

Minnesota Board of Water and Soil Resources. Minutes.

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9/29/94

Minnesota Board of Water & Soil Resources

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DATE: September 20, 1994

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

FROM: Ronald D. Harnack, Executive Director

SUBJECT: September 28-29, 1994 BWSR Tour and Meeting

The Board of Water and Soil Resources (BWSR) will meet on Thursday, September 29, 1994 beginning at 8:30 a.m. in Essex Hall at Canterbury Inn in Shakopee (see attached map). The agenda and informational materials are enclosed for your review.

A sleeping room reservation has been made (see attached listing) for the nights of Tuesday, September 27 and Wednesday, September 28. The rooms have been direct billed (so you will not pay for it) and listed in your name under the group name BWSR. If you need to make any changes to this reservation, please call the Canterbury Inn directly at 1-800-528-1234. The Brass Horse is the restaurant at the Canterbury Inn; you are on your own for meals except lunch and dinner on Wednesday, and lunch on Thursday, which have been direct billed.

A tour of the metro area has been scheduled for Wednesday, September 28, 1994. Attached is an itinerary of the tour. A chartered bus will depart from the Canterbury Inn at 8:00 a.m. A box lunch is provided at the Western Service Center in Apple Valley. The bus will return to the Canterbury Inn at 2:40 p.m. for a coffee break. A metro issues forum will be held in Essex Hall at Canterbury Inn from 3:00 - 4:30 p.m. A bus will depart from Canterbury Inn at 5:45 p.m. and take you to Mystic Lake Casino for dinner at 6:00 p.m. The bus will return to Canterbury Inn at 7:30 p.m.

SUMMARY OF SEPTEMBER BOARD AGENDA

1 - PROGRAM ASSESSMENTS

- **SERVICE TO LOCAL GOVERNMENTS**
- **DISPUTE RESOLUTION**
- **AGENCY ADMINISTRATION**

These assessments are the continuation of the presentations from last month. As requested by the Board these presentations will focus on the alternatives to address the program areas. They will be brief and yet provide ample time for discussion. **DISCUSSION.**

2 - BLUE PRINT FOR FY 96-97 LEGISLATIVE INITIATIVES

The staff management team has taken the assessments and laid out a framework for budget and policy initiatives for the FY 96-97 legislative session. The package presented recognizes the inter-relationships of the agency programs and therefore each element will have an impact on another element of the assessment process. This does not mean that changes are not appropriate. Depending on the Board's perspective on some of the policy issues reflected changes will be appropriate. Key policy issues in this proposal are:

a) the metro water management program be voluntary rather than mandatory;
b) metro area water management and wetlands are a priority need of the agency;
c) agency administration staffing is a priority need, both central office and regional;
d) increasing district capacity and recovering inflationary losses in the cost-share program are priority for putting conservation on the ground; and
e) the Wetland Conservation Act needs to be amended to address efficiency and effectiveness of the program at the local government;
f) training, education, communication are priority for effective delivery of services to the local governments; and
g) data management, data systems, and information and electronic communication exchange are priority for effective program monitoring and improvement.

There are other elements of the assessment process that require consideration by the Board but are not related to budget or policy legislation. These other issues will be reviewed in future Board meetings. **DECISION.**

3 - TECHNICAL COMMITTEE RECOMMENDATIONS REGARDING ALLOCATION OF ENGINEERING GRANTS

The technical committee representing staff of SCS, MASWCD, MACDE, and BWSR met several times to develop options for the effective delivery of engineering services for conservation practices and support for individual SWCD's. The result of these meetings is a team recommendation for the Board to adopt a river basin, watershed based geographical distribution of the resources. Ten to eleven teams consisting of one registered engineer and one technician specialist would provide the **backbone** of the engineering support. These teams would be located in host districts and serve a watershed based geographical area modified to align with existing SWCD boundaries. This backbone would be supported by engineering specialists and training specialists in BWSR and SCS. After review and discussion of several options, the team recommends this option for adoption by the Board. If accepted the next steps are for MASWCD in cooperation with BWSR to define the watershed based areas and to select a host district for approval at the October meeting. Staff would then work with the host districts and finalize agreements for hiring of the engineers and technicians by the end of the year or early in 1995. **DECISION.**

4 - HAZELTINE-BAVARIA WATER MANAGEMENT ORGANIZATION PLAN APPROVAL

A summary of the plan is attached. Staff has reviewed the plan and recommends approval. **DECISION.**

5 - REQUEST FOR HEARING ON VALLEY BRANCH WATERSHED DISTRICT WATER MANAGEMENT PLAN REVISION & FOR HEARING ON RILEY-PURGATORY-BLUFF CREEK WATERSHED DISTRICT WATER MANAGEMENT PLAN

The Board has received several requests for hearing on the districts plan or amendments to the plan. Under the statute the Board has an obligation to hold a hearing as prescribed by MS 103D.105. Staff requests authority to proceed and authorize the Executive Director to sign necessary documents. The hearings may be conducted by the Dispute Resolution Committee (DRC) or by a member or members of the Board at the discretion of the Board. **DECISION.**

6 - DISPUTE RESOLUTION COMMITTEE RECOMMENDATION, HARSTAD COMPANIES vs CITY OF FRIDLEY

The Dispute Resolution Committee held a hearing and will be finalizing findings, conclusions and recommendations for consideration by the Board. Specifics are not available at this time. **DECISION.**

7 - CHALLENGE GRANT ALLOCATIONS

The challenge grants for local water management have been allocated the second year of each biennium. The staff have reviewed the applications and recommend the Board's endorsement. There are limited comments from agencies or organizations. The statutory and rule guidance are included along with the recommendations. **DECISION.**

If you have any questions or need additional clarification please feel free to give me a call. See you on the 28th!

RDH:mja
Enc.

c: Sept.

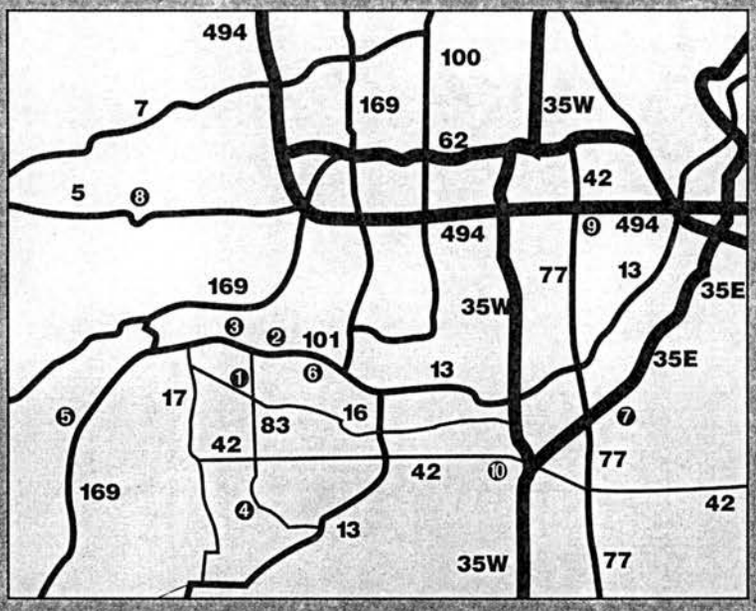
SLEEPING ROOMS FOR BWSR

Tuesday, September 27

1) Ted Lovdahl
2) Glenn Annexstad
3) Tim Hvidsten
4) Dwain Otte
5) Jim Nielsen
6) Barb Cobb
7) Marvell Tripp
8) Warren Rodning
~~9) James Rossman~~
10) Barb Uppgaard
~~11) Kathleen Roer~~
12) Ron Harnack
13) Bruce Sandstrom
14) Jim Haertel
15) Barbara Ohman

Wednesday, September 28

1) Ted Lovdahl
2) Glenn Annexstad
3) Tim Hvidsten
4) Dwain Otte
5) Jim Nielsen
6) Barb Cobb
7) Marvell Tripp
8) Warren Rodning
9) James Rossman
10) Barb Uppgaard
11) Kathleen Roer
12) Ron Harnack
13) Bruce Sandstrom
14) Jim Haertel
15) Barbara Ohman



❶ Best Western Canterbury Inn	❻ Raceway Park
❷ Valleyfair	❼ MN Zoo
❸ Murphy's Landing	❽ Chanhassen Dinner Theatres
❹ Mystic Lake Casino	❾ Mall of America
❺ Renaissance Festival	❿ Burnsville Center

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BWSR Metro Tour Agenda
September 28, 1994

8:00 Board Bus at Canterbury Inn in Shakopee

8:15 - 9:00 **Savage Fen - Alternative Urban Area Review Study (AUAR)**
- Dr. Jeanette Leete - MDNR, DOW
- Ray Wuolo - Barr Engineering
- John Heald, City of Savage

15 minutes travel time

9:15 - 9:45 **Crystal Lake Project - Phosphorus Removal / Wetland Treatment**
- Jim Robinette - President of Black Dog WMO

20 minute travel time

10:05 - 10:30 **Coffee Break and slide show presentation at Eagan City Hall on Eagan's Water Quality Management Program**
- Rich Brasch - City of Eagan Water Quality Coordinator

10:30 - 11:00 **Bus tour of City of Eagan Water Quality Projects**
- 2-cell storm water pond
- 1-cell pond
- in lake treatment
- Rich Brasch

20 minute travel time to Farmington

11:20 -12:00 **City of Farmington Project (wetlands mitigation, urban expansion, ag land conversion)**
- Lisa Rohr, Dakota SWCD Administrator
- Mitch Johnson, Dakota SWCD Technician

15 minute travel time to Dakota Co. Western Service Center in Apple Valley

12:15 -1:00 **Box Lunch at Dakota Co. Western Service Center. Presentations on:**
a. Dakota County GIS application to water and soil management issues
b. Overview of Dakota SWCD programs
- Curt Chatfield, Dakota County Physical Dev. Div.
- Dorothy Waltz, Dakota SWCD Supervisor

15 minute travel time (on bus overview of 1st private wetland banking project)

1:15 -1:30 **John Mesenbrink Wetland Bank Deposit**
Section 10, T. 114, R. 21, Scott County
- Jim Haertel, BWSR Board Conservationist

15 minute travel time (on bus explanation of Scott HD WL restoration - Jim Haertel)

1:45 -1:50 **Window inspection of Scott Co. Highway Dept. WL restorations near New Market**

10 minute travel time (on bus overview by Jim Haertel of next stop)

2:00 -2:05 **Window inspection of private driveway fill and wetland creation (violation/ cease & desist order/ replacement plan: demonstrates SWCD & DNR Enforcement Division cooperation, SW1/4, T. 113, R. 22)**

10 minute travel time to Prior Lake Spring Lake WD

2:15 -2:30 **On-site overview of Prior Lake Spring Lake Wetland/Water Quality Project**
- Paul Nelson, Montgomery Watson (Engineer for District)

15 minute drive back to Canterbury Inn

2:45 -3:00 Coffee Break

3:00 -4:30 **Metro Issues Forum (5-10 minute presentations followed by Q. & A.)**
- Comprehensive Wetland Management Planning (Cliff Aichinger, Ramsey - Wash. Metro WD)
- Storm Water/Wetlands Management (Diane Desotelle, City of Chanhassen)
- Met Council (Jack Frost)
  - LMRTAG
  - water quality grants
- Hennepin County views on urban ditch management (Vern Ginslinger, Henn. Co Public Works Director)
- Joint Power WMO perspectives (Jim Robinette, City of Lakeville)
- Minn. Assoc. of Soil & Water Cons. Districts, Urban Committee (Dorothy Waltz, Committee Chair)

A cellular phone will be on the bus for emergencies and coordination. (Phone # 759-7352)

a:agenda

BOARD OF WATER AND SOIL RESOURCES
BEST WESTERN CANTERBURY INN
1244 CANTERBURY ROAD
SHAKOPEE, MINNESOTA
THURSDAY, SEPTEMBER 29, 1994

AGENDA

8:30 a.m.	1.	Call Meeting to Order
	2.	Adopt Agenda
	3.	Approve Minutes of August 24, 1994
	4.	Reports • Chairman's Report - Jim Nielsen • Executive Director's Report - Ron Harnack • Committee Reports
9:00 a.m.	5.	Technical Advisory Committee Report - Al Kean
	6.	Program Assessments • Service to Local Governments • Dispute Resolution and Hearings • Agency Administration
	7.	Blueprint of BWSR Biennial Budget Request: Staff Recommendations from Program Assessments
	8.	FY95 Challenge Grant Allocations - Wayne Zellmer
11:00 a.m.	9.	Hazeltine-Bavaria Watershed Management Organization Watershed Management Plan Approval - Barbara Ohman
11:20 a.m.	10.	Dispute Resolution Committee's Recommendation, Harstad Companies vs. City of Fridley - Kathy Roer
11:30 a.m.	11.	Request for Public Hearing • Valley Branch Watershed District Watershed Management Plan Revision - Barbara Ohman • Riley-Purgatory-Bluff Creek Watershed District Watershed Management Plan Revision - Jim Haertel
	12.	Advisor Comments • Gary Nordstrom, SCS • Pat Wulff, MLA • Dan Livdahl, MACDE • Howard Peterson, MAWD • Allan Oehlke, MASWCD • Franklin Denn, MAT
	12.	Board Issues - discussion, comments, action needed
Noon		Adjourn

DRAFT 9-21-94

EXECUTIVE SUMMARY
BWSR PROGRAM ASSESSMENT--SUPPORT SERVICES TO SOIL AND WATER CONSERVATION DISTRICTS AND WATERSHED DISTRICTS

INTRODUCTION AND PURPOSE

Statutes require BWSR to provide many direct services to SWCDs and WDs. In addition, BWSR has provided certain discretionary services to assist its clientele. Taken together these services work toward accomplishing the BWSR mission as stated in its strategic plan of "enable(ing) local governments to properly manage water and soil resources". A BWSR "distinctive" is that the agency actively seeks to assist local governments to accomplish their resource management objectives with an active customer service approach.

SERVICES PROVIDED TO SOIL AND WATER CONSERVATION DISTRICTS

Background: SWCDs fill a unique niche in resource management in Minnesota. They are the key vehicle by which government can reach out to all land occupiers who need assistance to properly manage their resources. BWSR provides two services to SWCDs: timely assistance through its staff and funding (grants). Funding is provided because SWCDs do not have taxing authority. Currently BWSR provides 37% of SWCD revenues. BWSR provides staff and administrative and technical assistance for SWCDs to implement BWSR programs as well as purely local initiatives. BWSR helps connect individual SWCDs into a statewide delivery mechanism which works with many different agencies and organizations which need to reach out to individual landowners. Primary assistance is offered to SWCDs via 15 Board Conservationists located in BWSR field offices and various program staff located in BWSR St. Paul office.

M.S. 103C Responsibilities assigned to BWSR

-Assist district boards to implement their programs
-Keep districts informed
-coordinate district activities with other agencies
-Approve plans or programs which involve use of state funds
-Secure cooperation from other agencies in the work of districts
-Ensure compliance with grant requirements by advice, consultation and approval
-Provide operating funds to districts as provided by the legislature
-Audit SWCD books.

Discretionary services provided to SWCDs

-Respond to any requests for assistance
-Advocate for strong, capable districts
-Work closely with MASWCD on legislative and SWCD capacity building
-Providing evaluations of SWCD programs
-Conducting Supervisor and employee training in leadership, management, administration and technical subjects
-Accessing the executive branch of state government on SWCDs behalf including the governor's office, attorney general and other agencies
-Actively working to resolve disputes
-Representing district perspectives to other agencies
-Daily contact with BWSR field staff
-Bookkeeping assistance
-Technical and engineering support services to implement their programs
-Provide a statewide forum to advance the cause of soil and water conservation.

Examples of state policy implemented through SWCDs

1. Cost sharing for erosion control and water management (MS103C.501)
2. Activities to implement comprehensive local water plans(103B.3369)
3. Soil loss ordinances (103F.401-460)
4. Reinvest In Minnesota Program (103F.501-531)
5. Permanent Wetlands Preserves (103F.516)
6. Wetland Preservation Areas (103F.612)
7. Wetland Conservation Act(103G.221-103G.2373)
8. Well Sealing Cost Share Program (103I.331)
9. Sensitive groundwater area plan approvals (103H.111)
10. Statewide rainfall and groundwater observation networks
11. Preparation of metropolitan groundwater management plans (103B.255)
12. Administration of State Revolving Fund low interest loan funds for nonpoint source pollution control.

History (see separate summary)

WEAKNESSES:

1. BWSR staff time has shifted away from providing direct service to SWCDs for local priorities. Instead, more BWSR staff time is spent on BWSR program implementation.
This shift implies a mover from a service orientation to one in which SWCDs are seen primarily as a vehicle to implement an increasing array of state programs. Local initiative and flexibility are diminished.

2. No one person on BWSR's staff is assigned to be the SWCD "answer person" to support field staff by doing research and follow up. Timeliness and accuracy of response to districts suffers as a result.

3. SWCD Operational handbook is out of date.
4. SWCD support needs in the areas of technical and engineering support, leadership skills and training are growing faster than BWSR can support them.

STRENGTHS

1. Board Conservation work areas are small enough (3 to 8 counties) so there is regular contact and good, trustful working relationships exist between BWSR and SWCDs.

2. Response time to SWCD requests for information and assistance are still relatively fast.

3. BWSR program staff can gain rapid feedback from all SWCDs via field staff network. This helps BWSR to be responsive.

4. BWSR still operates as a decentralized agency which empowers field staff to set many priorities to match the needs of SWCDs. This is slipping away each year however.

SERVICES PROVIDED TO WATERSHED DISTRICTS

Background:

Watershed districts also fill a unique niche in resource management. Because water is difficult to manage on the basis of political boundaries, watershed districts are authorized to be formed to allow for more practical management on a hydrologic basis. BWSR creates watershed districts by responding to petitions of local origin. There are currently 43 watershed districts which cover about 25% of the state. Statutes assign only limited responsibilities to BWSR regarding watershed districts. Watershed districts have limited taxing authority and do not rely on BWSR for funding. Watershed districts typically retain consultant engineers and legal counsel in lieu of staff although more districts are hiring their own staff in recent years. The reliance of WDs on consultants sometimes limits their requests from BWSR for services since their is not a good understanding of where BWSR can assist watershed districts.

M.S. 103D Responsibilities assigned to BWSR

-Conduct hearings to establish districts, define boundaries and appoint the first managers
-Hear and decide on petitions for boundary changes, withdrawal of territory, enlargement of districts, consolidation of districts, terminations of districts, and increasing numbers of managers.
-maintain files and records on WDs
-establish audit schedule for WDs
-approve watershed management plans
-hear appeals of WD orders
-hear appeals of rules, permit decisions and orders not involving projects
-prepare advisory report on all WD projects

Non statutory (discretionary) assistance to WDs

1. Publish and maintain WD Managers Handbook
2. Notify WDs of upcoming manager appointments
3. Provide information and respond to requests for assistance such as providing legal interpretations via the attorney general, researching and advising on proper administrative procedures, provide information on forming watershed districts, etc.

STRENGTHS:

1. Statutory responsibilities continue to be met.

WEAKNESSES:

1. Overall staff assistance provided to watershed districts has diminished from 3 FTEs in 1987 to approximately 1.5 FTEs in 1994.

2. Services provided to WDs are reactive not proactive. Refinements to WD statute and assistance to help WDs manage their growing programs are dragging.

3. BWSR has no statutory authority to carry out watershed district oversight functions which the public and legislature perceive they have.

PROGRAM ALTERNATIVES (SERVICES TO SWCDs AND WDs)

Context:

1. **There is a growing expectation that BWSR can be "all things to all LGUs".** In reality BWSR is only

staffed and funded to provide services to SWCDs, WDs and Counties for items related to local water plans. BWSR is not staffed to provide assistance to cities, townships or other local governments. There is also a measurable shift in BWSR field staff time away from service to local governments to fulfill their priorities toward more time being spent to administer BWSR programs through local governments.

2. **BWSR field staff time is increasingly shifting away from service to local governments for THEIR priorities and towards BWSR program administration for state programs which SWCDs in particular implement.** In 1986 60% of field staff time was spent on SWCD services and 25% on BWSR programs and administration. In 1994 those figures have flip-flopped with approximately 66% of field staff time spent on BWSR programs and administration and 25% assisting all local governments with THEIR priorities.

3. **Changing expectations of BWSR by clientele and the public and shifts in use of BWSR staff time have happened incrementally in reaction to an eight year window of constantly taking on new program responsibilities which in reality are underfunded mandates (RIM, CLWP, METRO WP, Groundwater Act, WCA, SRF).** BWSR has not "padded" staffing requests to Finance and the legislature and has generally received about 60% of their requested staff. 1994 represents a good time to either ratify the gradual shift of staff resources or realign staff time in the context of the agency strategic plan.

4. **Providing a BWSR program mandate to local government gives them tools to carry out resource management activities but this alone does not constitute "service".** For example, no SWCD will say no to taking on RIM, Cost Sharing, CLWP, SRF etc., even though they are discretionary. Real or perceived, these programs become mandates. Pushing these mandates on SWCDs in particular tends to override their mission which is to tailor a conservation program which meets the particular needs of their district.

1. Status quo--maintain current levels of service. Probably not possible. Appeals under the Wetland Conservation Act and BWSR technical support responsibilities under the new State Revolving Fund for nonpoint pollution control outstrip staffing provided by the legislature. BWSR already has the mandate to implement these responsibilities. Reallocation of BWSR staff time away from serving local priorities is the only tool available within existing budget and staffing resources.

2. Retrench by avoiding non-statutory or non-mandated services and inform SWCDs and WDs of this. Ask local governments to find other sources for non BWSR program related training, question answering, consultation, troubleshooting, and personnel management assistance. Staff participation at many meetings and functions could be curtailed.

3. Provide more funding through grants so that SWCDs and WDs can staff up or otherwise meet their local program needs without relying on BWSR. Models which exist have been the Pilot SWCD manager program and funding assistance to joint powers efforts such as BERBI.

4. Comprehensively address staffing needs related to providing services to SWCDs and WDs.

> ***Keep Board Conservationist work areas similar in size to what they are now.** The present work areas allow a close personal working relationship to exist with the exception of the Metro Region where there are so many local governments. Maintaining this working relationship is a BWSR "distinctive". If not maintained, a large reason for BWSR's existence as a separate agency would be lost. In order to maintain close BC contact with clientele, the following specialist staff are needed to avoid encroaching on BC time:
>
> > ***Training Coordinator.** To organize and oversee BWSR's comprehensive training programs for SWCDs and WDs. This job has become too large for the chair of the T Team.

***Handbook/guidance materials Coordinator.** BWSR does a good job developing handbooks and a lousy job maintaining them. This person would work with all staff to keep materials up to date, including: SWCD Operational Handbook, RIM Handbook, WCA Handbook, various rules, BWSR administrative manual, SWCD Accounting Manual, BWSR technical materials....

***Communications officers in field offices** to keep all lgus, the public, other agencies and the legislature better informed on progress and success stories.

***Designate a SWCD answer person** to track down answers and do research beyond field staff's capacity.

***Designate a full time WD answer person** who could focus on customer service to them.

***Auditor is needed to implement a comprehensive audit process** for all BWSR grant programs including progress reporting which meets the agency's budgeting and management needs. Data base management could also be included. While existing staff appears to have the expertise to do this, time is not available.

***Complete teams of engineers and technicians** are needed to provide the most efficient and effective engineering assistance to SWCDs. Each design engineer needs at least one technician to assist with para-professional roles such as surveying and drafting to be the most productive and efficient. General funds are needed to permit the flexibility for technicians to wok with various programs and projects that include inadequate or no technical and administrative funding to the BWSR. The current need for technicians is in the Lakeshore Engineering and Cost-Share program support areas.

5. **Provide more financial and staffing support for Joint Powers Agreements** which create cooperative approaches for watershed based resource management.

6. **Develop agreements with educational institutions to provide trained staff persons** for local government and BWSR to hire, establish certification programs for professional competency, and accelerate training for upward mobility.

7. **Leadership development.** Fund an aggressive campaign to inform potential candidates of leadership opportunities on SWCD and WD boards. Second, provide leadership training opportunities to those persons who aspire to excellence in their capacities as board or staff leaders.

Next: Upon selection of strategy, specific law changes, rule and guideline changes, staffing needs and budget will be identified.

ALTERNATIVES FOR BWSR COMMUNICATIONS/EDUCATION PROGRAM

1. Status quo with acknowledgement that communications staff person provides little direct support to LGUs and northern education staff person is NOT carrying out the Education Strategy as it is written.

   Staffing: no changes
   Legislative action: none
   Implications: This will continue BWSR's movement away from providing direct service to LGUs in the communications arena and leave the southern and metro areas without any education support.

2. Attempt to better meet the communications/education efforts outlined in statute and the Strategic Plan. This could be done in the following ways:

   Alternative one: Combine communications/education/training under one office. Hire additional staff specializing in these areas.
   Implications: Combining these areas would require an overall communications (or marketing) plan, and would probably result in increased coordination between these areas. Increased staffing would allow us to provide both increased service to LGUs and increased service internally. The majority, if not all, of the additional staff would be located in the field offices.

   Alternative two: Continue communications/education under separate auspices. Expand staff.
   Implications: This would allow for separate tracts of these two areas to continue. It would be possible to expand one area (say, education) without expanding the other. Training would be an entirely separate function. There would probably be less coordination between these efforts (as they would be separate) but perhaps a greater focus on meeting regional needs. It would still be possible to have an overall "outreach" type of plan done, but individual communications, education and training plans would need to be done within that context.

   Alternative three: Expand partnership with MES.
   Implications: Politically, this would be a good idea; partnerships are trendy and MES gives us clout in the educational arena. The down side to this is that it limits us in terms of what directions we want to take our education/communications efforts. If, for example, we want staff people that fulfill a broader communications/education/training need, rather than just one of those needs, MES might well not be interested.

   Alternative four: Eliminate partnership with MES.

Implications: Politically, this would be a bad idea; however, it would allow us the opportunity to implement our Education Strategy as it was written (i.e., with the water resources education coordinator filling more of a coordinative role of facilitating educational work by the BCs) and would give us more freedom in directing the positions. We would lose the educational clout we get from being associated with MES.

Alternative five: Expand education/communications role of BCs.
Implications: This would entail hiring additional BCs, with the idea that each BC would then have certain education/communications responsibilities inherent in their jobs. This would build upon BWSR's traditional path of having BCs be generalists and provide a direct link to LGUs. However, it should be noted that most people with the BC background and education might not be comfortable in this role; or might not consider education and communications a priority.

Alternative six: Increased contracting.
Implications: This would allow us to increase our efforts in whatever way we choose. In the long run, this would probably be more expensive but would definitely serve well for short-term needs. Might take quite a bit of time to get someone "up to speed" on BWSR and its programs.

Alternative seven: Increased internship program.
Implications: This could potentially work very well. Obviously, the down side of interns is that they don't provide long-term support, and they tend to leave just as they finally figure out the ropes.

My recommendation:

1. Contract out for development of a communications/marketing/education plan. This plan will investigate and interpret LGU needs in a wide variety of areas, especially:
   - •training
   - •communications
   - •education
   - •technical assistance

2. To implement the recommendations in the plan, hire two additional communications/education specialists: one serving the metro and one serving the south. These positions could be shared BWSR/MES positions if the two agencies can reach an agreement on a somewhat different function for the positions.

3. These positions will focus on providing service to LGUs through working with the field staff. They will facilitate and

coordinate field staff communications and education activities, as well as providing some direct service to LGUs. Central office communications position will focus on providing overall communications/education planning, program support, and coordination with other agencies.

HAZELTINE-BAVARIA WATERSHED MANAGEMENT ORGANIZATION
WATERSHED MANAGEMENT PLAN APPROVAL

BACKGROUND

The Hazeltine-Bavaria Watershed Management Organization (HBWMO) is one of the last nine watershed management organizations (WMOs) in the metro area to submit their WMO Plan (Plan) for Board of Water and Soil Resources (BWSR) approval under the Metropolitan Surface Water Management Act (Act) (M.S. 103B.201 to 103B.251, formerly known as "509"). The HBWMO Plan was submitted, in accordance with M.S. 103B.231, Subd. 9, to BWSR, DNR, MPCA, and MN Dept. of Health for review on July 8, 1992, after having gone through the local review process in accordance with M.S. 103B.231, Subd. 7. According to M.S. 103B.231, Subd. 8, Met Council was to receive a copy of the plan and local comments prior to BWSR, DNR, MPCA and the Dept. of Health. However, Met Council received the plan at the same time as the other state agencies. The Plan is the last plan submitted prior to the effective date, August 1, 1992, of Minnesota Rules Chapter 8410, Metropolitan Area Local Water Management.

Agency comments were completed by Met Council (2/2/93), BWSR (3/3/93) and DNR (4/5/93). No comments were received from MPCA or the Dept. of Health. No responses to the comments were received from the HBWMO, nor were plan revisions made in response to the agency comments, until July, 1994.

In July, 1994, consultants for the HBWMO contacted BWSR staff to initiate completion and approval of the Plan. At this time, a response to agency comments received was formulated, addressing virtually all comments made. Met Council accepted the changes made with a letter dated August 2, 1994, with the understanding that this is a "first generation" plan, not subject to the 8410 Rules. DNR acknowledged that all concerns originally expressed had been addressed, in their letter dated August 24, 1994.

BWSR approval is sought as soon as possible, since the City of Chaska is an applicant for Met Council funding. Met Council requires that an approved WMO Plan be in effect in an area proposed to receive funding. The September BWSR meeting was set as date for approval.

HIGHLIGHTS OF THE PLAN

- An Executive Summary is included to summarize the contents and goals of the Plan. The HBWMO is located in Carver County, in the southwestern portion of the seven county metro area. The HBWMO has an area of approximately 12.5 square miles and outlets directly into the Minnesota River at Chaska.

- The Introduction outlines the purpose of the Plan, intending to meet the requirements of the Act.

- The Physical Environment section includes good detailed discussion of the climate, topography, soils, bedrock, groundwater, erosion, water quality, public water supply, public wastewater facilities, and land use information. This includes a thoughtful description of both existing and future land uses for the area.

- The Hydrologic System section further describes the subwatersheds of the area and addresses items which provide excellent background for the goals, policies and management of the watershed.

- In accordance with M.S. 103B.231, Subd. 6 (a)(6), the Plan identifies high priority areas for wetland preservation, enhancement, restoration, and establishment, and outlines the means to add additional high priority wetland areas in the future, through the Plan Amendment process.

- The Management Plan prescribes design criteria and standards, an education program, priority waterbody protection, wetland management provisions and a water quality monitoring program. The Management Plan requires the local municipalities to take the responsibility in implementing these programs, with HBWMO oversight to insure adequate implementation.

- The Plan's Goals and Policies section covers policies on planning, storm water runoff, flooding, wetland water quality, groundwater, erosion control, recreation, open space and wildlife management, administration, and land use regulation.

- In addition, in response to DNR and Met Council comments, the Plan also includes a Minnesota River Policy Statement. HBWMO will cooperate with the Met Council and MPCA in defining the 40% reduction, assessing the sources of the problem, and evaluation the potential solutions to the problem along the Minnesota River. The HBWMO agrees to revise its watershed plan to implement appropriate solutions after these are discussed, developed and mutually agreed upon by the Met Council and the WMO.

- The Plan's Administrative Procedures section includes requirements for Local Management Plan contents and approval, the procedures for Plan implementation, amendments and variances. Though the HBWMO does not plan any Capital Improvements at this time, the Plan outlines the procedures when such activity is determined to be necessary.

STAFF RECOMMENDATION

BWSR staff recommends that the BWSR approve the Watershed Management Plan for the Hazeltine-Bavaria Watershed Management Organization.

Prepared for: September 29, 1994 BWSR Board Meeting
By: Barbara W. Ohman, Metro Board Conservationist

REQUEST FOR PUBLIC HEARING
RILEY-PURGATORY-BLUFF CREEK WATERSHED DISTRICT
WATERSHED MANAGEMENT PLAN REVISION

BACKGROUND

The Riley-Purgatory-Bluff Creek Watershed District filed a Watershed Management Plan (Plan) for review pursuant to Minn. Stat. 103B.231, Subd. 7, 8, 9. Due notice of filing was provided by BWSR and published in local newspapers on August 4 and 11, 1994 (copy attached).

The BWSR received a timely request for hearing dated September 8, 1994 from the Minnesota River Valley Audubon Chapter (copy attached). The request stated that the Plan lacks definitive guidelines for local water plans, detailed criteria on permits and wetland impacts are not spelled out, and local water plans are adopted without direction from an overall watershed basis which questions the need to have a separate authority.

The Plan must conform to Minnesota Rules Chapter 8410, Metropolitan Area Local Water Management.

STAFF RECOMMENDATION

BWSR staff request the Board consider the following:

1. that the BWSR order and provide due public notice that a public hearing be held on the above referenced matter as soon as possible.
2. that the hearing be held at the Eden Prairie City Hall, a site that is handicap accessible, and
3. that the Executive Director be authorized to sign an order for hearing on behalf of the Board.

Staff will have necessary information on newspaper deadlines at the September 29, 1994 BWSR Board meeting in order to decide upon a date for the public hearing.

Prepared for: September 29, 1994 BWSR Board Meeting

By: Jim Haertel, Metro Board Conservationist

MINNESOTA RIVER VALLEY AUDUBON CHAPTER
Box 20400, Bloomington, Minnesota 55420

RECEIVED
SEP 12 1994
BOARD OF WATER

September 8, 1994

Mr. Jim Haertel
Minnesota Board of Water and Soil Resources (BWSR)
155 S. Wabasha, Suite 104
St. Paul, MN 55107

Dear Mr. Haertel,

This letter is a request for a public hearing due to objections to the proposed Water Management Plan filed with BWSR by the Riley-Purgatory-Bluff Creek Watershed District. The second publication of Notice of Filing of Watershed Plan was published in the August 11, 1994, edition of the Eden Prairie News, and this request is within thirty days from that date.

The draft copy of the plan lacks definitive guidelines for local water plans. Detailed criteria on permits and wetland impacts are not spelled out. It appears that local water plans are adopted without direction from an overall watershed basis, seriously questioning the effectiveness or need to have a separate authority.

Sincerely yours,

Scott Wallace

Scott Wallace

cc: Conrad Fiskness, Riley-Purgatory Bluff Creek Watershed district

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NOTICE OF FILING OF WATERSHED PLAN

In the Matter of Reviewing the Watershed Management Plan for the Riley-Purgatory-Bluff Creek Watershed District (Minnesota Statutes 103B.231, Subd.9)

NOTICE IS HEREBY GIVEN that a Watershed Management Plan (Plan) was filed with the Minnesota Board of Water and Soil Resources (Board), the Metropolitan Council, the Department of Natural Resources, the Minnesota Pollution Control Agency, the Minnesota Department of Health, Hennepin and Carver Counties, the governing bodies of the communities affected by the Plan, and the Hennepin and Carver Soil and Water Conservation Districts by the Riley-Purgatory-Bluff Creek Watershed District (District) pursuant to the requirements of the Metropolitan Surface Water Management Act (Minnesota Statutes 103B.201 to 103B.251)(ACT).

The District encompasses approximately 47 square miles of land in Hennepin and Carver Counties. It includes land in the Cities of Bloomington, Chanhassen, Chaska, Deephaven, Eden Prairie, Minnetonka, and Shorewood.

The Plan includes an executive summary with an overview of the District, a land and water resource inventory, District-wide goals and policies, an assessment of problems, a prioritized program, and a capital improvement program.

The Board must review the Plan for conformance with the requirements of Minnesota Statutes 103D and the Act. The Board may approve all or parts of the Plan which are in conformance with state law.

The Board invites written comment on the proposed Plan. All comments and information received by the Board will be considered before a decision is made on the Plan. Any person who objects to the proposed Plan may submit a written request for a hearing to the Board of Water and Soil Resources. If no written requests for a hearing are received within 30 days of the second publication of this Notice, the Board will consider all the information and comments received and will make a decision on the Plan at a future regular meeting of the Board.

A copy of the Plan is available for inspection by any interested persons at the office of each community within the District, as well as the offices of the Hennepin County Soil and Water Conservation District at 10801 Wayzata Blvd., Suite 240, Minnetonka, MN 55305 (telephone 544-8572), and the Carver County Soil and Water Conservation District at 219 E. Frontage Road, Waconia, MN 55387 (telephone 442-5101).

For further information, contact Jim Haertel at the Board of Water and Soil Resources at 297-2906.

Dated in St. Paul, Minnesota this 1st day of August 1994.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES
Jim Haertel
Board Conservationist

(Published in the Eden Prairie News on Thursdays, August 4 and 11, 1994; No. 7156)

Affidavit of Publication
Southwest Suburban Publishing

State of Minnesota)
)SS.
County of Hennepin)

Stan Rolfsrud, being duly sworn, on oath says that he is the authorized agent of the publisher of the newspaper known as the Eden Prairie News and has full knowledge of the facts herein stated as follows:

(A) This newspaper has complied with the requirements constituting qualification as a legal newspaper, as provided by Minnesota Statute 331A.02, 331A.07, and other applicable laws, as amended.

(B) The printed public notice that is attached to this Affidavit and identified as No. 7156, was published on the date or dates and in the newspaper stated in the attached Notice, and said Notice is hereby incorporated as part of this affidavit. Said notice was cut from the columns of the newspaper specified. Printed below is a copy of the lower case alphabet from A to Z, both inclusive, and is hereby acknowledged as being the kind and size of type used in the composition and publication of the Notice:

abcdefghijklmnopqrstuvwxyz

By: _____
Stan Rolfsrud, General Manager

Subscribed and sworn before me on

this 11th day of August, 1994

Gwen M. Raduenz
Notary Public

GWEN M. RADUENZ
NOTARY PUBLIC - MINNESOTA
SCOTT COUNTY
My Commission Expires Feb. 24, 1999

RATE INFORMATION

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Rate actually charged for the above matter ..... $6.89 per column inch

BOYUM & BARENSCHEER
CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

FAX TRANSMISSION

DATED: 9/2/94

TO: Grey Larson / Barbara Ohman
BWSR

ATTENTION

FAX NUMBER 297-5615

OF PAGES BEING TRANSMITTED 8 INCLUDING THIS PAGE

CONFIDENTIALITY NOTICE: The document(s) accompanying this fax contain confidential information which is legally privileged. The information is intended only for the use of the intended recipient named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information except its direct delivery to the intended recipient named above is strictly prohibited. If you have received this fax in error, please notify us immediately by telephone to arrange for return of the original documents to us.

COMMENTS:

IF YOU HAVE NOT RECEIVED ALL OF THE PAGES FOR THIS TRANSMISSION, PLEASE CONTACT:

FROM: BARBARA ISAACSON WALSH 777-7617

RETURN FAX NUMBER (612) 777-3147

To Whom it may concern,

I hereby request a hearing to be held by the Board of Water and Soil Resources regarding the final plan revision of the Valley Branch Watershed Board. I am requesting this hearing due to the options discussed for outletting the pond located in Olson Lake Estates.

Sincerely,

Barbara Isaacson Walsh

8027- 50TH St. N.
Lake Elmo, Minnesota 55042
777-7617

To Whom it may concern,

I hereby request a hearing to be held by the Board of Water and Soil Resources regarding the final plan revision of the Valley Branch Watershed Board. I am requesting this hearing due to the options discussed for outletting the pond located in Olson Lake Estates.

Sincerely,

Laura Ann Graaca

8009 Hill TR N.

Lake Elmo, Minnesota 55042

To Whom it may concern,

I hereby request a hearing to be held by the Board of Water and Soil Resources regarding the final plan revision of the Valley Branch Watershed Board. I am requesting this hearing due to the options discussed for outletting the pond located in Olson Lake Estates.

Sincerely,

(GRITZMAKER)

7951 N. 50th St

Lake Elmo, Minnesota 55042

To Whom it may concern,

I hereby request a hearing to be held by the Board of Water and Soil Resources regarding the final plan revision of the Valley Branch Watershed Board. I am requesting this hearing due to the options discussed for outletting the pond located in Olson Lake Estates.

Sincerely,

Mary D. Brown

7990 N. 50th St

Lake Elmo, Minnesota 55042

To Whom it may concern,

I hereby request a hearing to be held by the Board of Water and Soil Resources regarding the final plan revision of the Valley Branch Watershed Board. I am requesting this hearing due to the options discussed for outletting the pond located in Olson Lake Estates.

Sincerely,

Deni M. Hawbaum (HAWKINSON)

4811 Olson Lake Trail

Lake Elmo, Minnesota 55042

To Whom it may concern,

I hereby request a hearing to be held by the Board of Water and Soil Resources regarding the final plan revision of the Valley Branch Watershed Board. I am requesting this hearing due to the options discussed for outletting the pond located in Olson Lake Estates.

Sincerely,

Peter Schmieding

4751 Olson Lake Trail

Lake Elmo, Minnesota 55042

To Whom it may concern,

I hereby request a hearing to be held by the Board of Water and Soil Resources regarding the final plan revision of the Valley Branch Watershed Board. I am requesting this hearing due to the options discussed for outletting the pond located in Olson Lake Estates.

Sincerely,

Nancy S. Rowe
8286 Hidden Bay Ct. No.

Lake Elmo, Minnesota 55042

- REQUEST FOR PUBLIC HEARING -
VALLEY BRANCH WATERSHED DISTRICT
WATERSHED MANAGEMENT PLAN REVISION

BACKGROUND

The Valley Branch Watershed District (VBWD) submitted the Watershed Management Plan Revision (Plan Revision) for review pursuant to M.S. 103B.231, Subd. 7, 8 and 9 on June 28, 1994. Due notice was provided by BWSR in local newspapers on July 28 and August 4, 1994.

The BWSR received at least eleven separate, timely requests for a public hearing on the matter of review of the VBWD Plan Revision. Each of the requests dealt with the specific issue of the outlet of Olson Lake Estates Pond, a previously land-locked water body, into Olson Lake, and the alleged degradation of Olson Lake from this outlet.

Though the Plan Revision is not subject to MN Rules Chapter 8410, Metropolitan Area Local Water Management (Rules), it was written with the intent to conform as closely as possible to the Rules.

The Plan includes Individual Water Management Plans for specific water bodies indicated as high-priority water bodies. The Individual Water Management Plan for Olson Lake specifies a number of options for the outlet for Olson Lake Estates Pond, at least one of which is an outlet to Olson Lake with continuous alum treatment prior to outlet. Other options direct the outlet away from Olson Lake, with varying degrees of costs.

STAFF RECOMMENDATION

BWSR staff asks the Board to consider the following recommendations:

1) that the BWSR order and provide due notice that a public hearing be held on the above referenced matter as soon as possible,
2) that the hearing be held at the Lake Elmo City Hall, a site that is handicap accessible, and
3) that the Executive Director be authorized to sign an order for hearing on behalf of the Board.

Staff will have necessary information on newspaper deadlines at the September 29, 1994 BWSR Board meeting in order to decide upon a date for the public hearing.

Prepared for: September 29, 1994 BWSR Board Meeting
By: Barbara W. Ohman, Metro Board Conservationist

RECEIVED
SEP 13 1994
BOARD OF WATER
& SOIL RESOURCES

Financial Audit Division
Office of the Legislative Auditor
State of Minnesota

Financial Audit Division

The Office of the Legislative Auditor is responsible for financial audits of funds administered by the executive and judicial branches of state government. The audits are conducted by the office's Financial Audit Division. The division has a staff of approximately forty governmental accounting and auditing professionals, the majority of whom are Certified Public Accountants.

The Financial Audit Division does its work in accordance with standards established by the American Institute of Certified Public Accountants and the Comptroller General of the United States. Annually, the division performs a Statewide Financial Audit of the state's financial statements. The audit reviews the major financial systems maintained by the state's largest thirty departments. The Statewide Audit also includes a "Single Audit" which tests whether agencies are adhering to federal requirements in the administration of federally assisted programs. The division also conducts approximately thirty to forty financial and compliance audits of individual agencies or institutes each year after the Statewide audit is completed.

In addition to financial audits, the Office of the Legislative Auditor performs program evaluations through a Program Evaluation Division.

The Legislative Auditor is appointed by the Legislative Audit Commission for a six year term. The Financial Audit Division and the Program Evaluation Division are each under the direction of a deputy legislative auditor. All audit, evaluation, and investigation reports are solely the responsibility of the Legislative Auditor and his staff, and they are available on request from the office.

ENVIRONMENT AND NATURAL RESOURCES TRUST FUND

SELECTED SCOPE FINANCIAL AUDIT

FOR THE PERIOD JULY 1, 1991 - FEBRUARY 28, 1994

SEPTEMBER 1994

ADVANCE COPY
Not for
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UNTIL SEP 14 1994 -10 00 AM

Financial Audit Division
Office of the Legislative Auditor
State of Minnesota

94-48

Centennial Office Building, Saint Paul, MN 55155 • 612/296-4708

SUMMARY

State of Minnesota
Office of the Legislative Auditor
Centennial Office Building • St. Paul, MN 55155
612/296-4708

ENVIRONMENT AND NATURAL RESOURCES TRUST FUND

SELECTED SCOPE FINANCIAL AUDIT
FOR THE PERIOD JULY 1, 1991 - FEBRUARY 28, 1994

Public Release Date: September 14, 1994 No. 94-48

AGENCY BACKGROUND

The Environment and Natural Resources Trust Fund was established by constitutional amendment in November 1988. It provides a long-term permanent and stable source of funding for natural resources. The legislature authorized the first appropriations from the trust fund in 1991. The appropriations, which totaled $14,960,000, were made to nine different agencies and were available for the period July1, 1991 through June 30, 1993. As of February 28, 1994, the agencies had spent $13,734,398 of the appropriated funds.

SELECTED AUDIT AREAS

As provided in Minn. Stat. Section 116P.04, Subd. 5, the objective of our audit was to determine of trust fund expenditures were made for the purposes provided in the Legislative Commission on Minnesota Resources budget plan. We selected a sample of departments and individual projects for review. We performed tests of project activity at the Board of Water and Soil Resources, the Department of Natural Resources, the Department of Education, and the Department of Administration.

- *Board of Water and Soil Resources Projects*

The Board of Water and Soil Resources (BWSR) received funding of $2,060,000 for six trust fund projects. We found problems with three of the six projects. The board did not adequately monitor close out of the well sealing project grants. In addition, the board did not have timely written commitments from some landowners for two easement projects.

- *Department of Natural Resources Projects*

The Department of Natural Resources (DNR) had 16 trust fund projects funded from $5,760,000 in appropriations and $35,000 in grant receipts. We had concerns on three of the eight projects we reviewed at DNR. The department purchased a large amount of equipment at the end of one project. In addition, the department's accounting procedures for one project's required match needed improvement. Also, the department did not exercise adequate oversight for one project.

- *Department of Education Projects*

The Department of Education (DOE) had two projects funded from appropriations totaling $830,000. We question the department's allocation of per diem to one project.

- *Department of Administration Projects*

The Department of Administration had two projects funded from $2,100,000 in appropriations. We reviewed one of the projects and found that costs were in compliance with the budget plan.

Contact the Financial Audit Division for additional information.
296-1730

STATE OF MINNESOTA
OFFICE OF THE LEGISLATIVE AUDITOR
CENTENNIAL BUILDING, ST. PAUL, MN 55155 • 612/296-4708
JAMES R. NOBLES, LEGISLATIVE AUDITOR

Senator Phil Riveness, Chair
Legislative Audit Commission

Members of the Legislative Audit Commission

Representative Phyllis Kahn, Chair
Legislative Commission on Minnesota Resources

Members of the Legislative Commission on Minnesota Resources

Mr. John Velin, Director
Legislative Commission on Minnesota Resources

Mr. Ronald Harnack, Executive Director
Board of Water and Soil Resources

Ms. Linda Powell, Commissioner
Department of Education

Mr. Rodney Sando, Commissioner
Department of Natural Resources

Ms. Debra Rae Anderson, Commissioner
Department of Administration

Audit Scope

We have conducted a financial related audit of selected expenditures of the Environment and Natural Resources Trust Fund for the period July 1, 1991 through February 28, 1994. In November 1993, we issued a separate report on an audit of 12 trust fund projects for the period July 1, 1991 through December 31, 1992. This report incorporates the results of the prior audit testing. Chapter 1 provides a brief description of the Environment and Natural Resources Trust Fund and our audit scope. Chapters 2 through 5 discuss the results of our audit.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial activities attributable to the transactions of the Environment and Natural Resources Trust Fund are free of material misstatements.

As provided in Minn. Stat. Section 116P.04, Subd. 5, the objective of our audit was to determine if trust fund expenditures were made for the purposes provided in the Legislative Commission on

Minnesota Resources (LCMR) budget plan. To accomplish this objective, we interviewed LCMR staff to gain an understanding of the budget plan and the policies and procedures established to control expenditures. We then selected a sample of departments and individual projects for further review. We performed tests of project activity at the Board of Water and Soil Resources, the Department of Natural Resources, the Department of Education and the Department of Administration. We tested compliance with certain provisions of laws, regulations, contracts, and grants related to the Environment and Natural Resources Trust Fund. However, our objective was not to provide an opinion on overall compliance with such provisions.

To achieve our objective, we obtained an understanding of the design of relevant internal control policies and procedures and determined whether they have been placed in operation, and we assessed control risk. Our review was more limited than would be necessary to express an opinion on the internal control structures taken as a whole for the Board of Water and Soil Resources, the Department of Natural Resources, the Department of Education and the Department of Administration.

Management Responsibilities

The management of the Board of Water and Soil Resources, the Department of Natural Resources, the Department of Education and the Department of Administration are responsible for establishing and maintaining internal control structures. This responsibility includes compliance with applicable laws, regulations, contracts, and grants. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that:

- assets are safeguarded against loss from unauthorized use or disposition;
- transactions are executed in accordance with applicable legal and regulatory provisions, as well as management's authorization; and
- transactions are recorded properly on the statewide accounting system in accordance with Department of Finance policies and procedures.

Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

Conclusions

Our review of selected project expenditures identified some areas of concern relating to agency project administration. We believe additional statutory or procedural guidance may be necessary to clarify certain fiscal requirements, such as the time frame during which project appropriations may be expended. We found that for three projects, commitments were finalized or purchased equipment was received after the end of the appropriation period. We also question the allocation of certain costs to trust fund projects. In addition, departments did not adequately monitor flow-through projects. We believe that the Legislative Commission on Minnesota Resources should review these areas of concern to determine if further project guidelines or statutory revisions are necessary. We discuss our specific conclusions in Chapter 2 through 5.

This report is intended for the information of the Legislative Audit Commission and management of the Legislative Commission on Minnesota Resources, the Board of Water and Soil Resources, the Department of Natural Resources, the Department of Education, and the Department of Administration. This restriction is not intended to limit the distribution of this report, which was released as a public document on September 14, 1994.

We thank staff from the Legislative Commission on Minnesota Resources, the Board of Water and Soil Resources, the Department of Education, the Department of Natural Resources, and the Department of Administration for their cooperation during this audit.

James R. Nobles
Legislative Auditor

John Asmussen, CPA
Deputy Legislative Auditor

End of Fieldwork: April 29, 1994

Report Signed On: September 7, 1994

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Audit Participation

The following members of the Office of the Legislative Auditor prepared this report:

John Asmussen, CPA	Deputy Legislative Auditor
Claudia Gudvangen, CPA	Audit Manager
Lori Pellicci, CPA	Auditor-In-Charge
Geniene Herrlich	Auditor

Exit Conferences

The issues in this report were discussed with staff of the following agencies:

Board of Water and Soil Resources
Department of Natural Resources
Department of Education
Department of Administration

Chapter 1. Introduction

The Environment and Natural Resources Trust Fund was established by constitutional amendment in 1988. Article XI, Sec. 14 of the Constitution of the State of Minnesota, as amended in November 1990, provides, in part:

> The principal of the environment and natural resources trust fund must be perpetual and inviolate forever, except appropriations may be made from up to 25 percent of the annual revenues deposited in the fund until fiscal year 1997 and loans may be made of up to five percent of the principal of the fund for water system improvements as provided by law.....The net earnings from the fund shall be appropriated in a manner prescribed by law for the public purpose of protection, conservation, preservation, and enhancement of the state's air, water, land, fish, wildlife, and other natural resources. Not less than 40 percent of the net proceeds from any state-operated lottery must be credited to the fund until the year 2001.

This constitutional provision provides a long-term permanent and stable source of funding for natural resources. The State Board of Investment invests trust fund moneys pursuant to Minn. Stat. Section 11A.24. Investment income is available each biennium for expenditure. In addition, as shown in Table 1-1, for each biennium through 1997 the Legislature has provided varying percentages of additional revenue up to the constitutional limitation.

Table 1-1
Environment and Natural Resources Trust Fund
Additional Revenue Available for Funding Projects

- For the 1991-1993 biennium, up to 25 percent of the revenue deposited in the trust fund in fiscal years 1990 and 1991;
- For the 1993-1995 biennium, up to 20 percent of the revenue deposited in the trust fund in fiscal year 1992 and up to 15 percent of the revenue deposited in the fund in fiscal year 1993;
- For the 1993-1995 biennium, up to 25 percent of the revenue deposited in trust fund in fiscal years 1994 and 1995, to be expended only for capital investments in parks and trails; and
- For the 1995-1997 biennium, up to ten percent of the revenue deposited in the fund in fiscal year 1996.

Note: Table 1-3 shows the additional revenue collected during fiscal years 1990 through 1993 and available for expenditure in accordance with these guidelines.

Source: Minn. Stat. Section 116P.11 (b).

Table 1-2 shows the financial activity for the trust fund corpus from inception of the fund through Fiscal Year 1993.

Table 1-2
Environment and Natural Resources Trust Fund
Trust Fund Corpus
Summary of Financial Activity
Four Years Ended June 30, 1993

	Year Ended June 30			
	1990	1991	1992	1993
Beginning Fund Balance	$ 0	$ 2,734,734	$22,799,621	$40,291,056
Revenue:				
Lottery Proceeds	$2,734,434	$20,064,082	$17,491,835	19,429,227
Gifts and Donations	300	805	3,602	0
Total	$2,734,734	$20,064,887	$17,495,437	19,429,227
Ending Fund Balance	$2,734,734	$22,799,621	$40,291,056	$59,720,283

Note: In addition, any appropriated funds not encumbered in the biennium in which they are appropriated cancel and are to be credited to the principal of the trust fund.

Source: State of Minnesota Comprehensive Annual Financial Reports and supporting accounting records.

As provided in Minn. Stat. Section 116P.03, the trust fund may not be used as a substitute for traditional sources of funding environmental and natural resources activities, but the trust fund shall supplement the traditional sources. The trust fund is to be used primarily to support activities whose benefits become available only over an extended period of time.

Table 1-3 shows the financial activity for the expendable portion of the trust fund for the same four year period.

Table 1-3
Environment and Natural Resources Trust Fund
Expendable Trust Fund Portion
Summary of Financial Activity
Four Years Ended June 30, 1993

	Year Ended June 30			
	1990	1991	1992	1993
Beginning Fund Balance	$ 0	$ 911,505	$ 8,840,055	$10,802,997
Revenue:				
Lottery Proceeds	$911,478	$6,688,027	$ 4,372,058	3,428,687
Investment Income	27	1,240,253	2,611,161	3,477,179
Gifts and Donations	0	270	901	0
Total Revenue	$911,505	$7,928,550	$ 6,984,120	$ 6,905,866
Expenditures:				
Current Expenditures			$ 2,508,700	$ 5,650,461
Capital Outlay			699,929	323,362
Grants			1,812,549	1,803,534
Total Expenditures			$ 5,021,178	$ 7,777,357
Ending Fund Balance	$911,505	$8,840,055	$10,802,997	$ 9,931,506

Note: In addition, any appropriated funds not encumbered in the biennium in which they are appropriated cancel and are to be credited to the principal of the trust fund.

Source: State of Minnesota Comprehensive Annual Financial Reports and supporting accounting records.

During our annual statewide audit, we verified the propriety of revenue deposited to the trust fund. We performed tests of investment income at the State Board of Investment. We also verified the proper distribution of lottery proceeds to the trust fund, and the appropriate allocation of revenues between fund corpus and expendable balance. In our audits of the Minnesota State Lottery for fiscal years 1991 and 1992, we questioned the lottery's authority to maintain reserve accounts, thereby reducing distributions to the trust fund.

The Legislative Commission on Minnesota Resources (LCMR), consisting of 16 members of the legislature, administers the trust fund. LCMR recommends a biennial budget plan for trust fund expenditures. In addition, it adopts a six year strategic plan identifying priority areas for funding. LCMR employs a staff to assist it in its responsibilities. John Velin currently serves as LCMR Director.

Biennially, state agencies and other entities submit proposed projects to LCMR for review and, if approved, inclusion in the state's budget plan. The Legislature appropriates funds to state agencies for two-year projects based on LCMR recommendations. A peer review panel reviews all research proposals before they receive an appropriation from the trust fund. In addition to the trust fund, environmental projects may be funded from the Minnesota Future Resources Fund or federal oil overcharge funds.

Environmental and Natural Resources Trust Fund

The Legislature authorized the first appropriations from the trust fund in the 1991 legislative session. The appropriations funded projects scheduled for the period July 1991 through June 1993. Table 1-4 shows the financial status of the trust fund at February 28, 1994.

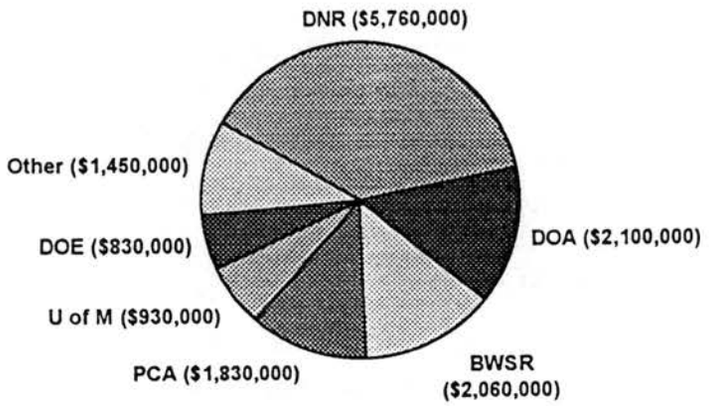
Table 1-4
Environment and Natural Resources Trust Fund
Summary of Project Financial Activity
July 1, 1991 - February 28, 1994

Project Appropriations	$14,960,000
Expenditures through June 30, 1993	12,798,535
Expenditures from July 1, 1993 through February 28, 1994	935,863
Canceled Appropriations	209,195
Unexpended Balance	$ 1,016,407

Source: Statewide Accounting System accounting records and detailed transactions as of February 28, 1994.

We examined all financial activity from July 1, 1991, through February 28, 1994, for a sample of projects funded for the 1991-1993 biennium. State agencies receiving trust fund appropriations are responsible for administering approved projects and monitoring flow-though grants to other entities. Figure 1-1 shows the level of funding received by various agencies for the 1991-1993 biennium.

Figure 1-1
Trust Fund
Fiscal Year 1991-1993 Appropriations



As a condition of acceptance of trust fund appropriations, agencies must submit a work program and semiannual progress reports to LCMR. As provided in Minn. Stat. Section 116P.05, LCMR must approve the work program before an agency can spend trust fund appropriations.

In Chapters 2 through 5, we discuss our specific conclusions on the projects reviewed at the Board of Water and Soil Resources, the Department of Natural Resources, the Department of Education and the Department of Administration.

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Chapter 2. Board of Water and Soil Resources

Chapter Conclusions

We found problems with three of the six projects administered by the Board of Water and Soil Resources. The board did not adequately monitor close out of the well sealing project grants. It did not promptly recover $15,010 that Dakota County had to return to the trust fund. In addition, it did not have firm commitments from many landowners on two projects before it encumbered the funds in the Statewide Accounting System.

The Board of Water and Soil Resources (BWSR) received funding of $2,060,000 for six trust fund projects for the 1991-1993 biennium. As of February 28, 1994, it had spent $1,531,268 on these projects.

Well Sealing Cost Sharing Grants

This project provided grants to counties to share in the cost of sealing wells. It accelerated work that was started under the Groundwork Protection Act of 1989.

Table 2-1
Well Sealing Cost Share Grant
Financial Status as of February 28, 1994

Appropriation Amount	$750,000
Grant Expenditures	750,000
Unexpended Appropriation	$ 0

Note: As discussed in finding 1, there is a receivable of $15,010 due from Dakota County for unexpended grant funds. Additional amounts may be due from other counties which have unobligated funds.

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

In our November 1993 audit of this project we questioned BWSR's process for review of certain project applications. In addition, we concluded that BWSR had not exercised adequate oversight of the well sealing project grants. Our review of activity through February 28, 1994 showed that, except for the issues noted in the November 1993 audit and in finding 1 below, costs were in compliance with the budget plan.

Environmental and Natural Resources Trust Fund

1. The Board of Water and Soil Resources did not adequately monitor close out of the well sealing project grants.

The Board of Water and Soil Resources did not monitor the timely receipt of unused funds from grantee counties. BWSR has not followed up with counties to ensure that they return unobligated funds at the end of the grant period. The grant agreements require that each county return any remaining funds within two months after the expiration of the grant agreement. We noted one instance where a county was holding unobligated funds, which it should have returned to the state. Dakota County submitted the required reports and requested to keep the funds for other well sealing projects. BWSR staff intended to request the funds back from Dakota County but had not done so at the time of our review. Instead, they allowed Dakota County to retain $15,010 beyond March 15, 1994, the date for return of funds specified in the contract. According to board records, there are also 38 other counties that had unexpended funds totaling $232,000, as of March 1994. A portion of the unexpended funds may also be due back to the trust fund.

Recommendations

- *The Board of Water and Soil Resources should recover from Dakota County the $15,010 of unexpended project funds.*
- *The board should review the financial status of all grants to ensure that grantees return unobligated moneys to the state in a timely manner.*

Easement Acquisition on Restored Wetlands

The purpose of this project was to contract with the U.S. Fish and Wildlife Service and the Izaak Walton League to acquire permanent easements on federally restored lands. The Fish and Wildlife Service and the League were to provide the required match.

Table 2-2
Easement Acquisition on Restored Wetlands
Financial Status as of February 28, 1994

Appropriation Amount	$400,000
Expenditures	
Perpetual Easements	$ 62,058
Other	17,961
Total Expenditures	$ 80,019
Future Commitments - Note 1	
10 signed agreements at June 30, 1993	62,189
9 unsigned agreements at June 30, 1993	235,093
1 unsigned agreement package not sent out timely	22,439
Total Future Commitments	$319,721
Canceled Appropriation	$ 260

Note 1: Landowners may elect to receive a lump sum easement payment or four equal annual installment payments. Therefore, the board may be disbursing these funds for up to four years.

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

Our review of activity through February 28, 1994 showed that, except for the issue noted in finding 2 below, costs were in compliance with the budget plan.

2. The board did not have written commitments from 10 landowners in a timely manner.

We question the board's practice for encumbering funds due to the timing of obligations and the length of time appropriations are available for expenditure. The easement process takes an extended period of time to complete. Once approved, the board may make easement payments over a four year period. However, the legislature appropriates, and the board encumbers, moneys for the entire payment at the beginning of the process.

The board did not have signed agreements at the end of the 1991-1993 biennium with 10 of the 20 landowners who eventually will receive easement payments. However, as of June 30, 1993, staff encumbered $257,531 in the statewide accounting system (SWA) for these easement payments. The appropriated funds would have canceled if the amounts were not encumbered. We think the board did not complete these contracts in a timely manner. The board had started the contracting process with each of the 10 landowners. In May and June 1993 it sent out nine agreement packages to the landowners for signature. They received the signed agreements in July 1993 through February 1994. The board did not send out the other landowner agreement package until April 1994. We question the board's authority to encumber funds for this agreement since the formal offer to purchase an easement was made after year end.

Recommendations

- *The board should work with LCMR to establish guidelines for the timing of easement encumbrances and payments.*
- *The board should promptly complete contracts with landowners.*
- *The board should seek LCMR approval for the expenditures relating to the easement agreement sent out after the project end date.*

Conservation Reserve Easements

The purpose of this project was to acquire perpetual easements with priority for wetland areas, to enhance wildlife habitat, control erosion, and improve water quality.

Table 2-3
Conservation Reserve Easements
Financial Status as of February 28, 1994

Appropriation Amount	$600,000
Expenditures:	
Unclassified Salaries BWSR employees	65,201
Unclassified Salaries - AG Representative	54,298
Perpetual Easements	228,808
Other	11,061
Total Expenditures	$359,368
Future Commitments:	
16 signed agreements at June 30, 1993	115,710
5 unsigned agreements at June 30, 1993	42,877
Total Future Commitments	$158,587
Canceled Appropriation	82,045

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

In our November 1993 audit of this project, we questioned whether legal fees charged to the project complied with the work plan. LCMR did not request repayment of the amounts in question. During our current review, we noted that the board charged $7,542 in additional legal fees to the project. Our review of activity through February 28, 1994 showed that, except for the issues noted in the November 1993 audit and in finding 3 below, costs were in compliance with the budget plan.

3. The board did not have written commitments from five landowners when it encumbered moneys for easement payments.

We have similar concerns about the timing of easement encumbrances and payments for this project, as was discussed for Easement Acquisition on Restored Wetlands. The board did not have signed agreements with 5 of the 21 landowners at the end of the 1991-1993 biennium. The board had started the process with each of the five landowners. It sent two of the agreement packages out for signature in May 1992. The other three were sent out in January and February 1993. The Board received the signed agreements back from August 1993 through March 1994. At the time of our review, they have not paid out any funds to these five landowners. The agreements with these five landowners totaled $42,877.

Recommendation

- *The board should work with LCMR to establish guidelines for the timing of easement encumbrances and payments.*

Environmental and Natural Resources Trust Fund

Erosion Control Cost Sharing Grants

This project funded grants to share the cost of conservation practices to control erosion and protect water quality including water quality practices that divert water from sinkholes.

Table 2-4
Erosion Control Cost Sharing Grants
Financial Status as of February 28, 1994

Appropriation Amount	$250,000
Expenditures:	
Grants	229,300
Other	20,700
Total Expenditures	$249,469
Canceled Appropriation	$ 531

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

In our November 1993 audit of this project, we questioned whether the board had appropriate project selection controls. Our review of activity through February 28, 1994 showed that, except for issues noted in the November 1993 audit, costs were in compliance with the budget plan.

Cannon River Watershed Grants

This purpose of this project was to provide research and demonstration grants to counties consistent with the comprehensive local water management program as part of the Cannon River watershed protection program.

Table 2-5
Cannon River Watershed Grant
Financial Status as of February 28, 1994

Appropriation Amount	$60,000
Grant Expenditures	60,000
Unexpended Appropriation	$ 0

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

Our review of activity through February 28, 1994, showed that costs were in compliance with the budget plan.

River Basin Water Quality Monitoring

This was a Pollution Control Agency (PCA) project to conduct assessments of non-point source pollution in the Minnesota River Basin. PCA granted a portion of the appropriation to the board. This portion funded a part time employee at the board who served as project coordinator.

Table 2-6
River Basin Water Quality Monitoring
Financial Status as of February 28, 1994

Grant Receipts	$32,600
Expenditures:	
Part-time Salaries	$31,685
Other	727
Total Expenditures	$32,412
Canceled Grant Receipts	$ 188

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

Our review of activity through February 28, 1994, showed that costs were in compliance with the budget plan.

Chapter 3. Department of Natural Resources

Chapter Conclusions

We had concerns on three of the eight projects reviewed at the Department of Natural Resources. We question certain expenditures for one of the projects reviewed. The department purchased a large amount of equipment at the end of the project. In addition, the department's accounting procedures for one project's required match needed improvement. The department also did not exercise adequate oversight for one project.

The Department of Natural Resources had 16 trust fund projects funded from $5,760,000 in appropriations and $35,000 in grant receipts. As of February 28, 1994, expenditures for these projects totaled $5,446,365. We tested expenditures for eight projects administered by the department, with expenditures totaling $4,746,045.

County Geological Atlas and Groundwater Sensitivity Mapping (Department of Natural Resources Portion)

The purpose of this project is to expand production of county geologic atlases and create a new atlas services office.

Table 3-1
County Geological Atlas and Groundwater Sensitivity Mapping
Financial Status as of February 28, 1994

Appropriation	$600,000
Expenditures:	
Unclassified Salaries	$333.671
Part-time Salaries	20,564
Professional Technical Services	44,151
Travel	15,410
Fixed Assets	56,436
Other	85,665
Total Expenditures	$555,897
Canceled Appropriation	$ 44,103

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

In our November 1993 audit of this project, we questioned the propriety of certain lump sum achievements awards. The department subsequently reimbursed the trust fund $44,091 for the inappropriate expenditures. We also questioned whether the allocation of $51,484 for certain capital asset costs to the trust fund was appropriate. Program guidelines do not address the allowability of charges for capital equipment to trust fund projects. During the current audit, we found that the department charged $4,554 to the project for computer equipment for a Local Area

Network (LAN) hook-up and a computer upgrade. The department allocated the equipment cost to this project and other funding sources. Our review of activity through February 28, 1994 showed that except for the issues noted above, costs were in compliance with the budget plan.

Minnesota County Biological Survey

The purpose of this project is to continue the biological survey in Minnesota counties.

Table 3-2
Minnesota County Biological Survey
Financial Status as of February 28, 1994

Appropriation	$1,000,000
Expenditures:	
Classified Salaries	$ 59,292
Unclassified Salaries	706,749
Other Payroll	54,708
Computer Equipment	31,962
Professional Technical Services	28,275
Purchased Services	15,609
Travel	11,426
Other	86,438
Total Expenditures	$994,459
Canceled Appropriation	$ 1,557
Unexpended Appropriation	$ 3,984

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

In our November 1993 audit of this project, we questioned whether certain salary expenditures complied with statutory requirements. Our review of activity through February 28, 1994 showed that, except for the issues noted in the November 1993 audit and in finding 4 below, costs were in compliance with the budget plan.

4. The propriety of certain capital expenditures is questionable.

The department spent $31,962 on a computer and other equipment after the project had ended. The project appropriation was available for the 1991-1993 biennium and unobligated funds would cancel as of June 30, 1993. The department received two navigation instruments and a computer on June 28 and 30, 1993, respectively. It received ten items in July, August, and September 1993. Table 3-3 details the items and the dates received. The department could not have used items received this late on the current project. This is a continuing project, and the department received an additional trust fund appropriation in the subsequent biennium. The department asserted that the equipment would be used in the subsequent year's project.

Table 3-3
Equipment Purchases After Year End

Date Received	Item
June 28, 1993	2 navigation instruments
June 30, 1993	Computer
July 29, 1993	Navigation instrument
August 16, 1993	2 stereoscopes
September 7, 1993	5 microscopes and attachments
September 15, 1993	Illuminator

Recommendation

- *The department should work with LCMR to determine the propriety of capital equipment charges to the project.*

Effects of Changes in the Forest Ecosystem on the Biodiversity of Minnesota's Northern Forest Birds

Table 3-4
Effects of Changes in the Forest Ecosystem on the Biodiversity of Minnesota's Northern Forest Birds
Financial Status as of February 28, 1994

Appropriation	$300,000
Expenditures:	
Professional Technical Services	$220,000
Grants	80,000
Total Expenditures	$300,000
Canceled Appropriation	$ 0

Note 1: The appropriation required $200,000 in matching funds.

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

Our review of activity through February 28, 1994, showed that costs were in compliance with the budget plan. In addition, the department received the required matching funds. However, we believe procedures to account for match could be improved, as discussed in finding 5.

5. The Department of Natural Resources did not properly account for match funds.

The department records match funds in several accounts outside of the trust fund. At the time of our review, it deposited the match funds in at least seven separate accounts. This makes it very

difficult to track the funds and may allow the funds to also be used as match for other projects. The match funds that are committed to a project should be more clearly accounted for to ensure they are used for the specific project.

Recommendation

- *The Department of Natural Resources should simplify the accounting practices for match funds and ensure they are used for the purpose of the project.*

South Central MN Surface Water Resources Atlases and Database

This appropriation was for the development of surface hydrology atlases and data base in both hard and electronic formats for the 13 counties of south central Minnesota.

Table 3-5
South Central MN Surface Water Resources Atlases and Database
Financial Status as of February 28, 1994

Appropriation Amount	$300,000
Grant Expenditures	$299,972
Canceled Appropriation	$ 28

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

Our review of activity through February 18, 1994 showed that, except for the issue discussed in finding 6, costs were in compliance with the budget plan.

6. The Department of Natural Resources did not adequately monitor a project grant.

The Department of Natural Resources did not monitor the pass-through grant to Mankato State University. The department paid funds to the university based on staggered payment dates established in the contract. However, the department did not base the payments on costs incurred. Once the department paid the grant funds, it did not monitor whether the expenditures were appropriate. It did not require the university to submit expenditure status reports. The department did monitor to ensure that the university submitted semiannual project status reports to LCMR. However, we believe the department, as recipient of the appropriation, has a responsibility to monitor specific expenditures and grantee performance. To help ensure that projects are progressing as anticipated, the department should require grantees to periodically report on expenditures. Staff should review reports for compliance with established budgetary requirements and program guidelines.

Recommendation

- *The Department of Natural Resources should establish a process to review grantee expenditures for propriety.*

Rails-to-Trails

The purpose of this project was to acquire and develop trails on unused railroad property in Northern Minnesota.

Table 3-6
Rails-to-Trails
Financial Status as of February 28, 1994

Appropriation	$1,000,000
Expenditures:	
Land Purchases	$ 950,000
Other	50,000
Total Expenditures	$1,000,000
Canceled Appropriation	$ 0

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

Our review of activity through February 28, 1994, showed that costs were in compliance with the budget plan.

Statewide National Wetlands Inventory, Protected Waters Inventory, and Watershed Map Digitization

This appropriation provided funds to complete the digitization of the national wetlands inventory, protected waters inventory, and watershed boundaries.

Table 3-7
Statewide National Wetlands Inventory, Protected Waters Inventory, and Watershed Map Digitization
Financial Status as of February 28, 1994

Appropriation Amount	$750,000
Expenditures:	
Unclassified Salaries	$187,366
Map Production	71,647
Office Machines/Computer Equipment	118,325
Grants	320,494
Other	51,369
Total Expenditures	$749,201
Canceled Appropriation	$ 799

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

Environmental and Natural Resources Trust Fund

Our review of activity through February 28, 1994, showed that costs were in compliance with the budget plan.

Research Insecticide Impact on Wetland and Upland Wildlife

This project researched the magnitude of impacts on growth, behavior, and survival of upland and wetland birds caused by insecticides used to control agricultural pests.

Table 3-8
Research Insecticide Impact on Wetland and Upland Wildlife
Financial Status as of February 28, 1994

Appropriation Amount	$650,000
Expenditures:	
Professional/Technical Services	$635,000
Other	14,786
Total Expenditures	$649,786
Canceled Appropriation	$ 214

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

Our review of activity through February 28, 1994, showed that costs were in compliance with the budget plan.

Environmental Education Program

The purpose of this project is to complete a long term plan for the development and coordination of environmental learning centers.

Table 3-9
Environmental Education Program
Financial Status as of February 28, 1994

Appropriation Amount	$60,000
Expenditures:	
Classified Salaries	$13,720
Unclassified Salaries	24,183
Rent	6,342
Professional Technical Services	6,000
Other	2,394
Total Expenditures	$52,639
Canceled Appropriation	$ 7,361

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

Environmental and Natural Resources Trust Fund

In our November 1993 audit of this project we questioned whether the classified employee salaries complied with statutory requirements relating to the employment status of staff paid from trust fund moneys. LCMR did not request repayment of the amounts in question. Our review of financial activity through February 28, 1994 showed that, except for the issues noted in the November 1993 audit, costs were in compliance with the budget plan.

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Chapter 4. Department of Education

Chapter Conclusions

We have concerns about one of the two trust fund projects administered by the Department of Education. We question the department's allocation of per diem expense to one project.

The Department of Education has two projects, incorporating several individual appropriations for the 1991-1993 biennium. The Legislature allocated $830,000 for the projects. As of February 28, 1994, the department had spent $794,228.

Environmental Education Program

This project has several environmental education objectives, including development of a statewide environmental education plan. The statewide plan will integrate the plans, strategies, and policies of the Department of Education, post-secondary institutions, the Department of Natural Resources and other deliverers of environmental education.

Table 4-1
Environmental Education Program
Financial Status as of February 28, 1994

Appropriation Amount	$730,000
Expenditures:	
Classified Salaries	$ 25,102
Unclassified Salaries	96,297
Part-time Salaries	79,436
Other Payroll	31,697
Professional Technical Services	88,061
Printing	31,061
Grants	288,000
Other	53,940
Total Expenditures	$694,228
Canceled Appropriation	$ 29,551
Unliquidated Appropriation -- Note 1	$ 6,221

Note 1: Subsequent to February 28, 1994, the remaining balance of $6,221 was canceled.

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

In our November 1993 audit of this project we questioned whether the classified employee salaries complied with statutory requirements relating to the employment status of staff paid from trust fund moneys. LCMR did not request repayment of the amounts in question. In addition, we recommended that the department establish a process to review grantee expenditures for

propriety. Our review of activity through February 28, 1994 showed that, except for the issues noted in the November 1993 audit and in finding 7 below, costs were in compliance with the budget plan.

7. The Department of Education paid the Environmental Education Advisory Board per diems out of trust fund project funds.

The department spent $4,785 in per diems for the Environmental Education Advisory Board. The board was created by in 1990 to help pupils and other citizens better understand the environment. The project work plan states that the board will review all phases of the planning effort for the state plan. Completion of the state plan was one of the board's major objectives. The board received a separate General Fund appropriation for normal operating costs which it used on other board expenditures. It originally paid some per diem expenses out of the board appropriation and later transferred them to the trust fund appropriation. It charged both regular board meeting per diems and special meeting per diems to the trust fund. The board had enough funds to pay for the per diems out of its operating budget since $5,985 of their operating budget canceled back to the General Fund. We believe that normal operating expenses of the board should not be charged to the project.

Recommendations

- *The department should only charge costs outside of the board's regular business to the state plan.*
- *The department should work with LCMR to determine the propriety of per diem charges to the project.*

Video Education Research and Demonstration Project

The purpose of this project was to develop a video education demonstration project and a model for a statewide video environmental education communication network. As provided in the appropriation, the department granted the project funds to Twin Cities Public Television.

Table 4-2
Video Education Research and Demonstration Project
Financial Status as of February 28, 1994

Appropriation Amount	$100,000
Grant Expenditures:	100,000
Unexpended Appropriation	$ 0

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

In our November 1993 audit of this project, we recommended improvements in the department's cash management procedures and increased monitoring of grantee expenditure reports. Our review of activity through February 28, 1994 showed that, except for the issues noted in the November 1993 audit, costs were in compliance with the budget plan.

Chapter 5. Department of Administration

Chapter Conclusions

We reviewed one project at the Department of Administration. Our review of activity through February 28, 1994, showed that costs were in compliance with the budget plan.

The Department of Administration had two projects funded from $2,100,000 in appropriations. As of February 28, 1994, expenditures for these projects totaled $2,073,616. We tested one project administered by the department, with expenditures totaling $1,897,684.

Base Maps for the 1990's

The purpose of this appropriation was to provide a state match for a federal program to complete a major portion of the statewide air photo and base map coverage.

Table 5-1
Base Maps for the 1990's
Financial Status as of February 28, 1994

Appropriation Amount	$1,900,000
Expenditures:	
Professional/Technical Services	$1,740,000
Books, Maps, Publications	157,684
Total Expenditures	$1,897,684
Unexpended Appropriation (Note 1)	$ 2,316

Note 1. Subsequent to February 28, 1994, an additional $458 was expended and $1,858 was canceled.

Source: Statewide Accounting System accounting reports and detailed transactions as of February 28, 1994.

Our review of activity through February 28, 1994, showed that costs were in compliance with the budget plan.

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August 29, 1994

Mr. James Nobles, Legislative Auditor
Office of Legislative Auditor
Centennial Office Building
St. Paul, Minnesota 55155

Dear Mr. Nobles:

We have received the audit of the six projects we administered under the Environment and Natural Resources Trust Fund for FY92 and FY93. Thank you for the opportunity to comment on those findings.

WELL SEALING COST-SHARING GRANTS

Recommendation #1 - The BWSR did not adequately monitor close out of the well sealing project grants.

Recommendations:

- The BWSR should recover from Dakota County the $15,010 of unexpended project funds.

- The BWSR should review the financial status of all grants to ensure that grantees return unobligated moneys to the state in a timely manner.

Agency Response:

- BWSR continues to monitor and review the program and financial status of these well sealing grants. We will make every effort to have grantees return unused grant funds within 30 days of grant agreement expiration.

- BWSR requested return of the dollars from Dakota County orally and in writing three months ago. The county thought they had paid the money back right away. However, they found that they had misplaced the paperwork and have issued a repayment recently.

EASEMENT ACQUISITION ON RESTORED WETLANDS

Recommendation #2 - The BWSR did not have written commitments from ten landowners in a timely manner.

Recommendations:

- The BWSR should work with LCMR to establish guidelines for the timing of easement encumbrances and payments.

- The BWSR should promptly complete contracts with landowners.

- The BWSR should seek LCMR approval for the expenditures relating to the easement agreement sent out after the project end date.

Agency Response:

- We appreciate the basis of this recommendation and will continue to communicate with LCMR regarding timing issues keeping in mind statutory and rule requirements, Department of Finance policies and overall state grant administration efficiency and effectiveness.

- It always has been and continues to be a goal of BWSR to promptly, efficiently and effectively deliver all of our programs to our clientele. The easement acquisition area is no exception. Sometimes there are time delays due to legal description problems, land title and ownership problems, construction problems or simply landowner delays in returning documents. We have analyzed and streamlined our process and continue to encourage local units of government (who coordinate and deliver this program at the local level) to keep the process moving.

- We were assured by the Department of Finance that if funds are requisitioned prior to the close of the fiscal year, they view them as valid obligations of the state. Sometimes land and "interest in land" transactions take an inordinate amount of time; however, it is BWSR's contention that the state's "obligation" occurs when we requisition the funds for an approved easement. All of the dollars associated with this grant were requisitioned on or before June 30, 1993.

CONSERVATION RESERVE EASEMENTS

Recommendation #3 - The BWSR did not have written commitments from five landowners when it encumbered moneys for easement payments.

Recommendation:

- The BWSR should work with LCMR to establish guidelines for the timing of easement encumbrances and payments.

Agency Response:

- We appreciate the basis of this recommendation and will continue to communicate with LCMR regarding timing issues keeping in mind statutory and rule requirements, Department of Finance policies and overall state grant administration efficiency and effectiveness. We believe that consistent guidelines for encumbrances and payments are important for efficiency and that the Department of Finance guidelines are sufficient to address these concerns.

Again, thank you for the opportunity to respond to your audit findings. We look forward to audits of all our program areas to ensure that legislative and agency goals are being achieved in an efficient and effective manner. If you have any further questions, contact me at your convenience.

Sincerely,

Ronald D. Harnack
Executive Director

RDH:mja

Minnesota Department of Natural Resources

OFFICE OF THE COMMISSIONER
500 Lafayette Road
St. Paul, Minnesota 55155-4037

August 22, 1994

Mr. James R. Nobles, Legislative Auditor
Office of the Legislative Auditor
First Floor, Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Dear Mr. Nobles:

Thank you for the opportunity to respond in writing to the audit report of the Environmental and Natural Resources Trust Fund programs administered by the Department of Natural Resources (DNR).

Minnesota County Biological Survey: Finding #4

If this is viewed as a two-year project that terminated on June 30, 1993, then these equipment purchases obviously could not be used on the project and would be inappropriate. However, we knew at the time, and the audit acknowledges, that this appropriation was a segment of a continuing long-term project. These purchases allowed us to accelerate the program by taking advantage of a full field season. Viewed in this context, we believe the purchases supported the goals of the project and were entirely appropriate.

Effects of Changes in the Forest Ecosystem on the Biodiversity of Minnesota's Northern Forest Birds: Finding #5

As you pointed out, DNR did receive the required matching funds for this project. The project received matching money from many different sources. As noted, the funds were deposited to seven accounts in several funds. Department of Finance policies prevent us, in many instances, from commingling funds. Where match is required on future projects, we will seek to use the fewest possible accounts consistent with Department of Finance procedures.

South Central Minnesota Surface Water Resources Atlases and Database: Finding #6

To address this finding, DNR staff worked with Legislative Commission on Minnesota Resources (LCMR) staff to develop new model contract language for grants that will specify that reimbursements will be based on actual cost documentation. This new language is now in effect for all LCMR-funded pass-through projects.

Yours truly,

Rodney W. Sando
Commissioner

cc: Gene Gere
Ray Hitchcock
Kent Lokkesmoe
John Heintz
Lee Pfannmuller
Bill Becker
John Bouthilet

MINNESOTA DEPARTMENT OF
EDUCATION

Capitol Square 550 Cedar Street
Saint Paul, Minnesota 55101 612/296-6104

MEMORANDUM

TO: Minnesota Office of the Legislative Auditor

FROM: Linda Powell, Commissioner
Minnesota Department of Education

DATE: August 24, 1994

RE: Response to Audit of Environmental & Natural Resources Trust Fund Audit Report of August 18, 1994.

Since the initiation of Environmental & Natural Resources Trust Fund Grants for environmental education in the 1991-1993 biennium, the Department of Education has tried to work closely with the Legislative Commission on Minnesota Resources Staff to meet our programmatic and fiscal responsibilities. Upon review of the Auditor's report of August 18, 1994 we accept the conclusions and recommendations regarding the two areas of concern.

First, we agree that we should only charge costs outside of the Environmental Education Advisory Board regular business to the State Plan. With the State Plan completed in the summer of 1993 and with no further LCMR funds requested, this per diem issue is no longer current practice. Further, the Board has established specific by-laws which refer specifically to per diem expenditures.

Second, in July 1993, the Department in collaboration with LCMR staff established specific cash management procedures and increased monitoring of grantee expenditures reports and products as related to the LCMR's pass-through grants to other agencies and organizations.

Finally, we believe we are in compliance and concurrence with the Auditor's report.

LP:MP:do

Minnesota Board of Water & Soil Resources

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SEP 06 1994
BOARD OF WATER & SOIL RESOURCES

DATE: August 31, 1994

TO: ~~Ron Shelito~~ BWSR Board Members

FROM: Dan Steward

SUBJECT: Board Tour Sessions

Attached are summaries of the two break out sessions I assisted with at the recent BWSR tour. The overall subject of the sessions was watershed management. The first session focused on the issue of pastured livestock impacts on surface waters. The second session reviewed issues related to technical assistance.

Please let me know if you have any questions regarding the sessions.

BOARD OF WATER & SOIL RESOURCES
TOUR & ISSUES FORUM
WATERSHED MANAGEMENT
SESSION 1 - LIVESTOCK/RIPARIAN IMPACTS

July 27, 1994

Minutes

About 20 people were present for the discussion. The group was comprised of BWSR Board members, BWSR staff and staff of local units of government.

The discussion began with staff from the Morrison and Douglas SWCD's giving background information on the issue. Helen McLennan discussed some specific examples of livestock impacts on water quality in Morrison County. Jerry Haggenmiller talked about similar issues in Douglas County. Both suggested the need for new approaches for dealing with livestock in riparian areas. Riparian livestock problems can be extremely obvious to the general public as they travel. Yet in spite of direct loadings of nutrients and sediment, BWSR doesn't yet have a practice for dealing with these sites. Discussion included the need for a flexible approach when trying to reduce livestock impacts in pasture situations. One option that isn't considered enough is to compensate the landowner for moving the cattle to another better suited site. In other cases alternative water supply is a need, but ASCS rules for this practice have been tightened. For a variety of reasons there doesn't currently exist a "toolbox" of flexible options for dealing with livestock in lakes and streams.

Helen discussed the 5 county BWSR challenge grant that has been submitted to deal with this need. The counties involved are Aitkin, Cass, Crow Wing, Morrison and Todd. If funded each county would have $10,000 to develop and implement practices to reduce livestock impacts in riparian areas.

BOARD OF WATER & SOIL RESOURCES
TOUR & ISSUES FORUM
WATERSHED MANAGEMENT
SESSION II - TECHNICAL SIGN-OFF

July 27, 1994

Minutes

About 20 people were present for the discussion. About six (6) of those present were Board of Water & Soil Resources (BWSR) Board members. The rest of the attendees were either BWSR staff (2), staff of local units, local board members, or agency staff.

The session began with Helen McLennan (Morrison SWCD) and Jerry Haggenmiller (Douglas SWCD) discussing sign-off issues they encounter as district managers. Haggenmiller stated that technical sign-off as required by state cost-share rules can result in significant project delays. He also pointed out that technical assistance can also be a problem, even if the landowner isn't interested in cost-sharing. In many cases, with shoreland erosion, if the SWCD could present the landowner with some standard engineering drawings, the problem could be solved with a minimum amount of time. Some practices should allow for SWCD technical staff design: field windbreaks, critical area stabilization, certain lakeshore erosion, and some diversions.

Helen asked if anyone was aware of anyone in Minnesota being sued for failure of a conservation project. She also stated that SWCDs are getting increasing requests for solutions to livestock in shoreland areas and bank stabilization. Often the Soil Conservation Service (SCS) isn't able to provide the design, especially on large watersheds. She also stated that SCS early retirements have made the sign-off bottleneck even worse. Helen also pointed out that SWCD's are in a good position to monitor the success or failure of projects. She also stated that we often cost share on repair of failed projects anyway, so why not eliminate the sign off and accept the fact that some projects may have to be repaired.

Bill Beck (president, Crow Wing County Lakes & Rivers Association) commented on standard engineering practices. Mr Beck, a retired engineer said about 90% of engineering practice involves comparing the current project proposal with a design for a similar need developed some time in the past and then making minor adjustments if needed. Mr. Beck didn't see why technical needs should result in such a bottleneck. He also commented on the opportunity to utilize retired professionals in resource management - especially as related to lake protection.

Ron Shelito pointed out that the SCS Technical Guide provides some canned project design guidance.

Dave Hills (Regional Hydrologist, DNR Division of Waters) stated that some shoreland stabilization projects are complex and will require engineering.

The discussion left the question: Are some practices, that currently require engineering sign-off, more appropriately designed and authorized by qualified technicians in order to allow engineers to more efficiently utilize their time on the projects that really require engineering skills? Attached is a copy of the technical requirements for the RIM (Reinvest In Minnesota) program. In the case of RIM, the BWSR has agreed to allow technicians to design the needed practices, assess their adequacy, and certify proper installation (RIM wetland restorations are designed by BWSR RIM engineering).

The discussion left the question: Are some practices, that currently require engineering sign-off, more appropriately designed and authorized by qualified technicians in order to allow engineers to more efficiently utilize their time on the projects that really require engineering skills? Attached is a copy of the technical requirements for the RIM (Reinvest In Minnesota) program. In the case of RIM, the BWSR has agreed to allow technicians to design the needed practices, assess their adequacy, and certify proper installation (RIM wetland restorations are designed by BWSR RIM engineering).

C. CONSERVATION PLAN - TECHNICAL & FINANCIAL REQUIREMENTS

C.1 General Conservation Practice Requirements

Technical Requirements:

An SWCD technical representative will be responsible for developing the conservation plan and attachments. They will work with the landowner(s) to select the most appropriate conservation practice(s) for the conservation easement area. The SWCD technical representative may be an SWCD technician, Soil Conservation Service employee or other representative designated by the SWCD who has an appropriate technical approval authority.

The responsibilities of the technical representative include:

a) Preparation of the conservation plan and attachments;

b) A technical on-site inspection/review of the proposed conservation easement and corresponding practice area(s) to assess the adequacy of the proposed practices and their compliance with the **Conservation Easement Practice Specifications**; and

c) Technical certification that the approved practices have been adequately installed.

Financial Requirements:

Activities necessary to successfully establish an approved conservation practice may be eligible for easement cost-share assistance from the BWSR. Cost-sharing for the conservation easement programs is only available up to the maximum payment limits shown in **table 1** in part A of this section. Any actual costs that exceed the total easement cost-share funds allocated are the responsibility of the landowner(s). However, landowners can reduce their contribution to the actual costs by seeking and receiving financial assistance from other contributors (e.g., other state and federal cost-share programs, conservation organizations, etc.). Note: the Agricultural Stabilization and Conservation Service (ASCS) ***does not allow ACP cost-sharing on acres accepted to be enrolled, or enrolled, in a conservation easement.***

Refer to the ***Practice Specifications subsection*** of the handbook for a specific list of cost-sharable and non-cost-sharable activities associated with each conservation practice.

10/26/94

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DATE: October 18, 1994

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

FROM: Jim Birkholz, Assistant Director

SUBJECT: October 26, 1994 BWSR Meeting

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, October 26, 1994, beginning at 9:00 a.m. The meeting will be held in Room 112 of the State Capitol. Parking is available in Lot Q (one block northeast of the State Capitol). The agenda and informational materials are enclosed for your review. Ron Harnack will be out of state that day so I'll be standing in for him. Following is some background information regarding the agenda items:

Wetland Conservation Act Grant Agreements - This item concerns the fact that despite a specific request, three of the five non-adopted counties (Beltrami, Marshall and Pennington) have not returned the funds granted to them to implement the WCA. Koochiching County has returned the funds and Lake County did not request funding. A letter discussing this fact has been sent to the three counties. Matt Seltzer will address questions.

Wetland Conservation Act Program Assessment - The program assessment for the WCA suggests that this agency has "paid a price" for the considerable benefits gained from the WCA. The issue before you concerns the willingness of this Board to forego the historic way of assisting local governments with voluntary efforts versus overseeing a mandated program. As discussed in the assessment, both perspectives cannot prevail given existing staffing.

Blue Print Revised - The second draft is enclosed for your review, discussion and action. Staff management team has discussed and proposed this set of budget initiatives. Please note that these initiatives will also require a number of revisions to existing statutes, rules and administrative guidelines. Rule and guideline revisions will be an important workload consideration for staff during the next calendar year. The management team believes that we have a justifiable approach to addressing many of the weaknesses identified in the program assessment. The remaining weaknesses will be addressed through policy and procedure decisions by the management team, the Board, and through legislation in the upcoming session. Please be prepared to provide

guidance on the priority of each of these initiatives as they relate to one another in overall importance to the success of sustaining our mission to enable local governments properly manage our soil and water resources.

Metro Public Drainage System Inventory Report - In 1990, the Minnesota Legislature enacted a state law (L90, C601, S27) which charged drainage authorities in the metropolitan area with the responsibility to inventory and evaluate the public drainage ditches under their jurisdiction, and to submit a report to the BWSR. The law also directed the BWSR to provide guidance and technical assistance to the drainage authorities in meeting this requirement. This report is a summary of the information received, and includes recommended statutory changes intended to allow for more efficient and effective management of public drainage systems in the urban and urbanizing areas. The report includes results of the inventory and highlights of the statistics summarized.

Nine Mile Creek Watershed District Complaint - During the August BWSR meeting, the Board found that there was just cause for the BWSR staff to investigate the Audubon's complaint relating to the failure to adopt and implement a watershed management plan. Metro staff have developed a draft report according to MN Rules Chapter 8410.0180. The rules require staff to meet with the parties to discuss the issues presented prior to submittal of the report and staff recommendations in final form to the Board. It is possible that Barbara Cobb and Bruce Sandstrom may be able to present a recommendation at the October meeting if the tentative meeting with the parties is held as planned for on October 25, 1994.

Watershed District Overall Plan Guidelines - Attached is a revised draft of the proposed rules for watershed district appeals. These rules have been prepared on the basis of the directions received from the working group. The rules provide a basis for discussion with room for change depending upon the direction determined by the BWSR.

State Revolving Fund (SRF) Loan Program Update - Paul Burns will provide a short update on the progress of the development of the Agricultural Best Management Loan Program component of the State Revolving Fund. The bulk of the time spent on the program since the program was established by the Legislature this past spring has been on working out the details and requirements of the federal government through the Environmental Protection Agency. However, counties and SWCDs have also been contacted and informed about the program, and draft county loan applications and agreements have been developed. The advisory committee established by the

legislation, that includes BWSR and MASWCD as members, has also met twice to begin establishing the county loan review process. The Minnesota Department of Agriculture will be holding informational meetings around the state for counties, SWCDs, local water planners, and other interested parties in November, with applications being received in December and January.

Conservation Technical Assistance Update -
The MASWCD, in cooperation with BWSR staff, has been very active since the September board meeting identifying joint powers agreement (JPA) area boundaries for technical assistance and starting the Joint Powers Agreement (JPA) process. Attached is a map showing the proposed JPA boundaries and their relationship to the major river basin boundaries within the state. Meetings are being held within each of these areas to confirm JPA boundaries and to prepare memorandums of agreement (MOAs) to enter into joint powers agreements by the end of December. SWCD concurrence on the boundaries of the proposed 11 joint powers areas and MOA development are expected by October 26. The joint powers areas are also in the process of identifying a host district for technical staff within each area. An update will be provided regarding the progress of these efforts. Our goal remains to hire lead engineers and technicians to establish a new statewide backbone of technical support by early in 1995.

1995 Natural Resources Block Grant Preview - As 1995 quickly approaches, it's time again to begin discussing the $6.2 million Natural Resources Block Grants for counties. Enclosed is a copy of last years application and agreement. For new members of the BWSR, the block grant is a hybrid of three different grants from years past, including local water planning base grants, Wetland Conservation Act administration grants, and DNR shoreland grants. The basis purpose of the grant is to assist counties financially to carry out and implement high priority actions in local water plans, administer the Wetland Conservation Act, and the DNR shoreland program in the county. Many grants are split between county planning and zoning, county environmental services, and the soil and water conservation district.

If you have additional agenda items or require additional information please contact myself or Mary Jo at the Board office. Travel safely, I look forward to seeing you on the 26th!

JB:mja
Enc.

BOARD OF WATER AND SOIL RESOURCES
ROOM 112 STATE CAPITOL
75 CONSTITUTION AVENUE
ST. PAUL, MINNESOTA 55155
OCTOBER 26, 1994

PRELIMINARY AGENDA

9:00 a.m.	1.	Call Meeting to Order
	2.	Adopt Agenda
	3.	Minutes of September 29, 1994
	4.	Reports • Chairman's Report - Jim Nielsen • Executive Director's Report - Jim Birkholz for Ron Harnack • Committee Reports Education Committee - Glenn Annexstad Feedlot Advisory Committee - Jim Rossman Soil Conservation Committee - Glenn Annexstad Dispute Resolution Committee - Kathleen Roer
9:30 a.m.	5.	Wetland Conservation Act Grant Agreements - Greg Larson and Matt Seltzer
	6.	Wetland Conservation Act Program Assessment - for discussion - Greg Larson
	7.	Blue Print Revised - for decision - Jim Birkholz
	8.	Metro Public Drainage System Inventory Report - for discussion and approval for distribution - Barbara Ohman and Bruce Sandstrom
	9.	Nine Mile Creek Watershed District Complaint - for discussion - Bruce Sandstrom
	10.	Watershed District Overall Plan Guidelines - for discussion - Doug Thomas
Noon	Lunch	
1:00 p.m.	11.	Middle River Snake River Watershed District Plan Approval - for decision - Doug Thomas

12. SRF Loan Program Update - for discussion - Paul Burns, Department of Agriculture

13. Conservation Technical Assistance Update - for discussion - Al Kean

14. 1995 Natural Resources Block Grant Preview - for discussion - Wayne Zellmer

15. Advisor Comments
    - Gary Nordstrom, SCS
    - Pat Wulff, MLA
    - Dan Livdahl, MACDE
    - Howard Peterson, MAWD
    - Allan Oehlke, MASWCD
    - Franklin Denn, MAT

16. Board Issues - discussion, comments, action needed

17. Next BWSR Meeting - December 7, 1994

3:00 p.m. Adjourn

BOARD OF WATER AND SOIL RESOURCES
BEST WESTERN CANTERBURY INN
ESSEX HALL
1244 CANTERBURY ROAD
SHAKOPEE, MINNESOTA
SEPTEMBER 29, 1994

BOARD MEMBERS PRESENT: Jim Nielsen, Jim Rossman, Kathy Roer, Marvell Tripp, Warren Rodning, Barb Cobb, Barb Uppgaard, Tim Hvidsten, Ted Lovdahl, Glenn Annexstad, and Dwain Otte.

BOARD MEMBERS ABSENT: Howard Peterson

AGENCY MEMBERS PRESENT:
Kim Benson-Johnson, Department of Health
Fred Bergsrud, U of M/Extension Service
Wayne Anderson, Pollution Control Agency
Wayne Edgerton, Department of Natural Resources
Paul Burns, Department of Agriculture

OTHERS PRESENT:
Gary Wehrenberg and Dan Livdahl, Minnesota Association of Conservation District Employees (MACDE)
D'Wayne DeZiel and Bob Pigeon, Minnesota Association of Soil and Water Conservation Districts (MASWCD)
Gary Nordstrom and John Brach, Soil Conservation Service (SCS)
Franklin Denn, Minnesota Association of Townships (MAT)

STAFF PRESENT:
Ron Harnack
Doug Thomas
Jim Birkholz
Barbara Ohman
Al Kean
Bruce Sandstrom
Jim Haertel
Dave Behm
Wayne Zellmer
Mary Jo Anderson

Chairman Nielsen called the meeting to order at 8:35 a.m.

** 94-50 **Adopt Agenda** - Moved by Otte, seconded by Tripp to adopt the agenda as presented. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

** 94-51 **Minutes of August 24, 1994** - Moved by Tripp, seconded by Cobb, to approve the minutes of August 24, 1994 as circulated. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

Reports

Chairman's Report - Chairman Nielsen received a letter from Pine County regarding their water plan, this will be on an upcoming agenda.

Chairman Nielsen briefly reported on the Redwood County feedlot problem. He has been in contact with Elton Redalen, Commissioner of the Department of Agriculture. Chairman Nielsen stated that there is a need to encourage SWCDs to address these matters before they become problems; BWSR should develop a policy to address this.

Chairman Nielsen received the Legislative Auditor's Report regarding BWSR's LCMR programs. Jim Rossman reported that BWSR probably got a B+; he was surprised to see five auditors at the meeting. Ron Harnack stated that the audit report that BWSR members received was a follow-up from last years audit of LCMR (Environmental Trust) programs. We have not yet received the Legislative audit report from this years agency audit.

Chairman Nielsen thanked Bruce Sandstrom, Jim Haertel and Barbara Ohman for the tour.

Executive Director's Report - Ron Harnack reported that the Wetland Heritage Advisory Committee (WHAC) met. The WHAC will meet two more times before December. Based on the WHAC report, the desire is to develop a consensus bill by January, for Wetland Conservation Act changes.

Ron stated that Koochiching County returned $15,000 WCA funds to BWSR. The other three counties (Beltrami, Pennington, Marshall) are still in default of the contract; the counties signed the agreement and received money. Discussion followed. Chair referred this back to staff to come up with appropriate plan for BWSR's review and action at October meeting. Ron has been in contact with Matt Seltzer to discuss options. Moved by Roer, seconded by Cobb, to direct legal council to draft a legal document and letter to the county attorney stating obligations and accountability. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard. Opposed: Nielsen. Carried.

** 94-52

Conventions - members interested in attending the conventions of the Minnesota Association of Soil and Water Conservation Districts, the Association of Minnesota

Counties, and the Minnesota Association of Watershed Districts should let Ron know.

Committee Reports
Dispute Resolution Committee - Kathy said two Wetland Conservation Act appeals are scheduled for October.

Technical Advisory Committee Report - Al Kean introduced the Technical Advisory Committee representatives on implementation of the Engineering and Technical Support for SWCDs (D'Wayne DeZiel, MASWCD; Gary Wehrenberg, MACDE; and John Brach, SCS). Al stated that the committee is seeking BWSR's endorsement for watershed based (Alternative E) recommendation so the committee can move forward. D'Wayne DeZiel reported that the MASWCD Board of Directors adopted Alternative E at their meeting on Tuesday. This alternative would provide statewide coverage of technical support (engineers and technicians) for nonpoint best management practices (BMPs) implementation primarily on a watershed basis. Boundaries of these watershed areas would be smaller than the existing SCS/MASWCD areas, but would utilize existing SWCD boundaries to approximate major watershed/river basin boundaries (land use, BMP needs and technical expertise needs would also be considered). Approximately 10-11 clusters of SWCDs are envisioned, along with joint powers groups of SWCDs and a host district in each area for new engineers and technicians. The funding includes salary, fringe, office rent and equipment, travel and communications. Funding does not include administrative costs for joint powers agreement or host district. The SCS and BWSR would provide supplemental technical assistance. Board suggested that River Basin Watershed was more reflective of the direction supported.

** 94-53 Moved by Rossman, seconded by Lovdahl, to endorse Alternative E. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

Program Assessments
Service to Local Governments - Jim Birkholz gave an overview on the services BWSR provides to SWCDs and watershed districts.

Dispute Resolution and Hearings - Doug Thomas gave an overview of the various dispute resolution and hearing responsibilities of the BWSR.

Agency Administration - Ron Harnack overviewed the five elements: fiscal management, personnel management, information management, interagency coordination, and board member support. Ron commended staff that had input in the program assessments.

Chairman Nielsen called for a break in the meeting at 10:20 a.m. The meeting reconvened at 10:40 a.m.

Blueprint of BWSR Biennial Budget Request: Staff Recommendations from Program Assessments - Dave Behm, Ron Harnack, Jim Birkholz, and Doug Thomas briefly commented on the program assessments. Dwain Otte asked if reorganization of BWSR

administration had been a consideration. Ron said only indirectly. Barb Uppgaard really appreciated the in-depth assessment of the programs; timing is important, she is pleased to see the recommendation for additional central staff. Barb Cobb mentioned that a voluntary water planning program in the metro region would be a significant change. Rodning stated that he's pleased with the dedication of the staff. Stable funding was discussed. Chairman Nielsen said this item will be on the October meeting agenda, staff will put together a management chart/structure as suggested. A revised blueprint will be discussed. An organization chart will be included with the mailing.

FY95 Challenge Grant Allocations - Wayne Zellmer stated that the Grant Committee made
** the recommendations with two changes: Redwood and Lyon to fund as listed. Moved by
94-54 Barb Uppgaard, seconded by Annexstad, to adopt the challenge grant allocations as presented, subject to verification of Clearwater project. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

Hazeltine-Bavaria Watershed Management Organization Watershed Management Plan Approval - Barbara Ohman introduced Brett Emmons and Cecilio Olivier, consultants with Bonestroo, Reseng, and Anderlik Associates. Barbara gave an overview of the plan. Staff
** recommends approval of the plan. Moved by Cobb, seconded by Otte, to approve the
94-55 Hazeltine-Bavaria Watershed Management Organization Watershed Management Plan. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried.

Dispute Resolution Committee's (DRC) Recommendation, Harstad vs. City of Fridley - Kathy Roer, chair of DRC, explained the appeal to the full BWSR and said that the DRC affirms the City of Fridley's resolution and recommends that BWSR pass the following resolution: a) Affirming the decision of the City of Fridley; and b) Authorizing the Chair
** of the BWSR to sign and issue an Order consistent with the resolution. Moved by
94-56 Uppgaard, seconded by Lovdahl, that the BWSR adopt the DRC's recommended resolution regarding Harstad Companies vs. the City of Fridley. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Rodning, Roer, Tripp, Uppgaard, and Nielsen. Opposed: Rossman. Carried.

Request for Public Hearing for the Valley Branch Watershed District Watershed Management Plan Revision and the Riley-Purgatory Bluff Creek Watershed District
** **Watershed Management Plan Revision.** Moved by Lovdahl, seconded by Rossman, to grant
94-57 the public hearing. Affirmative: Annexstad, Cobb, Hvidsten, Lovdahl, Otte, Rodning, Roer, Rossman, Tripp, Uppgaard, and Nielsen. Opposed: None. Carried. Chairman Nielsen appointed Cobb, Otte, and Rodning to attend the public hearings.

Advisor Comments

Minnesota Association of Townships (MAT): Franklin Denn reported that he was in Washington, D.C., and met with the Environmental Protection Agency.

Minnesota Association of Conservation District Employees (MACDE): Dan Livdahl reported that the MACDE sent out a tech capability survey; the results have just been mailed to BWSR as to who needs training. Area 5 had an environmental fair, they will appreciate the challenge grant.

Soil Conservation Service (SCS): Gary Nordstrom introduced his boss, Gary Margheim. SCS just recently signed a federal memorandum of understanding regarding wetland delineations. SCS would like to come before BWSR to report on their strategy and inform people on who is in charge of what. Chairman Nielsen asked that WHAC be given the report as well. Gary Margheim briefed BWSR on reorganization, both the Senate and House have passed appropriations for next year and President Clinton will receive the bill to sign. House passed USDA reorganization bill; it will go to conference. Chairman Nielsen stated he appreciates Gary's assistance and coordination.

Fred Bergsrud, MES, distributed "Restoring Your River" 1995 calendar for members' information.

Paul Burns, MDA, asked that a status report on the State Resolving Fund (SRF) be given at the October meeting from the Department of Agriculture.

The next BWSR meeting is October 26, there will not be a meeting in November; December 7 is the scheduled meeting date for November/December.

Chairman Nielsen adjourned the meeting at 12:10 p.m.

Respectfully submitted,

D. James Nielsen
Chairman

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

PUBLIC AND HUMAN RESOURCES
SUITE 900
445 MINNESOTA STREET
ST. PAUL, MN 55101-2127
TELEPHONE: (612) 297-1075

October 17, 1994

David Olin
Pennington County Attorney
210 N. Labree Avenue
P.O. Box 396
Thief River Falls, MN 56701

Re: Breach of Natural Resources Block Grant Agreement by Pennington County

Dear Mr. Olin:

I represent the Minnesota Board of Water and Soil Resources (BWSR). Earlier this year, my client entered into a Natural Resources Block Grant Agreement (NRBG Agreement) with Pennington County. Under the NRBG Agreement, Pennington County accepted certain state funds for administration of the Wetland Conservation Act (WCA). Thus far, Pennington County has not acknowledged to BWSR pursuant to Minn. R. 8420.0260 (1993) that it is assuming its responsibilities under the WCA statutes and rules. Accordingly, the purpose of this letter is to reiterate the demand made by BWSR for the immediate return of the WCA portion of the funds granted to Pennington County under the NRBG Agreement.

Attached for your information are copies of the following:

1. Resolution dated January 4, 1994 under which the Pennington County Board of Commissioners approved entering into the NRBG Agreement to receive state funds for, among other things, administration of WCA (Exhibit A attached);

2. NRBG Agreement under which Pennington County agreed, among other things, to comply with Chapter 8420 of Minnesota Rules and to use the funds as provided in the NRBG Agreement (Exhibit B attached);

3. Letter of June 3, 1994 from BWSR to Pennington County advising Pennington County, among other things, that it is in breach of the NRBG Agreement by virtue of Pennington County's refusal to acknowledge pursuant to Minn. R. 8420.0260 (1993) that it is assuming its responsibilities under the WCA statutes and rules (Exhibit C attached); and

4. Letter of July 18, 1994 from BWSR to Pennington County demanding the return of $11,700 which represents the WCA portion of the funds granted to the County under the NRBG Agreement (Exhibit D attached).

These documents clearly demonstrate that Pennington County is in breach of the NRBG Agreement and is holding state funds contrary to law. Pennington County must immediately return the demanded funds unless Pennington County acknowledges pursuant to Minn. R. 8420.0260 (1993) that it is assuming its responsibilities under the WCA statute and rules.

Please note that by returning the WCA portion of the funds granted under the Agreement, Pennington County will not be relieved of its obligation to acknowledge and perform its responsibilities under WCA. Minn. Stat. § 103G.005, subd. 10a(1) (1992) (emphasis added) provides that "outside of the seven-county metropolitan area, [the local government unit will be] a city council or county board of commissioners." See also Minn. R. 8420.0110, subp. 30A, .0200 (1993). The obligation for each local government unit to acknowledge its role under WCA is mandatory. Minn. R. 8420.0260 (1993) (emphasis added) provides that "By January 1, 1994, each local government unit of the state, except tribal lands, shall acknowledge to the board that it is assuming its responsibilities under this chapter and the act." Until Pennington County acknowledges its responsibilities, the moratorium on Pennington County's jurisdiction on exemption, no-loss, replacement plan, and banking determinations under WCA as adopted by BWSR pursuant to Minn. R. 8420.0260 (1993) will continue to be in effect. (See Exhibits C and D attached).

BWSR is interested in working with Pennington County in the administration of WCA. BWSR has shown great willingness to listen to Pennington County's concerns and has shown patience in allowing Pennington County to reconsider its position or return the funds. There may be an opportunity to refine WCA through future legislative and rule changes, but the present state of the law provides no basis whatsoever for the position taken by Pennington County. Until changes in the law are obtained, it is incumbent upon Pennington County to acknowledge its responsibilities under WCA and perform the NRBG Agreement in accordance with its terms.

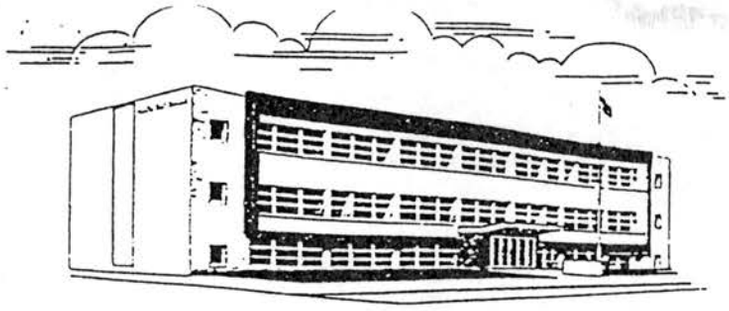
Very truly yours,

MATTHEW B. SELTZER
Assistant Attorney General

(612) 296-0692

Enclosures

cc: BWSR Board Members w/encl.
Jerry Engelbrecht, DNR Enforcement Supervisor w/encl.
Ron Harnack, BWSR Executive Director w/encl.
Frank Sawinski, President, Association of Minnesota Counties w/encl.
Ron Shelito, BWSR Regional Supervisor w/encl.
David Weirens, Association of Minnesota Counties w/encl.



PENNINGTON County

THIEF RIVER FALLS, MINNESOTA 56701

RESOLUTION AUTHORIZING SIGNATURE
OF
BOARD OF WATER AND SOIL RESOURCES
NATURAL RESOURCES BLOCK GRANT DOCUMENTS

Commissioner Jensen offered the following resolution, and moved its adoption.

WHEREAS, Pennington County has a State approved comprehensive local water plans, which has been locally adopted pursuánt to Minnesota Statutes Chapter 103B.311 or 103B.255, or has state approved comprehensive local water plans, covering 50% of land area in the county, which have been locally adopted pursuant to Minnesota Statutes Chapter 103B.231, 103D.401 or 103D.405; and

WHEREAS, the State of Minnesota, acting by and through its Board of Water and Soil Resources ("BWSR"), has authority to award Natural Resources Block Grants for purposes of implementing comprehensive local water plans, the wetland conservation act, and the DNR shoreland program to local government pursuant to Laws of Minnesota 1993, Chapter 172, sec. 6; and

WHEREAS, Pennington County may assess a levy under its general levy authority to match such grants by BWSR pursuant to Minn. Stat 103B.355; and

WHEREAS, The Minnesota Department of Revenue has determined the minimum amount necessary to be raised by Pennington County for the base grant under the formula in repealed Minn. Stat 275.50 subd. 5; and

WHEREAS, BWSR has determined that Pennington County is eligible for a Natural Resources Block Grant of up to $55,245.68 upon BWSR acceptance of the LGU's application and the execution and delivery of a Grant Agreement.

NOW, THEREFORE BE IT RESOLVED:

THAT THE Pennington County Board of Commissioners approves of Pennington County entering into a Grant Agreement with the State of Minnesota to receive state funds for the implementation of its comprehensive local water plans, the administration of the wetland conservation act, and the administration of the DNR

shoreland program, under the terms of the Grant Agreement and all statutory requirements; and

THAT THE Pennington County Board of Commissioners authorizes the expenditure of $11,871.00 cash and $10,384.68 in kind contributions to match the Natural Resources Block Grant as specified in Laws of Minnesota 1993, Chapter 172, sec. 6 and Grant Agreement.

BE IT FURTHER RESOLVED, THAT THE Chairperson of the County Board of Commissioners and the County Auditor or County Administrator are authorized to execute the Grant Agreement together with all related documents.

Commissioner Comstock seconded the adoption of the resolution, and it was declared adopted upon the following vote:

Ayes: 5 Nays: 0

STATE OF MINNESOTA
COUNTY OF PENNINGTON

I Kenneth Olson, Auditor of Pennington County, Minnesota certify that the above is a true and correct copy of a resolution moved by Commissioner Jensen and seconded by Commissioner Comstock and upon vote was unanimously carried.

dated January 4, 1994

Kenneth Olson
Pennington County Auditor

As Ammended January 4, 1994
Dated January 4, 1994

WT-01087-01

STATE OF MINNESOTA
MINNESOTA BOARD OF WATER AND SOIL RESOURCES
NATURAL RESOURCES BLOCK GRANT AGREEMENT

Trn. No.	FY	Account I.D.	Dept./Div.	Sequence No.	Suffix	Object	Vendor	Type	Amount
NA40	4	958744	99780	40665	01	745	026575004	01	55,245.68

Purchase Terms	Class Code/Asst. No.	C.C.D. 1	C.C.D. 2	C.C.D. 3	Cost Code 4	Cost Code 5

Type of Transaction				Date	Number	Entered By
	[X] NA40	[ ] NA41		020794	05949	mtn
[X] NA44	[ ] NA45	[ ] NA46		030494	09403	mtn

Amount $55,245.68 **Natural Resources Block Grant**

Local Governmental Unit: Pennington County

Address: Auditor
Box 616
Thief River Falls, Mn 56701

Agreement Period: January 15, 1994 to January 15, 1996

THIS AGREEMENT is entered into between the State of Minnesota, acting by and through its Board of Water and Soil Resources, hereinafter referred to as the "Board", and the above named Local Governmental Unit, hereinafter referred to as the "LGU".

WHEREAS, the Minnesota Legislature, by Laws of Minnesota 1993, Chapter 172, sec. 6, established the Natural Resources Block Grant, hereinafter referred to as the "NRBG", to assist with the implementation of comprehensive local water plans, wetland conservation act, and shoreland programs; and

WHEREAS, Minnesota Statutes 103B.101 subd. 9. (1), and 103B.3369, Subd. 5., and laws of Minnesota 1993, Chapter 172, sec. 6 authorize the Board to award grants; and

WHEREAS, a LGU must meet the criteria established by statute and the Board to be eligible to receive NRBG state grant funds.

WHEREAS, the Board has determined the LGU to be eligible and has selected the LGU to participate in the NRBG; and

WHEREAS, the LGU has provided a certified copy of the LGU resolution authorizing the LGU's participation in the NRBG including the required local match, attached hereto as Exhibit A.

NOW THEREFORE, it is agreed between the parties as follows:

I. LGU DUTIES AND SPECIFIC PROGRAM REQUIREMENTS

The LGU is responsible for the specific duties for the NRBG, as follows:

1. TAX LEVY. The LGU's participation in the NRBG is conditioned upon LGU expenditure of cash and in-kind contributions to match the NRBG as specified in Laws of Minnesota 1993, Chapter 172, sec. 6. and the Board grant allocation and match requirements adopted by the Board.

2. REPORTING. The LGU shall submit an annual progress report to the Board by January 31 of each year on the status of program implementation by the LGU. Information provided must conform to the requirements set by the Board.

Exhibit B

3. COMPLIANCE. The LGU shall comply with Minnesota Statutes Section 103B.3361 through 103B.3369 (1990), Minnesota Rules Chapter 8405, Laws of Minnesota 1991, Chapter 354, as amended by Laws of Minnesota 1993, Chapter 175, Minnesota Rules Chapter 8420, Minnesota Statutes Section 103F.201, and Minnesota Rules Chapter 6120, and amendments thereto for comprehensive water planning, the wetland conservation act, and the DNR shoreland management program.

II. PROGRAM APPLICATION.

The LGU shall perform the duties and responsibilities described in the NRBG application, as approved by the Board, and on file at the Board office in St. Paul, Minnesota. The approved application is incorporated into this Agreement by reference, and made a part hereof.

III. GENERAL TERMS AND CONDITIONS

A. TERMS OF PAYMENT.

1. Grant payments shall be made in one installment promptly after the effective date of this Agreement. The Board shall pay the Grant Amount stated on page 1. The total obligation of the Board shall not exceed the Grant Amount.

2. Any state funds remaining unspent, unencumbered or becoming unobligated after the expiration of the Agreement Period stated above shall be returned to the Board within two months of the expiration of the Agreement Period.

3. State funds may not be used for costs incurred before or after the end of the Agreement Period stated above, unless approved by the Board.

4. Payment to the LGU is made under the condition that all work performed pursuant to this Agreement shall be performed to the satisfaction of the Board, and in accordance with all applicable federal and state laws, including rules and regulations, and local ordinances. The LGU shall use the funds provided herein only for the purposes stated in the NRBG application, as approved by the Board, and this Agreement.

B. PERIOD OF AGREEMENT. This Agreement shall be effective upon such date as it is executed as to encumbrance by the Commissioner of Finance, and shall remain in effect until the expiration of the Agreement Period stated above, or until all of the obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

C. CANCELLATION AND REVOCATION.

1. The Board may cancel this entire Agreement for just cause. "Just cause" means that the LGU or its designee is not disbursing grant funds in accordance with established Board or state procedures, or has otherwise breached a term of this Agreement. The LGU may cancel this Agreement with or without just cause. The Board or the LGU must give written notice 14 calendar days prior to cancellation. In the event of cancellation by the Board or LGU, the LGU is entitled to payment, determined on a pro rata basis, for eligible work satisfactorily performed and the remaining grant funds must be promptly returned to the Board.

2. At the request of any state agency commissioner, the Board shall revoke and the LGU shall return to the Board that portion of the state funds used to support the NRBG not in compliance with the rules of that requesting agency.

D. ASSIGNMENT. The LGU shall neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of the Board, except for contracts with other local units of governments authorized by Section 103B.3369. The LGU may contract with others, including appropriate local units of government to perform the work specified in the Agreement. In all cases the LGU shall remain responsible for the work it authorizes and/or contracts with others to perform, and shall not delegate its responsibility under this Agreement.

E. AMENDMENTS. Any amendments to this Agreement shall be in writing, and shall be executed by the Board and the LGU.

F. COST OVERRUNS. The LGU agrees that any cost overrun is the sole financial responsibility of the LGU.

G. LIABILITY. The LGU agrees to indemnify and save and hold the Board, its agents, and employees harmless from any and all claims or causes of action arising from the performance of this Agreement by the LGU, its designated local units of government, contractors, agents or employees. This clause shall not be construed to bar any legal remedies LGU may have for the Board's failure to fulfill its obligations pursuant to this Agreement. This clause shall survive the expiration of the Agreement Period or the expiration or termination of this Agreement.

H. AUDITS. The books, records, documents, and accounting procedures and practices of the LGU and its designated local units of government and contractors relevant to the NRBG may be examined at any time by the Board or Board's designee. The LGU or designated local unit of government implementing this Agreement shall provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of the Agreement Period, and be performed within one year after the end of the Agreement Period or when routinely audited, whichever occurs first. Copies of the audit report must be provided to the Board. The LGU or delegated local unit of government shall maintain all records relating to the receipt and expenditure of grant funds for six years from the termination of the Grant Agreement.

I. AFFIRMATIVE ACTION. The LGU certifies that it is either exempt from obtaining a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes Section 363.073, or has obtained said certificate.

J. NONDISCRIMINATION. As a condition of receiving financial support for the NRBG, GRANTEE assures that it will meet all applicable requirements of the Civil Rights Act of 1964, as amended (including nondiscrimination on the basis of disability conditions) and of any applicable state civil rights statutes.

K. WORKERS COMPENSATION. The LGU assures that it has provided, or shall provide, acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, Subdivision 2 (1992).

L. ANTITRUST. LGU hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

M. DATA PRIVACY ACT. The LGU agrees to indemnify and save hold the STATE, its agents and employees, harmless from any and all claims or causes of action arising from a violation of any provision of Minnesota Statutes, Chapter 13.

N. DATA COMPATIBILITY. The LGU shall prepare and maintain all information gathered as a result of this project in a format which is compatible with the data systems employed by the principal information users of the State of Minnesota.

M. CAPITAL EQUIPMENT. The title for equipment purchased with the funding provided in this Agreement shall be taken in the name of the State of Minnesota. The equipment will remain the property of the State for its useful life. After the Grant Period, the equipment may remain in the custody of the LGU so long as it is used for the purposes of promoting and supporting the coordination of shoreland management activities. The State may take possession of the equipment at which time it ceases to be used for the intended purpose and at such time as it becomes necessary to use it for State purposes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

LOCAL GOVERNMENTAL UNIT

APPROVED:

Pennington County **LGU**
BY ITS LGU
BOARD OF COMMISSIONERS

By: Walter W. Murphy

Title: Chairperson

Date: 2-22-94

By: Kenneth Albers

Title: LGU Auditor/Administrator

Date: 2-22-94

STATE OF MINNESOTA

BOARD OF WATER AND SOIL RESOURCES

By: Ole Larson

Title: Section Head

Date: 2/28/94

COMMISSIONER OF ADMINISTRATION

By: Paul Arntzen

Title: Acct. Officer Sr.

Date: 3/2/94

APPROVED AS TO FORM AND EXECUTION
BY THE ATTORNEY GENERAL

By: William J. Fritz
Assistant Attorney General

Date: 3/2/94

COMMISSIONER OF FINANCE
Encumbered Department of Finance

By: Mary J. Miller

Title: Acct. Clerk Sr.

Date: 3-7-94

Attachments:
Exhibit A: Certified copy of LGU Resolution authorizing the LGU's participation in the NRBG

Minnesota Board of Water & Soil Resources

Southbridge Office Building
155 S. Wabasha Street
Suite 104
St. Paul, MN 55107
(612) 296-3767
Fax (612) 297-5615

Field Offices

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Duluth, MN 55802
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Fax (218) 723-4794

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Fax (218) 755-4201

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(218) 828-2383
Fax (218) 828-6036

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Fax (507) 359-6018

1200 S. Broadway
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(507) 285-7458

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Fax (507) 537-6368

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June 3, 1994

Kenneth Murphy, Board Chair
Pennington County
Pennington County Courthouse
P.O. Box 616
Thief River Falls, MN 56701-0616

Dear Commissioner Murphy:

RE: Wetland Conservation Act (WCA) Adoption Status

The Board of Water of Soil Resources (BWSR) staff have been communicating with your County regarding the adoption of the Wetland Conservation Act rules that were, by statute, effective January 1, 1994. To date, the BWSR has not received acknowledgement that the County has adopted the rules. Therefore, at the May BWSR meeting, the Board unanimously adopted the following resolution:

1) Request, within 30 days of receipt of notification (this letter), a formal resolution from the County regarding your intent to adopt and implement the Wetland Conservation Act rules.

2) Advise the County that a moratorium on all wetland draining and filling is in effect for all wetlands under the jurisdiction of the WCA until the County adopts the WCA rules.

3) Advise the County that the failure to adopt the WCA rules has placed the County in violation of the provisions of the Natural Resources Block Grant Agreement signed and executed by the County and BWSR. The Board directed staff to review the specific terms of the grant agreement and to advise the Board of their options at the June meeting.

4) Advise the County that the BWSR expects that the minimum $5,000 of the Natural Resources Block Grant be transferred to the Soil and Water Conservation District (SWCD) for their required WCA duties.

5) Directed staff to facilitate meetings with representatives of the county commissioners, SWCD supervisors and their respective staff to provide a forum for discussing issues relating to the implementation of the WCA; to share experiences in handling problem areas; to seek out implementation flexibility from the rules and the statute; and to recommend to the Wetland Heritage Advisory Committee and the BWSR changes in rule or law that will improve the efficiency and effectiveness of the WCA.

Exhibit C

The BWSR acknowledges the concerns that some counties have with elements of the WCA. However, we believe that in many instances the issues are often perceived and can only be given substance through implementation experiences. Other counties have also struggled with portions of the rule and law; however, through implementation flexibility of the program have been able to work through many of the issues. In those instances where implementation experiences prove that there need to be changes in the law and rule the BWSR pursued and achieved changes. We expect that for the next few years there will be a continuing need for refinement of the wetland law and rules. Your experiences and participation in the meetings and discussions will help determine the scope and justification for future refinements. This past year several amendments were adopted that will address issues that counties and SWCD's have experienced in the past year of implementation.

Ron Shelito, Northern Regional Supervisor, will be facilitating the WCA discussion meetings during the next months. Select BWSR members and program specialists will also be available for participation in the meetings as appropriate.

The BWSR has an obligation, under the law, to ensure that the WCA is effectively administered by local government and is reviewing various options that are available through the Board's authority. I believe that the Board has been tolerant and flexible during the past six months and its time for the program compliance. Therefore, the Board of Water and Soil Resources strongly encourages adoption of the WCA rules and pledges to work with local decision makers to address problems and issues that arise.

I will be looking forward to your timely response to the Board's resolution requests.

Yours truly,

D. James Nielsen
Chair

DJN/RDH:mja
cc: BWSR Members
Dave Weirens, Association of Minnesota Counties
Frank Sawinski, President, Association of Minnesota Counties
Matt Seltzer, Assistant Attorney General
Ron Shelito
Pennington County Auditor
Pennington SWCD

Minnesota Board of Water & Soil Resources

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July 18, 1994

Kenneth Murphy, Board Chair
Pennington County
Pennington County Courthouse
P.O. Box 616
Thief River Falls, MN 56701-0616

Dear Commissioner Murphy:

WETLAND CONSERVATION ACT (WCA) BLOCK GRANT RETURN

Since the Board of Water and Soil Resources (BWSR) has not received any indication of Pennington County's adoption of the WCA (as requested in the letter to you dated June 3, 1994) the BWSR hereby notifies you that:

1. The moratorium on all wetland draining and filling continues in effect for all wetlands under the jurisdiction of the WCA until the County adopts the WCA Rules.

2. The county is in breach of the Natural Resources Block Grant (NRBG) Agreement and ordered to return the WCA portion of the NRBG. The terms of the NRBG Agreement (attached) contract require that the county adopt and implement the WCA pursuant to MN Rules Chapter 8420. Pennington County adopted a resolution stating that they would adopt and implement the WCA (attached). Pennington County is in violation of the contract which awarded $16,700 to the county and is hereby ordered to return this amount less the $5,000 passed on to the Soil and Water Conservation District (SWCD) and any funds previously delegated to cities in Pennington County administering the WCA. The BWSR has determined, based on the NRBG application and resolution that $11,700 is the amount to be returned. Please provide documentation of all grant money distributed to other local governments.

As mentioned before, the BWSR is willing to listen to the concerns your county and others have with the WCA. There may be opportunity for refinement through future law and rule changes. However, the BWSR is also required to ensure that the WCA is properly administered by local government and will pursue appropriate legal options toward this end.

Exhibit D

Minnesota Board of Water & Soil Resources

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If your county has adopted the WCA, please remit the supporting documentation immediately. If you have questions please direct them to Ron Shelito, Regional Supervisor, at (218) 828-2604.

Yours Truly,

D. James Nielsen
Chair

DJN/jj

c: BWSR Members
Dave Weirens, AMC
Frank Sawinski, President, AMC
Matt Seltzer, Assistant Attorney General
Ron Shelito
Brian Dwight
Jerry Engelbrecht, DNR Enforcement Supervisor
Pennington County Auditor
Pennington SWCD

s:$back.wca

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

PUBLIC AND HUMAN RESOURCES
SUITE 900
445 MINNESOTA STREET
ST. PAUL, MN 55101-2127
TELEPHONE: (612) 297-1075

October 17, 1994

Timothy R. Faver
Beltrami County Attorney
P.O. Box 1653
207 Fourth Street
Bemidji, MN 56601

Re: Breach of Natural Resources Block Grant Agreement by Beltrami County

Dear Mr. Faver:

I represent the Minnesota Board of Water and Soil Resources (BWSR). Earlier this year, my client entered into a Natural Resources Block Grant Agreement (NRBG Agreement) with Beltrami County. Under the NRBG Agreement, Beltrami County accepted certain state funds for administration of the Wetland Conservation Act (WCA). Thus far, Beltrami County has not acknowledged to BWSR pursuant to Minn. R. 8420.0260 (1993) that it is assuming its responsibilities under the WCA statutes and rules. Accordingly, the purpose of this letter is to reiterate the demand made by BWSR for the immediate return of the WCA portion of the funds granted to Beltrami County under the NRBG Agreement.

Attached for your information are copies of the following:

1. Resolution No. 94-01-02 dated January 11, 1994 under which the Beltrami County Board of Commissioners approved entering into the NRBG Agreement to receive state funds for, among other things, administration of WCA (Exhibit A attached);

2. NRBG Agreement under which Beltrami County agreed, among other things, to comply with Chapter 8420 of Minnesota Rules and to use the funds as provided in the NRBG Agreement (Exhibit B attached);

3. Letter of June 3, 1994 from BWSR to Beltrami County advising Beltrami County, among other things, that it is in breach of the NRBG Agreement by virtue of Beltrami County's refusal to acknowledge pursuant to Minn. R. 8420.0260 (1993) that it is assuming its responsibilities under the WCA statutes and rules (Exhibit C attached); and

4. Letter of July 18, 1994 from BWSR to Beltrami County demanding the return of $31,000 which represents the WCA portion of the funds granted to the County under the NRBG Agreement (Exhibit D attached).

These documents clearly demonstrate that Beltrami County is in breach of the NRBG Agreement and is holding state funds contrary to law. Beltrami County must immediately return the demanded funds unless Beltrami County acknowledges pursuant to Minn. R. 8420.0260 (1993) that it is assuming its responsibilities under the WCA statute and rules.

Please note that by returning the WCA portion of the funds granted under the Agreement, Beltrami County will not be relieved of its obligation to acknowledge and perform its responsibilities under WCA. Minn. Stat. § 103G.005, subd. 10a(1) (1992) (emphasis added) provides that "outside of the seven-county metropolitan area, [the local government unit will be] a city council or county board of commissioners." See also Minn. R. 8420.0110, subp. 30A, .0200 (1993). The obligation for each local government unit to acknowledge its role under WCA is mandatory. Minn. R. 8420.0260 (1993) (emphasis added) provides that "By January 1, 1994, each local government unit of the state, except tribal lands, shall acknowledge to the board that it is assuming its responsibilities under this chapter and the act." Until Beltrami County acknowledges its responsibilities, the moratorium on Beltrami County's jurisdiction on exemption, no-loss, replacement plan, and banking determinations under WCA as adopted by BWSR pursuant to Minn. R. 8420.0260 (1993) will continue to be in effect. (See Exhibits C and D attached).

BWSR is interested in working with Beltrami County in the administration of WCA. BWSR has shown great willingness to listen to Beltrami County's concerns and has shown patience in allowing Beltrami County to reconsider its position or return the funds. There may be an opportunity to refine WCA through future legislative and rule changes, but the present state of the law provides no basis whatsoever for the position taken by Beltrami County. Until changes in the law are obtained, it is incumbent upon Beltrami County to acknowledge its responsibilities under WCA and perform the NRBG Agreement in accordance with its terms.

Very truly yours,

MATTHEW B. SELTZER
Assistant Attorney General

(612) 296-0692

Enclosures

cc: BWSR Board Members w/encl.
Jerry Engelbrecht, DNR Enforcement Supervisor w/encl.
Ron Harnack, BWSR Executive Director w/encl.
Frank Sawinski, President, Association of Minnesota Counties w/encl.
Ron Shelito, BWSR Regional Supervisor w/encl.
David Weirens, Association of Minnesota Counties w/encl.

SELT:AX8

RESOLUTION

BOARD OF COUNTY COMMISSIONERS
BELTRAMI COUNTY, MINNESOTA

DATE: January 11, 1994 RESOLUTION NO. 94-01-02

MOTION OF COMMISSIONER: Richardson SECONDED BY COMMISSIONER: Lund

WHEREAS, Beltrami County has a State Approved comprehensive local water plan, which has been locally adopted pursuant to Minnesota Statutes Chapter 103B.311 or 103B.255, or has State approved comprehensive local water plans, covering 50% of land area in the county, which have been locally adopted pursuant to Minnesota Statutes Chapter 103B.231, 103D.401, or 103D.405; and

WHEREAS, the State of Minnesota, acting by and through its Board of Water and Soil Resources ("BWSR"), has authority to award Natural Resources Block Grants for purposes of implementing comprehensive local water plans, the wetland conservation act, and the DNR shoreland program to local government pursuant to Laws of Minnesota 1993, Chapter 172, sec. 6; and

WHEREAS, Beltrami County may assess a levy under its general levy authority to match such grants by BWSR pursuant to Minnesota Statutes 103B.335; and

WHEREAS, the Minnesota Department of Revenue has determined the minimum amount necessary to be raised by Beltrami County for the base grant portion of the grant under the formula in repealed Minnesota Statute 275.50, subd. 5; and

WHEREAS, BWSR has determined that Beltrami County is eligible for a Natural Resources Block Grant of up to $74,107.40 upon BWSR acceptance of the LGU's application and the execution and delivery of a Grant Agreement.

NOW, THEREFORE BE IT RESOLVED, that the Beltrami County Board of Commissioners approves of Beltrami County entering into a Grant Agreement with the State of Minnesota to receive state funds for the implementation of its comprehensive local water plans, the administration of the wetland conservation act, and administration of the DNR shoreland program, under the terms of the Grant Agreement and all statutory requirements; and

THAT THE Beltrami County Board of Commissioners authorizes the expenditure of $24,362.00 cash and $24,969.40 in-kind contributions to match the Natural Resources Block Grant as specified in Laws of Minnesota 1993, Chapter 172, sec. 6 and the Grant Agreement.

BE IT FURTHER RESOLVED, that the Chairperson of the County Board of Commissioners and the County Auditor or County Administrator are authorized to execute the Grant Agreement together with all related documents.

Exhibit A

	YES	NO
LUND	X	
SKARE	X	
RICHARDSON	X	
FLORHAUG	X	
NORD	X	

STATE OF MINNESOTA)
(SS
COUNTY OF BELTRAMI)

I, Gregory D. Lewis, Administrator, Beltrami County, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Beltrami County, Minnesota, at their regular session held on the 11th day of January now on file in my office and have found the same to be a true and correct copy thereof.

Gregory D. Lewis
County Administrator

WR-01087-01

STATE OF MINNESOTA
MINNESOTA BOARD OF WATER AND SOIL RESOURCES
NATURAL RESOURCES BLOCK GRANT AGREEMENT

No.	FY	Account I.D.	Dept/Div.	Sequence No.	Suffix	Object	Vendor	Type	Amount
A40	4	958744	99780	40612	01	745	056904002	01	74,107.40 ✓

chase Terms	Class Code/Asst. No.	C.CD. 1	C.CD. 2	C.CD. 3	Cost Code 4	Cost Code 5

pe of Transaction				Date	Number	Entered By
☒ NA40	☐ NA41			020794	05565	mtm
☒ NA44	☐ NA45	☐ NA46		031194	01555	mtm

Amount $ 74,107.40 ✓ **Natural Resources Block Grant**

Local Governmental Unit: Beltrami County

Address: ✓ Auditor
619 Bemidji Ave. NW
Bemidji, Mn 56601

Agreement Period: January 15, 1994 to January 15, 1996

THIS AGREEMENT is entered into between the State of Minnesota, acting by and through its Board of Water and Soil Resources, hereinafter referred to as the "Board", and the above named Local Governmental Unit, hereinafter referred to as the "LGU".

WHEREAS, the Minnesota Legislature, by ~~Laws of Minnesota 1993, Chapter 172, sec. 6,~~ established the Natural Resources Block Grant, hereinafter referred to as the "NRBG", to assist with the implementation of comprehensive local water plans, wetland conservation act, and shoreland programs; and

WHEREAS, Minnesota Statutes 103B.101 subd. 9. (1), and 103B.3369, Subd. 5., and laws of Minnesota 1993, Chapter 172, sec. 6 authorize the Board to award grants; and

WHEREAS, a LGU must meet the criteria established by statute and the Board to be eligible to receive NRBG state grant funds.

WHEREAS, the Board has determined the LGU to be eligible and has selected the LGU to participate in the NRBG; and

WHEREAS, the LGU has provided a certified copy of the LGU resolution authorizing the LGU's participation in the NRBG including the required local match, attached hereto as Exhibit A.

NOW THEREFORE, it is agreed between the parties as follows:

LGU DUTIES AND SPECIFIC PROGRAM REQUIREMENTS

The LGU is responsible for the specific duties for the NRBG, as follows:

1. TAX LEVY. The LGU's participation in the NRBG is conditioned upon LGU expenditure of cash and in-kind contributions to match the NRBG as specified in Laws of Minnesota 1993, Chapter 172, sec. 6. and the Board grant allocation and match requirements adopted by the Board.

2. REPORTING. The LGU shall submit an annual progress report to the Board by January 31 of each year on the status of program implementation by the LGU. Information provided must conform to the requirements set by the Board.

Exhibit B

3. COMPLIANCE. The LGU shall comply with Minnesota Statutes Section 103B.3361 through 103B.3369 (1990), Minnesota Rules Chapter 8405, Laws of Minnesota 1991, Chapter 354, as amended by Laws of Minnesota 1992, Chapter 175, Minnesota Rules Chapter 8420, Minnesota Statutes Section 103F.201, and Minnesota Rules Chapter 6120, and amendments thereto for comprehensive water planning, the wetland conservation act, and the DNR shoreland management program.

II. PROGRAM APPLICATION.

The LGU shall perform the duties and responsibilities described in the NRBG application, as approved by the Board, and on file at the Board office in St. Paul, Minnesota. The approved application is incorporated into this Agreement by reference, and made a part hereof.

III. GENERAL TERMS AND CONDITIONS

A. TERMS OF PAYMENT.

1. Grant payments shall be made in one installment promptly after the effective date of this Agreement. The Board shall pay the Grant Amount stated on page 1. The total obligation of the Board shall not exceed the Grant Amount.

2. Any state funds remaining unspent, unencumbered or becoming unobligated after the expiration of the Agreement Period stated above shall be returned to the Board within two months of the expiration of the Agreement Period.

3. State funds may not be used for costs incurred before or after the end of the Agreement Period stated above, unless approved by the Board.

4. Payment to the LGU is made under the condition that all work performed pursuant to this Agreement shall be performed to the satisfaction of the Board, and in accordance with all applicable federal and state laws, including rules and regulations, and local ordinances. The LGU shall use the funds provided herein only for the purposes stated in the NRBG application, as approved by the Board, and this Agreement.

B. PERIOD OF AGREEMENT. This Agreement shall be effective upon such date as it is executed as to encumbrance by the Commissioner of Finance, and shall remain in effect until the expiration of the Agreement Period stated above, or until all of the obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

C. CANCELLATION AND REVOCATION.

1. The Board may cancel this entire Agreement for just cause. "Just cause" means that the LGU or its designee is not disbursing grant funds in accordance with established Board or state procedures, or has otherwise breached a term of this Agreement. The LGU may cancel this Agreement with or without just cause. The Board or the LGU must give written notice 14 calendar days prior to cancellation. In the event of cancellation by the Board or LGU, the LGU is entitled to payment, determined on a pro rata basis, for eligible work satisfactorily performed and the remaining grant funds must be promptly returned to the Board.

2. At the request of any state agency commissioner, the Board shall revoke and the LGU shall return to the Board that portion of the state funds used to support the NRBG not in compliance with the rules of that requesting agency.

D. ASSIGNMENT. The LGU shall neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of the Board, except for contracts with other local units of governments authorized by Section 103B.3369. The LGU may contract with others, including appropriate local units of government to perform the work specified in the Agreement. In all cases the LGU shall remain responsible for the work it authorizes and/or contracts with others to perform, and shall not delegate its responsibility under this Agreement.

E. AMENDMENTS. Any amendments to this Agreement shall be in writing, and shall be executed by the Board and the LGU.

F. COST OVERRUNS. The LGU agrees that any cost overrun is the sole financial responsibility of the LGU.

G. LIABILITY. The LGU agrees to indemnify and save and hold the Board, its agents, and employees harmless from any and all claims or causes of action arising from the performance of this Agreement by the LGU, its designated local units of government, contractors, agents or employees. This clause shall not be construed to bar any legal remedies LGU may have for the Board's failure to fulfill its obligations pursuant to this Agreement. This clause shall survive the expiration of the Agreement Period or the expiration or termination of this Agreement.

H. AUDITS. The books, records, documents, and accounting procedures and practices of the LGU and its designated local units of government and contractors relevant to the NRBG may be examined at any time by the Board or Board's designee. The LGU or designated local unit of government implementing this Agreement shall provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of the Agreement Period, and be performed within one year after the end of the Agreement Period or when routinely audited, whichever occurs first. Copies of the audit report must be provided to the Board. The LGU or delegated local unit of government shall maintain all records relating to the receipt and expenditure of grant funds for six years from the termination of the Grant Agreement.

I. AFFIRMATIVE ACTION. The LGU certifies that it is either exempt from obtaining a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes Section 363.073, or has obtained said certificate.

J. NONDISCRIMINATION. As a condition of receiving financial support for the NRBG, GRANTEE assures that it will meet all applicable requirements of the Civil Rights Act of 1964, as amended (including nondiscrimination on the basis of disability conditions) and of any applicable state civil rights statutes.

K. WORKERS COMPENSATION. The LGU assures that it has provided, or shall provide, acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, Subdivision 2 (1992).

L. ANTITRUST. LGU hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

M. DATA PRIVACY ACT. The LGU agrees to indemnify and save hold the STATE, its agents and employees, harmless from any and all claims or causes of action arising from a violation of any provision of Minnesota Statutes, Chapter 13.

N. DATA COMPATIBILITY. The LGU shall prepare and maintain all Information gathered as a result of this project in a format which is compatible with the data systems employed by the principal information users of the State of Minnesota.

M. CAPITAL EQUIPMENT. The title for equipment purchased with the funding provided in this Agreement shall be taken in the name of the State of Minnesota. The equipment will remain the property of the State for its useful life. After the Grant Period, the equipment may remain In the custody of the LGU so long as it is used for the purposes of promoting and supporting the coordination of shoreland management activities. The State may take possession of the equipment at which time it ceases to be used for the intended purpose and at such time as it becomes necessary to use it for State purposes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

LOCAL GOVERNMENTAL UNIT

APPROVED:

Beltrami Co. LGU
BY ITS LGU
BOARD OF COMMISSIONERS

By: Dale Skare

Title: Chairperson

Date: 3-7-94

By: Beverly B. Lewis

Title: LGU Auditor/Administrator

Date: 3/7/94

STATE OF MINNESOTA

BOARD OF WATER AND SOIL RESOURCES

By: Don Larson

Title: Section Head

Date: 3-10-94

COMMISSIONER OF ADMINISTRATION

By: Tim Schwandt

Title: Accts Offcr Ln

Date: 3/11/94

APPROVED AS TO FORM AND EXECUTION
BY THE ATTORNEY GENERAL

By: Matthew H. Pahl
Assistant Attorney General

Date: 3/10/94

COMMISSIONER OF FINANCE
Encumbered Department of Finance

By: Mary J. Miller

Title: Acct. Clk Sr.

Date: 3-15-94

Attachments:
Exhibit A: Certified copy of LGU Resolution authorizing the LGU's participation in the NRBG

Minnesota Board of Water & Soil Resources

Southbridge Office Building
155 S. Wabasha Street
Suite 104
St. Paul, MN 55107
(612) 296-3767
Fax (612) 297-5615

Field Offices

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Duluth, MN 55802
(218) 723-4752
Fax (218) 723-4794

3217 Bemidji Avenue N.
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(218) 755-4235
Fax (218) 755-4201

217 S. 7th Street
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Brainerd, MN 56401-3660
(218) 828-2383
Fax (218) 828-6036

Southern Region:

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Fax (507) 359-6018

1200 S. Broadway
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(507) 285-7458

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June 3, 1994

Gail Skare, Board Chair
Beltrami County
Beltrami County Courthouse
619 Beltrami Avenue NW
Bemidji, MN 56601

Dear Commissioner Skare:

RE: Wetland Conservation Act (WCA) Adoption Status

The Board of Water of Soil Resources (BWSR) staff have been communicating with your County regarding the adoption of the Wetland Conservation Act rules that were, by statute, effective January 1, 1994. To date, the BWSR has not received acknowledgement that the County has adopted the rules. Therefore, at the May BWSR meeting, the Board unanimously adopted the following resolution:

1) Request, within 30 days of receipt of notification (this letter), a formal resolution from the County regarding your intent to adopt and implement the Wetland Conservation Act rules.

2) Advise the County that a moratorium on all wetland draining and filling is in effect for all wetlands under the jurisdiction of the WCA until the County adopts the WCA rules.

3) Advise the County that the failure to adopt the WCA rules has placed the County in violation of the provisions of the Natural Resources Block Grant Agreement signed and executed by the County and BWSR. The Board directed staff to review the specific terms of the grant agreement and to advise the Board of their options at the June meeting.

4) Advise the County that the BWSR expects that the minimum $5,000 of the Natural Resources Block Grant be transferred to the Soil and Water Conservation District (SWCD) for their required WCA duties.

5) Directed staff to facilitate meetings with representatives of the county commissioners, SWCD supervisors and their respective staff to provide a forum for discussing issues relating to the implementation of the WCA; to share experiences in handling problem areas; to seek out implementation flexibility from the rules and the statute; and to recommend to the Wetland Heritage Advisory Committee and the BWSR changes in rule or law that will improve the efficiency and effectiveness of the WCA.

Exhibit C

The BWSR acknowledges the concerns that some counties have with elements of the WCA. However, we believe that in many instances the issues are often perceived and can only be given substance through implementation experiences. Other counties have also struggled with portions of the rule and law; however, through implementation flexibility of the program have been able to work through many of the issues. In those instances where implementation experiences prove that there need to be changes in the law and rule the BWSR pursued and achieved changes. We expect that for the next few years there will be a continuing need for refinement of the wetland law and rules. Your experiences and participation in the meetings and discussions will help determine the scope and justification for future refinements. This past year several amendments were adopted that will address issues that counties and SWCD's have experienced in the past year of implementation.

Ron Shelito, Northern Regional Supervisor, will be facilitating the WCA discussion meetings during the next months. Select BWSR members and program specialists will also be available for participation in the meetings as appropriate.

The BWSR has an obligation, under the law, to ensure that the WCA is effectively administered by local government and is reviewing various options that are available through the Board's authority. I believe that the Board has been tolerant and flexible during the past six months and its time for the program compliance. Therefore, the Board of Water and Soil Resources strongly encourages adoption of the WCA rules and pledges to work with local decision makers to address problems and issues that arise.

I will be looking forward to your timely response to the Board's resolution requests.

Yours truly,

D. James Nielsen
Chair

DJN/RDH:mja
cc: BWSR Members
Dave Weirens, Association of Minnesota Counties
Frank Sawinski, President, Association of Minnesota Counties
Matt Seltzer, Assistant Attorney General
Ron Shelito
Beltrami County Auditor
Beltrami SWCD

Minnesota Board of Water & Soil Resources

Southbridge Office Building
155 S. Wabasha Street
Suite 104
St. Paul, MN 55107
(612) 296-3767
Fax (612) 297-5615

Field Offices

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Fax (218) 828-6036

Southern Region:

P.O. Box 756
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Fax (507) 359-6018

1200 S. Broadway
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Fax (507) 280-2875

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(507) 537-6060
Fax (507) 537-6368

Metro Region:

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155 S. Wabasha Street
Suite 104
St. Paul, MN 55107
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July 18, 1994

Gail Skare, Board Chair
Beltrami County
Beltrami County Courthouse
619 Beltrami Avenue NW
Bemidji, MN 56601

Dear Commissioner Skare:

WETLAND CONSERVATION ACT (WCA) BLOCK GRANT RETURN

Since the Board of Water and Soil Resources (BWSR) has not received any indication of Beltrami County's adoption of the WCA (as requested in the letter to you dated June 3, 1994) the BWSR hereby notifies you that:

1. The moratorium on all wetland draining and filling continues in effect for all wetlands under the jurisdiction of the WCA until the County adopts the WCA Rules.

2. The county is in breach of the Natural Resources Block Grant (NRBG) Agreement and ordered to return the WCA portion of the NRBG. The terms of the NRBG Agreement (attached) contract require that the county adopt and implement the WCA pursuant to MN Rules Chapter 8420. Beltrami County adopted a resolution stating that they would adopt and implement the WCA (attached). Beltrami County is in violation of the contract which awarded $36,000 to the county and is hereby ordered to return this amount less the $5,000 passed on to the Soil and Water Conservation District (SWCD) and any funds previously delegated to cities in Beltrami County administering the WCA. The BWSR has determined, based on the NRBG application and resolution that $31,000 is the amount to be returned. Please provide documentation of all grant money distributed to other local governments.

As mentioned before, the BWSR is willing to listen to the concerns your county and others have with the WCA. There may be opportunity for refinement through future law and rule changes. However, the BWSR is also required to ensure that the WCA is properly administered by local government and will pursue appropriate legal options toward this end.

Exhibit I

Minnesota Board of Water & Soil Resources

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(612) 282-5116
Fax (612) 297-5615

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If your county has adopted the WCA, please remit the supporting documentation immediately. If you have questions please direct them to Ron Shelito, Regional Supervisor, at (218) 828-2604.

Yours Truly,

D. James Nielsen
Chair

DJN/jj

c: BWSR Members
Dave Weirens, AMC
Frank Sawinski, President, AMC
Matt Seltzer, Assistant Attorney General
Ron Shelito
Brian Dwight
Jerry Engelbrecht, DNR Enforcement Supervisor
Beltrami County Auditor
Beltrami SWCD

s:\$back.wca

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

PUBLIC AND HUMAN RESOURCES
SUITE 900
445 MINNESOTA STREET
ST. PAUL, MN 55101-2127
TELEPHONE: (612) 297-1075

October 17, 1994

Michael D. Williams
Marshall County Attorney
P.O. Box 159
423 North Main
Warren, MN 56762

Re: Breach of Natural Resources Block Grant Agreement by Marshall County

Dear Mr. Williams:

I represent the Minnesota Board of Water and Soil Resources (BWSR). Earlier this year, my client entered into a Natural Resources Block Grant Agreement (NRBG Agreement) with Marshall County. Under the NRBG Agreement, Marshall County accepted certain state funds for administration of the Wetland Conservation Act (WCA). Thus far, Marshall County has not acknowledged to BWSR pursuant to Minn. R. 8420.0260 (1993) that it is assuming its responsibilities under the WCA statutes and rules. Accordingly, the purpose of this letter is to reiterate the demand made by BWSR for the immediate return of the WCA portion of the funds granted to Marshall County under the NRBG Agreement.

Attached for your information are copies of the following:

1. Resolution dated December 28, 1993 under which the Marshall County Board of Commissioners approved entering into the NRBG Agreement to receive state funds for, among other things, administration of WCA (Exhibit A attached);

2. NRBG Agreement under which Marshall County agreed, among other things, to comply with Chapter 8420 of Minnesota Rules and to use the funds as provided in the NRBG Agreement (Exhibit B attached);

3. Letter of June 3, 1994 from BWSR to Marshall County advising Marshall County, among other things, that it is in breach of the NRBG Agreement by virtue of Marshall County's refusal to acknowledge pursuant to Minn. R. 8420.0260 (1993) that it is assuming its responsibilities under the WCA statutes and rules (Exhibit C attached); and

4. Letter of July 18, 1994 from BWSR to Marshall County demanding the return of $14,200 which represents the WCA portion of the funds granted to the County under the NRBG Agreement (Exhibit D attached).

These documents clearly demonstrate that Marshall County is in breach of the NRBG Agreement and is holding state funds contrary to law. Marshall County must immediately return the demanded funds unless Marshall County acknowledges pursuant to Minn. R. 8420.0260 (1993) that it is assuming its responsibilities under the WCA statute and rules.

Please note that by returning the WCA portion of the funds granted under the Agreement, Marshall County will not be relieved of its obligation to acknowledge and perform its responsibilities under WCA. Minn. Stat. § 103G.005, subd. 10a(1) (1992) (emphasis added) provides that "outside of the seven-county metropolitan area, [the local government unit will be] a city council or county board of commissioners." See also Minn. R. 8420.0110, subp. 30A, .0200 (1993). The obligation for each local government unit to acknowledge its role under WCA is mandatory. Minn. R. 8420.0260 (1993) (emphasis added) provides that "By January 1, 1994, each local government unit of the state, except tribal lands, shall acknowledge to the board that it is assuming its responsibilities under this chapter and the act." Until Marshall County acknowledges its responsibilities, the moratorium on Marshall County's jurisdiction on exemption, no-loss, replacement plan, and banking determinations under WCA as adopted by BWSR pursuant to Minn. R. 8420.0260 (1993) will continue to be in effect. (See Exhibits C and D attached).

BWSR is interested in working with Marshall County in the administration of WCA. BWSR has shown great willingness to listen to Marshall County's concerns and has shown patience in allowing Marshall County to reconsider its position or return the funds. There may be an opportunity to refine WCA through future legislative and rule changes, but the present state of the law provides no basis whatsoever for the position taken by Marshall County. Until changes in the law are obtained, it is incumbent upon Marshall County to acknowledge its responsibilities under WCA and perform the NRBG Agreement in accordance with its terms.

Very truly yours,

MATTHEW B. SELTZER
Assistant Attorney General

(612) 296-0692

Enclosures

cc: BWSR Board Members w/encl.
Jerry Engelbrecht, DNR Enforcement Supervisor w/encl.
Ron Harnack, BWSR Executive Director w/encl.
Frank Sawinski, President, Association of Minnesota Counties w/encl.
Ron Shelito, BWSR Regional Supervisor w/encl.
David Weirens, Association of Minnesota Counties w/encl.

SELT:AY7

RESOLUTION AUTHORIZING SIGNATURE
OF

BOARD OF WATER AND SOIL RESOURCES
NATURAL RESOURCES BLOCK GRANT DOCUMENTS

On a motion by Ben Kleinwachter, seconded by Commissioner Curtis

Carlson, the following resolution was adopted:

WHEREAS, Marshall County has a State approved comprehensive local water plans, which has been locally adopted pursuant to Minnesota Statutes Chapter 103B.311 or 103B.255, or has State approved comprehensive local water plans, covering 50% of land area in the county, which have been locally adopted pursuant to Minnesota Statutes Chapter 103B.231, 103D.401, or 103D.405; and

WHEREAS, THE State of Minnesota, acting by and through its Board of Water and Soil Resources ("BWSR"), has authority to award Natural Resources Block Grants for purposes of implementing comprehensive local water plans, the wetland conservation act, and the DNR shoreland program to local government pursuant to Laws of Minnesota 1993, Chapter 172, sec. 6; and

WHEREAS, Marshall County may assess a levy under its general levy authority to match such grants by BWSR pursuant to Minn. Stat. 103B.335; and

WHEREAS, the Minnesota Department of Revenue has determined the minimum amount necessary to be raised by Marshall County for the base grant portion of the grant under the formula in repealed Minn. Stat. 275.50, subd. 5; and

WHEREAS, BWSR has determined that Marshall County iseligible for a Natural Resources Block Grant up to $55,105 upon BWSR acceptance of the LGU's application and the execution and delivery of a Grant Agreement.

NOW, THEREFORE BE IT RESOLVED:

THAT THE Marshall County Board of Commissioners apporves of Marshall County entering into a Grant Agreement with the State of Minnesota to receive state funds for the implementation of its comprehensive local water plans, the admin. of the wetland conservation act, and administration of the DNR shoreland program, under the terms of the Grant Agreement and all statutory requirements; and

THAT THE Marshall County Board of Commissioners authorizes the expenditure of $4,595 cash and $22,200 in-kind contributions to match the Natural Resources Block Grant as specified in Laws of Minnesota 1993, Chap. 172, Sec. 6 and the Grant Agreement.

BE IT FURTHER RESOLVED, THAT THE chairperson of the County Board of Commissioners and the County Auditor or County Administrator are authorized to execute the Grant Agreement together with all related documents.

Aye: Carlson, Kleinwachter & Larson
Abstain: Gonsorowski

December 28, 1993

Selmer Larson, Chairman

CERTIFICATE AUTHENTICATING COPY

State of Minnesota
COUNTY OF MARSHALL } ss.

I, Roy G. Swanson, County Auditor of the County of Marshall, do hereby certify that I have examined the copy of a resolution entering into a grant agreement with the State of Minnesota hereto attached, and have carefully compared the same with the original thereof now on file in my office and that the copy hereto attached is a true and correct copy of said original and the whole thereof.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my seal this 7 day of January A. D. 19 94

Roy G. Swanson, County Auditor

Exhibit A

WR-01C87-01

STATE OF MINNESOTA
MINNESOTA BOARD OF WATER AND SOIL RESOURCES
NATURAL RESOURCES BLOCK GRANT AGREEMENT

Trn. No.	FY	Account I.D.	Dept./Div.	Sequence No.	Suffix	Object	Vendor	Type	Amount
NA40	4	958744	99780	40653	01	745	0382650004	01	55,105.00

Purchase Terms	Class Code/Asst. No.	C.CD. 1	C.CD. 2	C.CD. 3	Cost Code 4	Cost Code 5

Type of Transaction			Date	Number	Entered By
	[X] NA40	[ ] NA41	020794	05850	mtn
	[X] NA44	[ ] NA45 [ ] NA46	030494	09370	mtn

Amount $ 55,105.00 **Natural Resources Block Grant**

Local Governmental Unit: Marshall County

Address: Auditor
208 E. Colvin
Warren, Mn 56762

Agreement Period: January 15, 1994 to January 15, 1996

THIS AGREEMENT is entered into between the State of Minnesota, acting by and through its Board of Water and Soil Resources, hereinafter referred to as the "Board", and the above named Local Governmental Unit, hereinafter referred to as the "LGU".

WHEREAS, the Minnesota Legislature, by Laws of Minnesota 1993, Chapter 172, sec. 6, established the Natural Resources Block Grant, hereinafter referred to as the "NRBG", to assist with the implementation of comprehensive local water plans, wetland conservation act, and shoreland programs; and

WHEREAS, Minnesota Statutes 103B.101 subd. 9. (1), and 103B.3369, Subd. 5., and laws of Minnesota 1993, Chapter 172, sec. 6 authorize the Board to award grants; and

WHEREAS, a LGU must meet the criteria established by statute and the Board to be eligible to receive NRBG state grant funds.

WHEREAS, the Board has determined the LGU to be eligible and has selected the LGU to participate in the NRBG; and

WHEREAS, the LGU has provided a certified copy of the LGU resolution authorizing the LGU's participation in the NRBG including the required local match, attached hereto as Exhibit A.

NOW THEREFORE, it is agreed between the parties as follows:

I. LGU DUTIES AND SPECIFIC PROGRAM REQUIREMENTS

The LGU is responsible for the specific duties for the NRBG, as follows:

1. **TAX LEVY.** The LGU's participation in the NRBG is conditioned upon LGU expenditure of cash and in-kind contributions to match the NRBG as specified in Laws of Minnesota 1993, Chapter 172, sec. 6. and the Board grant allocation and match requirements adopted by the Board.

2. REPORTING. The LGU shall submit an annual progress report to the Board by January 31 of each year on the status of program implementation by the LGU. Information provided must conform to the requirements set by the Board.

Exhibit B

3. COMPLIANCE. The LGU shall comply with Minnesota Statutes Section 103B.3361 through 103B.3369 (1990), Minnesota Rules Chapter 8405, Laws of Minnesota 1991, Chapter 354, as amended by Laws of Minnesota 1993, Chapter 175, Minnesota Rules Chapter 8420, Minnesota Statutes Section 103F.201, and Minnesota Rules Chapter 6120, and amendments thereto for comprehensive water planning, the wetland conservation act, and the DNR shoreland management program.

II. PROGRAM APPLICATION.

The LGU shall perform the duties and responsibilities described in the NRBG application, as approved by the Board, and on file at the Board office in St. Paul, Minnesota. The approved application is incorporated into this Agreement by reference, and made a part hereof.

III. GENERAL TERMS AND CONDITIONS

A. TERMS OF PAYMENT.

1. Grant payments shall be made in one installment promptly after the effective date of this Agreement. The Board shall pay the Grant Amount stated on page 1. The total obligation of the Board shall not exceed the Grant Amount.

2. Any state funds remaining unspent, unencumbered or becoming unobligated after the expiration of the Agreement Period stated above shall be returned to the Board within two months of the expiration of the Agreement Period.

3. State funds may not be used for costs incurred before or after the end of the Agreement Period stated above, unless approved by the Board.

4. Payment to the LGU is made under the condition that all work performed pursuant to this Agreement shall be performed to the satisfaction of the Board, and in accordance with all applicable federal and state laws, including rules and regulations, and local ordinances. The LGU shall use the funds provided herein only for the purposes stated in the NRBG application, as approved by the Board, and this Agreement.

B. PERIOD OF AGREEMENT. This Agreement shall be effective upon such date as it is executed as to encumbrance by the Commissioner of Finance, and shall remain in effect until the expiration of the Agreement Period stated above, or until all of the obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

C. CANCELLATION AND REVOCATION.

1. The Board may cancel this entire Agreement for just cause. "Just cause" means that the LGU or its designee is not disbursing grant funds in accordance with established Board or state procedures, or has otherwise breached a term of this Agreement. The LGU may cancel this Agreement with or without just cause. The Board or the LGU must give written notice 14 calendar days prior to cancellation. In the event of cancellation by the Board or LGU, the LGU is entitled to payment, determined on a pro rata basis, for eligible work satisfactorily performed and the remaining grant funds must be promptly returned to the Board.

2. At the request of any state agency commissioner, the Board shall revoke and the LGU shall return to the Board that portion of the state funds used to support the NRBG not in compliance with the rules of that requesting agency.

D. ASSIGNMENT. The LGU shall neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of the Board, except for contracts with other local units of governments authorized by Section 103B.3369. The LGU may contract with others, including appropriate local units of government to perform the work specified in the Agreement. In all cases the LGU shall remain responsible for the work it authorizes and/or contracts with others to perform, and shall not delegate its responsibility under this Agreement.

E. AMENDMENTS. Any amendments to this Agreement shall be in writing, and shall be executed by the Board and the LGU.

F. COST OVERRUNS. The LGU agrees that any cost overrun is the sole financial responsibility of the LGU.

G. LIABILITY. The LGU agrees to indemnify and save and hold the Board, its agents, and employees harmless from any and all claims or causes of action arising from the performance of this Agreement by the LGU, its designated local units of government, contractors, agents or employees. This clause shall not be construed to bar any legal remedies LGU may have for the Board's failure to fulfill its obligations pursuant to this Agreement. This clause shall survive the expiration of the Agreement Period or the expiration or termination of this Agreement.

H. AUDITS. The books, records, documents, and accounting procedures and practices of the LGU and its designated local units of government and contractors relevant to the NRBG may be examined at any time by the Board or Board's designee. The LGU or designated local unit of government implementing this Agreement shall provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of the Agreement Period, and be performed within one year after the end of the Agreement Period or when routinely audited, whichever occurs first. Copies of the audit report must be provided to the Board. The LGU or delegated local unit of government shall maintain all records relating to the receipt and expenditure of grant funds for six years from the termination of the Grant Agreement.

I. AFFIRMATIVE ACTION. The LGU certifies that it is either exempt from obtaining a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes Section 363.073, or has obtained said certificate.

J. NONDISCRIMINATION. As a condition of receiving financial support for the NRBG, GRANTEE assures that it will meet all applicable requirements of the Civil Rights Act of 1964, as amended (including nondiscrimination on the basis of disability conditions) and of any applicable state civil rights statutes.

K. **WORKERS COMPENSATION.** The LGU assures that it has provided, or shall provide, acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, Subdivision 2 (1992).

L. **ANTITRUST.** LGU hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

M. **DATA PRIVACY ACT.** The LGU agrees to indemnify and save hold the STATE, its agents and employees, harmless from any and all claims or causes of action arising from a violation of any provision of Minnesota Statutes, Chapter 13.

N. **DATA COMPATIBILITY.** The LGU shall prepare and maintain all information gathered as a result of this project in a format which is compatible with the data systems employed by the principal information users of the State of Minnesota.

M. **CAPITAL EQUIPMENT.** The title for equipment purchased with the funding provided in this Agreement shall be taken in the name of the State of Minnesota. The equipment will remain the property of the State for its useful life. After the Grant Period, the equipment may remain in the custody of the LGU so long as it is used for the purposes of promoting and supporting the coordination of shoreland management activities. The State may take possession of the equipment at which time it ceases to be used for the intended purpose and at such time as it becomes necessary to use it for State purposes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

LOCAL GOVERNMENTAL UNIT

APPROVED:

Marshall County **LGU**
BY ITS LGU
BOARD OF COMMISSIONERS

By: Delray Larson

Title: Chairperson

Date: February 15, 1994

By: Roy E. Swanson

Title: LGU Auditor/Administrator

Date: February 15, 1994

STATE OF MINNESOTA

BOARD OF WATER AND SOIL RESOURCES

By: Rey Larson

Title: Section Head

Date: 2/23/94

COMMISSIONER OF ADMINISTRATION

By: [illegible]

Title: [illegible]

Date: 3/4/94

APPROVED AS TO FORM AND EXECUTION
BY THE ATTORNEY GENERAL

By: [illegible]
Assistant Attorney General

Date: 3/2/94

COMMISSIONER OF FINANCE
Encumbered Department of Finance

By: Mary J. Miller

Title: Acct. Clerk Sr.

Date: 3-7-94

Attachments:
Exhibit A: Certified copy of LGU Resolution authorizing the LGU's participation in the NRBG

Minnesota
Board of
Water & Soil
Resources

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155 S. Wabasha Street
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(612) 296-3767
Fax (612) 297-5615

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June 3, 1994

DelRay Larson, Board Chair
Marshall County
Marshall County Courthouse
208 East Colvin Avenue
Warren, MN 56762

Dear Commissioner Larson:

RE: Wetland Conservation Act (WCA) Adoption Status

The Board of Water of Soil Resources (BWSR) staff have been communicating with your County regarding the adoption of the Wetland Conservation Act rules that were, by statute, effective January 1, 1994. To date, the BWSR has not received acknowledgement that the County has adopted the rules. Therefore, at the May BWSR meeting, the Board unanimously adopted the following resolution:

1) Request, within 30 days of receipt of notification (this letter), a formal resolution from the County regarding your intent to adopt and implement the Wetland Conservation Act rules.

2) Advise the County that a moratorium on all wetland draining and filling is in effect for all wetlands under the jurisdiction of the WCA until the County adopts the WCA rules.

3) Advise the County that the failure to adopt the WCA rules has placed the County in violation of the provisions of the Natural Resources Block Grant Agreement signed and executed by the County and BWSR. The Board directed staff to review the specific terms of the grant agreement and to advise the Board of their options at the June meeting.

4) Advise the County that the BWSR expects that the minimum $5,000 of the Natural Resources Block Grant be transferred to the Soil and Water Conservation District (SWCD) for their required WCA duties.

5) Directed staff to facilitate meetings with representatives of the county commissioners, SWCD supervisors and their respective staff to provide a forum for discussing issues relating to the implementation of the WCA; to share experiences in handling problem areas; to seek out implementation flexibility from the rules and the statute; and to recommend to the Wetland Heritage Advisory Committee and the BWSR changes in rule or law that will improve the efficiency and effectiveness of the WCA.

Exhibit C

The BWSR acknowledges the concerns that some counties have with elements of the WCA. However, we believe that in many instances the issues are often perceived and can only be given substance through implementation experiences. Other counties have also struggled with portions of the rule and law; however, through implementation flexibility of the program have been able to work through many of the issues. In those instances where implementation experiences prove that there need to be changes in the law and rule the BWSR pursued and achieved changes. We expect that for the next few years there will be a continuing need for refinement of the wetland law and rules. Your experiences and participation in the meetings and discussions will help determine the scope and justification for future refinements. This past year several amendments were adopted that will address issues that counties and SWCD's have experienced in the past year of implementation.

Ron Shelito, Northern Regional Supervisor, will be facilitating the WCA discussion meetings during the next months. Select BWSR members and program specialists will also be available for participation in the meetings as appropriate.

The BWSR has an obligation, under the law, to ensure that the WCA is effectively administered by local government and is reviewing various options that are available through the Board's authority. I believe that the Board has been tolerant and flexible during the past six months and its time for the program compliance. Therefore, the Board of Water and Soil Resources strongly encourages adoption of the WCA rules and pledges to work with local decision makers to address problems and issues that arise.

I will be looking forward to your timely response to the Board's resolution requests.

Yours truly,

D. James Nielsen
Chair

DJN/RDH:mja
cc: BWSR Members
Dave Weirens, Association of Minnesota Counties
Frank Sawinski, President, Association of Minnesota Counties
Matt Seltzer, Assistant Attorney General
Ron Shelito
Marshall County Auditor
Marshall SWCD

Minnesota Board of Water & Soil Resources

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July 18, 1994

DelRay Larson, Board Chair
Marshall County
Marshall County Courthouse
208 East Colvin Avenue
Warren, MN 56762

Dear Commissioner Larson:

WETLAND CONSERVATION ACT (WCA) BLOCK GRANT RETURN

Since the Board of Water and Soil Resources (BWSR) has not received any indication of Marshall County's adoption of the WCA (as requested in the letter to you dated June 3, 1994) the BWSR hereby notifies you that:

1. The moratorium on all wetland draining and filling continues in effect for all wetlands under the jurisdiction of the WCA until the County adopts the WCA Rules.

2. The county is in breach of the Natural Resources Block Grant (NRBG) Agreement and ordered to return the WCA portion of the NRBG. The terms of the NRBG Agreement (attached) contract require that the county adopt and implement the WCA pursuant to MN Rules Chapter 8420. Marshall County adopted a resolution stating that they would adopt and implement the WCA (attached). Marshall County is in violation of the contract which awarded $19,200 to the county and is hereby ordered to return this amount less the $5,000 passed on to the Soil and Water Conservation District (SWCD) and any funds previously delegated to cities in Marshall County administering the WCA. The BWSR has determined, based on the NRBG application and resolution that $14,200 is the amount to be returned. Please provide documentation of all grant money distributed to other local governments.

As mentioned before, the BWSR is willing to listen to the concerns your county and others have with the WCA. There may be opportunity for refinement through future law and rule changes. However, the BWSR is also required to ensure that the WCA is properly administered by local government and will pursue appropriate legal options toward this end.

Exhibit D

Minnesota
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Water & Soil
Resources

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If your county has adopted the WCA, please remit the supporting documentation immediately. If you have questions please direct them to Ron Shelito, Regional Supervisor, at (218) 828-2604.

Yours Truly,

D. James Nielsen
Chair

DJN/jj

c: BWSR Members
Dave Weirens, AMC
Frank Sawinski, President, AMC
Matt Seltzer, Assistant Attorney General
Ron Shelito
Brian Dwight
Jerry Engelbrecht, DNR Enforcement Supervisor
Marshall County Auditor
Marshall SWCD
Marshall-Beltrami SWCD

s:$back.wca

October 5, 1994

PROGRAM ASSESSMENT:
Wetland Conservation Act

INTRODUCTION

This assessment will address the Wetland Conservation Act. Because this program is well known and has been a focus of agency activities for three years, less information on program description and history will be provided in this assessment.

PROGRAM DESCRIPTION

The purpose of the Wetland Conservation Act (WCA) is to achieve the no-net loss protection of wetlands. With few exceptions, all unavoidable wetland impacts must be replaced with wetlands of equal public value. The WCA is implemented by local units of government with program oversight provided by the BWSR. Enforcement of violations is provided by the Department of Natural Resources, Division of Enforcement.

PROGRAM HISTORY

The WCA was passed in 1991 as Chapter 354 after several years of debate. Revisions were passed in 1993 and 1994 as Chapters 175 and 627, respectively. Administrative rules, Chapter 8420, were promulgated in May of 1993 culminating a one year process. With the exception of five counties in northern Minnesota where a moratorium exists, the program is being implemented by local units of government throughout the remainder of Minnesota.

PROGRAM SIGNIFICANCE

Staffing. The WCA provided the BWSR with its largest ever staff increase. The BWSR staff complement was increased by 12 positions. Nine of those positions were assigned to the field and three to the central office. Many of the current board conservationists and regional secretaries are a consequence of WCA administrative funding. Of the three central office positions, one is the wetland specialist, another is a (computer) systems analyst and the other is the administrator of the water and land management section. The administrator vacated a similar position to assume his current duties. That position has not been filled. The administrator spends 80 percent of his time on WCA activities. Seventy of this 80 percent is spent on wetland related training and technical issues. Although the training has contributed to the increased capability of local government staff, there have been negative consequences which are manifested in the lack of oversight available to other land and water section activities. Also, because all aspects of a wetland regulatory program require significant coordination with other state and federal agencies, staff spend considerable time on coordination efforts (e.g., simplification, education, grant administration and policy development).

Mandated program. Like metropolitan surface water planning, the WCA is a mandated program. Consequently, BWSR and its implementing local government clientele cannot unilaterally decide to not implement the Wetland Conservation Act.

PROGRAM STRENGTHS

- The program helped the BWSR gain greater influence and credibility among its peers.
- Local units of government (especially SWCDs) have enhanced their credibility in natural resources protection with federal and state agencies. The WCA created an opportunity for many SWCDs to become reacquainted with technical programs.

- More wetland losses have been prevented and mitigated than would have occurred with existing federal and state wetland protection laws. This suggests that the WCA is a deterrent to wetland draining and filling and is achieving the no-net-loss objective.

- Significant state funding was provided to local government; that funding has contributed to the increased environmental awareness and technical competency of local government staff.

- The technical evaluation panel has improved cooperation and communication between affected parties and brings considerable expertise to bear on wetland technical issues.

- The enforcement process, with its initial non criminal phase, is proving to be an effective means of resolving complaints.

- Solely as a consequence of the WCA, significant federal funds were granted by the EPA to Minnesota. These funds have enabled the BWSR to conduct many training sessions and refine geographic information systems.

- Inter-agency regulatory simplification measures such as combined project notification and the wetlands memorandum of understanding have been developed with more actions such as programmatic general permits in process.

- Administrative appeals (in conjunction with the technical evaluation panels) afford applicants an opportunity -- in lieu of court -- to resolve disputes.

- Board conservationists have enhanced their technical skills and experience. This is borne out by the quality technical assistance that they have provided to local government staff through technical evaluation panels and training.

- Training opportunities for state and local government staff has been enhanced.

- A wetland banking system is available for mitigating wetland impacts.

PROGRAM WEAKNESSES

- By its requirement to focus on a single issue and because of its regulatory nature, the WCA is incompatible with the manner by which BWSR has historically delivered its "package" of programs.

- Program demands have resulted in a much higher workload in the Twin City metro and northern regions than in the southern region. As a consequence, other BWSR programs such as water planning receive much less attention in the north and the metro region.

- The significant workload has contributed to diminished quality of work products. This factor is a "stressor" for many BWSR staff.

- Parts of the WCA are inherently biased against those counties with the majority of their presettlement wetlands remaining.

- The WCA, and the workload of the central office staff, has contributed mightily to the decline in central office support and communication with field staff.

- The inherent and ever-changing complexity of wetland regulation requires more attention to legal details and processes; consequently, the future prospects of a diminished WCA workload are not promising.

- Due to the time spent on technical evaluation panels and administrative questions, board conservationists have too little time available for reviewing mitigation plans and doing program oversight.

- The appeals process -- which must be handled by BWSR in a high priority and precise manner -- has the potential for an overwhelming workload for both staff and dispute resolution committee members.

- New issues such as court room training for staff of local government continue to emerge.

- Given the workload, data on program accomplishments and shortcomings has been difficult to collect.

PROGRAM ALTERNATIVES

- Maintain the status quo where the WCA will continue to dominate the time of board conservationists and other staff whose primary duties are not directed at wetland regulation.

- Transfer WCA to the Department of Natural Resources.

- Make the program voluntary.

- Reallocate BWSR non-WCA staff to WCA efforts.

- Transfer wetland training to another agency or institution.

- Restrict availability of BWSR staff for participation on technical evaluation panels.

- Amend WCA and rules.

- Contract with MASWCD or another private entity to maintain and distribute the WCA administrative manual.

- Increase the number of BWSR staff.

- Establish an independent appellate body to handle WCA and other BWSR responsible appeals.

- Redefine the roles of board conservationists so that both generalists (as now exist) and specialists (which are lacking) are available.

PROGRAM RECOMMENDATIONS

- Keep the program mandatory. To do otherwise would eliminate the considerable gains made in wetland protection and regulatory simplification.

- The BWSR should seek statutory changes in cooperation with the Wetland Heritage Advisory Committee that would refocus the WCA on wetland protection and education rather than administrative tedium. Although directed at local government, these changes would also have a concomitant benefit to BWSR staff of allowing more time for program oversight.

- Change all WCA appeals to petition initiated. Under current procedure, appeals of replacement plans --whether or not trivial in nature -- must be heard by the BWSR. This recommendation would provide discretion for the BWSR to decide whether or not to hear an appeal.

- Hire 6 additional staff. One data management specialist and one clerical staff in the central office would enable the wetland bank and other WCA data bases to be implemented in a more timely and efficient manner. Four wetland technical specialists such as soil scientists and plant ecologists located in the field would greatly aid board conservationists and central office WCA staff in training and on-site investigations. This would enable current staff to administer other programs, devote more attention to details and increase communication with field staff.

RELATIONSHIP TO THE STRATEGIC PLAN

The intent of the WCA to protect wetlands by the actions of local units of government is consistent with the strategic plan. However, as discussed, the workload created by the WCA has had detrimental effects on other BWSR programs. Taken in this context, the WCA is not likely a program that the framers of the strategic plan would have set forth as a model program. To this end, either the strategic plan or WCA must be revisited.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

County Commissioners	SWCD Supervisors	Watershed Representative	Citizens	Agencies
Barbara Uppgaard	Tim Hvidsten	Barbara A. Cobb	**D. James Nielsen, Chair**	Department of Natural Resources
Warren Rodning	Dwain Otte	Marvell Tripp	Glen Annexstad	Pollution Control Agency
Jim Rossman	Ted Lovdahl, Jr	Howard L.Peterson	Kathleen Rohr	Department of Agriculture
				University of Minnesota
				Department of Health

EXECUTIVE DIRECTOR — *Ron Harnack*

EXECUTIVE ASSISTANT — *Mary Jo Anderson*

ASSISTANT DIRECTOR — *Jim Birkholz*

ENGINEERING & TECHNICAL SERVICES SECTION

CHIEF ENGINEER — *Al Kean*

- **ENGINEERING**
- **AREA II ENGINEER** — *Darrell Apelgrain (Marshall)*
- **LAKESHORE ENGINEER** — *Gene Clark (Duluth)*
- **DESIGN ENGINEER** — *Tom Wenzel*
- **WETLAND RESTORATION TECH.** — *Jeff Hedtke (New Ulm)*
- **FEEDLOT SPECIALIST** — *Brad Matlack (Duluth)*
- **REALESTATE MANAGEMENT**
- **EASEMENT COORDINATOR** — *Marybeth Block*
- **REAL ESTATE SENIOR SPECIALIST** - *Steve Miller*
- **SPECIALIST** - *Scott Giese*

WATER & LAND MANAGEMENT SECTION

SECTION HEAD — *Greg Larson*

- **GRANTS COORDINATOR** — *Wayne Zellmer*
- **WETLANDS SPECIALIST** — *John Jaschke*
- **WATER PLANNING COORDINATOR** — *Doug Thomas*
- **PROGRAMS AND POLICY ANALYST** — *Dave Behm*
- **HYDROGEOLOGIST** — *Eric Mohring*
- **DATA MANAGEMENT SPECIALIST** — *Bryan Alpaugh*

FIELD OPERATIONS

NORTHERN REGION

BRAINERD OFFICE
- **REGIONAL SUPERVISOR** - *Ron Shelito*
- **BOARD CONSERVATIONISTS** - *Dan Steward, Keith Grow, Peter Waller*
- **SECRETARY** - *Vicky Erbele*

DULUTH OFFICE
- **BOARD CONSERVATIONIST** - *Mark Nelson*
- **FORESTER** - *Jim Lemnerman*
- **WATER RESOURCES ED. COORD.** - * *Barb Liukkonen*
- **LAKESHORE ENGINEER** - * *Gene Clark*
- **FEEDLOT SPECIALIST** - * *Brad Matlack*
- **SECRETARY** - *Gail Watczak*

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BUSINESS MANAGER — *Tom Schwanke*

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- **ACCOUNTING CLERK** — *Sherry Duclos*

* Specialists located in field offices but supervised by central office staff.

July 1994

METROPOLITAN PUBLIC DRAINAGE SYSTEM INVENTORY REPORT

DISCUSSION DRAFT

A summary report, in response to
Minnesota Laws of 1990, Chapter 601, Section 27,
prepared for the Minnesota Board of Water and Soil Resources



Prepared by
Barbara W. Ohman
Metro Board Conservationist

October 1994

PUBLIC DRAINAGE SYSTEM INVENTORY REPORT

BACKGROUND

In 1990, the Minnesota Legislature enacted a state law (L 90, C601, S 27) which charged drainage authorities in the metropolitan area with the responsibility to inventory and evaluate the **public** drainage ditches under their jurisdiction, and to submit a report to the Board of Water and Soil Resources (BWSR). The law also directed the BWSR to provide guidance and technical assistance to the drainage authorities in meeting this requirement.

In June, 1991, BWSR staff sent a mailing to all ditch authorities in the metro area, which included a recommended inventory form for use in reporting. In the cover letter, staff explained that the basic purpose of the inventory was to find out:

- how many public drainage systems exist in the metro area;
- where they are;
- what condition they are in;
- who is responsible for them;
- how they are currently being managed; and
- how they should be managed in the future.

There was no mandate in the law for the BWSR to do anything specifically with the information received. We should be confident there were no penalties for drainage authorities which did not submit a report before the July 1, 1992 deadline (62%). This report is a summary of the information received from those ditch authorities which submitted reports, and includes recommended statutory changes based on this information to allow for more efficient and effective management of public drainage systems in the urban and urbanizing areas. The work to assist with the inventory and to write the report was done within the constraints of existing BWSR staff; the legislation requiring this reporting did not address the BWSR request for additional staff to implement this and other new responsibilities contained in Chapter 601.

INVENTORY RESULTS

Based on information received and contacts made during the reporting process, there are approximately 123 public drainage systems in the metro area. The BWSR received some form of report for 112 (91%) of these ditches. Of the 13 known ditch authorities in the metro area, only Scott County did not file reports, indicating that they were not willing to commit the amount of time required to compile the information given what they felt was inadequate assistance and direction.

Attached with this report is a copy of the Public Drainage Ditch Inventory Form sent to ditch authorities in June, 1991. This copy includes a compilation summary of the responses received by BWSR. Though we received reports for 112 systems, only 91 were fully reported on the inventory form provided. Therefore, some assumptions were made for summary purposes based on the information supplied. However, since such a high

percentage of reports were received, the summary percentages should reflect a fairly accurate assessment of the metro area ditch systems.

Highlights:

- 91% of the public ditches were constructed prior to 1920, and only 10 public ditches were constructed in the seven county metro area from 1921 to present.

- 56% of the ditch systems are probably not providing the degree of drainage for which they were originally designed and constructed. These ditches were rated by the ditch authority to be poorly maintained (33%), very poorly maintained (15%), or functionally abandoned (8%).

- In fact, for 22% of the ditch systems, substantial areas of wetland originally totally drained by the ditch reestablished themselves due to lack of ditch maintenance (this seems to closely correspond to the combined 23% of the ditches that were rated as very poorly maintained or functionally abandoned).

- At least 4 systems (4%) were reported to be functioning primarily as storm sewers. Many ditch systems likely have elements that function as storm sewer conduits, but the reporting authority may not have considered including this as an appropriate response, based on the wording of the inventory form provided.

- 40% of the systems were rated as well-maintained or fairly well-maintained.

- 385,697 acres were reported to be contributing water to the 112 systems. Of this area, only 17% (64,507 acres) were reported as originally benefitted, and 36% (138,648 acres) are in urban or urbanizing areas.

- 41% of all the ditches reported have at least 25% of the drainage area in urbanization.

- While a high percentage (92%) of the ditches were reported to serve a "useful purpose" to at least one property, the poorly, or worse, maintained status of many of the ditches indicates that many may be serving only one or a very few properties, which is not the original intent of draining agricultural land for which the ditch was constructed. This issue is discussed later in this report.

- 68% of the surveys indicated that the ditch was inspected only when a problem arose or a complaint was registered.

- For 97% of the ditches there has been no right-of-way acquired for a 1-rod permanent grassed strip, as required by M.S. 103E.021.

Table 1. Summary of Metro Ditch Systems Draining Urban Acreage

Ditch Authority	Total # Systems	Avg. % Urbanized
Anoka County	27	10%
Coon Creek WD	11	43%
Chisago/Washington County	1	40%
Dakota County	2	0%
Hennepin County	17	40%
Minnehaha Creek WD	8	41%
Rice Creek WD	22	51%
Ramsey County	3	100%
Vadnais Lake Area WMO	2	90%
Carver County	14	<10%
Scott County	~10	No Report Submitted <10%
Riley-Purgatory-Bluff Creek WD	5	100%
Nine Mile Creek WD	3	100%

COMMENTS AND RECOMMENDATIONS RECEIVED

The ditch authorities were also asked to make comments and recommendations for statutory changes in order to make future management of the ditch systems more efficient and economical. Additional discussion has also taken place since the inventory regarding funding of maintenance on ditch systems in the urban areas. This is a summary of the suggestions made.

Hennepin County recommended:

1. establishing an abandonment procedure through a County Board resolution.

Anoka County and the Rice Creek Watershed District recommended:

2. establishing an administrative process to most economically finance maintenance in the urban areas. Special property assessment is generally considered not to be a cost-effective method of financing in the urban and urbanizing areas.

Coon Creek Watershed District made the following specific recommendations:

3. Amend M.S. 103E.315, Subd. 5 and 103E.728, Subd. 2 to allow for the measuring of benefits based on the amount of runoff contributed; (Editor's note: Provide language which allows for a method of cost allocation based on the runoff contributed by each parcel of land to the drainage area, which would attribute the costs in proportion to the burden that each land parcel places on the drainage system, i.e. a user fee.)

4. Change the appeal process under M.S. 103D.535, Subd. 1 and 103E.091 to a process similar to that found under M.S. 429. (Editor's note: Unlike the processes under 103D and 103E, M.S. 429 provides for allowing a project to continue when an appeal is based on the amount to be paid. The drainage authority can revisit the assessment collection after the project is complete.)

5. Address situations where private ditches serve storm water purposes. There is a need to clarify and/or obtain maintenance rights. (Editor's note: During the subdivision process, easements should be established to provide access for on-going maintenance.)

STAFF ASSESSMENT AND GENERAL DISCUSSION

For the purposes of this report and recommendations, it is important to remember that watershed management organizations established under 103B, and watershed districts in the metro area, have the same authority for ditch management. "WMO" will be used in the discussion throughout and will refer to both types of boards, unless otherwise noted.

Based upon the information received and recent discussion with various ditch authorities, it is clear that the main problem with management of drainage ditches in the metro area is financing of maintenance and repairs. Costs involved with establishing a special assessment are inordinate when the drainage area is split between the varied land uses of residential, industrial and agricultural purposes. For example, one study documented that the cost to collect an assessment in the urban area was more than the assessment gained (i.e. it cost $10 to collect $6).

Furthermore, most ditches in the urban and urbanizing area are no longer providing the original function of draining agricultural property. Continuing to maintain ditches under a drainage law that was set up to provide for adequate drainage of agricultural property may not be in the best interest of the citizens of the urbanizing areas, because of the inequity which occurs between benefits received and assessments paid. However, while the ditches may no longer be providing the original function of draining land to put land into production, they often continue to serve important storm water functions for the urban and urbanizing areas. This "new use", for flood protection or water quality management, can be maintained under a different financing mechanism through comprehensive watershed planning, authorized under M.S. 103B.201 to 103B.255. With the drainage system fully under the management of a WMO, covered under the comprehensive WMO plan, all funding mechanisms available to the WMO, including ad valorem funding on a subwatershed basis, could be used to effectively and economically manage and maintain the system.

In 1990, the legislature attempted to address this issue by stating the following in M.S. 103D.621, Subdivision 1:

> "The legislature finds that because of urban growth and development in the metropolitan area problems arise for the improvement and repair of drainage systems which were originally established for the benefit of land used for agriculture. **The procedure for improvement and repair of drainage systems now in the metropolitan area should be simplified to more adequately and economically improve and repair drainage systems.**" (emphasis added)

This is legislative intent. However, no **clear** direction was given in the law to allow for a more cost-effective method of financing these improvements and repairs.

M.S. 103D.621, Subd. 3 requires the WMO to conform with sections 429.031; 429.041, subds. 1 and 2; 429.051; 429.061; and 429.071. Section 429.051, Apportionment of Cost, states that a governmental unit "**may** pay such portion of the cost of the improvement as the council may determine from general ad valorem tax levies" and that the governmental unit "**may** subsequently reimburse itself for all or any portion of the cost of a water, storm sewer, or sanitary sewer improvement so paid by levying additional assessments upon any properties abutting...". Emphasis is placed on the "may" in these statements, because it is BWSR's interpretation that the WMO has the authority to pay for ditch maintenance through an ad valorem levy, and does not need to collect an assessment to pay for this work. However, some WMOs and their legal counsels are reluctant to move on BWSR's interpretation without further legislative clarification. This position is directly opposed to the legislative intent discussed above.

GENERAL RECOMMENDATIONS

1) While WMOs have the authority to pay for routine ditch maintenance and repair through an ad valorem levy, **it is not appropriate in all cases to assess that levy on a district-wide basis.** Especially in the urban fringe areas, it is not fair and equitable to assess, for example, a city-dweller for the repairs on a ditch in the agricultural area or a Ramsey County resident for work on an Anoka County ditch, since neither assessed property may even contribute water to the ditch being repaired. Therefore, BWSR staff recommends that WMOs establish subwatersheds for the ditches, in which use of this levy could be made. To accomplish this, the intent of M.S. 103B.245, Subdivision 1 is to allow WMOs to establish watershed management tax districts. However, experience since the law passed in 1989 is that the attorneys for WMOs do not feel that this section applies to their boards. This law needs to be clarified on behalf of WMOs to **clearly** allow the establishment of subwatersheds in which payment of plan implementation costs may be made on an ad valorem basis. Portions of 103D and 103E should also be clarified to differentiate between "normal and routine maintenance" and "repair" of ditches. It may also be advisable to place limits on how much can be spent on normal and routine maintenance.

2) Management of the ditch systems in the metro area further needs to be streamlined by placing the responsibility under one type of authority. The discussion thus far has focused on the laws available to WMOs for management of the systems. However, the laws do not automatically give authority to the WMOs when appropriate. This is where the most significant law change is recommended. In the urban and urbanizing areas, the ditches, whether legally or functionally abandoned, are mainly being used as storm sewer conduits. Since WMOs are responsible for management of surface water in their watersheds, these systems should be managed under the adopted WMO plan consistent with sections 103B.205 to 103B.255.

3) In order for management of the drainage systems in the urban areas to be handled under a 103B plan, under existing law, they must first be legally abandoned to take them out of the purview of 103E. Additional language under 103E.811, (Abandonment of drainage system), is recommended to accomplish this end. The additional language recommended for this purpose is in the form of enabling legislation to set up a process to abandon a ditch upon development of 25% of the drainage area. Another method suggested is a legislative mandate abandoning a list of specific ditches and placing them under management by a WMO.

4) One additional problem area which should be examined is the burden of tax-exempt land uses within a watershed or subwatershed. Land uses which contribute a significant amount of runoff, but do not pay taxes, include churches, schools, highways, and wildlife management areas (like Carlos Avery in Anoka County), to name a few. Even if an acceptable financing formula is established, there is no way to collect a

contribution from these land uses except for an assessment. Counties utilizing Geographic Information Systems (GIS) could very easily set up an assessment procedure for WMO financing. This would essentially combine the administrative efficiency of collecting an ad valorem tax with the equity that would be provided by an assessment based on amount of runoff contributed by tax parcels.

Many cities currently finance their surface water management through a storm water utility authorized under Section 444, collected as a line item on their sewer or water bills. This allows collection of funds based on contributing runoff from some tax exempt parcels (i.e. churches), but not from tax exempt parcels such as county and state highways. If assessments were allowed based on this "contributing waters" concept instead of purely a "benefitted property" approach, a more equitable means of financing would be available to WMOs.

SUGGESTED LEGISLATIVE CHANGES - FOR DISCUSSION PURPOSES ONLY

Suggested new language to be added to 103E.811:

103E.811. Abandonment of drainage system

Subd. 2. Petitioners. (a) A petition must be signed by at least 51 percent of the property owners assessed for the construction of the drainage system or by the owners of not less than 51 percent of the area of the property assessed for the drainage system. For the purpose of the petition, the county is the resident owner of all tax-forfeited property held by the state and assessed benefits for the drainage system, and the board may execute the petition for the county as an owner.

(b) For drainage systems located within the seven county metropolitan area, once 25 percent of the drainage area of the affected system is subdivided for residential and/or other urban land use, a petition for abandonment of all or part of that drainage system may also be initiated by a petition signed by the majority of the governing bodies of the local governmental units affected by the entire drainage system.

(c) The following drainage systems are hereby abandoned as public drainage systems under Chapter 103E Anoka County Ditches #..., Carver County Ditches #..., Dakota County Ditches #..., Hennepin County Ditches #..., Ramsey County Ditches #..., Scott County Ditches #..., and Washington County Ditches #.... These drainage systems heretofore will be managed by the watershed management organization of jurisdication according to an adopted plan consistent with sections 103B.205 to 103B.255.

Subd. 5. Abandonment hearing. (d) Notwithstanding Subd. 2 (c), in the seven county metropolitan area, no drainage system, or part thereof, can be abandoned unless the watershed management organization of jurisdiction first amends its plan pursuant to section 103B.231, provided the amended plan defines how the drainage system will be managed and maintained and how any valid drainage rights will be acquired or maintained. Prior to the adoption of the plan amendment, the governing body of the watershed management organization shall hold a hearing on the matter and provide notice to all owners of benefitted property affected by the proposed abandonment.

Suggested new language to be added to 103D.625:

103D.625. Drainage systems within watershed district

Subd. 3. Procedure for repair or improvement. After the transfer is ordered, all proceedings for repair and maintenance must conform to chapter 103E, except that in the seven county metropolitan area watershed management organizations may finance ditch repair or maintenance under section 103B.245.

Suggested amended language under 103B.245, necessary to clarify ad valorem levy authority on a subwatershed basis:

103B.245. Special tax district

Subdivision 1. Watershed management tax district. (a) Any local government unit or watershed management organization planning for water management under or implementing components of a plan pursuant to sections 103B.231 and 103B.235 may establish a watershed management tax district or districts in the territory within the watershed, for the purpose of paying the costs of the planning or implementation required under sections 103B.231 and 103B.235, and may apportion these costs to the properties within the watershed as special assessments proportionate to the benefit received or amount of water contributed, and/or as taxes based on either the amount of water contributed, or the values of the property affected.

(b) Any local government unit which has part of its territory within a watershed for which a plan has been adopted in accordance with section 103B.231 and which has a local water management plan adopted in accordance with section 103B.235 may establish a ~~watershed management~~ tax district or districts in the territory within the watershed and/or a subwatershed unit in the watershed, for the purpose of paying capital costs of the water management facilities described in the capital improvement program of the plans and for the purpose of paying for normal and routine maintenance of the facilities, and shall apportion these costs as special assessments proportionate to the benefit received or the amount of water contributed, and/or as taxes based on either the amount of water contributed, or values of property affected.

(c) A county or counties required by section 103B.231, subdivision 3, to prepare, adopt, and implement a watershed plan shall apportion the costs of planning, capital improvements, and maintenance proportionate to benefits received, and/or amount of water contributed, and/or values of property affected. The county may apportion the costs among the subwatershed units in the watershed, or among the statutory and home rule charter cities and towns having territory in the watershed, and for this purpose may establish more than one watershed management tax district in the watershed.

Subdivision 2. Procedure. (a) A county or local government unit may establish watershed management tax districts only ~~The district shall be established~~ by ordinance adopted after a public hearing, or by ordinance established under a joint powers agreement after a public hearing. Notice of the time, place, and purpose of the hearing shall be published for two successive weeks in the official newspaper of the local government unit, ending at least seven days before the day of the hearing. The ordinance shall describe with particularity the territory or area to be included in the district. After adoption, the ordinance shall be filed with the county auditor and county recorder. The district may be dissolved by following the procedures prescribed for the establishment of the district.

(b) A watershed management organization may establish watershed management tax districts only by amendment to its plan in accordance with section 103B.231, subdivision 11. The amendment shall describe with particularity the territory or area to be included in the tax district, the amount of the necessary levy and the length of time the district will remain in force. After adoption, the amendment shall be filed with the county auditor and county recorder of each county affected by the tax district. The tax district may be dissolved by the procedures prescribed for the establishment of the tax district.

ATTACHMENT A
BWSR REPORT - JULY, 1994

PUBLIC DRAINAGE DITCH INVENTORY FORM

(Laws of 1990, Chapter 601, Section 27)

1. Drainage authority name: _____

2. Drainage ditch name and number: _____

3. Ditch location and drainage area boundary: (shown on attached quadrangle map)

4. Drainage area in acres: 385,697 ; Benefitted area in acres: 64,507

5. Approximate length in miles: Open Ditch 455 Buried Tile 43

6. Year constructed: 1889-1981; Original cost: $_____

7. Are original plans on file? Yes 76% No 24%; Location: _____

8. Date of original plans: 1889 - 1981

9. Are "as built" plans on file? Yes 23% No 77%; Location: _____

10. Year(s) improved: 1902 EARLIEST DATE; 1991 MOST RECENT

11. Are improvement plans on file? Yes 22% No 78%; Location: _____

12. Year(s) repaired: 1899 EARLIEST DATE ; 1993-4 MOST RECENT

13. Are repair plans on file? Yes 17% No 83%; Location: _____

14. If the ditch was transferred from a county or joint county ditch authority to a watershed district or WMO, is the transfer order on file? Yes 44% No 33% NA 23%

15. Is the list of lands benefitted and damaged on file? Yes 80% No 20%

16. Have the benefits and damages been redetermined? Yes 21% No 79%; If yes, year(s) of redetermination: VARIED

17. Has right-of-way been acquired for a 1-rod permanent grassed strip? Yes 3% No 97%; If yes, has it been maintained? Yes ____ No ____

18. Is there a maintenance fund for the ditch? Yes 34% No 66%; If yes, current balance in maintenance fund: $ VARIES : RANGE FROM $50.00 TO $30,000.00

19. What was the last year maintenance work was performed by drainage authority: NEVER TO A RANGE FROM 1904 - 1993

20. Have other local units or private parties performed maintenance work on the ditch?
Yes 55% No 20% ; List parties: VARIES: LOCAL LANDOWNERS, DNR, MNDOT, CITY/CO. PUBLIC WORKS
UNKNOWN 23%

21. Have the alignment, grade, bottom width, or bridge or culvert crossings been materially changed from the original or improved construction, without going through formal ditch proceedings? Yes 26% No 63% UNKNOWN 11%

22. Is the ditch inspected annually 2% ; every 2-5 years 27%; every 5-10 years; only when a problem arises 68%; or never 2%? Year of last inspection: _____

23. Approximate percentage of the ditch's contributing drainage area that is currently urbanized: 36 % ; rural: 64 %

24. Have any substantial areas of wetlands originally totally drained by the ditch reestablished themselves due to lack of ditch maintenance? Yes 22% No 76%

25. What is the general condition of the ditch?
a. well-maintained 9%
b. fairly well-maintained 31%
c. poorly maintained 33%
d. very poorly maintained 15%
e. functionally abandoned 8%
funtioning as storm sewers 4%

26. Describe the existing condition of the ditch, including erosion/sedimentation problems:

_____
_____
_____
_____
_____
_____

27. Does the ditch continue to serve a useful purpose to one or more properties? Yes 92%
No 8% ; Estimated acres of agricultural land currently benefitting: _____

28. What plans are there for future management of the ditch?

_____
_____
_____

29. Additional comments or recommendations for statutory changes: _____

_____
_____
_____
_____
_____
_____

STATE OF MINNESOTA

Office of the Attorney General

TO : DOUG THOMAS
BWSR

DATE : October 12, 1994

FROM : MATTHEW B. SELTZER
Assistant Attorney General

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

SUBJECT: **WATERSHED DISTRICT APPEALS**

Attached is a revised draft of the proposed rules for watershed district appeals. These rules have been prepared on the basis of the directions I received from the working group. These rules provide a basis for discussion, but there is plenty of room for change depending upon the direction determined by the BWSR Board. Also, it would be my hope that the final rules could be simplified and condensed to the extent appropriate.

Please note that the attached draft has not yet received final legal review by myself or other members of the Attorney General's Office to confirm that all of the provisions are within the scope of the applicable rulemaking authority. At an appropriate point when the basic thrust of the desired rules has been determined, the legal review will be completed.

I understand that you will be distributing this memo and the attached draft to the BWSR Board for comment. I look forward to receiving your comments and the comments of the BWSR Board.

Attachment

cc: Kathleen Roer w/encl.

selt.AH1

DRAFT FOR DISCUSSION

October 12, 1994

MINNESOTA RULES

CHAPTER 8415

BOARD OF WATER AND SOIL RESOURCES

RULES FOR APPEALS OF WATERSHED DISTRICT RULES, PERMIT DECISIONS, AND ORDERS NOT INVOLVING PROJECTS

INTRODUCTION

8415.0100 SCOPE.

The rules of procedure in parts 8415.0100 to 8415.0220 govern appeals to the board pursuant to Minnesota Statutes, section 103D.537. The matters appealable to the board pursuant to Minnesota statutes, sections 103D.535 are watershed district rules, watershed district permit decisions, and watershed district orders not involving projects. Review of watershed district decisions is conducted on the basis of the record of proceedings before the watershed district. A watershed district decision will be affirmed by the board unless it is unsupported by the record or in violation of law under the standard of review stated in part 8415.0110.

These rules in parts 8415.0100 to 8415.0220 provide, among other things, for: initiation of an appeal by the filing of a notice of appeal with the board; the potential for a watershed district to withdraw a decision for reconsideration; intervention by interested parties; amicus briefs; alternative dispute resolution; transmittal of the record on which the watershed district based its decision to the board; review of the watershed district decision on the watershed district record; procedures for the submission of briefs and oral

arguments by the parties; and, the delegation of certain responsibilities to the executive director; the dispute resolution committee; and the chair of the board.

These rules in parts 8415.0100 to 8415.0220 shall apply to appeals initiated by the filing a notice of appeal after __, 19___.

8415.0105 PURPOSE; APPEALS OF WATERSHED DISTRICT RULES.

Subpart 1. **Purpose.** These rules in parts 8415.0100 to 8415.0220 are intended to promote the speediest practicable review of watershed district rules, permit decisions, and orders not involving projects while affording notice and opportunity to intervene, time to prepare and submit cases, and a full and fair hearing. These rules shall be interpreted to carry out these objectives and to promote justice. Technical violations not affecting the substantial rights of parties shall not interfere with the review of a watershed district decision. Failure to comply with the time limit for filing a notice of appeal is not a technical violation.

Subp. 2. **Appeals of watershed district rules.** In order to prevent unnecessary and premature appeals of watershed district rules, any appeal of a watershed district rule must be made in the context of the appeal of a specific application of the watershed district rule in a permit decision or order not involving project.

8415.0110 SCOPE OF REVIEW.

Subpart 1. **Standard of review.** The board may affirm the watershed district decision or remand the case for further proceedings; or the board may reverse or modify the watershed district decision if the substantial rights of a party may have been prejudiced because the watershed district's findings, inferences, conclusions, or decisions are:

A. in excess of the statutory authority or jurisdiction of the watershed district;

B. in violation of a watershed district rule;

C. made upon unlawful procedures;

D. affected by other error of law;

E. unsupported by substantial evidence in view of the entire record as submitted; or

F. arbitrary or capricious.

Subpart 2. **Constitutional issues.** The board shall not rule on constitutional issues. The board may not reverse, modify or remand a watershed district decision on grounds that it is unconstitutional.

8415.0115 DEFINITIONS.

In parts 8415.0100 to 8415.0220, unless the context or subject matter requires otherwise:

A. "appellant" means the party filing a notice of appeal;

B. "applicant" means the applicant for a permit under Minnesota Statutes, section 103D.345;

C. "assistant director" means the assistant director of the board;

D. "board" means the board of water and soil resources established pursuant to Minnesota Statutes, section 103B.101;

E. "dispute resolution committee" means the committee of the board for dispute resolution established pursuant to Minnesota statutes, section 103B.101, subdivision 10;

F. "executive director" means the executive director of the board;

G. "ex parte communication" has the meaning in part 8415.0210, subpart 1;

H. "interested person" means any person with an interest in the pending subject matter. Interested person includes, without limitation, the applicant, the recipient, the landowner, the director of the division of waters of the department of natural resources, and the director of any other agency of government;

I. "landowner" means the fee owner or owners of the real property which is affected by the permit decision or order not involving project;

J. "notice of appeal" means the document which must be filed with the board in order to begin a review proceeding;

K. "occupant" means the person or persons who or which are occupying or are in possession of the real property which is affected by the permit decision or order not involving project. Occupant includes, without limitation, a tenant or contract for deed vendee;

L. "order not involving project" means an order of the watershed district other than an order which is appealable under Minnesota Statutes, section 103D.535;

M. "party" means the appellant, the respondent, and any intervenor as provided in part 8415.0125;

N. "permit decision" means an action of a watershed district on an application for a permit which is made pursuant to Minnesota Statutes, section 103D.345;

O. "person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit, or agency other than a court of law;

P. "recipient" means a person who is ordered under an order not involving project to take some action or desist from taking some action;

Q. "respondent" means the watershed district that is named in a notice of appeal;

R. "watershed district" meaning a watershed district established under Minnesota Statutes, section 103D.201; and

S. "watershed district decision" means a permit decision or order not involving project;

T. "watershed district rule" means a rule of a watershed district adopted pursuant to Minnesota Statutes, section 103D.341.

BASIC APPEAL PROCEDURES

8415.0120 NOTICE OF APPEAL.

Subpart 1. **Filing of notice of appeal.** The notice of appeal shall be filed with the board as provided in part 8415.0200, subpart 2 on or before the 30 days after the date the decision sought to be reviewed becomes final. A notice of appeal filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

Subp. 2. **Service of notice of appeal.** The notice of appeal shall be served on the watershed district, the applicant or recipient (if other than the appellant), the landowner (if other than the appellant), the occupant (if other than the appellant and the landowner), and the director of the division of waters of the department of natural resources on or before the date the notice of appeal is required to be filed.

Subp. 3. **Contents of notice of appeal.** The notice of appeal shall be substantially in the form of the model promulgated from time to time by the executive director and shall contain:

A. the name(s) of the person(s) filing the notice of appeal, identifying the person(s) as appellant(s) and the name of the watershed district, identifying the watershed district as the respondent;

B. the date the watershed district decision to be reviewed became final;

C. a concise description of the watershed district decision to be reviewed; and

D. the name, address and telephone number of each of the following:

(1) the appellant. If the appellant is not represented by an attorney, the appellant's name, address and telephone number shall be included. If an attorney represents the appellant, the attorney's name, address and telephone number shall be substituted for that of the appellant. If two or more appellants are unrepresented by an attorney, one appellant shall be designated as the lead appellant;

(2) the watershed district;

(3) the applicant or recipient (if other than the appellant); and

(4) the landowner (if other than the appellant).

E. a statement advising all interested persons, other than the watershed district, that in order to participate in the review proceeding, the interested person must file a motion to intervene pursuant to part 8415.0125; and

F. proof of service upon the persons listed in subpart 2. Such proof of service shall be substantially in the form of the model promulgated from time to time by the executive director.

Subp. 4. **Appeal bond.** The notice of appeal shall be accompanied by an appeal bond of at least $250 to the respondent. The bond must be approved by the executive director. The bond must be conditioned that the appellant will:

A. make the appeal;

B. pay all costs that may be awarded to the respondent; and

C. comply with the order of the board.

Subp. 5. **Persons eligible to file notice of appeal.** Any interested person may file a notice of appeal.

8415.0125 INTERVENTION.

Subpart 1. **Standing to intervene.** Any interested person may intervene in and appeal before the board. Status as an intervenor is recognized when a motion to intervene is filed, but the board may deny that status at any time prior to the board's final decision on the appeal.

Subp. 2. **Motion to intervene.** In the interests of promoting timely resolution of appeals, a motion to intervene shall be filed as soon as practicable after the notice of appeal is filed pursuant to part 8415.0120. The motion to intervene shall be substantially in the form of the model promulgated from time to time by the executive director and shall:

A. state whether the person is intervening on the side of the appellant or the respondent;

B. state the facts which show the person is entitled to intervene, supporting the statement to the extent necessary with affidavits, citations to the record or other proof; and

C. be served upon all parties.

Subp. 3. **Intervenor's brief and reply brief.**

A. If intervention is sought as an appellant, the brief and any reply brief shall be filed within the time for filing the appellant's brief and reply brief and shall satisfy the requirements for the appellant's brief and reply brief in parts 8415.0160 and 8415.0170.

B. If intervention is sought as a respondent, the brief shall be filed within the time for filing the respondent's brief and shall satisfy the requirements for the respondent's brief in part 8415.0165.

8415.0130 AMICUS PARTICIPATION.

Subpart 1. **Motion to appear as amicus.** A person may appear as amicus only be permission of the board on written motion. The motion shall set forth the interest of the movant and state reasons why a review of relevant issues would be significantly aided by participation of the amicus. A copy of the motion shall be served on all parties to the proceeding. Status as amicus is recognized when a motion to appear as an amicus is filed, but the board may deny that status at any time prior to the board's final decision on the appeal.

Subp. 2. **Oral argument and brief.** Appearance as amicus shall be by brief only, unless the board specifically authorizes or requests oral argument. An amicus brief shall be filed within the time required for filing respondent's brief.

8415.0135 ALTERNATIVE DISPUTE RESOLUTION.

Subpart 1. **Purpose.** It is the policy of the board to promote informal and expeditious resolution of appeals to the board.

Subp. 2. **Staff efforts to resolve appeals to the board.** Upon the filing of a notice of appeal, the staff of the board shall attempt to resolve the dispute between the parties by

informal means. If all parties consent, the staff may call a meeting of all the parties to discuss the possibility of settlement. At the request of the executive director, willing members of the board may be called upon to participate in the settlement conference and assist the staff in its efforts to promote settlement.

Subp. 3. **Other forms of alternative dispute resolution.** The board may order any other form of alternative dispute resolution which is agreed to by all of the parties and acceptable to the board. Such other forms of alternative dispute resolution include, but are not limited to, mediation with a mediator approved by all of the parties or binding arbitration before an arbitrator approved by all of the parties.

Subp. 4. **Suspension of time deadlines.** The board, on its own motion or the motion of any party, may order the suspension of time deadlines under parts 8415.0100 to 8415.0220 for a period of up to 60 days during the pendency of staff efforts to resolve the appeal or other forms of alternative dispute resolution. If, during the 60 day period, it appears that staff efforts to resolve the appeal or other forms of alternative dispute resolution will not be successful, then the board may order the immediate resumption of the proceedings in the appeal.

Subp. 5. **Discussions and communications not part of record.** Discussions and communications in staff efforts to resolve appeals and other forms of alternative dispute resolution shall not be part of the record of the appeal before the board.

8415.0140 WITHDRAWAL OF WATERSHED DISTRICT DECISION FOR RECONSIDERATION.

Subpart 1. **Notice of withdrawal.** A watershed district may withdraw a decision for reconsideration at any time prior to filing the record. If the watershed district withdraws a decision for the purposes of reconsideration, it shall file a notice of withdrawal with the board on or before the date the record is due and serve all parties with a copy of the notice of withdrawal. A decision on reconsideration shall be filed with the board within 60 days

after the filing of the notice of withdrawal or within such other time as the board may allow.

Subp. 2. **Suspension of proceedings.** The filing of a notice of withdrawal under subpart 1 shall suspend proceedings on the appeal until a decision on reconsideration is filed with the board, or the time designated therefor expires, unless otherwise ordered by the board. If no decision on reconsideration is filed within the time designated therefor, the board shall issue an order restarting the appeal.

Subp. 3. **Filing of decision on reconsideration.** A decision on reconsideration under subpart 1 shall be filed with the board within 7 days after the watershed district issues the decision on reconsideration and copies of the decision on reconsideration shall be served on all parties.

Subp. 4. **Appeal of decision on reconsideration.** Any party may seek review of the decision on reconsideration by filing a request for review of the decision on reconsideration with the board within 30 days after the decision on reconsideration is served upon the party. If no request for review of the decision on reconsideration is filed by a party within such 30 day period, the appeal will be dismissed.

8415.0145 RECORD.

Subpart 1. **Contents of record.** Unless the board otherwise orders, or the parties otherwise agree in writing, the record shall include at least the following:

A. the final watershed district decision including any findings of fact and conclusions of law;

B. all written testimony and all exhibits, maps, documents or other written materials included as part of the record during the course of the watershed district's proceeding;

C. minutes of the meetings of the watershed district at which the matter which is the subject of the appeal was discussed or considered, including but not limited to any hearings; and

D. a verbatim typewritten transcript of the meetings of the watershed district at which the matter which is the subject of the appeal was discussed or considered, including but not limited to any hearings. The transcript shall be accompanied by a certificate by the person or persons who recorded and transcribed the proceedings that the transcript is a true and accurate transcription, made to the best of the ability of such person or persons. Such certificate shall be substantially in the form of the model promulgated from time to time by the executive director. If a verbatim transcript cannot be provided and the parties are unable to stipulate to a simplified record that does not include a transcript, then the board shall remand the case to the watershed district with instructions for further proceedings.

Subp. 2. **Transmittal of record.** The watershed district shall, within 20 days after service of the notice of appeal on the watershed district, transmit to the board the original or a certified copy of the record of the proceeding under review. The watershed district may, however, retain any large maps or documents which are difficult to duplicate, until the date of oral argument. The record shall be accompanied by a certificate of the secretary of the board of managers of the watershed district that the record as transmitted to the board is a true and accurate record of the proceedings before the watershed district. Such certificate shall be substantially in the form promulgated from time to time by the executive director.

Subp. 3. **Service of record.** Contemporaneously with transmittal, the watershed district shall serve a copy of the record, exclusive of large maps and other documents which are difficult to duplicate, on the appellant. Contemporaneously with transmittal, the watershed district shall also serve a notice of transmittal of the record on all parties other than the appellant. The watershed district shall provide a copy of the record to any party other than the appellant that requests a copy provided, such party reimburses the watershed district for the reasonable costs incurred in making a copy of the record.

Subp. 4. **Simplification of record.** By stipulation of all parties, the record may be shortened. The parties are encouraged to stipulate to simplification of the record for purposes of appeal whenever reasonably possible. Such stipulation shall not preclude the board from requiring items excluded by the parties to be included in the record or remanding the appeal for further proceedings.

8415.0150 OBJECTIONS TO THE RECORD.

Subpart 1. **Informal resolution.** Before filing an objection to the record, a party shall attempt to resolve the matter with the watershed district. If the watershed district amends the record in response to an objection, the date the amendment is received by the board shall be considered the service of the record for the purpose of computing time limits as required by these rules.

Subp. 2. **Grounds for objections to record.** An objection to the record shall be filed with the board with proof of service on all parties within 15 days following service of the record or notice of transmittal of the record on the person filing the objection. Objections may be made on the following grounds:

A. the record does not include all material included as part of the record during the proceedings before the watershed district. The omitted item(s) shall be specified as well as the basis for the claim that the item(s) are part of the record;

B. the record contains material not included as part of the record during the proceedings before the watershed district. The item(s) not included as part of the record during the proceedings before the watershed district shall be specified, as well as the basis for the claim that the item(s) are not part of the record; or

C. the minutes or transcripts of meetings or hearings are incomplete or do not accurately reflect the proceeding. The defect(s) in the transcript shall be specified, as well as the basis for the claim that the transcript is defective.

Subp. 3. **Resolution of objections to the record.** All objections shall be resolved without oral testimony or argument unless otherwise directed by the board. When the

objection is resolved, the board shall issue a letter or order stating the items to be added to or omitted from the record and any other necessary corrections.

8415.0155 REMAND TO CONSIDER ADDITIONAL EVIDENCE.

Subpart 1. **Motion for remand.** The board, on its own motion or the motion of any party, may order remand of the appeal to the watershed district for further proceedings if the board finds that there is additional evidence that should be considered by the watershed district. A motion for an order remanding the appeal may be made at any time prior to the issuance of a final order by the board. The watershed district shall conduct any proceedings upon remand in accordance with the requirements specified by the board in its order for remand.

Subp. 2. **Factors to be considered by board in ruling on motion.** In determining whether the watershed district should consider additional evidence, the board may consider the following, among other relevant factors:

(1) whether the additional evidence would be material to the decision of the watershed district;

(2) whether any party would be prejudiced if the watershed district does not consider the additional evidence; and

(3) whether there were good reasons for failure to present the additional evidence at the watershed district proceedings.

Subp. 3. **Proceedings on motion.** A party's motion for an order remanding the appeal shall be in the form of a letter addressed to the board with proof of service upon all other parties. The letter shall state with particularity the grounds for remand of the decision. The letter shall be accompanied, if necessary, by sworn affidavits establishing the factual basis for the motion. The other parties may respond to the motion by filing and serving their own letters and affidavits within 10 days after the service of the movant's letter and affidavits, if any.

8415.0160. APPELLANT'S BRIEF.

Unless otherwise provided by the board, the appellant's brief shall be filed with the board within 15 days after the service of the record upon the appellant. A copy of the appellant's brief shall be served on all parties.

8415.0165. RESPONDENT'S BRIEF.

Unless otherwise provided by the board, the respondent's brief shall be filed within 15 days after the service of appellant's brief. A copy of the respondent's brief shall be served on all parties.

8415.0170 REPLY BRIEF.

Unless otherwise provided by the board, the appellant may file a reply brief within 10 days after the service of the respondent's brief. A copy of the reply brief shall be served on all parties. A reply brief shall be confined solely to new matters raised in the respondent's brief and in the briefs of any parties aligned with the respondent.

8415.0175 ORAL ARGUMENT.

Subpart 1. **Request for oral argument.** A case will be submitted to the board on briefs without oral argument unless oral argument is requested by the board or any of the parties. If the board hears oral arguments then, nonetheless, a party may waive the right to present oral argument, and the board shall consider the case based on that party's brief and the briefs and oral arguments presented by other parties.

Subp. 2. **Time allowed for oral argument.** The board shall inform the parties of the time and place of oral argument. Unless the board otherwise orders, appellant(s) shall be allowed 30 minutes for oral argument, which may be divided between the initial presentation and rebuttal. Multiple appellants shall share the 30 minutes for argument. The respondent shall be allowed 30 minutes to respond. Parties other than appellant(s) and respondent shall be allowed such time for oral argument and argue in the order determined by the board. The board shall tape record all arguments, but any party may also arrange at its own expense to record the argument in some other manner.

ADDITIONAL PROCEDURES

8415.0180 MOTIONS.

Subpart 1. **When motion is appropriate.** Unless parts 8415.0100 to 8415.0220 provide another form of application, a request for an order or relief shall be made by filing a motion in writing for such order or relief. A motion shall show proof of service on all parties.

Subp. 2. **Time of filing.** A party seeking to challenge the failure of an opposing party to comply with any of the requirements of parts 8415.0100 to 8415.0220 shall make the challenge by motion filed with the board and served on the adverse party within 10 days after the moving party obtains knowledge of such alleged failure. The opposing party may, within 10 days of the service of a motion, file an answer.

Subp. 3. **How submitted.** Parties shall submit all motions without oral argument unless otherwise directed by the board.

8415.0185 STAYS AND EXPEDITED REVIEW.

Subpart 1. **Limitation on stays pending appeal.** The board may not order the stay of a watershed district decision pending review by the board. A watershed district decision may be stayed pending review by the board by action of the watershed district.

Subp. 2. **Motion for expedited review.** Any party may move for expedited review by the board. A motion for expedited review by the board shall include:

A. a statement of facts and reasons for granting the motion for expedited review, demonstrating that the movant will be harmed if expedited review is not granted; and

B. a suggested expedited review schedule, recommending the time for transmittal of record, an expedited briefing schedule, a recommended date for oral argument, and other relevant time periods and dates.

Subp. 3. **Service of motion for expedited review.** A copy of a motion for expedited review shall be served on all parties on the same day the motion is filed with the board.

Subp. 4. **Response to motion for expedited review.** Unless otherwise ordered by the board, a response to a motion for expedited review of a decision shall be filed within 10 days after the motion is filed and shall set forth all matters in opposition to the motion.

Subp. 5. **Order for expedited review.** The board may grant or deny a motion for expedited review. If the motion is granted, the board shall issue a letter specifying the expedited review schedule. Such schedule may modify any of the time periods and deadlines that would ordinarily apply under parts 8415.0100 to 8415.0220.

8415.0190 REDUCTIONS AND EXTENSIONS OF TIME.

Subpart 1. **Notice of appeal.** In no event shall the time limit for the filing of the notice of appeal be reduced or extended.

Subp. 2. **Other time limits.** All other time limits may be reduced or extended upon written agreement of all parties with the written approval of the board, the board's motion, or the motion of a party.

8415.0195 CONSOLIDATION.

The board, at the request of any party or on its own motion, may consolidate two or more proceedings, provided the proceedings seek review of the same or closely related watershed district decision(s).

8415.0200 MISCELLANEOUS PROVISIONS.

Subpart 1. **Recovery of certain costs by the watershed district and limitation on award of attorneys fees.**

A. If the watershed district is the prevailing party, the watershed district may be awarded reasonable costs for transcribing the proceedings before the watershed district and of copying the record. Costs awarded the watershed district shall be paid from the bond required by part 8415.0210, subpart 4 and shall not exceed the amount of the bond. If a record has been filed, and appellant's brief is not filed within the time required by these rules, the appeal may be dismissed and the bond required by part 8415.0120,

subpart 4 may be awarded to the watershed district for costs of preparing of the record. Except as provided in this item, the board may not make an award of costs to any party.

B. The board may not make an award of attorneys fees to any party.

Subp. 2. **Filing.** Filing a document with the board is accomplished by:

A. delivery to the board on or before the date due; or

B. mailing on or before the date due by first class mail with the United States Postal Service.

Subp. 3. **Service.**

A. All documents filed with the board, other than the record as provided in 8415. 0145, subpart 3 must also be served on all parties contemporaneously. Service on two or more appellants unrepresented by an attorney is accomplished by serving the lead appellant designated under part 8415.0120, subpart 3, item D, subitem (1).

B. Service may be in person or by first class mail with the United States Postal Service. Service on a party represented by counsel shall be made on the attorney. Service by mail is complete on mailing; however, whenever a party is required or permitted to do an act within a prescribed period after service and the document is served by mail, 3 days may be added to the prescribed period.

C. All documents filed with the board shall contain either an acknowledgment of service by the person served or proof of service by a statement certified by the person who made service of the date of personal service or deposit in the mail, and the names and addresses of the persons served. Such acknowledgment of service or proof of service shall be substantially in the form of the model promulgated from time to time by the executive director.

Subp. 4. **Number of copies required.** Any document filed with the board except documents to be included as part of the record on review shall be filed with 5 copies.

Subp. 5. **Conferences.** On its own motion or at the request of any party, the board may conduct one or more conferences. The board shall provide reasonable notice advising all parties of the time, place, and purpose of any conference.

Subp. 6. **Appearances before the board.** An individual shall either appear on his or her own behalf or be represented by an attorney. A partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit, or agency shall be represented by an attorney.

Subp. 7. **Computation of time.** Time deadlines in these rules shall be computed by excluding the first day and including the last date. If the last day is a Saturday, Sunday or other legal holiday, the act must be performed on the next working day.

INTERNAL AND EXTERNAL RELATIONS

8415.0205 ROLES OF EXECUTIVE DIRECTOR, DISPUTE RESOLUTION COMMITTEE, AND CHAIR OF BOARD.

Subpart 1. **Purpose.** In order to promote the speediest and most efficient handling of appeals pursuant to parts 8415.0100 to 8415.0220, it is necessary and desirable for the board to authorize the executive director, the dispute resolution committee, and the chair of the board to act on behalf of the board in the manner set forth in this part.

Subp. 2. **Executive director.**

A. Unless determined by the board, the executive director may determine all nondispositive procedural matters for purposes of appeals pursuant to parts 8415.0100 to 8415.0220. The matters that may be determined by the executive director include, but are not limited to, the following:

(1) the adequacy of a notice of appeal pursuant to part 8415.0120;

(2) whether a person should be allowed to intervene pursuant to part 8415.0125;

(3) whether a person may appear as an amicus pursuant to part 8415.0130;

(4) the adequacy of a record pursuant to part 8415.0145;

(5) the resolution of objections to a record pursuant to part 8415.0150, including but not limited to, a determination of whether materials should be added to or deleted from a record or whether an appeal should be remanded to the watershed district for further proceedings;

(6) the scheduling of oral arguments pursuant to part 8415.0175;

(7) whether a motion for expedited review should be granted pursuant to part 8415.0185;

(8) whether there should be reductions or extensions of time pursuant to part 8415.0190;

(9) whether two or more proceedings should be consolidated pursuant to part 8415.0195;

(10) whether costs should be awarded to the watershed district pursuant to part 8415.0200; and

(11) the resolution of any other non-dispositive procedural motion not specifically enumerated in this item made pursuant to part 8415.0180.

B. The executive director is expressly prohibited from determining dispositive matters including, but not limited to, the following:

(1) whether a watershed district decision should be affirmed, remanded, reversed or modified pursuant to part 8415.0110; and

(2) whether an appeal should be dismissed pursuant to part 8415.0120 for failure to file a timely notice of appeal.

The foregoing shall not preclude the executive director and other employees of the board from making recommendations to the board on the determination of dispositive matters by the board.

C. All determinations of the executive director shall be in writing in the form of a letter served upon all of the parties and delivered by first class mail with the

United States Postal Service. In the absence of the executive director, or at the request of the executive director, the assistant director may make any of the determinations that the executive director is authorized to make, and the assistant director may issue and sign the letter notifying the parties of the determination. All references in this part to a determination of the executive director shall apply equally to a determination of the assistant director if the assistant director acts during the absence of or at the request of the executive director.

D. A determination of the executive director pursuant to this part shall become final and binding upon the parties unless:

(1) a party objects to the determination by filing and serving a written notice of objection within 10 days after the service of the executive director's letter notifying the parties of the executive director's determination; or

(2) the board acts in the absence of an objection by a party to reverse or modify a determination of the executive director.

E. A party's written notice of objection to a determination of the executive director shall be in the form of a letter addressed to the board with proof of service upon all other parties. The letter shall state with particularity the grounds for objecting to the determination by the executive director and the proposed alternative determination requested by the objecting party. The other parties may respond to a written notice of objection by filing and serving their own letters within 10 days after the service of the written notice of objection. The written notice of objection and any responsive letters shall be considered by the dispute resolution committee at its next meeting. The dispute resolution committee shall make a recommendation to the board on the action that the board should take with respect to the written notice of objection. The board may affirm, reverse, or modify a determination by the executive director. All objections to a determination by the executive director shall be considered by the dispute resolution

committee and the board without oral argument unless otherwise directed by the dispute resolution committee or the board.

F. The filing of an objection to a determination of the executive director shall not stay or suspend the determination of the executive director. The proceedings in an appeal pursuant to parts 8415.0100 to 8415.0220 shall be conducted in accordance with the determination of the executive director unless and until the determination of the executive director is reversed or modified by the board. If a determination of the executive director is reversed or modified by the board, the board may, by letter or order, modify the time limits for further proceedings under parts 8415.0100 to 8415.0220, allow the parties to submit amendments to previously filed documents, and make such other modifications to the procedures for the appeal as may be necessary to prevent undue prejudice to any party.

Subp. 3. **Dispute resolution committee.**

A. The dispute resolution committee shall meet and hear oral arguments pursuant to part 8415.0175. After oral arguments have been heard by the dispute resolution committee, there shall be no further oral arguments before the board unless requested by the board.

B. The dispute resolution committee shall meet and consider all objections to a determination by the executive director. The dispute resolution committee shall make a recommendation to the board on the disposition of each objection to a determination by the executive director.

C. The dispute resolution committee shall meet and consider all appeals. The dispute resolution committee shall make a recommendation to the board on the disposition of each appeal.

D. A majority of the dispute resolution committee is a quorum. All recommendations of the dispute resolution committee must be approved by a vote of a majority of the members of the dispute resolution committee in attendance at the meeting when the vote is taken. If the dispute resolution committee hears oral arguments on an

appeal, then members of the dispute resolution committee who were not in attendance at the time of the oral arguments may not vote upon the recommendation of the dispute resolution committee.

Subp. 4. **Chair of the board.**

A. The chair of the board shall sign and issue on behalf of the board all orders of the board in appeals pursuant to parts 8415.0100 to 8415.0220.

B. In the absence of the chair of the board, or at the request of the chair of the board, orders may be signed and issued on behalf of the board by the chair of the dispute resolution committee.

8415.0210 PROHIBITED EX PARTE COMMUNICATIONS.

Subpart 1. **Ex parte communication.** "Ex parte communication" means an oral or written, off-the-record communication made between a voting member of the board and a person that is directed to the merits or outcome of an appeal pursuant to parts 8415.0100 to 8415.0220. This term does not include procedural, scheduling, and status inquiries or other inquiries or requests for information that have no bearing on the merits or outcome of the appeal. This term does not include communications of any kind between a voting member of the board and any other members of the board, the executive director, any other employee of the board, or legal counsel for the board.

Subp. 2. **Communication with voting members of the board.** An ex parte communication must not be made or attempted to be made either directly or indirectly during a pending appeal from the date of the filing of the notice of appeal until the board issues its final order.

Subp. 3. **Disclosure of ex parte communication.** If a prohibited ex parte communication is made, a voting member of the board must advise the person who makes the communication that the communication is prohibited and shall immediately terminate the communication. If a prohibited ex parte communication is received by a voting member of the board, that voting member must promptly disclose the following

information to the chair of the board in writing prior to any decision regarding the appeal that is the subject of the ex parte communication:

A. to the extent known, the name and address of the person making the communication and the relationship, if any, to the parties in the pending appeal;

B. the date and time of the communication, its duration, and the means by and circumstances under which it was made;

C. a copy of the written document or a written summary of the matters discussed; and

D. whether the person making the prohibited communication persisted after being advised that the communication was prohibited.

Subp. 4. **Record of ex parte communication.** The chair of the board must make the written disclosure of ex parte communications required by subpart 3 and all disclosed written ex parte communications part of the record of the appeal to which those communications relate.

Subp. 5. **Abstention.** Any voting member of the board not disclosing information regarding a prohibited ex parte communication may be required to abstain from voting on the appeal that is the subject of the prohibited communication. A determination of an abstention must be made by the board, based on a finding that a prohibited ex parte communication with a voting member of the board occurred and was not disclosed in accordance with subpart 3.

8415.0215 EFFECT OF COURT PROCEEDINGS.

An appeal may not be commenced before the board if, at the time of the filing of the notice of appeal, there are proceedings pending in any court of law regarding the validity or enforcement of the watershed district decision, including but not limited to a declatory judgment action pursuant to Minnesota statutes, section 103D.537 or a civil or criminal action to enforce an order not involving project. If a civil or criminal action to enforce an order not involving project is commenced in any court after the filing of a notice of appeal,

then the proceedings in the appeal before the board shall be suspended until the completion of any court proceedings. Any matters determined by the court in the enforcement proceedings shall not be redetermined by the board. Further consideration of the appeal by the board after the completion of the court enforcement proceedings shall be limited to issues, if any, not determined by the court.

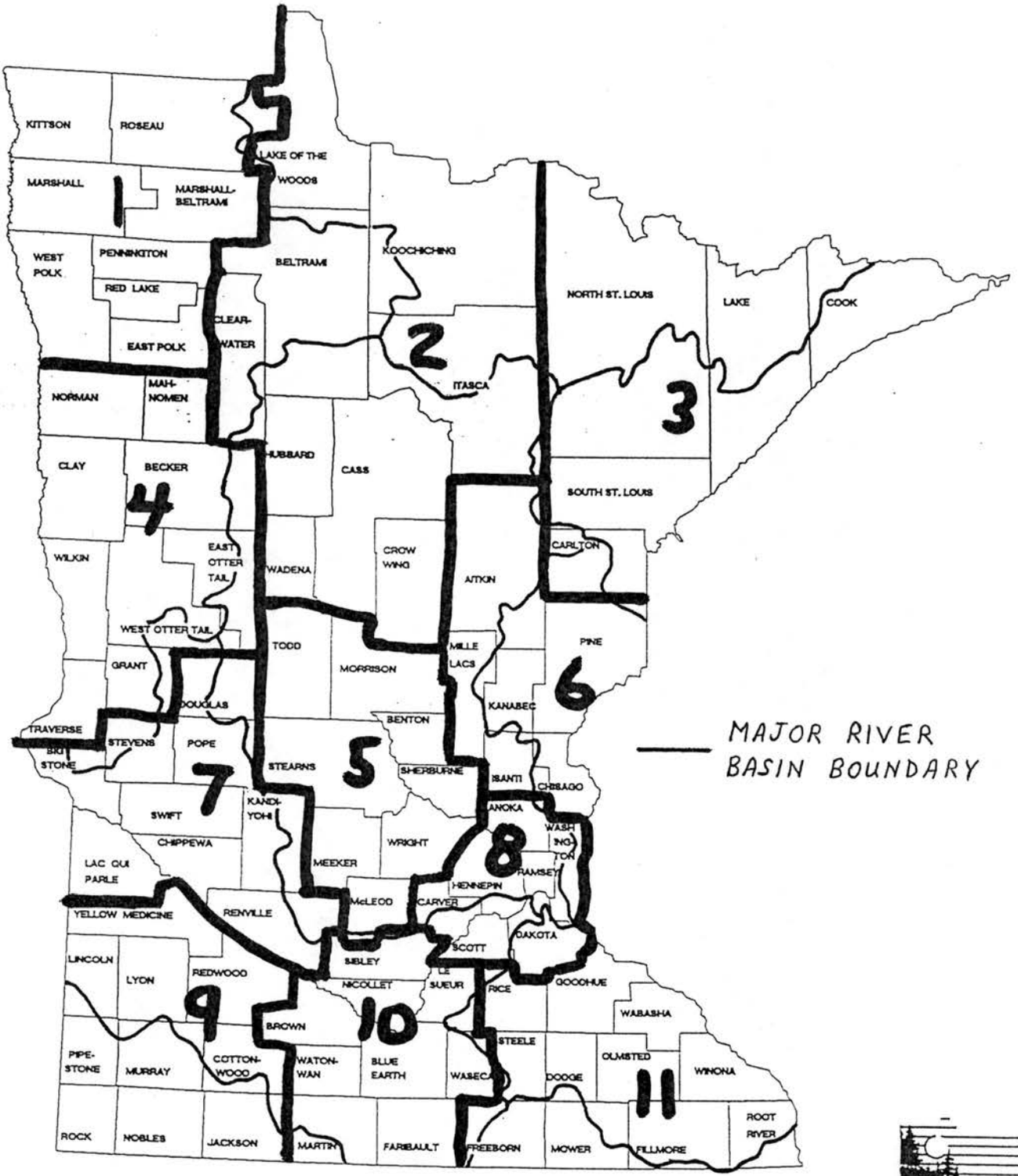
8415.0220 JUDICIAL REVIEW.

A final decision of the board on appeal is subject to judicial review under Minnesota statutes, sections 14.63 to 14.69. The board shall determine, in its discretion, whether its participation in the judicial review proceedings shall be limited to transmitting the record to the reviewing court, or whether the board will also make written or oral arguments before the reviewing court. Any party that appeared before the board which has a position of the outcome of the appeal should obtain its own representation before the reviewing court; the board and the board's counsel shall not represent any person other than the board.

SELT:AP4

Minnesota Soil & Water Conservation Districts

TECHNICAL STAFFING JOINT POWERS AREAS



MAJOR RIVER BASIN BOUNDARY

7/26/94
swcd.app

Minnesota Board of Water & Soil Resources

TO: BWSR Board Members

FROM: Wayne Zellmer & Doug Thomas

DATE: October 17, 1994

SUBJECT: 1995 Natural Resources Block Grants

As 1995 quickly approaches it is time again to begin discussing the $6.2 million Natural Resources Block Grants for counties. At this time we have enclosed a copy of last years application and agreement. For new members of the Board the block grant is a hybrid of three different grants from years past, including local water planning base grants, wetland conservation act administration grants, and DNR shoreland grants. The basic purpose of the grant is to assist counties financially to carry out and implement high priority actions in local water plans, administer the wetland conservation act, and the DNR shoreland program in the county. Many grants are split between county planning and zoning, county environmental services, and the soil and water conservation district.

At the October 26th board meeting we will be giving a general presentation about the block grant and where its headed in 1995. This discussion will be a precursor to the December meeting at which time staff will be asking the Board to authorize the program and allocations for 1995.

Some of the important issues that we need to resolve prior to the 1995 allocations are as follows.

** $900,000 is to be transferred from the MPCA to BWSR to allocate to counties that have accepted delegation of the feedlot program. Individual county allocations will calculated by a formula which was part of the legislation. Any remaining funds are to be allocated to counties on a competitive basis to counties to assist them in inventories, program adoption, etc.. We are currently working with MPCA staff to develop a proposed method for how this can be the most efficiently incorporated into the block grants.

** Funding for the wetland conservation act portion of the block grant will increase $200,000 from last year. We are presently determining ways to allocate this money to counties which can demonstrate that local expenditures exceeded their previous allocation.

** The Board will need to make a decision on funding for those counties which have yet to adopt the wetland conservation act. Options for consideration are, 1) not grant any of the block grant until adoption occurs, 2) Grant only the local water planning, DNR shoreland, and MPCA feedlot portions with no 1995 WCA portion, and 3) Grant the local water planning, DNR shoreland, and MPCA feedlot portion and pro-rate the WCA portion up until June of 1995 when we lose the money.

1994 BWSR
NATURAL RESOURCE BLOCK GRANT
APPLICATION

WATER PLANNING PORTION

LOCAL WATER PLANNING 1994 BASE GRANT

Base Grant Portion of Block Grant Requested $$_____

Designated Local Match (Levy), Base Grant Portion $$_____

Total $$_____

Lead Agency/Coordinator_____

Participating Agencies/Organizations Listed in Workplan_____

_____

_____

_____

_____

Does the county have an established water planning taskforce or committee? _____yes _____ no. If yes how many times a year does it meet? _____, and how many members are there? _____.

Summary of Plan Implementation_____

_____

_____

_____

_____

_____

_____

1993 Report

(attach a report of measurable activities and/or accomplishments along with the actual expenditures for 1993)

1994 Workplan & Budget

(attach a workplan and budget which identifies those activities, programs, or actions to be implemented in 1994 and their estimated costs)

Carryover of Base Grant Funds

1991 Base Grant
Did the County spend or encumber all of their 1991 base grant by January 15, 1993 ? _____yes _____no

If you answered no to the previous question list the amount of the 1991 base grant that was unspent or unencumbered on January 16, 1993? $$_____

You must return to the BWSR the amount identified on the previous line.

1992 Base Grant
Has the County spent or encumbered all of their 1992 base grant? _____yes _____no.

How much will remain unspent or encumbered on January 1, 1994? $$_____

!!NOTE - 1992 funds must be spent or encumbered by January 15, 1994.

1993 Base Grant
Has the County spent or encumbered all of their 1993 base grant? _____yes _____no.
If the answer was no, what will be carried forward to the 1994 workplan? $$_____.
!!NOTE - 1993 grants must be spent or encumbered by January 15, 1995

WETLAND CONSERVATION ACT (WCA) ADMINISTRATION PORTION

1993 Interim WCA Report

(those counties which received a wetland challenge grant in 1992 for implementing the interim program of the wetland conservation act must complete this section)

WCA Challenge Grant received $$_____ Designated local match $$_____

WCA Challenge Grant expenditures $$_____ Local match contributed $$_____

Will any of the WCA challenge grant be unspent or unencumbered on January 1, 1994 _____yes _____no. If yes how much will be unspent or unencumbered? $$_____

!!NOTE - Any funds that are unspent or unencumbered after December 31, 1993 must be returned to the BWSR.

WCA 1994 Administration

Amount Requested for WCA Portion of Block Grant $$_____

Designated Local Match by Source for WCA portion.

New Resources $$_____

In-Kind Resources $$_____

Total Local Match $$_____

Designated Lead/Coordinating LGU (if applicable)?_____

Has the county formally adopted the WCA permanent program? _____yes _____no.

If the answer above is no, what is the anticipated date of adoption?_____

List all other LGU's (cities and townships) in county who will be administering WCA independent of the County.

_____

_____

_____

_____

_____

_____

Are all areas in the County (except for tribal lands) covered by a LGU? _____yes _____no.

If the answer above is no what plans exist to provide seamless coverage in the county?

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

List the proposed allocation of the WCA portion of the block grant (including the local match) as follows:

	WCA portion of block grant	local match	Total
County	_____	_____	_____
SWCD's	_____	_____	_____
Other LGU's(list)	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	(attach additional sheet if necessary)		
Totals	==========	=========	========

SHORELAND PORTION OF BLOCK GRANT

Shoreland Portion of Block Grant Requested $$_____

Designated Local Match, Shoreland Portion $$_____

List all other LGU's (cities and townships) in the county administering a shoreland program independent of the county _____

_____

_____

_____

_____

Will the county be allocating any of its 1994 block grant (shoreland portion) to these LGU's? _____yes _____no.

If answer above is yes please list LGU's and dollars allocated.

City/Township	Allocation	Local Match	Total
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(attach additional sheet if necessary)

If the county will will not be allocating any portion of the shoreland grant to cities or townships is technical assistance available through the county? _____yes _____no.

SIGNATURE PAGE

COUNTY _____

SWCD _____

OTHERS AS IDENTIFIED IN APPLICATION

_____

_____

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LOCAL WATER PLANNING
ANNUAL REPORT, WORKPLAN & BUDGET GUIDANCE

The following format may be used to guide you in preparing your annual report, workplan, and budget. Although required by the local water planning grant rules, we hope that the report, workplan, and budget are useful locally to help tell the story of water planning and its successes in the county. Please feel free to arrange your report, workplan, and budget so that it is the most useful to you and your local efforts.

_____ COUNTY
COMPREHENSIVE LOCAL WATER PLANNING
1993 ANNUAL REPORT
&
1994 WORKPLAN AND BUDGET

ANNUAL REPORT (DUE DATE JANUARY 31, 1994)

A. Program Administration / Coordination

1. Measurable Results

Note: List Measurable activities such as # of taskforce meetings, # hours of time spent on administration, etc. during the year.

2. Expenditures From 1993 Base Grant & Carryover $$_____

Note: List here the actual grant dollars that were spent or encumbered.

B. Program Implementation

List measurable activities, accomplishments, and progress during the previous year for each of the broad categories shown below. Also list under each category the actual grant dollars spent or encumbered.

Note: For counties that organized their workplan around specific projects or initiatives those should be used instead of the broad categories shown below.

1993 Annual Report (continued)

1. Education and Information

   a. Measurable Results
   b. Expenditures From 1993 Base Grant & Carryover $$_____

2. Monitoring and Data Collection

   a. Measurable Results
   b. Expenditures From 1993 Base Grant & Carryover $$_____

3. Inventory and Mapping

   a. Measurable Results
   b. Expenditures From 1993 Base Grant & Carryover $$_____

4. Land and Water Treatment

   a. Measurable Results
   b. Expenditures From 1993 Base Grant & Carryover $$_____

5. Regulation, Ordinances & Planning

   a. Measurable Results
   b. Expenditures From 1993 Base Grant & Carryover $$_____

TOTAL 1993 IMPLEMENTATION EXPENDITURES ..... $$_____

1993 GRANT FUNDS TO BE CARRIED OVER TO 1994 ACTIVITIES $$____

Note: Expenditures may be greater than $37,500 due to carryover grant dollars from previous program years. Expenditures may also be less than $37,500 with a portion of funds carried forward to 1994 activities.

Note: Counties need to remember that this report does not replace, nor is it a substitute to an accounting/bookkeeping system. The State of Minnesota acting through BWSR does require that the county or delegated local unit of government implementing a grant shall provide for an audit that meets the standards of the Office of State Auditor. The Audit must cover the duration of a grant and be performed within one year after the end of the grant period or when routinely audited, whichever occurs first.

1994 WORKPLAN (DUE AT TIME OF APPLICATION)

A. Program Administration / Coordination

1. Narrative

Note: The narrative should describe how the water plan will be administered locally, including the identification of the plan's coordinator. This section should also describe how coordination among the various local agencies, departments, and groups is being ensured and briefly describe their roles in implementation.

B. Program Implementation

Note: In this guidance the program implementation section is broken down by implementation initiatives such as education, monitoring, construction, regulation, etc.. You may also break down your activities in this section by program, study area, project , etc..

Under each implementation initiative or activity list the activities, programs or projects which have been identified in the comprehensive plan and by the water planning taskforce or committee as a priority for the coming year.

1. Education and Information
   a. Planned Activities, Programs, and/or Initiatives
      Note: List activities, programs, etc. along with the measurable results which you expect to occur
   b. Lead Agency

2. Monitoring and Data Collection
   a. Planned Activities, Programs, and/or Initiatives
   b. Lead Agency

3. Inventory and Mapping
   a. Planned Activities, Programs, and/or Initiatives
   b. Lead Agency

4. Land and Water Treatment
   a. Planned Activities, Programs, and/or Initiatives
   b. Lead Agency

5. Regulation, Ordinances and Planning
   a. Planned Activities, Programs, and/or Initiatives
   b. Lead Agency

1994 BUDGET (DUE AT TIME OF APPLICATION

TYPE OF ACTIVITY OR ELEMENT	EQUIP. BUDGETED	SUPPLIES DATA COLL. BUDGETED	PERSONNEL BUDGETED	OTHER BUDGETED	TOTAL
Administration/ Coordination	_____	_____	_____	_____	_____
Education/ Information	_____	_____	_____	_____	_____
Monitoring/ Data Collection	_____	_____	_____	_____	_____
Inventory/ Mapping	_____	_____	_____	_____	_____
Land and Water/ Treatment	_____	_____	_____	_____	_____
Regulation, Ordinances/ Planning	_____	_____	_____	_____	_____
Other Programs, Activities, Studies, Etc. List as Needed					
TOTALS	=====	=====	=====	=====	=====

NOTE: For 1994 the budget information being requested is only for the combination of base grant dollars and local levy. At a minimum the grand total should be equal to $37,500, unless your county is carrying over dollars from 1993. Also the total can be greater if the budget includes other sources of revenue such as other grants or additional local levy.

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WR-01087-01

STATE OF MINNESOTA
MINNESOTA BOARD OF WATER AND SOIL RESOURCES
NATURAL RESOURCES BLOCK GRANT AGREEMENT

Amount $ _____ **Natural Resources Block Grant**

Local Governmental Unit: _____

Address: _____

_____

_____

Agreement Period: January 15, 1994 to January 15, 1996

THIS AGREEMENT is entered into between the State of Minnesota, acting by and through its Board of Water and Soil Resources, hereinafter referred to as the "Board", and the above named Local Governmental Unit, hereinafter referred to as the "LGU".

WHEREAS, the Minnesota Legislature, by Laws of Minnesota 1993, Chapter 172, sec. 6, established the Natural Resources Block Grant, hereinafter referred to as the "NRBG", to assist with the implementation of comprehensive local water plans, wetland conservation act, and shoreland programs; and

WHEREAS, Minnesota Statutes 103B.101 subd. 9. (1), and 103B.3369, Subd. 5., and laws of Minnesota 1993, Chapter 172, sec. 6 authorize the Board to award grants; and

WHEREAS, a LGU must meet the criteria established by statute and the Board to be eligible to receive NRBG state grant funds.

WHEREAS, the Board has determined the LGU to be eligible and has selected the LGU to participate in the NRBG; and

WHEREAS, the LGU has provided a certified copy of the LGU resolution authorizing the LGU's participation in the NRBG including the required local match, attached hereto as Exhibit A.

NOW THEREFORE, it is agreed between the parties as follows:

I. LGU DUTIES AND SPECIFIC PROGRAM REQUIREMENTS

The LGU is responsible for the specific duties for the NRBG, as follows:

1. TAX LEVY. The LGU's participation in the NRBG is conditioned upon LGU expenditure of cash and in-kind contributions to match the NRBG as specified in Laws of Minnesota 1993, Chapter 172, sec. 6. and the Board grant allocation and match requirements adopted by the Board.

2. REPORTING. The LGU shall submit an annual progress report to the Board by January 31 of each year on the status of program implementation by the LGU. Information provided must conform to the requirements set by the Board.

3. **COMPLIANCE.** The LGU shall comply with Minnesota Statutes Section 103B.3361 through 103B.3369 (1990), Minnesota Rules Chapter 8405, Laws of Minnesota 1991, Chapter 354, as amended by Laws of Minnesota 1993, Chapter 175, Minnesota Rules Chapter 8420, Minnesota Statutes Section 103F.201, and Minnesota Rules Chapter 6120, and amendments thereto for comprehensive water planning, the wetland conservation act, and the DNR shoreland management program.

II. PROGRAM APPLICATION.

The LGU shall perform the duties and responsibilities described in the NRBG application, as approved by the Board, and on file at the Board office in St. Paul, Minnesota. The approved application is incorporated into this Agreement by reference, and made a part hereof.

III. GENERAL TERMS AND CONDITIONS

A. TERMS OF PAYMENT.

1. Grant payments shall be made in one installment promptly after the effective date of this Agreement. The Board shall pay the Grant Amount stated on page 1. The total obligation of the Board shall not exceed the Grant Amount.

2. Any state funds remaining unspent, unencumbered or becoming unobligated after the expiration of the Agreement Period stated above shall be returned to the Board within two months of the expiration of the Agreement Period.

3. State funds may not be used for costs incurred before or after the end of the Agreement Period stated above, unless approved by the Board.

4. Payment to the LGU is made under the condition that all work performed pursuant to this Agreement shall be performed to the satisfaction of the Board, and in accordance with all applicable federal and state laws, including rules and regulations, and local ordinances. The LGU shall use the funds provided herein only for the purposes stated in the NRBG application, as approved by the Board, and this Agreement.

B. PERIOD OF AGREEMENT. This Agreement shall be effective upon such date as it is executed as to encumbrance by the Commissioner of Finance, and shall remain in effect until the expiration of the Agreement Period stated above, or until all of the obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

C. CANCELLATION AND REVOCATION.

1. The Board may cancel this entire Agreement for just cause. "Just cause" means that the LGU or its designee is not disbursing grant funds in accordance with established Board or state procedures, or has otherwise breached a term of this Agreement. The LGU may cancel this Agreement with or without just cause. The Board or the LGU must give written notice 14 calendar days prior to cancellation. In the event of cancellation by the Board or LGU, the LGU is entitled to payment, determined on a pro rata basis, for eligible work satisfactorily performed and the remaining grant funds must be promptly returned to the Board.

2. At the request of any state agency commissioner, the Board shall revoke and the LGU shall return to the Board that portion of the state funds used to support the NRBG not in compliance with the rules of that requesting agency.

D. ASSIGNMENT. The LGU shall neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of the Board, except for contracts with other local units of governments authorized by Section 103B.3369. The LGU may contract with others, including appropriate local units of government to perform the work specified in the Agreement. In all cases the LGU shall remain responsible for the work it authorizes and/or contracts with others to perform, and shall not delegate its responsibility under this Agreement.

E. AMENDMENTS. Any amendments to this Agreement shall be in writing, and shall be executed by the Board and the LGU.

F. COST OVERRUNS. The LGU agrees that any cost overrun is the sole financial responsibility of the LGU.

G. LIABILITY. The LGU agrees to indemnify and save and hold the Board, its agents, and employees harmless from any and all claims or causes of action arising from the performance of this Agreement by the LGU, its designated local units of government, contractors, agents or employees. This clause shall not be construed to bar any legal remedies LGU may have for the Board's failure to fulfill its obligations pursuant to this Agreement. This clause shall survive the expiration of the Agreement Period or the expiration or termination of this Agreement.

H. AUDITS. The books, records, documents, and accounting procedures and practices of the LGU and its designated local units of government and contractors relevant to the NRBG may be examined at any time by the Board or Board's designee. The LGU or designated local unit of government implementing this Agreement shall provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of the Agreement Period, and be performed within one year after the end of the Agreement Period or when routinely audited, whichever occurs first. Copies of the audit report must be provided to the Board. The LGU or delegated local unit of government shall maintain all records relating to the receipt and expenditure of grant funds for six years from the termination of the Grant Agreement.

I. AFFIRMATIVE ACTION. The LGU certifies that it is either exempt from obtaining a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes Section 363.073, or has obtained said certificate.

J. NONDISCRIMINATION. As a condition of receiving financial support for the NRBG, GRANTEE assures that it will meet all applicable requirements of the Civil Rights Act of 1964, as amended (including nondiscrimination on the basis of disability conditions) and of any applicable state civil rights statutes.

K. WORKERS COMPENSATION. The LGU assures that it has provided, or shall provide, acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, Subdivision 2 (1992).

L. ANTITRUST. LGU hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

M. DATA PRIVACY ACT. The LGU agrees to indemnify and save hold the STATE, its agents and employees, harmless from any and all claims or causes of action arising from a violation of any provision of Minnesota Statutes, Chapter 13.

N. DATA COMPATIBILITY. The LGU shall prepare and maintain all information gathered as a result of this project in a format which is compatible with the data systems employed by the principal information users of the State of Minnesota.

M. CAPITAL EQUIPMENT. The title for equipment purchased with the funding provided in this Agreement shall be taken in the name of the State of Minnesota. The equipment will remain the property of the State for its useful life. After the Grant Period, the equipment may remain in the custody of the LGU so long as it is used for the purposes of promoting and supporting the coordination of shoreland management activities. The State may take possession of the equipment at which time it ceases to be used for the intended purpose and at such time as it becomes necessary to use it for State purposes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

LOCAL GOVERNMENTAL UNIT

APPROVED:

_____**LGU**
BY ITS LGU
BOARD OF COMMISSIONERS

By: _____

Title: Chairperson

Date: _____

By: _____

Title: LGU Auditor/Administrator

Date: _____

STATE OF MINNESOTA

BOARD OF WATER AND SOIL RESOURCES

By: _____

Title: _____

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM AND EXECUTION
BY THE ATTORNEY GENERAL

By: _____
Assistant Attorney General

Date: _____

COMMISSIONER OF FINANCE
Encumbered Department of Finance

By: _____

Title: _____

Date: _____

Attachments:
Exhibit A: Certified copy of LGU Resolution authorizing the LGU's participation in the NRBG

Minnesota Board of Water & Soil Resources

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155 S. Wabasha Street
Suite 104
St. Paul, MN 55107
(612) 296-3767
Fax (612) 297-5615

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(218) 755-4235
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Brainerd, MN 56401-3660
(218) 828-2383
Fax (218) 828-6036

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New Ulm, MN 56073
(507) 359-6074
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(507) 537-6060
Fax (507) 537-6368

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

October 7, 1994

Marilyn Bernhardson, District Manager
Redwood Soil and Water Conservation District
1241 East Bridge Street - Suite C
Redwood Falls, Minnesota 56283

RE: General Services Grants Allocations

Dear Marilyn,

This fund is granted to SWCDs and MASWCD for unique or special needs and services. The Board reviews and approves all funding for services and support to SWCDs under the Laws of 1993, Chapter 172, Section 6 "Upon approval of the board, expenditures may be made from these appropriations for supplies and services benefiting soil and water conservation districts."

As a result of varying, unplanned for, or special needs of SWCDs, all SWCDs' General Services Grant allocations may fluctuate slightly from year to year.

In addition to the regular General Services Grant allocations for fiscal year 1995, the Board has approved the "supplies and services" of raingages, stationary, a stipend to state winner to the National Envirothon, and "kickstarting" the Blue Earth River Basin Initiative Joint Powers Agreement. In previous years, dollars remaining in the account have been allocated to similar one time special or unique initiatives of SWCDs and MASWCD.

The Board and staff are well aware that General Services Grants do not adequately compensate SWCDs for the delivery and implementation of programs. Legislative appropriations have not kept up with inflation. Consequently, an initiative has begun to seek a legislative increase in SWCD base funding.

I hope this addresses your concerns regarding General Services Grants. If I can be of further assistance, please let me know.

Sincerely,

Ronald Harnack
Executive Director

Post-it™ Fax Note 7671	Date 10/7/94	# of pages ▶ 1
To MARILYN BERNHARDSON	From RON HARNACK	
Co./Dept. REDWOOD SWCD	Co. BWSR	
Phone #	Phone #	
Fax # (507) 637-8136	Fax #	

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GIFTS TO PUBLIC OFFICIALS

Seminar

Minnesota Attorney General's Office

September 19, 1994

John R. Tunheim, Chief Deputy, Minnesota Attorney General's Office
Peter Wattson, Senate Counsel, State of Minnesota
Mary Ann McCoy, Executive Director, Ethical Practices Board
Jeanne Olson, Assistant Executive Director, Ethical Practices Board
John L. Holahan Jr., Chair, Ethical Practices Board
Mary Jo Murray, Assitant Attorney General, Minnesota Attorney General's Office

GIFTS TO PUBLIC OFFICIALS

An Overview

By

Peter S. Wattson
Senate Counsel
State of Minnesota

September 19, 1994

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I. Introduction

The Minnesota Legislature at its 1994 session passed significant new legislation prohibiting most gifts to public officials. That legislation was based on the premise that a person with a direct financial interest in a decision that a public official is authorized to make should not give that official a gift, lest the gift improperly influence the official's decision. Few would disagree with the proposition that a person should not attempt to influence a public official in this way. In fact, bribery of a public official has been a crime in Minnesota since statehood. *See* Pub. Stat. 1858, ch. 92, § 8; Minn. Stat. § 609.42 (1992).

But at the same time that bribery has been condemned, the giving of gifts in a social context has been approved. Indeed, for thousands of years the giving of gifts has been an accepted way to build and maintain friendships. Friendships are an essential ingredient of politics, and gift giving among politicians is as natural as shaking hands and asking for money.

Historically, drawing the line between appropriate social gifts and inappropriate gifts to influence a public official in the performance of official duties has been left to the judgment of each individual. It has been an ethical problem, rather than a legal one. So, why did the Minnesota Legislature decide to cease relying on the judgment of individuals? First, because a series of ethical lapses by members of the Legislature had left the institution open to criticism that the judgment of its individuals was not good enough. Second, because at least one member believed strongly that public officials were being led into temptations they'd be better off avoiding.

II. Legislative History

A. Before 1994

1. 1988 Interim

The movement in Minnesota to limit gifts to public officials began in the interim between the 1988 and 1989 sessions. Senator John Marty asked one of my colleagues in Senate Counsel to research the laws of other states that had adopted a code of ethics for public officials. Senate Counsel found that both Wisconsin and Massachusetts had adopted such a code and had considerable experience administering it. Senator Marty held hearings that interim at which the ethics code administrators from those two states testified on how their laws worked. Based on those hearings, Senator Marty had a bill drafted that was based primarily on the Massachusetts law, Mass. Gen. Laws. ch. 268B, but with some influence from Wisconsin, Wis. Stat. Ann., ch. 19, subch. III.

2. 1989 Session

Senator Marty's code of ethics for public officials was first introduced in the 1989 session as S.F. No. 5. It covered all public officials, local as well as state, under the expanded jurisdiction of the Ethical Practices Board, and prohibited the use of a public position for private gain and revolving door contracts with former public officials, as well as prohibiting gifts that "could reasonably be expected to influence the performance of the official's or employee's public duties."

The bill was referred to the Committee on Elections and Ethics, where it remained. I don't believe it even got a hearing.

3. 1991 Session

In the 1991 session, Senator Marty introduced the bill again, this time as S.F. No. 367. It was again referred to the Committee on Elections and Ethics, but this time it had more success. In 1992 Senator Hughes, the committee's chair, signed on as a co-author and even gave it a hearing, although he never put it to a vote.

4. 1993 Session

After the 1992 election, Senator Marty was in a position to become chair of a committee for the first time. He was assigned to the old Elections committee with a new name, the Committee on Ethics and Campaign Reform.

Senator Marty introduced his bill to create a code of conduct for public officials as S.F. No. 24, but spent almost the entire 1993 session hearing his next bill, S.F. No. 25, which became the Campaign Finance Reform Act of 1993.

B. 1994

1. 1994 Interim hearings

After passage of campaign finance reform, Senator Marty turned his attention to the code of ethical conduct. At hearings in February, before the session began, he took testimony from Common Cause, the League of Women Voters, the Humphrey Institute, the DFL and IR parties, the Minnesota Government Relations Council, the Association of Minnesota Counties, and the Governor's office, about what was needed to improve the ethics of public officials in this state. The speakers recommended action on many of the subjects that were in Senator Marty's bill, but they also recommended that any code of ethics be clear and simple and draw a bright line between conduct that was acceptable and conduct that was not.

2. 1994 Session

a. House action

By the start of the 1994 session, after both the House Majority Leader and the Speaker of the House had resigned their leadership positions because of ethical lapses, and the Majority Leader had pleaded guilty to misuse of the telephone system and resigned from office, the House of Representatives was even more eager than the Senate to pass some kind of ethics legislation.

The House bill, H.F. No. 1863, authored by Representative Edgar Olson, focused primarily on disclosure of gifts, reducing the reporting threshold for individual gifts from $50 to $5 and providing an expedited procedure for disclosing gifts of food and beverages given or made available to all members of the legislature or a legislative body. The House bill passed the House early in the

session and was referred in the Senate to the Committee on Ethics and Campaign Reform, which had been amending, and amending, and amending Senator Marty's bill.

b. Senate action

When the Senate committee reported out H.F. No. 1863, it kept most of the disclosure requirements of the House bill and added a modestly comprehensive prohibition on gifts. I say "modestly comprehensive" because it prohibited most gifts but permitted gifts of food and beverages "given at a reception, meal, or meeting away from the recipient's place of work." In other words, receptions in the capitol would be prohibited but receptions and meals anywhere else were still allowed, subject to the new reporting requirements.

The exception for food and beverages was probably discussed and amended more than any other provision of the bill. It began as part of the A-8 amendment offered to S.F. No. 24 by its chief author, Senator John Marty, at or after the February 16, 1994, meeting of the Committee on Ethics and Campaign Reform. It exempted "a cup of coffee or other refreshments not to exceed $3 in value given as part of ordinary office hospitality or at a reception or meeting away from the recipient's place of work" and "a meal, transportation, or other reasonable expenses furnished by an organization before whom the recipient appears to make a speech or answer questions as part of a program."

When H.F. No. 1863 passed the House of Representatives and was referred to the Senate Committee on Ethics and Campaign Reform, Senator Roger D. Moe moved to amend it by substituting a compromise proposal based on the bill that passed the House and the Senate committee's previous discussions. His amendment, A-1, adopted by the committee March 8, 1994, included a broad exemption for any "food or a beverage," but it also reduced the threshold for having to report gifts from $50 to $5 and created a simplified reporting procedure for gifts of food or beverages. It said that "A lobbyist need report only the aggregate amount and nature of food or beverages given or made available to all members of the legislature or a house of the legislature or to all members of a local legislative body, along with the name of the legislative body and the date it was given or made available." But the Moe amendment was further amended at the same meeting by Senator Marty's A-4 amendment to require that the food or beverage be "given at a reception, meal, or meeting away from the recipient's place of work." This narrowed the exemption considerably.

When the bill was considered on the floor of the Senate March 14, Senator David Knutson amended it further to require that the food and beverage not only be given away from the recipient's place of work but also "by an organization before whom the recipient appears to make a speech or answer questions as part of a program." Very few meals would meet this new requirement. So instead of a broad exemption to go with the strict reporting requirement for gifts and simplified procedure for reporting gifts of food or a beverage, the Senate bill had only a very narrow exemption. The reporting requirements no longer fit the exemption.

One might have expected this inconsistency to be worked out in conference committee. But when the amended House file was returned to the House, the House voted to concur in the Senate amendments rather than go to conference. The bill became law with the Governor's signature on March 22, 1994, although it did not become effective until August 1.

III. Who is Covered?

A. State Officials

1. Operative language

The operative language of the bill is very simple. For state officials it says: "A lobbyist or principal may not give a gift or request another to give a gift to an official. An official may not accept a gift from a lobbyist or principal." Minn. Stat. § 10A.071, subd. 2 (1994).

2. Givers

a. Lobbyists

A lobbyist is an individual engaged for pay who spends more than five hours in any month or more than $250 in a year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials. Minn. Stat. § 10A.01, subd. 11 (1992).

Public officials and employees who lobby as part of their job are not "lobbyists" for purposes of chapter 10A, except for nonelected local officials and employees who spend more than 50 hours a month lobbying.

Lobbyists must register with the Ethical Practices Board. Minn. Stat. § 10A.03 (1992).

b. Principals

A principal is an individual or association that spends more than $500 in any calendar year on a lobbyist, or spends at least $50,000 in a calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units. Minn. Stat. § 10A.01, subd. 28 (1992).

Political subdivisions and public higher education systems are listed in § 10A.01, subd. 11, among the entities that may employ a lobbyist, but they are not listed in subd. 28 among the entities that may be a principal. On two occasions, the Ethical Practices Board has deadlocked over whether they are principals, so at this point they are not. S.F. No. 943/H.F. No. 2287 would have named them as principals, but both bills died on the floor of the Senate and House when the 1994 session adjourned.

Principals must be named on the lobbyist's registration form, Minn. Stat. § 10A.03, subd. 2, and must report annually to the Ethical Practices Board. Minn. Stat. § 10A.04, subd. 6 (1992).

3. Recipients

a. Definition of "Official"

"'Official' means a public official, an employee of the legislature, or a local official of a metropolitan governmental unit." Minn. Stat. § 10A.071, subd. 1 (c) (1994).

b. Public officials

Public officials include legislators, constitutional officers, agency heads and deputy heads, administrative law judges and workers' compensation judges, various other officials in the executive branch of state government, and various officials of the metropolitan council and of metropolitan boards and commissions. Minn. Stat. § 10A.01, subd. 18 (1992). Judges and referees in the judicial branch are not covered as "public officials," because they are covered by their own Code of Judicial Conduct. *See* Code of Judicial Conduct, Canon 5, C. (4) (1992). Judges of the Tax Court are likewise not "public officials." Eth. Prac. Bd. Op. No. 46 (1978).

c. Employees of the Legislature

Certain employees of the Legislature are covered as public officials, including the Secretary of the Senate, the Chief Clerk of the House of Representatives, the Revisor of Statutes, the Legislative Auditor, and attorneys and researchers in the offices of Senate Counsel and Research and House Research. The rest are covered by the reference to "an employee of the legislature."

d. Local officials of a metropolitan governmental unit

A "local official" for purposes of chapter 10A is a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, recommend, or vote on (as a member of the governing body) major decisions regarding the expenditure or investment of public money. Minn. Stat. § 10A.01, subd. 25. (1992).

"Metropolitan governmental unit" means the metropolitan council or a metropolitan agency, any of the seven counties in the metropolitan area, a regional railroad authority established by a metropolitan county, and a city in the metropolitan area with a population of over 50,000 (Minneapolis, St. Paul, Bloomington, Brooklyn Park, Burnsville, Coon Rapids, and Plymouth). The Minnesota State High School League and Minnesota Technology, Inc., are also defined in chapter 10A as "metropolitan governmental units." Minn. Stat. § 10A.01, subd. 26

B. Local Officials

1. Operative language

"An interested person may not give a gift or request another to give a gift to a local official. A local official may not accept a gift from an interested person." Minn. Stat. § 471.895, subd. 2 (1994).

2. "Interested person"

"'Interested person' means a person or representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make." Minn. Stat. § 471.895, subd. 1 (c) (1994).

A "direct financial interest" is not the general interest that every taxpayer has in the decisions of a local official, but is rather the more immediate and personal interest that one has in a decision that affects one differently from others, such as a tax abatement on a particular parcel.

3. "Local official"

"'Local official' means an elected or appointed official of a county or city or of an agency, authority, or instrumentality of a county or city."

Officials of other political subdivisions, such as school districts, hospital districts, watershed districts, and towns, are not covered by the ban on gifts to local officials.

Not every person who works for a county or city is an "official." Officials are those who have significant responsibility for making decisions, not those who simply carry out the orders of others. *See* BLACK'S LAW DICTIONARY 1235 (4th ed. 1957). The definition of "local official" in Minn. Stat. § 10A.01, subd. 25, is not expressly incorporated into § 475.895, but it does provide some insight into the kinds of individuals the Legislature may have meant to include. It focuses on persons who have authority to make recommendations or decisions regarding the expenditure or investment of money. The current law limits that to recommendations and "*major* decisions." S.F. No. 943 and H.F. No. 2287, which died on the floor of the Senate and House when the 1994 session adjourned, would have changed it to "*final* recommendations and decisions."

IV. What is a Gift?

A. Operative Language

"'Gift' means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return." Minn. Stat. § 10A.071, subd. 1 (b) (1994).

B. Problem Items

1. Food and beverages

Wining and dining of legislators by lobbyists was probably the most frequently cited reason why the gift ban was needed. That wining and dining often took the form of expensive meals, receptions, and hospitality suites, but also included the delivery of inexpensive bagels, fried chicken, and pizza at the Capitol. Gifts of food and beverages are included in the term "personal property."

2. Entertainment

The second most common complaint was about gifts of tickets to sporting events. They too are covered by the term "personal property."

3. Travel and lodging

Free trips, such as the annual trip to Duluth, sponsored by the Duluth Chamber of Commerce for the benefit of all members of the Legislature, were a third subject of complaints of improper gifts to public officials. Free travel and lodging are covered by the term "services."

4. Honoraria

Honoraria for speeches were not a problem complained of, perhaps because the House of Representatives had already adopted a rule during the 1991 session prohibiting its members from accepting honoraria "for any service performed for an individual or organization which has a direct interest in the business before the House . . . ." House Rule 10.2. Honoraria are covered by the term "money."

Note, however, that not every fee received for making a speech is an honorarium. An honorarium is "A payment given to a professional person for services for which fees are not legally or traditionally required." AMERICAN HERITAGE DICTIONARY 620 (2d Col. Ed. 1982). If the speaking fee is legally required, as part of a contractual arrangement with the speaker in advance, it is neither an honorarium nor a gift and is not prohibited.

5. Promises of future employment

Promises of future employment have not been a problem in recent years, at least since the passage in 1986 of Minn. Stat. § 216A.036 (1992), which prohibits a regulated public utility from offering employment to a member of the Public Utilities Commission within one year after the member leaves the commission. But promises of future employment were included in the gift ban in the Wisconsin law that served as one of the bases on which the Minnesota law was built, Wis. Stat. Ann. § 19.42 (1) (Supp. 1993), and remained in the Senate bill from beginning to end.

C. Transaction Problems

1. Consideration in return

To be a gift, the item of value must be "given and received without the giver receiving consideration of equal or greater value in return." Minn. Stat. § 10A.071, subd. 1 (b) (1994).

The concept of consideration is useful to keep in mind when determining whether an item of value given in a social context is a "gift" for the purposes of the statutory ban. For example, one common question raised during the consideration of the new law was whether it prohibited a group who dined regularly together from taking turns picking up the check. The answer to that question (never given on the record, to my knowledge), was that another member of the group having picked up the check on a previous occasion might be considered consideration for a member picking up

the check today. If it were possible to prove this exchange of hospitality, it would be possible to prove that this was not a gift.

The Ethical Practices Board, however, has taken a different position on consideration. In response to a request for an opinion on the proper procedure to use for reimbursing a lobbyist for the value of refreshments received at a hospitality suite, the Board advised that the reimbursement must be made at the time the refreshments are received in order not to be an illegal gift. Eth. Prac. Bd. Op. No. 159 (1994).

2. Indirect gifts

Gifts that are not given directly from a lobbyist or other interested person to an official, but rather are passed through an intermediary, are nevertheless subject to the gift ban. For example, when the Minnesota Association of County Officers requested an opinion on whether they could continue to accept contributions from lobbyists or lobbyists' principals to help defray the costs of group breakfasts, hospitality rooms, snacks, and refreshments, the Ethical Practices Board advised that the Association could not accept those contributions, unless the officials reimbursed the lobbyists or lobbyists' principals for the value of the benefits received. Eth. Prac. Bd. Op. No. 142 (1994). The ban applies whether the contributions are given to the organization itself or to a private nonprofit charitable organization that hosts an event on behalf of the organization.

3. Gifts to a group

Where a gift is given to a group of officials, the value of the gift to each official is the total value divided by the number of officials to whom the gift was given.

4. Partial gifts

Where the cost of goods or services provided to an official has been paid partly with contributions from a lobbyist or other interested person and partly from other sources, the official must reimburse the giver for the portion paid by the lobbyist in order for it not to be an illegal gift.

5. Accounting for gifts

Some problems with gifts could be solved by better accounting for receipts and disbursements. Where an organization plans to host an event with money received from various sources, some of which may come from lobbyists or other interested persons, the organization may wish to segregate the receipts and make sure that none of the money from lobbyists or interested persons is used to provide a gift to covered officials.

V. Exceptions

A. Campaign Contributions

The ban on gifts does not apply to campaign contributions under either Minn. Stat. § 10A.01, subd. 7 (1992) (state candidates), or Minn. Stat. § 211A.01, subd. 5 (1992) (local candidates). This

is because the campaign contributions are limited in amount under §§ 10A.27 and 211A. 12 (Supp. 1993), and must be reported under §§ 10A.20 (Supp. 1993) and 211A.02 (1992).

B. Services to Assist in the Performance of Official Duties

Lobbyists complained that a ban on donating services to an official would prohibit them from providing information and contacting key people to assist a legislator in passing legislation. The Senate Committee on Ethics and Campaign Reform responded by creating an exception for "services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents." Minn. Stat. §§ 10A.071, subd. 3 (a) (2); 471.895, subd. 3 (a) (2) (1994).

The Ethical Practices Board has advised officials that providing them with a periodical publication on public policy issues related to transportation and training them in the operation of computer systems are services to assist them with the performance of official duties and fall within this exception. Eth. Prac. Bd. Op. Nos. 156 , 157 (1994). Attending meetings of the Council of State Governments, however, is not an official duty that can be paid for by lobbyist contributions.

C. Services of Insignificant Monetary Value

The bill as introduced in the Senate had included in the definition of "gift" a "favor," as that term had been used in the Wisconsin definition, Wis. Stat. Ann. § 19.42 (1) (Supp. 1993). Members of the Committee on Ethics and Campaign Reform complained that a ban on favors went too far, both because it seemed unsociable to prohibit people from doing small favors for public officials and because it seemed impractical to try to enforce a ban on common courtesy, such as helping a stranded motorist to fix a flat tire. So the bill was amended to delete the ban on favors and to specifically exempt "services of insignificant monetary value." Minn. Stat. §§ 10A.071, subd. 3 (a)(3); 471.895, subd. 3 (a)(3) (1994).

D. Plaques or Mementos Recognizing Service

The exception for "a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause," Minn. Stat. §§ 10A.071, subd. 3 (a)(4); 471.895, subd. 3 (a)(4) (1994), was taken directly from the Code of Ethics for Employees in the Executive Branch, Minn. Stat. § 43A.38, subd. 2 (b) (1992).

E. Trinkets or Mementos of Insignificant Value

The exception for "a trinket or memento of insignificant value," Minn. Stat. §§ 10A.071, subd. 3 (a)(5); 471.895, subd. 3 (a)(5) (1994),was a product of committee discussion in the Senate, designed to save the pins, pens, cups, and calendars that some members were fond of. The Ethical Practices Board, however, has interpreted this exemption not to cover either a leatherette pocket calendar and insert, valued at just over $11, nor even a $2 pocket calendar, both of which the Teamsters political committee wanted to give elected officials after the 1994 election. Eth. Prac. Bd. Op. No. 141 (1994).

F. Informational Material of Unexceptional Value

The exception for "informational material of unexceptional value," Minn. Stat. §§ 10A.071, subd. 3 (a)(6); 471.895, subd. 3 (a)(6) (1994), was designed to save papers, pamphlets, and brochures, but not to permit gifts of expensive books, such as might add elegance to a coffee table.

G. Food or Beverages Given in Connection with a Speech

As discussed earlier, the exemption for food or a beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program, is quite narrow. It does *not* have a dollar threshold, such as $3 or $5, beneath which gifts of food and beverages are permitted. It does *not* permit gifts of food and beverages to all the members of a legislative body just because all the members are given the same gift. And, it does *not* permit a gift of expenses for travel and lodging, even for an official who appears before an organization to make a speech or answer questions as part of a program. Each of those broader exemptions was considered during the legislative process, but none of them made it into the final bill.

H. Gifts to Groups of Nonofficials

The prohibitions in the new law do not apply if the gift is given "because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group." Minn. Stat. §§ 10A.071, subd. 3 (b)(1); 471.895, subd. 3 (b)(1) (1994). This is an attempt to provide an exemption for gifts that are not related to the recipient's position as a public official, but given for some other reason. The requirements for membership in a group of nonofficials and for an equivalent gift to be given to those other members of the group are attempts to provide proof that the gift was not related to the official's public position.

This exemption should apply to a company social event that a public official attends as the spouse of a company employee. Where the group invited consists of company employees and their spouses, and a majority of the group are not public officials, any gift given to all the invitees should be considered exempt, since it is not related to the official's public position.

Problems arise, however, when a gift is given in a context that is not strictly social, such as when candy is given to all the employees in a public office, a majority of whom may not have sufficient decision-making authority to be considered "officials." I believe that kind of gift was a target of the new law, but one could certainly argue that it falls within the letter of the exemption.

A second kind of problem arises when state-level officials from Minnesota attend a national meeting with their counterparts from other states. At that kind of meeting, although it is related to the official's public position, a majority of the group will usually not be "officials" within the meaning of the new law. This is because the definition of "official" in § 10A.071, subd. 2(c), refers to specific Minnesota offices, not to official positions generally. So a gift to all attendees at the meeting, even one from a corporation listed as a lobbyist principal in Minnesota, will be to a group, "a majority of whose members are not officials," and thus within the letter of this exemption. The exemption makes sense. If the group were Minnesota officials, we might expect them to change the

arrangements for the meeting, so that no gifts would be given. But a national group may not have the same freedom to change to accommodate Minnesota officials, and it is better to tolerate the occasional gift than to foreclose attendance at national meetings.

I. Gifts by Family Members

The exemption for gifts "by a lobbyist [or interested person] who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family," Minn. Stat. §§ 10A.071, subd. 3 (b)(2); 471.895, subd. 3 (b)(2) (1994), is designed to address the problem of a public official whose spouse is a lobbyist and to permit the spouse to give the public official normal family gifts. "Family" is not defined in the law, and could be narrowly construed as limited to the members of a single household or broadly construed as extending to all the blood relatives of a common ancestor. *See* BLACK'S LAW DICTIONARY 727-31 (4th ed. 1957); AMERICAN HERITAGE DICTIONARY 488 (2d col. ed. 1982).

VI. Enforcement

A. State Officials

1. Investigation by the Ethical Practices Board

Preexisting-existing law in chapter 10A authorizes the Ethical Practices Board to "investigate any alleged violation of this chapter. . . .

. . .

. . . [After the board makes a finding of probable cause the board shall report that finding to the appropriate law enforcement authorities." Minn. Stat. § 10A.02, subd. 11 (1992).

2. Violation is not a crime

"Unless otherwise provided, a violation of sections 10A.02 to 10A.34 is not a crime." Minn. Stat. § 10A.34, subd. 3 (1992).

3. Advisory opinions

"The board may issue and publish advisory opinions on the requirements of this chapter based on real or hypothetical situations." Minn. Stat. § 10A.02, subd. 12 (1994).

B. Local Officials

1. Violation is a misdemeanor

The jurisdiction of the Ethical Practices Board does not extend beyond chapter 10A, so some other enforcement mechanism is needed for the local officials covered by § 471.895. That enforcement mechanism is the general criminal law. "When the performance of any act is prohibited by a statute, and no penalty for the violation of the same shall be imposed in any statute, the doing of such an act shall be a misdemeanor." Minn. Stat. § 645.241 (1992).

This general criminal statute may not be as significant as it seems. My colleague who serves as Senate Counsel for the Committee on Crime Prevention tells me it is her understanding that no one has ever been prosecuted under this general criminal penalty. First, because many prosecutors are not aware of this general law, since it is outside the criminal code in chapter 609. Second, they may feel more comfortable relying on more specific statutes that specify the elements of the crime and provide a specific level of punishment.

2. Prosecution of misdemeanors

Within incorporated municipalities, prosecution of misdemeanors is normally handled by the city attorney. In other areas, it is done by the county attorney.

3. Possible amendment

After the gift ban left the Senate Committee on Ethics and Campaign Reform, there was some discussion of broadening the authority of the Ethical Practices Board to include violations of the gift ban by local officials and eliminate the possibility of criminal prosecution. An amendment was included in the campaign finance reform bill, S.F. No. 943, that would have made that change. S.F. No. 943 passed out of committee but was never taken up on the Senate floor. I would not be surprised to see that change made during the 1995 session.

VII. Examples

A. Schindler's List

B. The Distinguished Gentleman

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to minimize the number of cases in which the judge is disqualified. As soon as one can do so without serious financial detriment, a judge should become divested of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a family member residing in the same household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, judicial administration, or the administration of justice;

(b) a judge or a family member residing in the same household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a family member residing in the same household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, and, if its value exceeds $100, the judge reports it in the same manner as he or she reports compensation in Canon 6C.

(5) For the purposes of this section "family member residing in the same household" means any relatives of a judge by blood or marriage, or a person treated by a judge as a member of the family, who resides in the judge's household.

(6) A judge is not required by this Code to disclose his or her income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in a judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a family member, and then only if such service will not interfere with the proper performance of judicial duties. "Family member" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) A judge should not serve if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extrajudicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, judicial administration, or the administration of justice. A judge, however, may represent the judge's country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

(Amended effective January 1, 1989.)

Canon 6. A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extrajudicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this Code, if the source of such pay-

of his surrogate: and the private prosecutor in any such case is, accordingly, said to "promote the office of the judge." Mozley & Whiteley.

Political office. Civil offices are usually divided into three classes,—political, judicial, and ministerial. Political offices are such as are not immediately connected with the administration of justice, or with the execution of the mandates of a superior, such as the president or the head of a department. Fitzpatrick v. U. S., 7 Ct.Cl. 293.

Principal office. The principal office of a corporation is its headquarters, or the place where the chief or principal affairs and business of the corporation are transacted. Usually it is the office where the company's books are kept, where its meetings of stockholders are held, and where the directors, trustees, or managers assemble to discuss and transact the important general business of the company; but no one of these circumstances is a controlling test. See Jossey v. Georgia & A. Ry., 102 Ga. 706, 28 S.E. 273; Middletown Ferry Co. v. Middletown, 40 Conn. 69; In re Lone Star Shipbuilding Co., C.C.A.N.Y., 6 F.2d 192, 196. Synonymous with "principal place of business," being the place where the principal affairs of a corporation are transacted. Foreman & Clark Mfg. Co. v. Bartle, 125 Misc.Rep. 759, 211 N.Y.S. 602, 604.

Public office. The right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of government for the benefit of the public. Walker v. Rich, 79 Cal.App. 139, 249 P. 56, 58. An agency for the state, the duties of which involve in their performance the exercise of some portion of the sovereign power, either great or small. Yaselli v. Goff, C.C.A., 12 F.2d 396, 403, 56 A.L.R. 1239; Lacey v. State, 13 Ala.App. 212, 68 So. 706, 710; Curtin v. State, 61 Cal.App. 377, 214 P. 1030, 1035; Shelmadine v. City of Elkhart, 75 Ind.App. 493, 129 N.E. 878. State ex rel. Colorado River Commission v. Frohmiller, 46 Ariz. 413, 52 P.2d 483, 486.

Where, by virtue of law, a person is clothed, not as an incidental or transient authority, but for such time as denotes duration and continuance, with independent power to control the property of the public, or with public functions to be exercised in the supposed interest of the people, the service to be compensated by a stated yearly salary, and the occupant having a designation or title, the position so created is a public office. State v. Brennan, 49 Ohio St. 11, 29 N.E. 593.

State office. This terms as used in a primary election law, means offices to be filled by the electorate of the entire state. Hamilton v. Monroe, Tex.Civ.App., 287 S.W. 304, 308.

OFFICER. The incumbent of an office; one who is lawfully invested with an office. Evans v. Beattie, 137 S.C. 496, 135 S.E. 538, 554; State v. Bratton, 148 Tenn. 174, 253 S.W. 705, 706. One who is charged by a superior power (and particularly by government) with the power and duty of exercising certain functions.

One who is invested with some portion of the functions of the government to be exercised for the public benefit. Fox v. Lantrip 162 Ky. 178, 172 S.W. 133, 136; In a popular sense, an officer is one holding a position of trust and authority in any kind of an organization—civil, military, political, ecclesiastical, or social. Illinois Commerce Commission v. Cleveland, C., C. & St. L. Ry. Co., 320 Ill. 214, 150 N.E. 678, 682. The word "officer," as used in state statutes or constitutions, is sometimes held to refer only to elective officers: Cunningham v. Rockwood, 222 Mass. 574, 111 N. E. 409, 411, Ann.Cas.1917C, 1100; and sometimes to both appointive and elective officers: State v. Campbell, 94 Ohio St. 403, 115 N.E. 29, 31.

An "officer" is distinguished from an "employee" in the greater importance, dignity, and independence of his position, in requirement of oath, bond, more enduring tenure, and fact of duties being prescribed by law. Bowden v. Cumberland County, 123 Me. 359, 123 A. 166, 169; McClendon v. Board of Health of City of Hot Springs, 141 Ark. 114, 216 S.W. 289, 290; Jefferson County v. Case, 244 Ala. 56, 12 So.2d 343, 344.

In determining whether one is an "officer" or "employee," important tests are the tenure by which a position is held, whether its duration is defined by the statute or ordinance creating it, or whether it is temporary or transient or for a time fixed only by agreement; whether it is created by an appointment or election, or merely by a contract of employment by which the rights of the parties are regulated; whether the compensation is by a salary or fees fixed by law, or by a sum agreed upon by the contract of hiring. Hyde v. Board of Com'rs of Wells County, 209 Ind. 245, 198 N.E. 333, 337.

For *obstructing an officer*, see that title.

For definitions of the various classes and kinds of officers, see the titles "Commissioned Officers," "Executive," "Fiscal," "Judicial," "Legislative," "Ministerial," "Municipal," "Naval," "Non-Commissioned," "Peace," "State," and "Subordinate".

Civil officer. The word "civil," as regards civil officers, is commonly used to distinguish those officers who are in public service but not of the military. U. S. v. American Brewing Co., D.C.Pa., 296 F. 772, 776; State v. Clarke, 21 Nev. 333, 31 P. 545, 18 L.R.A. 313, 37 Am.St.Rep. 517. Hence, any officer of the United States who holds his appointment under the national government, whether his duties are executive or judicial, in the highest or the lowest departments of the government, with the exception of officers of the army and navy, is a "civil officer." 1 Story, Const. § 792. See, also, Com'rs v. Goldsborough, 90 Md. 193, 44 A. 1055.

Military officer. Officer who has command in the army. Non-commissioned officer is not officer in the sense in which that word is generally used; Babbitt v. U. S., 16 Ct.Cl. 214.

Officer de facto. As distinguished from an officer *de jure*; this is the designation of one who is in the actual possession and administration of the office, under some colorable or apparent authority, although his title to the same, whether by election or appointment, is in reality invalid or at least formally questioned. Norton v. Shelby County, 6 S.Ct. 1121, 118 U.S. 425, 30 L.Ed. 78; State v. Carroll, 38 Conn. 449, 9 Am.Rep. 409. One who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law. 6 East 368; City of Terre Haute v. Burns, 63 Ind. App. 7, 116 N.E. 604, 608; Johnson v. State, 27 Ga. App. 679, 109 S.E. 526, 527.

The rules of parliamentary procedure contained in Mason's Manual of Legislative Procedure shall govern the House in all applicable cases in which they are not inconsistent with these Rules, the Joint Rules of the Senate and House of Representatives, or established custom and usage.

Article X
Ethics

10.01 Solicitations During Legislative Session
No member of the House, nor the member's principal campaign committee, nor any other political committee with the member's name or title, nor any committee authorized by the member which would benefit the member, shall solicit or accept a contribution on behalf of the member's principal campaign committee, any other political committee with the member's name or title, or any political committee authorized by the member which would benefit the member, from a registered lobbyist, political committee, or political fund during the regular session of the House.

No member may accept compensation for lobbying.

10.02 Acceptance of an Honorarium by a Member
No member may accept an honorarium for any service performed for an individual or organization which has a direct interest in the business of the House, including, but not limited to, registered lobbyists or any organizations they represent. The term "honorarium" does not include reimbursement for expenses incurred and actually paid by a member in performing any service.

Alleged violations of this rule shall be referred to the Committee on Ethics under Rule 6.10. Upon finding that an honorarium was accepted in violation of this rule, the Committee on Ethics shall direct the return of the funds. If the funds are not

under Rule 6.10.

10.03 Acceptance of Travel and Lodging by a Member or Employee
A member or employee of the House shall not accept travel and lodging from any foreign government, private for-profit business, labor union, registered lobbyist, or any association thereof, except for expenses that relate to the member's or employee's participation as a legislator or legislative employee in a meeting or conference. This rule does not apply to travel and lodging provided to a member in the regular course of the member's employment or business.

CODE OF CONDUCT

Senators & Staff

As members and employees of the Senate, we are entrusted with the welfare, property, security, and safety of the people we serve and of the people of Minnesota.

- ☐ **We will treat each other and the public fairly, equally, and with dignity and respect.**
- ☐ **We will be courteous to the public and respectful of the institution.**

The President of the Senate will receive written, signed complaints from any member or employee of the Senate or from the public regarding disrespectful treatment by a member or employee of the Senate or by another member of the public.

Comments or questions call (612)296-4191.

Senate Committees

The Committee Chair is responsible for order, decorum, and quiet.

All members of the committee are responsible for enforcing respectful treatment of each other and the public.

The Chair or Vice Chair should start and end hearings on time.

All non-conference committee meetings must adjourn by midnight.

All speakers should request permission from and address their comments to the chair.

Respectfully address people giving testimony as Mr., Ms. or their title.

Allow those who travel long distances to testify first.

Be sensitive and attentive to persons testifying and to their concerns.

A Senator should not use insulting or personally or socially offensive language when addressing members of the public.

A Senator should not speak impertinently, attack the motives of any Senator who proposes or advocates a particular position, use indecent language or other disorderly words or refer to another Senator by name in a disparaging way.

A Senator should not interrupt another member.

Private conversations should be held away from the committee table.

Beverages are permitted at the committee table but not food.

Public Trust

Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of their government. Each individual officer, employee or advisor of government must help to earn and must honor that trust by his (or her) own integrity and conduct in all official actions.

- Presidential Executive Order (1965)



Code of Conduct and Ethics Guidelines for the Minnesota State Senate

Adopted by the Minnesota State Senate
Rules and Administration Committee
April 27, 1994

CODE OF ETHICS

Senators and Senate Staff

Avoid actions that might impair your independence of judgment or give the appearance of impropriety.

- ☐ Put the public interest ahead of your own personal advancement and financial interest.
- ☐ Do not accept gifts from a registered lobbyist or principals (a person or entity who engages a lobbyist on their behalf). (Minn. Stat. 10A.071.)
- ☐ Decide all matters based on their merits, free from improper influences.
- ☐ Disclose conflicts of interest and refrain where practical from participating in decisions that will have a substantial affect on your personal financial interest that is different from the group you represent.
- ☐ Maintain and respect confidentiality.

Avoid activities that might improperly influence a state agency, court, or government body.

- ☐ Be cautious when doing business with the state as a private business person.

Avoid situations that could be disrespectful of the institution and the public.

- ☐ Represent the interests of all citizens, seeking out those who would not otherwise be involved in the public process.
- ☐ Treat all with courtesy and civility, including other participants in the legislative process.
- ☐ Do not engage in any act of discrimination, sexual harassment, or abuse of any person.
- ☐ Act honestly, fairly, and openly so that others can rely in good faith on your words and actions.
- ☐ Do not use your position to gain privileges or special treatment.



Lobbyists

- ☐ A lobbyist shall not appear before a Senate Committee pursuant to the lobbyist's employment unless the lobbyist is in compliance with the law requiring lobbyist registration. (Minn. Stat. Sections 10A.03 to 10A.06.)
- ☐ A lobbyist when appearing before a committee shall disclose to the committee those in whose interest the lobbyist speaks and the purpose of the lobbyist's appearance.
- ☐ A lobbyist shall not knowingly furnish false or misleading information or make a false or misleading statement that is relevant and material to a matter before the Senate or any of its committees when the lobbyist knows or should know it will influence the judgment or action of the Senate or any of its committees thereon.
- ☐ A lobbyist shall not exert undue influence or expend improper sums of money in connection with any legislation.

(Rule 75, Permanent Rules of the Senate.)

Special Committee on Ethical Conduct

The Subcommittee on Committees shall appoint a Special Committee on Ethical Conduct consisting of four members, two from the majority and two from the minority.

The committee shall serve in an advisory capacity to a member or employee upon written request and shall issue recommendations to the member or employee.

The committee shall investigate a complaint by a member of the Senate in writing under oath received during a legislative session regarding improper conduct by a member or employee of the Senate or a lobbyist.

(Rule 75, Permanent Rules of the Senate.)

Ethical Practices Board

Additional guidance may be obtained confidentially by contacting the State Ethical Practices Board.

STATE OF MINNESOTA
ETHICAL PRACTICES BOARD

GIFTS, ADVISORY OPINIONS, and the MINNESOTA ETHICAL PRACTICES BOARD

Introduction:

What is a gift?

Who is an official?

Advisory Opinions of the Ethical Practices Board

The Request

The Opinion

The Procedure

A Preliminary Analysis: Advisory Opinions of the Ethical Practices Board relating to Minn. Stat. § 10A.071

ADDENDUM: Summaries of Recent Advisory Opinions

Prepared by

Mary Ann McCoy
Executive Director
Minnesota Ethical Practices Board
September 12, 1994

SUMMARIES OF ADVISORY OPINIONS OF THE ETHICAL PRACTICES BOARD
relating to MINN. STAT. § 10A.071 (1994 Minn. Laws, ch. 377, sec. 5)

June 2, 1994, to August 31, 1994

Re: Gift from Lobbyist or Principal
#141. A gift from a lobbyist or a lobbyist principal to an official is prohibited unless the gift falls within a n exemption provided in Minn.Stat. §10A.071 (Laws of 1994, Ch. 377, sec. 2).

(Issued to Wes D. Lane, Minnesota D.R.I.V.E., June 2, 1994)

Re: Gift to Local Officials
#142. Effective August 1, 1994, local officials attending meetings of the Minnesota Association of County Officers may not accept gifts in the form of payments that reduce the costs for the meetings from vendors that are lobbyists or lobbyist principals, pursuant to Minn. Stat. §10A.071. The Association also should consider the application to such payments of Minn. Stat. §471.895 (1994 Minn. Laws, Ch.377, Sec.6), a statute that is not within the jurisdiction of the Ethical Practices Board.

(Issued to Jeff C. Cole, Treasurer, Minnesota Association of County Officers, June 7, 1994; revised: August 12, 1994)

Re: Complimentary Copies of Newspapers
#143. The distribution of complimentary copies of a newspaper to legislators by the newspaper's publisher is included in the exceptions to the gift prohibition in Minn. Stat. §10A.071 (Laws of 1994, Ch. 377, sec. 5). Payment of dues to the Minnesota Newspaper Association does not cause a member to be a lobbyist or a lobbyist principal.

(Issued to Mark R. Anfinson, Esq., Minnesota Newspaper Association on June 7, 1994)

Re: Gifts to Officials
#147. Minn. Stat. Ch. 10A does not prohibit the distribution of gifts to officials or the acceptance of gifts by official unless the donor is a lobbyist principal or a lobbyist. Effective August 1, 1994, officials participating the in the State Fair Agricultural Get-together may accept items or funds from a commodity organization unless the organization is a lobbyist principal or the items or funds are provided by a lobbyist. Minn. Stat. §10A.071 (Laws of 1994, Ch. 377, Sec. 5). The Minnesota Agricultural Commodity Coalition and the Minnesota Agri-Growth Council may wish to confer with legal counsel about the existence of other laws that may apply to preparations for the 1994 State Fair Agricultural Get-together including, but not limited to Minn. Stat. §471.895 (Laws of 1994, Ch. 377, Sec. 6).

(Issued to Rollin M. Dennistoun, June 30, 1994)

Re: Gifts to Officials

#148. Effective August 1, 1994, a licensed assessor who is a local official of a metropolitan governmental unit is subject to the provisions of state law prohibiting acceptance of gifts from lobbyists and lobbyist principals. Minn. Stat. §10A.071 (Laws of 1994, Ch. 377, Sec. 5). Licensed assessors who serve local governments other than metropolitan governmental units should confer with legal counsel or contact the county attorney about the existence of other laws that may apply including Minn. Stat. §471.895 (Laws of 1994, Ch. 377, Sec. 6).

(Issued to G. D. Garski, Executive Secretary, Minnesota Board of Assessors, June 27, 1994)

Re: Volunteer Activities

#151. Services provided without compensation by an individual volunteering personal time on behalf of a candidate are not considered a contribution to that candidate. Minn. Stat. §10A.01, subd. 7 (1992). Therefore, volunteer activities by a lobbyist provided without compensation on behalf of an incumbent legislator or constitutional officer seeking re-election are included in the exception from the gift prohibition for services of insignificant monetary value. Minn. Stat. § 10A.071, subd. 3 (3) (Laws of 1994, Ch. 377, Sec. 5).

(Issued to Kathryn L. Nelson, June 30, 1994)

Re: Gifts to Officials

#153. Complimentary breakfasts given to legislators who appear at an organization's series of meetings to speak or to respond to questions as part of the program are included in the exceptions to the gift prohibition at Minn. Stat. § 10A.071, subd. 3 (7) (Laws of Minnesota 1994, Ch. 377, sec. 5).

(Issued to John Rajkowski, Twin West Chamber of Commerce, August 2, 1994; Board decision: July 29, 1994)

Re: Gifts to Officials

#155. HealthSpan, a lobbyist principal, may not pay for expenses for team members who are "officials" as defined in Minn. Stat. § 10A.071, subd. 1 (c), and who attend a forum held by HealthSpan. A lobbyist principal is prohibited from giving a gift to an official that is given and received without the principal receiving consideration of equal or greater value in return. Minn.Stat. § 10A.071, subds. 1 and 2. The application of a parallel gift prohibition in Minn. Stat. § 471.895 for local officials and interested persons should be considered in connection with payment of expenses for local officials who attend the proposed forum. Laws of 1994, Ch. 377, secs. 5 and 6.

(Issued to Susan Mitchell, HealthSpan Systems Corporation, August 12, 1994; Board decision: July 29, 1994)

Re: Gifts to Officials

#156. The Minnesota Transportation Alliance, a lobbyist principal, may provide to officials at no cost a periodical publication relating to public policy issues. The

publication as described in this request is within the exception from the gift prohibition for services to assist an official in the performance of official duties, including information and communication in connection with legislation, and it also is within the exception for informational material of unexceptional value. Minn. Stat. § 10A.071, subd. 3 (2), (6) (Laws of 1994, Ch. 377, sec. 5).

(Issued to Frank J. Corrigan, Executive Director, The Minnesota Transportation Alliance, August 12, 1994; Board decision: July 29, 1994)

Re: Gifts to Officials

#157. A training session about the operation of computer products provided to officials by the vendor is not a gift to the officials regardless of whether the vendor is a lobbyist principal. Training in the operation of computer products is within the exception from the gift prohibition for services by a lobbyist principal to assist an official in the performance of official duties. However, officials must not accept meals given by a vendor at a training session unless the meals are part of the purchase agreement with the vendor. Minn. Stat. § a.071.

(Issued: August 22, 1994)

Re: Gifts to Officials

#159. Officials are prohibited from accepting a gift from lobbyists or principals unless the givers bill the officials and the officials make payment to the lobbyists or officials of equal or greater value at the same time the gift is received. The only exception to the gift prohibition that relates to food and beverages is found in Minn. Stat. § 10A.071, subd. (3) (a) (7), which excepts from the prohibitions of the statute "food and beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program."

(Issued: August 22, 1994)

Re: Gifts to Officials

#160. A lobbyist or lobbyist principal is prohibited from giving a gift to an official and an official is prohibited from accepting a gift from a lobbyist or lobbyist principal, both within and outside the state of Minnesota. Minn. Stat. § 10A.071. The lobbyist principal should review the applicability of Minn. Stat. § 471.895 (1994 Minn. Laws, ch. 377, sec. 6), a statute that is not within the jurisdiction of the Ethical Practices Board, if its hospitality suite is offered to local officials.

(Issued: September 15, 1994)

Re: Gifts to Officials

#161. Prizes donated or paid for by lobbyists or lobbyist principals for an event hosted by an official are not exempt from the statutory gift prohibition because hosting the event is not an official duty. Tickets to the event purchased at full price by lobbyists or lobbyist principals are not gifts to the official hosting the event. Prizes

won by officials based upon demonstrated skill are not gifts to the officials, pursuant to Minn. Stat. § 10A.071.

(Issued: September 15, 1994)

Re: Gifts to Officials

#162. An organization that is a lobbyist principal may not provide complimentary registration fees to one or more officials to attend the organization's educational programs. The service is a gift from a lobbyist principal to an official that is prohibited by Minn. Stat. § 10A.071, subd. 3 (2) (Laws of 1994, Ch. 377, sec. 6).

(Issued: September 15, 1994)

Re: Gift to Official

#163. An official is prohibited from accepting the payment of the cost of an event if a lobbyist or lobbyist principal contributes to defraying the cost of the event. Donations from a lobbyist principal to pay in part for the cost of meetings among governmental officials are not within any exemption from the gift prohibition in Minn. Stat. § 10A.071. An official is prohibited from accepting a gift from a lobbyist or from a lobbyist principal regardless of the conduit through which the official receives the gift.

(Issued: September 15, 1994)

Re: Gifts to Officials

#164. An official, whose spouse is employed by a lobbyist or lobbyist principal, is prohibited from accepting a benefit from the employer of the spouse unless the official pays contemporaneously for the benefit received. Minn. Stat. § 10A.071, subd. 1(b) and (c).

(Issued: September 15, 1994)

SECTION II

Advisory Opinion Provisions of the Minnesota Ethics in Government Act

Prepared by

Jeanne L. Olson
Assistant Executive Director
Minnesota Ethical Practices Board
Saint Paul, Minnesota

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Summaries of Recent Advisory Opinions of the Board 6

I. ADVISORY OPINIONS

A. ADVISORY OPINION REQUEST

1. Individuals or associations may request a written advisory opinion from the Board on the requirements of the Act, to guide their own conduct.

2. A request may be based on real or hypothetical situations.

B. ADVISORY OPINIONS RESPONSE

1. The Board issues written response within 30 days after receipt, unless a majority of the Board agrees to extend the time limit.

2. The written opinion is binding on the Board in subsequent Board proceedings concerning the person making or covered by the request. Beginning August 1, 1994, opinions issued by the Board do not lapse.

3. The written opinion is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request.

4. Exceptions to 2 and 3:

a. the Board has amended or revoked the opinion before the initiation of the proceeding, has notified the person making or covered by the request of this action, and has allowed at least 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion;

b. the request has omitted or misstated material facts; or

c. the person making or covered by the request has not acted in good faith in reliance on the opinion.

C. CONFIDENTIALITY

1. The request for an opinion and the opinion are nonpublic data.

2. The Board may publish the opinion or a summary of the opinion, not including the name of the requester, the name of the person covered by the request, or any other information that might identify the requester.

3. The identity of the requester may be included in the opinion or summary if the person consents to the inclusion.

D. APPLICATION OF ADVISORY OPINION

Effective July 1, 1995, the Board must adopt as rules under Chapter 14 principles of law or policies announced in an advisory opinion if the Board intends to apply the principles or policies more broadly than to the individual or association to whom an opinion is issued.

Board advisory opinions are annotated in Minnesota Statutes Annotated. Compilations of advisory opinions issued to date are available from the Board office.

II. SCOPE OF THE ETHICS IN GOVERNMENT ACT, MINN. STAT. CH. 10A

Adopted in 1974, the Act was amended in 1978 as a result of the court decision in Bang v. Chase 331 F. Supp. 758 (1977). Further amendments became effective in the 1982 election as a result of the adoption of a campaign finance amendment to the Minnesota Constitution in 1980. Enacted in 1990 major changes in the campaign finance, public subsidy, lobbyist, and economic interest programs became effective in 1990 (campaign finance, public subsidy) and in 1991 (lobbyist and economic interest disclosure). Additional amendments in 1993 lowered contribution limits for candidates, provided for an aggregation of contributions from "special interests", and imposed contribution limits on political committees (other than party units) and political funds for the first time. Legislation enacted in 1994 prohibits, with few exceptions, gifts from a lobbyist or a lobbyist principal to public officials.

The Act created a six-member Ethical Practices Board responsible for the administration, interpretation, and civil enforcement of laws and rules which

- require public disclosure of the source and use of campaign money to influence the nomination or election of state candidates and to promote

or defeat state ballot questions (Minn. Stat. §§ 10A.01, subds. 5, 23, 10A.20);

- set limits on how much a candidate for state executive or legislative office may accept in contributions (Minn. Stat. §§ 10A.25, 10A.255, 10A.30 - 10A.325);

- provide public subsidy for state executive and legislative office candidates who agree to abide by spending limits and for the state committee of a major political party (Minn. Stat. §§ 10A.25, 10A.255, 10A.30 - 10A.34);

- require public disclosure of disbursements by lobbyists and principals to influence legislative, administrative, and metropolitan governmental unit action (Minn. Stat. §§ 10A.01, subds. 11, 18, 25, 26, 27, 28, 10A.03, 10A.04);

- require public disclosure of public and local officials' economic interests, potential conflicts of interest (Minn. Stat. § 10A.07, 10A.09) and representation of clients by public officials (Minn. Stat. § 10A.08);

- provide various civil and criminal penalties for violation of the law, including Minn. Stat. §§ 10A.02, 10A.04, 10A.06, 10A.065, 10A.09 - 10A.12, 10A.14 to 10A.18, 10A.20, 10A.22, 10A.23, 10A.28, 10A.29, 10A.322, 10A.34

III. NATURE AND SCOPE OF ACTIVITIES OF THE ETHICAL PRACTICES BOARD

A. **Mission.** At its meeting of July, 1993, the Board reaffirmed its goals of more than nineteen years as expressed in the following mission statement:

To promote public confidence in state government decision making through development and administration of disclosure, public financing, and enforcement programs which will ensure public access to information filed with the Board.

B. **Appointment.** Vacancies on the Ethical Practices Board are announced through the open appointments process under Minn. Stat. § 15.0597. The Governor appoints all six members, subject to confirmation by a 3/5 vote of the Senate and the House, acting separately. No more than

three members may support the same political party. Beginning July 1, 1991, no registered lobbyist may be appointed to the Board. Minn. Stat. § 10A.02, subds. 1 and 2.

1. Board members serve four-year, staggered terms. Each year the Board elects its officers for rotating, one-year terms. Minn. Stat. § 10A.02, subd. 4.

2. The Act requires a concurring vote of four members to decide any matter before the Board. Minn. Stat. § 10A.02, subd. 3.

3. Board employs an executive director and other staff in the unclassified state service, subject to appropriation. Current positions: 8.5. Minn. Stat. § 10A.02, subd. 5.

C. **Scope.** In conjunction with the public disclosure programs administered by the Board, the following provisions of the Act apply:

1. Nothing in the Act shall abridge the right of an association to communicate with its members. Minn. Stat. § 10A.265.

2. An individual must amend a filed document within ten days after the date the individual became aware of the inaccuracy. Minn. Stat. § 10A.23.

3. Violations of the contribution and expenditure limits are subject to civil fines of up to four times the amount which exceeded the limit. Minn. Stat. § 10A.28.

4. Attempts to circumvent the provisions of Minn. Stat. Chapter 10A by redirecting funds through, or contributing funds on behalf of, another individual or association are prohibited. Minn. Stat. § 10A.29.

5. Information copied from reports or statements filed with the Board must not be sold or utilized by any individual or association for any commercial purpose. "Commercial purpose" does not include purposes related to elections, political activities, or law enforcement. Penalty: up to $1,000 civil fine; misdemeanor. Minn. Stat. § 10A.02, subd. 8(e).

6. Late filing fees may accrue for late filing of a report or statement or for failure to file a timely amendment to a filed report or statement, or both. The fees accrue at $5 per business day

(maximum: $100), except for campaign finance statements or reports due just before a primary or general election, when fees accrue at $50 per business day (maximum: $500). The Board may waive all or part of a late fee, upon receipt of a written explanation. Minn. Stat. §§ 10A.03, 10A.04, 10A.08, 10A.09, 10A.14, 10A.20. Minn. Rules pts. 4500.2600, 4500.2700, 4505.0300, 4505.0400, 4510.1200, 4510.1300.

D. **Information.** The Board prescribes and receives registrations and reports under each program it administers; makes rules under Minn. Stat. Ch. 14; maintains a cumulative index of documents filed and not filed; makes annual reports about its actions, salary and duties of its employees, and fiscal responsibilities to the Governor, the Legislature, and the public; publishes summary information from filed documents; distributes information to individuals and associations whose activities are required to be disclosed under the law; preserves records; provides for public inspection and copying of filed documents; files copies of legislative candidate reports and statements with the county auditor of each county in the legislative district. Minn. Stat. §§ 10A.02, 10A.21.

E. **Audits and Investigations.** The Board has power to conduct audits and investigations; inspect all filed documents for compliance with the Act; subpoena witnesses and information; impose civil fines; initiate civil proceedings for relief. Minn. Stat. §§ 10A.02, subds. 8, 9, 10, and 11, 10A.22, 10A.28, 10A.34.

F. **Complaints.** An individual or association may file a complaint with the Board concerning suspected violations of the Act. All correspondence and hearings concerning a complaint are confidential until the Board issues a public finding. Minn. Stat. § 10A.02, subd. 11. Minn. Rules Ch. 4525.

Copies of Minnesota Statutes, Chapter 10A, and Minnesota Rules Chapters 4500-4525 are available for purchase from the Minnesota Bookstore. The telephone numbers for the Minnesota Bookstore are 612/297-3000 or 800/657-3757.

CHAPTER No. 377
H.F. No. 1863

AN ACT

relating to ethics in government; requiring lobbyists to report gifts of $5 or more; prohibiting gifts by lobbyists and interested persons to certain officials under certain conditions; regulating certain solicitations by political party units; revising procedure for advisory opinions; amending Minnesota Statutes 1992, sections 10A.02, subdivision 12; 10A.04, subdivision 4; and 10A.065, by adding a subdivision; Minnesota Statutes 1993 Supplement, section 10A.065, subdivision 5; proposing coding for new law in Minnesota Statutes, chapters 10A; and 471.

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

Section 1. Minnesota Statutes 1992, section 10A.02, subdivision 12, is amended to read:

Subd. 12. [ADVISORY OPINIONS.] (a) The board may issue and publish advisory opinions on the requirements of this chapter based upon real or hypothetical situations. An application for an advisory opinion may be made only by an individual or association who wishes to use the opinion to guide the individual's or the association's own conduct. The board shall issue written opinions on all such questions submitted to it within 30 days after receipt of written application, unless a majority of the board agrees to extend the time limit. An

(b) A written advisory opinion ~~shall lapse the day the regular session of the legislature adjourns in the second year following the date of the opinion.~~ issued by the board is binding on the board in any subsequent board proceeding concerning the person making or covered by the request and is a

defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request unless:

(1) the board has amended or revoked the opinion before the initiation of the board or judicial proceeding, has notified the person making or covered by the request of its action, and has allowed at least 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion;

(2) the request has omitted or misstated material facts; or

(3) the person making or covered by the request has not acted in good faith in reliance on the opinion.

(c) A request for an opinion and the opinion itself are nonpublic data. The board, however, may publish an opinion or a summary of an opinion, but may not include in the publication the name of the requester, the name of a person covered by a request from an agency or political subdivision, or any other information that might identify the requester unless the person consents to the inclusion.

Sec. 2. Minnesota Statutes 1992, section 10A.04, subdivision 4, is amended to read:

Subd. 4. (a) The report shall include such information as the board may require from the registration form and the information required by this subdivision for the reporting period.

(b) Each lobbyist shall report the lobbyist's total disbursements on lobbying, separately listing lobbying to influence legislative action, lobbying to influence administrative action, and lobbying to influence the official actions of a metropolitan governmental unit, and a breakdown of disbursements for each of those kinds of lobbying into categories specified by the board, including but not limited to the cost of publication and distribution of each publication used in lobbying; other printing; media, including the cost of production; postage; travel; fees, including allowances; entertainment; telephone and telegraph; and other expenses.

Minneapolis, MN 55430
612-574-7800

RECEIVED
ETHICAL PRACTICES BD.

HealthSpan™

Mary Ann McCoy
Minnesota Ethical Practices Board
First Floor South, Centennial Office Building
658 Cedar Street
St. Paul, MN 55155-1603

July 11, 1994

Dear Ms. McCoy:

I am writing to request an advisory opinion from the Ethical Practices Board.

This is the second year my organization is planning an event called Healthy Communities Leadership Forum to be held August 26-28 in Alexandria, MN at the Radisson Arrowwood resort. The forum will bring together teams of civic leaders from fifteen different communities around the state. The teams meet throughout the weekend discussing the needs and assets of their specific communities and solutions to make their communities healthier. Skill building workshops will be held for team members to attend. All team members will be answering questions, providing advice, consultation and information. This is not a passive weekend for team members, they will actively participate in community problem solving. The forum is modeled after the National Civic League's Healthy Communities initiative which has evolved in many other states. We are proud to be part of the healthy communities movement here in Minnesota.

Last year, each community's hospital staff identified who they perceived as the local opinion leaders and stakeholders in their community and invited these people to join the team. Team memberships have continued to evolve, adding new leaders while some have dropped out. The teams currently are made up of clergy, city council members, mayors, legislators, health care providers, community health service agency staff, large and small employers, human service agency staff, county commissioners, and county administrators.

HealthSpan is prepared to pay all forum expenses--meals and lodging--for all team members this year (as we did last year) as one way of contributing to the fifteen communities where we provide health care services. It is efficient to pull together the teams all at once so they can learn lessons from each other and so we can offer group skill building workshops. I sincerely hope Chapter 10A will not interfere with this healthy communities movement by not allowing us to pay expenses for some or all team members who may otherwise not be able to afford it.

I would appreciate a response from the Ethical Practices Board as soon as possible. If you need a detailed agenda of our forum, or have any other questions, please call me at 574-7617.

Thank-you for your consideration.

Sincerely,

Susan Mitchell

Susan Mitchell
Policy Development Director

ETHICAL PRACTICES BOARD
First Floor South, Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

Issued to:
Susan Mitchell, Policy Development Director
HealthSpan Health Systems Corporation
2810 Fifty-Seventh Avenue North
Minneapolis, MN 55430

RE: Gifts to Officials

ADVISORY OPINION #155

SUMMARY

155. HealthSpan, a lobbyist principal, may not pay for expenses for team members who are "officials" as defined in Minn. Stat. § 10A.071, subds. 1 (c) and who attend a forum held by HealthSpan. A lobbyist principal is prohibited from giving a gift to an official that is given and received without the principal receiving consideration of equal or greater value in return. Minn. Stat. § 10A.071, subds. 1 and 2. The application of a parallel gift prohibition in Minn. Stat. § 471.895 for local officials and interested persons should be considered in connection with payment of expenses for local officials who attend the proposed forum. Laws of 1994, Ch. 377, secs. 5 and 6.

FACTS

As policy development director for HealthSpan Health Systems Corporation (HealthSpan), you ask the Ethical Practices Board for an advisory opinion based upon your statement of the following facts:

1. For the second year HealthSpan is planning an event called Healthy Communities Leadership Forum to be held August 26 - 28 in Alexandria, Minn., at the Radisson Arrowwood resort to bring together teams of civic leaders from fifteen different communities around the state where HealthSpan provides health care services.

2. The teams meet throughout the weekend discussing the needs and assets of their specific communities and solutions to make their communities healthier.

3. Skill building workshops will be held for team members to attend, and all team members will be answering questions, providing advice, consultation, and information as they actively participate in community problem solving.

4. The teams currently are made up of clergy, city council members, mayors,

legislators, health care providers, community health service agency staff, large and small employers, human service agency staff, county commissioners, and county administrators.

5. HealthSpan is prepared to pay all forum expenses -- meals and lodging -- for all team members this year as last year.

QUESTION

Can HealthSpan pay all forum expenses for team members who are officials under Minn. Stat. § 10A.071, subds. 1 and 2?

OPINION

No. HealthSpan may not pay for expenses for team members who are "officials" as defined in Minn. Stat. § 10A.071, subds. 1 (c). HealthSpan, a lobbyist principal, is prohibited from giving a gift to an official that is given and received without HealthSpan receiving consideration of equal or greater value in return. Minn. Stat. § 10A.071, subds. 1 and 2 (Laws of 1994, Ch. 377, sec. 5).

The gift to officials you describe is prohibited under Minnesota Statutes, Ch. 10A, the only statute governing lobbyists and lobbyist principals for which the Ethical Practices Board has advisory opinion authority. You should be aware that there is a parallel gift prohibition in Minn. Stat. § 471.895 that applies to local officials and interested persons, and you should consider the application of that statute to your proposed activities. See Minn. Stat. § 471.895 (Laws of 1994, Ch. 377, sec. 6), below.

Issued: 8-12-1994

John L. Holahan

John L. Holahan, Jr., Chair
Ethical Practices Board

PERTINENT STATUTES

Minn. Stat. § 10A.01 DEFINITIONS provides:

Subd. 11. (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration, or authorized to spend money by another individual, association, political subdivision, or public higher education system, who spends more

than five hours in any month or more than $250, not including the individual's own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative action or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

. . .

Subd. 18. "Public official" means any:

(a) member of the legislature;

(b) constitutional officer in the executive branch and the officer's chief administrative deputy;

(c) member, chief administrative officer or deputy chief administrative officer of a state board or commission which has at least one of the following powers: (i) the power to adopt, amend or repeal rules, or (ii) the power to adjudicate contested cases or appeals;

(d) commissioner, deputy commissioner, or assistant commissioner of any state department as designated pursuant to section 15.01;

(e) individual employed in the executive branch who is authorized to adopt, amend or repeal rules or adjudicate contested cases;

(f) executive director of the state board of investment;

(g) executive director of the Indian affairs intertribal board;

(h) commissioner of the iron range resources and rehabilitation board;

(i) commissioner of mediation services;

(j) deputy of any official listed in clauses (e) to (i);

(k) judge of the workers' compensation court of appeals;

(l) administrative law judge or compensation judge in the state office of administrative hearings or referee in the department of jobs and training;

(m) solicitor general or deputy, assistant or special assistant attorney general;

(n) individual employed by the legislature as secretary of the senate, chief clerk of the house, revisor of statutes, or researcher, legislative analyst, or attorney in the office of senate counsel and research or house research;

(o) member or chief administrative officer of the metropolitan council, regional transit board, metropolitan transit commission, metropolitan waste control commission, metropolitan parks and open spaces commission, metropolitan airports commission or metropolitan sports facilities commission;

(p) the director of the racing commission, the director of the gambling control board, the director of the state lottery, and the deputy director of the state lottery;

(q) director or the division of gambling enforcement in the department of public safety;

(r) member or executive director of the higher education facilities authority; or

(s) member of the board of directors or president of the Minnesota world trade center corporation.

Subd. 25. **Local official.** "Local official" means a person who holds elective office in a political subdivision or who is appointed to or employed in a public position in a political subdivision in which the person has authority to make, to recommend, or to vote on as a member of the governing body, major decisions regarding the expenditure or investment of

public money.

Subd. 26. **Metropolitan governmental unit.** "Metropolitan governmental unit" means any of the seven counties in the metropolitan area as defined in section 473.121, subdivision 2, a regional railroad authority established by one or more of those counties under section 398A.03, a city with a population of over 50,000 located in the seven-county metropolitan area, the metropolitan council, a metropolitan agency as defined in section 473.121, subdivision 5a, the Minnesota state high school league, and Minnesota Technology, Inc.

Subd. 27. **Political subdivision.** "Political subdivision" means the metropolitan council, a metropolitan agency as defined in section 473.121, subdivision 5a, a municipality as defined in section 471.345, subdivision 1, the Minnesota state high school league, and Minnesota Technology, Inc.

Subd. 28. **Principal.** "Principal" means an individual or association that:

(1) spends more than $500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or

(2) is not included in clause (1) and spends a total of at least $50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of governmental units, as described in section 10A.04, subdivision 6.

Laws of 1994, Ch. 377, Sec. 5, created Minn. Stat. § 10A.071 CERTAIN GIFTS BY LOBBYISTS AND PRINCIPALS PROHIBITED which provides:

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Gift" means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.

(c) "Official" means a public official, an employee of the legislature, or a local official of a metropolitan governmental unit.

Subd. 2. **Prohibition.** A lobbyist or principal may not give a gift or request another to give a gift to an official. An official may not accept a gift from a lobbyist or principal.

Subd. 3. **Exceptions.** (a) The prohibitions in this sections do not apply if the gift is:

(1) a contribution as defined in section 10A.01, subdivision 7;

(2) services to assist an official in the performance of official duties, including by not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;

(3) services of insignificant monetary value;

(4) a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;

(5) a trinket or memento of insignificant value;

(6) informational material of unexceptional value; or

(7) food or a beverage given at a reception, meal, or meeting away from the recipient place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program.

(b) The prohibitions in this section do not apply if the gift is given:

(1) because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group; or

(2) by a lobbyist or principal who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.

Laws of 1994, Ch. 377, Sec. 5, created Minn. Stat. § 471.895 CERTAIN GIFTS BY INTERESTED PERSONS PROHIBITED which provides:

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Gift" has the meaning given it in section 10A.071, subdivision 1.

(c) "Interested person" means a person or a representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make.

(d) "Local official" means an elected or appointed official of a county or city or of any agency, authority, or instrumentality of a county or city.

Subd. 2. **Prohibition.** An interested person may not give a gift or request another to give a gift to a local official. A local official may not accept a gift from an interested person.

Subd. 3. **Exceptions.** (a) The prohibitions in this sections do not apply if the gift is:

(1) a contribution as defined in section 211A.01, subdivision 5;

(2) services to assist an official in the performance of official duties, including by not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;

(3) services of insignificant monetary value;

(4) a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;

(5) a trinket or memento of insignificant value;

(6) informational material of unexceptional value; or

(7) food or a beverage given at a reception, meal, or meeting away from the recipient place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program.

(b) The prohibitions in this section do not apply if the gift is given:

(1) because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group; or

(2) by an interested person who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.

ETHICAL PRACTICES BOARD
First Floor South, Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

THIS ADVISORY OPINION IS NONPUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12 (b) (1994 Minn. Laws, ch. 377, sec. 1)

RE: Gifts to Officials

ADVISORY OPINION #159

SUMMARY

159. Officials are prohibited from accepting a gift from lobbyists or principals unless the givers bill the officials and the officials make payment to the lobbyists or officials of equal or greater value at the same time the gift is received. The only exception to the gift prohibition that relates to food and beverages is found in Minn. Stat. § 10A.071, subd. 3(a)(7), which excepts from the prohibitions of the statute "food or beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program."

FACTS

As a public official as defined in Minn. Stat. § 10A.01, subd. 18, and, therefore, an official as defined in Minn. Stat. § 10A.071, subd. 1 (c), you ask the Ethical Practices Board about implications and practicality of the new prohibition on accepting gifts from lobbyists and principals enacted in the 1994 legislative session (Laws of 1994, Ch. 377, sec. 5).

You ask the Board the following:

QUESTION ONE

If a lobbyist or principal provides a meal to a group of persons, one of whom is an official who is not permitted to accept the gift, and the restaurant or facility is not able to provide a separate check, is it permissible for the lobbyist or principal to submit a bill to the official, and for the official, at that point, to reimburse the lobbyist or principal? Must the bill be given and paid contemporaneously or will exchange by mail suffice?

OPINION

Yes. The bill must be submitted by the lobbyist or principal contemporaneously and must be paid by the official contemporaneously. Pursuant to Minn. Stat. § 10A.071, officials are

prohibited from accepting gifts from lobbyist or lobbyist principals, subject to certain exceptions defined in the statute. The term "gift" is broadly defined by Minn. Stat. § 10A.071, subd. 1(b), and includes money and a service that is given and received without the giver receiving consideration of equal or greater value in return. It is the opinion of the Board that an official must adopt a pay-as-you-go procedure when accepting a gift from a lobbyist or principal; therefore, the billing for a gift and the payment for the gift must be made at the time when the gift is accepted by the public official.

QUESTION TWO

A "gift" is apparently only considered a "gift" under the law when the giver does not receive consideration of equal or greater value in return. How soon after a lobbyist or principal provides something of value to an official must the official provide something of equal or greater value to the lobbyist or principal for the item provided and accepted not to be considered a gifts? The same day? Month? Year? Must there be a formal agreement at the time the lobbyist or principal provides the thing of value to the official that the lobbyist or principal will receive something of equal or greater value in return? E. g., if a principal takes on official fishing on Monday, and the official takes the principal fishing on Saturday.

OPINION

See response to Question One, above.

QUESTION THREE

If a lobbyist or principal provides a hospitality suite at a conference or convention which is open to all members of a particular organization, and a majority of those members are **not** Minnesota officials, may an official receive food and beverage from that hospitality suite since an equivalent gift is being given to other members of the organization? Does it matter if the conference is not being conducted in Minnesota?

OPINION

No. Pursuant to Minn. Stat. § 10A.071, officials are prohibited from accepting gifts from lobbyist or lobbyist principals, subject to certain exceptions defined in the statute. The term "gift" is broadly defined by Minn. Stat. § 10A.071, subd. 1(b), and includes money and a service that is given and received without the giver receiving consideration of equal or greater value in return. The only exception to the gift prohibition that relates to food and beverages is found in Minn. Stat. § 10A.071, subd. 3(a)(7), which excepts from the prohibitions of the statute "food or beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program." That exception would not apply to the facts you have described regardless of where the conference is conducted.

QUESTION FOUR

If, because of an official's membership in a group (organization), a majority of whose members are **not** Minnesota officials, the official receives an invitation to dinner from a lobbyist or principal, and the lobbyist or principal has also invited a number of other members of that group (organization) who are not Minnesota officials, may the Minnesota official accept the invitation and receive food and beverage from a lobbyist or principal without reimbursing the lobbyist or principal for the cost of the meal? Is the result different if the offer is accepted only by Minnesota officials, or if the resulting attenders consist of a majority of Minnesota officials, or if the resulting attenders contain a guest list with a minority of Minnesota officials? How is a "group" defined? Is it synonymous with organization?

OPINION

No. See response to Question Three, above.

QUESTION FIVE

Is it permissible for a lobbyist or principal to provide a meal or give a gift to a spouse or significant other of an official? Does it make a difference if the official is also in attendance at the meal (although the official pays for his or her own meal)?

OPINION

Gifts to spouses of officials or gifts to significant others of officials as defined in Minn. Stat. § 10A.071, subd. 1(c), from lobbyists or principals are not addressed in Minn. Stat. Ch. 10A.

Issued: 8-22-1994

John L. Holahan, Jr., Chair
Ethical Practices Board

PERTINENT STATUTES

Minn. Stat. § 10A.01 DEFINITIONS provides:

. . .

Subd. 11. (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration, or authorized to spend money by another individual, association, political subdivision, or public higher education system, who spends more than five hours in any month or more than $250, not including the individual's own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative action or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

. . .

Subd. 18. "Public official" means any:

(a) member of the legislature;

(b) constitutional officer in the executive branch and the officer's chief administrative deputy;

(c) member, chief administrative officer or deputy chief administrative officer of a state board or commission which has at least one of the following powers: (i) the power to adopt, amend or repeal rules, or (ii) the power to adjudicate contested cases or appeals;

(d) commissioner, deputy commissioner, or assistant commissioner of any state department as designated pursuant to section 15.01;

(e) individual employed in the executive branch who is authorized to adopt, amend or repeal rules or adjudicate contested cases;

(f) executive director of the state board of investment;

(g) executive director of the Indian affairs intertribal board;

(h) commissioner of the iron range resources and rehabilitation board;

(i) commissioner of mediation services;

(j) deputy of any official listed in clauses (e) to (i);

(k) judge of the workers' compensation court of appeals;

(l) administrative law judge or compensation judge in the state office of administrative hearings or referee in the department of jobs and training;

(m) solicitor general or deputy, assistant or special assistant attorney general;

(n) individual employed by the legislature as secretary of the senate, chief clerk of the house, revisor of statutes, or researcher, legislative analyst, or attorney in the office of senate counsel and research or house research;

(o) member or chief administrative officer of the metropolitan council, regional transit board, metropolitan transit commission, metropolitan waste control commission, metropolitan parks and open spaces commission, metropolitan airports commission or metropolitan sports facilities commission;

(p) the director of the racing commission, the director of the gambling control board, the director of the state lottery, and the deputy director of the state lottery;

(q) director or the division of gambling enforcement in the department of public safety;

(r) member or executive director of the higher education facilities authority; or

(s) member of the board of directors or president of the Minnesota world trade center corporation.

. . .

Subd. 28. **Principal**. "Principal" means an individual or association that:

II. Acceptance of Gifts by State Employees

A. Minn. Stat. §15.43 - contracts and purchase orders

Minn. Stat. §15.43 (attached) prohibits state employees from having any direct or indirect financial interest in any contract or purchase orders, and from accepting, directly or indirectly from any person, firm or corporation to which a contract has been or may be awarded, a gift, money or anything of value other than items of nominal value.

B. Minn. Stat. §43A.38 - state employee code of ethics

Employees in the executive branch cannot directly or indirectly receive or agree to receive any payment of expense, compensation, gift, reward, gratuity, favor service or promise of future employment or other future benefit from any source. There are few exceptions: gifts of nominal value which may be accepted under Minn. Stat. §15.43, plaques or similar mementos, payment or reimbursement for travel or meals not reimbursed by the state and approved in advance by the appointing authority as part of the work assignment, honoraria, and tips by employees in the food and room cleaning services.

Where there are conflicting provisions in Chapter 10A, the provisions of Chapter 10A shall apply.

C. Minn. Stat. §43A.49 - prohibited acts and penalties

An employee who violates Minn. Stat. §43A.38 is subject to disciplinary action and action pursuant to Chapter 609 (criminal sanctions).

III. Public Officers, Interest in Contracts

A. Minn. Stat. §471.87

Minn. Stat. §471.87 prohibits an official who is authorized to take part in any manner in any sale, lease or contract from having a personal financial interest in the sale lease or contract or personally benefiting therefrom. Violation of this provision is a misdemeanor. While this statute is included in the chapter on municipalities, it arguably applies to all public officials.

B. Minn. Stat. §471.88, Exceptions

There are 16 exceptions to Minn. Stat. §471.87 which address certain types of contracts and other activities in which an interest by the official is not prohibited.

IV. Other Provisions

A. Minn. Stat. §412.311 - City officials, contracts

B. Minn. Stat. §382.18 - County officials, contracts

C. Minn. Stat. §469.113 - Area redevelopment agencies

D. Minn. Stat. §349A.11 - Lottery officials

E. Minn. Stat. §317A.257 - Nonprofit Corporations

F. Executive Order 91-1: Code of Ethics

V. Construction of Laws

A. Minn. Stat. §645.16 - Legislative Intent

B. Minn. Stat. §645.26 - Irreconcilable Provisions

Mary Jo Murray, Assistant Attorney General
Minnesota Attorney General's Office Seminar
September 19, 1994

Sec. 5. [10A.071] CERTAIN GIFTS BY LOBBYISTS AND PRINCIPALS PROHIBITED.

Subdivision 1. DEFINITIONS. (a) The definitions in this subdivision apply to this section.

(b) "Gift" means money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.

(c) "Official" means a public official, an employee of the legislature, or a local official of a metropolitan governmental unit.

Subd. 2. PROHIBITION. A lobbyist or principal may not give a gift or request another to give a gift to an official. An official may not accept a gift from a lobbyist or principal.

Subd. 3. EXCEPTIONS. (a) The prohibitions in this section do not apply if the gift is:

(1) a contribution as defined in section 10A.01, subdivision 7;

(2) services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;

(3) services of insignificant monetary value;

(4) a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;

(5) a trinket or memento of insignificant value;

(6) informational material of unexceptional value; or

(7) food or a beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program.

(b) The prohibitions in this section do not apply if the gift is given:

(1) because of the recipient's membership in a group, a majority of whose members are not officials, and an equivalent gift is given to the other members of the group; or

(2) by a lobbyist or principal who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.

Sec. 6. [471.895] CERTAIN GIFTS BY INTERESTED PERSONS PROHIBITED.

Subdivision 1. DEFINITIONS. (a) The definitions in this subdivision apply to this section.

(b) "Gift" has the meaning given it in section 10A.071, subdivision 1.

(c) "Interested person" means a person or a representative of a person or association that has a direct financial interest in a decision that a local official is authorized to make.

(d) "Local official" means an elected or appointed official of a county or city or of an agency, authority, or instrumentality of a county or city.

Subd. 2. PROHIBITION. An interested person may not give a gift or request another to give a gift to a local official. A local official may not accept a gift from an interested person.

Subd. 3. EXCEPTIONS. (a) The prohibitions in this section do not apply if the gift is:

(1) a contribution as defined in section 211A.01, subdivision 5;

(2) services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;

(3) services of insignificant monetary value;

(4) a plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause;

(5) a trinket or memento of insignificant value;

(6) informational material of unexceptional value; or

(7) food or a beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program.

(b) The prohibitions in this section do not apply if the gift is given:

(1) because of the recipient's membership in a group, a majority of whose members are not local officials, and an equivalent gift is given to the other members of the group; or

(2) by an interested person who is a member of the family of the recipient, unless the gift is given on behalf of someone who is not a member of that family.

Presented to the governor March 18, 1994

Signed by the governor March 22, 1994, 11:41 a.m.

Subd. 11. (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration, or authorized to spend money by another individual, association, political subdivision, or public higher education system, who spends more than five hours in any month or more than $250, not including the individual's own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than $250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

(b) "Lobbyist" does not include:

(1) a public official;

(2) an employee of the state, including an employee of any of the public higher education systems;

(3) an elected local official;

(4) a nonelected local official or an employee of a political subdivision acting in an official capacity, unless the nonelected official or employee of a political subdivision spends more than 50 hours in any month attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit other than the political subdivision employing the official or employee, by communicating or urging others to communicate with public or local officials, including time spent monitoring legislative or administrative action, or the official action of a metropolitan governmental unit, and related research, analysis, and compilation and dissemination of information relating to legislative or administrative policy in this state, or to the policies of metropolitan governmental units;

(5) a party or the party's representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(6) an individual while engaged in selling goods or services to be paid for by public funds;

(7) a news medium or its employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(8) a paid expert witness whose testimony is requested by the body before which the witness is appearing, but only to the extent of preparing or delivering testimony;

(9) a stockholder of a family farm corporation as defined in section 500.24, subdivision 2, who does not spend over $250, excluding the stockholder's own travel expenses, in any year in communicating with public officials; or

(10) a party or the party's representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Subd. 18. "Public official" means any:

(a) member of the legislature;

(b) constitutional officer in the executive branch and the officer's chief administrative deputy;

(c) member, chief administrative officer or deputy chief administrative officer of a state board or commission which has at least one of the following powers: (i) the power to adopt, amend or repeal rules, or (ii) the power to adjudicate contested cases or appeals;

(d) commissioner, deputy commissioner, or assistant commissioner of any state department as designated pursuant to section 15.01;

(e) individual employed in the executive branch who is authorized to adopt, amend or repeal rules or adjudicate contested cases;

(f) executive director of the state board of investment;

(g) executive director of the Indian affairs intertribal board;

(h) commissioner of the iron range resources and rehabilitation board;

(i) commissioner of mediation services;

(j) deputy of any official listed in clauses (e) to (i);

(k) judge of the workers' compensation court of appeals;

(l) administrative law judge or compensation judge in the state office of administrative hearings or referee in the department of jobs and training;

(m) solicitor general or deputy, assistant or special assistant attorney general;

(n) individual employed by the legislature as secretary of the senate, legislative auditor, chief clerk of the house, revisor of statutes, or researcher, legislative analyst, or attorney in the office of senate counsel and research or house research;

(o) member or chief administrative officer of the metropolitan council, regional transit board, metropolitan transit commission, metropolitan waste control commission, metropolitan parks and open spaces commission, metropolitan airports commission or metropolitan sports facilities commission;

(p) the director of the racing commission, the director of the gambling control board, the director of the state lottery, and the deputy director of the state lottery;

(q) director of the division of gambling enforcement in the department of public safety;

(r) member or executive director of the higher education facilities authority; or

(s) member of the board of directors or president of the Minnesota world trade center corporation.

Subd. 26. **Metropolitan governmental unit.** "Metropolitan governmental unit" means any of the seven counties in the metropolitan area as defined in section 473.121, subdivision 2, a regional railroad authority established by one or more of those counties under section 398A.03, a city with a population of over 50,000 located in the seven-county metropolitan area, the metropolitan council, a metropolitan agency as defined in section 473.121, subdivision 5a, the Minnesota state high school league, and the Greater Minnesota Corporation.

Subd. 28. **Principal.** "Principal" means an individual or association that:

(1) spends more than $500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist; or

(2) is not included in clause (1) and spends a total of at least $50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subdivision 6.

15.43. Acceptance of advantage by state employees; penalty

Subdivision 1. Financial interest of agents. No employee of the state or of the University of Minnesota in direct contact with suppliers or potential suppliers to the state or the university, or who may directly or indirectly influence a purchasing decision or contract by establishing specification, testing purchased products, evaluating contracted services, or otherwise has official involvement in the purchasing or contracting process may:

(1) Have any financial interest or have any personal beneficial interest directly or indirectly in contracts or purchase orders for goods or services used by, or purchased for resale or furnished to a department or agency of the state or the university; or

(2) Accept directly or indirectly from a person, firm, or corporation to which a contract or purchase order has been or may be, awarded, a rebate, gift, money, or anything of value other than items of nominal value. No such employee may further accept any promise, obligation or contract for future reward.

Subd. 2. Textbooks exempted. Textbooks authored by an employee of the state's education systems or of the University of Minnesota may be used as required course material upon receipt of written approval from the head of the department. Instructors in state institutions and at the university may accept free samples of textbooks and related teaching materials.

Subd. 3. Other exemptions. The commissioners of human services and corrections, and the chancellors of the state university and community college systems may by rule prescribe procedure for the acceptance of gifts from any person or organization, provided that such gifts are accepted by the commissioner or chancellor, or a designated representative of the commissioner or chancellor, and that such gifts are used solely for the direct benefit of patients, inmates or students under the jurisdiction of the accepting state officer.

Subd. 4. Penalties. A violation of this section is a misdemeanor.

15.435. Airline travel credit

(a) Whenever public funds are used to pay for airline travel by an elected official or public employee, any credits or other benefits issued by any airline must accrue to the benefit of the public body providing the funding. In the event the issuing airline will not honor a transfer or assignment of any credit or benefit, the individual passenger shall report receipt of the credit or benefit to the public body issuing the initial payment within 90 days of receipt.

(b) By July 1, 1993, the appropriate authorities in the executive, legislative, and judicial branches of the state and the governing body of each political subdivision shall develop and implement policies covering accrual of credits or other benefits issued by an airline whenever public funds are used to pay for airline travel by a public employee or an elected or appointed official. The policies must apply to all airline travel, regardless of where or how tickets are purchased. The policies must include procedures for reporting receipt of credits or other benefits.

Laws 1992, c. 592, § 20.

43A.38. Code of ethics for employees in the executive branch *

Subdivision 1. Definitions. For the purpose of this section the following definitions shall apply:

(a) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual or any other legal entity which engages either in nonprofit or profit making activities.

(b) "Confidential information" means any information obtained under government authority which has not become part of the body of public information and which, if released prematurely or in nonsummary form, may provide unfair economic advantage or adversely affect the competitive position of an individual or a business.

(c) "Private interest" means any interest, including but not limited to a financial interest, which pertains to a person or business whereby the person or business would gain a benefit, privilege, exemption or advantage from the action of a state agency or employee that is not available to the general public.

Subd. 2. Acceptance of gifts; favors. Employees in the executive branch in the course of or in relation to their official duties shall not directly or indirectly receive or agree to receive any payment of expense, compensation, gift, reward, gratuity, favor, service or promise of future employment or other future benefit from any source, except the state for any activity related to the duties of the employee unless otherwise provided by law. However, the acceptance of any of the following shall not be a violation of this subdivision:

(a) Gifts of nominal value or gifts or textbooks which may be accepted pursuant to section 15.43.

(b) Plaques or similar mementos recognizing individual services in a field of specialty or to a charitable cause.

(c) Payment of reimbursement expenses for travel or meals, not to exceed actual expenses incurred, which are not reimbursed by the state and which have been approved in advance by the appointing authority as part of the work assignment.

(d) Honoraria or expenses paid for papers, talks, demonstrations, or appearances made by employees on their own time for which they are not compensated by the state.

(e) Tips received by employees engaged in food service and room cleaning at restaurant and lodging facilities in Itasca State Park.

Subd. 3. Use of confidential information. An employee in the executive branch shall not use confidential information to further the employee's private interest, and shall not accept outside employment or involvement in a business or activity that will require the employee to disclose or use confidential information.

Subd. 4. Use of state property. An employee shall not use or allow the use of state time, supplies or state owned or leased property and equipment for the employee's private interests or any other use not in the interest of the state, except as provided by law.

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* For definitions of persons covered by Minn. Stat. Ch. 43A, see Minn. Stat. §§43A.02, 43A.07 (1992) and Minn. Stat. §43A.08 (Supp. 1993)

Subd. 5. Conflicts of interest. The following actions by an employee in the executive branch shall be deemed a conflict of interest and subject to procedures regarding resolution of the conflicts, section 43A.39 or disciplinary action as appropriate:

(a) use or attempted use of the employee's official position to secure benefits, privileges, exemptions or advantages for the employee or the employee's immediate family or an organization with which the employee is associated which are different from those available to the general public;

(b) acceptance of other employment or contractual relationship that will affect the employee's independence of judgment in the exercise of official duties;

(c) actions as an agent or attorney in any action or matter pending before the employing agency except in the proper discharge of official duties or on the employee's behalf; or

(d) the solicitation of a financial agreement for the employee or entity other than the state when the state is currently engaged in the provision of the services which are the subject of the agreement or where the state has expressed an intention to engage in competition for the provision of the services; unless the affected state agency waives this clause.

Subd. 6. Determination of conflicts of interest. When an employee believes the potential for a conflict of interest exists, it is the employee's duty to avoid the situation. A conflict of interest shall be deemed to exist when a review of the situation by the employee, the appointing authority or the commissioner determines any one of the following conditions to be present:

(a) the use for private gain or advantage of state time, facilities, equipment or supplies or badge, uniform, prestige or influence of state office or employment;

(b) receipt or acceptance by the employee of any money or other thing of value from anyone other than the state for the performance of an act which the employee would be required or expected to perform in the regular course or hours of state employment or as part of the duties as an employee;

(c) employment by a business which is subject to the direct or indirect control, inspection, review, audit or enforcement by the employee;

(d) the performance of an act in other than the employee's official capacity which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by the employee.

Subd. 7. Resolution of conflict of interest. If the employee, appointing authority or commissioner determine that a conflict of interest exists, the matter shall be assigned to another employee who does not have a conflict of interest. If it is not possible to assign the matter to an employee who does not have a conflict of interest, interested persons shall be notified of the conflict and the employee may proceed with the assignment.

Subd. 8. Precedence of chapter 10A. Where specific provisions of chapter 10A apply to employees and would conflict with this section, the provisions of chapter 10A shall apply.

Subd. 9. Limits. This section shall not be interpreted to apply to any activity which is protected by sections 179A.01 to 179A.25 and collective bargaining agreements and practices thereunder nor to prevent a current or former employee from accepting employment with a labor or employee organization representing employees.

Laws 1981, c. 210, § 38, eff. July 1, 1981. Amended by Laws 1982, c. 560, § 35, eff. June 30, 1982; Laws 1984, c. 462, § 27; Laws 1985, 1st Sp., c. 17, § 9, eff. June 29, 1985; Laws 1987, c. 128, § 1, eff. May 15, 1987.

43A.39. Compliance with law

Subdivision 1. Prohibited acts; penalties. All employees shall comply with and aid in all proper ways the enforcement of the provisions of this chapter. No employee or any other person shall intentionally:

(a) Make any false oral or written statement, mark, rating or report concerning any application, examination, certification or appointment made under provisions of this chapter or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter;

(b) Directly or indirectly, give, render, pay, offer, solicit, or accept any money, service or other valuable consideration for any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in obtaining, a position in the civil service;

(c) Defeat, deceive or obstruct any person in rights to examination, eligibility, certification or appointment under this chapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to appointment, advancement or retention in the classified service;

(d) Violate the provisions of section 43A.37 or 43A.38; or

(e) If in the classified service, engage in activities prohibited by section 43A.32.

Subd. 2. Noncompliance. Any employee who intentionally fails to comply with the provisions of chapter 43A shall be subject to disciplinary action and action pursuant to chapter 609. An appointing authority shall report in writing to the legislative auditor when there is probable cause to believe that a substantial violation has occurred. Any person convicted of a crime based on violations of this chapter shall be ineligible for appointment in the civil service for three years following conviction.

Subd. 3. Violations; position vacated. Intentional violation of section 43A.37 may be cause for disciplinary action and conviction of an employee in the classified service under section 43A.32 shall render the position vacant.

Laws 1981, c. 210, § 39, eff. July 1, 1981. Amended by Laws 1982, c. 560, § 36, eff. June 30, 1982.

43A.38. Code of ethics for employees in the executive branch

Notes of Decisions

1. Conflicts of interest

There was substantial evidentiary support for findings of Public Utilities Commission that a commissioner and officials of utility had a duty to disclose their negotiations concerning commissioner's possible future employment with utility, that commissioner had substantial conflict of interest in participating in commission deliberations and vote on utility's pending application for rate increase and that at least a portion of commission proceedings were tainted as a result, since commissioner's mere presence created obvious appearance of impropriety and undermined public confidence in system, even if there was no direct evidence that he unduly influenced Commission's decision. Petition of Northern States Power Co., 1987, 414 N.W.2d 383.

There was substantial evidentiary support for findings of Public Utilities Commission that conflict of interest, real or perceived, existed with regard to a commissioner's negotiations concerning future employment with officials of utility during pendency of utility's rate increase application before Commission, since commissioner's participation in rate increase decision could likely affect his direct or indirect financial interest in utility by which he soon would be employed. Petition of Northern States Power Co., 1987, 414 N.W.2d 383.

Proposed disposition of remand of utility's rate increase application to Public Utilities Commission with instructions to reconsider matter on the record was not an appropriate remedy for conflict of interest engendered by participation of a commissioner in rate increase proceedings while he was negotiating with officials of utility concerning his future employment, since proposed remedy failed to meet objection that great part of perceived impropriety or influence may have indelibly infected cumulative decisional process of other members of Commission. Petition of Northern States Power Co., 1987, 414 N.W.2d 383.

Public utilities commissioner's discussions of future employment with officials of utility, during pendency of utility's application for rate increase before Public Utilities Commission, could be characterized as proscribed ex parte communication, even though both commissioner and representatives of utility attested that at no time during employment negotiations did subject of pending rate decision arise. Petition of Northern States Power Co., 1987, 414 N.W.2d 383.

471.87 PUBLIC OFFICERS, INTEREST IN CONTRACT; PENALTY.

Except as authorized in section 471.88, a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom. Every public officer who violates this provision is guilty of a gross misdemeanor.

History: *1951 c 379 s 1; 1955 c 41 s 1; 1986 c 444*

471.88 MS 1957 [Repealed, 1961 c 651 s 2]

471.88 EXCEPTIONS.

Subdivision 1. The governing body of any port authority, seaway port authority, economic development authority, town, school district, hospital district, county, or city, by unanimous vote, may contract for goods or services with an interested officer of the governmental unit in any of the following cases.

Subd. 2. In the designation of a bank or savings association in which the officer is interested as an authorized depository for public funds and as a source of borrowing, no restriction shall apply to the deposit or borrowing of any funds or the designation of a depository by such authority or governmental unit in any bank or savings association in which a member of an authority or officer of a governmental unit shall have an interest if such deposited funds are protected in accordance with chapter 118; provided, however, that any member or officer having such an interest shall disclose that the member is a director or employee of the bank or savings association, which disclosure shall be entered upon the minutes of the authority or governmental unit, such disclosure shall be made when such bank or savings association is first designated as a depository or as a source of borrowing, or when such member or officer is elected whichever is later, and such disclosure shall serve as notice of such interest and need not be made with each successive transaction;

Subd. 3. The designation of an official newspaper, or publication of official matters therein, in which the officer is interested when it is the only newspaper complying with statutory or charter requirements relating to the designation or publication;

Subd. 4. A contract with a cooperative association of which the officer is a shareholder or stockholder but not an officer or manager;

Subd. 5. A contract for which competitive bids are not required by law.

Subd. 6. A contract with a volunteer fire department for the payment of compensation to its members or for the payment of retirement benefits to these members;

Subd. 7. A contract with a municipal band for the payment of compensation to its members;

Subd. 8. [Repealed, 1992 c 380 s 8]

Subd. 9. When a port authority commissioner or economic development authority commissioner is engaged in or employed by a firm engaged in the business of importing or exporting or general trade, it shall be lawful for the authority to do business with the commissioner or the commissioner's employer provided that in the fixing of any rates affecting shippers or users of the terminal facility, said commissioner shall not vote thereon.

Subd. 10. When a seaway port authority commissioner is engaged in or employed by a firm engaged in the business of importing or exporting or general trade, it shall be lawful for the authority to do business with the commissioner or the commissioner's employer provided that in the fixing of any rates affecting shippers or users of the terminal facility, said commissioner shall not take part in the determination of, except to testify, nor vote thereon.

Subd. 11. When a commissioner of any public housing, port authority, or economic development authority is employed by a bank engaged in making loans or performing trust services involving real or personal property affected by any plan or such housing or port authority, no restriction shall apply to any such loans made or trust services performed by said bank if the commissioner shall disclose the nature of such loans or trust services of which the commissioner has personal knowledge, which disclosure shall be entered upon the minutes of such authority.

Subd. 12. An officer of a government unit may contract with the unit to provide construction materials or services, or both, by sealed bid process if the unit has a population of 1,000 or less according to the last federal census. The officer may not vote on the question of the contract when it comes before the governing body for consideration.

Subd. 13. A public officer may rent space in a public facility at a rate commensurate with that paid by other members of the public.

Subd. 14. **Housing and redevelopment authority.** When a county or multicounty housing and redevelopment authority administers a loan or grant program for individual residential property owners within the geographical boundaries of a government unit by an agreement entered into by the government unit and the housing and redevelopment authority, an officer of the government unit may apply for a loan or grant from the housing and redevelopment authority. If an officer applies for a loan or grant, the officer must disclose as part of the official minutes of a public meeting of the governmental unit that the officer has applied for a loan or grant.

Subd. 15. **Franchise agreement.** When a home rule charter or statutory city and a utility enter into a franchise agreement or a contract for the provision of utility services to the city, a city council member who is an employee of the utility is not precluded from continuing to serve as a city council member during the term of the franchise agreement or contract if the council member abstains from voting on any official action relating to the franchise agreement or contract and discloses the member's reason for the abstention in the official minutes of the council meeting.

History: *1961 c 651 s 1; 1965 c 806 s 1-4; 1969 c 26 s 1; 1973 c 123 art 5 s 7; 1977 c 55 s 1-3; 1978 c 651 s 1; 1979 c 20 s 1; 1986 c 399 art 2 s 38-40; 1986 c 400 s 38-40; 1986 c 444; 1Sp1986 c 3 art 2 s 41; 1991 c 65 s 1,2; 1992 c 380 s 7; 1992 c 522 s 42,43*

471.881 EXCEPTIONS; APPLICATION.

The exceptions provided in section 471.88 shall apply notwithstanding the provisions of any other statute or city charter.

History: *1967 c 18 s 1*

[For text of subds 1 to 15, see M.S.1992]

Subd. 16. **School district.** Notwithstanding subdivision 5, a school board member may be newly employed or may continue to be employed by a school district as an employee only if there is a reasonable expectation at the beginning of the fiscal year or at the time the contract is entered into or extended that the amount to be earned by that officer under that contract or employment relationship will not exceed $5,000 in that fiscal year. Notwithstanding section 125.12 or 125.17 or other law, if the officer does not receive unanimous approval to continue in employment at a meeting at which all board members are present, that employment is immediately terminated and that officer has no further rights to employment while serving as a school board member in the district.

History: *1993 c 224 art 9 s 43*

645.16 LEGISLATIVE INTENT CONTROLS.

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.

When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:

(1) The occasion and necessity for the law;

(2) The circumstances under which it was enacted;

(3) The mischief to be remedied;

(4) The object to be attained;

(5) The former law, if any, including other laws upon the same or similar subjects;

(6) The consequences of a particular interpretation;

(7) The contemporaneous legislative history; and

(8) Legislative and administrative interpretations of the statute.

History: *1941 c 492 s 16*

645.26 IRRECONCILABLE PROVISIONS.

Subdivision 1. **Particular controls general.** When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail.

Subd. 2. **Clauses in the same law.** When, in the same law, several clauses are irreconcilable, the clause last in order of date or position shall prevail.

Subd. 3. **Laws passed at same session.** When the provisions of two or more laws passed during the same session of the legislature are irreconcilable, the law latest in date of final enactment, irrespective of its effective date, shall prevail from the time it becomes effective, except as otherwise provided in section 645.30.

Subd. 4. **Laws passed at different sessions.** When the provisions of two or more laws passed at different sessions of the legislature are irreconcilable, the law latest in date of final enactment shall prevail.

History: *1941 c 492 s 26*

STATE OF MINNESOTA

EXECUTIVE DEPARTMENT

EXECUTIVE ORDER 91-1
PROVIDING FOR ESTABLISHMENT OF A
CODE OF ETHICS FOR
APPOINTEES OF THE GOVERNOR

I, Arne H. Carlson, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, democratic government is founded on public confidence in the integrity of government officials; and

WHEREAS, the people of Minnesota have entrusted me, Lieutenant Governor Joanell Dyrstad and our appointees with their welfare, property, security, and safety for the next four years; and

WHEREAS, in return for their trust, Minnesotans have the right to demand that their public officials adhere to the highest ethical standards; and

WHEREAS, there is a need to clearly establish the ethical principles and standards by which all executive branch officials will be held accountable during our administration;

10. No gubernatorial appointee shall solicit a financial agreement for him/herself or an entity other than the state when the state is currently engaged in the provision of the services which are the subject of the agreement or where the state has expressed an intention to engage in competition for the provision of the services, unless the affected state agency and the governor waives this provision.

11. No commissioner shall engage in political fund-raising. The Commissioner of Human Rights, in recognition that human rights are a basic tenet of citizenship in the State of Minnesota, shall not be involved in any state political activity.

12. No gubernatorial appointee shall, directly or indirectly, use official authority or influence to compel any state employee to apply for membership in or become a member of any political organization, to pay or promise to pay any assessment, subscription, or contribution, or during hours of employment, to solicit or receive funds for political purposes or take part in any political activity.

13. Any gubernatorial appointee falsifying his or her expense report shall be immediately disciplined.

14. Any gubernatorial appointee guilty of discrimination, or sexual or other harassment shall be immediately disciplined.

I shall designate a person in the Governor's Office to respond to ethical concerns in the administration. That person shall ensure that immediate action is taken to resolve potential conflicts of interest and questions of misconduct. That person, with the assistance of the

commissioner of employee relations, shall advise gubernatorial appointees on ethical matters.

Executive Order 87-4 is rescinded.

Pursuant to Minnesota Statutes, Section 4.035, this Executive Order shall be effective fifteen (15) days after publication in the State Register and filing with the Secretary of State and shall remain in effect until rescinded by the proper authority or it expires in accordance with Minnesota Statutes 1990, Section 4.035, Subdivision 3.

IN TESTIMONY WHEREOF I have set my hand this 7th day of January, 1991.

ARNE H. CARLSON
Governor

Filed According to Law:

JOAN ANDERSON GROWE
Secretary of State

TO: BWSR Board Members

FROM: Wayne Zellmer & Doug Thomas

DATE: October 17, 1994

SUBJECT: 1995 Natural Resources Block Grants

As 1995 quickly approaches it is time again to begin discussing the $6.2 million Natural Resources Block Grants for counties. At this time we have enclosed a copy of last years application and agreement. For new members of the Board the block grant is a hybrid of three different grants from years past, including local water planning base grants, wetland conservation act administration grants, and DNR shoreland grants. The basic purpose of the grant is to assist counties financially to carry out and implement high priority actions in local water plans, administer the wetland conservation act, and the DNR shoreland program in the county. Many grants are split between county planning and zoning, county environmental services, and the soil and water conservation district.

At the October 26th board meeting we will be giving a general presentation about the block grant and where its headed in 1995. This discussion will be a precursor to the December meeting at which time staff will be asking the Board to authorize the program and allocations for 1995.

Some of the important issues that we need to resolve prior to the 1995 allocations are as follows.

** $900,000 is to be transferred from the MPCA to BWSR to allocate to counties that have accepted delegation of the feedlot program. Individual county allocations will calculated by a formula which was part of the legislation. Any remaining funds are to be allocated to counties on a competitive basis to counties to assist them in inventories, program adoption, etc.. We are currently working with MPCA staff to develop a proposed method for how this can be the most efficiently incorporated into the block grants.

** Funding for the wetland conservation act portion of the block grant will increase $200,000 from last year. We are presently determining ways to allocate this money to counties which can demonstrate that local expenditures exceeded their previous allocation.

** The Board will need to make a decision on funding for those counties which have yet to adopt the wetland conservation act. Options for consideration are, 1) not grant any of the block grant until adoption occurs, 2) Grant only the local water planning, DNR shoreland, and MPCA feedlot portions with no 1995 WCA portion, and 3) Grant the local water planning, DNR shoreland, and MPCA feedlot portion and pro-rate the WCA portion up until June of 1995 when we lose the money.

1994 BWSR
NATURAL RESOURCE BLOCK GRANT
APPLICATION

WATER PLANNING PORTION

LOCAL WATER PLANNING 1994 BASE GRANT

Base Grant Portion of Block Grant Requested $$_____

Designated Local Match (Levy), Base Grant Portion $$_____

Total $$_____

Lead Agency/Coordinator_____

Participating Agencies/Organizations Listed in Workplan_____

_____

_____

_____

_____

Does the county have an established water planning taskforce or committee? _____yes _____ no. If yes how many times a year does it meet? _____, and how many members are there? _____.

Summary of Plan Implementation_____

_____

_____

_____

_____

_____

_____

1993 Report

(attach a report of measurable activities and/or accomplishments along with the actual expenditures for 1993)

1994 Workplan & Budget

(attach a workplan and budget which identifies those activities, programs, or actions to be implemented in 1994 and their estimated costs)

Carryover of Base Grant Funds

1991 Base Grant
Did the County spend or encumber all of their 1991 base grant by January 15, 1993 ? _____yes _____no

If you answered no to the previous question list the amount of the 1991 base grant that was unspent or unencumbered on January 16, 1993? $$_____

You must return to the BWSR the amount identified on the previous line.

1992 Base Grant
Has the County spent or encumbered all of their 1992 base grant? _____yes _____no.

How much will remain unspent or encumbered on January 1, 1994? $$_____

!!NOTE - 1992 funds must be spent or encumbered by January 15, 1994.

1993 Base Grant
Has the County spent or encumbered all of their 1993 base grant? _____yes _____no.
If the answer was no, what will be carried forward to the 1994 workplan? $$_____.
!!NOTE - 1993 grants must be spent or encumbered by January 15, 1995

WETLAND CONSERVATION ACT (WCA) ADMINISTRATION PORTION

1993 Interim WCA Report

(those counties which received a wetland challenge grant in 1992 for implementing the interim program of the wetland conservation act must complete this section)

WCA Challenge Grant received $$_____ Designated local match $$_____

WCA Challenge Grant expenditures $$_____ Local match contributed $$_____

Will any of the WCA challenge grant be unspent or unencumbered on January 1, 1994 _____yes _____no. If yes how much will be unspent or unencumbered? $$_____

!!NOTE - Any funds that are unspent or unencumbered after December 31, 1993 must be returned to the BWSR.

WCA 1994 Administration

Amount Requested for WCA Portion of Block Grant $$_____

Designated Local Match by Source for WCA portion.

New Resources $$_____

In-Kind Resources $$_____

Total Local Match $$_____

Designated Lead/Coordinating LGU (if applicable)?_____

Has the county formally adopted the WCA permanent program? _____yes _____no.

If the answer above is no, what is the anticipated date of adoption?_____

List all other LGU's (cities and townships) in county who will be administering WCA independent of the County.

_____
_____
_____
_____
_____
_____

Are all areas in the County (except for tribal lands) covered by a LGU? _____yes _____no.

If the answer above is no what plans exist to provide seamless coverage in the county?

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

List the proposed allocation of the WCA portion of the block grant (including the local match) as follows:

	WCA portion of block grant	local match	Total
County	_____	_____	_____
SWCD's	_____	_____	_____
Other LGU's(list)	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	(attach additional sheet if necessary)		
Totals	==========	=========	========

SHORELAND PORTION OF BLOCK GRANT

Shoreland Portion of Block Grant Requested $$_____

Designated Local Match, Shoreland Portion $$_____

List all other LGU's (cities and townships) in the county administering a shoreland program independent of the county _____

_____

_____

_____

_____

Will the county be allocating any of its 1994 block grant (shoreland portion) to these LGU's? _____yes _____no.

If answer above is yes please list LGU's and dollars allocated.

City/Township	Allocation	Local Match	Total
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
(attach additional sheet if necessary)			

If the county will will not be allocating any portion of the shoreland grant to cities or townships is technical assistance available through the county? _____yes _____no.

SIGNATURE PAGE

COUNTY _____

SWCD _____

OTHERS AS IDENTIFIED IN APPLICATION

_____

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LOCAL WATER PLANNING
ANNUAL REPORT, WORKPLAN & BUDGET GUIDANCE

The following format may be used to guide you in preparing your annual report, workplan, and budget. Although required by the local water planning grant rules, we hope that the report, workplan, and budget are useful locally to help tell the story of water planning and its successes in the county. Please feel free to arrange your report, workplan, and budget so that it is the most useful to you and your local efforts.

_____ COUNTY
COMPREHENSIVE LOCAL WATER PLANNING
1993 ANNUAL REPORT
&
1994 WORKPLAN AND BUDGET

ANNUAL REPORT (DUE DATE JANUARY 31, 1994)

A. Program Administration / Coordination

1. Measurable Results

Note: List Measurable activities such as # of taskforce meetings, # hours of time spent on administration, etc. during the year.

2. Expenditures From 1993 Base Grant & Carryover $$_____

Note: List here the actual grant dollars that were spent or encumbered.

B. Program Implementation

List measurable activities, accomplishments, and progress during the previous year for each of the broad categories shown below. Also list under each category the actual grant dollars spent or encumbered.

Note: For counties that organized their workplan around specific projects or initiatives those should be used instead of the broad categories shown below.

1993 Annual Report (continued)

1. Education and Information

   a. Measurable Results
   b. Expenditures From 1993 Base Grant & Carryover $$_____

2. Monitoring and Data Collection

   a. Measurable Results
   b. Expenditures From 1993 Base Grant & Carryover $$_____

3. Inventory and Mapping

   a. Measurable Results
   b. Expenditures From 1993 Base Grant & Carryover $$_____

4. Land and Water Treatment

   a. Measurable Results
   b. Expenditures From 1993 Base Grant & Carryover $$_____

5. Regulation, Ordinances & Planning

   a. Measurable Results
   b. Expenditures From 1993 Base Grant & Carryover $$_____

TOTAL 1993 IMPLEMENTATION EXPENDITURES ..... $$_____

1993 GRANT FUNDS TO BE CARRIED OVER TO 1994 ACTIVITIES $$____

Note: Expenditures may be greater than $37,500 due to carryover grant dollars from previous program years. Expenditures may also be less than $37,500 with a portion of funds carried forward to 1994 activities.

Note: Counties need to remember that this report does not replace, nor is it a substitute to an accounting/bookkeeping system. The State of Minnesota acting through BWSR does require that the county or delegated local unit of government implementing a grant shall provide for an audit that meets the standards of the Office of State Auditor. The Audit must cover the duration of a grant and be performed within one year after the end of the grant period or when routinely audited, whichever occurs first.

1994 WORKPLAN (DUE AT TIME OF APPLICATION)

A. Program Administration / Coordination

1. Narrative

Note: The narrative should describe how the water plan will be administered locally, including the identification of the plan's coordinator. This section should also describe how coordination among the various local agencies, departments, and groups is being ensured and briefly describe their roles in implementation.

B. Program Implementation

Note: In this guidance the program implementation section is broken down by implementation initiatives such as education, monitoring, construction, regulation, etc.. You may also break down your activities in this section by program, study area, project , etc..

Under each implementation initiative or activity list the activities, programs or projects which have been identified in the comprehensive plan and by the water planning taskforce or committee as a priority for the coming year.

1. Education and Information
   a. Planned Activities, Programs, and/or Initiatives
      Note: List activities, programs, etc. along with the measurable results which you expect to occur
   b. Lead Agency

2. Monitoring and Data Collection
   a. Planned Activities, Programs, and/or Initiatives
   b. Lead Agency

3. Inventory and Mapping
   a. Planned Activities, Programs, and/or Initiatives
   b. Lead Agency

4. Land and Water Treatment
   a. Planned Activities, Programs, and/or Initiatives
   b. Lead Agency

5. Regulation, Ordinances and Planning
   a. Planned Activities, Programs, and/or Initiatives
   b. Lead Agency

1994 BUDGET (DUE AT TIME OF APPLICATION

TYPE OF ACTIVITY OR ELEMENT	EQUIP. BUDGETED	SUPPLIES DATA COLL. BUDGETED	PERSONNEL BUDGETED	OTHER BUDGETED	TOTAL
Administration/ Coordination	_____	_____	_____	_____	_____
Education/ Information	_____	_____	_____	_____	_____
Monitoring/ Data Collection	_____	_____	_____	_____	_____
Inventory/ Mapping	_____	_____	_____	_____	_____
Land and Water/ Treatment	_____	_____	_____	_____	_____
Regulation, Ordinances/ Planning	_____	_____	_____	_____	_____
Other Programs, Activities, Studies, Etc. List as Needed					
TOTALS	=====	=====	=====	=====	=====

NOTE: For 1994 the budget information being requested is only for the combination of base grant dollars and local levy. At a minimum the grand total should be equal to $37,500, unless your county is carrying over dollars from 1993. Also the total can be greater if the budget includes other sources of revenue such as other grants or additional local levy.

h:blkgrt94.rwb/djt

WR-01087-01

STATE OF MINNESOTA
MINNESOTA BOARD OF WATER AND SOIL RESOURCES
NATURAL RESOURCES BLOCK GRANT AGREEMENT

Amount $ _____ Natural Resources Block Grant

Local Governmental Unit: _____

Address: _____

_____

_____

Agreement Period: January 15, 1994 to January 15, 1996

THIS AGREEMENT is entered into between the State of Minnesota, acting by and through its Board of Water and Soil Resources, hereinafter referred to as the "Board", and the above named Local Governmental Unit, hereinafter referred to as the "LGU".

WHEREAS, the Minnesota Legislature, by Laws of Minnesota 1993, Chapter 172, sec. 6, established the Natural Resources Block Grant, hereinafter referred to as the "NRBG", to assist with the implementation of comprehensive local water plans, wetland conservation act, and shoreland programs; and

WHEREAS, Minnesota Statutes 103B.101 subd. 9. (1), and 103B.3369, Subd. 5., and laws of Minnesota 1993, Chapter 172, sec. 6 authorize the Board to award grants; and

WHEREAS, a LGU must meet the criteria established by statute and the Board to be eligible to receive NRBG state grant funds.

WHEREAS, the Board has determined the LGU to be eligible and has selected the LGU to participate in the NRBG; and

WHEREAS, the LGU has provided a certified copy of the LGU resolution authorizing the LGU's participation in the NRBG including the required local match, attached hereto as Exhibit A.

NOW THEREFORE, it is agreed between the parties as follows:

I. LGU DUTIES AND SPECIFIC PROGRAM REQUIREMENTS

The LGU is responsible for the specific duties for the NRBG, as follows:

1. **TAX LEVY.** The LGU's participation in the NRBG is conditioned upon LGU expenditure of cash and in-kind contributions to match the NRBG as specified in Laws of Minnesota 1993, Chapter 172, sec. 6. and the Board grant allocation and match requirements adopted by the Board.

2. **REPORTING.** The LGU shall submit an annual progress report to the Board by January 31 of each year on the status of program implementation by the LGU. Information provided must conform to the requirements set by the Board.

3. **COMPLIANCE.** The LGU shall comply with Minnesota Statutes Section 103B.3361 through 103B.3369 (1990), Minnesota Rules Chapter 8405, Laws of Minnesota 1991, Chapter 354, as amended by Laws of Minnesota 1993, Chapter 175, Minnesota Rules Chapter 8420, Minnesota Statutes Section 103F.201, and Minnesota Rules Chapter 6120, and amendments thereto for comprehensive water planning, the wetland conservation act, and the DNR shoreland management program.

II. PROGRAM APPLICATION.

The LGU shall perform the duties and responsibilities described in the NRBG application, as approved by the Board, and on file at the Board office in St. Paul, Minnesota. The approved application is incorporated into this Agreement by reference, and made a part hereof.

III. GENERAL TERMS AND CONDITIONS

A. TERMS OF PAYMENT.

1. Grant payments shall be made in one installment promptly after the effective date of this Agreement. The Board shall pay the Grant Amount stated on page 1. The total obligation of the Board shall not exceed the Grant Amount.

2. Any state funds remaining unspent, unencumbered or becoming unobligated after the expiration of the Agreement Period stated above shall be returned to the Board within two months of the expiration of the Agreement Period.

3. State funds may not be used for costs incurred before or after the end of the Agreement Period stated above, unless approved by the Board.

4. Payment to the LGU is made under the condition that all work performed pursuant to this Agreement shall be performed to the satisfaction of the Board, and in accordance with all applicable federal and state laws, including rules and regulations, and local ordinances. The LGU shall use the funds provided herein only for the purposes stated in the NRBG application, as approved by the Board, and this Agreement.

B. PERIOD OF AGREEMENT. This Agreement shall be effective upon such date as it is executed as to encumbrance by the Commissioner of Finance, and shall remain in effect until the expiration of the Agreement Period stated above, or until all of the obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

C. CANCELLATION AND REVOCATION.

1. The Board may cancel this entire Agreement for just cause. "Just cause" means that the LGU or its designee is not disbursing grant funds in accordance with established Board or state procedures, or has otherwise breached a term of this Agreement. The LGU may cancel this Agreement with or without just cause. The Board or the LGU must give written notice 14 calendar days prior to cancellation. In the event of cancellation by the Board or LGU, the LGU is entitled to payment, determined on a pro rata basis, for eligible work satisfactorily performed and the remaining grant funds must be promptly returned to the Board.

2. At the request of any state agency commissioner, the Board shall revoke and the LGU shall return to the Board that portion of the state funds used to support the NRBG not in compliance with the rules of that requesting agency.

D. ASSIGNMENT. The LGU shall neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of the Board, except for contracts with other local units of governments authorized by Section 103B.3369. The LGU may contract with others, including appropriate local units of government to perform the work specified in the Agreement. In all cases the LGU shall remain responsible for the work it authorizes and/or contracts with others to perform, and shall not delegate its responsibility under this Agreement.

E. AMENDMENTS. Any amendments to this Agreement shall be in writing, and shall be executed by the Board and the LGU.

F. COST OVERRUNS. The LGU agrees that any cost overrun is the sole financial responsibility of the LGU.

G. LIABILITY. The LGU agrees to indemnify and save and hold the Board, its agents, and employees harmless from any and all claims or causes of action arising from the performance of this Agreement by the LGU, its designated local units of government, contractors, agents or employees. This clause shall not be construed to bar any legal remedies LGU may have for the Board's failure to fulfill its obligations pursuant to this Agreement. This clause shall survive the expiration of the Agreement Period or the expiration or termination of this Agreement.

H. AUDITS. The books, records, documents, and accounting procedures and practices of the LGU and its designated local units of government and contractors relevant to the NRBG may be examined at any time by the Board or Board's designee. The LGU or designated local unit of government implementing this Agreement shall provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of the Agreement Period, and be performed within one year after the end of the Agreement Period or when routinely audited, whichever occurs first. Copies of the audit report must be provided to the Board. The LGU or delegated local unit of government shall maintain all records relating to the receipt and expenditure of grant funds for six years from the termination of the Grant Agreement.

I. AFFIRMATIVE ACTION. The LGU certifies that it is either exempt from obtaining a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes Section 363.073, or has obtained said certificate.

J. NONDISCRIMINATION. As a condition of receiving financial support for the NRBG, GRANTEE assures that it will meet all applicable requirements of the Civil Rights Act of 1964, as amended (including nondiscrimination on the basis of disability conditions) and of any applicable state civil rights statutes.

K. WORKERS COMPENSATION. The LGU assures that it has provided, or shall provide, acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Section 176.181, Subdivision 2 (1992).

L. ANTITRUST. LGU hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

M. DATA PRIVACY ACT. The LGU agrees to indemnify and save hold the STATE, its agents and employees, harmless from any and all claims or causes of action arising from a violation of any provision of Minnesota Statutes, Chapter 13.

N. DATA COMPATIBILITY. The LGU shall prepare and maintain all information gathered as a result of this project in a format which is compatible with the data systems employed by the principal information users of the State of Minnesota.

M. CAPITAL EQUIPMENT. The title for equipment purchased with the funding provided in this Agreement shall be taken in the name of the State of Minnesota. The equipment will remain the property of the State for its useful life. After the Grant Period, the equipment may remain in the custody of the LGU so long as it is used for the purposes of promoting and supporting the coordination of shoreland management activities. The State may take possession of the equipment at which time it ceases to be used for the intended purpose and at such time as it becomes necessary to use it for State purposes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

LOCAL GOVERNMENTAL UNIT

APPROVED:

_____**LGU**
BY ITS LGU
BOARD OF COMMISSIONERS

By: _____

Title: Chairperson

Date: _____

By: _____

Title: LGU Auditor/Administrator

Date: _____

STATE OF MINNESOTA

BOARD OF WATER AND SOIL RESOURCES

By: _____

Title: _____

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM AND EXECUTION
BY THE ATTORNEY GENERAL

By: _____
Assistant Attorney General

Date: _____

COMMISSIONER OF FINANCE
Encumbered Department of Finance

By: _____

Title: _____

Date: _____

Attachments:
Exhibit A: Certified copy of LGU Resolution authorizing the LGU's participation in the NRBG

C:\oct.not

Enclosed are the agenda & support materials for the October 26, 1994 Bd mtg which will be at the _____ _____. Ron Harnack will be out of state that day so I'll be standing in for him. Following is some background information regarding the agenda items:

If you have additional agenda items or require additional information please contact myself or Mary Jo at the Board office. Travel safely, I look forward to seeing you on the 26th.

Minnesota Board of Water & Soil Resources

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155 S. Wabasha Street
Suite 104
St. Paul, MN 55107
(612) 296-3767
Fax (612) 297-5615

Field Offices

Northern Region:

394 S. Lake Avenue
Room 403
Duluth, MN 55802
(218) 723-4752
Fax (218) 723-4794

3217 Bemidji Avenue N.
Bemidji, MN 56601
(218) 755-4235
Fax (218) 755-4201

217 S. 7th Street
Suite 202
Brainerd, MN 56401-3660
(218) 828-2383
Fax (218) 828-6036

Southern Region:

P.O. Box 756
Highway 15 S.
New Ulm, MN 56073
(507) 359-6074
Fax (507) 359-6018

1200 S. Broadway
Room 135
Rochester, MN 55904
(507) 285-7458
Fax (507) 280-2875

P.O. Box 267
1400 E. Lyon Street
Marshall, MN 56258
(507) 537-6060
Fax (507) 537-6368

Metro Region:

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

An Equal
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TO: Water Planning Coordinators

FROM: Doug Thomas

DATE: October 18, 1994

SUBJECT: Recommended Time Line for 1995 Plan Updates

Please find attached a time line that we have prepared to assist you in making sure you fulfill all of the requirements for updating your plan. The time line also recommends specific dates by which items should be accomplished, these dates were determined by counting back form December of 1995 which is when plans will need to be approved and adopted.

As BWSR gets ready to assist you in the update process we are planning on distributing regular water plan updates, fill in the blank local news releases, and specific guidance on wellhead protection and sensitive groundwater areas, stormwater management, and designation of priority wetland areas. Hopefully you will begin receiving these materials sometime in November.

In the meantime if you have any questions please do not hesitate to contact your BWSR board conservationist or myself.

cc: Board Conservationists
M-Team
Land & Water Section
103B Technical Representatives

MP — 11/29
We will need
special mtgs for
these in Oct &
Dec. RDH

Comprehensive Water Planning Time Line

RECOMMENDED DATE	ACTION
By Dec. 1, 1994:	The county board must adopt a resolution to revise their comprehensive water plan.
By Dec. 1, 1994:	The county must file a notice of decision to revise the plan. It should be sent to: •county boards of contiguous counties •the governing bodies of counties, watershed districts (WDs), and watershed management organizations (WMOs) that have jurisdiction in each major watershed partly or wholly within the county •the governing bodies of all local government units (LGUs) wholly or partly within the county, including the soil and water conservation district •the regional development commission, if any •the Board of Water and Soil Resources (BWSR)
By Dec. 1, 1994:	The county must request copies of local plans and official controls from cities and townships. These include: •any existing water and related land resources plans and official controls •any conflicts, problems, or opportunities that those local units of government want examined and addressed in the comprehensive water plan •The local units of government must send the requested information so that it is before January 30, 1995.
By March 1, 1995:	The county must hold a public information meeting. The county must publish notice of the meeting at least ten days but not more than 30 days before the meeting. The county must also give 30 days notice to: •the county boards of contiguous counties •governing bodies of counties, WDs and WMOs wholly or partly in the county •the governing bodies of all LGUs wholly or partly within the county, including the soil and water conservation district •regional development commission, if any •the BWSR

(more)

(Con't) by March 1, 1995:

Meetings must be held with LGUs within the county exercising authority in water and related land resources management.

The county board developing or revising a comprehensive water plan shall ensure that there is a process for public participation during plan development or revision as well as implementation of the plan (i.e., task forces, policy committee, technical committee, etc.).

There must be a record of each meeting held regarding the water plan. This includes:

- the public information meeting
- meetings with the LGUs and public participation

The record should include minutes and a list of those in attendance and who they represent.

March 1, 1995-
June 30, 1995:

Revise plan. Revised plan should include the following elements:

- resource assessments
- identification of problems and opportunities
- goals, objectives, actions
- local priorities
- implementation plan

By July 1, 1995:

The following local governments and organizations should receive the plan for 60 day review:

- county LGUs
- contiguous counties
- WMOs
- WDs
- regional development commissions with jurisdiction over the watersheds and ground water systems affected by the comprehensive water plan
- the BWSR; the Departments of Agriculture, Health, and Natural Resources, the Pollution Control Agency, and the Minnesota Geological Survey for preliminary state agency review.

By Aug. 14, 1995:

State agencies must have comments to the county and the BWSR.

By Aug. 29, 1995:

All other local comments are due to the county.

(more)

In Sept. 1995:	County must hold a public hearing on the plan.
By Sept. 29, 1995:	County must address comments and revise plan if necessary.
By Oct. 1, 1995:	County must submit 10 copies of final plan to the BWSR.
Dec. 29, 1995:	BWSR votes on plan approval.