

Minnesota Board of Water and Soil Resources. Minutes.

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BOARD OF WATER AND SOIL RESOURCES
DEWITT SEITZ BUILDING, THIRD FLOOR CONFERENCE ROOM
394 SOUTH LAKE AVENUE
DULUTH, MINNESOTA 55802
JULY 26, 1995

BOARD MEMBERS PRESENT:
Barb Cobb, Barb Uppgaard, Ginny Imholte, Jim Rossman, Kathy Roer, Glenn Annexstad, Tim Hvidsten, LeRoy Stensgaard, Ted Lovdahl, Marvell Tripp, Dwain Otte, and Darrell Bruggman.

AGENCY MEMBERS PRESENT:
Paul Burns, Department of Agriculture
Wayne Edgerton, Department of Natural Resources

OTHERS PRESENT:
Bill Hunt and Kevin Daw, Natural Resources Conservation Service (NRCS)
D'Wayne DeZiel, Jim Schafer, and Bob Pigeon, Minnesota Association of Soil and Water Conservation Districts (MASWCD)
Rich Harms and Dave Davis, South St. Louis SWCD
Ray Bohn, Minnesota Association of Watershed Districts (MAWD)

STAFF PRESENT:
Ron Harnack, Greg Larson, Al Kean, Barb Liukkonen, Gail Watczak, Mark Nelson, Ron Shelito, Bill Best, Eric Mohring, and Mary Jo Anderson.

Chair Cobb called the meeting to order at 8:30 a.m.

** 95-35 **Adopt Agenda** - Moved by Marvell Tripp, seconded by Lovdahl, to approve the agenda as amended. The amendment removed the Lake Superior Coastal Engineering Assistance from the agenda. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, Tripp, and Uppgaard. Opposed: None. Carried.

** 95-36 **Approval of Minutes of June 28, 1995** - Moved by Ted Lovdahl, seconded by Marvell Tripp, to approve the minutes of June 28, 1995 as circulated. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, Tripp, and Uppgaard. Opposed: None. Carried.

Reports

Chair's Report - Barb Cobb stated that she has enjoyed her first month as chair. She distributed a list of acronyms and definitions and "Relationship Between Ecosystem-Based Management, Sustainability, and Biodiversity" for members' information. Barb attended the Environmental Quality Board (EQB) meeting and participated in the discussion on the two-agency premise on reorganization. The first reorganization meeting will be held on September 5. Barb appointed two board member committees to work on the reorganization. Staff and committees will meet to discuss the strategy of this issue. Discussion followed. Chair Cobb appointed new committees of BWSR.

Executive Director's Report - Ron Harnack attended the July 25 capital bonding tour, looking at the Minnesota River initiative. Ron attended an Association of Minnesota Counties (AMC) meeting in Moorhead on July 14 to meet with county board chairs; good discussion and focus on the Wetland Conservation Act (WCA). Ron stated that specific program policy issues will be addressed at upcoming BWSR meetings. Ron reported that new staff will be hired; one full-time position for metro water planning; one position to work on planning issues and support of dispute resolution activities; and 1.5 support staff positions.

Soil Conservation Committee - Glenn Annexstad reported that CRP has been extended an additional year. Glenn, Ron Harnack and LeRoy Stensgaard attended the Minnesota River joint powers signing meeting in Mankato at Sibley Park; Governor Carlson was present at the signing ceremony.

Dispute Resolution Committee - Kathy Roer reported that a WCA appeal from Wright County will be heard on August 10.

Wayne Edgerton and Paul Burns offered assistance on any BWSR committees.

Reaction to Tour and Public Forum - Barb Cobb thanked Ted Lovdahl for his invitation to Duluth and staff for the great tour. Ted thanked the northern staff and appreciated Gail Watczak's assistance in setting up the tour. Chair Cobb appreciated Barb Liukkonen's self-guided tour on the way up to Duluth.

East Ottertail SWCD Update - Ted Lovdahl thanked Ron Shelito for his great efforts on the East Ottertail SWCD issue. About $73,000 have been taken from BWSR funds. Ted asked to table the issue until September when more information will be available regarding prosecution and/or restitution. Ron Harnack stated the Matt Seltzer, attorney general's office, has been asked to look into the situation regarding restitution; he is working on the options and authorities available to the BWSR and will have this information at the September meeting. Moved by Ted Lovdahl, seconded by Dwain Otte, to table the East Ottertail SWCD situation until the September BWSR meeting. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, Tripp, and Uppgaard. Opposed: None. Carried.

** 95-37

Metro Groundwater Planning - Eric Mohring distributed a metropolitan groundwater planning progress report for the board members' information. Eric displayed a poster "Management Techniques for Groundwater Protection" showing what has been done in the seven-county metropolitan area. Eric gave background and updates on groundwater planning in the metro. He also made available copies of the Ramsey County water plan for the members' information.

Chair Cobb called for a break in the meeting at 9:35 a.m. The meeting reconvened at 9:50 a.m.

Wetlands Banking Agreement and Policy - Greg Larson briefly commented on Chair Cobb's "plain English" interpretation of the memorandum of agreement with BWSR and the Minnesota Department of Transportation (MNDOT). Greg explained there are two issues regarding public transportation projects that BWSR needs to take action on: 1) should credits only be available to greater than 80 percent counties; and 2) what should BWSR charge for those credits? Discussion followed. Moved by Ted Lovdahl, seconded by Kathy Roer, to approve credits only to greater than 80 percent counties. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, Tripp, and Uppgaard. Opposed: None. Carried.

** 95-38

** 95-39 Moved by Lovdahl, seconded by Marvell Tripp, that credits will be sold for mitigation costs based on lessor estimated market value in townships as determined by the Department of Revenue or twice the adjacent land value as assessed by the county assessor, not less than

$400. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, Tripp, and Uppgaard. Opposed: None. Carried.

** 95-40 Moved by Jim Rossman, seconded by Bard Uppgaard, to endorse the Memorandum of Understanding between the BWSR and MNDOT, with the executive director to sign for BWSR. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, Tripp, and Uppgaard. Opposed: None. Carried.

WCA Non-Adopting Local Governmental Unit (LGU) Policy - Greg Larson explained that staff have developed some options for consideration by the BWSR. The three options are: 1) A moratorium exists in any LGU that has not adopted the WCA. Therefore, no wetland activities other than exemptions are legal. The Department of Natural Resources enforcement officers and other local peace officers have the responsibility and authority to enforce the moratorium. The LGU attorney has the responsibility to enforce the actions of the peace officers. Currently five counties have not adopted and we have no indication that they will in the near future. 2) Take legal action to secure local administration of the program. This would involve the Attorney General's office filing suit against the local government in an effort to get the court to order administration of the program. 3) Cancel the natural resources block grant and ask other agencies to withhold financial assistance from those counties. The BWSR previously acted to only withhold the WCA funds from the LGUs. Greg stated that staff supports the first option. The moratorium, with proper enforcement, is the most efficient means to address the issue. Ron stated that it's BWSR ongoing policy to withhold their WCA funds if they continue not to adopt WCA. Greg stated that BWSR staff need to play a bigger enforcement role with the five non-adopting counties. Discussion followed. Moved by Marvell Tripp, seconded by Dwain Otte, to accept staff recommendation as status quo to continue with moratorium. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, Tripp, and Uppgaard. Opposed: None. Carried.

** 95-41

WCA Non-Complying LGUs Policy - Greg Larson commented on the draft BWSR policy WCA implementation corrective action policy; three-step process - staff to staff; staff to local officials; BWSR to remedy. Moved by Barb Uppgaard, seconded by Darrell Bruggman, to accept staff's recommended draft WCA implementation correction action policy. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, Tripp, and Uppgaard. Opposed: None. Carried.

** 95-42

Coastal Zone Management Report - Dan Retka, Department of Natural Resources, explained the Coastal Zone Management (CZM) program in Minnesota. The federal CZM program offers grants as incentives to keep the state CZM program active. The non-point pollution control program was evaluated in Minnesota and they are awaiting the national

response to the program. A report will be made on all existing activities and programs and will be the basis of the CZM program. Ron Harnack stated that BWSR's role in this is that CZM is another tool in the tool box. Chair Cobb thanked Dan for coming before the BWSR.

Lake Superior Association Report - Ted Lovdahl explained the Lake Superior Association (LSA). The LSA meets monthly. Their activities include developing a model water plan for watershed districts; assisting in the State Revolving Fund (SRF) program; and working to address septic system concerns. The LSA is a coalition of five SWCDs (Carlton, Lake, Cook, North and South St. Louis). The LSA looks for grants and funds from the Lake Superior area.

Recommendations of Dispute Resolution Committee (DRC) on Appeals - Kathy Roer reported on two long-standing appeals; 1) Landview Landscaping, Inc., vs. Minnehaha Creek Watershed District; and 2) Levine vs. Minnehaha Creek Watershed District. In the past, DRC has made a recommendation to BWSR and then BWSR has taken action. The DRC hopes that these will be the last ~~WCA~~ watershed district appeals, due to legislative action as of August 1. Both appeals were complex; the DRC was advised by the Attorney General's office to proceed in a more formal recommendation to BWSR. The DRC will now make a recommendation, the Attorney General's office will provide written record for decision, all board members will have an opportunity to review the findings before voting and taking action on the recommendation. Kathy stated that the DRC met yesterday to deliberate the Levine vs Minnehaha Creek Watershed District appeal~~; appropriate for both parties to appeal~~. Next DRC meeting is August 10; the Landview Landscaping, Inc., matter will be deliberated at that time. No recommendation for either appeal today. Kathy was hopeful that a recommendation will be made at the August meeting, with written recommendations to board members before the August meeting.

Advisors' Comments

Department of Agriculture (MDA) - Paul Burns reported that an advisory group will meet July 27 to review two handbooks; 1) Ag Land Preservation and 2) Providing Assistance to Local Governments on Planning and Zoning and Feedlots. Paul reported on the Minnesota River ag water related research in the Minnesota River basin. Paul said that the Agricultural Best Management Practices (BMP) program is continuing.

Department of Natural Resources (DNR) - Wayne Edgerton briefly commented that DNR, in cooperation with the Department of Agriculture, is working on the sustainable ag BMP plan in response to legislation on state lands. A draft of the plan will be available in 30 days; please review and comment on the plan. "Good Neighbor Plan" focus groups will be held statewide this fall. Wayne thanked staff for the good tour yesterday.

Natural Resources Conservation Service (NRCS) - Bill Hunt thanked BWSR and others for making Bill feel welcome in Minnesota. He thanked Glenn Annexstad for attending NRCS meeting. An information sharing meeting is scheduled for August 16 with BWSR staff and NRCS staff to discuss joint technical information and how to work together better. Bill requested that if he and staff of NRCS can be of assistance to members, tell him exactly what they need from NRCS. NRCS just completed a moderate (just over 7,000 acres) WCA sign-up into alternative uses. CRP sign-up may be in September; please help advertise the benefits of this program. On August 11 NRCS will meet to discuss the Minnesota River; on August 22 Bill will meet with Congressman Minge to discuss conservation issues in Minnesota.

Minnesota Association of Soil and Water Conservation Districts (MASWCD) - Jim Schafer reported that he attended North Central NACD Leadership meeting in LaCrosse, Wisconsin July 9-12. MASWCD appreciated BWSR staff in attendance at the NACD meeting. Jim requested Tim Hvidsten to participate in the MASWCD Education Committee. Jim stressed the great interest in the statewide Envirothon.

Minnesota Association of Watershed Districts (MAWD) - Ray Bohn reported that in mid-March he received a memo regarding a permitting issue with watershed districts and the Department of Transportation (MNDOT); they are on their way to resolving the issue; he appreciated BWSR staff assistance on this. MAWD is in the process of planning their annual meeting, December 1-2; he appreciates BWSR staff assistance with that. Ray looks forward to working with BWSR committees on the reorganization process.

Chair Cobb asked that BWSR staff present introduce themselves: Ron Shelito, Eric Mohring, Mark Nelson, Greg Larson, Barb Liukkonen, Al Kean, Bill Best and Mary Jo Anderson.

Chair adjourned the meeting at 11:45 a.m.

Respectfully submitted,

Barbara Cobb

Barbara Cobb
Chair

Minnesota Board of Water & Soil Resources

Board Member Update

July 1995

The mission of the Board of Water and Soil Resources is to manage water and soil resources and to help all citizens be stewards of our irreplaceable natural resources.

Southern Region

* Southern board conservationists (BCs) spent a good deal of time in June dealing with water planning update activities under the Comprehensive Local Water Planning Program. It looks like this will continue to be a workload item for board conservationists (BCs) through the end of 1995 and into early 1996.

* The southern region had an opportunity to host Tim Fredbo, the new Reinvest in Minnesota (RIM) coordinator, for a couple of tours through the region to see RIM sites and visit with SWCD employees administering the program. Tim received positive comments from the SWCD employees; many spoke highly of the RIM program and what it means to their district.

* On the Wetland Conservation Act front...BC Tom Fischer spent quite a bit of time in McLeod County during June, mainly due to the fact that both the county and SWCD technical evaluation panel (TEP) members resigned from their positions of employment! Landowner inquiries still came in even though no local staff was on hand to assist them. McLeod County has asked a neighboring SWCD to help out until new employees can be hired.

* BC Mary Kells worked with the Olmsted SWCD on preparing a budget for restructuring operations.

* BC Dave Peterson has been working with the Cannon River Watershed Partnership to implement an LCMR grant. Dave also spent two days working with the Mower SWCD to proceed with enforcement on a WCA violation. Matt Seltzer of the Attorney General's Office is now involved and is providing much needed assistance.

Engineering and Technical Services Section

Lakeshore Engineering

Gene Clark, lakeshore engineer, has been developing plans and specifications for several lakeshore stabilization projects and working with SWCD staff and BCs to conduct site investigations and/or feasibility studies for about ten erosion problems in Lake, Cook and St. Louis Counties, as well as one on Sauk Lake in Todd County and at a private campground in Morrison County. A couple of highlights include:

* Plans and specs for a shoreline stabilization project on the Sewall property in Duluth were completed in June and bids recently received. However, all three bids were much higher than available funding. Gene is working with the landowner and the

low bidder to see if the plans and specs can be modified to result in a workable plan with an affordable price tag.

* Gene continues to work on the design for Phase II of the Sucker Bay project, which involves upper surface and groundwater control best management practices (BMPs).

* Al Kean, chief engineer, and Ron Harnack, executive director, have been talking with Gene, BC Mark Nelson, and other staff about future directions and methods of operation for BWSR lakeshore engineering assistance. We want to clarify roles and responsibilities a bit and expand our assistance somewhat to other parts of the state. We also plan to use Gene's expertise more as a trainer, in conjunction with our increased technical training coordination role that is growing out of the State Revolving Fund (SRF) technical assistance program. One way that we are currently advancing the technical training/education idea is via lakeshore BMP workshops that Gene and Barb Liukkonen, water resources education coordinator, will be conducting this fall and winter. This initiative will be partially funded by a Great Lakes Commission grant that the BWSR recently received. Another internal expertise-sharing initiative involves having some of our BCs spend a couple days with Gene for some on-site shoreline erosion control technique training. Brian Dwight recently was the first BC to do this.

Conservation Easements

* During the last half of FY 95, we finalized and made payment on about 85 conservation easements. These easements were from applications accepted prior to the last sign-up, which was in 1994. We currently have 77 easements from pre-1994 sign-ups in process, of which 29 are wetland restorations (which take longer than other types due to design and construction requirements). Program staff continue to work with SWCDs to resolve title and other problems, restore wetlands and complete these easement acquisitions.

* Tim Fredbo, easement program manager, recently visited several SWCD and BWSR offices in our northern and southern regions to get acquainted with some program clientele and talk about development of the annual program plan, which we intend to present to the BWSR Board in August. Tim has also been involved in preparing information and materials for a State Bonding Council tour in southern Minnesota on July 25. Bryan Alpaugh, data management specialist, and Marybeth Block, special projects coordinator, have also been helping with that effort.

* Tim and Design Engineer Tom Wenzel have been involved with the Grass Lake Restoration Project in Kandiyohi County, most recently in regard to the County Highway Department request to secure a portion of the easements to obtain credits for their wetland mitigation bank. It has been agreed in principle that the county will secure easements and receive credits in proportion to their contributions to the restoration project costs, up to some reasonable limit. More on this later.

* Tom, Matt and Wetland Restoration Technician Jeff Hedtke have been very busy finalizing wetland restoration designs for construction yet this year, and providing SWCDs with various other technical assistance for design and construction of restorations. Construction conditions have generally

been favorable, so we expect many projects to be completed this year.

Area II

* Several board members of Area II Minnesota River Basin Projects, Inc. and their coordinator, Kerry Netzke, presented their annual plan to the BWSR board in June. We intend to make this an annual presentation. They also assisted Chief Engineer Al Kean in late June in giving a report to the Legislative Water Commission regarding the use of bonding funds appropriated to date for the Redwood 22 project.

* Darrell Apelgrain, BWSR Area II engineer, and Kerry continue to work on the preparation of a feasibility study and draft Environmental Assessment Worksheet for the Lazarus Creek flood control project. Most of the engineering analyses have been done, but there is still much writing and data preparation to be done. The draft report is scheduled to be completed in August.

* Al Kean, chief engineer, Eric Mohring, hydrogeologist, and Darrell helped investigate drainage concerns of two landowners adjacent to the Wellner-Hageman reservoir in June. (The Wellner-Hageman reservoir was a 1993 Area II project.) It appears that the project may have contributed to the problems. We will continue to assist the local sponsors to resolve these situations.

SRF Technical Assistance

* As of this writing, ten engineers and six technicians have been hired by the joint powers groups of SWCDs. Joint Powers Group 9 is having a very difficult time finding an engineer. Al Kean helped them with their second round of interviews recently, but it looks like a good fit has not yet been found. It appears that they will have to readvertise.

* All of the engineers and technicians that have been hired are still waiting on equipment, and letting Al know about it. Computers are supposed to start arriving the last week of July and the AutoCad software purchase is supposedly progressing. We'll let the joint powers groups know as soon as the equipment is available.

Partnership Technical Coordination

* The Technical Advisory Committee (TAC), a Natural Resources Conservation Service-BWSR committee formed to coordinate technical services, met on July 18 to review its purpose and goals and to discuss some priority areas for technical coordination. The co-chairs, Al Kean and John Brach, Natural Resources Conservation Service (NRCS) state conservation engineer, reviewed how they have collaborated in the past and sought insights and consensus on how to form partnerships between the two agencies in the areas of technical training, practice standards updating, technical approval authority and practice failure investigations. Minutes of the meeting will be available soon.

* BWSR and NRCS engineering staff have begun to look at our construction specifications development and construction contracting procedures to identify the potential for better coordination and mutual improvements.

Northern Region

Wetland activities dominate field staff time again this month. Here's a few of the highlights:

* Bemidji BC Brian Dwight visited Roseau and Beltrami counties responding to requests by SWCDs to assist in site reviews after cease and desist orders had been issued. Brian has spent time in Marshall and Pennington counties responding to specific concerns related to the fact that these counties have not yet adopted WCA. Mark Nelson, Duluth BC, spends much of his waking life doing WCA work. This month Mark assisted in a TEP involving an $8 million hotel-restaurant complex near Duluth and a condo development up the north shore. Meanwhile Brainerd BC Keith Grow has been receiving a steady stream of phone calls regarding the $100 million prison facility that may be going in Braham. A strong citizens' group has formed protesting the location of this prison in Braham. And, wouldn't you know it, the Braham site has several acres of wetlands that would have to be mitigated. The Braham citizens' group is urging the Department of Corrections to take a closer look at some other sites that may have smaller wetland impacts. Keith bets this one will be appealed.

* Not wanting to be outdone by other staff, Dale Krystosek, Bemidji BC, also had a busy WCA month. Dale worked with the Becker SWCD in resolving a WCA violation that had been scheduled for court trial. In this case, the defendant (Dale's getting pretty good with this legal jargon) filled a wetland and backed water onto his neighbors's property. The defendant eventually entered a guilty plea and agreed to resolve the fill violation. Dale was also busy doing wetland-related activities in Wadena and Otter Tail counties as well as the city of Detroit Lakes.

* Dan Steward, Brainerd BC, recently met with Keith Pohl (Crow Wing SWCD) and Army Corps of Engineers' personnel to review the wetland creation and enhancement projects completed by the Trus-Joiust MacMillian when they built their wood products plant in 1991. TJM was required to create 12 acres of type 2 and type 6 wetland for 8 acres of filled wetlands.

* On to other things. The Duluth BWSR office has been busy getting the BWSR Board tour ready. They have worked with So. St. Louis SWCD to organize a tour that will highlight the complex nature of resource management along the north shore. We'll see forest land use, urban land use, Lake Superior shoreline issues, agricultural issues, and of course, wetlands. Please take note of the pre-tour information contained in your packet. This is intended to give people some things to look at on the way into or out of Duluth. Barb Liukonnen, water resources education coordinator, organized this portion of the tour.

* Keith was busy with his second job, chairing the Cost-Share rules revision process. This team has been doing great work and keeping to a tight schedule. Keith says the rules have been drafted and are out to the districts for review. Subcommittees have been formed to address the guidelines. Marybeth Block will now take center stage as the legal process begins (including dealing with the Revisor's Office, Attorney General review, and the Statement of Need and Reasonableness).

* Northern Region Supervisor Ron Shelito spent his time wrapping up the Cost-Share Audit Report for East Otter Tail SWCD. Ron and Board Member Ted Lovdahl presented this draft report to the East Otter Tail board and had a productive discussion with them.

Board of Water and Soil Resources
Conservation Easement Programs



Working to Restore the Minnesota River

July 1995

Board of Water and Soil Resources
Conservation Easement Programs - Working to Restore The Minnesota River

I. Introduction

In September 1992, Governor Arne Carlson issued a challenge: Make the Minnesota River swimmable and fishable within 10 years. As a result, the Minnesota River Citizens' Advisory Committee was formed to develop viable options for improving the water quality in the Minnesota River. A series of recommendations to assist in achieving this goal were developed and assembled into a report to the MPCA titled, Working Together: A Plan to Restore the Minnesota River, 1994

The first two recommendations listed in the action plan of this report are as follows: 1) Restore floodplains and riparian areas. 2) Restore wetlands. **Attachment #1** is a copy of this section of the report.

The Reinvest in Minnesota Reserve (RIM) program and the Permanent Wetlands Preserve (PWP) program are two of the primary resource management tools available to help accomplish the objectives laid out in the Minnesota River Citizens' Advisory Committee Report.

II. Program Authority, History and Accomplishments

Authority
The Board of Water and Soil Resources (BWSR) administers two conservation easement programs, the Reinvest in Minnesota Reserve program and the Permanent Wetlands Preserve program. (Minnesota Statutes sections 103F.501 - 103F.531.) Administrative rules (Minn. Rules parts 8400.3000-8400.3930) for RIM Reserve were initially promulgated as emergency rules in 1986, and as permanent rules in 1988. The rules were revised in 1990, and have recently undergone another revision which will become effective in October 1994.

These programs are administered by the state and implemented at the county level by soil and water conservation districts (SWCDs).

History
In 1984, Governor Rudy Perpich's concern for the future of tourism in Minnesota lead him to appoint a citizen's commission to report on ways to improve and promote hunting and fishing in Minnesota. The commission recommended that the sales tax revenues generated from the state's one billion dollar outdoor recreation industry be reinvested in the resources that sustain those activities. Their recommendations prompted the formation of a large and diverse coalition of organizations whose members supported the passage of the RIM Program in 1986. The RIM Coalition continued to support the program by developing innovative promotion programs and seeking stable funding sources. One of the four programs under the "RIM umbrella" was the RIM Reserve Program which focuses on retiring marginal lands from crop production via conservation easements. The program also assists landowners to the establish grass, trees or wetlands on the easement area (i.e., establish conservation practices).

The Permanent Wetlands Preserve (PWP) Program was enacted in 1991 in conjunction with the Wetland Conservation Act (WCA). PWP allows for the acquisition of easements on existing type 1,2 or 3 wetlands and wetlands where permits for WCA exemptions are denied. In 1994 program eligibility was broadened to include type 6 wetlands and wetlands expiring from state waterbank contracts.

Accomplishments to Date

Since 1986, over $40 million have been appropriated to the BWSR easement programs. RIM Reserve has secured 1,958 easements that protect over 53,695 environmentally sensitive acres. Over 540 wetland basins have been, or are currently being, restored encompassing 5,740 acres, along with approximately 9,110 acres of adjacent uplands. The average size of a wetland restoration easement is 34 acres, with the average wetland basin covering about 10 acres. The average wetland restoration easement payment is $567 per acre and the average practice establishment costs are $152 per acre. Other easements (nonwetland restoration) average 23 acres in size at a cost of $592 per acre for the easement payment and $127 per acre for practice establishment.

In 1991, $7 million was appropriated for PWP easements. Approximately $6 million of that appropriation was expended through FY 95 to secure 259 easements protecting over 10,500 acres of existing wetlands and adjacent upland. Approximately one million dollars has been reserved to acquire easements where permits for WCA exemptions are denied.

Attachment #2 illustrates the location of easements across the state along with acres and numbers associated with the various eligible land types.

As a result of Governor Carlson's Minnesota River challenge in 1992, the BWSR has targeted the Minnesota River watershed as a high priority area, allocating 50% of the available easement acquisition funds to the area. **Attachment #3** illustrates just easements in the Minnesota River basin counties. Approximately 54% of the states total easements, which encompass 56% of the total easement acreage, are located in the Minnesta River basin area.

Attachments 4 & 5 respectively show conservation easement expenditures and obligations for the entire state (4) and just the Minnesota River basin area (5), by easement type. These figures show that approximately 70% of the conservation easement expenditures have gone or are obligated to the Minnesota River Watershed counties.

Many partnerships have formed to assist in the successful implementation of the conservation easement programs. The willingness of private groups to provide financial assistance to landowners to establish conservation practices, along with technical and financial assistance from federal agencies, has allowed the BWSR to target program appropriations towards the acquisition of more easement acres.

The historical demand for program dollars continues to exceed program appropriations by a large ratio. In 1994, landowners submitted over $20 million of requests for conservation easements. **Attachment 6** illustrates, by year, the landowner demand and the bonding appropriation.

III. Program Priorities and Enrollment Goals

Statewide Priorities and Goals
In 1992, the BWSR adopted a five-year program plan for the RIM Reserve Program. This plan was based on the agency's strategic plan and set forth program priorities and objectives, as well as setting five-year enrollment goals.

Resource protection and improvement priorities established in the RIM Reserve program plan are:

1. Protect and improve **water quality**
2. reduce **soil erosion**
3. enhance **fish and wildlife habitat**

The same priorities are used for the PWP program, along with the priority to enroll wetlands that are highly susceptible to being altered (i.e., farmed wetlands or wetlands not protected by other local, state or federal regulations). For both RIM Reserve and PWP, high priority will be given to perpetual easements applications.

Acreage enrollment goals for FY 95-96 identified in the program plan include 4,000 acres of restored wetlands plus adjacent uplands; 6,000 acres of riparian lands (i.e., adjacent to a water course or water body); 2,000 acres of highly erosive marginal lands; 1,500 acres for ground water protection purposes and approximately 10,000 acres of lands expiring from a USDA Conservation Reserve Program contract or RIM Reserve limited-duration easement. Conversion of these CRP contracts or RIM limited duration easements to perpetual easements is efficient because the land is already in conserving use and therefore will not require funds for the establishment of conservation practices. Less than one percent of the expiring acres are targeted for acquisition. Approximately 1.2 million acres are scheduled for release from CRP in 1996 and 1997 alone. Only the most environmentally sensitive lands are targeted for conversion into RIM Reserve. Many of these conversion acres will undoubtedly come out of the Minnesota River Basin as the BWSR will continue to target 50% of the availble easement acquisition funds to this area.

Local and Regional Prioritization
Each easement application is prioritized as to how well it achieves local resource protection goals as set forth in the county water plan, SWCD comprehensive plan and by a local screening committee. The screening committee is made up of representatives from conservation and environmental groups, farming organizations and various federal and state agencies. In addition to identifying resource protection priorities, this committee often reviews each application and assists the SWCD with prioritizing the applications.

Each easement application is subsequently assessed by one of the BWSR's 15 regional board conservationists (BCs) to determine how well (high, medium or low) it meets the BWSR's resource protection priorities listed above. The BWSR's goal for FY 96 is to enroll at least 75 percent high resource protection priority easements, and no more than 25 percent medium priority easements. No low priority easement areas are included in the enrollment goals. In addition to considering how well the area meets local and BWSR resource protection priorities

in a funding recommendation, the BC will also consider other factors, such as the degree to which the land's title is clouded or the capacity of the SWCD to implement the programs.

IV. Summary and Anticipated Outcomes

RIM Reserve and PWP are effective resource protection programs that will continue to help address the water quality problem in the Minnesota River. By continuing to target the Minnesota River watershed with floodplain and riparian easement acquisition, the BWSR will continue to strive towards the acreage goals it has laid out for itself, and the goals of the Minnesota Citizen's Advisory Committee. Achieving these goals will be dependent on the state's continued financial commitment to the program.

RESTORE FLOODPLAINS AND RIPARIAN AREAS

Rationale

A floodplain is an area of relatively flat land adjacent to a river. When there is more water than can be contained within a riverbed, the excess water goes onto the floodplain. When human activities take place in a floodplain, those activities are at risk of being flooded. The less human activity that takes place in a floodplain, the less damage is done by a flood.

Restoring the floodplain to its natural purpose will make a powerful statement about the state's commitment to cleaning up the river.

Even during times of normal water levels, floodplains perform a vital water-cleansing function. As water moves from the uplands toward a river after a rainfall or snow melt, floodplains retain some of the water and trap sediment, nutrients, bacteria, and other pollutants.

Riparian zones — the vegetative areas along the banks of a river usually make up a small percentage of land area in a river basin, but they perform three important functions disproportionate to their size. First, they assist in the overall floodplain's water-cleansing process. Second, they provide an unbroken green corridor for the movement of wildlife. Third, riparian areas make a river more beautiful.

In June 1994, the federal Interagency Floodplain Management Review Committee published *Sharing the Challenge: Floodplain Management into the 21st Century*. The abstract of the report states:

> "The federal government can lead by example; but state and local governments must manage their own floodplains. Individual citizens must adjust their actions to the risk they face and bear a greater share of the economic costs."

The floodplain of the Minnesota River is the most visible and identifiable portion of the river basin. Restoring the floodplain to its natural purpose will make a powerful statement about the state's commitment to cleaning up the river. Clearly visible green belts along the major tributaries will confirm Minnesota's intention to safeguard one of our major ecosystems.

Action Plan

1. Restore the Minnesota River floodplain

The Reinvest in Minnesota (RIM) program, in concert with local and federal initiatives, should acquire all of the Minnesota River floodplain between Jordan and Big Stone Lake — roughly 200,000 acres in all.

Procurement should be made with willing landowners through permanent easements and selective fee-title acquisitions.

In the case of permanent easement acquisitions, the administering agency should interpret easement provisions flexibly. Some agricultural activity may still be allowed on some of the lands acquired. Pasturing or haying, for example, may not interfere with some parcel's ability to filter floodwaters during storm events. In those cases, the state should not pay for both cropping rights and haying or grazing rights.

2. Establish riparian areas along the major tributaries

"A river ...can be tamed but it resents it. And then far-reaching and very destructive things happen, all the way from the trickles of its source clear down to its deltas and entrances at the edge of the ocean."
-Andy Russell

The RIM Reserve program has the authority to acquire easements in riparian areas along the major tributaries of the Minnesota River. Statewide, more than 5,000 acres of riparian land are currently enrolled in the Reserve. The program is well run and needs no major legislative changes. What is needed is support for the Board of Water and Soil Resources (BWSR) to substantially increase the amount of their resources for riparian corridor restoration, both through internal reallocation and external supplements.

No riparian corridor easements should be acquired where such action would not reduce erosion or maintain a continuous green belt. Special attention should be given to connecting riparian areas to non-riparian natural areas so as to create corridors for wildlife. The monies allocated to this program should be for acquisitions within an average 50-foot corridor on each side of a tributary.

Costs

The cost of permanent easement acquisition along the main stem of the Minnesota River is estimated to be $400–$700 per acre for cropping (but not full agricultural) rights. To acquire such rights, the state would face a one-time cost of $80-$140 million. For each particular parcel, the cost of permanent easement acquisition should be weighed against the costs and benefits of fee-title acquisition.

This expenditure may be reduced to the extent that other public and private organizations conduct their own acquisition and development programs. For example, the U.S. Fish and Wildlife Service has made a preliminary proposal to expand the Minnesota Valley National Wildlife Refuge along the river from Jordan to Le Sueur. The Citizens Advisory Committee supports this proposal.

Action Plan

Acquiring a complete riparian corridor on the major tributaries of the Minnesota River will cost about $42 million. This is based on an average width of 50 feet on each side of 5,000 miles of major tributaries (about 60,000 acres) at $700 per acre.

These floodplain and riparian acquisitions will lower the market value of the properties themselves. This will reduce the tax base of the property's various taxing jurisdictions and, as a result, would increase property tax payments of other properties in the jurisdictions. To reduce these tax shifts, the state should pay property taxes on the easements share of the property value. This would add another $6–10/acre/year or $1,560,000–$2,600,000 to the annual cost of the programs.

"A river is nature's own wilderness road."
-Tim Palmer

Acquiring the floodplain will reduce expenditures in other areas. Estimates of the cost of the 1993 flood in the Minnesota River basin were $233 million in property damage and $550–$800 million in crop damage. These costs would have been even higher had not the Minnesota Valley National Wildlife Refuge protected the metro-area floodplain from development. The costs would have been lower had restoration of the floodplain and riparian areas outside the metropolitan area occurred before the flood.

Translating all of the environmental benefits of floodplain restoration into economic terms is an inexact science. One can be confident in asserting, however, that water quality and scenic values will improve, which will result in an increase in recreational fishing and tourism throughout the basin.

Restoration of the Minnesota River floodplain and tributary riparian areas should be accomplished over a period of five years. The 1995 Legislature should allocate a special fund of $30 million to ensure that these programs get off to a good start.

RESTORE WETLANDS

Rationale

If our goal is to improve water quality in the Minnesota River, we must look beyond the old ways of thinking and understand water within a larger context. Rather than think of water as a liability — something we must get off the land and send downstream as quickly as possible — we must recognize that water is a precious natural resource and attempt to retain as much of it as we can. This is true in urban and rural areas alike.

"The Minnesota in its meandering way exerts subtle pressures of the sort that make it endearing, if not a famous river. One of the finest attributes is that it is not intimidating." -Suzanne Winckler

Beyond the floodplain, the best way for us to manage water on the land is wetland restoration. While drainage has dramatically altered surface and subsurface hydrology throughout the Minnesota River basin, wetland restoration can compensate by allowing water to be retained on the land. As Minnesotans now recognize, wetlands perform many important functions, such as reducing peak flow during runoff events, recharging groundwater aquifers, slowing the movement of surface water, trapping sediment and nutrients, and providing habitats for fish and wildlife.

In the Minnesota River basin, more than 90 percent of the original wetlands have been drained or filled. We must restore some of those wetlands. The percentage of the land in a particular area to be restored will depend upon the land-use practices, soils, and drainage patterns of that area.

Action Plan

We should begin our wetland restoration effort by purchasing perpetual easements on lands that will be inexpensive to restore, that offer the biggest return in the form of pollution reduction, water retention and habitat restoration, and that landowners want to restore. The RIM program and the U.S. Fish and Wildlife Service wetland restoration programs should be funded at sufficient levels to meet the demand from all landowners who want to participate.

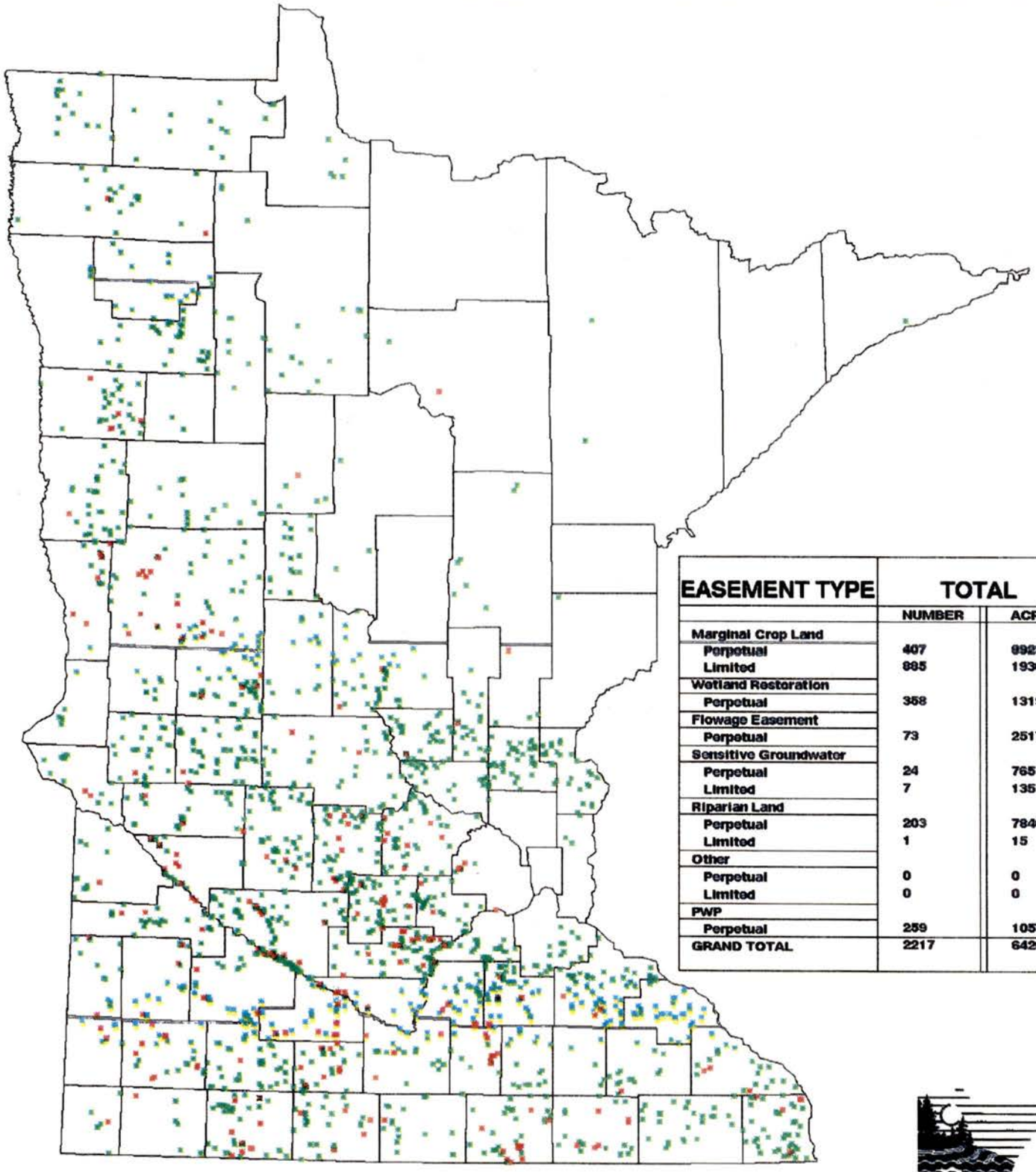
The Wetland Reserve Program is a sound alternative to draining existing wetlands and should be continued for an additional 10 years.

Costs

Initial expenditures for wetland restoration vary considerably, with an upper limit of about $1,000 per acre. As is the case with floodplain restoration, the costs are at least partially offset by the economic benefits of cleaner water and improved wildlife habitat.

ATTACHMENT 2

CONSERVATION EASEMENT LANDS 7/12/95
RIM RESERVE & PERMANANT WETLANDS



EASEMENT TYPE	TOTAL	
	NUMBER	ACRES
Marginal Crop Land		
Perpetual	407	9923
Limited	885	19309
Wetland Restoration		
Perpetual	358	13193
Flowage Easement		
Perpetual	73	2517
Sensitive Groundwater		
Perpetual	24	765
Limited	7	135
Riparian Land		
Perpetual	203	7840
Limited	1	15
Other		
Perpetual	0	0
Limited	0	0
PWP		
Perpetual	259	10573
GRAND TOTAL	2217	64268

07/12/95
RIM.PLT

✳ RIM Easements

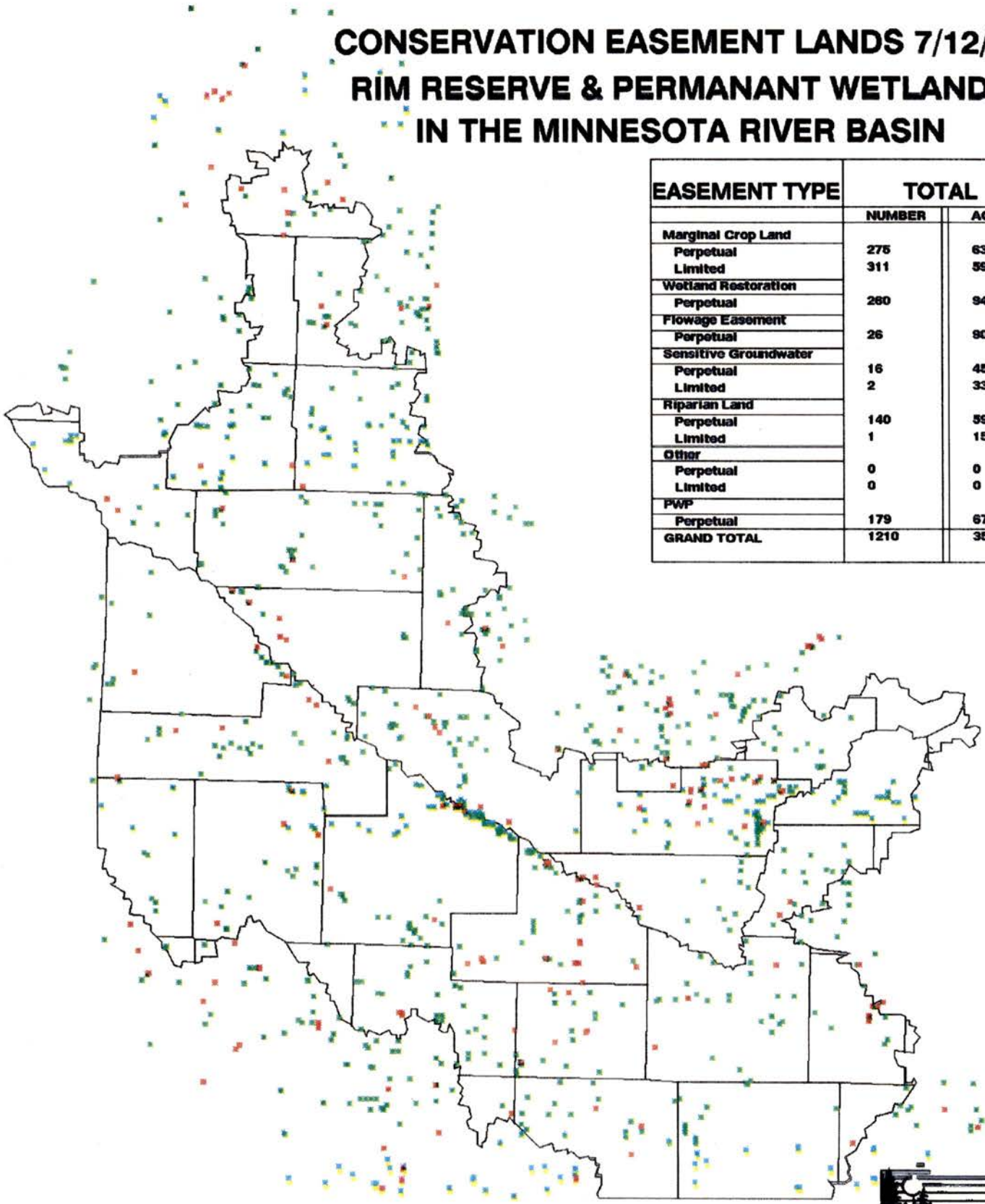
✳ PWP Easements

Minnesota Board of Water & Soil Resources

ATTACHMENT 3

CONSERVATION EASEMENT LANDS 7/12/95
RIM RESERVE & PERMANANT WETLANDS
IN THE MINNESOTA RIVER BASIN

EASEMENT TYPE	TOTAL	
	NUMBER	ACRES
Marginal Crop Land		
Perpetual	275	6345
Limited	311	5980
Wetland Restoration		
Perpetual	280	94913
Flowage Easement		
Perpetual	26	901
Sensitive Groundwater		
Perpetual	16	453
Limited	2	33
Riparian Land		
Perpetual	140	5993
Limited	1	15
Other		
Perpetual	0	0
Limited	0	0
PWP		
Perpetual	179	6710
GRAND TOTAL	1210	35920



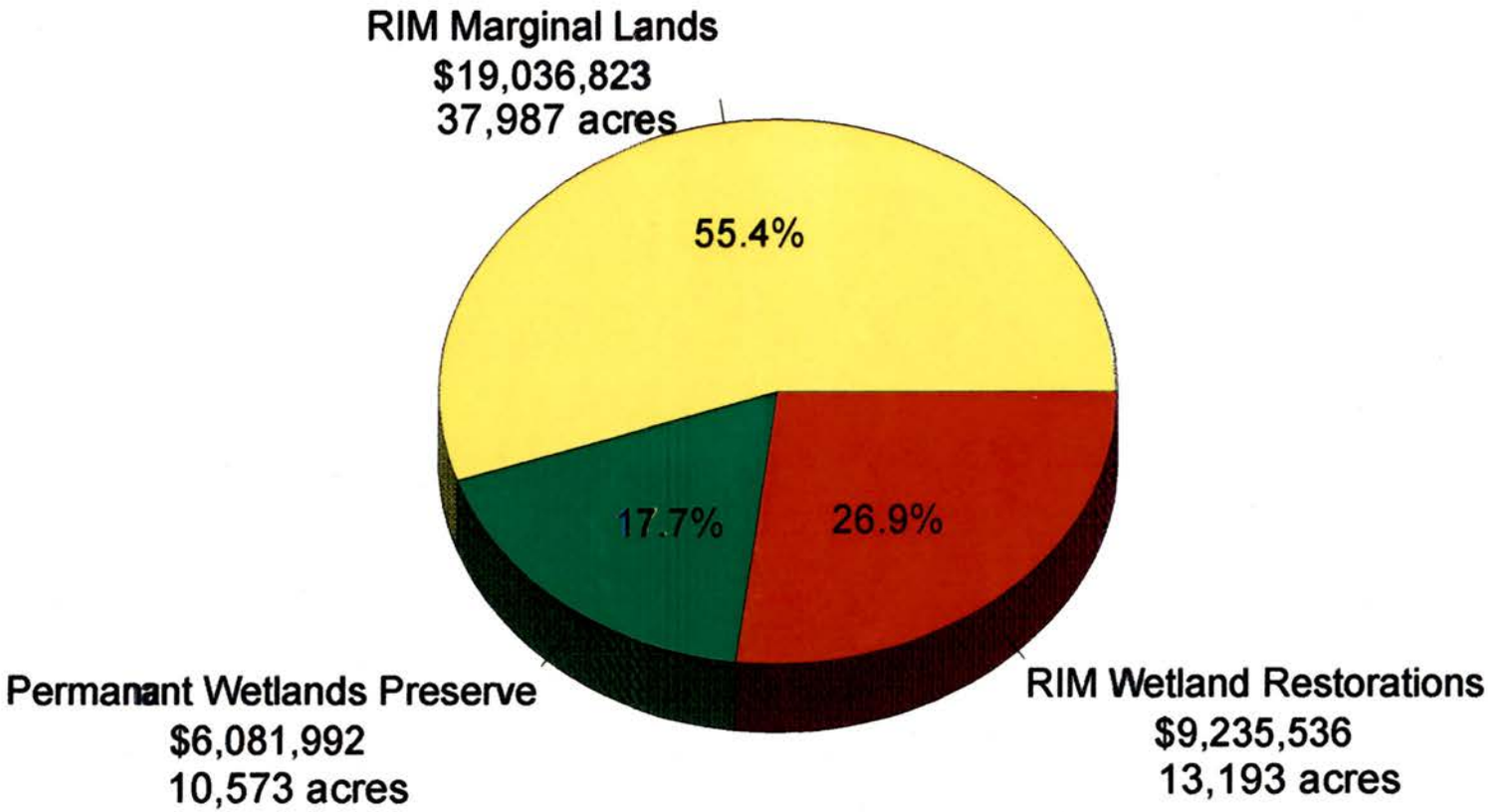
07/12/95
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* RIM Easements
* PWP Easements

Minnesota Board of Water & Soil Resources

Conservation Easement Expenditures & Obligations

by Easement type

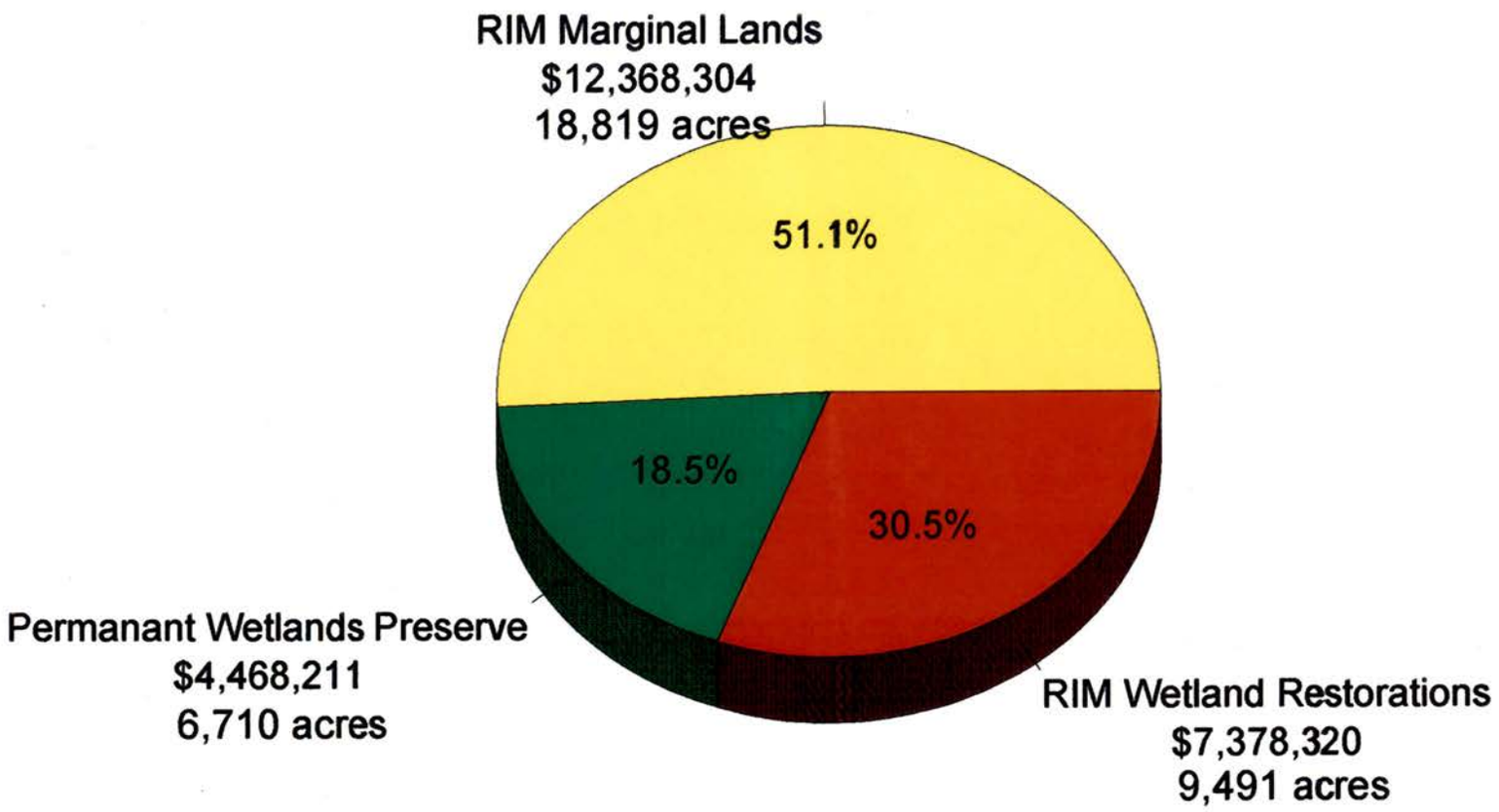


ATTACHMENT 4

7/13/95
CEASEEX2

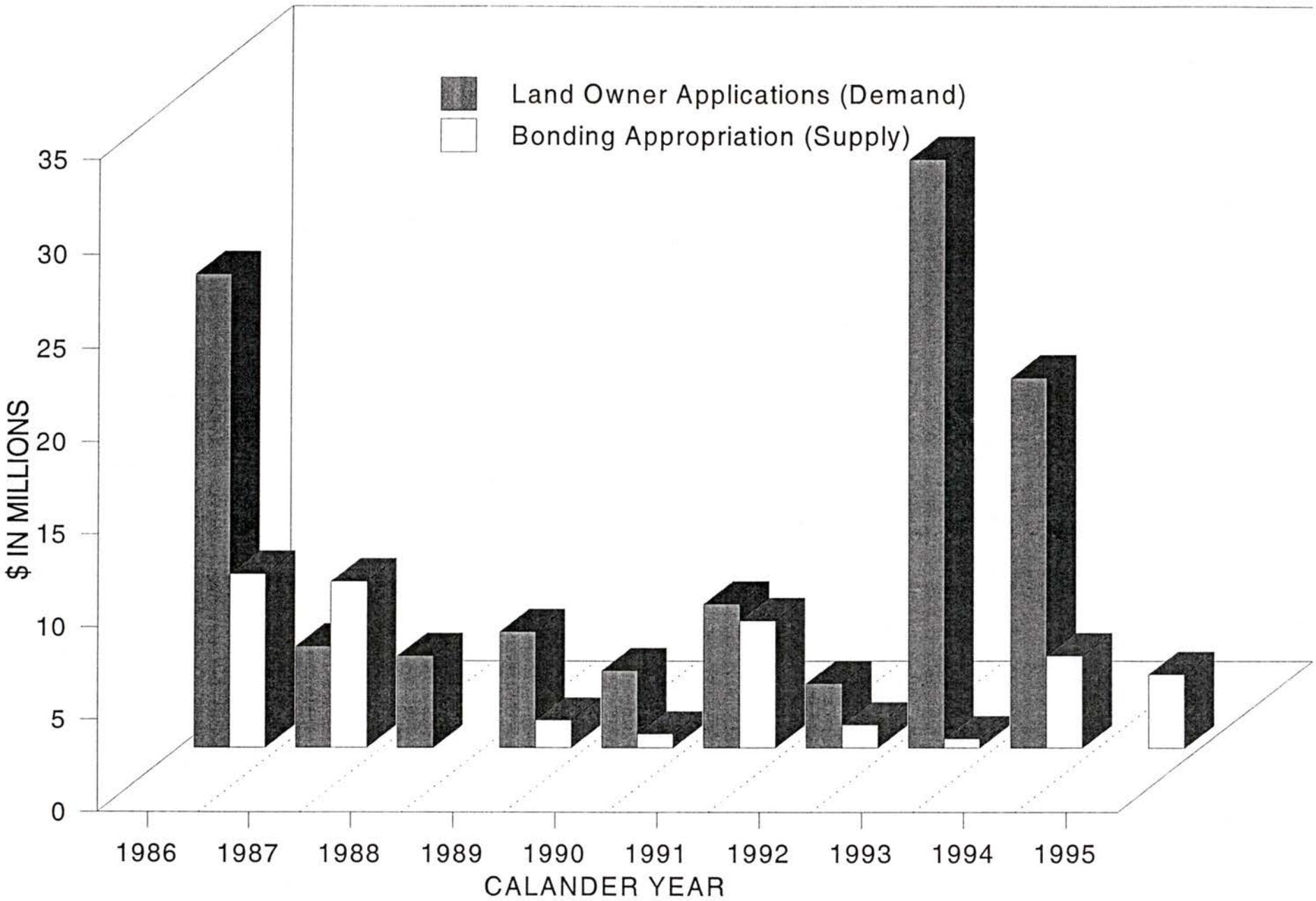
Conservation Easement Expenditures & Obligations

by Easement type in the Minnesota River Basin



ATTACHMENT 5

7/13/95
CEASEEX1

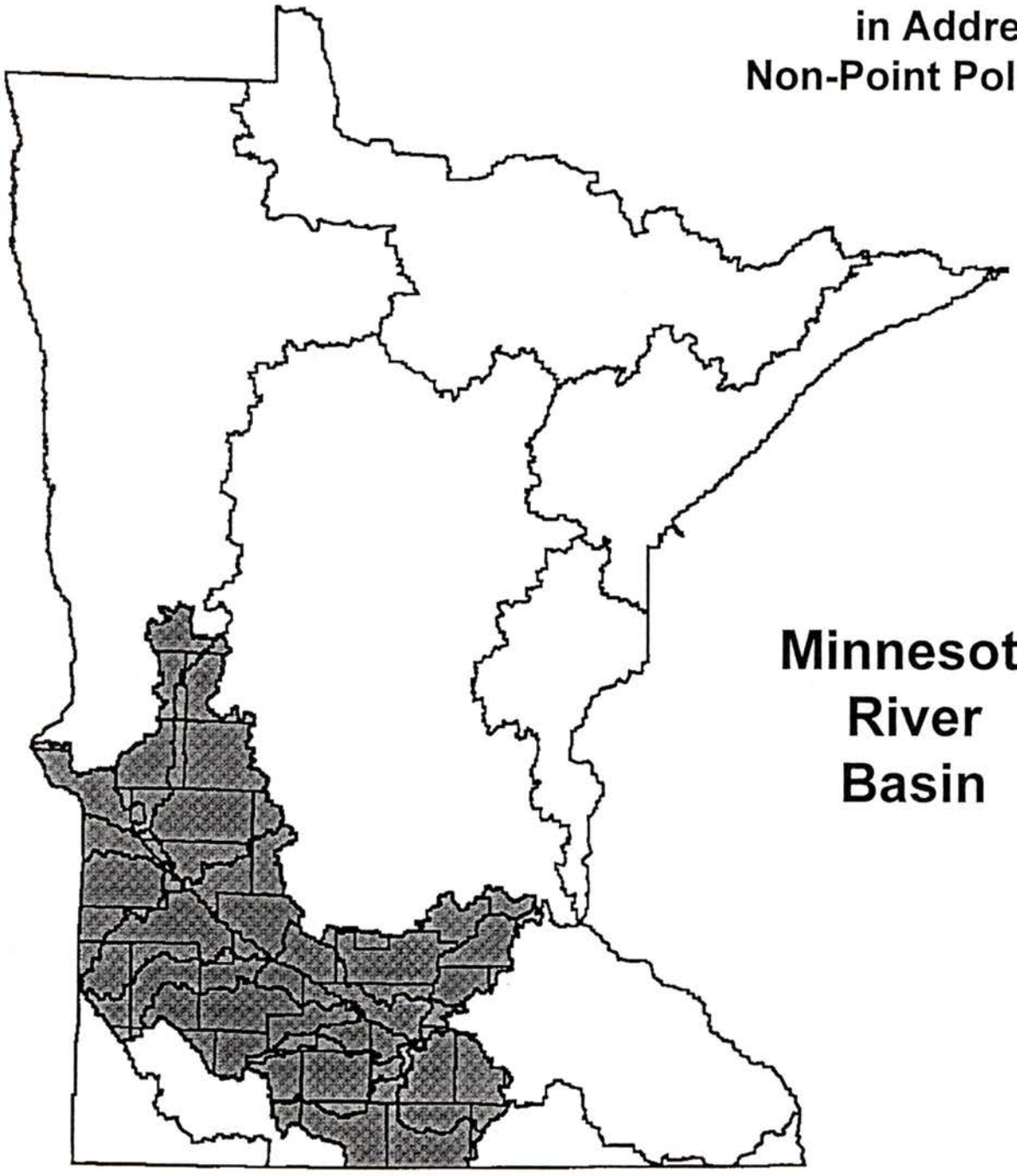


CONSERVATION EASEMENT FUNDING

Supply and Demand

ATTACHMENT 6

The Role of BWSR and Local Government in Addressing Non-Point Pollution



Minnesota River Basin

COUNTY LOCAL WATER PLANNING

LAND AND WATER SHALL BE PRESERVED

WATERSHED DISTRICTS

SWCDs

Minnesota Board of Water & Soil Resources

The Role of Local Governments and the Board of Water
and Soil Resources in Addressing Non-Point Pollution
in the Minnesota River Basin

THE PROBLEM

Since the time of European settlement land use decisions in both the rural and urban environments have contributed pollutants to the Minnesota River to the point that in 1995 it no longer meets fishable and swimable standards at many times during the year. Today, most of the pollution reaching the river is considered non-point, coming from stormwater runoff from farms, and cities. The Minnesota River also has a strong negative effect on the Mississippi River downstream from Fort Snelling.

THE ROLE OF LOCAL GOVERNMENT AND THE BOARD OF WATER AND SOIL RESOURCES (BWSR) WITHIN THE MINNESOTA RIVER BASIN

In order for clean up efforts to be successful the basic behavior of people must change. The results of intensive monitoring and pollutant modeling done by state and local governments in the last five years have challenged traditional land use practices in the basin. Because change must be widespread, involving thousands of landowners, the traditional approach of top-down regulation--which was very successful with point source pollution like factory discharges--will not work in the basin. Instead, a new approach using local government in partnership with state and federal government, can make these changes happen.

Local governments are well equipped to encourage and foster these needed changes for a number of reasons: local governments are, in most instances, the land use authority in Minnesota, and since non-point pollution is generally associated with land use decisions, local government must be at the forefront of change; local officials are community residents who understand both the people and the resource needs of the area; and finally, citizens tend to have more trust in their local government, because it involves their neighbors and friends. Therefore the lead for non-point source pollution control should be local with involvement and assistance from the state and federal government.

The roles of local government in natural resource protection in Minnesota are many and date as far back as the 1930s. It wasn't until the mid 1970s, however, that local government--particularly soil and water conservation districts (SWCDs), watershed districts (WDs), and counties--began to accelerate their resource management activities. Much of the acceleration was through specific programs and activities that involved a local-state partnership. Appendix A summarizes some of the more significant programs and events in local resource management history.

One benchmark worthy of additional note is the Comprehensive Local Water Planning Program (CLWP), administered by the BWSR. Approved in 1987, the CLWP brought together for the first time the many diverse local interests involved in resource management.

In most counties participation included the county, SWCD, watershed districts, the Minnesota Extension Service, sporting organizations, environmental groups, farm groups, townships, cities, and lake associations. Representatives of these groups served on local task forces charged with writing the plans and overseeing their implementation. Most task forces became local leadership coalitions specializing in identifying resource management needs, advocating action, and providing a central contact point and forum for resource protection needs and issues.

Another program worth noting is the State Revolving Fund (SRF) Loan Program, established in 1994 to provide citizens and local governments with low-interest loans to address non-point pollution problems. The program is administered in three parts by the Minnesota Pollution Control Agency, the Minnesota Department of Agriculture, and the Minnesota Department of Trade and Economic Development. The portion of the program administered by the Department of Agriculture will make approximately $10 million dollars per year available to counties to establish revolving loan programs. The counties and or local lender will lend this money to individual landowners to implement best management practices, including purchasing conservation tillage equipment, installing animal waste control systems, and installing individual sewage treatment systems.

STATUS OF CURRENT LOCAL GOVERNMENT EFFORTS IN THE MINNESOTA RIVER BASIN

Through a variety of programs administered by the BWSR, the Minnesota Pollution Control Agency and the Minnesota Department of Agriculture, the state has provided local governments with many of the tools they need to achieve implementation of water and soil resource management practices and programs in the basin.

The BWSR administers three programs used most extensively by local governments in the basin:

- The Reinvest in Minnesota (RIM) Reserve Program and the Permanent Wetland Preserves Program (PWP), which are land retirement programs. The RIM Reserve Program removes marginal agricultural land from production and restores drained wetlands. PWP preserves existing wetlands. These programs are administered locally by SWCDs.
- The Cost-Share Program, both regular and accelerated, which provides funding to landowners to offset the cost of installing erosion and sediment control practices. This program is administered locally by SWCDs.
- The Comprehensive Local Water Planning Program, which provides base and competitive funding for the implementation of priority actions in local water plans. This program is administered by counties.

Traditionally, major funding for local water and soil resource protection efforts have come from the state, counties (through CLWP), SWCDs, and watershed districts. Appendix B shows the relation of local funding to state funding for these three units of government.

The results of the funding commitments made by the state and local government to the Minnesota River cleanup initiative are partially illustrated in Appendix C, D & E. Appendix C illustrates Comprehensive Local Water Planning initiatives implemented in 1994 by 29 counties outside the seven county metro area. Appendix D shows the allocation of BWSR regular and accelerated cost-share dollars to Minnesota River counties. These cost-share dollars are allocated to individual landowners, through the SWCDs, to help defray the cost of correcting or treating high priority erosion, sedimentation, or water quality problems.

Appendix E illustrates the type and numbers of practices installed within the Blue Earth River Basin and the allocation of funds by type of practice. The Blue Earth Basin Initiative is a five-SWCD/county Joint Powers Board (JPB) established to accelerate land treatment practices on private lands that have been identified as priority pollutant reduction areas. The Blue Earth River Basin Initiative was selected as a recipient of accelerated cost-share dollars through BWSR because of its integrated and watershed-based approach to addressing water quality problems. The accelerated cost-share program because of is competitive nature has resulted in SWCD's getting together on a watershed basis to set land treatment goals and prioritize the individual land treatment needs. Implementation on a watershed basis makes the best use of limited funding by directing moneys to those areas that contribute the most pollutants.

Although the SRF Program is new and there are no real results to report, an indication of the impact that the program will have can be seen by looking at the results of the application process recently completed by the Minnesota Department of Agriculture. Appendix F shows a breakdown, by percent, of the types of practices that counties identified in their loan applications. Response to the program has been tremendous, evidenced by counties statewide submitting applications to the MDA that totalled over 31 million dollars. Appendix G illustrates the amount of SRF money allocated to successful applicants in the basin. Appendix G shows the allocation of SRF money to successful applicants statewide.

COORDINATION EFFORTS IN THE BASIN

Many levels of coordination and cooperation are occurring in the basin. Each of these efforts are unique and represent what local citizens and elected officials felt was the most appropriate implementation structure to deal with their unique problem or opportunity. The following cooperative efforts are currently underway in the basin:

Organization	Purpose
Southcentral 13 County Water Planning JPB	Assist in water plan development and area-wide data collection, interpretation & monitoring.

Blue Earth River JPB	Five SWCDs organized to implement conservation practices identified as a result of the Minnesota River Assessment Project.
Redwood Cottonwood River Control Area	Six county/SWCD JBP organized to implement protection efforts on the Redwood and Cottonwood Rivers.
Mounds Creek	A special project by Cottonwood SWCD to improve water quality in the Mounds Creek Watershed
MN River JPB, 33 Counties	Joint powers agreement to coordinate the implementation of local water plans in the basin.
Watershed districts, including: Upper Minnesota River Watershed District Lac qui Parle Yellow Bank Watershed District Yellow Medicine Watershed District Nine Mile Creek Watershed District Riley Purgatory Bluff Creek Watershed District Lower Minnesota River Watershed District Prior Lake - Spring Lake Watershed District	Special purpose local units of government organized along watershed boundaries to manage both water quantity and quality.
Soil and water conservation districts	38 special purpose local units of government established by petition to provide technical and financial assistance to individual landowners for soil and water conservation related activities.
Upper Minnesota JPB	Five-county JPB for coordinating implementation of local water plans and for applying for and implementing SRF Loan Program dollars.
MN River Citizens Advisory Committee	Organized as part of the Minnesota River Assessment Project and Minnesota River Implementation Project to provide a forum for citizen participation and recommendations.

SWCD technical assistance clusters	11 clusters of SWCDs, covering the entire state, organized as JPBs to provide increased technical assistance to landowners receiving financial assistance through the State Revolving Fund Loan Program.
MPCA Clean Water Partnership Projects	Administered by the MPCA, this program provides grants and loans to watershed based projects for both diagnostic studies and implementation programs.

Projects in the Minnesota River Basin include:

Phase 1 projects (resources investigation, study and planning)

- Beardsley Ground Water
- Lake Shetek
- Crystal, Loon, Mill Lakes
- Redwood River
- Duck lake

Phase 2 projects (implementation)

- Lake Shaokatan
- Redwood River
- Mountain Lake
- Prior Lake / Spring Lake
- Fish Lake
- Schwanz Lake

NEEDS AND RECOMMENDATIONS

The needs and recommendations expressed in this section are designed to compliment the existing state and local base efforts in the Minnesota River Basin through accelerating existing implementation programs and increasing the flexibility of programs currently available. The overriding goal of the BWSR as expressed in this section is the increased application of conservation treatment on the ground. The recommendations listed below incorporate recommendations from the Minnesota River Citizens' Advisory Committee's (CAC) Final Report to the Minnesota Pollution Control Agency for increased technical assistance and an accelerated BWSR Cost-Share Program.

** Increase technical staffing at the local level. The Minnesota Legislature in 1995 partially addressed this issue with an investment imitative that increased SWCD General Service grants from approximately $9,300 to $11,800 per year. Although the increase was helpful it did not provide enough new money--even if matched by the county--to hire additional technical staff within the SWCDs. The staffing of SWCDs will continue to rely heavily upon state support as long as they are reliant on their

individual county boards as their primary source of funding. Increasing the technical assistance capabilities of SWCDs would provide a significant new opportunity to work with landowners to develop integrated whole farm resource plans, as recommended by the Minnesota River CAC.

** Increase state funding for the Cost-Share Program administered by the BWSR and the SWCDs. Special emphasis should be placed on funding only those projects which are the most effective over the long run for improving water quality.

** Expand the flexibility of the Cost-Share Program to allow the expenditure of state funds on alternative agricultural feedlot runoff control systems. Alternative control systems, when done as part of a watershed project, have the potential to reduce landowner cost while achieving the desired pollutant loading reductions established for the project area.

** Continue to enhance partnerships in the basin. All of the major watersheds in the basin should be organized.

APPENDIX A
BENCHMARK NON-POINT POLLUTION INITIATIVES
INVOLVING A STATE/LOCAL PARTNERSHIP

1976 STUDY AREA II

A seven county joint powers established for the purpose of flood damage reduction and management of surface waters in southwestern Minnesota.

1978 EROSION AND SEDIMENT CONTROL COST-SHARE PROGRAM

A State grant program administered through local SWCD's to assist in paying the cost of constructed high priority erosion and sediment control projects.

1982 METROPOLITAN SURFACE WATER MANAGEMENT ACT

A State initiated program which required local communities in the seven county metropolitan area to plan for surface water protection on a watershed basis.

1985 METROPOLITAN GROUND WATER MANAGEMENT ACT

Allows counties in the seven county metropolitan area, on a voluntary basis, to plan for ground water protection.

1986 REINVEST IN MINNESOTA - RIM RESERVE PROGRAM

A state/local program to retire marginal cropland and other environmentally sensitive lands from agricultural production through the purchase of perpetual conservation easements.

1987 COMPREHENSIVE LOCAL WATER PLANNING

Authorized counties outside the seven county metropolitan areas to develop local comprehensive water management plans.

1989 MINNESOTA RIVER ASSESSMENT PROJECT

An LCMR funded multi agency and local government of the Minnesota River under the direction of the MPCA.

1990 LOCAL WATER RESOURCES PROTECTION AND MANAGEMENT PROGRAM

A matching grant program for the purpose of providing grants to counties to assist in the administration and implementation of state approved comprehensive local water plans.

1990 ABANDONED WELL SEALING PROGRAM

A matching state grant program, administered locally through counties, to assist in the sealing of high priority abandoned wells.

1991 WETLAND CONSERVATION ACT

A State initiated wetland protection program which is administered locally by local units of government.

1993 ACCELERATED COST-SHARE PROGRAM

Investment initiative to increase cost-share assistance to the Minnesota River Basin.

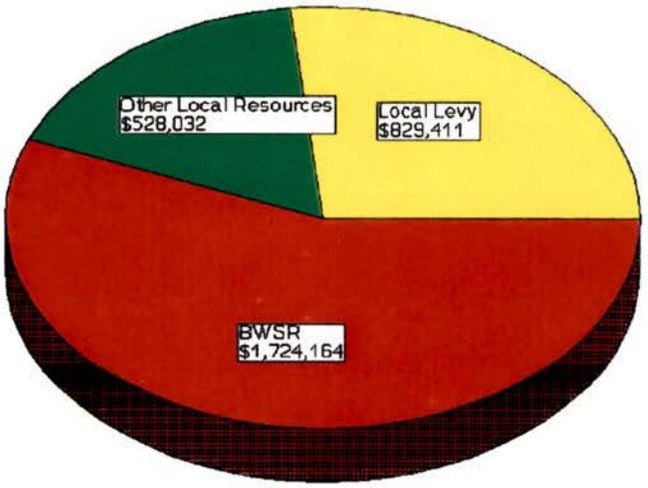
1994 STATE REVOLVING LOAN PROGRAM

Authorization for SRF program to be used to finance through low interest loans non-point pollution problems.

APPENDIX B
Local and State Funding for Minnesota River Basin Projects FY 1993 & 1994

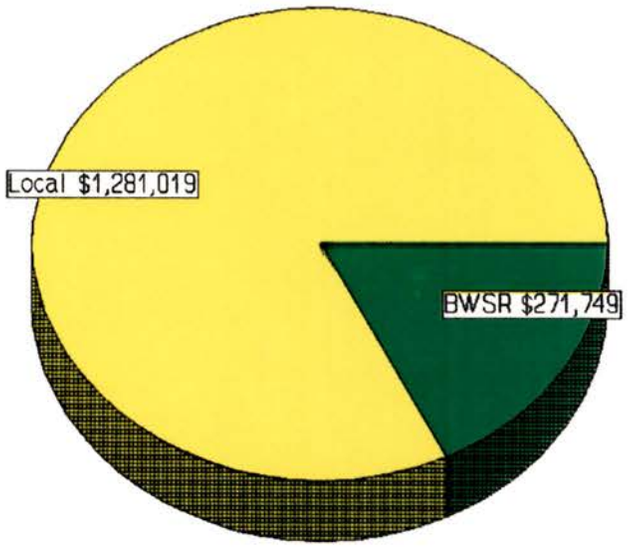
LOCAL WATER PLANNING

Minnesota River Basin FY 1994 Funding



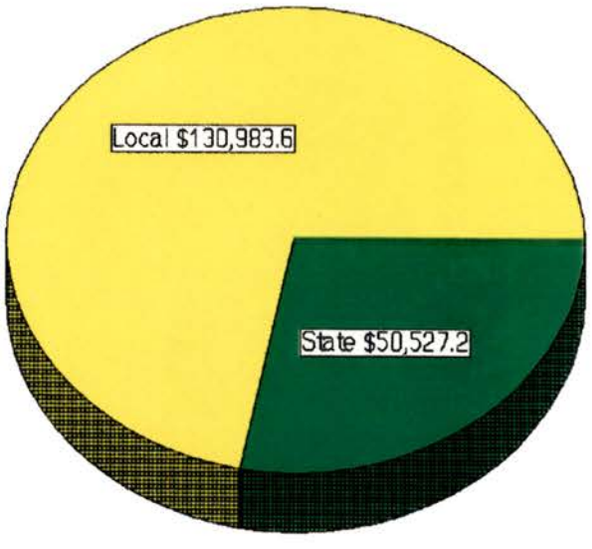
SWCDs

Minnesota River Basin FY 1993 Funding



Watershed Districts

Minnesota River Basin FY 1994 Funding



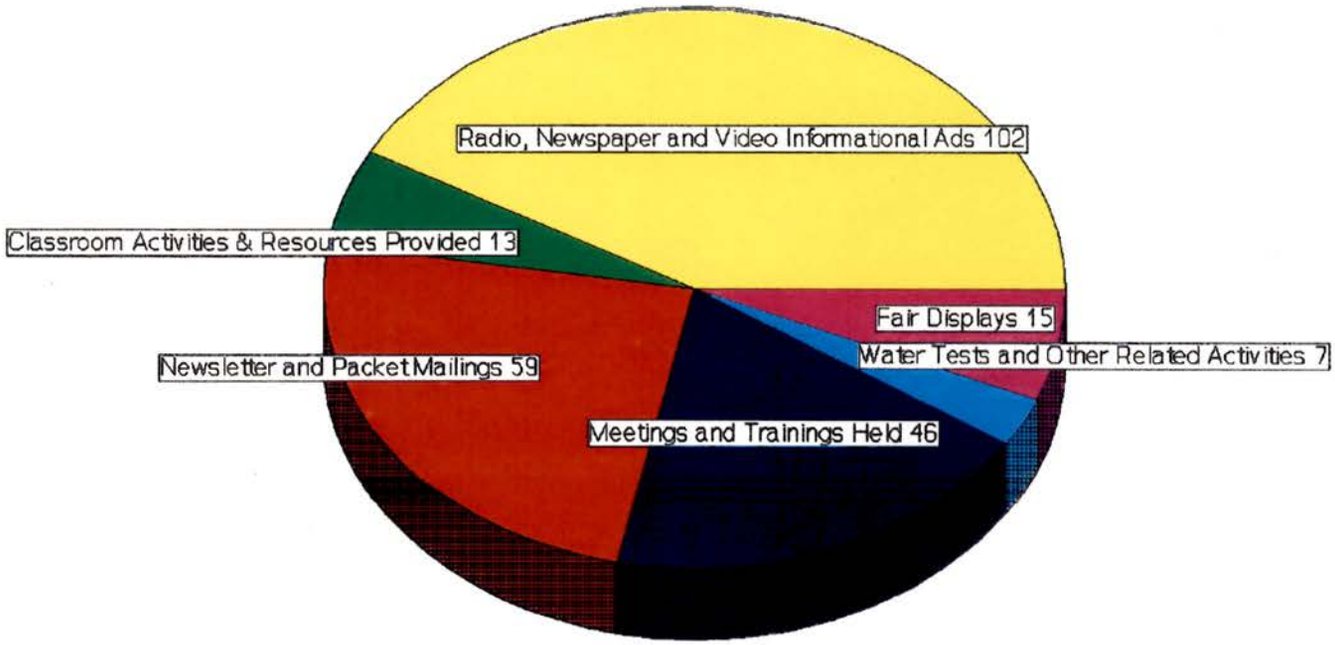
Note: Numbers Shown are from 29 of the 38 MN River Basin Counties

APPENDIX C

Major Minnesota River Basin Counties Comprehensive Local Water Planning 1994 Activities and Accomplishments

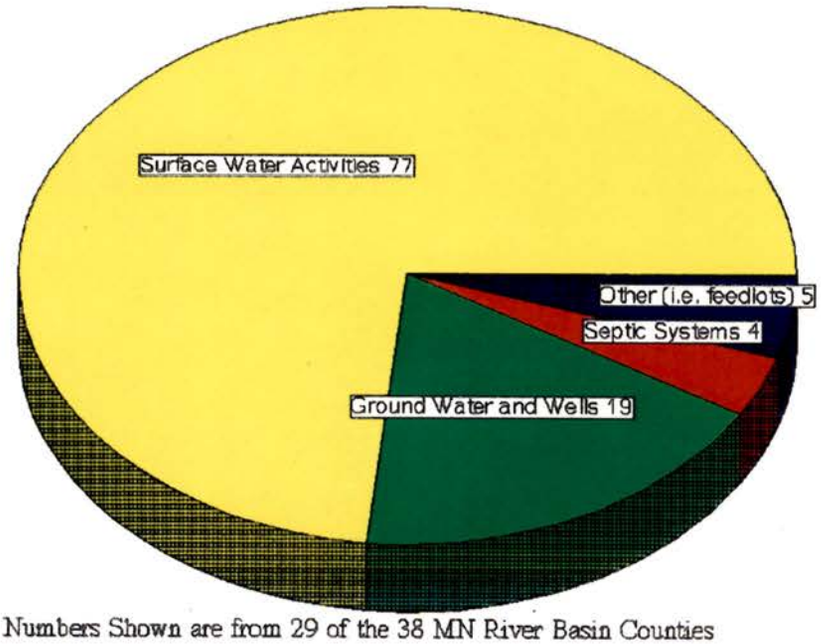
EDUCATION AND INFORMATION

242 Initiatives Reported



MONITORING AND DATA COLLECTION

105 Initiatives Reported

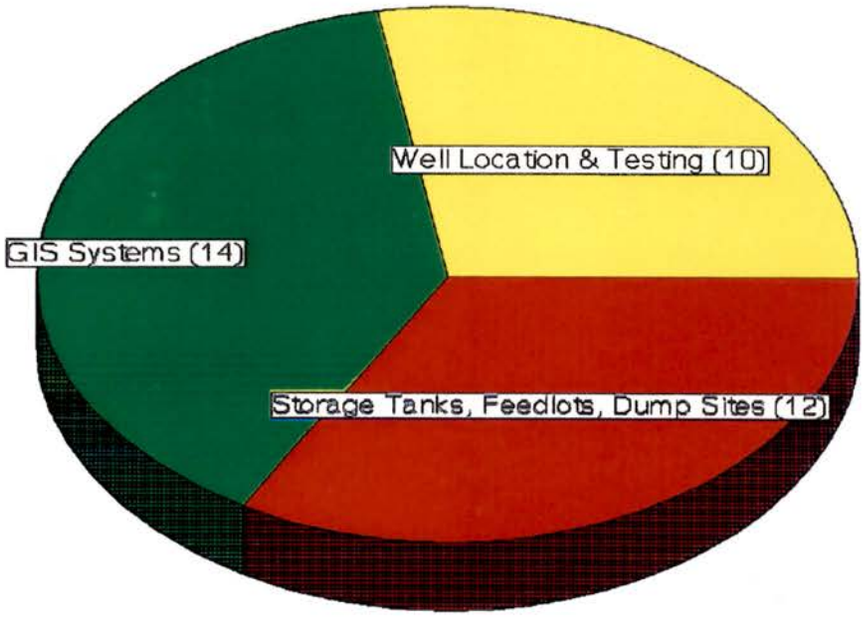


Note: Numbers Shown are from 29 of the 38 MN River Basin Counties

Major Minnesota River Basin Counties Comprehensive Local Water Planning 1994 Activities and Accomplishments

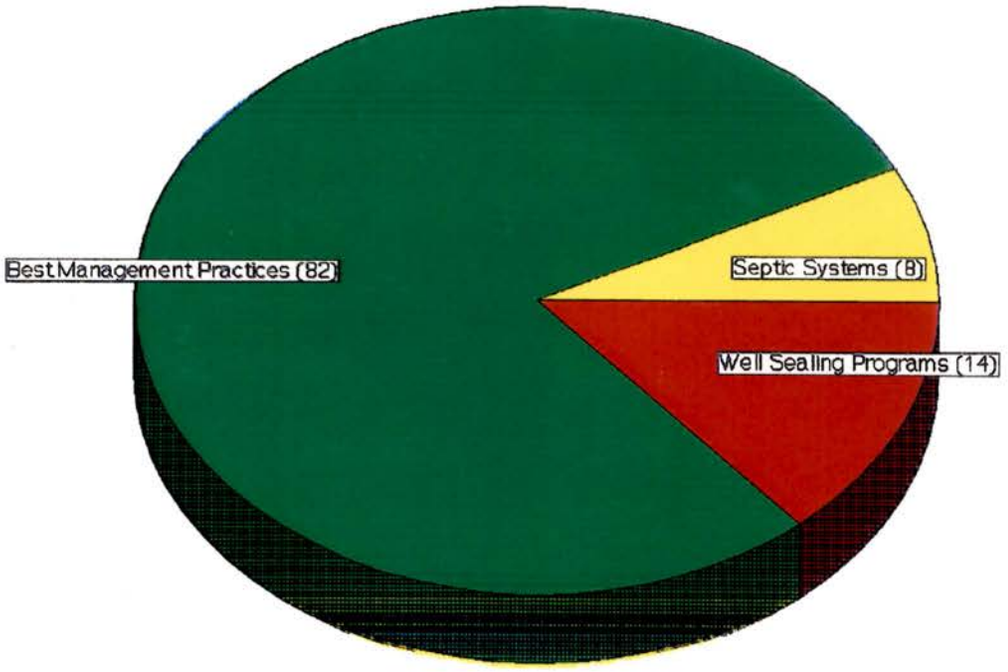
INVENTORY AND MAPPING

36 Initiatives Reported



LAND AND WATER TREATMENT

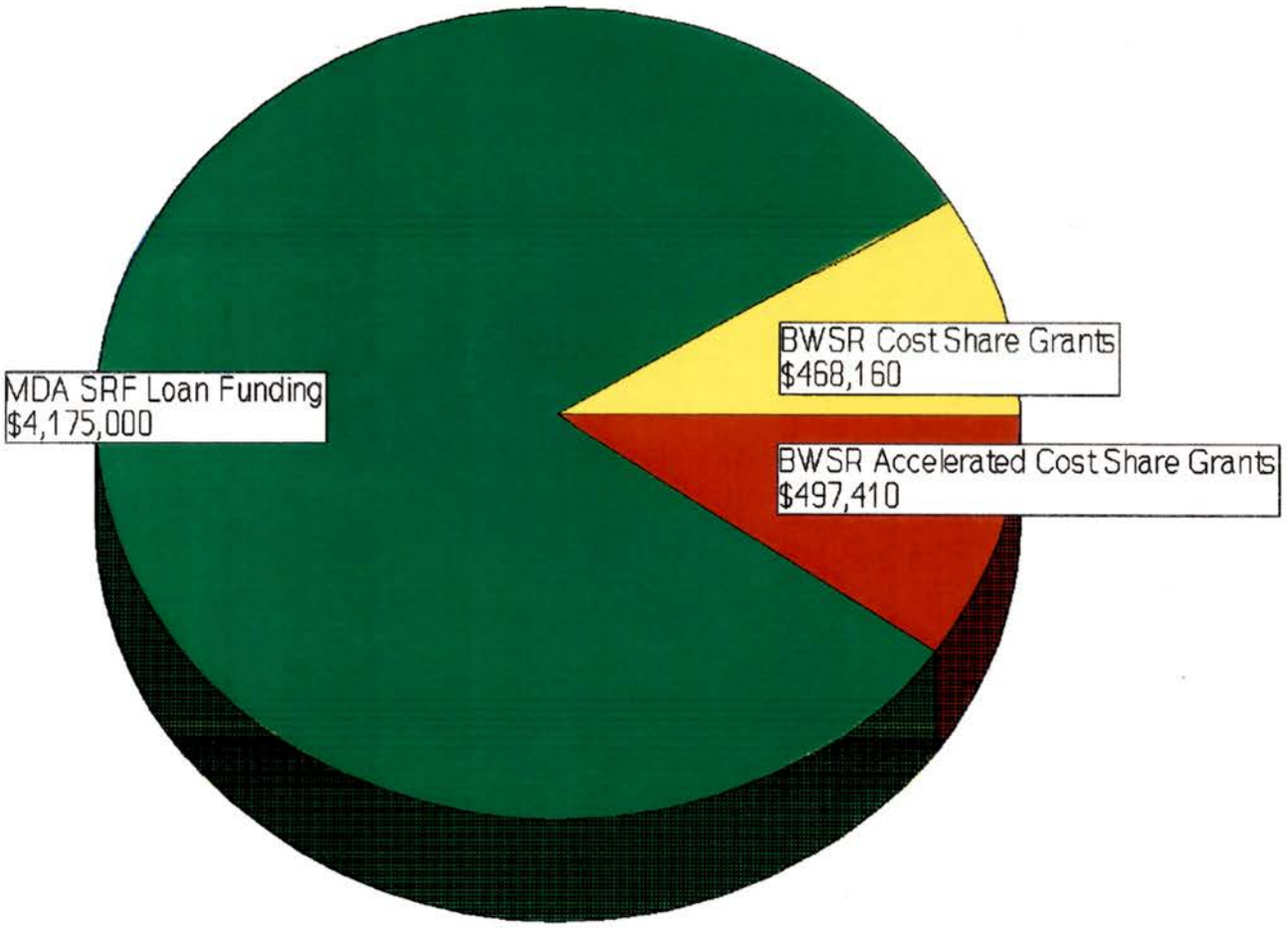
104 Initiatives Reported



Note: Numbers Shown are from 29 of the 38 MN River Basin Counties

APPENDIX D
COST SHARE FUNDING
FOR
MINNESOTA RIVER BASIN PROJECTS
FY 1995

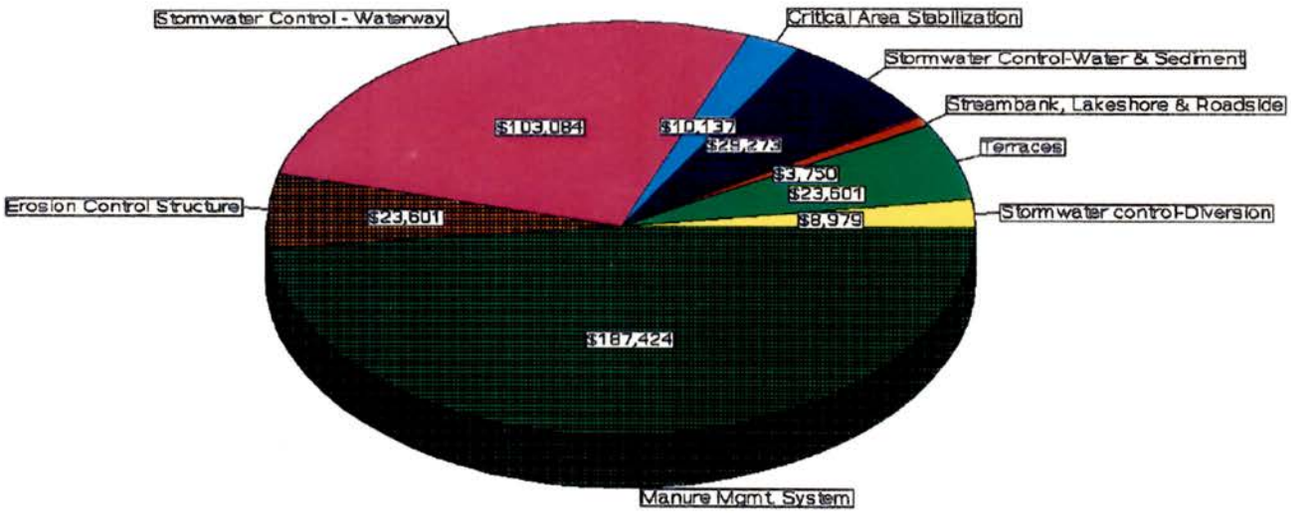
Conservation Practice Funding



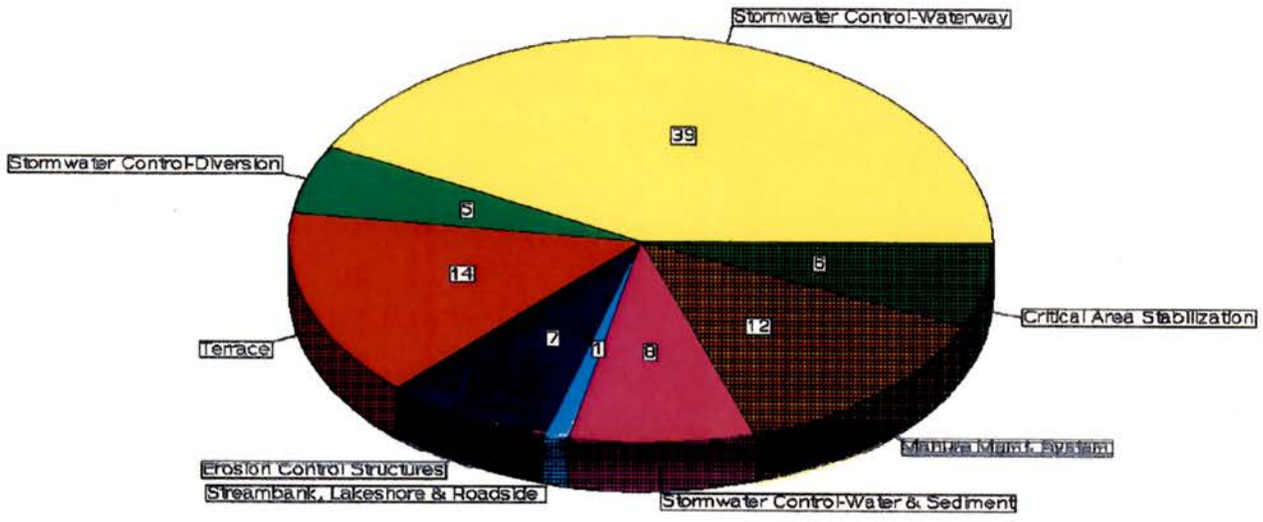
Note: Numbers shown are from 29 of the 38 MN River Basin Counties

Appendix E
Blue Earth River Basin Initiative
Accelerated Cost Share FY94 & FY95

Fund Utilization



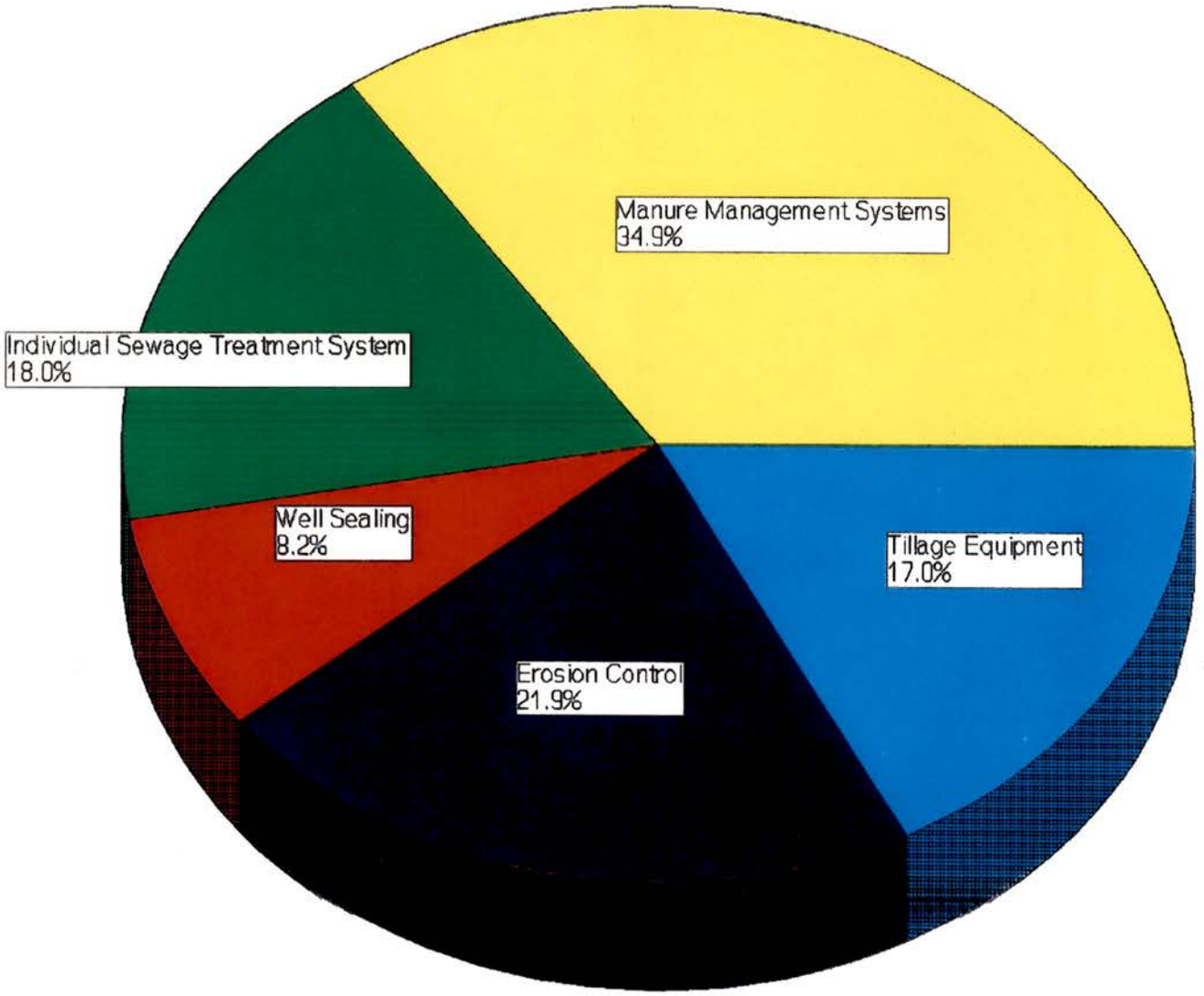
Number of Practices



5 County/SWCD JPA Effort

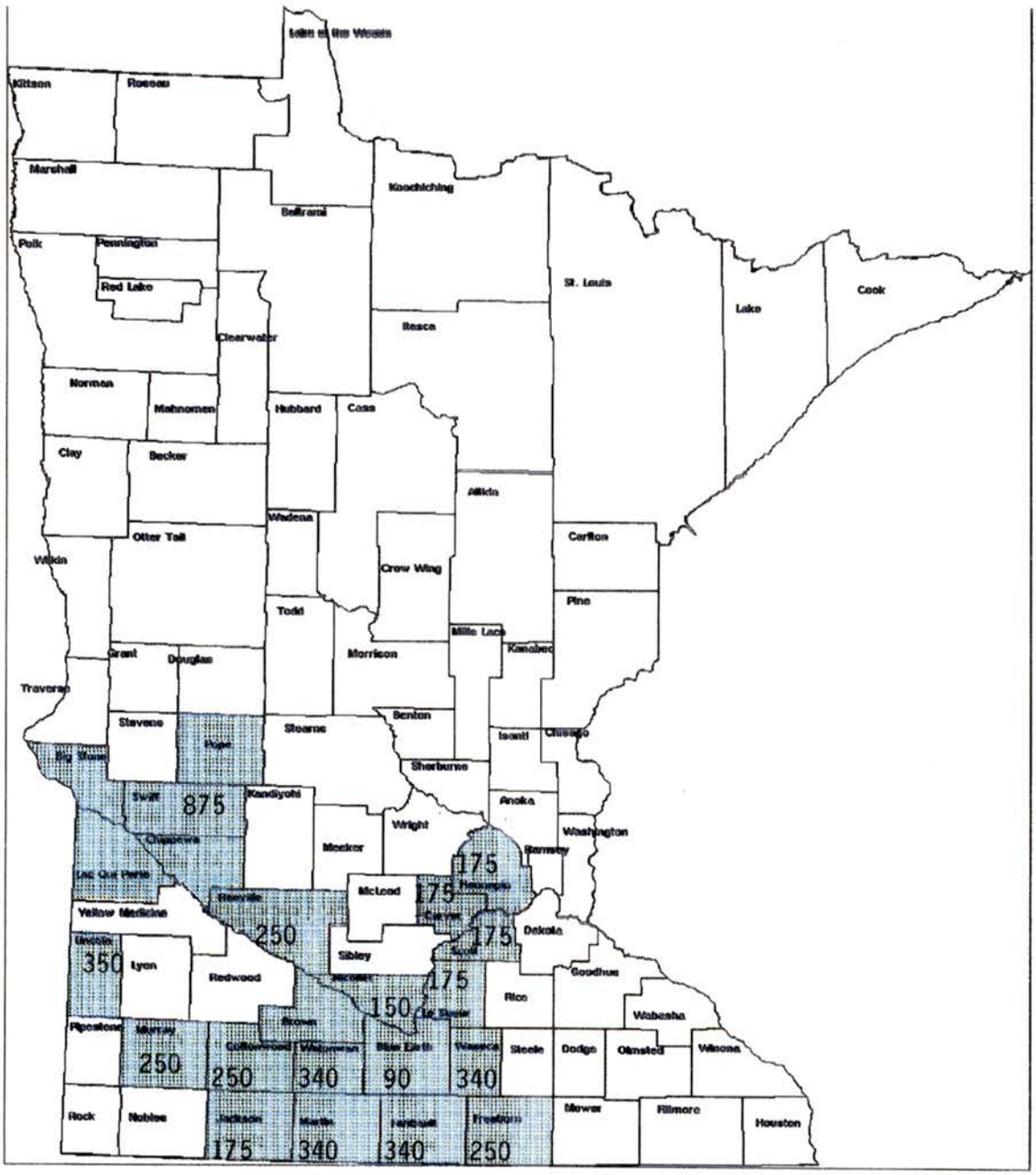
APPENDIX F

Minnesota River Basin
Loan Dollars Requested, by Practice Type
Projected for 1995



APPENDIX G

SRF AG BMP ALLOCATIONS



Scale: 5.(10 mi

MN RIVER BASIN COUNTIES

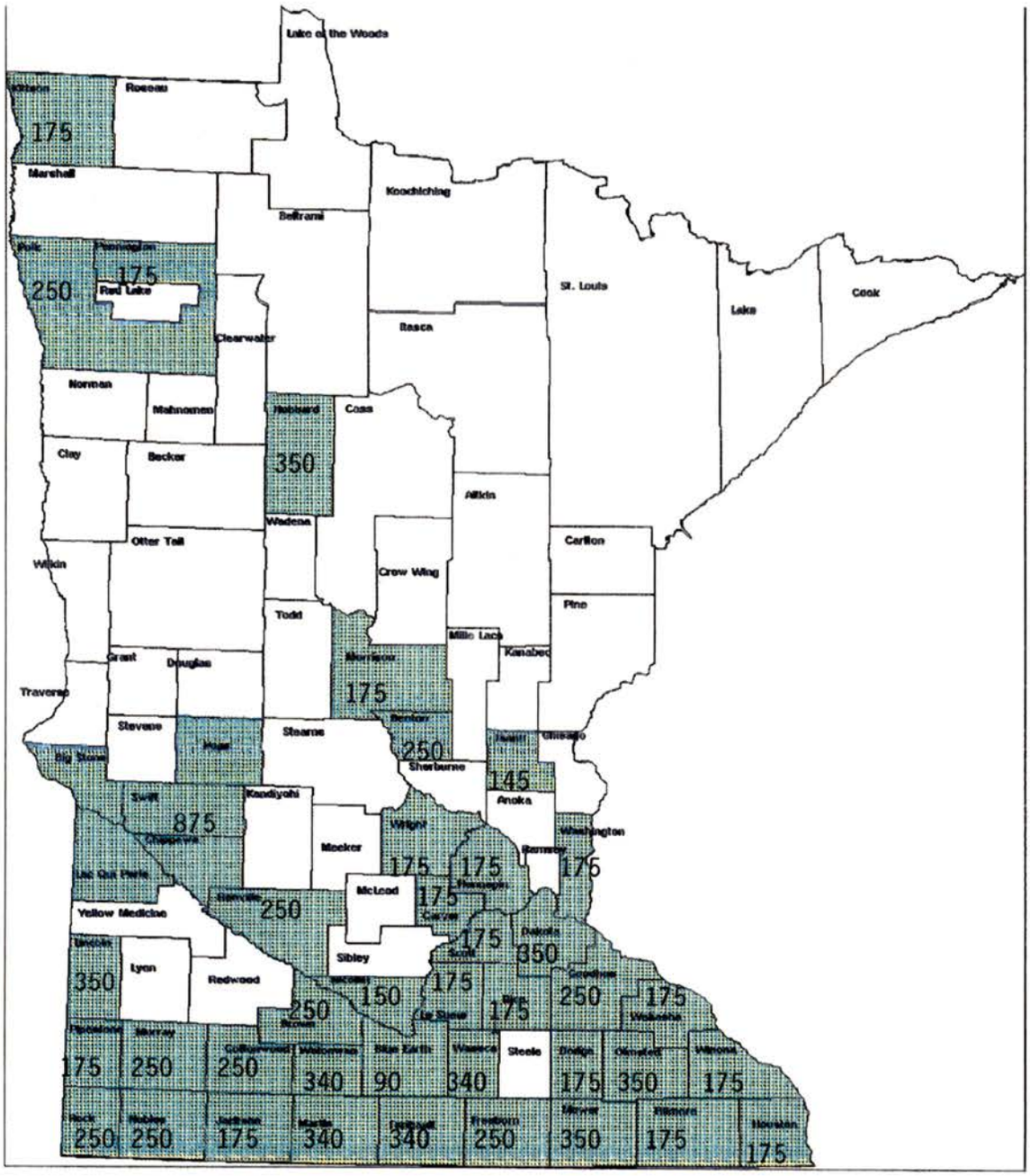
NUMBERS = LOAN AMOUNT (x 1,000)

Source: MN Dept. of Ag: Ag Planning and Development
7/16/1995

COUNTIES IN MINNESOTA

APPENDIX H

SRF AG BMP LOAN ALLOCATIONS



Scale: 5.(10 mi

MINNESOTA COUNTIES RECEIVING LOAN DOLLARS

NUMBERS = LOAN AMOUNT (x 1,000)
Source: Minnesota Dept. of Ag: Ag Planning and Development

7/16/1995

COUNTIES IN MINNESOTA

AGENCY CAPITAL BUDGET BRIEF
Strategic Planning Summary
Fiscal Years 1996-2001

Form A

1. **AGENCY:** Water and Soil Resources, Board of

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2. **AGENCY MISSION STATEMENT:**

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

Although other agencies are involved in resource management, the BWSR is unique in that it is the only agency that accomplishes its goals through increasing the capabilities of local government units. This approach makes sense for a number of reasons.

First, local ownership of natural resource management activities is an important component of the success of such efforts. Rather than resentment at a state mandate that local personnel perceive they are being forced to carry out, a state-local partnership fosters feelings of pride and local responsibility.

Second, since resource management is primarily a land use issue, and local government is the land use authority in Minnesota, it makes sense to focus resource management assistance at the local level. Local governments, through their widespread planning and zoning authorities, make the vast majority of land use decisions. Sound land use management at the local level will protect soil, lakes, rivers, and streams, and sustain agriculture, forestry and development.

Finally, we enter a time of increased environmental awareness-but dwindling resources to address these concerns. Partnerships and strong working relationships are an effective way of leveraging our talents, resources, and finances to achieve the greatest results.

Recognizing the advantages of local resource management, the legislature in 1987 created the BWSR to facilitate local government effort and to ensure coordination of state, local, federal and private resource management initiatives. To accomplish this, the membership of the BWSR includes representatives from local government, citizens, 4 state agencies and the University of Minnesota Extension. This composition provides a unique opportunity for communication of issues and concerns, policy discussions on resource management, and generally enhancing state/local/private partnerships.

To reach these objectives, the BWSR:

- promotes communication and partnerships among state, local, and federal governments, as well as private organizations;
- administers a number of grant programs providing funding to local governments for resource management;
- conducts training sessions and provides technical assistance to local units of government; and
- coordinates state government activities as they affect local governments.

3. **TRENDS, POLICIES AND OTHER ISSUES AFFECTING THE DEMAND FOR SERVICES, FACILITIES OR CAPITAL PROGRAMS:**

The following trends are shaping the development of policies and programs at the BWSR:

1. *Reduced state and federal government funding for local governments, and increased expectations of local responsibilities.* As more of the financial and administrative burdens of resource management fall on local governments, they need to increase their capability to handle the myriad demands of those responsibilities, and be supported by capital programs such as those administered by BWSR.

2. *Increased awareness among the general public, including landowners, of resource problems, and increased willingness to make reasonable efforts to accomplish resource conservation.* More Minnesotans are becoming concerned about our environment, particularly water quality-many people have noticed deteriorating conditions in their favorite lakes or fishing streams. As these concerns surface, more people are willing to make reasonable efforts and contributions to protect and improve their environment.

3. *Movement from planning to implementation phase of non-point source pollution prevention strategy.* As Minnesota moves from the planning to the implementation stage of its non-point source strategy, BWSR's local government network increases in importance as a means of disseminating financial and technical aid to local governments. The BWSR has the structure and the relationships needed to address non-point concerns at the local level.

4. *Federal Actions.* Federal actions continue to affect BWSR local government programs in a wide variety of ways. Some examples of this are the recent funding cuts to the Conservation Reserve Program and the Wetland Reserve Program. Decreasing federal participation in flood control and related efforts has also resulted in a greater need for state participation. The BWSR must take this into consideration as it anticipates funding, programmatic and staffing needs, as well as an increased demand for state set-aside dollars, over the next bienniums.

4. **PROVIDE A SELF-ASSESSMENT OF THE CONDITION, SUITABILITY AND FUNCTIONALITY OF PRESENT FACILITIES, CAPITAL PROJECTS OR ASSETS:**

Since the inception of the RIM Reserve/Permanent Wetland Preserve program, landowner interest in enrolling acreage into conservation easements has consistently exceeded appropriations by a 4 to 1 margin. The board anticipates that this level of landowner interest in the program will be sustained for the foreseeable future.

The Area II Minnesota River grant-in-aid program administered and technically supported by the BWSR has proven to be an effective partnership for flood control, floodplain management and related erosion control and water quality improvements. The member counties of the Area II joint powers board remain focussed on their mission and have the desire and capability to support an expanded local/state partnership in a large portion of the Minnesota River basin. Existing studies by the Soil Conservation Service, Corps of Engineers and local governments have identified numerous potential project sites.

In the past, the Streambank, Lakeshore and Roadside (SLR) and Abandoned Well Sealing programs have not been directly funded by bonding. In recent years, demand for these programs has exceeded available funding by more than 2:1.

5. **DESCRIBE THE AGENCY'S LONG-RANGE STRATEGIC GOALS AND CAPITAL BUDGET PLAN:**

The BWSR intends to use bonding to the extent possible to fund projects on public property or projects on private land with a long term public benefit; to protect the public interest, projects on private land will be done through easement acquisition.

The BWSR Strategic Plan (attachment A) identifies resource management strategies and related goals of the agency. The resource management strategies specified are education, incentives and regulation. The plan also identifies a number of goals (by resource area such as water quality management) that focus on assisting local governments and landowners in solving and preventing natural resource management problems. The projects outlined in this capital budget request utilize the "incentive strategy" as tools available to local government to enhance local program delivery. Incentives should provide opportunities to dissuade harmful and encourage beneficial land and water use activities. Incentives should also encompass urban as well as rural values, and loans as well as grants.

Some of the goals identified in the Strategic Plan that are achieved through the capital projects include:

- Protecting or retiring existing marginal agricultural lands and highly sensitive lands.
- Targeting land retirement programs to the highest priority marginal agricultural lands and sensitive lands.
- Retiring marginal agricultural lands and highly sensitive lands to permit land managers to focus their stewardship efforts on more productive lands.
- Creating and protecting natural retention systems to aid in the management of surface water runoff and enhance groundwater recharge.

- Striving towards a "net gain" of wetland resources.
- Installing best management practices on Minnesota lands.
- Targeting land treatment cost-share programs to erosion-prone productive lands.
- Reducing soil loss at or below the soil loss tolerance level by the year 2000.
- Managing runoff to minimize property loss and environmental damage.
- Reducing groundwater contamination by sealing abandoned wells.

The requests included in this capital budget are a reflection of programs that have been successful in achieving the objectives outlined above. Wetland restoration, erosion control projects, well sealing and RIM have been specifically identified in local comprehensive water management programs as key incentives to realizing state and local water resource objectives.

6. **AGENCY PROCESS USED TO ARRIVE AT THESE CAPITAL REQUESTS:**

Budget requests were based on historic requests from local governments for financial assistance.

To determine the capital budget request for the RIM Reserve program goal acreage was extrapolated from the program's Five Year Plan (attachment B). The acreage was derived through a collaborative effort of LGU representatives and the BWSR RIM Reserve Strategic Planning Committee which considered the amount of eligible land for the program and forecasted landowner interest.

Information was provided by the Washington County Soil and Water Conservation District for the St. Croix River SLR request.

Area II requests were based on short and long range work plans which reflect project priorities and available capabilities.
Abandoned wells information was derived from local water plans.

Internal agency estimates were used to arrive at the amount requested for the permanent wetland preserve program.

- All requests are a reflection of demands for service or assistance of local government and citizens.
- The county water plans, work plans of SWCDs, watershed districts, and watershed management organizations were key sources for these requests.

7. **AGENCY CAPITAL BUDGET PROJECTS DURING THE LAST SIX YEAR (1990-1995):**

RIM Reserve/Permanent Wetland Preserve has received $38.9 million from bonding sources between 1986 and the most recent appropriation in 1994. Please refer to the RIM Reserve Permanent Wetland Preserve project detail for funding history by year.

The Wellner-Hageman multiple purpose reservoir received $1,645,000 from bonding in 1990. This reservoir was completed in 1992.

The Redwood 22 Reservoir Project has received $1,050,000 from bonding. The project is in progress.

8. **OTHER (OPTIONAL):**

None

9. **AGENCY CONTACT PERSON, TITLE AND PHONE**

Ronald D. Harnack, Executive Director 296-0878

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AGENCY CAPITAL BUDGET BRIEF

Projects Summary

Fiscal Years 1996-2001

Dollars in Thousands ($137,500 = $138)

Form B

AGENCY: Water and Soil Resources, Board of

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Project Title	1996 Agency Priority Ranking	Agency Project Requests for State Funds ($ by Session)				Statewide Strategic Score	Governor's Rec's 1996	Governor's Planning Estimates	
		1996	1998	2000	Agency Total			1998	2000
RIM Reserve/Permanent Wetland Preserve	1	21,074	18,176	15,762	55,012				
Erosion Control Cost-Share	2	1,200	1,500	1,200	3,900				
Area II - MN River Basin Grant-in-Aid	3	1,750	900	-0-	2,650				
Abandoned Well Sealing	4	250	250	250	750				
Total Project Requests:		$ 24,274	$ 20,826	$ 17,212	$ 62,312		$	$	$

AGENCY CAPITAL BUDGET REQUEST
Non-Building Project Detail
Fiscal Years 1996-2001
Dollars in Thousands ($137,500 = $138)

Form F-1

AGENCY: Water and Soil Resources, Board of
PROJECT TITLE: Reinvest In Minnesota (RIM) Reserve Program and the Permanent Wetlands Preserve Program
TOTAL PROJECT COSTS: $95,347
STATE APPROPRIATION REQUEST FOR 1996 SESSION: $21,074
STATE APPROPRIATION ESTIMATE FOR 1998 SESSION: $18,176
STATE APPROPRIATION ESTIMATE FOR 2000 SESSION: $15,762
LOCATION (CAMPUS, CITY, COUNTY): Statewide

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AGENCY PRIORITY (for 1996 Session only):

1 of 4 requests

1. PROJECT DESCRIPTION:

RIM Reserve was established in 1986 (M.S. 103F.505 to 103F.531, as amended) "to keep certain marginal agricultural land out of crop production to protect soil and water quality and support fish and wildlife habitat." The requested funds will be utilized to acquire conservation easements from private landowners on marginal lands to restore wetlands and to establish permanent vegetative cover. Marginal lands targeted for acquisition include riparian lands, drained restorable wetlands, sensitive groundwater areas and marginal agricultural croplands.

The permanent wetland preserve program was enacted under the Laws of 1991, c. 354, Article 3, subpart 1. The requested funds will be utilized to acquire perpetual conservation easements on existing type 1 (seasonally flooded basin or flat), 2 (inland wet meadow), 3 (cattail) wetlands and 6 (shrub) and adjacent lands, and for the establishment of permanent cover on the adjacent lands.

In addition to conservation easement acquisition, the total dollar amount requested includes professional service costs associated with acquiring easements and conducting related engineering functions (12% for wetland restoration easements and 10% for non-wetland restoration easements).

2. PROJECT RATIONALE AND RELATIONSHIP TO AGENCY LONG-RANGE STRATEGIC GOALS AND CAPITAL PLAN:

Project Rational

The RIM Reserve and PWP programs conform with the Board of Water and Soil Resources'(BWSR's) long-range plan by providing an incentive tool for local resource managers to utilize to protect and improve their water and soil resources. RIM Reserve and PWP are implemented at the local level by soil and water conservation districts (SWCDs).

RIM promotes the retirement of marginal intensive-use lands by reimbursing landowners to cease cropping and grazing, and establish conservation practices. This conserving use reduces runoff, erosion and sedimentation, and benefits land, water, fish and wildlife resources. Specific benefits to the public include:

- prevention of groundwater contamination to surficial and bedrock aquifers through the retirement of cropland overlying wellhead protection areas or in the immediate proximity of sinkholes;
- prevention of further surface water quality degradation resulting from sedimentation through the retirement of riparian land and marginal agricultural cropland;
- enhancement of fish habitat due to reductions in sediment loadings through the retirement of riparian lands; and
- enhancement of upland game and nongame wildlife habitat due to increased permanent vegetative cover.

The permanent wetland preserve program was enacted during the same legislative session that the Wetland Conservation Act 1991 (WCA) was passed. Both programs strive to protect the state's remaining wetland resources. The permanent wetland preserve program discourages the

conversion of wetlands that are exempt from the regulatory restrictions of the WCA, and offsets the financial burden that may result when individuals are denied a permit exemption from WCA rules. When the permanent wetland preserve program was created, the state waterbank program which compensated landowners when a DNR protected wetlands permit to drain for agricultural purposes was denied was sunsetted. Even though the two programs are not identical, the permanent wetland preserves program was intended largely to replace the state waterbank program.

Both programs meet the goals and objectives of BWSR's strategic plan (1990). They protect the state's water and soil resources by retiring existing marginal agricultural lands, by restoring drained wetlands and by protecting existing wetlands that are highly susceptible to alteration.

Anticipated Outcomes

For the RIM Reserve program the annual easement acquisition goal includes 6,000 acres of marginal lands (including riparian lands and groundwater sensitive lands) and 2,000 acres of drained wetlands.

In addition to this baseline RIM Reserve acquisition goal, the agency has identified the need to acquire easements on some of the lands expiring from USDA's Conservation Reserve Program (CRP) contracts or RIM Reserve limited-duration easements. Conversion of these contacts or limited-duration easements to perpetual easements is efficient because the land is already in conserving use and therefore will not require dollars for the establishment of conservation practices. Less than one percent of the expiring acres are targeted for acquisition. Only the most environmentally sensitive lands are targeted for conversion into RIM Reserve - those lands that significantly contribute to the degradation of ground and surface water resources. Typically these lands are prone to erosive forces that detach sediment (often latent with nutrients and pesticides), and a direct transportation route between the land and a water body exists. Some counties have included these sensitive lands as priorities in their local water plans. While maintaining these acres in conserving use requires a significant investment, it is important to recognize that lands reverting to intensive use, such as cropping and grazing, will undoubtedly result in costly off-site impacts such as sedimentation and water quality degradation.

BWSR will place priority on enrolling existing wetlands that are highly susceptible to alteration into PWP, i.e., farmed wetlands or wetlands not protected by state or federal laws. Target enrollment is 2,500 for the 96-97 biennium.

Acres scheduled for release from CRP and RIM limited-duration easements:

Year	CRP Acres	RIM Acres	Total Acres
1996	136,000	110	136,11
1997	1,007,000	8,120	1,015,120
1998	341,000	100	341,100
1999	221,000	100	221,100
2000	126,000	-0-	126,000
2001	20,000	-0-	20,000
Total	1,705,000	8,430	1,713,430

AGENCY CAPITAL BUDGET REQUEST
Non-Building Project Detail (Cont'd.)
Fiscal Years 1996-2001
Dollars in Thousands ($137,500 = $138)

Form F-1

ACREAGE ENROLLMENT GOALS:

YEAR	MARGINAL ACRES	WETLAND ACRES	CRP ACRES	RIM ACRES	PWP ACRES	TOTAL ACRES
1996	6,000	2,000	720	55	1,250	10,025
1997	6,000	2,000	5,000	4,060	1,250	18,310
1998	6,000	2,000	3,410	50	1,200	12,660
1999	6,000	2,000	2,210	50	1,000	11,260
2000	6,000	2,000	1,260	0	1,000	10,260
2001	6,000	2,000	200	0	500	8,700
Totals	36,000	12,000	10,495	4,215	6,200	71,215

FUNDS REQUIRED TO ENROLL GOAL ACREAGE:

YEAR	MARGINAL LANDS	WETLAND RESTORE	EXPIRING CRP/RIM	PWP	TOTAL $$$
1996	4,314	2,118	505	899	7,836
1997	4,314	2,118	5907	899	13,238
1998	4,314	2,118	2256	863	9,551
1999	4,314	2,118	1474	719	8,625
2000	4,314	2,118	1260	719	8,411
2001	4,314	2,118	200	719	735
Totals	25,884	12,708	11,602	4,818	55,012

Average Cost/Acre:
- Marginal Land $ 791.00
- Wetland $1,186.00
- CRP/RIM $ 652.00

Achieving the enrollment acreage goals will be dependent on:

1. The state's financial commitment to the program.
2. The economic appeal of the program in relation to a landowner's management decisions.
3. The degree to which other conservation agencies and organizations contribute to the protection of the identified acres.

Project Alternatives

The BWSR acknowledges that alternative resource management techniques should be employed in conjunction with RIM Reserve and PWP to protect environmentally sensitive lands slated to expire from conservation programs. Comprehensive resource management techniques should include local adoption and enforcement of an ordinance to reduce erosion and sedimentation, and to promote maintenance of flood plain hardwood forests. A model *Agricultural Erosion control Ordinance* has been drafted to assist counties wishing to voluntarily adopt such a measure. The BWSR believes that regulatory approaches, such as ordinances, are only successful if implemented in conjunction with educational efforts and incentive programs.

The agency also believes there is a role for limited-use conservation easements. Limited-use would only be allowed in a manner compatible with the program goals to protect water quality and enahance wildlife habitat. Because the state is acquiring fewer land rights the easement acquisition rates can be reduced and consequently more acres can be protected, mutually benefiting the landowner and the citizens of the state. Limited use is most applicable to a managed grazing system or regulated mowing. Several tools exist to assist landowners with the management of their grazing lands. The Land Stewardship Project and the USDA Natural Resources Conservation Service (NRCS) have been actively involved

promoting managed and holistic grazing systems, and both are actively investigating the compatibility of conservation easements and grazing. Acquiring limited-use easements does require frequent monitoring and consistent enforcement of the terms of the easement.

SWCDs and counties must possess the base-capability of adequate numbers of properly trained technical staff to execute alternative resource management strategies.

3. PREVIOUS PROJECT FUNDING:

Since its inception in 1986, RIM's funding source has largely been from the sale of bonds with limited support funding appropriated from the Environmental Trust fund for RIM. The BWSR submitted a $12 million request for FYs 1992-93 and received $1,000,000. For FYs 1994-95 $10 million Legislative Commission on Minnesota Resource (LCMR) proposal was submitted, of which $823,000 was appropriated. A capital budget request for $14 million was submitted for the FY 1995-96 biennium. The legislature appropriated $9 for RIM Reserve and the PWP programs. The BWSR has committed approximately $6 million from this account to specific easements and professional services, with the balance reserved to fund easement applications received in 1995 and to fund a special project (the restoration of Grass Lake near Willmar, MN) approved by the BWSR in April of 1995.

The BWSR has solicited and received matching funds from federal partners for wetland restoration easements. In 1994 the BWSR received $850,000 for restorations in the Minnesota River Basin from the North American Wetlands Conservation Act (NAWCA). In 1996 the agency will receive $353,353 for restoration in the Minnesota River Basin. The BWSR continues to seek grants from NAWCA to fund conservation easements associated with special projects or within priority watersheds. This matching program requires a 2.5:1 match to be competitive nationally.

It is anticipated that conservation groups, such as Pheasants Forever, Ducks Unlimited, Isaac Walton League, Minnesota Waterfowl Association, Trout Unlimited and the U.S. Fish and Wildlife Service will continue to leverage dollars towards the establishment of conservation practices on RIM easements. From 1992 to present, these organizations directly contributed approximately $200,000 to the program, with more dollars donated in the form of grass seed and in-kind services. The BWSR continues to actively seek funding from these groups.

The PWP program received $7 million in FY 1993-94. All of the funds have been utilized to acquire conservation easements, with the exception of $500,000 that has been reserved for permit denial compensation.

AGENCY CAPITAL BUDGET REQUEST
Non-Building Project Detail (Cont'd.)
Fiscal Years 1996-2001
Dollars in Thousands ($137,500 = $138)

Form F-1

Program accomplishments and trends:

LAWS OF:	APPROPRIATIONS (millions)		LANDOWNER INTEREST (MILLIONS)	
			1986	25.5
1987	9.0	Bonding	1987	5.5
1988	-0-		1988	5.0
1989	1.5	Bonding	1989	6.3
1990	0.75	Bonding	1990	4.2
1991	6.9	Bonding	1991	7.8
1991	1.0	Env. Trust Fund	1991*	
1991	7.0	Bonding	1992	3.7
1992	1.25	Bonding	1993	35.0
1993	0.82	Env. & Future Resources Trust Funds		
	0.50	Bonding		
	0.85	NAWCA (federal grant)	1994**	20.0
1994	9.0	Bonding		

* PWP Appropriation (all other figures are RIM Reserve). Landowner interest included with the 1992-94 figures.
** A fall/winter sign-up for 1995 is scheduled.

4. <u>OTHER CONSIDERATIONS (OPTIONAL)</u>:

RIM Reserve has been a popular program stemming from the 1984 Citizens Commission report on the Governor to Promote Hunting and Fishing in Minnesota. Many individuals and organizations praised the report for its insightful recommendations, and as a result created a coalition to promote the passage of the landmark legislation that created RIM. The demise of this program would eliminate a vital incentive tool utilized in promoting good land and water stewardship. In addition, a growing partnerships with other public and private organizations would be greatly diminished.

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AGENCY CAPITAL BUDGET REQUEST
Non-Building Project Detail (Cont'd.)
Fiscal Years 1996-2001
Dollars in Thousands ($137,500 = $138)

Form F-2

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TYPE OF REQUEST (Check all that apply):

__X__ Acquisition of State Assets
_____ Development of State Assets
_____ Maintenance of State Assets
__X__ Grants to Local Governments
_____ Loans to Local Governments
_____ Other Grants (specify):

PROJECT CHARACTERISTICS (Check all that apply):

_____ Health and Safety
_____ Enhancement of Existing Programs/Services
__X__ Expansion of Existing Program/Services
_____ Provision of New Program/Services
_____ Other (specify):

PROPOSED METHOD(S) OF 1996 STATE FINANCING (check all that apply):

_____ Cash: $_____ Fund _____
__X__ Bonds: $ 21,074 Tax Exempt __X__ Taxable _____

STATE DEBT SERVICE PAYMENTS (Check all that apply):

__x__ General Fund % of total 100
_____ User Financing % of total _____

Source of funds _____

FUNDING SOURCES:

Previous Project Funding (all prior years)	$ 39,982
State funding received	$ 38,579
Federal funding received	$ 1,203
Local government funding received	$ -0-
Private funding received	$ 200
For 1996 Session (F.Y. 1996-97)	
State funding requested	$ 21,074
Federal funding	$ 353
Local government funding	$ -0-
Private funding	$ -0-
For 1998 Session (F.Y. 1998-99)	
State funding estimate	$ 18,176
Federal funding	$ -0-
Local government funding	$ -0-
Private funding	$ -0-
For 2000 Session (F.Y. 2000-01)	
State funding estimate	$ 15,762
Federal funding	$ -0-
Local government funding	$ -0-
Private funding	$ -0-
Total Project Costs (all years)	$ 95,347
State funding requested(all years)	$ 93,591
Federal funding (all years)	$ 1,556
Local government funding (all years)	$ -0-
Private funding (all years)	$ 200

AGENCY CAPITAL BUDGET REQUEST
Non-Building Program Detail
Fiscal Years 1996-2001
Dollars in Thousands ($137,500 = $138)

Form F-1

AGENCY: Water and Soil Resources, Board of
PROJECT TITLE: Erosion Control Cost-Share
TOTAL PROJECT COSTS (ALL YEARS/ALL FUNDING SOURCES): $7,244
STATE APPROPRIATION REQUEST FOR 1996 SESSION: $1,200
STATE APPROPRIATION ESTIMATE FOR 1998 SESSION: $1,500
STATE APPROPRIATION ESTIMATE FOR 2000 SESSION: $1,200
LOCATION (CAMPUS, CITY, COUNTY): Statewide

AGENCY PRIORITY (for projects in the 1996 session only):

2 of 4 requests

1. PROJECT DESCRIPTION:

Eligible projects under the BWSR's cost-share programs include eroding sites on streambank, lakeshore and roadside areas. The program has statewide applicability with focus on lakes and rivers. Sites on public property are eligible, sites on private land are eligible if access--for maintenance--and use of the sites are restricted by easement.

The amount requested above for each of the next three bienniums is intended as grants to soil and water conservation districts (SWCDs) for cost-sharing with landowners at a 75%/25% (state/local private share) rate. The Board of Water and Soil Resources (BWSR) proposes that up to 20% of bond proceeds be used for the technical assistance necessary to survey and design the projects. This percentage is consistent with M.S. 103C.501, Cost-Sharing Contracts.

2. PROJECT RATIONALE AND RELATIONSHIP TO AGENCY LONG-RANGE STRATEGIC GOALS AND CAPITAL PLAN:

The BWSR strategic plan states that programs should be available to assist local units of government in correcting problems on lakes and rivers. The sites that would be addressed by this proposal are locally identified by SWCDs as priority areas. The BWSR and its predecessor agency the Soil and Water Conservation Board (SWCB) has provided grants to SWCDs for streambank, lakeshore and roadside projects since the late 1970's. The LCMR provided the initial funding to the SWCB of $150,000 and $250,000 per year, respectively, over two biennia. Since then, annual funding has averaged about $159,000. The BWSR allocates funds to SWCDs on a request basis. For fiscal year 1994, SWCDs requested $573,000 for 29 projects. The BWSR funded 12 requests for $159,000. This trend of requests exceeding funding by a 3.5:1 ratio has existed for several years and the basis for part of this proposal. An additional $400,000 per year is needed to fund requests.

The other component of this proposal regards the St. Croix River south of Stillwater. Estimates provided by local government personnel suggest that there are about 100 sites that need stabilization of an average cost of $10,000 per site including cost of easements for access and restricted use. One million dollars is needed to complete these projects over the next 6 years.

3. PREVIOUS PROJECT FUNDING:

Please refer to Form F-2.

4. OTHER CONSIDERATIONS (OPTIONAL):

Local governments and BWSR have used other funds to augment this effort (e.g., local water planning and federal erosion control cost-share dollars). Lake Superior and Coastal Management funds are also leveraged by these requests. Shifting monies from other cost-share components is viable, however would detract from equally or higher priority areas.

5. PROJECT CONTACT PERSON, TITLE, AND PHONE:
Greg Larson, Administrator, Water and Land Management Section; 296-0882

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AGENCY CAPITAL BUDGET REQUEST
Non-Building Program Detail (Cont'd.)
Fiscal Years 1996-2001
Dollars in Thousands ($137,500 = $138)

Form F-2

TYPE OF REQUEST (Check all that apply):

__X__ Acquisition of State Assets
_____ Development of State Assets
_____ Maintenance of State Assets
__X__ Grants to Local Governments
_____ Loans to Local Governments
_____ Other Grants (specify):

PROJECT CHARACTERISTICS (Check all that apply):

_____ Health and Safety
_____ Enhancement of Existing Programs/Services
__X__ Expansion of Existing Program/Services
_____ Provision of New Program/Services
_____ Other (specify):

PROPOSED METHOD(S) OF 1996 STATE FINANCING (check all that apply):

Cash: $_____ Fund _____
__X__ Bonds: $ 1,500 Tax Exempt __X__ Taxable _____

STATE DEBT SERVICE PAYMENTS (Check all that apply):

__X__ General Fund % of total 100
_____ User Financing % of total _____

Source of funds _____

FUNDING SOURCES:

Previous Project Funding (all prior years)	$ 3,344
State funding received	$ 3,344
Federal funding received	$ -0-
Local government funding received	$ -0-
Private funding received	$ -0-
For 1996 Session (F.Y. 1996-97)	
State funding requested	$ 1,500
Federal funding	$ -0-
Local government funding	$ -0-
Private funding	$ -0-
For 1998 Session (F.Y. 1998-99)	
State funding estimate	$ 1,200
Federal funding	$ -0-
Local government funding	$ -0-
Private funding	$ -0-
For 2000 Session (F.Y. 2000-01)	
State funding estimate	$ 1,200
Federal funding	$ -0-
Local government funding	$ -0-
Private funding	$ -0-
Total Project Costs (all years)	$ 7,244
State funding requested(all years)	$ 7,244
Federal funding (all years)	$ -0-
Local government funding (all years)	$ -0-
Private funding (all years)	$ -0-

AGENCY CAPITAL BUDGET REQUEST
Non-Building Program Detail
Fiscal Years 1996-2001
Dollars in Thousands ($137,500 = $138)

Form F-1

AGENCY: Water and Soil Resources, Board of
PROJECT TITLE: Area II Minnesota River Basin Grant-in-Aid Program

TOTAL PROJECT COSTS (ALL YEARS/ALL FUNDING SOURCES): $8,250
STATE APPROPRIATION REQUEST FOR 1996 SESSION: $1,650
STATE APPROPRIATION ESTIMATE FOR 1998 SESSION: $2,175
STATE APPROPRIATION ESTIMATE FOR 2000 SESSION: $1,575
LOCATION (CAMPUS, CITY, COUNTY): Five major subbasins of the Minnesota River between Ortonville and Mankato, Minnesota.

AGENCY PRIORITY (for projects in the 1996 session only):

3 of 4 requests

1. PROJECT DESCRIPTION:

In 1978, the legislature created a grant-in-aid program to cost share with local units of government for floodwater retarding and retention structures within five major subbasins of the Minnesota River. The current authorizing statues are M.S. 103F.171 - 103F.187. The project area is characterized by broad upland and lowland plains connected by a steep transition known as the Coteau des Prairie, fertile soils, frequent flooding (including many interbasin floodwater overflows) and substantial erosion. These five subbasins were referred to as Study Area II in the Minnesota River Basin Study conducted by the U.S. Soil Conservation Service during the 1970s. The ten-county joint powers board "Area II Minnesota River Basin Projects, Inc." was established in 1978 to coordinate local implementation and cost sharing for the program, which is now administered by the Board of Water and Soil Resources (BWSR).

The projects for which funds are requested include: reservoirs, both with and without permanent pools; "road retention structures" involving temporary floodwater storage upstream from public roads, typically constructed during bridge or culvert replacements; and other potential floodwater and sediment retarding measures such as buffer strips and wetland restorations.

The projects cost-shared through this program are components of a general plan for flood control and floodplain management. The Minnesota River Basin Study identified over 100 potential floodwater retention sites within the project area. A subsequent joint study conducted by the SCS and U.S. Army Corps of Engineers during the 1980s documented recurring severe flood damage and soil loss within the five major Area II watersheds. The average direct flood damages were estimated to total $8,000,000 annually. An average of 346,000 tons of soil per year were estimated to erode from these watersheds, washing into the Minnesota River. This soil loss was estimated to result in up to $20,000,000 in annual productivity losses, with significant associated water quality impacts.

The joint SCS/COE study provided technical, environmental and economic analyses of the potential floodwater retention sites identified and a basis for project prioritization. That study also recognized local project implementation as being the most cost effective. Road retention structure sites within Area II are identified in cooperation with county and state highway departments and prioritized based on the estimated costs and benefits of the sites. Specific projects and programs for which capital funds are requested include:

Redwood-22 Reservoir, upstream of Marshall, MN	$1,050,000
Numerous Road Retention Projects	$1,800,000
Lazarus Creek Reservoir	$1,125,000
Peterson Reservoir	$ 400,000
Lac Qui Parle-3 Reservoir	$1,125,000

2. PROJECT RATIONALE AND RELATIONSHIP TO AGENCY LONG-RANGE STRATEGIC GOALS AND CAPITAL PLAN:

The severe flooding in the Minnesota River basin in 1993 highlighted the need to reduce flood damage to roads and bridges, public and private structures, farm fields, river banks and urban centers within the project area. An interagency hazard mitigation team led by the Federal Emergency Management Agency prepared a report for Minnesota, including the project area, which identified floodwater retention at roads, flood control reservoirs

and wetland restorations as appropriate measures to reduce flood damage in the future. The reservoirs and road retention structures cost-shared by this program retard floodwaters in the upstream areas of watersheds, which reduces downstream flood peaks and sediment transport. Lower flood peaks result in reduced direct flood damages to roads, bridges, structures and fields, as well as reduced downstream sedimentation. The sediment and associated nutrient trapping efficiency of these floodwater retarding projects is approximately 50 - 90%, providing significant water quality improvement benefits.

The BWSR strategic plan states: "Runoff should be managed to minimize property loss and environmental damage by moderating high flows and maintaining low flows of streams." Both state and federal floodplain management and flood control programs rely upon local partners and local implementation. The Area II partnerships between local, state and federal governments have resulted in the construction of 8 flood control reservoirs and 18 road retention projects, to date. These partnerships have capitalized on the efficiencies of local implementation through focussed efforts, mutual commitments and streamlined procedures. Numerous additional road retention projects, reservoirs and associated watershed management measures are planned within Area II.

The basic strategy of the BWSR, as capsulized in its mission statement and outlined in its strategic plan, is to empower local governments and private citizens to be effective resource managers. The state-wide local water planning efforts have been very successful in this regard, and have become an important basis for the strategic plan for the Area II joint powers group. On a watershed basis, successful local water management requires joint efforts among local units of government. The Area II joint powers board and state grant-in-aid program have provided opportunities to achieve this kind of local government cooperation for flood control and floodplain management in a priority area. The Area II grant-in-aid program has also provided opportunities for partnerships associated with erosion and sedimentation control, river and reservoir water quality monitoring, streamflow data collection and related technical assistance.
The stategic plans for Area II include increased ties to comprehensive local water plans, as well as expanded partnerships under the state's Minnesota River improvement initiative. The board of directors for the Area II joint powers group has expressed to the Governor and area legislators, its commitment to an expanded role under the Minnesota River improvement initiative.

3. **PREVIOUS PROJECT FUNDING:**

Laws of 1993: $250,000 for land acquisition for Redwood-22 Reservoir
Laws of 1994: $800,000 for land acquisition for Redwood-22 Reservoir

4. **OTHER CONSIDERATIONS (OPTIONAL):**

The requested funding would involve a maximum state cost-share of 75%, if federal funding is not available, and maximum 50% of the local sponsor cost-share, if federal funding is available, in accordance with the program statutes. In all instances, local government and the BWSR have leveraged the optimum availability of federal funds. If no action is taken to fund this project, the viability of the existing successful local and state partnership will be in jeopardy and opportunities for effective flood control and floodplain management in this priority area will be greatly reduced or foregone.

5. **PROJECT CONTACT PERSON, TITLE, AND PHONE:**

Al Kean, Chief Engineer; 297-2907

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06-13-95 8:35am cm

AGENCY CAPITAL BUDGET REQUEST
Non-Building Program Detail (Cont'd.)
Fiscal Years 1996-2001
Dollars in Thousands ($137,500 = $138)

Form F-2

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06-13-95 9:27am cm

TYPE OF REQUEST (Check all that apply):

____ Acquisition of State Assets
____ Development of State Assets
____ Maintenance of State Assets
__X__ Grants to Local Governments
____ Loans to Local Governments
____ Other Grants (specify):

PROJECT CHARACTERISTICS (Check all that apply):

__X__ Health and Safety
____ Enhancement of Existing Programs/Services
__X__ Expansion of Existing Program/Services
____ Provision of New Program/Services
____ Other (specify):

PROPOSED METHOD(S) OF 1996 STATE FINANCING (check all that apply):

____ Cash: $_____ Fund _____
__X__ Bonds: $ 1,650 Tax Exempt __X__ Taxable ____

STATE DEBT SERVICE PAYMENTS (Check all that apply):

__X__ General Fund % of total 100
____ User Financing % of total ____ Source of funds

FUNDING SOURCES:

Previous Project Funding (all prior years)	$ 1,050
State funding received	$ 1,050
Federal funding received	$ -0-
Local government funding received	$ -0-
Private funding received	$ -0-
For 1996 Session (F.Y. 1996-97)	
State funding requested	$ 1,650
Federal funding	$ -0-
Local government funding	$ 550
Private funding	$ -0-
For 1998 Session (F.Y. 1998-99)	
State funding estimate	$ 2,175
Federal funding	$ -0-
Local government funding	$ 725
Private funding	$ -0-
For 2000 Session (F.Y. 2000-01)	
State funding estimate	$ 1,575
Federal funding	$ -0-
Local government funding	$ 525
Private funding	$ -0-
Total Project Costs (all years)	$ 8,250
State funding requested(all years)	$ 6,450
Federal funding (all years)	$ -0-
Local government funding (all years)	$ 1,800
Private funding (all years)	$ -0-

AGENCY CAPITAL BUDGET REQUEST
Non-Building Program Detail
Fiscal Years 1996-2001
Dollars in Thousands ($137,500 = $138)

Form F-1

AGENCY: Water and Soil Resources, Board of
PROJECT TITLE: Abandoned Well Sealing
TOTAL PROJECT COSTS (ALL YEARS/ALL FUNDING SOURCES): $3,257
STATE APPROPRIATION REQUEST FOR 1996 SESSION: $ 250
STATE APPROPRIATION ESTIMATE FOR 1998 SESSION: $ 250
STATE APPROPRIATION ESTIMATE FOR 2000 SESSION: $ 250
LOCATION (CAMPUS, CITY, COUNTY): Statewide

AGENCY PRIORITY (for projects in the 1996 session only):

4 of 4 requests

1. PROJECT DESCRIPTION:

The requested funds will be used to share the cost of sealing high-priority abandoned wells on public land (excluding state land) under Minnesota Statutes 103C.501. The state share of well-sharing costs will be up to 75%. Well sealing costs can range from several hundred to many thousand dollars, so the exact numbers of wells that will be sealed is not known, but using the statewide average of $500 per well sealed, the requested funds will seal approximately 2,000 priority wells.

2. PROJECT RATIONALE AND RELATIONSHIP TO AGENCY LONG-RANGE STRATEGIC GOALS AND CAPITAL PLAN:

Abandoned wells are wells that are no longer used on a regular basis, or are in such a state of disrepair that continued use is impractical or a health hazard. Unsealed abandoned wells are a potential source of ground-water degradation, and can pose a safety hazard. They can act as conduits or channels for contamination to reach ground water. Water from a contaminated aquifer may move through an unsealed abandoned well to contaminate another aquifer that is normally protected by an impermeable layer. The Minnesota Department of Health (MDH) has estimated that there are approximately one million unsealed abandoned wells present throughout the state. Some counties are estimated to have as few as 1000 abandoned wells, while others may have many tens of thousands.

The Ground-water Protection Act of 1989 provided limited state funding to establish a cost-share program to seal abandoned wells. This program was administered by the Board of Water and Soil Resources (BWSR). To date 1.1 million dollars have been allocated in grants to 39 counties to share the cost with landowners of sealing high priority abandoned wells. Over 3400 wells have been sealed to date with these cost-share funds. Program results have been summarized in a "Status Report on Abandoned Well Programs" submitted jointly to the Minnesota legislature in September, 1994 by BWSR and MDH.

The well-sealing cost-share program has not been able to address the problem of abandoned wells on publicly owned land. The Department of Natural Resources has been charged with conducting inventories of abandoned wells on state land, and is separately seeking funding to seal priority wells on state land.

These requested funds will begin to address the problem of abandoned wells on publicly owned land other than state land. The requested funds will compliment the existing regulatory program which requires disclosure and sealing of unused wells at the time of property transfer.

The BWSR strategic plan identifies reducing ground-water contamination by cost-share on sealing abandoned wells as a goal. The BWSR, in cooperation with other agencies, has developed the capabilities and procedures to successfully implement well-sealing cost-share programs.

3. PREVIOUS PROJECT FUNDING:

Please refer to Form F-2.

4. OTHER CONSIDERATIONS (OPTIONAL):

A concern in this type of program is setting priorities to insure that the highest priority wells (those with the greatest potential to contaminate ground water) are sealed with available funds. Setting priorities insures that the most effective use is made of state funds and that the state gets the

most ground-water protection for its money. In 1990, BWSR let an interagency advisory group with representation from BWSR, MDH, DNR, MPCA, and several counties which developed a system for prioritizing wells for sealing.

Priority wells are wells which, by virtue of their construction, depth, condition, location, aquifer characteristics, or proximity to contamination sources and other wells provide increased potential for ground water contamination and contamination of drinking water. Examples include wells receiving surface drainage, wells penetrating confining layers, multi-aquifer, wells near a zone of surface contamination, and wells in an aquifer for which unsealed abandoned wells are the main potential contamination source.

A great deal of experience has already been gained in setting priorities for well sealing. The prioritization criteria developed as a part of the current well-sealing cost-share program will be sued to prioritize requests from public entities for well-sealing funds so that the allocations will achieve the most ground-water protection per state dollar spent.

5. **PROJECT CONTACT PERSON, TITLE, AND PHONE**:

Greg Larson, Administrator, Water and Land Management Section;
296-0882.

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06-13-95 8:57am cm

AGENCY CAPITAL BUDGET REQUEST
Non-Building Program Detail (Cont'd.)
Fiscal Years 1996-2001
Dollars in Thousands ($137,500 = $138)

Form F-2

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06-13-95 8:36am cm

TYPE OF REQUEST (Check all that apply):

___ Acquisition of State Assets
___ Development of State Assets
___ Maintenance of State Assets
_X_ Grants to Local Governments
___ Loans to Local Governments
___ Other Grants (specify):

PROJECT CHARACTERISTICS (Check all that apply):

_X_ Health and Safety
___ Enhancement of Existing Programs/Services
___ Expansion of Existing Program/Services
_X_ Provision of New Program/Services
___ Other (specify):

PROPOSED METHOD(S) OF 1996 STATE FINANCING (check all that apply):

___ Cash: $_____ Fund _____
_X_ Bonds: $ 250 Tax Exempt X Taxable ____

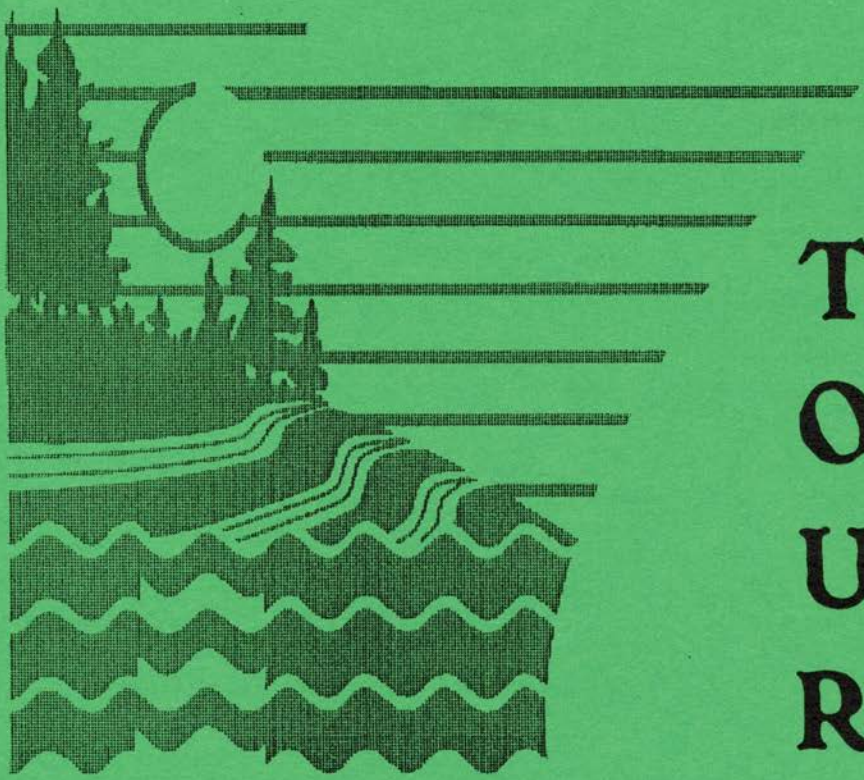
STATE DEBT SERVICE PAYMENTS (Check all that apply):

_X_ General Fund % of total 100
___ User Financing % of total ____

Source of funds _____

FUNDING SOURCES:

Previous Project Funding (all prior years)	$ 1,757
State funding received	$ 1,107
Federal funding received	$ 500
Local government funding received	$ 150
Private funding received	$ -0-
For 1996 Session (F.Y. 1996-97)	
State funding requested	$ 250
Federal funding	$ -0-
Local government funding	$ 250
Private funding	$ -0-
For 1998 Session (F.Y. 1998-99)	
State funding estimate	$ 250
Federal funding	$ -0-
Local government funding	$ 250
Private funding	$ -0-
For 2000 Session (F.Y. 2000-01)	
State funding estimate	$ 250
Federal funding	$ -0-
Local government funding	$ 250
Private funding	$ -0-
Total Project Costs (all years)	$ 3,257
State funding requested(all years)	$ 1,857
Federal funding (all years)	$ 500
Local government funding (all years)	$ 900
Private funding (all years)	$ -0-



TOUR

Self-Guided Tour of Erosion Problems and Solutions in Carlton and South St. Louis counties

July 24 - 26, 1995

Why take this self-guided tour?

As you head to Duluth for the BWSR Tour and Board Meeting, there's an opportunity to learn more about some sites that we won't be able to visit during the tour on Tuesday. By taking MN Highway 23, you'll see some excellent examples of cost-share solutions and typical erosion problems in northeastern Minnesota. You'll also get to drive along a scenic roadway, with less traffic and less construction than I-35, and it doesn't take much longer than the freeway.

This booklet provides information about suggested stops and examples you'll see while driving, with mileage measured from the Highway 23 exit off I-35.

There is currently a large cooperative project aimed at identifying best management practices that will help reduce serious erosion and sedimentation problems in the Nemadji River basin. This tour will help you understand the need for the Nemadji Project.

Also included is information about erosion problems near the Comfort Suite Hotel where you'll be staying. You can visit these any time during your visit or join the group for a guided tour on Monday evening.

Meet Ted Lovdahl in the lobby of the Comfort Suites at 7:00 p.m. for a tour before dinner at the Radisson.

Take the MN Highway 23 exit off I-35. It's exit 195, 12 miles north of Hinckley. Turn right (east) onto Hwy 23 and reset your trip odometer to ZERO (or note the mileage). All distances will be measured from here. Those of you coming from the west, see footnote below.*

mileage	description
1.3	The outcrops of rock here are Hinckley Sandstone, one of the oldest sedimentary rocks in Minnesota. This sandstone, nearly all quartz (98%) and about 500 feet thick, is 800-900 million years old and may have been deposited in a lake.
3.0	Town of Askov - Rutabaga capital of Minnesota.
8.0	Hwy 23 parallels the Burlington Northern Railroad until just past the town of Nickerson -- you'll notice there isn't much other high ground in the area.
12.2	Veterans' Memorial wayside.
15.2	Little Willow River - notice the wetland on the left.
17.6	Town of Kerrick.
22.3	Just crossing into the Nemadji River watershed.
23.3	Upper Nemadji River is the first stream you cross that drains north into the Lake Superior basin.
24.3	Town of Nickerson. Just north of Nickerson you'll enter Carlton County.
28.8	If it's a clear day, you'll get your first glimpse of the St. Louis River Valley as you look north toward Duluth.

* If you're coming from Brainerd, you can cut across to Barnum. Then take County Road 6 to intersect Hwy 23 north of Nickerson. If you're coming on 210, continue on 210 past I-35 at Carlton to where it meets Hwy 23 by Chambers Grove. Turn south on Hwy 23 for 12 miles to the stops on the Nemadji River.

29.8 County Road 8 -- Turn right to take a side trip to Holyoke to visit three successful erosion control practices. This 11-mile round trip detour includes 6 miles of gravel road.

32.0 Rock Waterway. This practice was funded by the Onanegozie Resource Conservation & Development Council (RC&D) in 1975 to carry runoff to the Net River. As you cross the bridge, look back over your right shoulder to see the waterway.

On the north end of Holyoke, County 8 is the gravel road that goes straight ahead.

34.6 Pipe Drop Structure. On the south side of the road, just west of the Little Net River, there is a ditch block, intake, and underground tile outlet near the trout stream. This is another roadside RC&D measure, installed in the 1970s. Don't let the "No Trespassing" signs deter you, the structures are located within the right-of-way if you want to get out to see them better.

35.5 Culvert Replacement and Realignment. The old County 8 culvert was misaligned and sent water into the slope on the north side. A $20,000 BWSR grant, administered by the Carlton County SWCD, was used to help cost-share the new culvert and other work including seeding and sodding. This practice was installed about three years ago.

Turn around in the driveway here and return to Highway 23. As you head south out of Holyoke and cross the Net River, you'll get a better view of the full length of the Rock Waterway. When you reach Hwy 23, turn right and resume heading north.

The mileage numbers in ( ) indicate what your trip odometer will read if you've taken this 11-mile side trip.

The Nemadji River drains an area of northern Minnesota and Wisconsin characterized by heavy red clay soil that is prone to slumping and is highly erosive. The red clay, 50-200 feet thick, was deposited in Glacial Lake Duluth more than 12,000 years ago. The extensive slumping and erosion results in a serious sedimentation problem in the St. Louis River Estuary and Duluth-Superior Harbor. The Nemadji River Basin Project currently underway is funded by NRCS and US Forest Service to recommend remedial action and adoption of best management practices to restore beneficial uses to the Nemadji River basin.

31.3 (42.3) South Fork of the Nemadji River. Notice the steep eroding streambanks and slumping shoulders all along the next stretch of Hwy 23.

32.8 (43.8) On the right side of the highway, as you come around a large right-hand curve and down into a valley, you'll see evidence of the kind of hillside erosion common in the Nemadji Watershed. MnDOT has been trying to stabilize slopes like these along the highway. Here, tons of soil were removed to flatten the slope and several de-watering methods were tried. The black plastic geowebbing installed near the soil surface at this site has not worked well -- you can see the gullies that have begun to form.

33.3 (44.3) Nemadji River. There is a wide shoulder on the right if you want to park and walk along the trail on the upstream side of the road.

33.5 (44.5) Herringbone Hillside Erosion Control. Constructed in 1976 as an RC&D cost-share measure, these main and lateral rock drains are 3 feet deep. The bottom and downhill sides of the 2-foot wide trenches were lined with plastic. An 8-inch tile in the road ditch collects the water and takes it to the Nemadji River and to Deer Creek. The cost of the measure was $42,000.

33.9 (44.9) On the left side of the road (if you park and get out) you can look down and see evidence of the erosion caused when a beaver dam was breached by MnDOT. The large rush of water caused lateral and headcut erosion on Deer Creek. On the right side of Hwy 23 is a large slump on a curve in Deer Creek below the culvert under 23.

34.2 (45.2) Veer left onto County Road 1 for another short detour to visit a successful project.

34.6 (45.6) Turn left on County Road 6 (the turn comes up fast).

35.4 (46.4) At the bottom of the small hill, County Road 6 crosses Deer Creek. Notice the two large culverts needed for this small stream and the ditch blocks and tile in the southwest road ditch. Also notice the slumping and lack of trees on the slopes. This was an RC&D roadside erosion cost-share measure in 1975.

Continue up the hill, turn around in the drive at the top of the hill and return to Highway 23. At Hwy 23, turn left and resume heading north.

Mileage distances for the remaining tour stops include this 2.3 mile detour

38.8 (49.8) In the next couple miles you'll see several areas of ongoing work on culverts and the shoulders. Constant work is necessary to maintain shoulders and culverts in this highly erodible clay watershed.

42.1 (53.1) On the left, note the newly paved recreational trail. Notice gullies already beginning in the steep banks that were seeded and mulched with straw.

44.9 (55.9) Overlook of the St. Louis River valley. At this Veterans' Memorial you'll have an excellent view northwest across the valley.

Much of the erosion in the Nemadji basin results from natural processes. There is not much agricultural activity in the watershed today, with dairy and forage crops being the primary products. Some early forestry practices contributed to the erosion occurring today, by converting forest stands that had a high percentage of evergreen species to more deciduous species. The use of forestry best management practices helps prevent most of the erosion on forest land when forest management activities occur.

45.9 (46.9) Looking ahead you'll see the face of an eroding bluff nearly a mile away.

46.8 (57.8) Eroding bluff face on the left is an excellent example of the slumping and erosion that occurs on steep slopes in the Nemadji watershed. On this stretch of Hwy 23, you're actually in Wisconsin.

47.0 (58.0) St. Louis River. As you cross the bridge, look to your left and you can view the gabions described below. Crossing the river takes you back into Minnesota.

47.2 (58.2) Turn left into Chambers Grove, park and walk along the boardwalk to see the erosion control structures. This is a great place to have a picnic or simply stretch your legs.

The rock-filled gabions and sheet pilings, stretching for about 700 feet upstream from the bridge, are the result of a joint project between the City of Duluth and the South St. Louis SWCD. Funding for the project came from about $50,000 in cost-share rollover funds and about $100,000 from the City of Duluth.

River currents and undercutting by bank beavers used to cause periodic collapse of the banks along this curve so that over 50,000 square feet of park area had been lost and about 50,000 tons of material deposited in the St. Louis Bay. Reducing non-point pollution and sedimentation to the river was identified as a priority by the St. Louis Remedial Action Plan.

As a result of this cooperative project, the park is a safer and more appealing place for recreation, the need for maintenance has been reduced, and a significant source of sediment to the river and harbor has been eliminated.

As you leave the park, turn left (across the divided roadway) and resume heading north on Hwy 23.

[If you want to visit Jay Cooke Park and the swinging bridge area, turn left almost immediately onto Hwy 210. The park is about 2 miles and you'll need a state park permit. After visiting the park return to Hwy 23 to continue onto Duluth.]

48.7 (59.7) Along this stretch of river there are several turnouts where people park to fish and hike along the river levees.

49.7 (60.7) Another overlook provides a chance to look southeastward across the St. Louis River to Wisconsin.

51.5 (62.5) Just past this railroad overpass on the right is the St. Louis River/Interlake/Duluth Tar (SLRIDT) superfund site. A clean-up plan has been proposed by MPCA for the site; clean up of an adjacent area was completed in March 94.

The SLRIDT site includes about 255 acres of land and river embayment and was the former site of iron and coking plants that began in the early 1900s. Tar and chemical companies used by-products of the coking operations to make other products. Contaminants of concern include volatile organic compounds (VOCs), particularly PAHs, and naphthalene, benzene, and others.

56.3 (67.3) Enter I-35 heading east.

60.8 (71.8) Exit I-35 at the Lake Avenue/5th Avenue West exit. At the light at the top of the exit ramp go straight ahead to Lake Avenue. At the light on Lake Avenue, turn right and go straight ahead for about 4 blocks to the Comfort Suites.

Monday Evening Tour

At 7:00 pm, gather in the lobby of the Comfort Suites for a brief tour and description of erosion problems along the Lakewalk and Park Point beaches. You'll meet with Ted Lovdahl and drive to 22nd Street on Park Point -- carpooling will make transportation and parking easier. Scott Smith from the South St. Louis SWCD will meet the group down on the beach at 22nd Street.

Wear comfortable clothes and shoes that are appropriate for walking on sand. After the tour, meet at 8:15 pm in the Comfort Suites lobby to go to dinner at the Radisson.

Park Point Erosion -

On the lake side of 16th and 22nd streets, off Minnesota Avenue, you'll see evidence of the need for sand dune stabilization. After each major storm, the City of Duluth must remove many cubic yards of sand from streets on Park Point. This dune erosion not only requires extensive maintenance, it also threatens property and reduces recreational opportunities along the Point. Over the past 20 years, the South St. Louis SWCD has worked with the Park Point Community Club to help stabilize the beach.

With $9,248 in funds from the Great Lakes Basin Program and hours of volunteer labor, 20,000 beach grass scones and 2,000 sand cherry shrubs were planted along the beach. Overall the project had three goals including mapping the blowout areas, establishing vegetation, and educating the public on appropriate use of the dune areas.

Future plans includes erecting signs, informing users about how fragile the vegetation is along the beach, and mapping all active erosions sites for future stabilization.

Duluth Lakewalk Erosion - tour on your own

As you walk along the boardwalk from the Comfort Suites, you'll notice evidence of the erosive power of Lake Superior. Much of this damage to the existing rock revetment and walkway resulted from a

major storm in November 1994 and has received a lot of publicity.

In the summer of 1994, $20,000 in BWSR SLR Special Project funds were matched with City of Duluth funds to complete emergency repairs from previous storms (notably the "storm of the century" in November 1992). South St. Louis SWCD provided construction observation for the project. These repairs held up well during the November '94 storm.

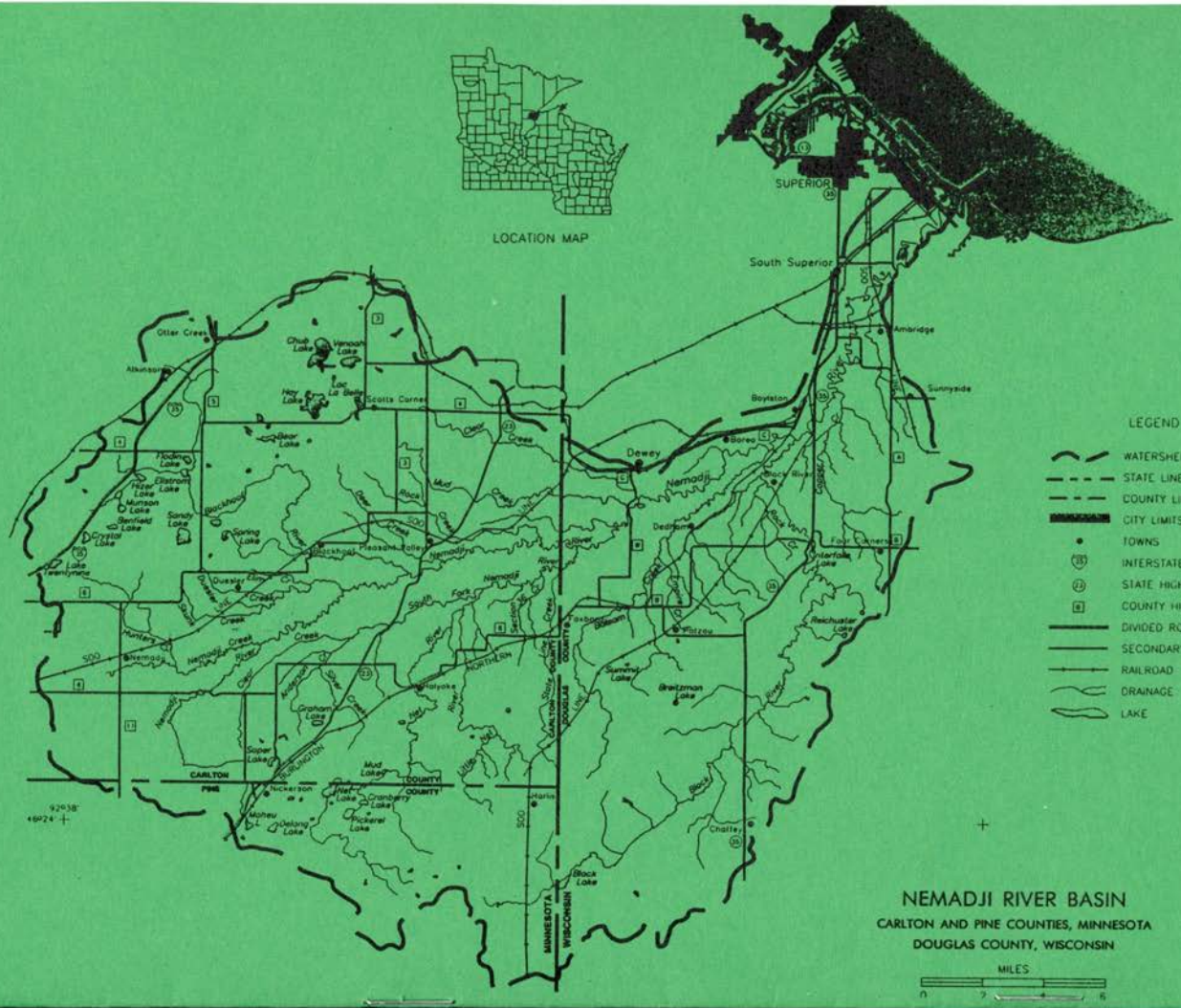
Repair of '94 storm damage has not been completed and may cost several million dollars. Gene Clark, the BWSR Lakeshore Engineer, is providing technical review of consultants' studies for the City of Duluth.

The Lakewalk is a good example of a project that will continue to experience erosion problems because it is exposed to extreme wave and ice conditions on the shoreline of Lake Superior. The Lakewalk is a focal point of tourism and recreation in Duluth and will receive ongoing attention from the public and city to ensure it remains a safe and appealing attraction. Locating the walkway as close as possible to the shoreline increases the potential for storm damage, but is a popular choice in terms of visitor use.

Farther down the Lakewalk (just beyond Fitger's) there is serious undercutting of the boardwalk where it runs along a narrow strip of land between the railroad and steep shoreline bluffs. Stabilizing this site presents a significant engineering challenge.

The problems exhibited along the boardwalk typify the interaction of policy and natural resources management in a region where tourism is a large part of the economic base. Technical and financial assistance from or through BWSR will be important as repairs and renovations occur on the boardwalk and other Lake Superior sites. Preventing all erosion along the boardwalk and Lake Superior coastline is impossible, but by working together with local, state, and federal partners we'll be able to find effective ways to stabilize the shore in key places.

Questions to ask . . .


LOCATION MAP
SUPERIOR
South Superior
Ambridge
Sunnyside
Boylston
Dewey
Nemadji
Foxboro
Pleasant Valley
Four Corners
Interlake
Reichuster Lake
Graetzman Lake
Sunset Lake
Mud Lakes
Cranberry Lake
Pickerel Lake
Mahau Lake
Oesterg Lake
Nickerson
Harris
Chalte
Rock Lake
Graham Lake
Super Lake
Holyoke
Nemadji
Scotts Corner
Otter Creek
Atkinson
Hay Lake
Bear Lake
Floodwood Lake
Fraser Lake
Elkhorn Lake
Munson Lake
Benfield Lake
Crystal Lake
Lake Hanitywa
Sandy Lake
Swing Lake
Duxbury Creek
Hunters Creek
Blackhoof River
Mud Creek
Deer Creek
Black River
Cassidy Creek
Little Creek
Section Creek
Northern Creek
Little Hay River
Big Hay River
South Fork Nemadji River
Nemadji River
CARLTON COUNTY
DOUGLAS COUNTY
PINE COUNTY
MINNESOTA
WISCONSIN
LEGEND
WATERSHED BOUN
STATE LINE
COUNTY LINE
CITY LIMITS
TOWNS
INTERSTATE HIGHW
STATE HIGHWAY
COUNTY HIGHWAY
DIVIDED ROAD
SECONDARY ROAD
RAILROAD
DRAINAGE
LAKE
NEMADJI RIVER BASIN
CARLTON AND PINE COUNTIES, MINNESOTA
DOUGLAS COUNTY, WISCONSIN
MILES
0
2
6

Metropolitan Ground Water Planning Progress Report

July, 1995

BACKGROUND

In 1987 Minnesota Statutes Chapter 473.8785 (now 103B.255) was enacted giving metropolitan counties authority to prepare and adopt ground-water plans.

In 1988, Hennepin County began ground-water planning with authority delegated to the Conservation District. In 1989 Washington County began the ground-water planning process, with the county planning department taking the lead. Dakota and Carver counties began ground-water planning in 1990 lead by the county planning departments. Ramsey and Scott Counties began ground water planning in 1992 and 1993 respectively, with Soil and water Conservation Districts in the lead.

The BWSR sent information and guidelines to counties for the metropolitan county groundwater plans in early 1990. The BWSR awarded matching grants of $15,600 to the 6 metropolitan counties preparing groundwater plans. Metropolitan counties with approved ground water plans are eligible for matching grants to implement items in the plans.

PLAN REVIEW

The plan review process which involves: 1) review by local units of government, concurrent with preliminary review by state agencies and the metropolitan council; 2) formal review by the metropolitan council and state agencies; and 3) BWSR review and approval.

COUNTY PROGRESS

Anoka

Anoka County, though not participating in the official metropolitan ground water planning process, is currently working on a "ground water assessment." The county public health department has a staff person to coordinate the groundwater assessment activities. The county is considering submitting the resulting plan through the state-sanctioned ground water plan review process.

Carver

The Carver county ground water plan was approved in August, 1992.

The plan identifies the following as immediate planning and implementation issues: integration of ground water planning into comprehensive plans, adoption of ground water sensitivity maps, feedlot and septic system impacts, agricultural and urban chemical and fertilizer use, water quality monitoring, data collection and maintenance, abandoned wells, and landspreading.

Dakota

The Dakota county ground water plan was approved in March, 1992.

The plan contains over 100 initiatives on various aspects of ground water protection. Primary objectives include: Information and education, abandoned wells, pesticide issues, industrial issues, aquifer and well head protection, and ground water supply.

Hennepin

Hennepin County was the first to start the ground water planning process. The Hennepin Conservation District (HCD) named an advisory committee in 1989. HCD collected data from state agencies through 1990. They did an exhaustive cleanup of the county's well log data base, and have developed an exceptional GIS capability.

After a protracted (and contentious) local review process involving a major revision, the plan received state approval in March, 1994. The plan has not yet been adopted by the county board.

Plan goals for cities will include management according to geographic location and hazard potential, delineation of wellhead protection areas around public supply wells, applying existing zoning authority to protect ground water, ranking and management of hazardous land use activities according to risk, using a GIS system to manage ground water information, location of abandoned wells, and adoption of contingency plans for ground water.

Though the plan has not been formally adopted by the county, the county is proceeding with implementation of many aspects of the plan. HCD is working with cities on delineating wellhead protection areas, hazard ranking, and GIS applications.

Ramsey

The Ramsey Soil and Water Conservation District (SWCD) has coordinated plan development since 1992. The plan is in the final stages of review.

The plan focuses on developing protection programs that cities and other local units of government can use to protect ground water within their jurisdictions.

Scott

The Scott SWCD has been working with an advisory committee on plan development. A draft plan is being prepared.

Washington

A draft plan was submitted for preliminary review in late 1992. However the county has not submitted a revised draft for review and approval. The plan emphasized public input over technical considerations. County staff have put allot of effort into working with the advisory groups and subcommittees.

COUNTY COOPERATION

One successful result of the metropolitan ground water planning effort has been the cooperation between counties. Most recently this has resulted in the formation of the Metro Area Ground Water Alliance (MAGWA). MAGWA is an association of water resource professionals which is being organized through the efforts of county ground water planners and managers in the 7-county Twin Cities metropolitan area. The organization's focus is ground water issues in the metropolitan area. Its purpose is to:

- identify priorities for regional ground water quality and quantity protection
- be a forum for considering regional ground water issues
- be an organized advocate on regional ground water issues
- provide information on issues that impact ground water resources in the region

METROPOLITAN GROUND WATER PLANS
Summary of Statute (103B.255) requirements

1. Voluntary program.
2. County may prepare or may delegate all or part of preparation and adoption to SWCD.
3. County will conduct meetings with local units and WMO's and may establish agreements
4. County will consult with MGS, MDH, DNR, MPCA, and other agencies. County must name advisory committee of 15 members of various interests including. (Requirements for composition of committee.)
5. Must extend through 1995 (five-year plans). Must contain elements below. Level of detail according to local conditions, needs. Maximum use of available data, studies.

6. Contents:
   - (1) cover entire county area;
   - (2) describe existing and expected changes to the physical environment, land use, and development in the county;
   - (3) summarize available information about ground water and related resources in the county, including existing and potential distribution, availability, quality, and use;
   - (4) state the goals, objectives, scope, and priorities of groundwater protection in the county;
   - (5) contain standards, criteria, and guidelines for the protection of ground water from pollution and for various types of land uses in environmentally sensitive areas, critical areas, and previously contaminated areas;
   - (6) describe relationships and possible conflicts between the ground water plan and the plans of other counties, local units of government, and WMO's in the affected ground water system;
   - (7) set forth standards and guidelines for the implementation of the plan by WMO's and local units of government;
   - (8) include a procedure for amending the plan.

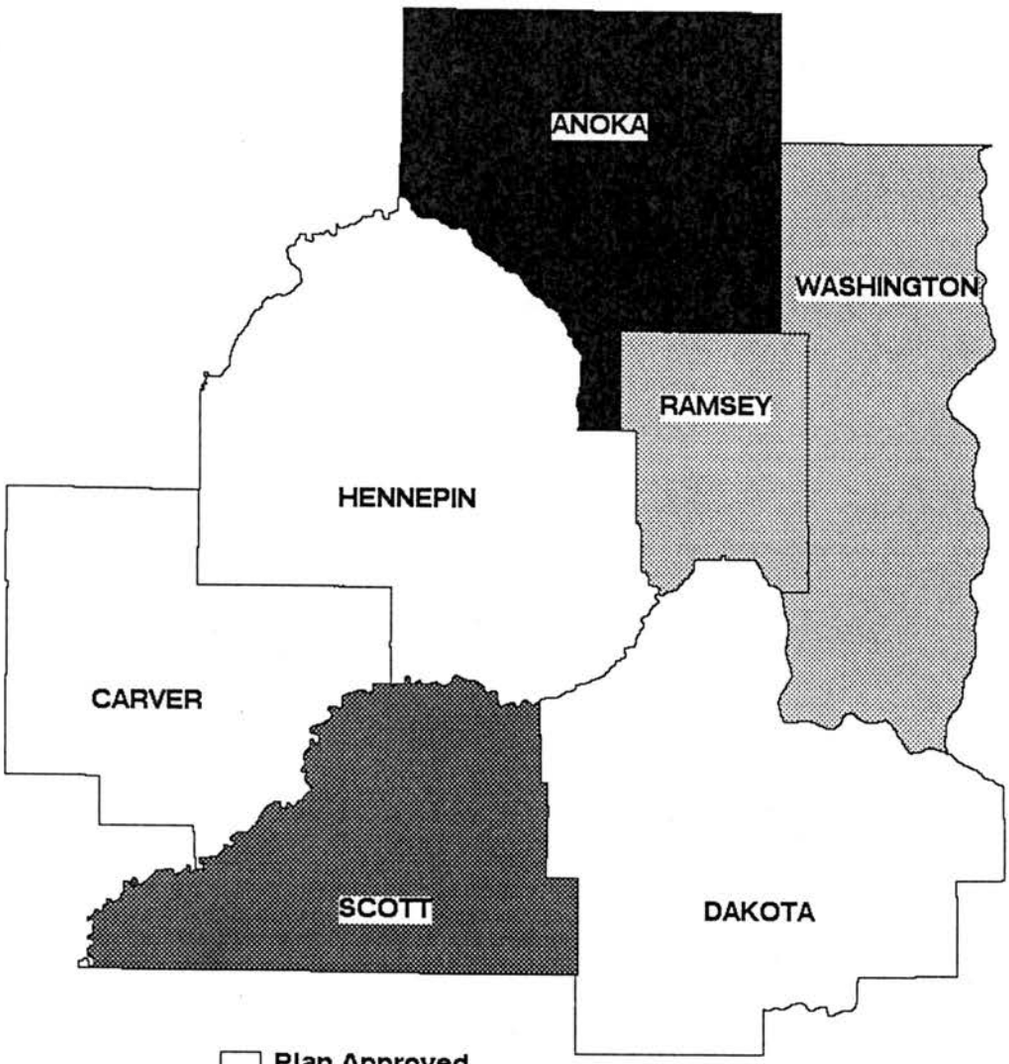
7. Local Review and comment:
   Requirement for review by SWCD's, towns, cities, WMO's within county, as well as by other affected counties, WMO's, and districts. Substantially affected parties describe amendments that would be necessary and costs. Differences among governmental agencies mediated.

8. Review by metropolitan council
9. Review by DNR, MDH, MPCA, and finally BWSR
10. Adoption and implementation of plan within 120 days of approval by BWSR.
11. WMO's must make necessary amendments to their surface water management plans within one year of adoption by the county.
12. Amendments must go through same local and agency review.

Other Statute Requirements

Watershed plans must be reviewed for consistency with county ground water plans.

STATUS OF METROPOLITAN COUNTY GROUND WATER PLANNING



GWTR_92.PLT
11/2/94

Minnesota Board of Water & Soil Resources

DRAFT July 21, 1995

MEMORANDUM OF UNDERSTANDING

BETWEEN

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

AND

MINNESOTA DEPARTMENT OF TRANSPORTATION

This Memorandum of Understanding will provide for a cooperative effort between the Minnesota Board of Water and Soil Resources (BWSR) and the Minnesota Department of Transportation (MnDOT) to provide wetland banking credits for public transportation projects by certain local government road authorities.

WHEREAS, pursuant to the Wetland Conservation Act of 1991 as amended (WCA) and the administrative rules promulgated thereunder, Minn. Stat. § 103G.2242, subd. 1(a) (1994) and Minn. R. 8420.0700-.0760 (1993), BWSR has responsibility to establish and administer a state wetland bank (State Wetland Bank); and

WHEREAS, MnDOT has accounts and is the holder of wetland credits in the State Wetland Bank; and

WHEREAS, pursuant to Laws 1994, ch. 643, § 26, subd. 3, as amended by Laws 1995 First Special Session, ch. 2, § 49, (the Wetland Banking Appropriation), BWSR is authorized to use up to $300,000 to establish and restore wetlands to provide credits for deposit in the State Wetland Bank; and

WHEREAS, the Wetland Banking Appropriation further provides that BWSR may enter into agreements with MnDOT for the use of the $300,000 and that such agreements may provide for borrowing or acquiring existing wetland credits from MnDOT's accounts in the State Wetland Bank; and

WHEREAS, BWSR and MnDOT agree that it is desirable to restore wetlands and to provide wetland banking credits for the State Wetland Bank; and

WHEREAS, BWSR and MnDOT recognize that certain local government road authorities have an immediate need for wetland banking credits to provide a means of wetland replacement for public transportation projects and that it is desirable to provide wetland banking credits for immediate use by these certain local government road authorities.

NOW, THEREFORE, BWSR and MnDOT agree:

1. BWSR and MnDOT staff shall work together on the development of Interagency Agreements between BWSR and MnDOT for provision of portions of the Wetland Banking Appropriation to MnDOT for restoration of wetlands to provide credits

for deposit in the State Wetland Bank. The specifics of such Interagency Agreements will be cooperatively developed by BWSR and MnDOT staff. Such Interagency Agreements shall not be binding upon either agency unless and until they are signed by both the Executive Director of BWSR and the Commissioner of Transportation. The terms and conditions of such Interagency Agreements may include, but are not necessarily limited to the following features:

a. MnDOT and BWSR will cooperatively select the project site or sites. MnDOT will become the fee title or easement holder for the property on which these wetland projects are located.

b. Subject to terms and conditions approved by MnDOT, certain existing wetland credits from MnDOT accounts in the State Wetland Bank which are designated by MnDOT may be made available to certain local government road authorities. In such circumstances, MnDOT would be paid for the credits from the Wetland Banking Appropriation or compensated by means of new wetland banking credits developed in connection with wetlands restored with the Wetland Banking Appropriation. Alternatively, the Interagency Agreements may provide for existing wetland credits from MnDOT accounts in the State Wetland Bank to be borrowed by local government road authorities on a temporary basis until new credits from wetlands restored with the Wetland Banking Appropriation become available. Such Interagency Agreements may provide for BWSR to enter into agreements on behalf of MnDOT to transfer wetland banking credits from MnDOT accounts in the State Wetland Bank to eligible local government road authorities on terms and conditions specified in the Interagency Agreements.

2. This Memorandum of Understanding may be cancelled by BWSR or MnDOT at any time by written notice to the other agency. This Memorandum of Understanding expresses the intent of BWSR and MnDOT to work cooperatively toward the development of Interagency Agreements as described in this Memorandum of Understanding, but this Memorandum of Understanding does not subject either agency to any binding obligations. Any obligations which are intended to have binding effect will be documented by means of the Interagency Agreements described in this Memorandum of Understanding.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES	MINNESOTA DEPARTMENT OF TRANSPORTATION
By_____	By_____
Its_____	Its_____
Dated:_____	Dated:_____

"DRAFT"

MINNESOTA BWSR

WCA IMPLEMENTATION CORRECTIVE ACTION POLICY

The goal of this policy is to set up an action process with an acceptable time frame to bring into compliance an LGU that is not properly implementing/administering the Minnesota Wetland Conservation Act.

Step 1 • BC has reason to believe that LGU may not be implementing WCA according to Rule and Statute.

- BC verifies that the LGU has adopted WCA and has a copy of the Act, Rule, and Administrative Manual.

- BC verifies who is administering WCA. (Example: a city may be accused of not administering/enforcing WCA when in fact they have delegated this responsibility to the county.

Step 2 • BC compiles information, gathers evidence and develops written documentation. This is done by meeting with the LGU to obtain information such as TEP findings of fact or decision, LGU experience and training, and other background information.

Step 3 • BC notifies regional supervisor of findings and then discuss situation with BWSR WCA program staff to determine appropriate action for BC to take.

Step 4 • If a significant problem is evident, BC meets with LGU staff to discuss; explains findings, cites Rule and consequences of poor administration of WCA, and explains the BC's and BWSR's role in this process. BC will also recommend corrective actions to the LGU. LGU is informed that BC will conduct a follow up meeting with the LGU within 30 to 45 (**maybe 60**) days to determine LGU's compliance with BC recommendations.

Step 5 • If appropriate, BC makes written recommendation to LGU for correction of misadministration. BC documents the LGU's verbal response (agreement/disagreement, etc.) on actions for corrective measures.

- If LGU response to corrective actions is negative, a meeting with LGU elected officials will be necessary to present findings and make recommendations. Meeting is scheduled and held.

- If elected officials indicated that the LGU will not comply, a written warning is sent to LGU elected officials and administering staff specifying that the LGU has 30 days in which to comply. Move to Step 9.

Step 6 • BC notifies the regional supervisor and BWSR WCA staff of discussion with and recommendations made to the LGU, and meeting held with LGU elected officials.

Step 7 • BC conducts follow up meeting with the LGU within the 30 to 45 (**maybe 60**) day period to review on compliance.

- If compliance is evident, no further action required. BC reports findings to regional supervisor and BWSR WCA program staff. BC sends written letter of compliance to LGU.

- If administration problem still exists, a written communication is necessary. BC schedules a meeting with LGU elected officials to present findings and make recommendations. BC follows up the meeting with written warning which is sent to LGU elected officials and administering staff. LGU is given 30 (**maybe 60**) days in which to comply.

Step 8 • BC forwards written summary of activities to regional supervisor and BWSR WCA program staff.

Step 9 • If after 30 (**maybe 60**) days the LGU has not favorably responded to the written warning, formal action by the BWSR Board begins as outlined in Chapter 8420.0260 Penalty For Local Government Unit Failure To Apply Law. Consultation between the BC, regional supervisor, BWSR WCA staff and executive director results in written communication to the LGU requesting the LGU to appear at a hearing before the BWSR Board (dispute resolution committee) to discuss the matter.

Step 10 • The hearing before the BWSR Board is conducted. If corrective action is determined to be necessary, the BWSR Board will make written communication with the LGU directing specific corrective actions to take place within 60 days, explain the reason for the actions and give consequences for not complying.

Step 11 • If after the 60 day period the LGU has not corrected the problem, the BWSR Board will take appropriate legal action to ensure compliance. Actions may include:

- declaring a moratorium until actions are corrected
- demanding return of WCA fund portion of block grant
- withholding future WCA fund portion of block grant
- legal action by the state to secure compliance
- increased enforcement action
- state auditor review of LGU (?)

Step 12 • An LGU appeal of the BWSR Board's decision may be taken to the state court of appeals as specified in Chapter 8420.0280 Appeal From Board Decisions.

s:BADWCA.IMP

law to the facts, including this chapter; and if the local government unit made no procedural errors prejudicial to a party. Otherwise, the board will reverse the decision, amend it, or remand it with instructions for further proceedings.
SA: MS s 14.06; 103B.101; 103B.3355
HIST: 18 SR 274

8420.0260 PENALTY FOR LOCAL GOVERNMENT UNIT FAILURE TO APPLY LAW.

The board shall send copies of this chapter to all local government units at least 60 days before July 1, 1993. 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. Local government units from which an affirmative response is not received will be given notice by the board that there is a 60-day moratorium in the local government unit's jurisdiction on exemption, no-loss, replacement plan, and banking determinations. The board will end the moratorium within the 60 days upon agreement by the local government unit that it will assume its duties under this chapter and the act. If at the end of the initial 60-day moratorium an agreement has not been made for the local government unit to apply the law, the board can extend the moratorium until the local government unit agrees to apply the law.

If the board has information that a local government unit is not following this chapter or the act in making exemption, no-loss, replacement plan, or banking determinations, the board shall notify the local government unit of its concerns. If not satisfied with the local government unit's response, the board shall ask the local government unit to appear at a hearing before the board to discuss the matter. If it is determined at the hearing, that corrective action is necessary, the board shall write the local government unit directing specific corrective action within 60 days. The notice shall explain the reason for the action.

If, after the 60-day period described in this part the local government unit has not corrected the problem to the satisfaction of the board, the board shall take appropriate legal action to ensure compliance.
SA: MS s 14.06; 103B.101; 103B.3355
HIST: 18 SR 274

8420.0270 COMPENSATION.

Replacement plan applicants who have completed the local government unit process and the board appeal process, and the plan has not been approved as submitted, may apply to the board for compensation under Minnesota Statutes, section 103G.237.

The application must identify the applicant, locate the wetland, and refer the board to its appeal file in the matter.

The application must include an agreement that in exchange

Minnesota Board of Water & Soil Resources

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Fax (612) 297-5615

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Duluth, MN 55802
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Fax (218) 723-4794

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(218) 755-4235
Fax (218) 755-4201

217 S. 7th Street
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Fax (218) 828-6036

Southern Region:
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Box 756
New Ulm, MN 56073
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Metro Region:
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MEMORANDUM

Date: July 11, 1995

To: Ron Harnack, Executive Director

From: John Jaschke, Wetland Management Specialist JJ

Subject: MNDOT WETLAND BANKING AGREEMENT

On July 10, Matt Seltzer and I met with MNDOT representatives (Frank Pafko, Sarma Straumanis and Nick Tiedeken) to develop a plan for getting banking credits established for needy local road authorities using the $300K of bonding funds appropriated by the legislature. The plan we came up with is as follows:

1) MNDOT (aided by BWSR staff) will pursue project sites (approximately 3) with immediate efforts focusing on a 30+ acre project in Blue Earth County (LeSueur River watershed). This site has had much of the preliminary work done by Blue Earth county Engineer Al Forsberg (in conjunction with Chris Hughes.) MNDOT District 7 - Mankato and Blue Earth county will jointly design, construct and maintain the site and in return receive an amount of wetland credits based on their contributions to the project. BWSR will be the holder of the remaining majority of the credits. This project could be initiated late this summer with credits established by Fall 1996.

2) With plans for Blue Earth county project ready, BWSR and MNDOT District 3 - Brainerd would make a trade with BWSR committing the future Blue Earth county credits to MNDOT District 3 in exchange for immediate credits for their Staples project. This will allow us to make credits available to the needy road authorities very soon but also assure MNDOT District 3 that they will have all of the credits they need for their own projects over the next decade.

3) Staff Action

   A) Sarma and Nick will get the detailed information on the Blue Earth county site from Al Forsberg, Chris Hughes and Blue Earth SWCD, Chuck Peterson.

B) Frank will discuss details of the plan with the District 7 and District 3 Engineers and other MNDOT officials in the Environmental Services Section, Commissioners Office and Finance Section.

C) Matt will draft an overarching Memorandum of Understanding (MOU) befor the July Board meeting that MNDOT and BWSR can sign agreeing to the plan. Details of the interagency obligations and funds transfers will be done separately for each banking project using the standard State of Minnesota Financial MOA.

4. Board Action needed at July meeting:

A) Endorse MOU and authorize staff (Executive Director) to sign and enter into subsequent agreements with MNDOT.

B) Determine price the credits will be sold at (i.e. the amount of subsidization). Recommend using some multiple of the average township value of (ag)land in the township as determined by the MN Department of Revenue. This is the same as RIM payment basis and broadly available. Where not available use the value of adjacent upland as determined by the county assessor.

C) Affirm that the credits will be sold only to local government road authorities in counties or watersheds with more than 80 percent of their presettlement wetlands remaining. This was the language in the legislative proposal and will provide credits at reasonable costs to areas that have very few options for replacement and low land values. This limitation must be maintained so as not to upset the entrepenurial bank market. Many of the less than 80 percent counties have developed or are developing credits and public transportation projects have the flexibility to replace statewide.

c: Greg Larson, BWSR
Matt Seltzer, AG's office
Frank Pafko, MNDOT
Sarma Straumanis, MNDOT
Nick Tiedeken, MNDOT
BWSR Board Conservationists
Regional Supervisors

P.S. The Breakfast meeting on July 11 was canceled so I did not get a chance to talk with the USCOE and DNR about their level of support for wetland banking. We need them to support (as per the Wetland Regulatory Simplification MOA signed in August 1994) the idea of restoring wetlands in the Minnesota River Valley for replacement/mitigation of property in greater than 80 percent counties (especially for road projects).

s:banking.agr

SECTION 6. RELATIONSHIP BETWEEN ECOSYSTEM-BASED MANAGEMENT, SUSTAINABILITY, AND BIODIVERSITY

Sustainability, Ecosystem-based Management, and Biological Diversity are umbrella concepts used by DNR as organizing principles for guiding natural resource management. These terms are closely related and are often used interchangeably. To understand their relationship, it may be useful to view sustainability as an outcome, Ecosystem Management as a methodology, and biodiversity as a measure or benchmark.

SUSTAINABILITY (A DESIRED OUTCOME)

Definition: Sustainability is the achievement of economic and social well-being without damaging the planet's resource base (e.g., its soils, water, vegetation and wildlife).

What Sustainability Means to DNR: Sustainability is the expected outcome of all resource management activities. Sustainability requires DNR to protect and restore natural systems so that their resources can be used indefinitely. Sustainability requires DNR to reconcile human needs and demands with the capacity of ecosystems to meet those demands.

ECOSYSTEM-BASED MANAGEMENT (A METHODOLOGY)

Definition: Ecosystem-based management is the collaborative process of sustaining the integrity of ecosystems through partnerships and interdisciplinary teamwork.

What Ecosystem Management Means to DNR: The approach requires that all DNR disciplines work together (in interdisciplinary teams) with strong public participation to develop and implement sustainability goals for entire ecological systems. This is different from the old model of "competing multiple-uses" where disciplines work in isolation to improve individual resources.

BIOLOGICAL DIVERSITY (A MEASUREMENT)

Definition: Biodiversity is the variety and abundance of life and its processes: It includes ecosystem diversity, species diversity, and genetic diversity. Biodiversity is a basic property of nature: It supports the integrity and resilience of life sustaining habitats (i.e., ecosystems).

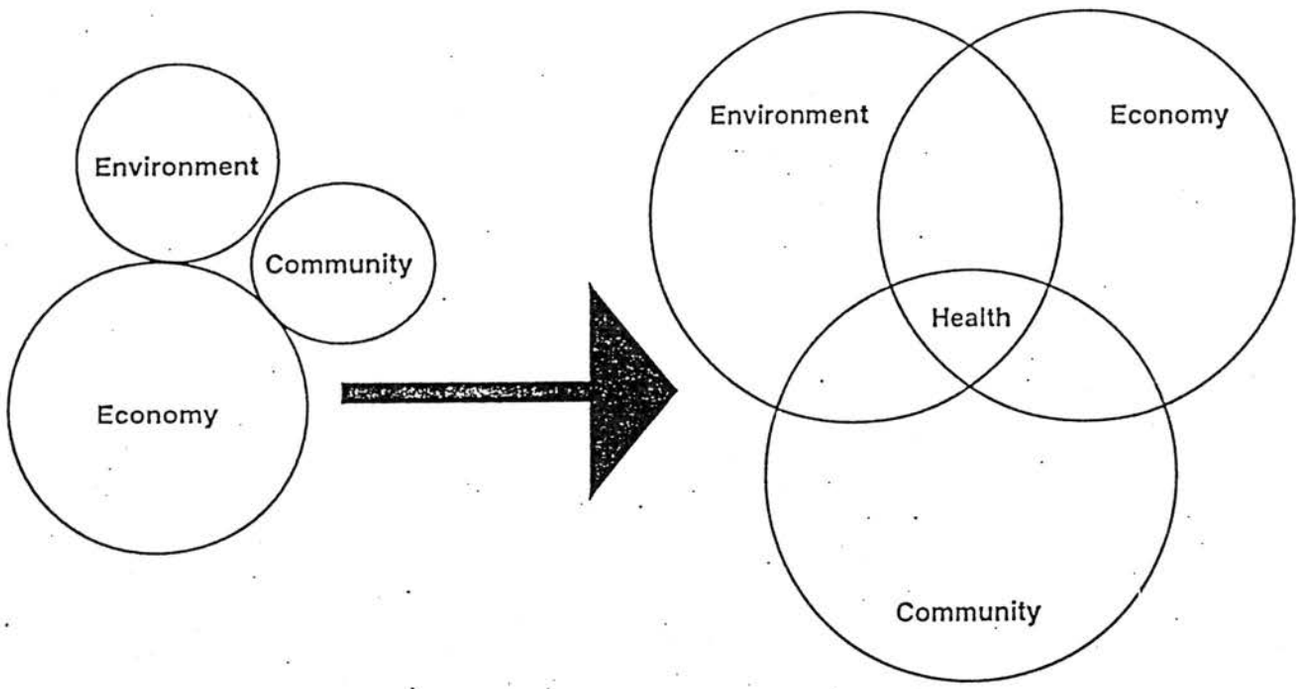
What Biodiversity Means to DNR: Indicators of biodiversity can be used as benchmarks to measure ecosystem health and hence the sustainability of our actions. Practical biodiversity measures are essential because traditional economic indicators do not reflect environmental degradation. Resource professionals must develop such indicators for tracking environmental quality trends. Biodiversity is one of the vital signs that measure our quality of life -- how much biodiversity is maintained will be a measure of our success as resource managers.

Source: *Directions for Natural Resources: An Ecosystem-based Framework for Natural Resource Management.*

Figure 1: The Three Interacting Dimensions of Ecosystem-based Management

The ecosystem-based approach holds that the economy, the community, and the environment are interrelated components of an ecosystem. Decisions and actions made in one area affect the others. These relationships can be visualized as three interlocking circles. Traditionally, decision-making has separated the three, with little understanding of their linkage.

Ecosystem health depends on (a) an environment that is viable and sustainable (i.e., supports human and non-human life); (b) an economy that is sustainable; and (c) a community that is liveable. The intersection of these circles represents the desired state of a "healthy" ecosystem.



Source: 1st International Symposium on Ecosystem Health and Medicine: Integrating Science, Policy and Management. (June 19-23, 1994, Ottawa, Canada.)

ACRONYMS:

BWSR	Pronounced "bowser" - Board of Water & Soil Resources
MACDE	Pronounced "mas-id" - MN. Assoc. of Conservation District Employees
MASWCD	Pronounced "mas-quid" - MN Assoc. of Soil & Water Conservation Districts or referred to as S-W-C-D's in capital letters
MAT	Pronounced "mat" - MN. Assoc. of Townships
MAWD	Pronounced "maud" - MN Assoc. of Watershed Districts
MFIP	Pronounced "m-flp" - MN Forestry Improvement Program
RIM	Reinvest In MN Reserve Program - BWSR conservation easement projects
SCOPING	"buzz word" means a norrowing process to get to the key issues
SONAR	Statement of Need & Reasonableness
URP	Pronounced just like it sounds = Urban Resources Partnership (thru Dept. of Ag - grants available)
WCA	Pronounced "wack-a" - Wetland Conservation Act
W H A C	Pronounced "wack" - no "a" = Wetland Heritage Advisory Committee (one of the Gov's wetland rule working groups

ABBREVIATIONS:

A M C	Association of Minnesota Counties
B M P	Best Management Practices (Good Conservation Methods)
C R P	Conservation Reserve Program
D N R	Department of Natural Resources
E A W	Environmental Assessment Worksheet
E I S	Environmental Impact Statement G E I S = Generic Environmental Impact Statement
E Q B	Environmental Quality Board
L G U	Local Government Unit - may be same or different from R G U = Responsible Unit of Government

L C M R	Legislative Commission on MN Resources (Environ. $)
M L A	MN Lake Association
N R C S	National Resources Conservation Service (under U.S. Dept of Agric. Formerly SCS = Soil Conservation Service
P C A	Pollution Control Agency
P F	Pheasants Forever - Sporting group upholds concervation & continuation of wildlife habitat
P W P	Permanent Wetland Preservation
S L R	Streambank, Lakeside & Roadside (projects)
S R F	State Revolving Fund (Loan Program) - also known as Ag. BMP Loan Program
S W C D	Soil & Water Conservation District
W D	Watershed District
W M O	Watershed Management Organization
U S C O E	United State Corp of Engineers - also known as the Amry Corp or just the Corp.

NUMBERS:

GP 17	New BWSR grant program opportunity for impacts of less than 3 acres of land - max.= $4,000
103 B	Metropolitan Surface Water Management statutes (WMOs and Metro WDs)
509	=Metro surface water mgmt PLAN
103 D	Watershed District Statutes
Chapter 248	Refers to Governors Environmental Agency Reorganization initiative
319	A Federal Non-Point Pollution Control Program administered in MN. by the PCA
401	Statutes that guide PCA water related permits
404	Federal Clean Water Act statute that guides water related permits.

8/23/95

BOARD OF WATER AND SOIL RESOURCES
ONE WEST WATER STREET, CONFERENCE ROOM
ST. PAUL, MINNESOTA
AUGUST 23, 1995

BOARD MEMBERS PRESENT:
Barb Cobb, LeRoy Stensgaard, Dwain Otte, Glenn Annexstad, Darrell Bruggman, Ginny Imholte, Jim Rossman, Ted Lovdahl, Marvell Tripp, Kathy Roer, and Tim Hvidsten.

BOARD MEMBERS ABSENT:
Barbara Uppgaard

AGENCY MEMBERS PRESENT:
Bob Patten, Department of Agriculture
Wayne Edgerton, Department of Natural Resources

AGENCY MEMBERS ABSENT:
Kim Benson-Johnson, Department of Health
Jim Anderson, Minnesota Extension Service
Wayne Anderson, Pollution Control Agency

OTHERS PRESENT:
Jim Schafer and Bob Pigeon, Minnesota Association of Soil and Water Conservation Districts (MASWCD)
Bill Hunt, Natural Resources Conservation Service (NRCS)
Rick Reimer, Minnesota Association of Conservation District Employees (MACDE)
Greg Anderson, Consolidated Farm Service Agency (CFSA)
Ray Bohn, Minnesota Association of Watershed Districts (MAWD)

STAFF PRESENT:
Doug Thomas, Jim Birkholz, Al Kean, Wayne Zellmer, Tom Wenzel, Marybeth Block, Keith Grow, and Mary Jo Anderson.

Chair Cobb called the meeting to order at 9:05 a.m.

** 95-42 **Adopt Agenda** - Moved by Marvell Tripp, seconded by Jim Rossman, to adopt the agenda as presented. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, and Tripp. Opposed: None. Carried.

Minutes of July 26, 1995 - Kathy Roer stated that a change needs to be made on page five, regarding the recommendations of the Dispute Resolution Committee on appeals; it should read "watershed district permit" appeals, rather than WCA. Also, the end of that sentence should be deleted. Moved by LeRoy Stensgaard, seconded by Marvell Tripp, to approve the minutes of July 26, 1995, as corrected. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, and Tripp. Opposed: None. Carried.

** 95-43

Dispute Resolution Committee (DRC) Report - Kathy Roer reported that three items will be addressed on September 14 when the Dispute Resolution Committee (DRC) meets again; and also two matters that are set for hearing in the near future. Rossman stated that staff should make determination if the appeal has met criteria for the appeal to come before the DRC.

Education Committee Report - Tim Hvidsten stated that he will stop by the BWSR state fair booth and MASWCD booth as well and encouraged other board members to stop by the BWSR booth.

Chair's Report - Barb Cobb attended several meetings this past month including the Environmental Quality Board (EQB) meeting; the NRCS/MASWCD/BWSR meeting regarding partnerships; the MAWD board of directors meeting on reorganization; and a metro SWCD meeting.

Executive Director's Report - Ron Harnack spent three days visiting field offices in northern Minnesota. A watershed district petition has been received for expansion of boundaries; a BWSR committee may have to be appointed to hear the issue. A Reinvest In Minnesota (RIM) Reserve celebration ceremony has been scheduled for October 12 in Yellow Medicine County to celebrate 60,000 acres, acknowledge cooperating partners, and promoting future program funding; Ron encouraged board members in the area to attend. BWSR has a booth at the state fair in the Education Building; members are invited to stop by the booth. A WCA appeal from McLeod County was heard before district court and the court ruled in BWSR's favor; a summary will be provided to members. A legislative mini-session will be held September 21-22 in Bemidji. Three additional counties, Clearwater, Itasca, and Roseau, have resolved to rescind the Wetland Conservation Act (WCA) in November. Ron met with Association of Minnesota Counties (AMC) committees to address the issue of wetland legislation. AMC is appointing a wetland committee to review issues

and develop a position. Ron attended the MASWCD board of directors meeting in Rochester; cost-share area allocation was discussed. BWSR needs to revisit the cost-share allocation issue. Ron stated that legislation deadlines have been set; legislative initiatives are due September 29. Policy and money issues are due October 6; drafts need to be in the Revisor's Office by November 1; staff will bring considerations before BWSR in September. Chair Cobb asked for a legislative outline to be sent out to board members.

Consent Agenda

- Grass Lake Wetland Restoration Project in Kandiyohi County - Tom Wenzel updated board members on the Grass Lake Wetland Restoration Project; things are going very well and the partnership is making great progress. Moved by Jim Rossman, seconded by Dwain Otte, to make final approval on the Grass Lake Wetland Restoration Project in Kandiyohi County. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, and Tripp. Opposed: None. Carried.

** 95-44

-FY96 Non-Point Engineering Assistance Grant - Wayne Zellmer updated board members on the hiring process for engineering assistance. Moved by Marvell Tripp, seconded by LeRoy Stensgaard, to approve the two-year funding grant for non-point engineering assistance. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, and Tripp. Opposed: None. Carried.

** 95-45

-Proposed Cost-Share Rule Revisions and Cost-Share Allocation Procedure - Marybeth Block gave an overview of the allocation process and rule revision process. Dwain Otte commended staff, Marybeth Block, Keith Grow, and Wayne Zellmer for the work they have done on the cost-share revisions and allocation procedures. The BWSR cost-share committee met yesterday with staff to discuss the rule revision and allocation processes. Staff and committee members will be asking the board to endorse the draft rule in September. The allocation formula was discussed. Ron Harnack clarified that the board had already endorsed distributing funds area option (August 1994), provided all SWCDs in an area agreed to the area-allocation process. The board did not change the allocation formula. Jim Schafer, President of MASWCD, stated that the MASWCD board of directors met yesterday and revisited the issue. He indicated that it appears there is confusion and misunderstanding regarding the area allocation process among members. Dwain Otte mentioned that the board will need to decide whether or not they will distribute a portion, not to exceed 20%, of the regular statewide appropriation for a special program and project initiatives. He reported that the committee was going to recommend retaining 20%. If board members are uncomfortable with retaining a portion of the appropriation, or any aspect of the rules revision Dwain encouraged them to please speak to the BWSR cost-share committee members. Board members further discussed the area allocation process. Each area accepting the area option must establish priorities within their area for the use of cost-share funds. An area may elect not to participate in this cost-share

allocation process; districts in non-participating areas will receive their allocations according
** to the current allocation formula. Moved by Marvell Tripp, seconded by Dwain Otte, to
95-46 endorse the BWSR cost-share committee policy statement, all or none, regular statewide cost-share program allocation procedures. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, and Tripp. Opposed: None. Carried.

** Moved by Ginny Imholte, seconded by Marvell Tripp, to approve proceeding with the cost-
95-47 share rule revision process. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, and Tripp. Opposed: None. Carried.

A letter will be sent to districts regarding the area option.

Chair Cobb called for a break in the meeting at 10:35 a.m. The meeting reconvened at 10:50 a.m.

RIM Easement Program Work Plan and 1995 Sign-Up - Tim Fredbo gave an overview of the program and presented the allocations by board conservationists' work area. Staff recommends approval of the proposed $2.7 million allocation. Chair Cobb commended Tim
** and Marybeth on the easy-to-follow work plan. Moved by Dwain Otte, seconded by Kathy
95-48 Roer, to approve the RIM Easement Program Work Plan and 1995 Sign-Up. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, and Tripp. Opposed: None. Carried.

Reorganization Update - Ron Harnack stated that the reorganization meetings have been scheduled. The role of BWSR is multi-fold--BWSR is a member of EQB; BWSR is behind the scenes, and BWSR is also part of the environmental cluster group of the Governor's office. Findings, conclusions, and draft recommendations are expected to come out of the meetings. One administrative report will be submitted to the Governor. Ron asked members to let him know which meetings they can attend. BWSR staff will serve as facilitators.

Proposed Policy Allowing SWCDs to Retain RIM Penalty Payments - Jim Birkholz explained the issue: as an alternative to returning funds to the state, should SWCDs that resolve non-compliance problems with RIM Reserve easements be authorized to receive and disburse landowner payments that are part of the restitution? Jim has been in contact with the Department of Finance and the Attorney General's office on this issue. A proposed policy was distributed to members for review. Wayne Edgerton asked if Mower County would then be denied its request to fund Pheasants Forever with RIM Reserve dollars. Jim
** Birkholz stated that, yes, Mower County would be denied its request under this policy.
95-49 Moved by Ginny Imholte, seconded by Ted Lovdahl, to approve the proposed policy to

allow SWCDs to administer certain RIM Reserve non-compliance penalty payments received from landowners. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, and Tripp. Opposed: None. Carried.

Local Water Planning Update - Doug Thomas gave an overview and history of local water planning. He distributed proposed criteria for authorizing extensions of comprehensive local water plans. Moved by Jim Rossman, seconded by Darrell Bruggman, to approve the proposed criteria for authorizing extensions of comprehensive local water plans. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, and Tripp. Opposed: None. Carried.

** 95-50

Advisory Comments

-Department of Natural Resources (DNR): Wayne Edgerton reported that a roundtable discussion was held at Camp Ripley to address trespass issues in the state and how they relate to property rights. Wayne stated that DNR looks forward to working with BWSR on Wetland Conservation Act amendments as they progress.

-Department of Agriculture (MDA): Bob Patten stated that the agricultural loan best management program (BMP) continues to move along with anticipated workshops in September.

-Consolidated Farm Service Agency (CFSA): Greg Anderson reported that the thirteenth Conservation Reserve Program (CRP) sign-up will take place in September. There are 1.8 million acres of CRP land in Minnesota. Greg stated that agricultural conservation program (ACP) funds have been cut by 50 percent. He stated that due to the USDA Reorganization Act, CFSA has transferred some programs to NRCS.

-Minnesota Association of Soil and Water Conservation Districts (MASWCD): Jim Schafer stated that MASWCD continues to work on getting conservation on the land.

-Minnesota Association of Conservation District Employees (MACDE): Rick Reimer stated that MACDE met in August; one topic discussed was review of summer training. MACDE will produce a new publication "Keeping in Touch." Rick stated that MACDE will assist BWSR staff on five-year training program. He stated that MACDE is looking for raffle items for the convention. Rick reported that currently there are 315 SWCD employees involved in MACDE.

Chair Cobb recessed the meeting for lunch at 12:20 p.m. The meeting reconvened at 1:15 p.m.

-Proposed Board Member Handbook - Susan Tsakakis reviewed the proposed board member handbook and asked for suggestions and ideas. Susan hopes to have the handbook finalized in six months. A draft handbook will be distributed to board members.

-Media Communications - Susan Tsakakis gave an informative presentation on how board members should respond to the media.

** 95-51 Moved by Dwain Otte, seconded by Marvell Tripp, to adjourn the meeting at 1:40 p.m. Affirmative: Annexstad, Bruggman, Cobb, Hvidsten, Imholte, Lovdahl, Otte, Roer, Rossman, Stensgaard, and Tripp. Opposed: None. Carried.

Barbara Cobb

Respectfully submitted,
Barb Cobb, Chair

SRF Passed 1/25/95

PROPOSED TWO YEAR FUNDING BASED ON CURRENT APPROPRIATIONS AND *EPA GRANT

TOTAL ANNUAL ENGINEER AND TECHNICIAN BUDGET FOR EACH JOINT POWERS (BWSR ESTIMATE FROM PAGE 1) = $105,800

AVAILABLE NON POINT ENGINEERING ASSISTANCE GRANT FUNDS:

* FY 95 – $865,000 APPROPRIATION + $240,000 EPA GRANT = $1,105,000
  $1,105,000/11 JOINT POWERS = $100,500 PER JOINT POWERS.
* FY 96 – $1,040,000/11 JOINT POWERS = $94,500 PER JOINT POWERS
* FY 97 – $1,040,000/11 JOINT POWERS = $94,500 PER JOINT POWERS

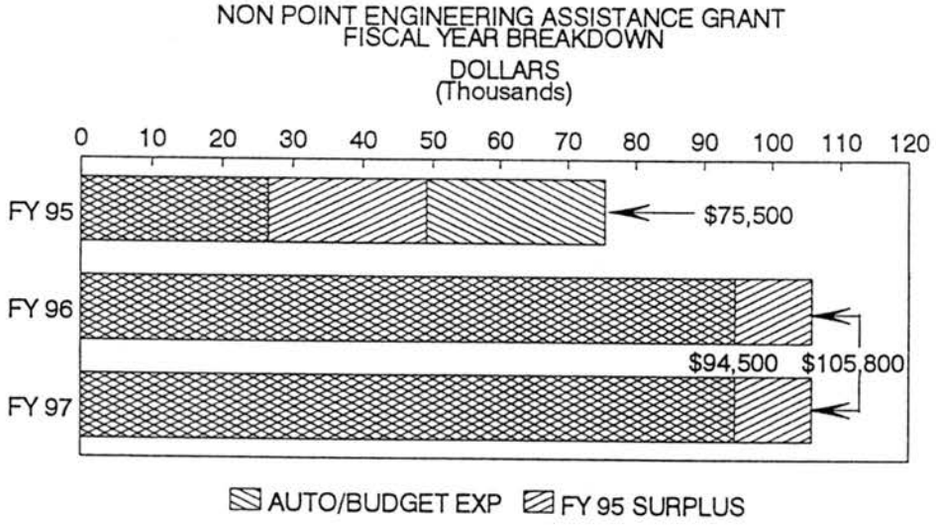
FISCAL YEAR FUNDING BREAKDOWN

* FY 95 – $25,000 WILL BE WITHELD FROM EACH JOINT POWERS GRANT FOR COMPUTER AIDED DRAFTING AND SURVEYING EQUIPMENT. THIS IS A ONE TIME PURCHASE. $100,500 – $25,000 = $75,500
* $75,500 GRANT WILL BE ALLOCATED TO EACH JOINT POWERS IN FEBRUARY OF 1995 FOR A 2.5 YEAR GRANT PERIOD. DURING THE REMAINDER OF FY 95, THE JOINT POWERS WILL SPEND APPROXIMATELY $26,500 LEAVING A BALANCE OF $49,000.
  THE REMAINING BALANCE OF $49,000 WILL BE USED AS:
  $11,300 – TO BE RESERVED FOR FY 96 BUDGET EXPENSES ($11,300 + $94,500 = $105,800)
  $11,300 – TO BE RESERVED FOR FY 97 BUDGET EXPENSES ($11,300 + $94,500 = $105,800)
  $26,400 – TO BE RESERVED FOR AUTOMOBILE AND ELIGIBLE BUDGET EXPENSES

* FY 96 – $94,500 GRANT WILL BE MADE TO EACH JOINT POWERS. (2 YEAR GRANT PERIOD) THE $11,300 RESERVED IN THE FY 95 GRANT WILL SUPPLEMENT THIS FY 96 GRANT TO MAKE AVAILABLE THE NEEDED $105,800.

* FY 97 – $94,500 GRANT WILL BE MADE TO EACH JOINT POWERS. (2 YEAR GRANT PERIOD) THE $11,300 RESERVED IN THE FY 95 GRANT WILL SUPPLEMENT THIS FY 97 GRANT TO MAKE AVAILABLE THE NEEDED $105,800

* **FY 98 AND AFTER – WITH PRESENT FUNDING LEVELS, THE $94,500 WILL NEED TO BE AUGMENTED BY THE JOINT POWERS BOARDS FUNDS TO BRING FUNDING LEVELS TO THE $105,800 LEVEL OR BEYOND.**



BECAUSE IT IS IMPOSSIBLE FOR THE JOINT POWERS BOARDS TO ESTIMATE THEIR BUDGETS EXACTLY, THESE GRANT PERIODS WILL OVERLAP AND THE ALLOCATION OF THE FY 95 SURPLUS WILL PERMIT FLEXIBILITY AND CUSHION IN MANAGING BUDGET EXPENSES.

* A GRANT TO SUPPLEMENT STATE APPROPRIATIONS WAS APPROVED BY EPA. THIS GRANT IS EXPECTED TO BE $240,000.

Board of Water and Soil Resources

CONSERVATION EASEMENT PROGRAMS

Fiscal Years (FY) 95-96 Work Plan

8/94 Report Prepared by: Marybeth Block, Easement Coordinator as per Minnesota Laws Chapter 643, Section 26, Subd. 3 and 4
8/95 Report updated by Tim Fredbo, Easement Coordinator.

I. Program Authority, History and Accomplishments

Authority

The Board of Water and Soil Resources (BWSR) administers two conservation easement programs, the Reinvest in Minnesota Reserve program and the Permanent Wetlands Preserve program. (Minnesota Statutes sections 103F.501 - 103F.531.) Administrative rules (Minn. Rules parts 8400.3000-8400.3930) for RIM Reserve were initially promulgated as emergency rules in 1986, and as permanent rules in 1988. The rules were revised in 1990, and again in October 1994.

These programs are administered by the state and implemented at the county level by soil and water conservation districts (SWCDs).

History

In 1984, Governor Rudy Perpich's concern for the future of tourism in Minnesota lead him to appoint a citizen's commission to report on ways to improve and promote hunting and fishing in Minnesota. The commission recommended that the sales tax revenues generated from the state's one billion dollar outdoor recreation industry be reinvested in the resources that sustain those activities. Their recommendations prompted the formation of a large and diverse coalition of organizations whose members supported the passage of the RIM Program in 1986. The RIM Coalition continued to support the program by developing innovative promotion programs and seeking stable funding sources. One of the four programs under the "RIM umbrella" was the RIM Reserve Program which focuses on retiring marginal lands from crop production via conservation easements. The program also assists landowners to the establish grass, trees or wetlands on the easement area (i.e., establish conservation practices).

The Permanent Wetlands Preserve (PWP) Program was enacted in 1991 in conjunction with the Wetland Conservation Act (WCA). PWP allows for the acquisition of easements on existing type 1,2 or 3 wetlands and wetlands where permits for WCA exemptions are denied. In 1994 program eligibility was broadened to include type 6 wetlands and wetlands expiring from state waterbank contracts.

Accomplishments to Date

Since 1986, over $40 million have been appropriated to the BWSR easement programs. RIM Reserve has secured 1,958 easements that protect over 53,695 environmentally sensitive acres. Over 540 wetland basins have been, or are currently being, restored encompassing 5740 acres, along with approximately 9,110 acres of adjacent uplands. The average size of a wetland restoration easement is 34 acres, with the average wetland basin covering about 10 acres. The average wetland restoration easement payment is $567 per acre and the average practice establishment costs are $152 per acre. Other easements (nonwetland restoration) average 23 acres in size at a cost of $592 per acre for the easement payment and $127 per acre for practice establishment.

In 1991, $7 million was appropriated for PWP easements. Approximately $6.4 million of that appropriation was expended through FY 95 to secure 260 easements protecting over 10,500 acres of existing wetlands and adjacent upland. Approximately one million dollars has been reserved to acquire easements where permits for WCA exemptions are denied.

Attachment #1 illustrates the location of easements across the state along with acres and numbers associated with the various eligible land types.

Many partnerships have formed to assist in the successful implementation of the conservation easement programs. The willingness of private groups to provide financial assistance to landowners to establish conservation practices, along with technical and financial assistance from federal agencies, has allowed the BWSR to target program appropriations towards the acquisition of more easement acres.

The historical demand for program dollars continues to exceed program appropriations by a large ratio. In 1994, landowners submitted over $20 million of requests for easements. **Attachment 2** illustrates, by year, the landowner demand and the bonding appropriation.

II. Program Priorities and Enrollment Goals

Statewide Priorities and Goals

In 1992, the BWSR adopted a five-year program plan for the RIM Reserve Program. This plan was based on the agency's strategic plan and set forth program priorities and objectives, as well as setting five-year enrollment goals.

Resource protection and improvement priorities established in the RIM Reserve program plan are:

1. Protect and improve **water quality**
2. reduce **soil erosion**
3. enhance **fish and wildlife habitat**

The same priorities are used for the PWP program, along with the priority to enroll wetlands that are highly susceptible to being altered (i.e., not protected by other local, state or federal regulations). For both RIM Reserve and PWP, high priority will be given to perpetual easements applications.

Acreage enrollment goals for FY 95-96 identified in the program plan include 4,000 acres of restored wetlands plus adjacent uplands; 6,000 acres of riparian lands (i.e., adjacent to a water course or water body); 2,000 acres of highly erosive marginal lands; 1,500 acres for ground water protection purposes and approximately 10,000 acres of lands expiring from a USDA Conservation Reserve Program contract or RIM Reserve limited-duration easement.

Local and Regional Prioritization

Each easement application is prioritized as to how well it achieves local resource protection goals as set forth in the county water plan, SWCD comprehensive plan and by a local screening committee. The screening committee is made up of representatives from conservation and environmental groups, farming organizations and various federal and state agencies. In addition to identifying resource protection priorities, this committee often reviews each application and assists the SWCD with prioritizing the applications.

Each easement application is subsequently assessed by one of the BWSR's 15 regional board conservationists (BCs) to determine how well (high, medium or low) it meets the BWSR's resource protection priorities listed above. Draft guidelines for this assessment are presented in **Attachment 3**. The BWSR's goal for FY 95-96 is to enroll at least 75 percent high resource protection priority easements, and no more than 25 percent medium priority easements. No low priority easement areas are included in the enrollment goals. In addition to considering how well the area meets local and BWSR resource protection priorities in a funding recommendation, the BC will also consider other factors, such as the degree to which the land's title is clouded or the capacity of the SWCD to implement the programs.

III. Easement Acquisition Procedures

Once an application has been approved for funding, the local SWCD gathers the information necessary to develop an agreement between the state and the landowner to enter into a conservation easement. During this process, land ownership is verified, a legal description and map of the easement area are prepared and a conservation plan is developed. Once the agreement is signed by the landowners and the state, the easement and conservation practice funds are encumbered.

The state purchases a title insurance policy on each proposed easement area. This allows for the resolution of any title problems that the state determines may pose a threat to the legal interests the state acquires upon conveyance of the easement (i.e., the cropping and grazing rights and the requirement that the conservation practices agreed to by the landowner and the state will be established and maintained). Upon the recording of the conservation easement and the state's approval of the final title policy, and upon the landowner's certification that cropping and grazing have ceased, the state will issue the easement payment. The easement payment is based on the Assessor's Township Average Market Value (ATAMV) as provided by the Minnesota Department of Revenue.

TYPE OF LAND	PERPETUAL	LIMITED
LANDS WITH CROP HISTORY	90% of the ATAMV	75% of the ATAMV
LANDS WITHOUT CROP HISTORY	60% of the ATAMV	45% of the ATAMV
Wetland W/out Crop History	50% of the ATAMV	N/A

Where ATAMV is not available, the current tax year's estimated market valuation of the land only (as documented by the assessor) will be used.

The general procedure to acquire a conservation easement is illustrated in a flowchart found in **Attachment 4**. Once the easement acquisition is complete the SWCD assists the landowner to establish the conservation practices as documented in the conservation plan. Engineering assistance

III. Easement Acquisition Procedures cont.

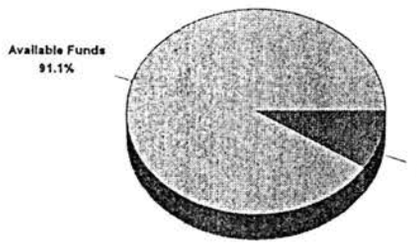
is provided to the SWCD and the landowner by the BWSR where needed (e.g., wetland restoration projects). Expenses incurred to install conservation practices will be reimbursed up to the statutory limits when the SWCD certifies that the practice has been adequately installed and submits an itemized expense voucher to the BWSR.

IV. Distribution of Program Funds

FY 95-96 Appropriation:

The Laws of 1994, Ch. 300, Sec. 64, appropriated $9 million to the BWSR for conservation easement acquisition and the establishment of perennial cover on easement areas. Of this appropriation, $300,000 was targeted to "jump-start" the state wetlands bank as defined in the administrative rules for WCA (M.R. Chapter 8420). These funds will subsequently be reimbursed through the sale of associated wetland banking credits. In addition, the BWSR received approval from the Department of Finance to expend up to $352,000 in FY 95 to supplement the BWSR's General Fund appropriation of $150,000 for the professional services necessary to acquire easements, restore wetlands and provide technical assistance to SWCDs and landowners. A reserve of $150,000 was also set aside to cover the costs associated with obtaining title insurance policies and reinstalling failed conservation practices. These collective expenses are referred to as "program obligations." Of the $9 million appropriation, $802,000 was set aside in FY 95 for program obligations, leaving $8.2 million of available funds.

Available Funds vs. Obligations



Program Obligations



FY 95 Easement Acquisition:

- 60 percent of the available funds (≈$5 million) was set aside to secure conservation easements from applications submitted for funding consideration in December 1994.

The December 1994 sign-up yielded over 523 applications representing approximately $20 million of bond fund requests. The BWSR selected those requests which best fit state and local priorities as discussed in Section II of this document. A total of 154 easements were selected for funding. These easement areas represent 6,632 acres with easement payments totalling $5,603,680.

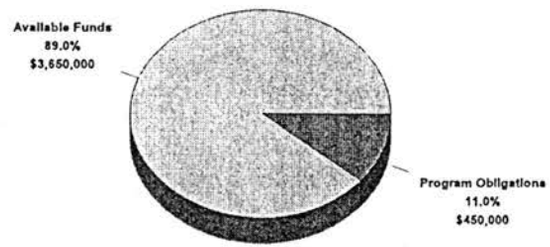
Of the $5,603,680 in funding requests, $1,505,990 will be secured from prior year bond funds that have been carried over and made available due to cancelled easement applications, plan revisions, etc.. This leaves a total of $4,097,690 of the FY 95-96 bonding appropriation needed to acquire the easements from the December '94 sign-up. The $4,097,690 plus the remaining FY 95 "program obligations" leaves a total of $4,713,579 as listed in **Attachment 5**, FY 95-96, Obligated column. The $9 million appropriation, minus the liquidated and obligated amounts, leaves a balance of approximately $4.1 million available for FY 96 easement acquisition. (**Attachment 5**).

FY 96 Easement Acquisition:

- 100 percent of the available funds (fund balances minus the program obligations for FY 96) will be allocated to applications submitted for funding consideration in December 1995.

The following "program obligations" are identified for FY 96: $350,000 to supplement the BWSR's Gen. Fund appropriation; $100,000 for obtaining title insurance and reinstallation of failed conservation practices. The above obligations total $450,000, leaving $3.65 million of available funds.

FY96 Available Funds vs. Obligations



Of the $3.65 million, the BWSR Board, at their February 22, 1995 meeting, committed $950,000 to the Grass Lake Wetland Restoration Project in Kandiyohi County (Resolution 95-22). This amount includes $410,000 from the FY 95 RIM special projects fund, and $540,000 from the regular FY 95-96 RIM/PWP appropriation. This leaves a balance of

FY 96 Easement Acquisition cont.

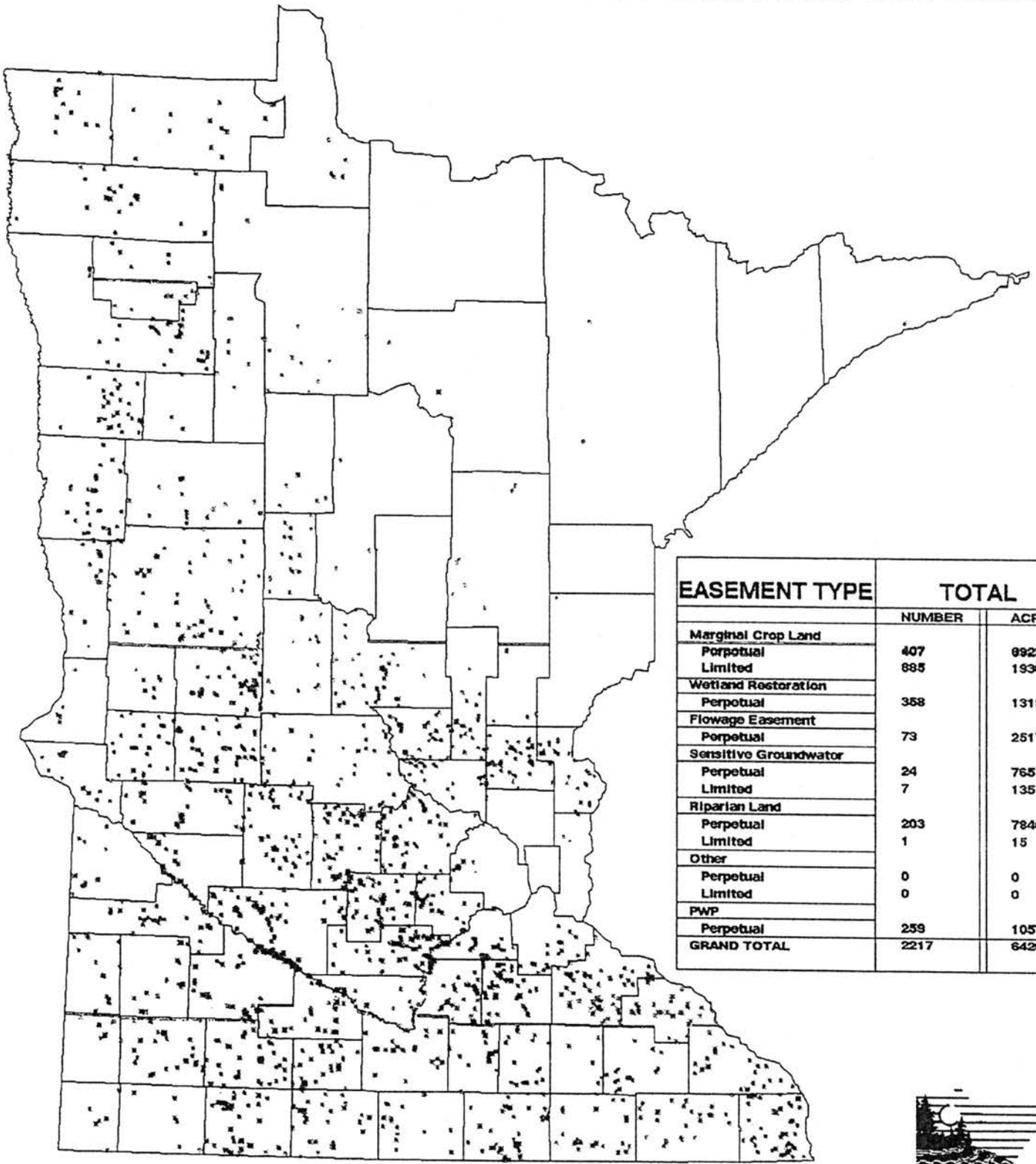
approximately $2.7 million available for the December '95 sign-up.

Target allocations for the 1995 sign-up, as listed in **Attachment 6**, will be provided to BCs as a financial guideline to use when determining how many applications they will recommend be funded. If their target allocation will not fund all of the high or medium priority applications submitted for their work area, up to three additional applications can be forwarded to BWSR in a "pending" status. The BWSR easement coordinator will determine which pending applications will be accepted based on the dollars made available from BCs who did not use all of their target allocation. A minimum of 50% of the available funds will be allocated to work areas within the Minnesota River Watershed, which is targeted as a high priority area by the BWSR.

An additional $753,348 has been secured in two separate grants from the North American Wetlands Conservation Act (NAWCA) Council; $353,348 for the Minnesota River Watershed Phase 2 project, and $400,000 for the Heron Lake Watershed phase 3 project. These NAWCA grants must be used to secure wetland restoration easements and fund restoration practices in their respective watershed areas. BC allocations for the Minnesota River Phase 2 grant are also shown on Attachment 6. The Heron Lake 3 amount is entirely within one BC work area for Murray, Cottonwood, Nobles and Jackson Counties.

ATTACHMENT 1

CONSERVATION EASEMENT LANDS 7/12/95
RIM RESERVE & PERMANANT WETLANDS



EASEMENT TYPE	TOTAL	
	NUMBER	ACRES
Marginal Crop Land		
Perpetual	407	9925
Limited	685	19309
Wetland Restoration		
Perpetual	358	13193
Flowage Easement		
Perpetual	73	2517
Sensitive Groundwater		
Perpetual	24	765
Limited	7	135
Riparian Land		
Perpetual	203	7840
Limited	1	15
Other		
Perpetual	0	0
Limited	0	0
PWP		
Perpetual	259	10573
GRAND TOTAL	2217	64268

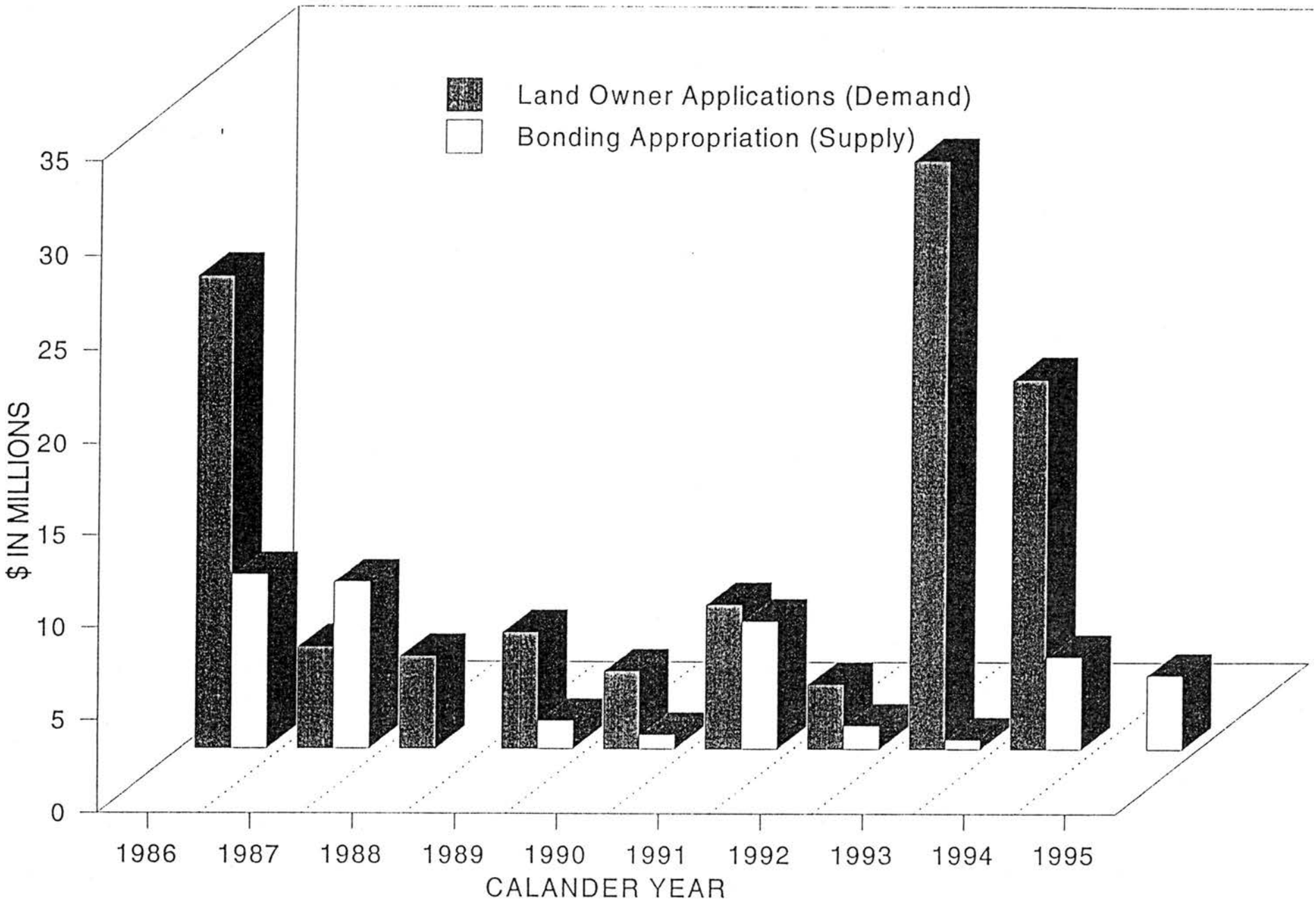
07/12/95
RIM.PLT

* RIM Easements

* PWP Easements

Minnesota Board of Water & Soil Resources

ATTACHMENT 2



CONSERVATION EASEMENT FUNDING

Supply and Demand

ATTACHMENT # 3
STATE RESOURCE PROTECTION PRIORITY
ASSESSMENT GUIDELINES - AUGUST 1995

Resource Protection Assessment Matrix

[Note: numbers in parentheses represent priority weighting factors]

	PRIORITY RATING		
PARAMETER	HIGH (5)	MED. (2)	LOW (0)
WATER QUALITY PROTECT. (5)	10	7	5
SOIL EROSION REDUCTION (3)	8	5	3
FISH & WILDLIFE HABITAT (1)	6	3	1

OVERALL PRIORITY RATING: 24- 20 = HIGH 19-14 = MEDIUM 13-0 = LOW

Assessment Guidelines: The following considerations are meant to guide SWCD's and board conservationists (BCs) in ascertaining to what degree the resource protection priorities of the state would be met if the RIM or PWP application were approved and an easement was acquired on the area.

1. Water Quality Protection

A. the area is located in a sensitive groundwater area, is contributing runoff to a sinkhole or is located in a designated wellhead protection area; **[high]**

B. where high rates of nutrients, sediment or pesticides are being directly conveyed from the easement area into a lake, river, stream, priority wetland, or drainage system, with little or no filtering of runoff by natural vegetation, **and**

B.1. the area is currently in row crop production or a hay/row crop rotation[1] ; or in a limited duration conservation contract at high-risk of being converted to row crop production or a hay/row crop rotation; or is an over-grazed pasture with denuded, bare soil areas, and/or excessive animal waste accumulations; **and**

- a majority of the easement area meets the B. and B.1 definitions **[high]**
- some of the easement area meets the above definitions **[medium]**
- a minority of the easement area meets the above definitions **[low]**.

C. where wetlands will be restored **[high]**

D. where farmed wetlands(types 1and 2 with crop history) currently exist, and once farming ceases the area will function to filter or trap nutrients, sediments or pesticides transported to the wetland from non-enrolled parcels, **and**

D.1. the wetland has a flow-through hydrologic regime, and outlets directly to a lake, river, stream, priority wetland area, or drainage system **[high]**

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[1] hay/row crop rotation means at least two years of row crops are planted within previous 5 years.

(OVER)

D.2. the wetland has a depressional (no outlet) hydrologic regime **[low]**

E. where existing wetlands are not farmed (no crop history) **[low]**

2. Soil Erosion Reduction

A. fifty percent or more of the easement area is presently in row crop production or a hay/row crop rotation; or is presently in a limited duration conservation contract and at high-risk of being converted (potential for conversion) to row crop production or a hay/row crop rotation; **and**

A.1 shows evidence of (or potential for) excessive erosion (e.g., 2XT; Land Capability Class, if known, is erosive; ephemeral erosion is occurring, or gullies are present across the majority of the easement area) **[high]**

A.2 erosion is occurring (or potentially will occur), but not excessive (e.g. >T but <2XT; little or no evidence of ephemeral or gully erosion) **[medium]**

A.3 no significant evidence of (or potential for) erosion on the easement area **[low]**

B. less than fifty percent of the easement area is presently in row crop production or a hay/row crop rotation **[low]**

3. Fish and Wildlife Habitat

A. contains threatened or endangered species habitat **[high]**

B. wetlands will be restored on the easement area; and currently the

B.1 basin is fully drained and the majority (e.g., 75% or more) is cropped **[high]**
B.2 basin is partially drained and partially being cropped **[medium]**
B.3 drainage system is no longer functioning and the basin is not being cropped **[low]**

C. wetlands will be restored on the easement area; and

C.1 the upland to wetland ratio will be 3:1 or greater **[high]**
C.2 the upland to wetland ratio will be less than 3:1 but greater than 1:1 **[medium]**
C.3 the upland to wetland ratio will be less than 1:1 **[low]**

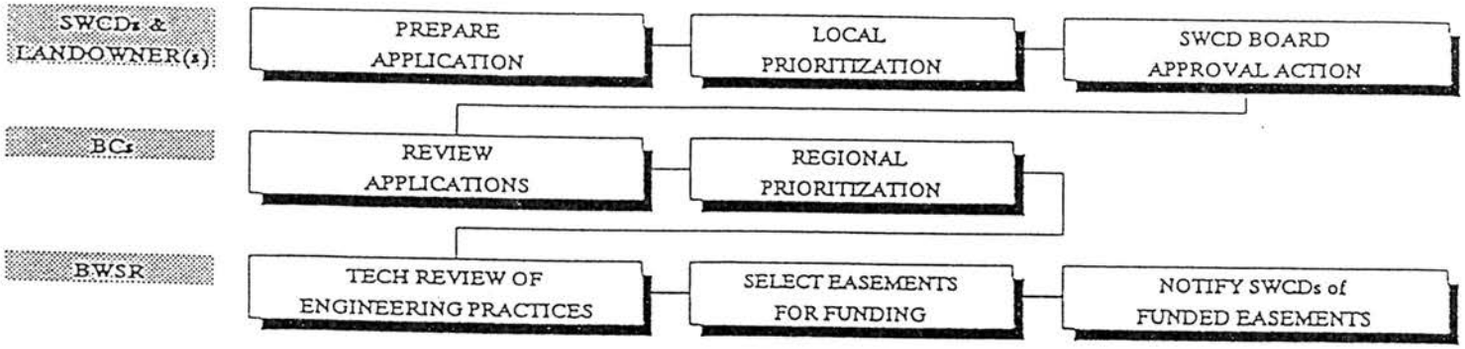
D. the easement area and surrounding land use:

D.1 is predominantly in agricultural use and in row crops or a hay/row rotation **[high]**
D.2 has some area in agricultural use or residential use **[medium]**
D.3 is predominantly secluded & undisturbed land or recreational land **[low]**

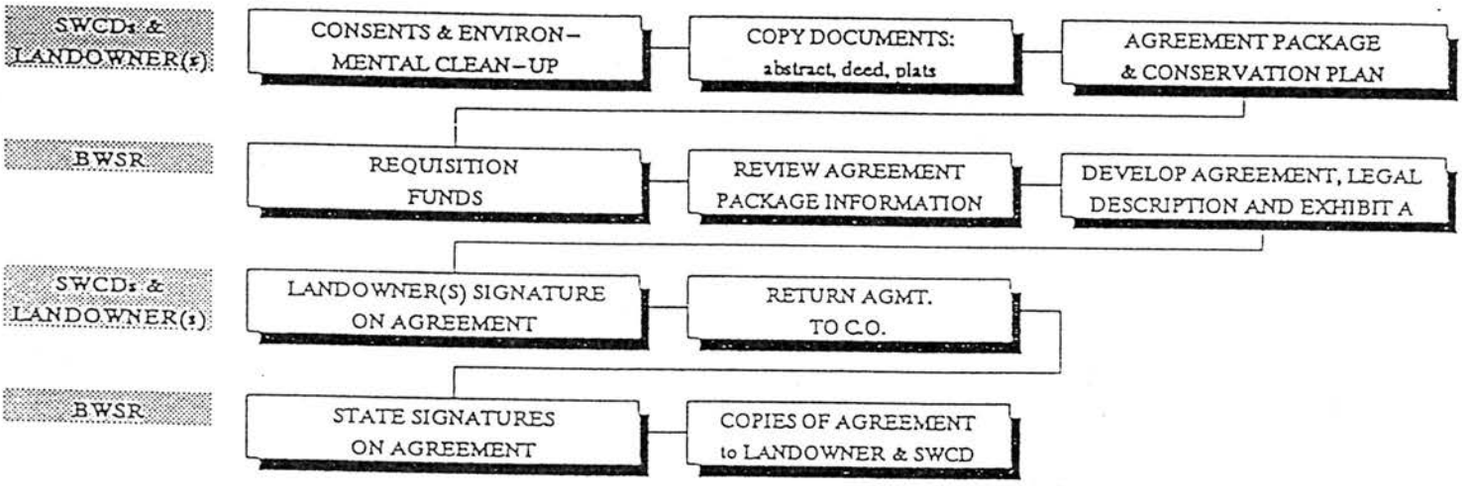
E. the easement area will be established to:

E.1 a mixture of native grass/trees; or introduced grass/native grass; or introduced grass/trees/native grass **[high]**
E.2 a mixture of introduced grass and trees; or native grass **[medium]**
E.3 a monoculture of introduced grass or trees **[low]**

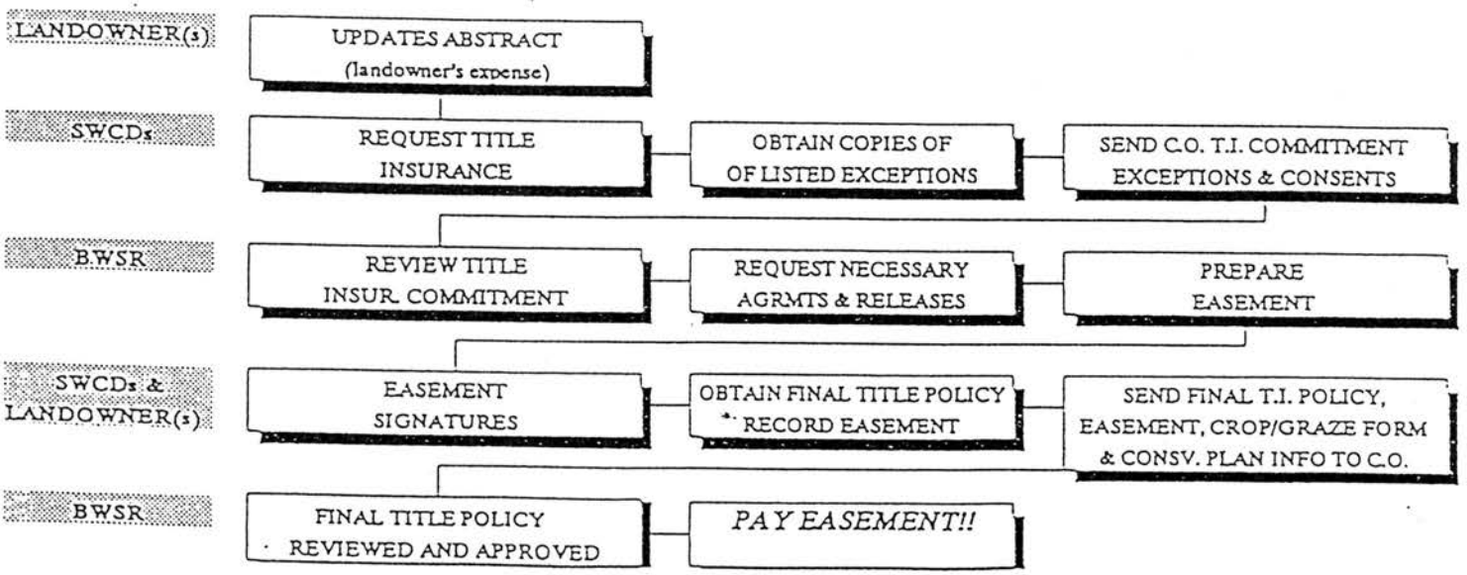
APPLICATION STAGE



AGREEMENT STAGE



EASEMENT STAGE



bond.695

6/19/95

RIM RESERVE/PWP APPROPRIATIONS - MN BWSR

Conservation Easement Cash Flow

BONDING	Appropriated	Liquidated [1]	Obligated [2]	Balance
RIM-Non Wetlands				
FY86	$9,400,000.00	$9,376,257.00	$23,733.00	$10.00
FY87	$9,000,000.00	$8,874,440.00	$125,484.00	$76.00
FY89	$1,500,000.00	$1,347,113.00	$152,785.00	$102.00
FY91	$750,000.00	$704,973.00	$45,016.00	$11.00
FY92	$1,900,000.00	$1,725,682.00	$173,924.00	$394.00
FY93	$1,250,000.00	$885,098.00	$364,687.00	$215.00
FY94 [3]	$500,000.00	$116,827.00	$382,715.00	$458.00
FY95-96	$9,000,000.00	$184,111.00	$4,713,579.00	$4,102,310.00
TOTALS	*$33,300,000.00*	*$23,214,501.00*	*$5,981,923.00*	*$4,103,576.00*
RIM-Wetlands				
FY92	$5,000,000.00	$2,944,769.00	$2,055,140.00	$1,090.00
PWP				
FY92	$7,000,000.00	$4,494,168.00	$1,866,884.00	$638,948.00

LCMR	Appropriated	Liquidated [1]	Obligated [2]	Balance
RIM Wetland				
FY91-subd 6(d)	$600,000.00	$423,000.00	$44,000.00	$133,000.00 [4]
FY91-subd 9(h)	$400,000.00	$389,000.00	$9,000.00	$2,000.00 [5]
RIM Non-Wetland				
FY93	$823,000.00	$810,473.00	$0.00	$12,527.00 [6]

Other: Rim Reserve has received approximately $1,500,000.00 matching dollars for financial and technical assistance from government agencies and private organizations. Some of the participants include: North American Wetlands Conservation Council, Ducks Unlimited, Pheasants Forever, Minnesota Waterfowl Association and the U.S. Fish & Wildlife Service.

1 Liquidated: Easements paid

2 Obligated: Easement applications accepted for enrollment, requesitioned or encumbered.

3 Reappropriated $750,000.00 ($500,000.00 for RIM Reserve) from Laws of 1989-300

4,5 & 6 Easement applicants cancelled; balance to be returned to the trust fund.

(OVER)

1994-01 easements assigned to other accounts:

FY92	$6,224.00
FY93	$69,385.00
FY94	$382,715.00
FY92 (WET)	$727,162.00
FY92(PWP)	$320,504.00
SUBTOTAL	*$1,505,990.00*

1994-01 easement funded: $5,603,680.00

FY 95-96 funds needed for easements: $4,097,690.00

FY95-96 Obligated:

	$4,097,690.00	94-01 easements
	$300,000.00	Wetland Bank
(1995 ONLY)	$165,889.00	Profess. Services (350,000 - liquidated 184,111)
(1995 ONLY)	$150,000.00	Reseed + Title Insurance 184,111
	$4,713,579.00	Obligated Total

ATTACHMENT 6

08/09/95 Target Allocations by BC Work Area Page 1

BC	HISTORY		BASE		TOTAL	MNR %	TOTAL IN MNR
Brian Dwight	30,267.07	+	10000	=	40,000.00	0.00%	0.00
Bill Best	52,967.37	+	10000	=	63,000.00	0.00%	0.00
Mark Nelson	0.00	+	10000	=	10,000.00	0.00%	0.00
Dale Krystosek	98,367.95	+	10000	=	108,500.00	5.00%	5,425.00
Dan Steward	75,667.66	+	10000	=	86,000.00	0.00%	0.00
Keith Grow	136,201.78	+	10000	=	146,000.00	0.00%	0.00
Peter Waller	143,768.55	+	10000	=	154,000.00	36.00%	55,440.00
Jim Haertel	121,068.24	+	10000	=	131,000.00	40.00%	52,400.00
Barbara Ohman	15,133.53	+	10000	=	25,000.00	10.00%	2,500.00
David Sill	234,569.74	+	10000	=	244,500.00	95.00%	232,275.00
Tom Fischer	499,406.53	+	10000	=	509,500.00	65.00%	331,175.00
Tabor Hoek	363,204.75	+	10000	=	373,000.00	65.00%	242,450.00
Chris Hughes	416,172.10	+	10000	=	426,000.00	95.00%	404,700.00
Dave Peterson	211,869.43	+	10000	=	222,000.00	15.00%	33,300.00
Mary Kells	151,335.31	+	10000	=	161,500.00	0.00%	0.00
TOTALS	2,550,000.01	+	150000	=	2,700,000.00		1,359,665.00

History is based on activity in the work area for the past two fiscal years.

NAWCA MN River Phase II Grant

BC	Grant Amount
Peter Waller	25,527.02
Jim Haertel	21,496.46
David Sill	41,649.39
Tom Fischer	88,672.89
Tabor Hoek	64,489.37
Chris Hughes	73,894.07
Dave Peterson	37,618.80
TOTALS	353,348.00

NAWCA Heron Lake Phase III Grant

BC	Grant Amount
Tabor Hoek	400,000

COST-SHARE PROGRAM RETOOLING
INFORMATIONAL PACKAGE

This packet contains various information pertaining to the state cost-share program. This material will be reviewed and discussed at the August board meeting. In September the board will be asked to endorse the draft rule to be published in the State Register and decide how much (if any) of the legislative appropriation will be reserved for special projects or programs.

PACKET CONTENTS:

PROGRAM ASSESSMENT was compiled by David Behm as part of an overall assessment of BWSR programs about one year ago. Contains information on the program's history, strengths, weaknesses, alternatives and recommendations.

DRAFT RULE AMENDMENTS AND SUPPORTING INFORMATION contains:

- ✓ *a memo from Marybeth regarding the rule revision process;*
- ✓ *the Administrative Guidelines (cost-share implementation handbook) draft table of contents;*
- ✓ *a narrative intended to highlight sections of the rule that have substantially changed;*
- ✓ *a copy of the statutes; and finally*
- ✓ *a copy of the proposed draft amendments to the rule. This draft includes comments received from SWCDs and interested agencies (where the retooling workteam deemed appropriate to incorporate) received during the June 17 to July 19 comment period .*

ALLOCATION POLICY includes:

- ✓ *a memo from Dwain Otte to MASWCD outlining the BWSR regular statewide cost-share allocation procedure;*
- ✓ *the BWSR Policy On: Regular Statewide Cost-Share Program Allocation Procedures; and*
- ✓ *an allocation worksheet showing how FY 96 funds were distributed and examples of various allocation percentages.*

Program Assessment: Cost-Share Program

PROGRAM DESCRIPTION:

Financial assistance is provided directly to landowners implementing specified soil and water conservation practices. Each of the 91 soil and water conservation districts (SWCDs) in the state receives an annual allocation, based on designated high priority resource problems (e.g., erosion rates exceeding "2xT," sedimentation within shoreland areas, and feedlots). While the enabling statute (M.S. 103C.501) is fairly broad in scope, the administrative rules (M.R. 8400.0100 - 8400.2800) focusses the program on agricultural lands.

PROGRAM HISTORY:

The purposes for which the cost-share program was established remain valid today, 17 years after passage of the enabling statutes. Indeed, the public's awareness and concern about water quality degradation -- particularly from nonpoint sources -- may be even greater today.

Since 1975, five major transitional events have occurred relating to the cost-share program.

1) 1975: Minnesota Resources Commission (MRC) funded a demonstration program for erosion and sediment control on streambanks, lakeshores, and roadsides;
2) 1977: cost-share program established;
3) 1982: legislative amendments to cost-share program required targeting;
4) 1985: SWCB revised cost-share program administrative rules and guidelines to incorporate legislatively-mandated targeting concepts and it established an allocation formula; and
5) 1994: Soil Conservation Advisory Committee prepared a report regarding the control of agricultural erosion and sedimentation, including recommendations regarding the cost-share program.

1975: Special appropriation ($300,000 for biennium) via MRC (later named Legislative Commission on Minnesota Resources -- LCMR) for demonstration program for streambank, lakeshore and roadside (SLR) erosion control.

1977: Cost-share program established, without a single dissenting vote, which represented the first state program designed to complement federal programs (funded at $3 million for biennium); 10% allowed for SWCD technical assistance costs and 10% allowed for administrative expenses of SWCDs and the Soil and Water Conservation Board (SWCB). One new staff provided to administer the program.

Special appropriations ($250,000 for biennium) from LCMR to continue SLR demonstration program; no new staff provided.

1978: Administrative rules adopted.

1979: Legislature increased cost-share program appropriation to $1,585,200/year; no new staff provided.

1980: Legislature established general fund appropriation ($250,000/year) to continue SLR permanently.

1982: Legislative amendments required targeting of at least 70% of funds to high priority erosion, high priority sedimentation, or high priority water quality problems based on SWCD comprehensive and annual plans and statewide priorities of SWCB; no new staff provided.

Legislature reduced SLR appropriation to $246,300/year.

1984: Legislature reduced cost-share program appropriation to $1,541,400/year and reduced the SLR appropriation to $158,700/year.

1985: Legislative amendments allow up to 20% of annual cost-share program allocation to each SWCD for local costs to administer (including technical services) cost-share program; no new staff provided. Previously designated staff position was reallocated as initial development of RIM Reserve Program through 1986; additionally, this staff position was then allocated to develop the new local water planning and management program beginning in 1987. Consequently, no longer was any staff position solely responsible for oversight of the cost-share program.

1987: Board created through merger of SWCB, Water Resources Board, and Southern Minnesota River Basin Board; no staff were provided at the time of the merger.

1988: Legislature reduced cost-share program appropriation to $1,501,000/year.

1990: Grants Coordinator position refilled after a 1-1/2 year vacancy, but less than 0.2 FTE was designated to provide administrative oversight to this program.

Legislature increased SLR appropriation to $159,000/year.

1991: Legislature reduced cost-share program appropriation to $1,461,000/year.

1993: Legislature combined cost-share program and SLR appropriations and increased cost-share program appropriation by $1.1 million for the biennium (targeted to the Minnesota River watershed). Annual appropriation level will now be $2,120,000/year.

1994: Soil Conservation Advisory Committee prepares (a) model ordinance for control of agricultural erosion and sedimentation, and (b) report to the Board including recommendations to accelerate and enhance a more comprehensive approach to control agricultural erosion and sedimentation. The report includes a recommendation to seek increase in program appropriations to (1) recover inflationary losses to the program since 1977, and (2) accelerate program accomplishments.

PROGRAM STRENGTHS:

- All SWCDs are provided an incentive-based tool to financially assist landowners address local resource management priorities which directly benefit the protection of soil and water resources.
- Program allocations are targeted to areas with greatest resource protection needs.
- Recent acceleration of program appropriation to a targeted area (i.e., Minnesota River watershed).
- Increased the awareness of the public about SWCDs and served to initially enhance SWCD staff administrative capabilities.
- Enables SWCDs to leverage other state, federal and local funds (for administrative as well as land treatment purposes) to address local priority problems.
- Provides considerable latitude for local use of funds for unique soil and water conservation problems.
- Allows for local flexibility, which enables SWCDs to leverage accelerated implementation by landowners of best management practices and to leverage greater compliance with certain official controls (e.g., feedlot and erosion ordinances).
- **(Anticipated, due to establishment of low/no-interest loan program -- State Revolving Fund)** Enables SWCDs to further target limited cost-share funds to financially needy landowners with local high priority soil and water conservation problems.
- Relatively simple program with an easily accountable flow of program funds from the state to SWCDs to individual landowners.
- One of the first state programs to be administered by SWCDs, thereby enhancing SWCD staff capabilities (administrative and technical).

PROGRAM WEAKNESSES:

Lack of program plan. Lack of designated staff resulted in the Board never preparing this document as mandated in statute. The absence of this document undermines the purpose and utility of the SWCD comprehensive and annual plans that were also required by the same statute. Consequently, the Board does not have a specific document in which the relationship of state and local priorities (as reflected in SWCD comprehensive plans) are adequately assimilated into Board policy regarding program allocations to SWCDs

and clearly stated program goals and objectives.

Inadequate correlation with local water plan priorities; inadequate local targeting. Due to a lack of adequate clarification in statutes, few annual plans submitted by SWCDs discuss the targeting of their cost-share allocation to local priority waterbodies or watersheds designated within county water plans.

Inadequate program funding. Since 1977, inflationary reductions amount to at least 50% of 1994 funding level. With the exception of the 1993 increase in its appropriation, the program has received four reductions in its level of appropriation. 33 of the 91 SWCDs currently receive an annual allocation of less than $10,000 each -- this is not an adequate amount to effectively address local soil and water conservation problems.

Reduced Board central office staff support. The reduction in central office staff support has resulted in less than optimal coordination with other state agencies and USDA-Agricultural Stabilization and Conservation Service (which administers a federal cost-sharing program -- Agricultural Conservation Program), loss of support to field staff, and a complete inability to compile historical (and trend) information regarding the effectiveness and accomplishments of this program (see next weakness). In addition, the existing administrative guidelines and administrative assistance to SWCDs have not been adequately maintained.

Inability to compile and analyze program accomplishments and trends. While the Board staff created a database in 1991, the data to be inserted is incomplete with little or no assurance of its accuracy. Further, there is no established process for ensuring the input of new or archived data. Consequently, the Board is unable to analyze the accomplishments and trends of this program regarding its effectiveness to control the soil and water conservation problems for which it was designed to address.

Outdated administrative rules. The rules were last revised in 1985. Numerous significant environmental programs have been established at the federal, state and local levels since then; most have direct relationships with the allocation of funds to and their use by SWCDs to address local soil and water conservation problems. In addition, newer technology and its transfer are not adequately reflected.

Outdated allocation formula. The data supporting the factors in the existing allocation formula should be replaced with current information; some information will likely need to be inventoried since no other reliable statewide inventorying effort has recently capture this information. Depending upon the alternative selected, additional or replacement factors could be incorporated into the allocation formula, some of which will likely require inventorying efforts of their own.

Insufficient recognition of SWCD administrative and technical signoff capabilities. SWCD staff administrative and technical capabilities have been developed and enhanced since 1985 (date of the last administrative rule revisions), and certainly since 1977 (date of program establishment). Consequently, these capabilities should be acknowledged, where appropriate, and SWCD staff with proven capabilities should be authorized to provide the necessary administrative or technical signoffs required by the program's administrative rules.

PROGRAM ALTERNATIVES:

1) Status Quo. Maintain current levels of support regarding administration and funding.

   Staffing: No change.

   Legislative Action: None.

   Implications: Continued inability to compile accomplishments of program; continued inability to assess effectiveness or trends of program. Continued reduction of support services to the Board Conservationists and SWCD staff. Likely initiation of criticism of the Board's fiscal administration and compliance oversight of the cost-share program.

2) Full implementation of M.S. 103C.501. All of the required elements of the statute should be fully implemented as well as the following actions.

Staffing: One additional FTE required for the Board's central office; this position would: (1) manage (i.e., collect and input data as well as provide quality assurance) the cost-share program database, (2) assist Grants Coordinator and Board Conservationists with program compliance measures, and (3) assist with ongoing program analysis. **(NOTE: This position could also be used to provide additional database assistance to other programs and program staff.)**

Legislative Action: Increase program appropriation to reflect inflationary losses since 1977. Increase program appropriation to ensure at least $10,000 allocated to each SWCD. Accelerate program appropriation to targeted areas; consider the following priorities *in addition to the Minnesota River watershed*: (1) SWCDs whose counties are administering erosion control ordinances, and (2) SWCDs whose counties are administering other federal- or state-funded watershed protection projects (e.g., Clean Water Partnership, Public Law-566, Blue Earth River Basin Initiative, etc.). Also, increase allocation of each general services grant to SWCDs to ensure that adequate technical assistance will be available to properly administer the increased and accelerated program appropriations.

Implications: Additional and enhanced administrative services assistance to SWCDs and Board Conservationists from Grants Coordinator. Database would be current and its contents would be compiled and assessed, enabling the Board to make informed policy decisions regarding program allocations to SWCDs. Program plan would provide additional background information to enable Board to make informed policy decisions regarding the relationship of state priorities with local priorities expressed in SWCD comprehensive plans.

3) <u>Eliminate mandatory comprehensive plan requirements; clarify relationship of SWCD annual plans to local water plans</u>. Requirement to prepare comprehensive plans would no longer be mandatory for SWCDs. However, annual plans should continue to be required, but their relationship to the implementation of county water plans should be further clarified.

Staffing: None required.

Legislative Action: Amend M.S. 103C.501 and 103B.301 to clarify relationship of SWCD annual plans to implementation of local water plans. Repeal provision of M.S. 103C.501 requiring SWCDs to prepare comprehensive plans.

Implications: Statutory amendments would clarify the relationship between these LGU planning efforts and eliminate duplication, resulting in better and more coordinated local targeting of available technical and financial assistance to priority resource concerns.

PROGRAM RECOMMENDATIONS:

- Alternative 2: Staff believe that this program, albeit modestly funded in relation to Board programs more recently established, should be enhanced and accelerated to adequately address the continuing soil and water conservation problems of this state and to enhance the historical successes of this program.

- However, staff suggest that a combination of Alternatives 2 and 3 may be best. This option would implement all of the elements of Alternative 2 *except for the continuation of SWCDs to prepare comprehensive plans*.

RELATIONSHIP TO STRATEGIC PLAN:

The recommended alternative is fully consistent with the *Strategic Plan*. However, the following modifications are suggested so as to clarify and improve the relationship of the cost-share program to the Board's mission.

- Revise references of "T by 2000" to emphasize the need for LGUs to locally adopt comprehensive soil conservation programs by the year 2000 -- i.e., a local program is adopted which adequately integrates an appropriate mix of resource management strategies (education-incentives-regulation); and
- Further develop the discussion pertaining to incentives as a resource management strategy, especially position #4 on page 20 of the *Strategic Plan* and its relationship to the cost-share program.

Draft

August 14, 1995

To: *Water and Soil Resources Board Members*

Prepared by: *Marybeth Block, Cost-Share Retooling Work Team*
612-297-7965

Subject: *Cost-Share Rule Revisions*

Minnesota Board of Water & Soil Resources

BACKGROUND:

At the March 1994 board meeting a cost-share retooling committee consisting of board members and central office staff was appointed. This committee primarily focused on the issue of allocating grants to SWCDs, including reviewing and responding to the MASWCD proposal of equal allocations to their areas. At the board's August 1994 meeting the committee recommended that the board not adopt a policy allocating the monies equally to each area. The committee did feel the area allocation idea had merit and recommended the concept be incorporated within revised rule.

Concurrently, a process to revise the administrative rules was being developed. In February of 1995 the BWSR Cost-Share Retooling Work Team, consisting of six field staff and two central office staff, was convened to draft the rule amendments.

It became apparent through the rule revision process that a comprehensive handbook was needed to guide district's with program implementation. The guidelines are in the early draft stage. A preliminary table of contents can be found on the back of this page.

GUIDING PRINCIPLES:

- → *Address state priorities according to statute - water quality, erosion control and sedimentation.*
- → *Maintain local district flexibility.*
- → *Coordinate with the local planning process - annual, comprehensive and local comprehensive water plans.*
- → *Simplify planning and reporting*
- → *Simplify rule and be more descriptive in guidelines.*

RULE REVIEW - PERTINENT POINTS:

✓ Minnesota Statutes 103C.501 authorize the board to administer a state cost-share program. Please note that subdivision 6 identifies what must be contained in the rules. (A copy of the statute has been included in this mailing for your reference.) Other supporting information regarding the program and the retooling effort is available on request.

✓ Administrative rules have the effect of law. Procedures, and other items subject to change and refinement, are best addressed by board action and identified in the Administrative Guidelines for the State Cost-Share Program (e.g., list of approved practices).

✓ The following pages reflect the proposed revisions to the July 1, 1985 copy of the cost-share program rules. Text with a line through it (strikeout) suggests it will be deleted and any text underlined is proposed additions. Clean text indicates that no changes were made to the 1985 version. It is important to read <u>all</u> of the text, including the strikeout language, to understand the implications that deleting the text will have.

Administrative Guidelines for the State Cost-Share Program

I. Program Overview

A. State Priorities
B. Minnesota Statutes 103.501
C. Administrative Rules

II. Grant Administration

A. Local Planning
B. Distribution of Funds
C. Program Eligibility
D. Conservation District Records

III. Contract Implementation

A. Application
B. Cost-Share Contract
C. Issuing Contract Payments

IV. Practice and Technical Information

A. Definitions
B. Technical Approval Authority
C. Technical Requirements Implementing the Cost-Share Contract
D. Project File
E. Approved Practice List
F. Practice Guidelines

V. Contract Maintenance

A. Recording Practices
B. Practice Maintenance
C. Contract Noncompliance

VI. Special Projects or Programs

The following narrative briefly highlights, by section, historical information, explanation of the changes or issues that have important implications.

8400.0100 DEFINITIONS.

This section defines terms used within the rule. Terms were added and deleted from rule during the revision process. Important terms to review include the definitions of high priority erosion problems and high priority water quality problems because they determine eligible lands. Revisions to these terms attempt to target areas where problems are apparent and recognize local efforts to identity areas where problems are prevalent. Technical approval authority is also a term SWCDs are interested in. The work team consulted the Technical Advisory Committee (initially appointed to deal with technical issues pertaining to SRF) to define Technical Approval Authority..

8400.0600 STATE BOARD ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS

Subpart 3 reworded to clarify that at least 80% of the statewide allocation will be granted to districts. Up to 20% may be retained to grant to districts for special projects (including programs). In the past the board retained 10% for special projects. However, the majority of funds traditionally allocated for special projects came from rollover dollars - i.e., monies returned because projects cancelled or did not cost as much as estimated. The rule revisions largely eliminate rollover dollars because districts will have the ability to re-encumber freed-up dollars rather than immediately return them to state (see 8400.0900 subp.3).

Subpart 4 was added to authorize BWSR to distribute state and federal grants through the cost-share program, e.g., MFIP.

8400.0900 CONSERVATION DISTRICT ADMINISTRATION OF PROGRAM FUNDS

Subp. 1 requires that districts use 80% of the funds to address high priority erosion or water quality problems. The remaining 20% may be used to cost-share on a problem not meeting the high priority definitions or to cover the technical and administrative expenses the districts incur with the program.

Subp. 2 identifies "up to" 75% as the maximum cost-share percent allowed for a practice.

Subp 3 authorizes districts to reallocate dollars freed-up within the grant period.

8400.1250 TECHNICAL ASSESSMENT AND COST-ESTIMATE

The rule revision effort has attempted to chronologically discuss the cost-share program process. This reference was formally (1985 version) mentioned in 8400.1400 subp. 1. The narrative has been expanded to clarify what's needed at this stage and who is authorized to do it.

8400.1300 CRITERIA FOR CONSERVATION DISTRICT BOARD REVIEW

Deleted language pertaining to supplemental practices (item B lines 28-34). It was no longer needed because these practices will be incorporated into the approved practice list.

Added language in item D-1 to allow the application to serve as the land occupier and owner's authorization to allow SWCD employees access - the cooperative agreement (deleted-see item A) use to serve this function. Item D.2 requires the land occupier to obtain the necessary permits associated with the practice to be installed.

Item E and F reworded to clarify the difference between repairing a damaged practices and reconstructing a failed or depleted practice.

- more on the back page -

8400.1400 CONSERVATION DISTRICT APPROVAL

Added subpart 2 to clarify the technical requirements of the conservation practices. The 1985 version discusses this step in 8400.1300 item G.

8400.1405 PROJECT DEADLINES AND PARTIAL PAYMENT

Subp 2 and 3 have been reworded to delegate the state board's role to authorize partial payments to the conservation district board. The district board is in the best position of determining whether or not the request meets the partial payment conditions listed in this subpart.

8400.1500 CONSERVATION DISTRICT RECORDS

Added the statutory requirement that the rules require district's to document their efforts identify and contact landowner with high priority erosion problems

8400.1600 EXECUTING THE COST-SHARE CONTRACT

Subp 1 is language that has been moved from subp.4 to improve chronological organization.

8400.1650 RECORDING THE COST-SHARE CONTRACTS

Recording practices has its roots in 1986 session law. To the best of staffs' recollection - Sen. Chuck Davis soil loss limit bill (later enacted) required the recording of conservation practices in certain circumstances. In April of 1986 the board extended this requirement to all practices applied to the land using state cost-share dollars. This proved to be an extreme administrative burden for SWCDs with little perceived benefit, and consequently the policy of the board was rescinded in approximately 1990. However, it was the feeling of the retooling work team that recording practices does have merit when the state is making a major investment (only required if state pays $50,000 or more). It would serve to legally notified the new landowner that the practice is established on the land and must remain there for its effective life.

8400.1750 PRACTICE SITE INSPECTIONS

This language was added to authorize the BWSR to require that SWCDs perform periodic inspections of practices installed with state cost-share dollars.

8400.1950 through 8400.2800 has been repealed.

These sections identified the approved practices, along with other pertinent conservation practice information.

COST-SHARING CONTRACTS

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

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

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

(1) a comprehensive plan;

(2) an annual work plan; and

(3) an application for cost-sharing funds.

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

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

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

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

(1) for technical and administrative assistance, not more than 20 percent of the funds; and

(2) for conservation practices for lower priority erosion, sedimentation, or water quality problems.

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

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

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

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

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

(1) procedures and criteria for allocating funds for cost-sharing contracts;

(2) standards and guidelines for cost-sharing contracts;

(3) the scope and content of district comprehensive plans, plan amendments, and annual work plans;

(4) standards and methods necessary to plan and implement a priority cost-sharing program, including guidelines to identify high priority erosion, sedimentation, and water quality problems;

(5) the share of the cost of conservation practices to be paid from cost-sharing funds; and

(6) requirements for districts to document their efforts to identify and contact land occupiers with high priority erosion problems.

History: *1990 c 391 art 3 s 23*

WORKS OF IMPROVEMENT

103C.601 WORKS OF IMPROVEMENT.

Subdivision 1. **Authority.** (a) The district board may, if directed by resolution of the boards of commissioners from the counties where the district is located undertake, construct, install, maintain, and operate works of improvement for a district purpose. The district board may:

(1) use the proceeds of tax levies, assessments, and other available funds for the works of improvement;

(2) acquire necessary real or personal property by purchase or gift for the works of improvement;

(3) contract, survey, plan, construct, install, maintain, and operate the works of improvement; and

(4) exercise other authorized powers.

(b) Two or more district boards may jointly exercise the powers granted by this section.

Subd. 2. **Request for project.** A program for works of improvement in any area within one or more districts may be initiated upon written request for a project submitted to the district board by one or more of the owners of land in the affected area. The request must include:

(1) a general description of the area proposed for inclusion in an improvement work unit, with a proposed name or number for the project;

(2) a description of the affected land owned by the signers; and

(3) a statement of the objectives of the proposed works in furtherance of the authorized purposes, the grounds upon which the project will be of public benefit and utility and promote the public health, safety, and welfare, and special benefits to property that will result from the project.

Subd. 3. **Determination by district board.** As soon as practicable after receipt of the request the district board shall have necessary preliminary surveys and studies conducted.

Subd. 4. **Resolution of establishment.** (a) The district board may, by resolution. recommend the establishment of an improvement work unit and a program for works of improvement in the work unit to the boards of county commissioners of the counties where the affected land is located if the district board determines the proposed works of improvement:

(1) are feasible;

(2) will be of public utility and benefit;

(3) will promote the public health, safety, and welfare; and

(4) will further the authorized purposes and best interests of the district.

(b) The district board shall by resolution give the improvement work unit an appropriate name or number, which may be different from the one proposed in the initial project request.

(c) The resolution shall recommend definite boundaries for the improvement work unit, which may be those proposed in the request or modified as the district board deems advisable.

(d) In the resolution the district board may also enlarge, reduce, or otherwise modify the proposed objectives of the program, but not make a substantial change in its

CHAPTER 8400
BOARD OF WATER AND SOIL RESOURCES
COST-SHARE PROGRAM

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RULES

8400.0050 PURPOSE.

The cost-share program is administered through local conservation districts to provide financial and technical assistance to land occupiers for the application of soil and water conservation practices that reduce erosion, control sedimentation or improve and protect water quality to ensure the sustainable use of Minnesota's ~~water and soil~~ natural resources.

8400.0100 DEFINITIONS.

Subp 1. **Scope.** For purposes of parts 8400.0050~~0100~~ to 8400.~~29~~1800, the definitions in this part, in addition to those in Minnesota Statutes, chapter ~~40~~103C, apply.

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

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

Subp. 2. **Administrative Guidelines for the State Cost-Share Program.** "Administrative Guidelines for the State Cost-Share Program" means the most current compilation of the approved practices, practice guidelines, administrative guidelines, and examples of administrative forms provided to conservation districts by the state board to assist in locally administering the state cost-share program. The publication is not subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 3. **Annual plan.** "Annual plan" means a plan prepared by the conservation district pursuant to Minnesota Statutes, section ~~40.07~~103C.331, subdivision ~~9~~11F, and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is not subject to frequent change, is available at the State Law Library, and is incorporated by reference.

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

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

~~Subp. 8. **Assigned Soil Conservation Service personnel.** "Assigned Soil Conservation Service personnel" means the district conservationist or Soil Conservation Service personnel designated by the area conservationist to provide need and performance certification to the program.~~

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

~~severe limitations that require very careful management.~~

Subp. 5. **Comprehensive local water plan.** "Comprehensive local water plan" means a local water plan authorized under Minnesota Statutes section 103B.311, or a watershed overall plan required under section 103D.401, or a watershed management plan required under section 103B.231, or a county groundwater plan authorized under section 103B.255.

Subp. ~~7~~6. **Comprehensive plan.** "Comprehensive" means a long-range plan ~~prepared~~ adopted by the conservation district pursuant to Minnesota Statutes, section ~~40.07~~103C.331, subdivision ~~9~~11 and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is not subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 7. **Conservation practices.** "Conservation practices" means practices applied to the land for the purpose of controlling or preventing soil erosion, sedimentation, nutrient runoff, or other water pollution to maintain the sustainable use of soil and water and other natural resources.

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

Subp. ~~9~~8. **Conservation ~~D~~district.** "Conservation ~~D~~district" means a soil and water conservation district organized under Minnesota Statutes, chapter ~~40~~103C.

Subp. ~~10~~9. **Conservation ~~D~~district board.** "Conservation ~~D~~district board" means the ~~five~~ board of supervisors of a soil and water conservation district ~~authorized to carry out the functions of the conservation district~~ as organized under Minnesota Statutes, chapter 103C.

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

Subp. 10. **Conservation district technical representative.** "Conservation district technical representative" means a district employee or other designee assigned by the conservation district board who has expertise in the design and application of conservation practices.

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

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

Subp. 11. **Consolidated Farm Service Agency.** "Consolidated Farm Service Agency" means the United States Consolidated Farm Service Agency, an agency of the United States Department of Agriculture.

Subp. 142. ~~Enduring practice~~ **Effective Life.** "~~Enduring practice~~ Effective Life" means ~~a~~ the time span for which a ~~soil and water~~ conservation practice effectively fulfills its intended purpose. ~~that is designed for an effective life of ten years or more.~~

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

Subp. 153. **Field Office Technical Guide.** "Field Office Technical Guide" means the document providing standards and specifications for technical requirements of ~~soil and water~~ conservation practices as provided by the ~~Soil~~ Natural Resource Conservation Service and adopted by the conservation district board.

Subp. 164. **Group spokesperson.** "Group spokesperson" means an ~~individual~~ principal land occupier designated by ~~several~~ the individuals involved in a group project~~,~~ who ~~may~~ is authorized to speak for the entire group in negotiations with a conservation district for cost-share assistance.

Subp. 16a5. **High priority erosion problems.** "High priority erosion problems" means areas where erosion from wind or water is occurring ~~on Class I-IV soils~~ equal to, or in excess of, 2 x T tons per acre per year or is occurring on any area ~~within 300 feet of water course or within 1000 feet of a water basin or wetland eroding by water in excess of t tons per acre per year. The water basin, wetland, or water course must be classified by the department of natural resources as a protected water. Erosion problems occurring on nonshoreland areas in excess of t but less than 2xt tons per acre per year are classified as secondary priority~~ that exhibits active gully erosion or is identified as high priority in the comprehensive local water plan or the conservation district's comprehensive plan.

Subp. 16b. **High priority water quality problems.** "High priority water quality problems" means areas where sediment, nutrients, chemicals, or other pollutants discharge to Department of Natural Resources designated ~~protected~~ public waters or to any high priority waters as identified in a comprehensive local water plan or the conservation district's comprehensive plan, or discharge to a sinkhole or groundwater. The pollutant delivery rate to the water source is in amounts ~~water as to~~ that will impair ~~their~~ the quality or usefulness of the water resource~~,~~. ~~including high priority feedlots and sedimentation problems.~~

~~"High priority feedlots" means feedlots where the pollution potential rating from a the feedlot model is greater than or equal to one; and that are discharging pollutants to Department of Natural Resources designated protected waters, or to a sinkhole, or sensitive groundwater area, or to shallow soils overlying fractured or cavernous bedrock or with 100 feet of a water well feedlots not meeting these criteria are not eligible for cost sharing assistance except as provided in part 8400.2600, subpart 3.~~

~~" High priority sedimentation problems means areas within 300 feet of a water course or 1000 feet of a water basin or wetland where~~

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

Subp. 1~~8~~7. **Land occupier.** "Land occupier" means a person, ~~firm or~~ corporation, or legal entity that holds title to or is in possession of ~~including the governments of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the state, who possess~~ lands ~~lying~~ within a conservation district ~~organized under Minnesota Statutes, chapter 40, whether~~ as an owner, lessee, ~~renter,~~ tenant or otherwise ~~, including, during the life of a practice, successors of a land occupier who received a cost share payment. This definition also includes the federal government~~.

Subp. 18. **Landowner.** "Landowner" means a person, corporation, or legal entity that holds title to or is in possession of land.

Subp. 19. **Natural Resource Conservation Service.** "Natural Resource Conservation Service" means the United States Natural Resource Conservation Service, an agency of the United States Department of Agriculture.

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

Subp. 20. **Other recognized technical practices.** "Other recognized technical practices" means any conservation practice or compilation of such practices not on the approved list of conservation practices that have been approved by the state board for cost-share assistance on a case-by-case basis.

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

Subp. 2~~0a~~1. **~~Protected~~ Public waters.** "~~Protected~~ Public waters" means waters ~~basins, water courses and wetlands~~ as defined in Minnesota Statutes, section ~~105.371~~ 103G.005, subdivision 15 and ~~on the~~ inventory~~ied of public waters and wetlands~~ under Minnesota Statutes, section ~~105.391~~, ~~subdivision 1~~ 103G.201, and identified on a ~~protected~~ public waters and inventory map available in a county auditor's office.

Subp. 2~~0b~~2. **Registered professional engineer.** "Registered professional engineer" means a person who is duly registered to practice~~s~~ professional engineering within the meaning of Minnesota Statutes, sections 326.02 to 326.15.~~, and who performs technical professional services such as, but not limited to, the planning, designing, or inspecting of the construction of erosion, sediment control or water quality protection or improvement measures. A registered professional engineer may be designated by a district board and may use criteria in a recognized technical procedure to design, install, and certify practices that qualify for state cost sharing.~~

Subp. 23. **Sensitive groundwater area.** "Sensitive groundwater area" means a geographic area defined by natural features where there is a significant risk of groundwater degradation from activities conducted at or near land surface. These areas may be identified by mapping or other appropriate methods determined by the commissioner of natural resources and the board. Wellhead protection areas and land that is adjacent and draining into a sinkhole may be designated as a sensitive groundwater area.

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

Subp. 2~~0d~~4. **Sinkhole.** "Sink hole means a depression or hole in the earth's surface caused by dissolving of underlying limestone carbonate bedrock and subsequent settling or collapse of surficial soils.~~; drainage is through joints and fractures in underlying bedrock.~~

~~Subp. 21. **Soil and water conservation practices.** "Soil and water conservation practices" means structural or vegetative practices applied to the land for the purpose of controlling soil erosion, sediment, agricultural waste, or other water pollutants. Practices installed or applied primarily to bring land into production or to increase the short term productivity are not considered to be soil and water conservation practices.~~

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

Subp. 2~~2a~~5. **Special project.** "Special project" means a conservation project or program, including but not limited to, those projects or programs that accelerate implementation of innovative soil and water conservation ~~projects~~ activities. ~~or demonstration projects , accelerated watershed or water quality project, long term conservation agreement, planning technique, or nonstructural erosion or sediment control or water quality protection or improvement measure. Special projects may address nonshoreland secondary priority erosion problems and are submitted to the state board according to " Guidelines for Special Projects" published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.~~

Subp. 2~~3~~6. **State board.** "State board" means the state ~~Soil and~~ Board of Water and Soil Resources ~~Conservation Board~~ created in Minnesota Statutes, section ~~40.03~~ 103B.101.

Subp. 2~~5~~7. **T.** "T" means the soil loss tolerance that is the maximum ~~level~~ average annual rate of soil ~~erosion~~ loss from sheet and rill erosion or wind erosion, expressed in tons per acre per year, that ~~will permit a high level of crop productivity to be~~ is allowed yet still sustain~~ed economically and indefinitely. In Minnesota "T" ranges from one to five tons per acre per year depending on the particular soil characteristics. "T" values for Minnesota soils are provided in the Field Office Technical Guide~~ the productive capacity

of the soil to produce food and fiber over the long term.

Subp. 2~~6~~8. **2 x T.** "2 x T" means soil erosion at the rate of two times T.

Subp. 29. **Technical Approval Authority.** "Technical approval authority" means the authorization granted in accordance with the Administrative Guidelines for the State Cost-Share Program to a district technical representative to provide comprehensive technical assistance for individual conservation practices, including associated technical sign-off as the district technical representative of record.

8400.0200 AUTHORITY.

Minnesota Statutes, chapter ~~40,~~ 103C.501 authorizes the state ~~Soil and Water Conservation B~~board, in cooperation with the ~~soil and water~~ conservation districts, to administer a program of cost-sharing with land occupiers ~~on~~ for the installation of soil and water conservation practices. Parts 8400.~~0100 to~~ 0050 through 8400.~~2~~1800 provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to conservation districts, and standards and guidelines ~~which~~ that the conservation district boards shall use in allocating funds to land occupiers.

8400.0300 ~~ESTABLISHING~~ APPROVED PRACTICES.

Subp 1. **Approved practices.** The state board, in consultation with the conservation districts, shall maintain a list of practices ~~which~~ that are eligible for cost-share funds. ~~and a schedule of maximum rates.~~ The list is contained in the Administrative Guidelines for the State Cost-Share Program. ~~parts 8400.2000 to 8400.2700 and the schedule in parts 8400.2800 and 8400.2900~~. ~~Changes to the list and schedule must be made pursuant to Minnesota Statutes, chapter 14.~~

~~8400.0400 CRITERIA FOR APPROVED PRACTICES~~

Subp. 2. **Criteria for approved practices.** Practices approved by the state board must meet the criteria in items A through ~~C~~ D.

A. The~~ir~~ primary purpose must be the control of soil erosion, ~~of~~ sedimentation, or chemical or nutrient runoff or infiltration ~~the protection or improvement of water quality~~.

B. ~~They must be enduring in nature.~~ All practices cost-shared under this program must be designed and maintained for a minimum effective life of ten years. The beginning date for a practice's effective life is the same date the conservation district board approves the final payment and the project is considered complete.

C. ~~They must be nonproduction practices.~~ No cost-share funds shall be furnished for practices designed only to increase land productivity.

D. All practices must be consistent with the district's comprehensive plan.

Subp. 3. **Objectives of approved practices.** The Administrative Guidelines for the State Cost-Share Program contains a list of approved practices. The objectives of these approved practices may include, but are not limited to, activities that:

1. control nutrient run-off,
2. stabilize critical areas,
3. divert runoff to protect and improve water quality,
4. reduce wind erosion,

5. control gully, rill or sheet erosion,
6. protect shoreland from erosion,
8. control storm water, or
9. protect surface and ground water quality.

Approved practices must meet the criteria listed in Subp. 2.

8400.0600 STATE BOARD ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS.

Subp. 1. **Comprehensive plan.** Before the state board can allocate cost-share funds to a conservation district it must ~~first~~ approve the conservation district's comprehensive plan, including its most recent amendment and the annual work plan ~~which~~ that includes the ~~application~~ justification for needed cost-share funds. The plans must be in a format required by ~~the~~ M.S. 103C.331, subdivision 11 and the state board.

Subp. ~~3~~.2 **Review criteria.** The state board shall review all required conservation district applications for cost-share funds, ~~with respect to~~ based on the following criteria:

A. the extent of high priority erosion or water quality problems in the conservation district as outlined in the conservation district comprehensive and annual plans;

B. priorities for the control of soil erosion or water quality problems as established in the ~~program plan~~ Administrative Guidelines for the State Cost-Share Program of the state board;

C. historical success of the conservation district in applying soil and water conservation practices;

D. availability of cost-share funds from other sources; and the

E. ~~readiness~~ ability of the conservation district to ~~effectively use~~ expend the funds in a timely manner.

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

Subp. ~~4~~ 3. **Grants to conservation districts.** ~~Following review and approval of the annual and comprehensive plans, the~~ The state board shall annually allocate ~~to conservation districts in the form of grants~~ cost-share funds to conservation district boards that have fully complied with all state cost-share program rules and comprehensive and annual planning guidelines as prescribed by the state board. At least ~~7~~80 percent of the cost-sharing funds available statewide will be allocated to conservation districts in the form of grants for conservation practices and technical and administrative services. ~~to address high priority erosion or water quality problems.~~ The remaining cost-share funds may be allocated by the board to conservation districts ~~for technical and administrative assistance or~~ to carry out special projects or programs addressing high priority erosion or high priority water quality problems. ~~Technical and administrative assistance grants may be used for controlling secondary priority nonshoreland erosion problems.~~

Subp.4 **Other state and federal funds.** Other funds received by the state board may be allocated to conservation districts for the treatment of erosion, sedimentation, or water quality problems. These additional funds may be incorporated with existing funds and their use may be governed by the Administrative Guidelines for the State Cost-

Share Program or may be subject to other administrative guidelines required to fully implement the intent for which these additional funds were appropriated.

8400.0700 PROGRAM REPORTING AND MONITORING.

For the purpose of reporting and monitoring the progress of the program and use of funds, ~~the state board shall receive from~~ each conservation district shall submit an annual report of the year's accomplishments by a date deemed reasonable by the state board. The state board ~~may~~ shall require additional special reports, including but not limited to, summaries of practice site inspections and special projects. ~~deemed necessary by the state board to monitor the cost-sharing program~~. ~~The reports must be on forms provided by the state board.~~

8400.0900 CONSERVATION DISTRICT ADMINISTRATION OF PROGRAM FUNDS.

Subp. 1. **General.** Following receipt of grant funds from the state board, a conservation district is responsible for administration of the funds in accordance with Minnesota Statutes, chapter ~~40~~103C, the Administrative Guidelines for the State Cost-Share Program, and all other applicable laws. The conservation district board ~~may~~ shall make all decisions concerning use of these funds in accordance with parts 8400.0050~~0100~~ ~~to~~ through 8400.~~29~~1800 and the Administrative Guidelines of the State Cost-Share Program. At least 80 percent of the cost-sharing funds must be used to address high priority erosion or water quality problems. The remaining cost-share funds allocated by the board to districts may be used for technical and administrative assistance, or to install approved practices to address problems not meeting the high priority erosion or water quality problem definition. ~~As a condition to receiving grant funds from the state board, the district shall ensure compliance with the maintenance provisions of part 8400.1700 and Minnesota Statutes, chapter 40 by monitoring all cost share contracts made with land occupiers.~~

Subp. 2. **Maximum cost-share percentage.** Prior to considering any applications from land occupiers for cost-share assistance, the conservation district board shall establish ~~the~~ cost-share rates for practices to be installed under the program, ~~which may not exceed~~ up to the maximum rates established by the state board. The maximum percent of the total eligible cost of ~~a~~ the practice(s) installed using state cost-share funds must not exceed 75 percent. Other state or federal funds from any source, when used in combination with cost-share funds of this program, must not exceed the maximum payment rate of 75 percent.

~~This~~ The conservation district board~~'s decision~~ shall establish cost-share rates ~~be~~ based on the following factors:

A. the extent of high priority erosion or water quality problems in the conservation district as outlined in the conservation district comprehensive and annual plans;

B. advice of technical experts familiar with the conservation district; ~~and~~

C. cost-share rates currently in effect under the agricultural conservation program administered by the United States ~~Agricultural Stabilization and Conservation Service~~ Consolidated Farm Service Agency and other assistance programs.

D. conservation district priorities as established in

the conservation districts' comprehensive and annual plans; ~~and~~

E. cost-share funds available; and

F. state board recommendations located in the Administrative Guidelines for the State Cost-Share program.

The maximum cost-share rates must be identified in the conservation district's annual plan and other documents containing the policies of the district.

Subp. 3. **Re-encumbering funds.** Prior to the end of the grant period for which the state board had allocated the cost-share funds, a conservation district board may re-encumber all funds resulting from cancelled projects or from those projects that did not utilize the full amount encumbered. For unencumbered funds remaining at the end of a grant period, the conservation district board shall follow the procedures described in part 8400.1460.

8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS.

Land occupiers seeking assistance under this program shall apply to the conservation districts on forms provided by the state board and available from the conservation district office. Each application must be filled out in its entirety~~. The application~~ and must be signed by the land occupier~~, and i~~. If the land occupier is not the landowner, ~~it~~ the application must also bear the landowner's signature. ~~Applications must be submitted not later than June 1 to be considered for cost sharing from the funds available for the current fiscal year. After initial priority screening by the district board, assigned Soil Conservation Service personnel or a registered professional engineer are responsible for making a determination of need and cost estimate. Actual determination for need and cost estimate may be done by the district technician. Additional information on the desired practice which may be required by the district board in its consideration of the application shall be included.~~

8400.1100 GROUP PROJECT.

~~A situation may arise w~~ Where the cooperation of several land occupiers is required to solve an ~~conservation~~ erosion or water quality problem~~. T~~the conservation district may share the cost of such a group project if all of the land occupiers are eligible as individuals and the practices satisfy the criteria of the program. The land occupiers must reach agreement on ~~a~~ division of payments and designate a group spokesperson. The spokesperson must ~~be identified on the group cooperator agreement and shall file all forms with the district and~~ sign the application on behalf of the group and negotiate all project details with the conservation district. ~~Checks~~ Payment for the conservation district's share of the practice shall be issued to the group ~~members~~ spokesperson ~~based on~~ who will be responsible for executing the division of payment plan prepared by the group.

8400.1200 ~~LAND IN MORE THAN ONE DISTRICT~~ COOPERATIVE AND JOINT PROJECTS OF CONSERVATION DISTRICTS.

Subp. 1. **Land in more than one conservation district.** If a project involves land in more than one conservation district, application for the entire project must be made to the conservation district containing the ~~most land benefited by the practice~~ majority

of the project lands.

Subp. 2. **Pooling cost-share allocation for joint projects.** Conservation district boards may enter into an agreement to pool all, or portions of their collective cost-share allocations to implement joint projects. Cooperative and joint projects may be done to accomplish watershed-based resource management goals or other goals of mutual benefit as identified in the county's comprehensive local water plan or the district's comprehensive plan.

8400.1250 TECHNICAL ASSESSMENT AND COST ESTIMATE DETERMINATION

A determination of the effectiveness of a practice to address the erosion or water quality problem and a cost estimate must be made by the conservation district technical representative prior to the conservation district board's review of the application for cost-share funds. The assessment and cost-estimate must be conducted by an individual with the appropriate level of technical approval authority or by a registered engineer with expertise in the design of the conservation practice(s).

8400.1300 CRITERIA FOR CONSERVATION DISTRICT BOARD REVIEW.

~~Criteria for~~ Conservation district board review:

~~A. The applicant must be a district cooperator.~~

~~B~~A. The practice needed to solve the problem must be on the list of approved practices listed in the Administrative Guidelines for the State Cost-Share Program or must have received approval from the state board.

~~C~~B. The primary purpose of the requested practice must be ~~the control of soil~~ to treat a high priority erosion problem or ~~sedimentation or the protection or improvement of~~ high priority water quality problem. ~~In cases where the primary purpose is questionable, the conservation district board shall make a determination of the shall make determination of the need for supplemental practices to protect any practice installed under this program, such as fencing of water impoundment structures. If the district board determines that supplemental practices are necessary, it shall authorize cost sharing for their installation.~~

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

D. The application must be signed by the land occupier and the landowner (if different) indicating their agreement to:

1. grant the soil and water conservation district's representative(s) access to the parcel where the conservation practice will be located;

2. obtain all permits required in conjunction with the installation and establishment of the practice prior to starting construction of the practice; and

~~E~~. 3. ~~The practice must be maintained by the land occupier, who is~~ be responsible for operation and maintenance of practices applied under this program in accordance with an operation and maintenance plan prepared by the district technical representative.

~~F~~E. ~~Priority consideration shall be given to land occupiers or groups of land occupiers who demonstrate the ability to meet matching requirements.~~ Costs to repair damage to conservation

practices installed with state cost-share dollars are eligible if the damage was caused by reasons beyond the control of the land occupier. Costs to repair conservation practices installed without state cost-share dollars are not eligible for state cost-share assistance.

F. If the practice has fully met or exceeded its designed effective life the cost to reconstruct the practice is eligible for cost-share assistance if the practice was originally installed with or without state cost-share dollars. ~~Cost share funds may must not be used for repair of practices installed solely with private or federal cost sharing funds.~~

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

8400.1400 CONSERVATION DISTRICT APPROVAL.

Subp. 1. **General.** After completion of the conservation district board review ~~a priority determination and cost estimate,~~ the conservation district board shall either approve or deny the application. If it is approved, the district board shall instruct the chair~~man~~ or acting chair~~man~~ to sign the application. Once it is signed, the application becomes the contract between the district and land occupier, and serves as the authorization ~~for work to proceed on~~ to construct the practice~~.~~ in accordance with the approved plan. Practices where construction has begun prior to conservation district approval are ineligible for financial assistance. Changes in any provisions of the contract are subject to review and approval by the conservation district board.

If ~~it~~ the application is denied, the conservation district board shall notify the land occupier in writing within 30 days after conservation district board action of the reason for denial ~~of the application. Changes in any provisions of the contract are subject to review and approval by the district board.~~

Subp. 2. **Conservation Practice Plans.** The plans for conservation practices must be prepared in accordance with standards in the Field Office Technical Guide or other standards approved by the state board. Plans prepared by a registered professional engineer must meet Field Office Technical guide standards, other standards approved by the state board or must be certified as appropriate standards by the registered professional engineer. Upon completion and technical approval of the plan, one copy will be given to the land occupier and on copy will be retained with the project file located in the conservation district office.

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

8400.1405 ~~STARTING AND COMPLETION~~ PROJECT DEADLINES AND PARTIAL PAYMENT

Subp. 1. **Time limit~~,~~ and cancellation.** Projects not started within 18 months after conservation district board approval must be canceled unless an amendment to the project has been approved by the conservation district board. Projects not completed ~~within two~~

~~calendar~~ by the end of the state's third fiscal years after initial conservation district board approval must be canceled unless prior written approval of the state board has been received.

Subp. 2. **Partial payment.** In cases where weather or other unanticipated circumstances beyond the control of the land occupier, force postponement of certification of completion until the following construction season, the ~~state board or its authorized representative may authorize a~~ conservation district board ~~to~~ may issue a partial payment for the work that has been completed. The ~~following conditions must be met before the state board or its authorized representative will~~ conservation district board shall not consider ~~authorizing~~ issuing a partial payment unless:

A. ~~T~~the anticipated completion date ~~will be in~~ complies~~ance~~ with subpart 1~~.~~;

B. ~~T~~the completed work meets the requirements of part 8400.1~~3~~4400, ~~item G~~ subpart 2; and

C. ~~T~~the ~~state board's authorized~~ conservation district's technical representative ~~must~~ has reviewed the work and concurs in the payment decision.

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

A. ~~P~~payment percentages must comply with part 8400.~~2800~~ 0900, subpart 2.;

B. ~~T~~the balance of the project must be paid by the conservation district board upon the satisfactory completion of the total project~~.~~;

C. ~~A~~all expenses incurred ~~in~~ to correct~~ing~~ damage caused ~~to the project by virtue of its incompletion~~ by the land occupier's failure to expeditiously complete the conservation practice must be borne by the land occupier~~.~~;

D. ~~L~~land occupiers receiving partial payments must complete the project within a time deemed reasonable by the conservation district board~~.~~; and,

E. ~~L~~land occupiers not completing partially paid projects ~~are~~ shall be considered as violating part 8400.1700 and shall be directed, unless otherwise authorized by the state board as provided elsewhere in part 8400.1700, to return the amount of financial assistance received~~.~~;

~~F. Partial payment authorizations shall not be construed as precedent setting.~~

Every request for partial payment will be considered by the ~~state~~ conservation district board ~~or its authorized representative~~ on its own merits.

Subp. 4. **Denial.** If the ~~state~~ conservation district board ~~or its authorized representative~~ denies a request for partial payment under subpart 2, they ~~conservation district board~~ shall ~~be~~ notify~~ied~~ the land occupier within 30 days of the reasons for denial of the request.

8400.1460 RETURN OF ALLOCATED FUNDS.

Cost-share funds unencumbered by the conservation district board at the end of a grant period must be returned to the state board within 30 calendar days following the end of that grant period.

8400.1500 CONSERVATION DISTRICT RECORDS.

The conservation district shall maintain a current ledger of all cost-share contracts on forms provided by the state board. The ledger must specify the land occupiers with whom the conservation district has contracted, the practices involved, the status of construction, and a total of funds encumbered. The conservation district shall also document their efforts to identify and contact land occupiers with high priority erosion problems.

8400.1600 ~~PAYMENTS~~ EXECUTING THE COST-SHARE CONTRACT.

Subp. 1. **Amending cost share contracts.** Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to amend the original cost share contract. If changes to the original cost share contract are needed, an amendment must be approved by the conservation district board. The conservation district board shall not approve amendments that increase the originally approved cost share percentage, nor shall the conservation district board approve any amendments after the approval to issue final payment on the original contract has been made.

Subp. ~~1~~.2 **Construction of the practice.** Construction of the practices must be monitored by the conservation district board to ensure compliance with part 8400.1~~3~~400, ~~item G~~ subpart 2. Upon completion, ~~assigned~~ the district technical representative with technical approval authority or the registered engineer shall certify whether ~~or not~~ the practice has been satisfactorily constructed in accordance with the approved conservation practice plan(s) ~~performed, including a certification that the practice meets the requirements of part 8400.1300, item G~~ and meets the design criteria of the practice as specified in the Field Office Technical Guide or other standards certifiable by a registered professional engineer or other standards approved by the state board. No certification shall be made until all specifications have been satisfied. Exceptions must be in accordance with part 8400.1405, subpart ~~2~~3. Upon certification of completion, the land occupier shall contact the conservation district for payment and shall present documentation of all costs incurred in the installation of the practice in the form of receipts or invoices.

Subp. ~~2~~ 3. **In-kind services and materials.** In-kind services and materials provided by the land occupier such as, but not limited to, earth work, seedbed preparation, ~~and~~ seeding and permanent fencing materials may be credited toward the land occupier's share of the total cost of the practice. The conservation district board shall determine whether charges for in-kind services and materials are practical and reasonable.

Subp. ~~3~~ 4. **Actual cost differing from estimated cost.** In cases where the actual cost of the practice exceeds the estimated cost, the conservation district may only share the approved percentage of the estimated cost, except when an amendment to increase the cost estimate listed on the cost-share contract has been approved by the conservation district board. ~~Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to increase the estimated cost, or postpone the starting or completion date of the practice. These changes must be approved by the supervisors in advance of completion of the work with an amendment to the cost share contract covering the changes.~~

~~Amendments may not be authorized for providing final cost sharing percentages in excess of the originally approved percentage or additional money for projects that were knowingly underfunded at the time of approval. Amendments may not be authorized after final approval of payment has been made on the original contract.~~ Where the actual cost is less than the estimated cost, the conservation district shall only share the approved percentage of the actual cost of the practice.

Subp. 5. Issuing cost-share payments. The conservation district board shall review the receipts or invoices provided by the land occupier to determine the actual cost of the practice. When the conservation district determines that all claims are practical and reasonable, it shall authorize issuance of a check for the conservation district's share of the practice. If the conservation district board determines that certain claims are not justified, it shall notify the land occupier in writing of the unjustified claims within 30 days. The conservation district board shall then authorize the issuance of a check for the conservation district's share of the justified claims.

8400.1650 RECORDING PRACTICES

The size, location and effective life of the soil and water conservation practices that have received cost-share payments under this program equal to, or in excess of, $50,000 shall be recorded on the property title. The conservation district board may require the recording of practices where cost-share payments are less than $50,000 where such action is considered appropriate.

8400.1700 MAINTENANCE.

Subp. 1. **Land occupier maintenance responsibilities.** The land occupier is responsible for operation and maintenance of practices applied under this program to ensure that their conservation objective is met and the effective life, a minimum of ten ~~or more~~ years, is achieved. Should the land occupier fail to maintain the practices during their effective life, the land occupier is liable to the state of Minnesota for the full amount of financial assistance received ~~for their~~ to install~~ation~~ and establish the practice. ~~The conservation district board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice.~~ The land occupier is not liable for cost-share assistance received if the failure was caused by reasons beyond the land occupier's control, or if soil and water conservation practices are applied at the land occupier's expense that provide equivalent protection of the soil and water resources.

Subp. 2. **Reapplication** or **removal** of practices. In no case shall a conservation district provide cost-share assistance to a land occupier for the reapplication of practices that were removed by the land occupier during their effective life or that failed due to improper maintenance. The conservation district board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice.

8400. 1750 PRACTICE SITE INSPECTIONS.

As a condition to receive grant funds from the state board, the conservation district shall ensure compliance with the maintenance

provisions of part 8400.1700 and Minnesota Statutes, chapter 103C by monitoring all cost-share contracts made with land occupiers. The conservation districts shall conduct site inspections of practices installed with cost-share funds to determine if the land occupier is in compliance with the operation and maintenance requirements pursuant to section 8400.1700. Site inspection procedures, including the prescribed forms and frequency, are described in the Administrative Guidelines for the State Cost-Share Program.

8400.1800 APPEALS.

~~If a~~ land occupier ~~feels he has been treated unfairly~~, ~~he~~ may appeal a conservation district's action by submitting a written request ~~that~~ to the conservation district board asking them to ~~review~~ reconsider their decision. Should the land occupier and the conservation district board reach an impasse, the land occupier may ~~petition~~ appeal the conservation district board's decision ~~in writing for a hearing before~~ to the state board. If ~~it~~ an informal hearing is grant~~s~~ed ~~the hearing, that shall be informal,~~ the state board or its ~~a referee~~ appointed mediator ~~by it~~ shall hear all testimony offered, and shall accept written testimony for ten days after the hearing. The ~~referee~~ mediator, if one is used, shall report ~~his~~ its findings and recommendation to the state board~~,~~. ~~which~~ The State board shall ~~within 60 days of the hearing date~~ make its decision on the appeal within 60 days of the hearing date, upholding, reversing, or amending the decision of the conservation district board.

REPEALER. Minnesota Rules, part 8400.1950 through 8400.2800 is repealed.

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August 4, 1995

TO : Minnesota Association of Soil and Water Conservation Districts

FROM : Dwain Otte, BWSR Cost-Share Committee Chair

RE : Regular Statewide Cost-Share Program Allocations Procedures

The BWSR has endorsed the "area allocation concept" for the State Cost-Share Program as provided by resolution of the 1992 MASWCD Convention. Based on the BWSR Cost-Share Committee recommendations, this endorsement does not allow for equal allocations among areas. However, this endorsement does allow areas to allocate cost-share funds according to area and district priorities. This procedure was approved by the MASWCD Board of Directors on August 23, 1994. This policy will become effective for the FY 1997 allocation scheduled for June of 1996. This policy is outlined on the enclosure.

This new allocation procedure coincides with the present "retooling" of the State Cost-Share Program Rules. The BWSR will be requested to adopt the Rule revision at their September Meeting and set the amount of funds to be allocated for the FY 97 Regular Statewide Cost-Share Program.

If their are any questions concerning this policy, please contact Wayne Zellmer, Grants Coordinator, at (612) 297-7361.

c: Board Conservationists
Greg Larson, Section Administrator
Ron Harnack, Executive Director

BWSR POLICY ON: REGULAR STATEWIDE COST-SHARE PROGRAM ALLOCATIONS PROCEDURES

Effective FY 97

For the allocation of regular cost-share program funds to districts, the state association, as authorized by the state board, will establish area cost-share committees. Each area cost-share committee must establish priorities within their area for the use of cost-share funds. These priorities must be in accordance with state board policies and guidelines. The basis for these priorities must be district annual and comprehensive plans.

An area may elect not to participate in this area cost-share allocation process. Conservation districts in non-participating areas will receive their allocations according to the allocation formula used for the FY 96 allocation.

Allocation Plans

Each area participating in the area allocation process must submit to the state board their area allocation plan. This plan must be submitted to the BWSR Central Office by May 1 of each year. The area allocation plan must include:

1. Area priorities for the use of cost-share program funds.
2. Each conservation district's allocation request, identifying that portion designated for technical and administrative costs.

The sum of an area's conservation districts requests must not exceed an area's total allocation. All allocation plans and requests will be reviewed according to criteria developed by the Grants Team. All allocation plans and requests must be approved by the state board. Also:

3. The state board is the fiscal agent for cost-share funds.
4. Conservation districts will pay their own expenses for attending area cost-share meetings.
5. Roll-Over funds will remain within the area for reallocation by the area cost-share committee.

Area Cost-Share Committee Composition

1. A voting chair or delegated supervisor from each conservation district in the area; and
2. A non-voting state association area director who will chair the committee; and
3. A non-voting state board conservationist who will serve as advisor; and
4. A non-voting state employee's association area director who will serve as advisor.

REGULAR STATE COST-SHARE PROGRAM ALLOCATION EXAMPLES

Annual Legislative Appropriation $1,620,000

For FY 96 the BWSR allocated 81% of this appropriation or $1,314,489. This left a reserve of $305,511 for competitive special projects grants (actually $365,032 with *roll-over funds).

The revised Cost-Share Rule states that the Board must allocate at least 80% of the appropriation. At the September Board Meeting the Board will be requested to determine the appropriate amount to allocate for FY 97.

The following table shows examples of selected allocation percentages, the resulting amount allocated and the amount remaining to be reserved for special projects or programs:

% Allocated	Amount Allocated	Amount Remaining
100	$1,620,000	$ 0
95	1,539,000	81,000
90	1,458,000	162,000
85	1,377,000	243,000
80	1,296,000	324,000

*Under the new rule in FY 97, any available roll-over funds will stay in the area to which the funds were originally granted, to be reallocated by that area cost-share committee. However, under the new rule SWCD grant agreements will change from one to two years in length. SWCDs will then have two years to re-encumber slippage funds before they need to be returned to BWSR. This change should nearly eliminate the slippage at the SWCD level which in the past has resulted in grant funds which had to be returned to the BWSR for reallocation as roll-over funds.

Amended 8-18-95

PROPOSED POLICY

1. Penalties received by a soil and water conservation district from landowners as restitution for a non-compliant RIM Reserve easement may be ~~expended~~ utilized by the soil and water conservation district consistent with the purpose and policy of the Reinvest In Minnesota Resources ~~Act~~ law (M.S. sec. 103F.505 to 103F.531) and the powers of district boards in M.S. sec. 103C.331. Or, at the SWCD's option the funds may be sent to the Treasurer, State of Minnesota.

2. If the SWCD chooses to ~~expend~~ utilize the funds, such expenditures must result in long term protection of soil and water quality and improve fish and wildlife habitat. Tree, shrub or grass plantings which improve habitat are strongly encouraged. Local RIM screening committee members should be consulted to gather input and recommendations for use of funds.

3. SWCDs may ~~expend~~ use funds ~~to individuals, private and public organizations to enhance fish and wildlife habitat~~ as follows:

a) for direct expenditures for conservation activities; or,

b) to contract with individuals or organizations to accomplish conservation objectives as authorized by M.S. Sec. 103C.331, subd. 13.

4. ~~provided that~~ ~~f~~Funds resulting from restitution shall not be used to purchase lands for the purpose of sale or gift to the state.

4. Any funds received and disbursed by the SWCD for the purpose of carrying out this policy must be recorded in the official SWCD bookkeeping system subject to periodic audit as are other funds of the district.

5. Prior to expending restitution funds locally, the SWCD shall receive approval in writing from the BWSR Board Conservationist who shall follow guidelines for approving expenditures established in the RIM Reserve Administrative Handbook.

:RIMFINE8

BWSR Memo

August 9, 1995

TO: BWSR Members

THROUGH: Ron Harnack, Executive Director

FROM: Jim Birkholz, Assistant Director

SUBJECT: **Proposed policy to allow SWCDs to administer certain RIM Reserve non-compliance penalty payments received from landowners**

ISSUE

As an alternative to returning funds to the state, should soil and water conservation districts which resolve non-compliance problems with RIM Reserve easements be authorized to receive and disburse landowner payments which are part of the restitution?

BACKGROUND/HISTORY

1. The RIM Reserve Program was created by legislative act in 1986. As more easements were acquired each year, attention was directed to firming up the part of the law which provides for enforcement and damages if the provisions of the easements are not followed.

2. In 1989 Session Laws, Ch. 353 (attachment #1) the legislature amended the RIM law to make landowners who violate the term of a conservation easement liable to the state for double (not willful) or treble (willful) damages as appropriate and authorized the attorney general to act on request of the BWSR board to enforce the easement provisions when necessary. DNR has had success with this approach for some of its programs.

3. In August, 1994 as part of the ongoing RIM Reserve administrative retooling process, a "Non-compliance/Violation Procedures" section was added to the RIM Reserve Handbook. This section instructed SWCDs how to carry out their responsibilities as the State of Minnesota's local agent in enforcing the provisions of RIM Reserve easements. The assumption made in these guidelines is that any landowner payments which are part of restitution for easement violations would be made to the state.

4. Earlier this year, the Mower SWCD discovered and corrected a non-compliance issue as part of its normal follow up and inspection of RIM Reserve easements in Mower County (the infraction involved

planting and harvesting an agricultural crop on RIM land). Part of the settlement involved the landowner paying restitution. The landowner's check was made out to the SWCD. The SWCD requested permission from BWSR to utilize the funds for conservation efforts in the township where the non-compliance occurred (attachment #2).

5. Because the RIM Reserve Program easements are funded through the sale of state bonds and because the law specifies that landowners who violate easement terms are liable to the state, BWSR staff conducted further research and the Department of Finance and Attorney General were consulted. This research indicates that the Mower request can be granted, however, a consistent statewide approach should be taken via a policy enacted by the BWSR Board and updated RIM Reserve administrative procedures.

ANALYSIS

1. The role of the SWCD in the RIM Reserve Program is to act as the State's local agent. For easement maintenance this involves periodic site inspections and certifications as to whether landowners are in compliance with the terms of the easement. This is an important aspect of the program as most easements are perpetual. Allowing SWCDs the option to utilize restitution funds locally has several advantages over returning the funds to the state. First, it would create a financial incentive for SWCDs to give appropriate attention to inspection and maintenance of RIM Reserve easements by providing funds to further the SWCDs local program. Secondly, it would minimize the passing of funds from one level of government to another thereby reducing the related administrative costs. Third, it emphasizes the "locally directed" nature of the program which is one of RIM Reserve's strengths.

2. Staff at the Department of Finance and the Attorney General's office have indicated that it would be appropriate for SWCDs to utilize restitution funds within the district contingent upon BWSR enacting appropriate guidance.

3. The BWSR RIM Reserve Administrative Guidelines define "noncompliance" as the part of the enforcement process conducted by the SWCD. If the SWCD fails to get compliance from the landowner, the issue is treated as a "violation". (see flowchart, attachment #3) It is appropriate for the SWCD to retain funds received as restitution for resolving "noncompliance" status issues. When they move to the "violations" stage, significant BWSR and attorney general staff time and expense can be incurred. Restitution funds received from "violations" should be sent to the state.

4. The legislature has expressed concern in the past that the RIM Reserve program not be a stepping stone to greater state ownership of land. Any policy enacted by BWSR should continue to emphasize the private lands aspect of RIM Reserve.

PROPOSED POLICY

1. Penalties received by a soil and water conservation district from landowners as restitution for a non-compliant RIM Reserve easement may be expended by the soil and water conservation district consistent with the purpose and policy of the Reinvest In Minnesota Resources Act. Or, at the SWCD's option the funds may be sent to the Treasurer, State of Minnesota.

2. If the SWCD chooses to expend the funds, such expenditures must result in long term protection of soil and water quality and improve fish and wildlife habitat. Tree, shrub or grass plantings which improve habitat are strongly encouraged. Local RIM screening committee members should be consulted to gather input and recommendations for use of funds.

3. SWCDs may expend funds to individuals, private and public organizations to enhance fish and wildlife habitat provided that funds shall not be used to purchase lands for the purpose of sale or gift to the state.

4. Any funds received and disbursed by the SWCD for the purpose of carrying out this policy must be recorded in the official SWCD bookkeeping system subject to periodic audit as are other funds of the district.

5. Prior to expending restitution funds locally, the SWCD shall receive approval in writing from the BWSR Board Conservationist who shall follow guidelines for approving expenditures established in the RIM Reserve Administrative Handbook.

Attachment #1

Subd. 9. Enforcement and damages. (a) A landowner who violates the term of a conservation easement or agreement under this section, or induces, assists, or allows another to do so, is liable to the state for treble damages if the trespass is willful, but liable for double damages only if the trespass is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater.

(b) Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney's fees, and any other appropriate relief to enforce sections 103F.505 to 103F.531 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

Laws 1990, c. 391, art. 6, § 73. Amended by Laws 1991, c. 354, art. 10, § 3; Laws 1992, c. 415, § 3.

Attachment #2



MOWER COUNTY SOIL AND WATER CONSERVATION DISTRICT

101 21st Street S.E.
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Telephone # (507) 433-8288
Fax # (507) 437-4755

received
MAR 08 1995

MINNESOTA SOIL AND WATER CONSERVATION DISTRICTS

March 7, 1995

Dave Peterson
Board Conservationist
40 16th. Street S.E Suite A
Rochester, MN 55904

Dear Dave,

The Mower County SWCD has received 1,383.00 in restitution for a conservation easement violation on property owned by Gary Thome located in T.102N.-R.16W section 34.

The district proposes to donate the 1,383.00 to the Pheasant Forever Habitat group in Grand Meadow to establish tree and shrub plantings and nesting cover. It shall be suggested that they target their conservation efforts to Marshall township which is where the violation occurred.

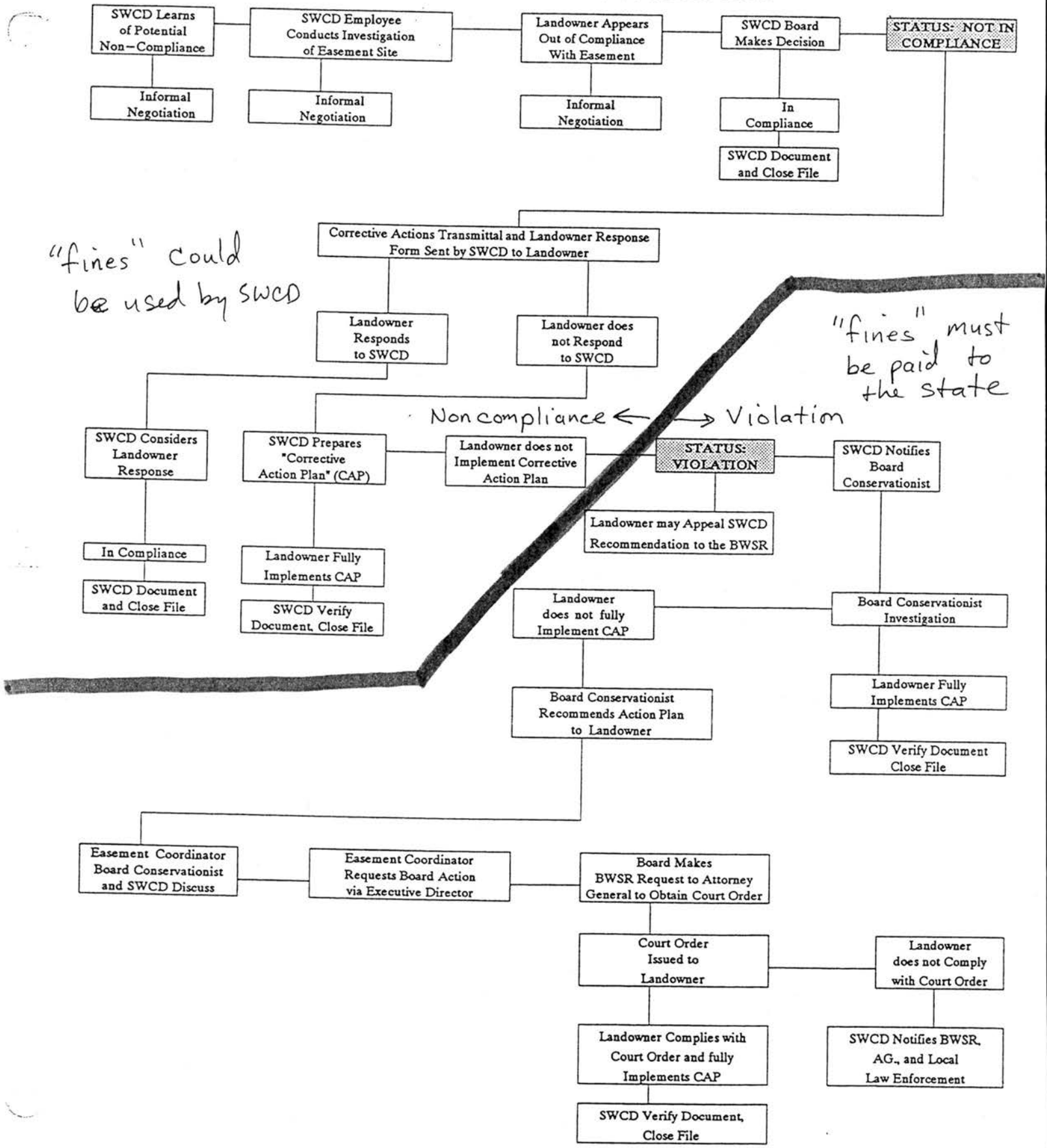
The district believes this would follow the guidelines and policies set forth by the Board of Water and Soil Resources involving proper restitution on behalf of Mr. Thome.

Sincerely,

John Voz
Resource Specialist

Attachment #3

D. FLOWCHART OF NON-COMPLIANCE / VIOLATION PROCEDURES



Proposed Criteria
for
Authorizing Extensions of Comprehensive Local Water Plans
(M.S. 103B.301)

Background - The Minnesota legislature in 1995 adopted amendments to the Comprehensive Local Water Planning Act including a amendment which allows the BWSR to grant up to a two year extension to a county on its water plan. The extension if granted precludes a county from ordering or commencing a project during the period of the extension. Projects covered under this condition are those that the county would use its authority to establish a taxing district and pay the cost of a project by assessment or ad valorem levies.

Issue - Does the Board want all requests for extensions coming before the board for their approval.

Proposed Action - Since most requests for extension will be non-controversial and administrative in nature staff recommend that Board adopt some general criteria for issuance of an extension, direct staff to review all requests for extension, and place them on a consent agenda of the next regularly scheduled meeting of the Board. By doing this the only requests for extensions that the Board would take up during a regular Board meeting would be those that are controversial in nature.

Proposed Criteria (all conditions would have to be met in order to put on consent agenda)

(a) A county board resolution that includes:
  (1) The amount of time requested (2 year maximum).
  (2) Those planning activities requiring additional time to complete.
  (3) How public participation will be insured during the interim period.
  (4) A statement that no projects, initiated under 103B.331, will be ordered or commenced during the extension period.

(b) A certified copy of the county resolution must be received prior to the expiration date of the current plan.

(c) Board Conservationist recommendation for approval (in writing to Water Planning Coordinator).

Any request not meeting the above criteria would be placed on the next regularly scheduled meeting of the Board as new business requiring Board action.

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August 14, 1995

TO: Commissioner, Minnesota Department of Agriculture
Commissioner, Minnesota Department of Health
Commissioner, Minnesota Department of Natural Resources
Commissioner, Minnesota Pollution Control Agency
Chairman, Minnesota Environmental Quality Board
Director. Minnesota Geological Survey

On August 1, 1995 the Minnesota Board of Water and Soil Resources (BWSR) began the official 90 day State review of the Benton County Comprehensive Local Water Plan. Pursuant to Minnesota Rules, Chapter 9300.0170 the BWSR is transmitting a copy of the Benton County water plan for your agency's review and comment. Your agency has 45 days from receipt of this letter to submit comments in writing to the BWSR identifying the portions of the plan that the agency has determined to be inconsistent with state law.

The Benton County water plan document itself is being sent to your agency's 103B Technical Review Committee Member under separate cover. The 103B Technical Review Committee Members are:

MDA, Mark Zabel
MDH, Kimberly Benson-Johnson
MDNR, Ken Wald/John Fax
MPCA, Celine Lyman
EQB, Marilyn Lundberg
MGS, Barb Palen

Thank you for your agency's continued assistance and commitment to make comprehensive local water planning the success that it has become. We also look forward to working with your agency as counties continue implementation of their updated water plans.

Sincerely,

Ron Harnack
Executive Director

cc: Members BWSR
Staff BWSR
103B Technical Committee
Don Bajumpaa, Benton County SWCD

h:bent95.not/djt

BOARD OF WATER AND SOIL RESOURCES
COMMITTEES
AUGUST 1, 1995

DISPUTE RESOLUTION COMMITTEE (DRC)

Membership:	Kathleen Roer, Chair	citizen
	Glenn Annexstad	citizen
	Jim Rossman	county commissioner
	Ted Lovdahl	SWCD
	Marvell Tripp	watershed district
	Doug Thomas	staff

Responsibility: The DRC is responsible for appeals relating to the Wetland Conservation Act rule decisions of local governments, watershed district rule appeals, and appeals of state agencies water decisions that are of a policy nature. The authority of the DRC is established in statute and as given by the Board. Under current guidelines the DRC receives the appeals; hears the issues; and makes recommendations to the Board.

EDUCATION & PUBLIC RELATIONS COMMITTEE

Membership:	Tim Hvidsten, Chair	SWCD
	Barb Uppgaard	citizen
	LeRoy Stensgaard	county commissioner
	Ginny Imholte	watershed district
	Susan Tsakakis	staff

Responsibility: The education committee is responsible for the development of an overall education strategy for the Board; establishing annual objectives; assessing the education initiatives; and updating the education strategy to meet the needs of the Board's clientele. The committee will review the training needs of the clientele and review the training plan to ensure continuity with the education plan of the Board. In addition, the committee will assess and make recommendations concerning new Board Member indoctrination materials, the need for specific Board Member educational briefs, and to develop distribution of the annual Board calendar. The committee will evaluate and make recommendations concerning BWSR's publicity and public relations tools including, but not limited to, its brochure, convention "booth" and State Fair involvement.

FEEDLOT ADVISORY COMMITTEE

Membership:	Jim Rossman, Chair	county commissioner
	Ted Lovdahl	SWCD
	Al Kean	staff

Responsibility: The committee was established to provide Board participation on the Feedlot and Manure Management Advisory Group and to provide input to the Board on issues relating to feedlot activities of the Board. The committee will review feedlot cost-share requests where enforcement actions have been initiated and make recommendations to the Board on the request. The committee acts in an advisory capacity only.

COST-SHARE / SOIL CONSERVATION COMMITTEE

Membership:	Dwain Otte, Chair	SWCD
	Glenn Annexstad	citizen
	Ginny Imholte	watershed district
	LeRoy Stensgaard	county commissioner
	Darrell Bruggman	county commissioner
	Barbara Cobb	WMO
	Marybeth Block	staff

Responsibility: The committee has developed an implementation strategy to achieve the goals for soil conservation as defined in the Strategic Plan of the Board and has developed recommendations approved by the Board regarding the 1995 Federal Farm Bill. It is to remain actively involved in the new Farm Bill development process and act as liaison to the Board in regard to its progress and other associated issues. The committee is responsible for contributing to the multi-agency cost-share rules retooling efforts and will act as liaison to the Board regarding the future product.

WATER PLAN COMPLIANCE COMMITTEE

Membership:	Barbara Cobb, Chair	WMO
	Barbara Uppgaard	citizen
	Darrell Bruggman	county commissioner
	Ginny Imholte	watershed district
	Doug Thomas	staff

Responsibility: This is an ad hoc committee formed to review policy issues relating to compliances; rule and statute changes and inter-agency coordination with particular emphasis on looking into agency cooperation concerning development of a more defined, more absolute method to assure water planning compliance.

WATER PLAN REVIEW COMMITTEE

Membership: The committee is ad hoc and is appointed by the Chair on an as needed basis.

Responsibility: The committee has the responsibility to review county water plans, water management organization plans, watershed district overall plans, and amendments to same and to advise the Board on the adequacy of the plans.

WETLANDS COMMITTEE

Membership:	Darrell Bruggman, Chair	county commissioner
	Tim Hvidsten	SWCD
	Glenn Annexstad	citizen
	Kathleen Roer	citizen
	John Jaschke	staff

Responsibility: The Wetlands Committee is responsible for reviewing Wetlands Conservation Act (WCA) policies and procedures; participating in Wetland Heritage Advisory Committee (WHAC) meetings and making recommendations to the Board.

ADMINISTRATIVE ADVISORY COMMITTEE

Membership:	Barbara Cobb, Chair	WMO
	Jim Rossman, Vice-Chair	county commissioner
	Dwain Otte	SWCD
	Barb Uppgaard	citizen
	Ted Lovdahl	SWCD
	Ron Harnack	staff
	Mary Jo Anderson	staff

Responsibility: The administrative advisory committee will act in the capacity of a "management team" and will make evaluations and recommendations to the Board on various Board positions including standing policies; programs; ethics; expenses/per diem; legislative platforms and strategy. It will assess specific Board objectives and evaluate the Board's effectiveness. It will assist in the formulation of bylaws, review the budget, make suggestions involving Board budget and act in a personnel review function for the Executive Director.

ENVIRONMENTAL REORGANIZATION COMMITTEES

Responsibility: The two committees will form recommendations regarding the Governor's initiative to reorganize and/or improve.

A) State Agencies

Barb Uppgaard, Chair	citizen
Darrell Bruggman	county commissioner
Dwain Otte	SWCD
Ginny Imholte	watershed district

B) Special Purpose Districts

Kathleen Roer, Chair	citizen
Tim Hvidsten	SWCD
Marvell Tripp	watershed district
LeRoy Stensgaard	county commissioner

C) Liaison between both groups and the Board and member of Governor's Environmental Cluster Group

Barbara Cobb	WMO
Ron Harnack	staff

STATUTORY COMMITTEES

Membership: Eric Mohring — staff

Responsibility: Interest and availability with regard to Advisory Council on Wells and Borings and Pesticide Advisory Committee.

Advisory members have offered to serve on BWSR committees and assist as needed.

BWSR Calendar

J U L Y
1995

SUNDAY	*MONDAY*	*TUESDAY*	*WEDNESDAY*	*THURSDAY*	*FRIDAY*	*SATURDAY*
						1
2	**3** *M-Team	**4**	**5**	**6**	**7**	**8**
9 *NACD Regional Meeting	**10** *NACD Regional Meeting	**11** *NACD Regional Meeting	**12** *NACD Regional Meeting	**13** *DRC Meeting	**14**	**15**
16	**17**	**18**	**19**	**20**	**21**	**22**
23/30	**24/31**	**25** *BWSR Board Tour	**26** *BWSR Board Mtg. Duluth	**27** *EQB	**28**	**29**

BWSR Calendar

A U G U S T
1995

SUNDAY	*MONDAY*	*TUESDAY*	*WEDNESDAY*	*THURSDAY*	*FRIDAY*	*SATURDAY*
		1	2	3	4	5
6	7 *M-Team	8	9	10 *DRC Meeting	11	12
13	14	15	16	17	18	19
20	21	22	23 *BWSR Board Mtg.	24 *EQB *State Fair Booth through Labor Day	25	26
27	28	29	30	31		

BWSR Calendar

S E P T E M B E R
1995

SUNDAY	*MONDAY*	*TUESDAY*	*WEDNESDAY*	*THURSDAY*	*FRIDAY*	*SATURDAY*
					1	**2**
3	**4** *Office Closed *Fair Ends *Labor Day*	**5** *M-Team	**6**	**7**	**8**	**9**
10	**11**	**12**	**13**	**14** *DRC Meeting	**15**	**16**
17	**18**	**19**	**20**	**21**	**22**	**23**
24	**25**	**26**	**27** *BWSR Board Mtg. Marshall	28 *EQB	**29** *Technicial Initiatives due	**30**

BWSR Calendar

O C T O B E R
1995

SUNDAY	*MONDAY*	*TUESDAY*	*WEDNESDAY*	*THURSDAY*	*FRIDAY*	*SATURDAY*
1	**2** *M-Team	**3**	**4**	**5**	**6** *Leg. Initiatives due.	**7**
8	**9**	**10**	**11**	**12** *DRC Meeting	**13**	**14**
15	**16**	**17**	**18**	**19**	**20**	**21**
22	**23**	**24**	**25** *BWSR Board Mtg.	**26** *EQB	**27**	**28**
29	**30**	**31** *Halloween*				

BWSR Calendar

N O V E M B E R
1995

SUNDAY	*MONDAY*	*TUESDAY*	*WEDNESDAY*	*THURSDAY*	*FRIDAY*	*SATURDAY*
			1	2	3	4
5	6 *M-Team	7	8	9 *DRC Meeting	10 *Office Closed *Veterans Day*	11
12	13	14	15	16	17	18
19	20	21	22 *BWSR Board Mtg.	23 *Office Closed *Thanksgiving*	24 *Office Closed	25
26	27	28	29	30		

BWSR Calendar

D E C E M B E R
1995

SUNDAY	*MONDAY*	*TUESDAY*	*WEDNESDAY*	*THURSDAY*	*FRIDAY*	*SATURDAY*
					1	**2**
3 *AMC Annual Convention (St. Cloud)	**4** *M-Team *AMC Annual Convention (St. Cloud)	**5** *AMC Annual Convention (St. Cloud)	**6**	**7**	**8** *MAWD Annual Convention (Alexandria)	**9** *MAWD Annual Convention (Alexandria)
10 *MASWCD Annual Convention (St. Cloud)	**11** *MASWCD Annual Convention (St. Cloud)	**12** *MASWCD Annual Convention (St. Cloud)	**13**	**14** *DRC Meeting	**15**	**16**
17	**18**	**19**	**20**	**21**	**22**	**23**
24/31	**25** *Office Closed *Christmas Day*	**26**	27 *BWSR Board Mtg. *Block Grants due	**28** *EQB	**29**	**30**

BWSR Calendar

J A N U A R Y
1996

SUNDAY	*MONDAY*	*TUESDAY*	*WEDNESDAY*	*THURSDAY*	*FRIDAY*	*SATURDAY*
	1 *Office Closed *New Years Day*	**2** ***M-Team**	**3**	**4**	**5**	**6**
7	**8**	**9**	**10**	**11** *DRC Meeting	**12**	**13**
14	**15** *Office Closed *Martin Luther King Day*	**16** *Start of Legislative Session	**17**	**18**	**19**	**20**
21	**22**	**23**	**24** *BWSR Board Mtg. *Roll Over Grants due	**25** *EQB	**26**	**27**
28	**29**	**30**	**31**			

BWSR Calendar

F E B R U A R Y
1996

SUNDAY	*MONDAY*	*TUESDAY*	*WEDNESDAY*	*THURSDAY*	*FRIDAY*	*SATURDAY*
				1	**2**	**3**
4 *NACD National Convention (Las Vegas)	**5** *M-Team *NACD National Convention (Las Vegas)	**6** *NACD National Convention (Las Vegas)	**7** *NACD National Convention (Las Vegas)	**8** *DRC Meeting *NACD National Convention (Las Vegas)	**9**	**10**
11	**12**	**13**	**14** *Valentines Day*	**15**	**16**	**17**
18	**19** *Office Closed *Presidents Day*	**20**	**21**	**22** *EQB	**23**	**24**
25	**26**	**27**	28 *BWSR Board Mtg.	**29**		

BWSR Calendar

M A R C H
1996

SUNDAY	*MONDAY*	*TUESDAY*	*WEDNESDAY*	*THURSDAY*	*FRIDAY*	*SATURDAY*
					1	2
3	4 *M-Team	5	6	7	8	9
10	11	12	13	14 *DRC Meeting	15	16
17	18	19	20	21	22	23
24/31	25	26	27 *BWSR Board Mtg.	28 *EQB	29	30

BWSR Calendar

A P R I L
1996

SUNDAY	*MONDAY*	*TUESDAY*	*WEDNESDAY*	*THURSDAY*	*FRIDAY*	*SATURDAY*
	1 *M-Team	**2**	**3**	**4**	**5**	**6**
7	**8**	**9**	**10**	**11** *DRC Meeting	**12**	**13**
14	**15**	**16**	**17**	**18**	**19**	**20**
21	**22**	**23**	**24** *BWSR Board Mtg.	**25** *EQB	**26**	**27**
28	**29**	**30**				

BWSR Calendar

M A Y
1996

SUNDAY	*MONDAY*	*TUESDAY*	*WEDNESDAY*	*THURSDAY*	*FRIDAY*	*SATURDAY*
			1	2	3	4
5	6 *M-Team	7	8	9 *DRC Meeting	10	11
12	13	14	15	16	17	18
19	20	21	22 *BWSR Board Mtg.	23 *EQB	24	25
26	27 *Office Closed **Memorial Day*	28	29	30	31	

BWSR Calendar

J U N E
1996

SUNDAY	*MONDAY*	*TUESDAY*	*WEDNESDAY*	*THURSDAY*	*FRIDAY*	*SATURDAY*
						1
2	3 *M-Team	4	5	6	7	8
9	10	11	12	13 *DRC Meeting	14	15
16	17	18	19	20	21	22
23/30	24	25	26 *BWSR Board Mtg. *RIM/Cost Share Grants due	27 *EQB	28	29

h:calendar.95(RM)8/95

STATE OF MINNESOTA

Office of the Attorney General

RECEIVED
AUG 0 1 1995

TO : RON HARNACK
Executive Director

DATE : July 31, 1995

FROM : MATTHEW B. SELTZER
Assistant Attorney General

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

SUBJECT : **Article on Citizen Boards as Regulatory Agencies**

I don't imagine that you need more reading material for your "spare" time. Nonetheless, I thought that, if you haven't seen it before, you or others at BWSR might be interested in this article by Marcia Gelpe on "Citizen Boards as Regulatory Agencies." There seems to be some useful analysis here. In particular, her comments at pages 476-78 about some of the dynamics of giving legal advice in an open meeting seem to be accurate.

Attachment

cc: Jim Birkholz w/encl.

SELT:AK4

MJ- Some file reds for
Board members & MT.

DH

Citizen Boards As Regulatory Agencies

Marcia R. Gelpe

Professor of Law, William S. Richardson School of Law; Member, Minnesota Pollution Control Agency; A.B., Barnard College, Columbia University 1965; M.S., Ohio State University, 1967; J.D., Indiana University School of Law, 1974.

I. Introduction

FOR THE PAST FIVE YEARS, I have served as a member of a citizen board. This board, comprising nine part-time, unspecialized citizen members, is the decision-making body for one of the most powerful administrative agencies in Minnesota state government, the Minnesota Pollution Control Agency (MPCA). This agency makes the rules in the environmental area, issues pollution discharge permits, and enforces the environmental laws. The actions of the agency touch virtually every large business in the state, many small ones, and every local government entity. The areas it regulates are highly controversial, involving fundamental issues on the balance of economic growth and health protection. All of these important, far-reaching decisions that touch the lives of every state resident are made by a board of lay citizens, acting with little training and minimal compensation.

As an academic who studies and teaches the law of how administrative agencies work, I have naturally been curious about the workings of this citizen board as a form of administrative agency. This article is the product of six years of observation, discussion, and thought about the workings of a citizen board. It sets out the strengths and weaknesses of such a board, identifies the areas in which they are best used, and discusses ways to maximize their strengths and minimize their weaknesses.

A citizen board, as used in this article, is a group of lay people who are not full time government employees, who constitute the body responsible for some or all decisions of an administrative agency. The focus is on boards completely composed of such lay members, rather than citizen boards with both professional and lay members.[1] Many of the obser-

1. The Minnesota Environmental Quality Board (EQB) is an example of such a partial citizen board. The EQB is comprised of the heads of nine state agencies, one representative of the governor, and five part time citizen members. MINN. STAT. § 116C.03 (1988). *See also* Chesney, *Citizen Participation on Regulatory Boards*, 9 J. HEALTH POLITICS, POLICY & LAW 125 (1984) (describing the Michigan Licensing and Regulation boards for the health professions).

vations in this article apply to mixed boards, but such partial citizen boards also present particular problems that come from their mixture of expert and non-expert members.[2] This article does not address specifically the issues surrounding agencies with full-time lay commissioners. Again, many of the observations are pertinent, but others are not.[3] Citizen boards are also different from advisory boards. Although both may be comprised of lay members, the former have decision-making power while the latter do not.[4]

Citizen boards are found throughout state and local government. State governments use citizen boards for land-use control[5] and in many environmental areas, including wildlife management,[6] adjudication of air pollution regulation disputes,[7] and siting hazardous waste facilities,[8] as well as general environmental regulation.[9] A recent study in Virginia found citizen boards with decision-making authority over the entire

2. *See* Checkoway, *Citizens on Local Health Planning Boards: What are the Obstacles?*, 10 J. COMMUNITY DEV. SOC. 101 (1979) [hereinafter Checkoway].

3. Those observations which rely on the part time nature of the board and the fact that the members do not rely on their government positions as their primary source of income do not apply.

4. *See generally* DeParle, *Advise and Forget*, WASHINGTON MONTHLY 41 (May 1983); Nauman & Koehler, *Sacramento County/Community Councils: A New Partnership in Planning*, NAT'L CIVIC REV. 416 (Sept. 1983); Spohn, *The Role of Advisory Boards in the Policy Process: An Analysis of the Attitudes of HEW Board Members*, 16 AM. R. PUB. ADMIN. 185 (1983).

Some boards do not fall neatly into any one category. For example, the New York State Environmental Board, as described in E. HASKEL & V. PRICE, STATE ENVIRONMENTAL MANAGEMENT: CASE STUDIES OF NINE STATES 145 (1973)[hereinafter HASKEL & PRICE], has sixteen members, of whom nine are heads of state departments and seven are citizens. The board is mainly advisory, although it has some limited authority to make final decisions on environmental standards. *Id. See also Id.* at 92–96, describing the Washington Ecological Commission.

Citizen boards bear some resemblance to boards of directors of nonprofit organizations. A recent book examines the characteristics of such boards, but concentrates on issues of legal liability rather than on the issues of effective functioning, which are the focus of this article. *See* D. KURTZ, BOARD LIABILITY, GUIDE FOR NONPROFIT DIRECTORS (1988).

5. *See* HASKELL & PRICE, *supra* note 4, at 173, 175–77, describing the Vermont Environmental Board.

6. Price, *The Impact of Governing Boards on Organizational Effectiveness and Morale*, 3 ADMIN. SCIENCE Q. 361 (1963) [hereinafter Price].

7. Manaster, *Administrative Adjudication of Air Pollution Disputes: The Work of Air Pollution Control District Hearing Boards in California*, 17 U.C. DAVIS L. REV. 1117 (1984).

8. Tarlock, *State Versus Local Control of Hazardous Waste Facility Siting: Who Decides in Whose Backyard?* 7 ZONING & PLAN. LAW REP. 1 (1984).

9. *E.g.*, the Minnesota Pollution Control Agency, MINN. STAT. 116.01–.02 (1988); the Iowa Environmental Protection Commission, IOWA CODE ANN. § 455A.6 (West Supp. 1989); Maine Environmental Protection Board, described in HASKELL & PRICE, *supra* note 4, at 198–201 (also has authority over land-use control).

mission of fifty-eight state agencies.[10] Local governments often use citizen boards as local zoning appeals boards[11] and mass transit boards.[12]

The issue in this article is how well citizen boards function as decision-making bodies in comparison to the more standard type of administrative agency, comprised of a full-time professional staff. It begins by describing one specific citizen board in detail. Next it describes the general characteristics of a citizen boards and contrasts them with the characteristics of a standard agency. Following these descriptive sections, one section analyzes the relationship between board and staff in an agency headed by a citizen board, and sets out three alternative models for this relationship. The article goes on to discuss the strengths and weaknesses of citizen boards. It concludes with specific recommendations on when to use citizen boards as regulatory agencies and how to make them function better.

II. A Description of a Citizen Board

Because much of the analysis in this article derives from my experience on the MPCA, I shall describe that agency.[13] The MPCA is a nine member citizen board. The law does not require that members of the board have any particular expertise in the work of the agency.[14] The statute only requires that the membership be "broadly representative of the skills and experience necessary to effectuate the policy" of the statute[15] and that one member be "knowledgeable in the field of agriculture."[16] Several of the current members do have relevant backgrounds and most have a strong interest. The current members are a doctor who is a specialist in emergency medicine and toxicology (the chairman), an official in a carpenters' union (the vice-chairman), an ornithologist and environmental activist, the owner of a large turkey farming operation, a housewife who has been a community activist, a former mayor of a

10. Henry & Harms, *Board Involvement in Policy Making and Administration*, 47 PUB. ADMIN. R. 153, 154–55 (1987). In addition, this study found 154 citizen bodies with a more narrow purpose, but did not indicate how many of these were merely advisory boards and how many were citizen boards with decision-making authority. *Id.* at 154.

11. *See* Steele, *Community Participation and the Functioning of Rules: The Case of Urban Zoning Boards*, 9 LAW & POLICY 279 (1987).

12. *See* N. HAMILTON & P. HAMILTON, GOVERNANCE OF PUBLIC ENTERPRISE: A CASE STUDY OF URBAN MASS TRANSIT (1981) [hereinafter HAMILTON & HAMILTON].

13. A description of how the same agency functioned in its early days is found in HASKELL & PRICE, *supra* note 4, 49–50, 55–57, 64–66 (1973).

14. MINN. STAT. § 116.02(1) (1988).

15. MINN. STAT. § 116.02(3) (1988).

16. *Id.*

small town, a lawyer who has served on a rural county board, a farmer who has for years been active on environmental issues, and myself, a law professor who teaches environmental and administrative law.

Board members are appointed by the governor, with the consent of the state senate, for staggered four year terms.[17] The governor also appoints a commissioner for the agency, who serves at the pleasure of the governor.[18] The Commissioner is not a member of the board. Almost all agency authority is vested in the board, although the board regularly delegates a large body of more routine decisions to the Commissioner. The Commissioner also devises the budget and legislative requests. The board considers requests for legislation and could legally play a more active role in formulating these requests, but by tradition it has not done so.[19] In a few areas, the legislature has given the Commissioner direct authority.[20] The Commissioner also serves as the political spokesperson for the agency, and has a staff of more than 600 people.[21]

The board meets at least once a month with meetings held in public and usually lasting a full day.[22] In practice, the Commissioner decides what issues will be considered by the board. For each issue, the staff prepares a written document called a "board item" which states the issue, describes the background, proposes the decision that the staff wants the board to make, and gives the justifications for that decision. These board items are mailed to board members and affected parties and are available to the public prior to each board meeting. At board meetings, the staff is given the first opportunity to speak to each item, and then comments are taken from affected parties and members of the public, as time allows.

III. Comparison of Citizen Boards and Standard Agencies

Standard agencies are headed by either an individual with a title such as Secretary, Administrator, or Director, or by a multi-member panel of commissioners. In either case, the head or heads of the agency are full

17. MINN. STAT. §§ 116.02(2), 15.0575 (1988).
18. MINN. STAT. §§ 116.03(1)(a), 15.06(2) (1988).
19. In fact, some members of the board now want to increase its activity in these areas.
20. *E.g.*, the Commissioner may assess administrative penalties for violations of state hazardous waste laws. MINN. STAT. § 116.072 (1988).
21. Telephone interview with Barbara Lindsey Sims, Deputy Administrator, Minnesota Pollution Control Agency (Jan. 18, 1990).
22. Generally, the public must have ten-days notice of any item to be considered by the board. MINN. R. 7000.0500 (1989).

time government employees with career goals and professional commitment to their government work. On the state level, agency heads often make a permanent career out of government work. On both the federal and state level, those who do not regard their work as a permanent career are likely to regard it as an important career stage on which they expect to be judged as professionals. In contrast, the members of a citizen board serve part time. They generally do not identify themselves primarily with their agency service, and such service is less likely to be crucial to the development of their careers. Therefore, they lack the same stake in their government work that heads of standard agencies have.

A corollary to this is that citizen board members do not depend on their positions for their economic livelihood; many receive little or no compensation.[23] The heads of standard agencies generally do depend on their government incomes.

In a standard agency, the head usually has either technical or political expertise, and sometimes has both. Citizen board members may have diverse backgrounds, but in most cases do not necessarily have expertise in the subjects they address. Although individual board members may have political experience, or access to those in high government position, the selection criteria and processes do not guarantee such qualifications.[24]

IV. Role of the Citizen Board in Relationship to Staff

Perhaps the most puzzling aspect of a citizen board is its relationship to the agency staff. In a standard agency, the staff reports to the agency head, who in turn serves as the final authority on all matters. While the head of the agency can delegate certain activities to the staff, such delegations are fluid and can easily be revised. Moreover, the head of the agency has ready access to the staff and can easily draw on its technical and political expertise.

23. For example, members of the Minnesota Pollution Control Agency receive a payment of $48 for each day they spend in meetings or traveling on agency work. MINN. STAT. § 15.0575 (1988), *as amended* by 1989 Minn. Law 3095. Prior to the 1989 amendment, the amount was $35 per day. MINN. STAT. § 15.0575 (1988). No payment is made for time spent in reading or in preparation for the meetings.
A 1981 study of local mass transit boards found most offered their members no pay, one paid $25 per day up to $100 per month, one paid $50 per meeting, and one paid at least $15,000 per year. HAMILTON & HAMILTON, *supra* note 12, at 14–15.
24. *See supra* text accompanying notes 14 and 15. *See also* HAMILTON & HAMILTON, *supra* note 12, at 14.

For an agency headed by a citizen board, the relationships between the agency head and the staff are more complex. An agency with a citizen board may have a staff, but the staff may not report directly to the board.[25] If it does not, staff expertise and resources will not be put at the direct disposal of the citizen board.[26] In some cases, the staff will report to an individual who is appointed as staff head by the chief executive, and who thus carries independent political authority.[27] The role of the board, as compared to that of the staff, may not be clear. Even if the board in theory has the same authority as the head of a standard agency, it may have a different functional relationship to the staff. The board may function in any one of three different roles, and at times may function in more than one of these roles.

One way to conceive of an agency headed by a citizen board is to assume that the powers to initiate and shape proposals properly lies with the staff, and the role of the board by design is only to give or withhold final approval.[28] Under this model, the agency's power lies mainly with the expert or politically controlled staff, and the board exists only to limit extreme exercises of that power.

A second model sees the board as functionally, if not formally, an appellate body, in which the staff makes the decisions and the board hears and rules on objections to those decisions. Again, the role of the board is limited as against that of the staff that carries technical expertise and, sometimes, independent political authority.

25. *E.g.*, The Maine Board of Environmental Protection uses the staff of the Department of Environmental Protection. HASKEL & PRICE, *supra* note 5, at 199–201.

26. At the MPCA, the Commissioner has put one secretary at the direct disposal of the board members. Other than this, board members must rely on the Commissioner's staff to do any work they want done. On a day to day basis, the Commissioner, not the board, sets the priorities for staff activities. While board members can, and often do, request staff assistance on various matters, the availability of staff depends on their work assignments from the Commissioner. Board requests are seldom if ever refused, but they do not always get top priority.

A study of local mass transit boards found that few have even a single independent staff person, although some have a member of the agency staff appointed to perform work for the boards. *See* HAMILTON & HAMILTON, *supra* note 12, at 15.

In contrast, the staff of the Oregon Fish Commission, as described in Price, *supra* note 6, reports directly to the citizen board. The Vermont Environmental Board has some staff of its own, but also uses the staff of another state agency. *See* HASKELL & PRICE, *supra* note 4, at 177.

27. *E.g.*, the staff of the MPCA reports to the Commissioner of the agency, who is appointed by and serves at the pleasure of the governor. The Commissioner is not a member of the agency citizen board and neither chairs nor votes at board meetings.

28. Price, in his study of two citizen boards in wildlife management agencies in Oregon, found a model for an even more limited board role. Although the boards had the legal authority to be agency decision makers and policymakers, the board members and upper staff members all saw the board's role as decision ratification. Price, *supra* note 6, at 371–72.

Under a third model, the board itself is seen as a more powerful body, with its proper role extending to all aspects of agency work. The board works as a final authority on all matters, much like the head of a standard agency, subject only to such delegations to the staff that the board chooses to make. One might adopt this model out of belief that the nature of the agency's work is such that the need for broad-based decisions responsive to more than expert concerns predominates, or if one wants the agency's work isolated from the everyday pulls of direct political accountability.

V. Strengths of Citizen Boards

A. *Articulation of Positions*

Perhaps the greatest value of a citizen board is that it forces everyone wanting to influence an agency decision to articulate clearly what they want and why they want it. With a standard administrative agency, the agency itself and those appearing before it may communicate in a technical or bureaucratic shorthand that is not readily comprehended by most citizens. If the agency is a citizen board, agency staff members, regulated parties, or other members of the public who want the agency to issue a regulation or to decline to do so, to issue or deny a permit, to adopt a policy, to fund a project, or to take some enforcement action must come before a group of citizens and state in commonly understood language what they want and why the board should give it to them.[29]

In my experience, this effect on staff members is particularly striking. Although most staff proposals are granted by the MPCA board, staff members remain concerned about losing a board vote. They even worry about not receiving unanimous approval for their recommendations, about being unable to answer some board member's questions, and about being criticized at the public board meetings. Therefore, they prepare cases thoroughly, sometimes even rehearsing their presentations. This has several beneficial effects.

29. My observations at the MPCA and discussions with staff at that agency strongly support the conclusion in the text. *Accord*, HASKEL & PRICE, *supra* note 4, at 65–66 (MPCA's first director reported that the need to go before the board induced him and his staff to better prepare their positions). *But see* Price, *supra* note 6. Price asked eight top staff managers of agencies headed by citizen boards to choose from a list of six possible choices the biggest contributions which the citizen board made to the effective operation of the agency. One possible choice was "Keeping the full-time staff 'on their toes' by having them justify their recommendations." Price reports that this choice was not one of the two most often chosen but does not report what rank it received. *Id.* at 371–72.

First, it prevents agency staff from hiding incomplete ideas behind bureaucratic gobbledygook. One reason we have judges write opinions in important cases is that in the process of writing, the author is required to think through a decision and its justifications more clearly.[30] Similarly, agency staff who must write out what they want in a document to be reviewed by a board, or at least orally ask the board to do something, are more likely to think through the request clearly. The same analysis applies to members of the public, either regulated parties or other interested persons.

Greater articulation is also important because it makes agency decisions more politically acceptable. The public will be happier with a decision if it can understand what the decision is and why it was made. An agency composed completely of professional staff has less reason to articulate the reasons for its decisions in language that the general public can understand. This is an especially important factor for agencies that deal with highly technical issues that are most difficult for the public. But public comprehension is essential if we are to have a society that exercises its value choices on matters involving technical or scientific knowledge.

B. *Greater Public Voice in Decisions*

Citizen boards provide the public with a greater voice in agency decisions.[31] It is easier for unrepresented members of the public to express their opinions before citizen board members than before a professional staff of a standard administrative agency.[32] In addition, public opinions may be heard more carefully by a citizen agency than by professional bureaucrats.[33] The existence of the citizen board as the final agency decision maker also induces the professional staff of that agency to be more receptive to public input. The staff's need to respond to a citizen board on a regular basis is likely to create a culture of listening to nonprofessionals. In addition, staff members will not want to be embarrassed by having members of the public later complain to the board that the staff did not listen to their comments.[34]

30. Simonett, *The Use of the Term "Result-Oriented" to Characterize Appellate Decisions*, 10 WM. MITCHELL L. REV. 187, 206 (1984).

31. *Accord* HASKELL & PRICE, *supra* note 4, at 66. *But see id.* at 127, 133 (Wisconsin Natural Resources Board discusses few controversial matters at its meetings and does not exercise real decision-making power, so citizens do not attend meetings).

32. *Cf.* Price, *supra* note 6, at 367–68.

33. *Cf.* Checkoway, *supra* note 2, at 105–06 (citizen board members mediate differences between agencies and members of the public).

The increased receptiveness of an agency headed by a citizen board is likely to lead to better decisions based on greater input. Such an agency is less likely to miss or ignore relevant facts or an important constituency in reaching its decisions.

These first two strengths of citizen boards, taken together, mean that agencies with such a body are likely to be more open in both receiving and providing information. Particularly with agencies that take actions affecting many members of the public, such as environmental agencies, these are important features. In order to have the best decisions, the agency must garner information from a variety of diverse sources and must have its decisions laid open for public political review. The presence of a citizen board helps both occur.[35]

C. *Maintaining the Big Picture*

Citizen boards, because of their relative ignorance of the details of an agency's program, can be very useful in forcing the agency to focus on the big picture. This arises in several ways. At times the board can help identify and reconcile inconsistencies in the approaches of various departments within an agency. For example, if one department is strictly enforcing the laws within its jurisdiction with large penalties for all violators and another is more relaxed, rarely exacting a penalty, the difference will be apparent to a board that must approve all enforcement actions. The board can then require the departments to explain the differences in their mode of enforcement, endorsing the difference if it is justified and requiring a change in one or both departments if it is not. This will help the agency deal with its constituencies as a unified whole rather than as a collection of independent departments.

A citizen board also strengthens decisions by giving them a final "smell test." A citizen board is less likely to become bound in the day to day issues before the agency, and is more likely to keep an eye on how a

34. The greater citizen input thus comes from greater public access, and not from the input of the citizen members themselves. Of course, the citizen board members will contribute their own views, and some authors have suggested that this may be one advantage of a citizen board. *See* HASKELL & PRICE, *supra* note 4, at 64. I think it is unrealistic to expect the board members themselves to speak for diverse public interest, on most matters. The access they provide for the public is more important.

35. A multi-member professional agency, whose meetings are covered by an open meeting law, will have some, but not all, of the same strengths by having its decisions made in the open. *See also infra* notes 70–72 and accompanying text (discussion on violation of open meeting laws).

decision will appear to the general public. This can help prevent the agency from becoming the governmental equivalent of the proverbial academic ivory tower, a place where people think about things with only the most tenuous connection to the real world.

None of this is to say that the same kind of focusing function can not be performed by the head of a standard professional agency. The single agency head may also maintain a view of the big picture and require different departments within the agency to recognize and reconcile inconsistencies in their programs. But a single agency head must surmount some structural barriers to playing this role because that person, and that person's staff, are likely to have multiple functions. They will have to lobby for agency programs, make public appearances, and deal with internal personnel matters, as well as make final agency decisions. The board, which concentrates almost completely on final decision-making, will probably have an easier time keeping the big picture in view. Also, the single agency head must develop personal relationships and loyalties with staff in various agency departments that can impede the ability to critique the work at the end point. A citizen board, which is perceived of as much more outside the staff, is less likely to develop such affinities and loyalties.

It is also true that at times a citizen board may perform poorly in this regard. Absorbed in the equities of a single decision, the board may forego its very strength to reach the decision it wants in the case at hand, ignoring the effect of that precedent on the other programs of the agency. Also, to the extent that some investigators have found that citizen board members vote based on special interests, yielding inconsistent decision patterns with low predictability.[36]

In the end, the issue is not whether a single agency head or a citizen board is better at viewing the big picture, but whether both together are better than the former alone. If both a chief of agency staff and a citizen board review all decisions, the combination is most likely to give the best results in the greatest number of cases.

D. *Political Independence in Agency Decisions*

A chronic question in administrative law is whether agency decisions should be highly politicized. Agencies should be responsive to the political will of the chief executive and to the legislative branch. Still, extreme sensitivity to the political implications of administrative decisions, especially in controversial areas that affect many different vocal

36. HASKELL & PRICE, *supra* note 4, at 65.

constituencies, results in inconsistent and unpredictable application of the law. To the extent that greater political independence is desireable for a given agency, a citizen board is likely to provide it.[37]

Because members of a citizen board serve part time, they are more likely to be politically independent in their decisions than is the head of a traditional executive agency. Few members depend on their income from their government work. While they may be paid indirectly in feelings of power and prestige, this does not create as strong a will to please the governor as does the desire to keep a job. This is not to say that all heads of standard agencies always respond to the will of the chief executive; clearly, they do not. Nor is it to say that when the agency head is responsive to the chief executive, that person is acting out of improper self-interest. Obviously executive agencies are designed to create an incentive for obedience to the executive will, and an agency head who ignores that incentive injures not only that person's self-interest but also the system that was designed to create political responsiveness. The result is that where it is preferable to have an agency less tied to the will of the political power holders, the citizen board is the better choice.[38] This political independence will be increased, of course, if the citizen board is an independent agency; that is, if members are appointed for a set term with removal permitted only for cause.[39] An independent citizen board has even greater political independence than the traditional independent agency, again because there is little financial incentive to seek reappointment.[40]

37. *Cf.* HASKELL & PRICE, *supra* note 4, at 64 (overlapping terms should provide "continuity of leadership"). These authors then criticize the Minnesota agency which is headed by a citizen board member because it is not controlled by the governor and has too little political accountability. *Id.* at 64–65. This should not really be a criticism. It is rather the necessary trade off for the advantage of continuity. The authors' real complaint seems to be that board decisions were erratic, and therefore political accountability was being sacrificed without gaining continuity.

38. This is not to say that a citizen board is unresponsive to any pressure. It is more likely to respond to grass roots pressure, but less responsive to the political establishment.

39. Haskell and Price conclude that the Illinois Pollution Control Board, with staggered three year terms, strikes a good balance between political accountability and insulation from politics. HASKELL & PRICE, *supra* note 4, at 38. A board like the MPCA differs in serving longer, four year, terms, although that difference probably amounts to little in practice. Since the part-time MPCA members receive little pay, while the full-time Illinois board members receive substantial compensation, probably more members in Minnesota leave in the middle of a term, yielding the functional equivalent of three year terms.

40. Haskell and Price would find that this arrangement tips the balance too far in the direction of political independence. *See* HASKELL & PRICE, *supra* note 4, at 38, 64, 66. I disagree, partly because I value consistency over time in a regulatory program more highly than do Haskell and Price, and partly because I trust the political process less to provide this consistency.

E. *Legitimizing Agency Decisions*

One of the few studies of citizen boards finds a main value to be in legitimizing agency decisions.[41] The public is more accepting of agency decisions because they are made by respected citizen representatives rather than by career bureaucrats.[42] The question is why this should be so.[43] One answer is that the public has some vague distrust of "government people." Another is that due to the openness to and with the public described above,[44] the public develops greater trust in decisions by citizen boards.[45]

F. *Summary*

The strengths of a citizen board listed above are important, particularly in forcing clear articulation of positions and in increasing public access. Citizen boards also are politically popular. In some areas of state and local government, people seem to prefer having a group of nonprofessionals hold final responsibility for decisions.

VI. Weaknesses of Citizen Boards

The weaknesses of citizen boards are substantial in number and in scope. Many are related to how these boards are used and can be eliminated or reduced by altering or restructuring the way the boards function. The next section describes these weaknesses and suggests how to reduce them.

The weaknesses of a citizen board are grouped in four categories: those that directly affect the substance of the agency decision, those that affect how a decision is communicated and used, those that affect the procedure for reaching decisions, and those that affect staff behavior.

A. *Direct Effects on Substance of Decisions*

1. WEAKNESS IN MAKING TECHNICAL JUDGMENTS

For those agencies where technical issues are prominent, citizen boards are at a disadvantage because they have a hard time understanding, let alone judging, technical issues. In environmental agencies, many issues

41. Price, *supra* note 6, at 371–73.

42. *Accord* Checkoway, *supra* note 2.

43. Actually, it is not clear from the study that the proposition in the text is true from the public's point of view. The investigator claims only that top staff of agencies with citizen boards perceive it to be true. Price, *supra* note 6, at 371–73.

44. *See supra* notes 33–34, and accompanying text.

45. One official suggested that another advantage of an agency with a citizen board is that some of the criticism and lobbying that would otherwise deplete the time and energy of the professional staff is directed at the citizen board. HASKELL & PRICE, *supra* note 5, at 66. Staff will be subject to less lobbying to the extent that people perceive the board, rather than the staff, as the decisive player in the agency action in question.

involve engineering or scientific determinations. In a health agency, the issues may be the medical effects of certain procedures. In any case, a panel of lay citizens is ill equipped to reach decisions on such matters.

Before exploring this topic further, it is useful to distinguish between technical issues, which are difficult for a citizen board and beyond its competence, and related policy issues that are also difficult but well within the board's competence. For example, in the environmental area, the issue may be whether a given piece of pollution control equipment can achieve an emission rate of .2 grams per cubic meter or .3 grams per cubic meter. This is a technical question. Engineers may debate how well the equipment will work, but citizens have no particular competency to settle such a professional debate. It is entirely different if it is clear that there are two possible standards, one of .2 grams per cubic meter, which will carry compliance costs of $1 million, and the other of .3 grams per cubic meter, which will carry compliance costs of $2.5 million. Now the debate is not technical. It is agreed that there are two possible standards, what they are, and what they will cost. The remaining issue is which should be selected; that is, whether the more stringent level of control is justified. This is clearly a policy question, well within the competence of a citizen board. Similarly, the issue of whether to set a standard of .2 grams in face of uncertainty that a facility is technically capable of meeting the standard is a policy question. It is a policy judgment on how to proceed in the face of technical or scientific uncertainty.

On the technical issues themselves, a citizen board must not try to make a decision. In these cases, the citizen board has a role that is analogous to the role of a court in reviewing the technical aspects of an administrative agency's decision. While federal courts for a while imposed procedural requirements on agencies to be sure that all relevant evidence was brought before the agency and considered by it, the Supreme Court ruled in 1978 that federal courts may not require agencies to follow procedures in excess of those dictated by Congress.[46] An agency board will have the same substantive difficulties in reviewing staff tech-

46. The difficulty of this task for the courts gave rise to the well known Leventhal-Bazelon debate over how review of such issues was to be performed by generalist judges. Judge Leventhal took the position that the "necessity to review agency decisions, if it is to be more than a meaningless exercise, requires enough steeping in technical matters to determine whether the agency has exercised a reasoned discretion." Portland Cement Ass'n v. Ruckelhaus, 486 F.2d 375, 402 (D.C. Cir. 1973) (citations omitted). *See* Leventhal, *Environmental Decisionmaking and the Role of the Courts*, 122 U. PA. L. REV. 509 (1974).

Judge Bazelon had a different view. He believed that courts lacking the requisite ability should not scrutinize technically complex agency decisions; rather, the court should require additional procedures to "establish a decision-making process that assures a

nical work that a court has, but is not constrained by the same considerations of institutional allocations of power that drove the Supreme Court decision.[47] Therefore, citizen boards, functioning as the agency and not as a reviewing court, may use procedural requirements to assure full agency consideration of technical matters. In considering technical issues, a citizen board should see if its staff has considered objections to its technical judgment. This generally will require reviewing the procedures the staff used. Even better than conducting a case by case review, the board should establish procedures for the staff to use in considering information on technical matters and objections to its tentative technical decisions. Because these procedures relate to several different issues discussed in this paper, a proposal is set out separately below.[48]

The board does have some additional role on technical issues. It should demand a clear explanation of crucial technical judgments and of those in dispute. Then it should apply a "smell test," and require further staff consideration of those explanations that seem preposterous. It is possible to explain good technical judgments to an interested lay audience in a way that makes those judgments plausible; if the staff cannot provide such an explanation, something is probably wrong with the judgment.

2. DIFFICULTY IN UNDERSTANDING COMPLEX LEGAL AUTHORITY

Citizen boards may not understand complex legal authority found in statutes or rules,[49] and therefore may not act in accordance with the directives of such authority.[50] This is particularly likely to be a problem in areas where the law is inherently complex, such as environmental law.

To some extent, good staff work and education of board members will

reasoned decision that can be held up to the scrutiny of the scientific community and the public." International Harvester Co. v. Ruckelhaus, 478 F.2d 615, 652 (D.C. Cir. 1973) (Bazelon, C.J. concurring). *See* Bazelon, *Coping with Technology Through the Legal Process*, 62 CORNELL L. REV. 817 (1977).

This debate was resolved for the courts when the Supreme Court held that the courts could not generally require procedures in excess of those required by Congress. Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 549 (1978). *See generally* Rabin, *Federal Regulation in Historical Perspective*, 38 STAN. L. REV. 1189, 1307–11 (1986).

47. *See* Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519 (1978).

48. *See infra* text following note 79.

49. The rules may be those of the citizen board, passed at an earlier time, or those of another agency which should affect the actions of the citizen board. For example, the rules of an agency that administers a state's administrative procedure act can define the procedures which citizen boards in other agencies must follow.

50. *E.g.*, a study of one zoning board of appeals found that it often did not follow its statutory authority. Dukeminer & Stapleton, *The Zoning Board of Adjustment: A Case Study in Misrule*, 50 KY. L. J. 273, 324 (1962). The authors do not report whether this is due to a failure to understand that authority or some other reason.

reduce this problem. Staff will be called on to explain the authority in comprehensible terms, which is in any case not a bad exercise for staff of an administrative agency. Moreover, if the law does not make sense to members of a citizen board even when it is explained well, the problem may lie in the law. This may be a sign that the law is not well conceived, or that the law should not be administered strictly according to its terms, but rather with the tempering effect of "interpretation" through a citizen board. This is like our expectation that juries will temper the effect of the laws they apply.

But these suggestions do not dispose of the problem completely. Sometimes a law is designed to address not regular citizens or the public as a whole, but a specialized regulated community that can handle legal complexity. In these cases, the sacrifice of common clarity may gain the advantage of technical precision. In other cases, there may be good reason for a law in which formality prevails over common sense. Citizen boards are not good at handling issues based on this type of legal authority.

3. LIMITED VOICE IN SHAPING AGENCY ACTIONS

Citizen boards have been criticized for being mainly reactive.[51] Staffs decide independently what programs to emphasize and what actions to take, and the board is limited to saying "yes" or "no" at the end of the line. The board, which is formally the head of the agency, has no effective way to influence either staff initiatives or the contours of the proposals brought before it. This gives the agency head only a very rough form of control over the agency.

The first question is whether this problem is a valid basis for criticism at all. That depends on the important question of how the role of the board is conceived. As was discussed above,[52] there are three models of the role of a citizen board. The limited voice of the board is a problem under only one of these models.

Under the first model, which sees agency power lying mainly with the staff and of the board as performing only a final check on extreme exercises of agency power, the fact that the board cannot initiate actions is appropriate and not problematic. This model may be justified on several grounds. The staff has greater expertise on and long term familiarity with agency responsibilities than does the board. In addition, at least for an agency where the staff is headed by a political appointee who serves at the pleasure of the chief executive, the staff is more politically accountable than the board. Sometimes political accountability is desireable.

51. HASKELL & PRICE, *supra* note 4, at 65, 258.

52. *See supra* text accompanying notes 28–29.

Under the second model, which sees the board functioning as an appellate body, the board's limited influence on staff work is also not objectionable. In fact, in order to have the proper distance from staff work to sit as an unbiased appellate body, the board should not be involved in formulating staff initiatives or in the development of staff positions.

It is only under the third model, which sees the board as the central repository of agency power and primary decision-maker, that the limited board influence over staff initiatives and proposals is objectionable.

In order to solve this possible problem, the first thing a board should do is define its own role in decision making. An attorney or staff member associated with a board should describe the full extent of the board's proper role as defined by its legal authority. If this authority confers only final or appellate authority on the board, the inquiry need go no further; the board's limited influence in shaping agency actions is not a problem. If the legislation is not clear, the board must then explicitly address the issue of the role it will play. This will require that the staff educate the board on the issue, that the board members discuss the issue, and finally make a choice. The board may choose to play its full role or, if allowed by law, delegate part of its authority to its staff and play a more limited role. For example, an agency with authority to be the original decision-maker may delegate that task to its staff and agree only to review staff decisions when someone objects to them. Once the decision of the role of the board is made, that decision should be transmitted to new board members through some sort of orientation program. The board may also periodically reexamine the question of the role it will play. What is important here is that the decision on role be made explicitly and that it then be clearly stated.

If the board retains the role of primary decision maker, it must then find ways to have more influence over the proposals brought before it. While the board can direct the staff to initiate work on some matter or to take board advice in shaping some proposal, it is hard for the board to monitor staff work on such matters. Since the board meets only periodically, and since time is usually tight in board meetings, these meetings do not provide a good setting for discussing progress reports on a variety of staff activities. It is even difficult for the board to obtain changes in the contours of a proposal when it is finally presented for a vote. By that point, there is often some time pressure to take action. Staff work will have gone into the proposal as presented, and possibly a few other options that the staff discarded along the way, but it will be difficult to obtain a full and fair staff treatment of some previously unconsidered option. Staff members will be psychologically invested in their proposal. Also, for some actions, such as rulemaking, parts are interdependent and change in one part by the board may require extensive changes in other parts. The only feasible answers may be yes or no to the proposal as a whole.

If the citizen board is truly to be the decision maker, one might go further and suggest that the staff not present a proposal for action to the board, but rather present alternative proposals with the pros and cons of each, and let the board make the decision on its own. In this way, the board is clearly the decision maker and not merely the body that approves a foregone conclusion.

This suggestion has several fatal flaws. First, it ignores the fact that the full-time professional staff views itself in having a stake in outcomes, so it will necessarily choose a preferred course of action. If the board were to pay no attention to staff preferences, perhaps by preventing the staff from identifying and defending its preferences, the staff's sense of professionalism and concern for its activities would be seriously injured to the detriment of not only the staff but also the public which the staff is to serve.

Second, if the policy choices were made by the board without significant staff advice, affected individuals would direct their lobbying activities at the board members and not at the staff. Part time citizen board members lack the time to hear all interested parties fairly and fully. The staff has a much greater capability to perform this task.

Third, staff preferences would almost certainly be stated to the board anyway, but in less open and detectable, and therefore in less debatable, ways. For example, the staff could present the pros and cons of each possible course of action to show that only one selection is reasonable. Yet the staff would be likely to claim that its presentation was not skewing the debate. If the staff openly states its preference, it is easier to evaluate its justifications honestly. Everyone will clearly recognize that the staff is using those justifications to persuade the board to choose its preferred course of action.

Finally, in cases where the head of the staff is politically appointed, the staff is expected to take stands and allow the political system to react.

On the citizen board on which I serve, we tend to conceive of ourselves as the main decision-makers for policy matters,[53] and we have worked out a committee system to alleviate these problems. The board

53. This conception is not formally stated, but is the product of board discussions. The board clearly has statutory authority for this role. Yet the board also acts somewhat as a panel for final approval. In other words, the model for the board's role is not expressly articulated and tends in practice to fall somewhere between these two.

has several committees, each of which corresponds to one of the main divisions within the agency staff. The committees meet with the staff monthly, discussing proposals that are being developed and initiatives for future action. When the system works best, the committee discusses staff proposals at an early stage of their development and then periodically along the way. The staff will bring to the committee issues it sees, alternative ways of resolving those issues, and a statement of the advantages and disadvantages of each resolution. Committees will also hear comments from interested parties. Because the issues are brought to the committee early, before the staff is committed to one course of action, the discussion of alternatives by the staff is honest and the staff seems willing to accept committee suggestions that are backed by articulated reasons.

This committee process does have several disadvantages. It is a substantial drain on time for board members and staff. The problem has proved more severe for the board. Committee meetings take up a full day and nearly double the number of hours board members must spend at meetings. There has been some offsetting compensation; many items now seem to go more smoothly at board meetings so they are somewhat shorter. Still, attendance at committee meetings has been sporadic. Yet here, as with other matters, the world is run by those who show up, and in the majority of cases, a board member with a strong interest in a matter will use the committee process to gain increased influence over the shape of proposals. Staff members seem to have less objection to the time they spend with the committees; they feel compensated by the increased likelihood that their proposals will win board approval.

Committees have no official status within the board, so they are not delegated any official responsibility for board work. Thus, favorable committee action is no guarantee of favorable board action, and there have been cases where the committee work is in vain; that is, where a proposal is still rejected because the majority of the board disagrees with the committee's position on a matter or because a concern unforeseen in committee deliberations surfaces before the full board. To help avoid this, committee agendas are published in advance and meetings are open to all board members and scheduled so that all may attend.[54]

Committees also pose the danger of creating too cozy a relationship between staff and board. Board members must maintain enough personal distance from the staff to be able to say no to proposals in which staff members are heavily invested.

54. All committee meetings are publicly noticed and are open to the public, so they meet the procedural requirements of the state's Open Meeting Law, MINN. STAT. § 471.705 (1988) and MPCA Meeting Rules, MINN. R. 7000.0500 (1989).

4. PAROCHIALISM IN DECISION MAKING

Several observers of citizen boards have concluded that board members tend to base their decisions on the needs of the area[55] or constituency[56] from which they come, rather than on a fair balance of the interests at stake. One study in particular found that representatives of regulated firms were heavily represented on the MPCA and that these board members voted based on narrow interests.[57] I have observed little of this in my time at the MPCA. The regulated community now has little representation on the board. There are some patterns in voting, mainly in some members from small towns and rural areas being more likely to agree with small town governments and less likely to give big cities what they want.[58] But this is not as firm a pattern as is presented in the earlier literature. Perhaps the difference is just one of chance variation over time, or perhaps the maturation of the agency has brought the change.[59]

In any case, parochialism in voting patterns is a danger and would be a significant disadvantage. While each citizen board member should bring a different perspective to the job, each should not bring a firm constituency. The appointment process is not designed to see that all constituencies are fairly represented in proportion to their interests, nor could it be given the limited size of any workable citizen board.

There are two ways to guard against parochialism. One is by educating board members to a culture of agency mission. The other is by appointing people of broad enough vision to see beyond the interests of the constituency from which they came. This relates to the next problem, the quality of appointments.

55. Price, *supra* note 6, at 274–76.

56. HASKELL & PRICE, *supra* note 4, at 37, 65, 76, 244. It is not clear if these authors found that the board members were voting based only on the interests of their full-time employers, or if they only found that the voting patterns of these environmental agencies were not sufficiently pro-environmental based on some independent standard.

57. *See* HASKELL & PRICE, *supra* note 4, at 57, 65, 258.

58. I live in Minneapolis and work in St. Paul, and I assume others think me too sympathetic to the needs of large cities.

59. Board members may also have conflicts of interests with their jobs that lead to voting with the interest of their employers. *See* HASKELL & PRICE, *supra* note 4, at 51. Good legislative and administrative controls on the appointment process and good legal advice to board members as they vote in cases with potential conflicts of interest should minimize this problem.

5. QUALITY OF APPOINTMENTS

As with most things, on a citizen board the work is only as good as the people who do it. Of course, this is as true for an agency with a single professional head as it is for an agency headed by a panel of citizens. The difference is that the appointments to a citizen board probably get less attention from the appointing authority and less scrutiny by confirming bodies and by the general public. For these reasons, the appointments are more likely to be used to pay political debts. Since the work of citizen boards is not as readily subject to political review as that of the typical agency with a single head,[60] it is even more important that members of the board should be capable of and self-motivated to produce good work. If citizen boards are to have serious authority and are to exercise it in a reasonable manner, they must be populated with able and committed people. When it comes to appointments, attention must be paid.

6. LIMITED POLITICAL ACCOUNTABILITY

Citizen boards have been strongly criticized because of their limited accountability to the appointing chief executive.[61] This results in their being less responsive to political changes than are agencies headed by a single executive appointee.

To a significant extent, this feature derives from the fact that most citizen boards are structured as multi-member independent agencies and would apply to any agency with that structure, whether the members were citizens or full time commissioners. Still, citizen boards may have an even greater tendency to be politically independent, in part because the members have no tradition of government loyalty and in part because board members do not rely on their positions for their livelihood, so they have only a limited financial stake in pleasing the chief executive enough to gain reappointment.

While political independence can be counted as a disadvantage, it should be seen as a trade-off for gaining consistency over time. As discussed above,[62] this is an important advantage for certain types of agencies. In addition, there is no reason to assume that a citizen board is oblivious to political considerations. In my experience, the citizen board members are very sensitive to the fact that the legislature can and does react to its decisions, both by legislative enactments and by appropriation decisions. Lest any board member forget about these means of political oversight, legislators have shown no hesitancy to remind us of their interests in various matters. The chief executive also responds to agency actions by deciding which agency requests to include in the governor's budget proposal.

60. *See supra* text following note 38.
61. HASKELL & PRICE, *supra* note 4, at 64–66, 76, 110, 144, 245, 256.
62. *See supra* notes 39–41 and accompanying text.

B. *Effects on How a Decision Is Shaped or Used*

1. LACK OF CLARITY IN COMMUNICATIONS FROM HEAD OF AGENCY TO AFFECTED SEGMENT OF THE PUBLIC OR THE REGULATED COMMUNITY

Both the public and members of the regulated community depend on prior agency actions as precedent. These prior actions should indicate what the agency will do in similar future situations, how to conform their behavior to the requirements of the law as interpreted by the agency, and how to shape requests or arguments to the agency.[63] If a multi-member board is head of an agency, the value of prior decisions as precedent is reduced for two reasons.

First, the agency as a whole may not agree on any reasons for its actions. Different members of the agency may have different, and even conflicting, reasons for voting together to form the prevailing majority on any matter. The result will be votes based on shifting coalitions that produce little predictive value. A line of agency decisions will appear inconsistent[64] and become comprehensible as precedent only if the reasons of each board member are articulated.

Second, it is more difficult for a multi-member agency to express the reasons for its actions. Citizens may be more reluctant than professional bureaucrats to express the reasons for what they do, although the opposite may also be true. While citizen board members may be less articulate and more fearful of talking in public, professionals may have a greater tendency to hide the ball to avoid political opposition. Also, in the private sector, from which many citizen board members come, there is no tradition of having to explain the reasons for actions in public.

Most importantly, a citizen board may lack a good mechanism that allows it to make a record of the reasons for its decisions. Board members could be asked to state their reasons orally, but that is not calculated to produce a record that is carefully thought out nor one that is readily

63. Dukeminier & Stapleton, *supra* note 51, at 322–24, found that presentations before a zoning board of appeals which they studied in depth were unfocused in part because people did not understand the precedents of the board.
64. Haskell and Price argue that decisions of citizen boards tend to be more inconsistent over time than those of agencies with single heads. *See* HASKELL & PRICE, *supra* note 4, at 256, 258.

accessible. For a written statement of reasons, part time board members must rely on their staff. The staff can draft a statement of reasons prior to the board meeting, giving what the staff members see as the reasons for a proposed decision. The problem with this is that even if a majority of the board agrees with the proposed decision, all or some members of that majority may not agree with the given reasons. It is infeasible to redraft the reasons during the meeting to coincide with those of the members, even if those reasons are stated.

An alternative is to have the staff initially draft the reasons for a decision after it is made, based on the reasons board members have given for their votes. Again, this is infeasible, partly because some members may vote without stating their reasons. In addition, it means that every issue will come up for vote at least twice, once for the initial discussion and vote and once for the vote on the statement of reasons. This doubles the work of board members and staff and gives opponents of the initial board vote an automatic second shot for no substantive reason.

A third alternative is for the staff in each case to present to the board several possible courses of action, with a statement of reasons supporting each one. The problems with this solution are also severe. Staff members committed to one position would have to write reasons for alternative positions. It is easy to anticipate that reasons for the less favored alternative would be poorly presented. In my experience, it is the rare staff member who can see the weaknesses of a chosen position as clearly as the strengths. Moreover, this will not fully cure the problem when the board agrees with the staff recommendation but some or all members disagree with the recommended reasons.

Probably the best solution is to have the staff draft a statement of reasons prior to a decision, to call upon the board to express not only its vote on a matter but also the reasons for that vote, and then ask for staff redrafting only if the board members disagree with he proposed reasons.[65] This will require some education of both board members and staff. Board members will have to learn to focus on and articulate the reasons for their actions as well as the end result. Staff members will have to learn to express the real reasons behind a decision. This will be especially difficult in cases where the staff thinks that the real reasons are legally impermissible or politically distasteful, and prefers obfuscation.

65. The MPCA uses a variation of this procedure. The staff drafts a statement of reasons for each action it recommends to the board. In most cases, the board adopts both the staff proposal and the statement of reasons. Occasionally, the board asks for a minor change in the reasons during a board meeting, then votes for the suggested action. If the board votes against the suggested staff action, the staff is directed to write reasons that reflect those of the board and present the reasons for a vote at the next board meeting. This is an awkward process. It usually entails a lot of scurrying around after a board meeting, with staff members trying to get board members to state why they voted as they did. Then a staff member who worked on the project and had recommended the rejected action must write up a statement of reasons for not taking the action and possibly for taking some other action. This is quite difficult for the staff member who has already made a commitment to the rejected position.

All of the problems discussed above are magnified when the board takes action with some members absent. The majority coalition in one decision may not even be the majority on the next similar issue when all members are present. Or the reasons of the missing member will be left out but will affect later decisions.

The process of shaping a statement of reasons to coincide with the real reasons for a decision is much simpler with a single agency head, who can informally discuss the language of a resolution or other action with the staff and where the reasons of only one person need be expressed.

Finally, some observers find that a citizen board is less likely than a single agency head to produce a consistent line of decisions.[66] This may be due in part to the shifting coalition problem identified above, or to the greater failure of citizen board members to understand and base decisions on the main as opposed to peripheral issues, or to their lesser familiarity with their own precedents, or to a lesser sense of the importance of precedent in an agency program.

2. LACK OF CLARITY IN COMMUNICATIONS FROM HEAD OF AGENCY TO STAFF

Staff members, as well as the public and the regulated community, need to know the reasons the board acts as it does and what the board is likely to do in the future. Staff members must carry out many of the actions for the board, and must understand these actions in order to implement them. Staff members will also want to propose actions that the board will approve; no one likes to lose. The same factors that cloud communications from the head of the agency to the public will interfere with the directions to the staff.

An additional factor exacerbates this problem. I have observed in my work on a citizen board that some staff members are too sensitive to a few negative votes on proposals they bring before the board. Staff members will sometimes alter their behavior on future proposals to meet the objections of a minority of board members. While this indicates that the staff is listening closely to board debates, and can help prevent future problems as that minority gains strength, it can also disenfranchise the

66. *See* HASKELL & PRICE, *supra* note 4, at 256, 258.

majority of board members. For example, if the board approves a stipulated enforcement agreement that includes a penalty, but two board members vote against approval because they thought the penalty too high, the staff might seek lower penalties in negotiating the next stipulated agreement. When the second agreement is brought to the board, it probably will not be clear that the penalty was lowered in this way, so approval is again likely, even though a majority of board members would have approved and even preferred higher penalties.

To avoid this problem, staff members must be careful not to alter their behavior too much in response to a few negative votes. It is important not to give in to the understandably human desire to have unanimous approval. At the same time, the staff should try to remain sensitive to minority votes as a possible signal of future directions. This means that the staff must understand the dynamics of the board and which members are influential on what matters. In these areas, upper level staff managers must take the responsibility for acquiring the information and imparting it to their subordinates. The managers must attend all board meetings and talk regularly with board members about their interests and concerns.

3. LIMITED ABILITY TO MONITOR STAFF COMPLIANCE WITH BOARD DIRECTIVES

A related problem is the board's inability to monitor closely staff compliance with its directives. These may be directives as to what type of actions to initiate, how to change informal staff procedures, which programs should receive emphasis, and other matters. This is likely to be a greater problem in those agencies where the board does not hire and fire the head of the staff[67] or where the board does not supervise the staff budget. Even in such agencies, staff good faith can eliminate this problem, but there is no structural mechanism for insuring its solution.

If the board does not have an independent staff, the best solution is to designate one high level staff person to have the responsibility of reviewing both staff reports to the head of staff and staff proposals to the board for consistency with board directives, and to review each division's work for such consistency. That person must be socialized to and rewarded for loyalty to the board rather than to the staff when there is a conflict. The person's role need not be to prevent the staff from ever deviating from a past board directive, but only to assure that such deviations are clearly articulated before the board for its approval.

67. *Accord* Price, *supra* note 6, at 369.

C. *Effects on Procedure*

1. LONGER DECISION-MAKING PROCESS

The presence of a citizen board draws out the time it takes to reach a final decision.[68] At the MPCA, the staff must go through its normal process to reach a decision, then it must write up a board item explaining the issue and the decision it recommends, give public notice that the issue is coming before the board, and wait until a board meeting before the agency decision is made. If the board disagrees with the staff proposal, the process will be even longer. The need for written board items, public notice, and the wait for monthly board meetings all prolong the decision-making process.

There is no cure for this problem, but it rarely causes significant hardship and in fact has some advantages. Staff members must adjust to working with more lead time for their decisions, and that is a good thing. Also, staff members are forced to always be thinking ahead. That is also good. Finally, the staff can more easily resist outside pressure to rush decisions and avoid the danger that wisdom will be lost in the rush. For cases where a swift decision is necessary, the board can be called for an emergency meeting. To meet foreseeable emergencies, the staff should obtain a delegation of decision-making authority from the board, but these delegations should be narrowly drawn to avoid unduly bypassing board authority and should be subject to ratification or review by the board at its next regular meeting.

2. TENDENCY TO IGNORE OPEN MEETING LAWS AND PROHIBITIONS ON *EX PARTE* CONTACTS

Most states and the federal government have statutes that require meetings of administrative agencies to be open to the public.[69] Although the precise requirements vary among the statutes, they typically require that any meeting at which a specified number of board members is involved in certain types of activities be held in public and after public notice.[70] In addition, statutes and regulations may prohibit agency mem-

68. *Accord* HASKELL & PRICE, *supra* note 5, at 65, 256, 258.

69. Fossy & Roston, *Invalidation as a Remedy for Violations of Open Meeting Statutes: Is the Cure Worse than the Disease?*, 20 U. FLA. L. REV. 163, 163–64 (1986) and 5 U.S.C. § 552b (1982).

70. *E.g.*, the federal law, called The Government in Sunshine Act, requires that meetings be open to the public and defines a meeting as "the deliberations of at least the number of individual agency members required to take action on behalf of the agency, where such deliberations determine or result in the joint conduct or disposition of official business." 5 U.S.C. § 552(b)(3) (1982). In contrast, the Minnesota Open Meeting Law, MINN. STAT. § 471.705 (1988), does not specify which meetings are covered, but the supreme court of the state has held that the law applies to gatherings which include at

bers who must make the decision in formal adjudicatory proceedings from receiving *ex parte* contacts on the subject of a proceeding that is in progress.[71]

Citizen board members probably have a tendency to ignore these requirements. Citizen board members are, in general, less sensitive to the fine points of legal requirements than are regular bureaucrats. As to open meeting laws, rules forbidding private discussion of matters before a board are peculiar to government; they do not exist in the private sphere. In addition, one reason for having citizen board members is so that they will keep in touch with the public; it is hard to make them understand that they can discuss board issues with members of the public, but not with each other, at least not when a group large enough to make a decision is present. Also, board members quite naturally become friendly. They are thrown together regularly. Often they stay in the same hotel when working on board business. Silence on important board matters is unnatural. As to prohibitions on *ex parte* contacts, it is difficult for those untrained in the concepts behind formal adjudicatory proceedings to differentiate between situations in which talking to the public and interested parties is not only permitted but encouraged, and those in which such conversations are forbidden.

The only way to mitigate this problem is through regular and repeated education of board members. I do not think board members set out purposely to violate open meeting laws, so education should help.

3. LACK OF LEGAL ADVICE

Open meetings laws present another problem for citizen boards. Some of these laws apply even to provision and discussion of legal advice. In other words, they require that in at least some instances, the board as a group can receive legal advice only in a public meeting. One law, for example, allows closing a meeting to receive legal advice only if that

least a quorum of members of an agency or a committee or other subgroup of an agency at which members "discuss, decide, or receive information as a group on issues relating to the official business of that governing body." Moberg v. Indep. School Dist. No. 281, 336 N.W.2d 510, 518 (Minn. 1983).

71. *E.g.*, 5 U.S.C. 557(d) (1982); MINN. R. 7000.1000 (1989) (allowing MPCA board members to engage in communications regarding the subject matter of a "contested case" formal adjudicatory procedure in only two circumstances: (1) a written communication must be sent to all parties to the matter and to all other agency board members, and (2) an oral communication is permissible only at a public meeting after reasonable notice of time and place to all parties and to all other agency board members).

advice relates to litigation in progress.[72] Even if the law allows closing a meeting that may be politically difficult to do in a jurisdiction with an open meeting tradition.

Here is an example of the type of problem that occurs. The staff brings a matter before the board that involves the interpretation of a statute or regulation. This may occur, for example, in deciding whether the agency can apply a legal limitation to someone seeking a grant or assistance, in determining whether the agency has authority to include a condition in a license or permit, or in deciding whether the agency has power to enact a rule on some matter. At the board meeting, an affected party may challenge the staff's interpretation of the law. The board will then turn to its lawyer to ask which argument on the law is right, that of the staff or that of the challenging affected party. Assuming there is not one clearly correct interpretation, the normal answer would be to point out the strengths and weaknesses of each proposed interpretation. But the attorney will be reluctant to do this in a public meeting, because the objecting party is present, may sue the board if it adopts the staff interpretation, and may use the board attorney's analysis against the board in that lawsuit.

One response to this hypothetical problem is to say that it is not a problem at all. While normally we think that the attorney for one side of a dispute should not supply the other side with its arguments, it may be that this is not the case when the first party is a public agency. Everyone should know the strengths and weaknesses of the government's position, both because that is best for the political process and because, even as to legal process, the government deserves to win only if it is right and not if it is simply the most clever litigant. But attorneys will still be hesitant to function in this way; it runs so counter to their training on how to win and to the usual notion behind the attorney-client privilege that you do not have to make your legal advice available to the other side.

One way around the problem is to let board members get individual legal advice. Clearly each board member can consult alone with the board's attorney without violating the open meeting law. Board members could call the attorney on upcoming items on the board agenda, or the attorney could call board members to advise them on legal issues the attorney sees on the horizon. Neither method is likely to work well. Board members are unlikely to see the legal issues ahead of time. Many

72. MINN. STAT. § 471.705 (1988), as interpreted in Minneapolis Star & Tribune Co. v. Housing & Redevelopment Authority, 310 Minn. 313, 323, 251 N.W.2d 620, 625 (Minn. 1976), and Northwest Publications, Inc. v. City of St. Paul, 435 N.W.2d 64 (Minn. Ct. App. 1989).

times, even the board's attorney will not foresee legal objections which affected parties may raise at the board meeting. In addition, individual calls are time consuming.

My experience has been that in these circumstances, the lawyers for the board tend to give accurate but incomplete legal advice. They will say something like, "I think the staff's position is legally defensible," without explaining its legal weaknesses. They may seek out the one or two lawyer members of the board during a break to give a fuller explanation. Sometimes they go beyond this, giving full legal advice in public. Interestingly, at these times the sky has not fallen and the agency has been no more vulnerable to legal challenge than at other times.

Therefore, my general preference would be to have full legal advice given, even if it is in public. When litigation really is pending or imminent, I would close the end of the meeting to discuss the matter in private. This could cause some complaints, mainly from the press, but I think we would all survive.

A citizen board has another problem related to the attorney-client relationship: if legal advice is given in such a way that an attorney-client privilege exists, how is it waived? Normally, the privilege is waived if the client reveals the advice.[73] What happens if only one board member reveals the advice; is there waiver of the privilege? There should not be. One member of the board should not be able to affect the legal rights of an agency that can normally act only through majority vote of a multimember board.[74]

4. DIFFICULTY IN UNDERSTANDING NEGOTIATED SETTLEMENTS

Any agency action that results from negotiations with a single or a few parties is hard for a citizen board. The board must negotiate through its staff. When the staff seeks board approval for a negotiated settlement, for example on some enforcement matter, either the staff must ask the board to accept the terms of the settlement based on faith in the staff and the negotiating procedure, or it must explain the basis for various terms, such as compliance time allowed and penalties for violations.

In my experience, the staff have been reluctant to articulate the basis for terms in a negotiated settlement. Staff members are likely to say they considered the duration and severity of a violation, the culpability of the violator, the costs saved by the violator, etc., without explaining precisely

73. MCCORMICK ON EVIDENCE 221 (E. Cleary 3d Ed. 1984).

74. *Cf.* the rule for corporate boards, that an individual member lacks authority to bind the organization. *See* Z. CAVITCH, 6 BUS. ORG. WITH TAX PLAN. § 125.01 (1988).

how they considered each of these factors or how that consideration translated into settlement terms. The staff claims that negotiation requires room to maneuver and that clear articulation of the basis of settlement terms is inconsistent with the give and take of negotiation. To some extent, this is true. The terms of any good settlement will depend on which matters are of particular importance to the other side. Some violators, for example, will pay higher penalties if they can gain a longer time to comply; some will want the opposite. No formula can express the tradeoff between time and money as it applies to all violators. On the other hand, case-by-case negotiations can lead to inconsistent results. It is the board's duty to oversee settlements to prevent such inconsistency and to supervise the general direction of settlement activities.

Therefore, I recommend that board members require the staff to articulate the basis of settlement terms, and err towards more rather than less precision.

D. *Effects on Staff Behavior*

1. DIFFICULTY IN PROVIDING ADEQUATE BACKGROUND INFORMATION

In some cases, before a lay board can reach a reasoned decision on even nontechnical issues, it will need substantial background information. It is difficult to find the time and opportunity to provide such information to a citizen board that meets only occasionally and that needs most of its meeting time to make decisions. This can be a problem not only for board members who want to know more before making a decision, but also for staff and outside parties, who want board members to have more background to help them understand their respective positions.[75]

One education technique is providing written background materials. This has several problems. Someone must take time to prepare good educational materials. I have sometimes found that material provided by staff or outside parties consisted of copies of published materials prepared for other purposes. As a result, I needed to read through a lot of irrelevant material to get to what I needed. Also, there is a limit on what even hard-working board members will read, and not all will read even that much.

Another education technique is through presentations at board meetings. This takes up board meeting time, which is often at a premium. As an alternative, the presentations can be done in committee. While they

75. *Accord* Price, *supra* note 7, at 374–75 (drain on staff time to educate board members is one of the major drawbacks of citizen boards).

then reach the most interested board members, they do not reach all who will vote on a matter.

The best solution is to use a combination of the techniques, choosing among them as appropriate.

One pet peeve of mine in the background education area is what I have viewed as a serious abuse of education time by some outside parties. I have seen numerous regulated firms request time to provide background education, then use that time for a slick public relations presentation on their activities, often totally unrelated to the issues before the agency. They seem to think that if they convince us that they are good businesses, they will get the permits, licenses, or whatever else they want, even if they ignore the legally relevant standards. I do not think this approach works with me or my colleagues.

2. GAME-PLAYING IN STAFF PRESENTATIONS TO THE BOARD

Staff members presenting a matter to the board want the board to approve the staff suggestion. Sometimes, staff presentations can become skewed to accomplish this goal. The staff may decide when to present a matter to the board based on predicted attendance, choosing to present or withhold a matter when some board members will be absent. The staff may withhold information on the disadvantages of a staff proposal, concerned whether board members would strike the same balance of advantages and disadvantages as the staff.

All of this is a result of a desire of the staff to win, and a fear of the criticism that seems inherent in losing before the board. We would not be better off if the staff did not care what happens. If staff members thought of themselves as mere information providers for the board, with no stake in the outcome, the impetus to thoroughness and dedication to the agency's mission would probably be diminished.

One solution would be to redefine the role of the staff. Instead of presenting proposals for board approval, it would only present alternative courses of action and the board would choose among them. Although this sounds fine in theory, it will not work for a multitude of reasons. First, it is unrealistic to expect a committed, professional staff working on a matter not to develop a position and try to defend it. If they were told to develop alternatives but not a position, one of two things would happen. Either the best staff would leave, or the staff would present poor alternative 1, poor alternative 2, and only reasonable alternative 3. Second, in those agencies where the staff is headed by a political appointee answerable to the chief executive, it will be expected to develop a position.

Third, board members do not really want free, unguided choices among alternatives. They prefer the guidance of the expert staff.

To some extent, the problem should be mitigated by developing a staff ethic of professionalism that tells the staff to choose and present one proposal but that also tells the staff that if it has done its work correctly, it has considered the disadvantages of that proposal and rejected them for good reason, and that those disadvantages and the reasons for rejecting them can and should be explained to the full board. In addition, the committee process can be used for early, more open exploration of alternatives.[76]

The real problem arises in those cases in which the board is unhappy with the staff's proposal but frustrated because it cannot fully see the alternatives. In this case, the matter should be remanded to the staff with instructions to develop alternative proposals. A high level staff person, with primary commitment to the board,[77] should supervise the staff work on remand and see that in these few cases, clear alternatives are fairly presented.

VII. Suggestions

A. *Types of Agencies*

Citizen boards are best used where their main advantages are important, that is where communication to and from the public is especially important. These are agencies making decisions with a high degree of social value choice and where a broad spectrum of members of the public wish to participate in reaching this decision. These factors explain the extensive use of citizen boards in environmental and land-use agencies.

B. *Role Definition*

The role of a citizen board must be clearly defined by legislation, by rule, or by clear statement of the board itself. Several of the disadvantages of these boards are exacerbated by unclear role definition. The board may be the main decision maker, a final oversight board, or an appellate board. It may also play a combination of these roles. For example, given the greater need for public information and input on policy matters, and the limited capability of a citizen board on technical issues, the board might be the main decision-maker on policy matters and play an oversight role on technical matters. I recommend this as the optimum role.

76. *See supra* text accompanying notes 54–55.
77. *See supra* text accompanying note 68.

C. *Policy Choices through the Committee Process*

The committee process should be used to allow the board an early and effective role in choosing among alternative policies.[78] Board members must take their committee responsibilities seriously and the staff should work carefully with the committees. All committee policy choices should be considered by the full board in the final decision or at intermediate points along the way.

D. *Technical Decisions through Oversight or Appellate Role*

A citizen board should not decide specific technical issues. It does have three functions as to staff proposals on technical matters. First, the board should review staff procedures for deciding technical matters, and most importantly staff procedures for gathering technical information and for hearing and considering objections to initial staff positions. The board should see that the staff gathers information from a variety of sources with diverse interests. It should also be sure that staff positions are made available to interested parties before they are presented to the board, so that the staff can take and react to comments.

Second, the board should hear objections to the staff's technical decisions, but only after those objections have been presented to the staff. The board lacks competence to decide most arguments on technical matters. In addition, neither staff nor outside parties should have to react to new technical positions for the first time in the context of a formal board meeting. New technical issues raised at a meeting by outside parties or by the staff should be remanded for further staff consideration before they are brought to the board.

Such a procedure will take the burden of technical decisions off the board, but is subject to potential abuse. A party unhappy with a staff proposal and anxious to postpone its adoption could wait until the board meeting to state its objection, knowing that this will necessitate a time-consuming remand. To avoid abuse, the remand procedure should be subject to two limitations. Minimalist objections, subject to easy disposition, should not be remanded. Objections that could have been raised prior to the board meeting should not be remanded and should not even be considered. In other words, if the staff notified a third party well before a board meeting of the staff position on a technical matter, and that third party could have brought its objections to the staff but waited until the board meeting, the board should ignore the comments. Similarly, if

78. *See supra* text accompanying notes 54–55.

a third party raises an objection prior to a board meeting, the staff must respond directly to that party and not wait until the meeting. All these procedures should be set out in rules or guidelines or through some means that will provide notice.

Finally, board members should be willing to subject even technical decisions to a smell test. If a technical position seems completely out of whack, either it is a poor position or it has been poorly explained. Board members should demand either a better position or a better explanation.

E. *Staff Member to Oversee Board Directions to Staff*

The staff will naturally develop some affinity to its own positions as opposed to those of the board. To prevent this from going so far as to interfere with the board's ability to have its reasonable requests and instructions honored, one high level staff person should be assigned responsibility for overseeing staff response to board directions. This person can also educate new staff members on the role of the citizen board and the relationship between the board and the staff. Just as important, the person should develop a good enough working relationship with board members to tell them when and why their demands on the staff are unreasonable and help work out an alternative way of handling the issue at hand.

VIII. Conclusion

Citizen boards provide significant advantages in making government decisions clearer to the public and giving the public greater access to the decision-making process. Citizen boards are also awkward and cumbersome. This article sets out ways to reduce the problems presented by citizen boards so that they can be made to operate more smoothly. The advantages presented by citizen boards should be preserved while their disadvantages are reduced.

STATE OF MINNESOTA

Office of the Attorney General

RECEIVED
JUL 13 1995

TO : RON HARNACK
BWSR

DATE : July 12, 1995

FROM : MATTHEW B. SELTZER
Assistant Attorney General

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

SUBJECT: **Open Meeting Law**

I enclose for your information a copy of the decision of the Court of Appeals filed July 11, 1995, in Rupp v. Mayasich. This was an action by a trucking company against members of the Minnesota Transportation Regulation Board. The trucking company claimed a violation of the open meeting law on grounds that notice of a special meeting of the Board was posted on a bulletin board that was not reasonably accessible to the public. The district court found no violation of the open meeting law, but the Court of Appeals reversed for determination of whether the bulletin board was reasonably accessible to the public.

This opinion highlights, once again, the importance of precise compliance with the particular requirements of the open meeting law. I understand that the principal bulletin board of BWSR is in the reception area at your office and thus, to that extent, it would seem to be more accessible to the public than the bulletin board in the Rupp case. The key, of course, is to make sure that the notices required by the open meeting law are given and that the principal bulletin board is used as and when required by statute.

As ever, if you have any question about the requirements of the open meeting law, or if I can be of assistance in any way, please let me know.

Attachment

cc: Jim Birkholz w/encl.
Bruce Sandstrom w/encl.

SELT:AE9

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STATE OF MINNESOTA
IN COURT OF APPEALS

C0-95-66

Dakota County
District Court File No. C5948632

Schumacher, Judge

William L. Rupp d/b/a Rupp Trucking, et al.,

Appellants,

v.

Lorraine E. Mayasich, et al.,

Respondents.

John D. McKenzie
1360 Energy Park Drive, #310
St. Paul, MN 55108

Hubert H. Humphrey III
Attorney General
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St. Paul, MN 55101

Filed: July 11, 1995
Office of Appellate Courts

S Y L L A B U S

For purposes of the Open Meeting Law, a principal bulletin board must be located in a place reasonably accessible to the public.

Reversed and remanded.

Considered and decided by Schumacher, Presiding Judge, Lansing Judge, and Holtan, Judge.*

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* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

O P I N I O N

SCHUMACHER, Judge

William L. Rupp d/b/a Rupp Trucking, David Kurk, Inc., Arrowhead Van & Storage Co., and Speedway Moving & Storage, Inc. (Rupp, Kurk, Arrowhead, and Speedway) appeal the grant of summary judgment, arguing that the district court erred by concluding that respondents Lorraine E. Mayasich and Eldon E. Keehr did not violate the Open Meeting Law. We reverse and remand.

FACTS

Mayasich and Keehr were members of the Minnesota Transportation Regulation Board (Board). In late June 1992, Lisa Peterson, a Minnesota Trucking Association representative, called Mayasich and asked her to call a meeting of the Board so carriers could voice their concerns about the 1992 Motor Carrier Reform Act. The legislative changes required hundreds of motor carriers to file for new certificates. In response to Peterson's request, Mayasich chose to hold a special meeting on June 29, 1992.

On June 25, 1992, Mayasich posted notice of the June 29 meeting for regular route carriers on the Board's primary bulletin board. The bulletin board was located in a hallway off the reception area in the Board's office suite. There was a half-door to this hallway, which was sometimes closed. On June 26, Keehr posted notice of the meeting for irregular route carriers on the same board. The Board also mailed out a weekly calendar to anyone who had signed up to receive it. The calendar provided that last minute scheduling of meetings would be posted on the bulletin board in the Board's office. The meeting was conducted as scheduled, on

June 29, 1992, with both regular and irregular route carriers in attendance.

Rupp, Kurk, Arrowhead, and Speedway sued Mayasich and Keehr, alleging Open Meeting Law violations. Both parties moved for summary judgment. The district court granted the motion in favor of Mayasich and Keehr, concluding that notice was posted on the Board's principal bulletin board in compliance with the statutory requirements. Rupp, Kurk, Arrowhead, and Speedway appeal.

ISSUE

Did the district court err in determining that Mayasich and Keehr did not violate the Open Meeting Law when they posted notice of a special meeting on the Board's principal bulletin board?

ANALYSIS

On appeal from summary judgment, this court decides whether there are any genuine issues of material fact and whether the district court correctly applied the law. Offerdahl v. University of Minn. Hosps. & Clinics, 426 N.W.2d 425, 427 (Minn. 1988). The construction of a statute is a question of law, fully reviewable by an appellate court. Hibbing Educ. Ass'n v. Public Employment Relations Bd., 369 N.W.2d 527, 529 (Minn. 1985).

A state board must "post written notice of the date, time, place, and purpose of" a special meeting, except a special meeting for which the notice requirement is otherwise established by statute or an emergency meeting. The posting must be

> on the principal bulletin board of the public body, or if the public body has no principal bulletin board, on the door of its usual meeting room.

Minn. Stat. § 471.705, subd. 1c(b) (1990).[1]

Rupp, Kurk, Arrowhead, and Speedway contend that Mayasich and Keehr violated this provision when they posted notice of the Board's special meeting on the Board's principal bulletin board that was located in an interior hallway off of the reception area.

The Open Meeting Law was enacted for the public benefit and must be given a liberal construction in the public's favor. Claude v. Collins, 518 N.W.2d 836, 841 (Minn. 1994); State by Archabal v. County of Hennepin, 505 N.W.2d 294, 297 (Minn. 1993). The purpose of the Open Meeting Law is to (1) prohibit secret meetings where it is impossible for an interested public to become fully informed or to detect improper influences; (2) assure the public's right to information; and (3) afford the public a chance to express its views. Claude, 518 N.W.2d at 841.

Even before the Open Meeting Law contained an express notification provision, the Minnesota Supreme Court read one into the statute under the theory that a "statute is understood to contain by implication, if not by its express terms, all provisions necessary to effectuate its * * * purpose." Sullivan v. Credit River Township, 299 Minn. 170, 174, 217 N.W.2d 502, 505 (1974). The court reasoned:

> The language of the statute directing that meetings be open to the public is meaningless if the public has no knowledge that the meeting is to take place.

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[1] Notice must also be mailed or delivered "to each person who has filed a written request for notice of special meetings." Minn. Stat. § 471.705, subd. 1c(b). No one had filed a written request with the Board so this notice requirement was not at issue.

Id. The court suggested that notice be given in a public hall or other location that gives the public a reasonable opportunity to be aware of the place in which the notice will be regularly posted. Id. at 174-75, 217 N.W.2d at 506. Interpreting the statutory notice provision in light of the Sullivan decision, we hold that a principal bulletin board must be located in a place that is reasonably accessible to the public.

Here, it is unclear from the record whether the principal bulletin board was reasonably accessible to the public; therefore, we remand for a factual determination. Because we are not deciding the issue of whether there was an Open Meeting Law violation, we do not reach the question of whether the violation was "willful and deliberate." See Minn. Stat. § 471.705, subd. 1c(h) (1990) (fine not imposed unless violation was willful and deliberate).[2] Nor do we decide the issue of attorney fees.

D E C I S I O N

We remand to the district court to determine whether the Board's principal bulletin board was reasonably accessible to the public.

Reversed and remanded.

ROBERT H. SCHUMACHER 7/5/95

[2] The "willful and deliberate" requirement was deleted from the 1994 statute. 1994 Minn. Laws ch. 618, art. 1, § 39.

Minnesota Board of Water & Soil Resources

Board Member Update

August 1995

The mission of the Board of Water and Soil Resources is to manage water and soil resources and to help all citizens be stewards of our irreplaceable natural resources.

Engineering and Technical Services Section

Conservation Easements

* Tim Fredbo, conservation easement program manager, has been updating the program plan for fiscal year (FY) 1996, with some assistance from other program staff. Staff did some clarification work on the statewide priority assessment matrix, which will be provided to SWCDs and board conservationists for use in screening and prioritizing easement applications. We trust that the statewide priorities will mesh well with local priorities, and that a common understanding of state priorities will be established by the matrix.

* Staff estimates that $2.7 million of bonding appropriations will be available for the first 1995 program sign-up, which will occur in Nov./Dec. of this year. An additional $353,348 will be available in the Minnesota River basin from the North American Wetland Conservation Act (NAWCA) Minnesota River 2 grant and an additional $400,000 will be available for the Heron Lake watershed from the NAWCA Heron Lake Phase 3 grant. The Minnesota River 2 grant application was pared down a bit last year, after failing to win approval by NAWCA Council during the first try. We trust that the SWCDs in the Heron Lake watershed will obtain all the easement applications slated to be part of the Phase 3 project.

* Processing of the 1994 (and older) easements continues. We are having some difficulties with the new statewide accounting system for obligating funds and cutting checks. However, Mary Miller, accounting coordinator, is working hard at getting the bugs worked out. We have received about 2/3 of the agreement packages from SWCDs for easement applications accepted during the first 1994 sign-up.

* Tom Wenzel, design engineer, Jeff Hedtke, wetland restoration technician, and Matt Moore, engineering technician, continue to work with SWCDs and landowners to take advantage of the good construction conditions this year for getting wetland restoration practices in place. We hope to have a banner year, in terms of the number of wetlands restored.

Lakeshore Engineering

* John and Barb Sewall recently negotiated a contract for their shoreline stabilization project, which involves a concrete retaining/seawall, surface water

diversion, slope shaping and revegitation. Construction will begin this week. They are located along the North Shore in Duluth, which presents some challenges in terms of construction access. Bids were higher than the original estimate upon which cost share funding was allocated, so some trimming of project features and an increase in the landowner share was done by the Sewalls. Gene Clark, BWSR lakeshore engineer, worked closely with the Sewalls, So. St. Louis SWCD staff and a structural engineering consultant (LHB and Associates) to help make last minute changes to the construction plans and specifications. We hope no major surprises are encountered during construction.

* Gene recently completed the plans and specs for the Lamois shoreline stabilization project near Grand Marais, which involves an armor stone revetment. Construction is scheduled to commence this fall, as soon as the necessary permits are obtained by the landowner.

* Gene continues to participate in a "bioengineering" demonstration project on Big Sandy Lake, providing technical assistance as needed. He will also be participating with Lake and Cook SWCD staff in the near future to conduct site investigations and feasibility studies, in anticipation of future cost share program application periods.

Area II

* The Environmental Assessment Worksheet (EAW) for the proposed RW-22 reservoir project went out for public review earlier this month. A public hearing in regard to the EAW is scheduled for 7:00 p.m. September 6, 1995, at the Lyon County Courthouse. We'll have to wait and see if local opposition resurfaces, now that more information about proposed road modifications, flowage easement acquisition procedures, and other impacts to surrounding landowners is documented and available. BWSR Chief Engineer Al Kean remains uncertain about the status of environmental impact documentation for the wetlands and Waterfowl Management Area (WMA) within the proposed pool area and related mitigation plans. He hopes to find some answers in the EAW.

* The World Wildlife Fund (WWF) and The Wetlands Initiative (TWI) groups recently put forth a proposed scope of work for a demonstration project in the upper Redwood River basin (above Marshall, Minn.) in regard to wetland restoration for flood control. This project proposal has its roots in the 1993 post-flood reports by a federal Interagency Floodplain Management Review Committee, which envisioned changing land uses in floodplains and providing for improved runoff control from uplands via wetland restoration and other conservation practices. The Redwood River project was one of three selected by the WWF and TWI out of fifty potential sites. These groups envision a federal/state/local partnership involving the Corps of Engineer's Section 22 Program, the Natural Resources Conservation Service (NRCS) PL 566 Program and local/state cost-share funding. The WWF and TWI would only contribute in-kind services (presumably coordination assistance). The BWSR has been asked to review the draft scope of work and to provide any funding commitments possible. Al Kean, chief engineer, is

drafting some comments and talking to the other agencies potentially involved to determine how or if the BWSR should get involved.

Feedlots

* In case you didn't already know it, the Pollution Control Agency (PCA) is working on a major rule rewrite for regulations governing feedlot runoff and manure management (MN Rule 7020). Public comment has been sought and the Feedlot and Manure Management Advisory Committee (FMMAC) is involved as a broad-based advisory group. BWSR board member Jim Rossman and staff member Al Kean are the BWSR's liaisons on the FMMAC.

* The Minnesota Department of Agriculture (MDA) recently published the "Manure Management Planning Guide for Livestock Operators." This 3/8 inch thick publication is focused on providing feedlot operators comprehensive planning level information that will hopefully help operators, technical assisters, financial assisters and regulators come together more efficiently during the planning process. This project was funded by the Legislature last year. The MDA involved technical representatives from the PCA, BWSR, NRCS, AURI and the Minnesota Extension Service (MES) on the steering committee for the project. BWSR had some doubts about the ultimate product during the reviews of drafts. However, a cursory review of the final product indicates that it should be a reasonably good planning reference for feedlot operators. If you would like a copy of the planning guide, contact Steve Olson directly at the MDA (612-296-3217).

SRF Technical Assistance

* BWSR recently received most of the computer hardware and software equipment for Joint Powers Area engineers and technicians, which is part of the program start-up efforts. Six of the JPAs have picked up their equipment and are working at getting it installed. The Information Management staff at NRCS area offices are helping many of the JPAs with installation. The only computer equipment BWSR hasn't received yet, as of this writing, ia laser printers and digitizing boards. Those should arrive later this week.

* The total station survey equipment and plotters that are to be part of the start-up equipment package still haven't been ordered, due to the continuing difficulties in getting funding from an EPA grant transferred from the PCA to the BWSR. The new statewide accounting system seems to be the current problem. Staff continues to push as hard as we can to get this funding transferred and the equipment ordered.

* Mr. Justin Jeffery, NRCS Area IV engineer, came to work for the BWSR this week on a two-year Intergovernmental Personnel Act (IPA) transfer. Justin will serve as our training and design engineer, with a focus on technical training coordination and design consultation for JPA and SWCD staff. He and Al Kean have been doing some preliminary planning for the past several months. Justin has extensive conservation practice design experience and a good reputation as a trainer and mentor. We intend to work closely with the NRCS, the Minnesota Association of Conservation District Employees (MACDE) and the Minnesota Association of Soil and

Water Conservation Districts (MASWCD) to enhance our partnership technical training efforts.

* Recent examples of partnership training efforts were two soil mechanics training courses held in St. Cloud and Bemidji, taught by NRCS staff and coordinated by BWSR staff. We were trying to take advantage of the expertise of two long-time, but currently short-time, NRCS staff, one of whom will be retiring soon and the other of whom's position appears doomed to be abolished in the NRCS reorganization. Approximately 45 SWCD, JPA and NRCS staff attended these two training sessions.

Southern Region

* Comprehensive local water planning update activities continued for Board Conservationist (BC) Tom Fischer. Four of six counties in Fischer's work area have submitted their revised/updated plan for public review and comment. The remaining two are getting close to submitting for public review. More work is yet to come for all BCs before the process is completed.

* BC Tom Fischer assisted BWSR Southern Region Supervisor Jeff Nielsen and BWSR Easement Program Coordinator Tim Fredbo with quickly developing a Reinvest in Minnesota (RIM) Reserve tour, which was part of a much larger tour for the Minnesota Legislative Bonding Committee. A lot of background work went into this effort. The best result was BWSR executive director Ron Harnack's noon luncheon presentation, which tied the easement program and the Minnesota River initiative efforts together.

* BCs Tom Fischer and Chris Hughes conducted a session entitled Orientation For New Supervisors and Employees for the south central region. Twelve new supervisors and seven new employees attended. BWSR, MASWCD, MACDE, and NRCS each had representatives give presentations to the group. Good session! Tom and LeAnn Buck of MASWCD have begun planning an Orientation II session for new supervisors and employees to be held at the 1995 MASWCD Annual Convention in St. Cloud in December.

* Marshall BC Tabor Hoek reports big dividends paying off on a NAWCA grant to accelerate RIM Reserve wetland activity in the Heron Lake Watershed: BWSR will be receiving $400,000 to accelerate RIM Reserve activity in the watershed. BWSR worked very closely with DNR on two applications with the second attempt finally paying off. BWSR made this possible by providing match dollars of previously secured easements in the watershed.

* The Rochester field office hosted the Area VII district managers meeting in July. Work and contacts with LGUs continue on the water plan review process and the Wetland Conservation Act (WCA).

* BC Mary Kells is working with John Nickolson, Area NRCS, in organizing area field training sessions in September looking at wetland delineation criterion.

Metro Region

There has been more good news than bad of late in the Metro Region. Here is some of the good news:

* Barbara Ohman is scheduled to return from her maternity leave on September 14.

* Met Council recently sent over a check in the amount of $25,000 for the first installment of the $100,000 water quality grant awarded the BWSR. Staff is working out the details of a mobility assignment with the Dakota County Physical Development Division to provide necessary staff assistance to get the project going. One of the primary goals of the project is to develop two second generation watershed management organization (WMO) plans that can be used as models for other WMOs.

* Metro staff have scheduled interviews for the new BC position that was created as a result of the 1995 legislative budget package. The interviews will be held on August 30 and 31. We hope to have the position filled by mid- to late September.

* A new full-time clerical position has been created that will be shared by the metro region and central office staff. The position's workload will be allocated on the following basis: 50 percent to Metro Region clerical support, 25 percent to assist the new appeals coordinator and 25 percent to assist the SRF/Training & Design Engineer.

* Outstate BCs have provided assistance on a part-time basis to help fill in where they could in Barbara Ohman's absence. The following BCs have spent from two to three days each at Metro working primarily on Wetland Conservation Act (WCA) issues: Bill Best, Chris Hughes, Mary Kells, Dave Peterson, Dan Steward, David Sill, and Brian Dwight. John Jaschke and Greg Larson also helped out on some technical evaluation panels (TEPs) and wetland banking projects. Their assistance has been greatly appreciated by Metro staff as well as our constituents!! Tabor Hoek, Keith Grow, Tom Fischer and Dale Krystosek have yet to serve their "Metro sentences to serve." Oddly enough, although they all said they enjoyed the work, none of them wanted to laterally transfer to the new BC position.

Other Metro news:

* Final decisions on the Landview Landscaping v. Minnehaha Creek Watershed District and Levine v. Minnehaha Creek Watershed District appeals are expected at the September 14 Dispute Resolution Committee (DRC) meeting.

* Trout Unlimited re-activated its WCA appeal of a wetland replacement plan approval by the City of Shakopee. A pre-hearing conference will be scheduled in the near future.

* A pre-hearing conference is scheduled for August 24 on a citizen appeal of a Minnehaha Creek WD permit decision for a development in the City of St. Louis Park.

* Metro staff have been meeting with the agencies who review metro water plans to establish a priority schedule for the submission of second generation plans. We expect to bring the recommendation to the Board at its September meeting for endorsement.

MEDIA RESPONSE

For those situations in which you are called by the media unexpectedly or have little/no time to prepare your responses, keep the following guidelines in mind:

1. Answer truthfully.

Always. While this means do not tell an outright lie, it also means do not exaggerate, understate or do anything else misleading. A deceptive response will usually come back to haunt you and generally makes the situation worse.

2. Pause before you answer.

While this may seem trivial, it is important to take a moment to gather your thoughts before you respond. After a reporter asks you a question, take the time to organize what you would like to say before you answer. Your answer will be more complete and accurate, and (if the interview is for broadcast and is being taped) you will sound more informed and relaxed.

3. Don't answer too much.

It is not your responsibility to fill in any "quiet time" during the interview; it is the reporter's job to keep the interview moving. Answer the question as concisely and accurately as possible, but don't feel obligated to continue giving more information if the reporter does not immediately jump in with a comment or another question. Simply wait quietly.

4. It's okay to say you'll get back to a reporter.

If you don't know the answer to what the reporter is asking, or if you need to check some information, it's fine to say you will return the reporter's call after you get what you need. IMPORTANT: Many reporters work on deadlines, meaning that they need a response from you by a certain time. While this may not always seem fair--especially if a reporter calls you at 2:00 and says he needs an answer by 3:00--this is how the media works. FIND OUT WHEN THE REPORTER'S DEADLINE IS AND RETURN THE CALL BY THAT TIME. Even if you haven't found out what you wanted to find out, you should still call the reporter back and either comment to the best of your knowledge or let him know that you were unable to track down the information you wanted.

5. Don't say anything "off the record."

When you are talking to a reporter, it is on the record. Period.

6. Guide the story--don't push it.

Nothing irritates a reporter more than being told to "put this in your story." Obviously, you want to influence the story to present you, your organization, or your cause in the best possible light, but do not try to tell the reporter how to do his job. The most effective means you have of influencing the story is to present your viewpoint accurately and concisely, in as human a way as possible.

MEDIA INTERVIEWS

For those situations where you know in advance that you will be interviewed or called upon to speak, follow the same guidelines as in the "Media Response" sheet, but add those listed below.

1. Focus on two or three points you want to convey.

Too much detail is confusing. To get the type of story you want, decide upon two or three major points that are the most important; then focus on repeating those points and providing supporting information.

2. Prepare.

Get the information you need to support your case. Try to anticipate what quesitons the reporter will ask. Then practice what you will say, particularly if it's a broadcast interview. This helps you determine if something will sound awkward or if you will stumble over it when you try to say it. You may want to tape yourself--either video or audio.

3. Bring written material.

It's a good idea to summarize your key points (in a brief and readable fashion) and some supporting evidence on paper. (It should be no more than one side of one sheet; bullets are a good format, or something else that the reporter can glance at and understand.) This helps ensure that confusing information will be conveyed correctly in the story and also helps influence the reporter to use the information you gave him.

a:bdpresent

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August 8, 1995

TO: board members

FROM: Susan Tsakakis

RE: proposed outline for a board member orientation book

Below is a proposed outline for a board member orientation book. I will be asking for feedback on this at the upcoming board meeting--please let me know then of any changes you think are appropriate.

Orientation Handbook for Board Members--Proposed Outline

I. The Board of Water and Soil Resources
- history
- mission
- structure of board
- staff/board relationship
- program summaries
- BWSR budget
- board meetings
- board policies
- BWSR enabling legislation--see Appendix

II. BWSR board members
- responsibilities
- board member PD
- the appointment process
- terms
- per diem
- reimbursement for expenses
- board member pictures and biographies--see Appendix

4 mo. of past minutes

III. BWSR staff
- how staff carries out board mission
- field staff/central office
- staff/board relationship
- executive director position
- organization chart
- staff work teams
- staff pictures and biographies--see Appendix

org. chart

co. map

IV. Local government units (LGUs)

- SWCDs
- WDs
- counties
- joint powers
- associations

formal members (agency)

V. Other agencies

- Department of Health
- Department of Agriculture
- Department of Natural Resources
- Pollution Control Agency
- Minnesota Extension Service
- Army Corps of Engineers
- Natural Resources Conservation Service

MLA
CFSA

VI. Appendix

- BWSR general statute/list of other BWSR statutes
- strategic plan
- charge and authorities of each committee/committee members/committee process
- acronyms
- calendar of expected board meeting votes
- board members pictures/biographies
- staff pictures/biographies

AG's { open meeting law
{ gifts

s:boardoutline.smt

BWSR'S TOP TEN

(Board Member Questions)

10. If I don't understand the rationale of a staff suggestion on a decision agenda item, should I wait until meeting?

ANSWER: No ! Call a knowledgeable board member (usually the chair of a related committee) or Ron Harnack. Get an understanding of the issue before meeting. If they are not given, ask what the conflicting viewpoints are. Such calls may be placed on a seperate line on your expense report with a copy of the charges.

9. Can I go to the restroom during meeting without waiting for a break?

ANSWER: YES, but don't ask a friend to join you.

8, How can I keep all this paper organized?

ANSWER: With 2 notebooks and a pack of file folders.
One notebook for the BWSR Directory and a section for the per diem explanation, forms and returned expense claims. One notebook with sections for the Board Member Calendar, Acronyms, Minutes and corresponding annotated Agendas.
File Folders with Subject Titles: Cost Share; RIM; Wetland Rules; Watershed Districts; Education, Reorganization; SRF; Budget; and every other subject that arises.
Immediately after meeting, put all materials in a subject file or make a new one and "throw them" in a file drawer. The subject WILL resurface! When you get a new agenda, pull the relating file, and VOILA!, you have "background."
Recycle any duplicates immediately - wherever you are.

7. Will Barb Cobb ever speak in public without tremor?

ANSWER: NO!

6. Can I attend an "outside" meeting related to BWSR issues and get reimbursed by BWSR for expenses?

ANSWER: NO & YES, and YES & NO. This is a difficult area that needs further definition and policy direction by Board consensus. Right now, common sense needs to apply - along with the need to hold our spending "in line". An occasional meeting is often necessary to get a hands-on picture of what is happening; i.e. a watershed district manager may want to attend their county meeting on wetland policy, or reorganization, or comprehensive planning to gain further insite and report at a BWSR meeting,etc. It is also approriate when you chair a BWSR committee having to do with the subject, or are asked to represent BWSR. Sometimes a meeting is short and you can claim the mileage but forgo the per diem - or share the per diem with another short meeting. Think about how you would feel about the extra expense if YOU were the employer and just use your common sense.

5. IS Ron Harnack cloned or does it just seem like he's everywhere at once?

ANSWER: There are four (4) RON'S that we know of: One on a tractor; one in a duck blind; one at a field office; and one on the phone at BWSR. Make sure the hat remains a constant to know you are dealing with one at a time!

4. For the "good" of the Board, should I naturally agree with the Staff Suggestion on a decision item?

ANSWER: NO! You were not appointed to just say "yes" - your opinion and the viewpoint from "your world" is vital to process of good decision making. In our ruling by majority vote, there have often been split votes and those opposing viewpoints have kept the "door open" for continued review and study.

3. How can I best keep up my expense report claim?

ANSWER: Keep a clip board with an expense form attached in your car. Write down the date, the meeting and your mileage starting point before you leave - as you prepare to drive home, list you lunch expense - and when you finally turn off the ignition at home, record your ending mileage. When the month is over, recopy the information in black ink and do your totals for payment. Keep the old copy like a receipt.

2. If I have questions on issue specifics can I call the staff member listed on the information ?

ANSWER: YES! Definitely. They are willing and able to answer all your questions and also anxious to get to know you better as a boardmember.

1. Will I ever again drive by a cow in a stream and think it's picturesque?

ANSWER: NO!

Mary Jo

Please make sure
Wayne E. get personally
identified in minutes
for the question on
Mower Cty Rim penaltty $

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August 14, 1995

TO: Commissioner, Minnesota Department of Agriculture
Commissioner, Minnesota Department of Health
Commissioner, Minnesota Department of Natural Resources
Commissioner, Minnesota Pollution Control Agency
Chairman, Minnesota Environmental Quality Board
Director. Minnesota Geological Survey

On August 1, 1995 the Minnesota Board of Water and Soil Resources (BWSR) began the official 90 day State review of the Benton County Comprehensive Local Water Plan. Pursuant to Minnesota Rules, Chapter 9300.0170 the BWSR is transmitting a copy of the Benton County water plan for your agency's review and comment. Your agency has 45 days from receipt of this letter to submit comments in writing to the BWSR identifying the portions of the plan that the agency has determined to be inconsistent with state law.

The Benton County water plan document itself is being sent to your agency's 103B Technical Review Committee Member under separate cover. The 103B Technical Review Committee Members are:

MDA, Mark Zabel
MDH, Kimberly Benson-Johnson
MDNR, Ken Wald/John Fax
MPCA, Celine Lyman
EQB, Marilyn Lundberg
MGS, Barb Palen

Thank you for your agency's continued assistance and commitment to make comprehensive local water planning the success that it has become. We also look forward to working with your agency as counties continue implementation of their updated water plans.

Sincerely,

Ron Harnack
Executive Director

cc: Members BWSR
Staff BWSR
103B Technical Committee
Don Bajumpaa, Benton County SWCD

h:bent95.not/djt