

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 - 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

October 19, 1977

Mr. William Augustus Clapp, III
Special Assistant Attorney General
Department of Natural Resources
Third Floor, Centennial Office Bldg.
Saint Paul, Minnesota 55155

Re: In the Matter of the Proposed Inclusion in the Minnesota Wild, Scenic and Recreational River's System of the Portion of the Rum River from the Ogechie Lake Spillway to a Line Crossing the River Between the Center Lines of Rice Street and Madison Street in the City of Anoka, and of the Proposed Adoption of a Management Plan for this Proposed Wild, Scenic and Recreational River. Docket No. DNR-77-009-HK

Dear Mr. Clapp:

I enclose and serve upon you by mail my Report in the above-entitled matter. Also, I am returning to you the official record, including transcripts of the proceedings.

Sincerely,

HOWARD L. KAIBEL, JR.
Hearing Examiner

HLK:sw
Enclosures

RECEIVED
OCT 20 1977
ATTORNEY GENERAL
Dept. of Natural Resources

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

DNR-77-009-HK

AFFIDAVIT OF SERVICE

SUSAN WOJCIK, being first duly sworn, deposes and says that on the 19th day of October 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of Hearing Examiner, official record, including Vol. I through V of the transcript of proceedings; unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Susan Wojcik

Subscribed and sworn to before me
this 19th day of October, 1977.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

Mr. William Augustus Clapp, III
Special Assistant Attorney General
Department of Natural Resources
Third Floor, Centennial Office Bldg.
Saint Paul, Minnesota 55155

Ex 5

STATEMENT OF NEED

RECEIVED
JUL 13 1977
OFFICE OF HEARING
EXAMINERS

Relating to the proposed designation, classification and management of the Rum River as a wild, scenic and recreational component of the Minnesota wild, scenic and recreational rivers system.

INTRODUCTION

The Rum River, a woodland and farmland stream running through central Minnesota, should be designated a Minnesota wild, scenic and recreational river. The outstanding natural, scenic, scientific, historical and recreational values of the Rum qualify the river for designation under the requirements of the Minnesota wild and scenic rivers act and the statewide standards and criteria for the Minnesota wild and scenic rivers system. Designation of the river is necessary to protect the river from adverse residential and other development along its banks as well as recreational overuse. The legislature, in fact, has foreseen the need to protect rivers with outstanding values in a wild and scenic rivers system. Designation of the Rum is reasonable since the provisions of the proposed rule fulfill and comply with the wild and scenic rivers act and the statewide standards, and because the management plan would preserve the scenic, recreational, natural, historical, scientific and similar values of the Rum River.

Eligibility, need and reasonableness are established in A Management Plan for the Rum River (Preliminary Draft, March 1977), which will be submitted as evidence into the hearing record. Since much of the management plan was written in the form of a statement of need, this statement will refer frequently to that document.

AUTHORITY

The Department of Natural Resources (DNR) is authorized to designate the Rum River a wild and scenic river because: (1) the Minnesota wild and scenic rivers act (Minn. Stats. 104.31-104.40) specifically authorizes the commissioner of natural resources to designate rivers or river segments that qualify; and (2) the Rum River qualifies for such designation under the criteria specified in the wild and scenic rivers act and the statewide standards (NR 7881).

Authorization

In addition to the clear-cut authority given to the commissioner of natural resources by the legislature through the wild and scenic rivers act, the legislature in 1975 specifically authorized the DNR to study the Rum River to see if it qualified for designation. In 1977 the legislature authorized funds to buy land and easements along the Rum River if it qualified for wild and scenic river designation.

Eligibility

The Minnesota wild and scenic rivers act states that "the whole or a segment of any river and its adjacent lands in this state that possesses outstanding scenic, recreational, natural, historical, scientific, or similar values shall be eligible for inclusion within the Minnesota wild and scenic rivers system" (Minn. Stat. 104.33, subdivision 1).

The statewide standards, which were approved by public hearing, uses similar language to describe rivers eligible for designation (NR 78 (f)).

A Management Plan for the Rum River, pages 19-35, describes the values of the Rum River that qualify the stream for inclusion in the wild and scenic rivers system. Here is a summary of those values:

Natural and scenic: The Rum, a narrow, meandering river, passes extensive backwaters and marshes, sandy upland plains, and bottomlands supporting maple, ash and other hardwoods. Small stands of red and white pine near the river's lower reaches are what remain of vast pine forests that were cut during the state's logging heyday near the turn of the century.

The river valley supports a variety of wildlife, including many game species. The river itself harbors many sport and game fish and is noted for a particularly high concentration of smallmouth bass.

Scientific: The Rum River valley, including much of the proposed land use district, has probably the greatest concentration of prehistoric sites in Minnesota, including many that are now being studied. These sites have yielded important information about the subsistence and settlement patterns of prehistoric Indians in central Minnesota.

Historical: The Rum River was an important landmark for Minnesota Indians and early explorers searching the Mississippi River valley. The river valley and its dense pine forests played an even more important role as the spur to economic development in the area during the mid-1800s.

Recreational: The natural beauty, the fish and wildlife, and the historical legacy of the Rum River valley all contribute to the river's importance as a recreational

resource. In fact, the river attracts many canoeists, fishermen, hunters and other people who enjoy the outdoors. Several public and private campgrounds and parks also enhance the recreational value of the river.

NEED

The greatest threat to the Rum River is the development of its shoreline, which could quickly destroy the river's natural character. Another problem which soon could become major is recreational use and subsequent conflicts between different kinds of river users as well as river users and riparian owners.

Although local units of government can take some steps to control development and recreation problems, they can not preserve the river as well as the state can through a comprehensive management plan for the entire Rum River. Local units of government can only control lands within their boundaries. Along the Rum, there are 13 separate counties and cities in three Regional Development Commissions (RDCs).

The need for designation is immediate. Unless certain riverside lands are protected through better land use controls and acquisition, the values of the river could soon be lost. The rate at which riverside lands along the Rum River are being subdivided and developed is equal to few other rivers in the state.

A Management Plan for the Rum River, pages 39-70, describes threats to the Rum River and notes the inability of local units to effectively solve many of these problems. Here is a summary:

Existing development standards

Existing zoning standards along the river vary considerably. While some communities may strive hard to protect the river from overdevelopment, other communities could negate these efforts by allowing intensive development and unsound land uses. (Interestingly, the most consistent standards are found among the four counties which have complied with the minimum standards of the state Shorelands Management Program.) Even if each of the 13 involved local units of government met or exceeded the land use standards that are recommended in the management plan (they don't now), there is no way to assure that they would be administered in a way that would insure protection of the river, short of certifying local land use decisions.

Population

Population trends and projections indicate that the rapid population increase in the Rum River area will continue (Anoka County, in fact, is now the fastest-growing county in the state). As the population grows, development pressure grows, meaning that more and more riverside land will be subdivided and developed. Well-designed and well-enforced zoning can be expected to help prevent overpopulation and ruination of riverside lands.

Existing development

The number and size of platted areas along the Rum River indicate that the river, particularly the southern reaches, is under heavy development pressure.

As might be expected in view of the population data, Mille Lacs County has only two subdivided areas along the Rum outside of incorporated areas, both near the city of Princeton. These two subdivisions contain a total of 17 lots in the land use district, seven of which are along the river.

Isanti County now has 15 subdivided areas within the land use district, consisting of 248 individual building sites, 169 of which abut the river.

Not surprisingly, Anoka County has the most subdivisions. Thirty separate subdivided areas contain a total of 471 individual lots in the land use district, about 245 of which abut the Rum. Since this data was obtained about one year ago, at least three more subdivisions have been approved. By the time the hearings are actually held several more will probably be approved.

Vegetative cutting

A major reason that the Rum River qualifies as a wild and scenic river is the beauty of the trees and other vegetation that line its banks. The dense vegetation along the Rum provides habitat for wildlife, shade for game fish species and cover to prevent erosion to riverside bluffs.

In some areas, unfortunately, man's land use practices have destroyed much of the riverside vegetation. Increasing values of agricultural land and products have led to the clearing of areas that previously were not considered worth cultivating. Residential development is responsible for additional cutting.

In light of increasing development pressure (which usually boosts farmland prices), additional clearing of river lands is foreseen. Complete removal of riverside cover can and often has resulted in severe erosion problems. In some cases, clearing the sandy soils along the Rum has resulted in erosion that would cost the landowner more than $40,000 to control. (The Soil Conservation Service estimates that bank erosion controls vary in cost from $40 to $125 per foot.)

Bank and gully erosion is already a major problem along the Rum. Local Soil and Water Conservation Districts have identified more than 47 badly eroded banks between Princeton and Anoka. In Mille Lacs County DNR personnel have noted at least four badly eroded banks. Although many of these erosion problems appear to occur naturally, several have been caused by man's activities.

Bank and gully erosion increases the amount of sediment in the river. Excessive siltation can clog river channels, causing still more erosion and perhaps destroying the excellent smallmouth bass habitat. By covering roe, silt can reduce the fish hatch.

Conflicting land uses and ordinances

Rivers are often the sites of apartments, industrial plants, mining operations and intensively developed recreational facilities -- developments that can degrade the aesthetic and natural qualities of a river. Although land uses can be directed through zoning, local regulations differ greatly. One community can do much to ruin the river for another locality.

Wild and Scenic river land use regulations can provide uniformity to make river preservation effective and equitable.

Recreational use

Conflicts between recreationists and landowners are bound to arise on any river. Problems are expected to worsen on the Rum River because recreational use will probably increase as the nearby population increases.

About 2.3 million people were estimated to live within an hour's drive of the Rum in 1970. Included is the seven-county metropolitan area, whose population

will grow from 1.8 million in 1970 to about 2 million by 2000. The rising population as well as the increase in leisure time and sales of outdoor recreational equipment indicate that river use will also increase.

Unfortunately, no studies are available that indicate the number of people who now use the Rum. However, DNR personnel have noted during the past two summers that the river receives extensive use between Cambridge and Anoka, moderate use between Princeton and Cambridge, light use from Onamia to Princeton, and heavy use near Onamia. The most popular activities are fishing, canoeing and inner-tubing.

Increasing use of the Rum will undoubtedly cause landowners increasing problems with litter, noise and trespassing, since relatively few public recreational facilities front the Rum. An open pasture is a tempting sight to a canoeist who has no other place to camp.

Only about eight percent of the river frontage, or about six percent of the proposed land use district area, is publicly owned. More than one-third of this public land is in Mille Lacs Kathio State Park.

Excluding the park, only one public camping area and six public accesses front the 145.7-mile river.

Several communities are developing additional facilities for river users. But there has been little in the way of a coordinated effort to provide facilities where they are most needed.

Heavy recreational use of private lands can also cause problems other than the usual ones landowners must contend with. Many soils and plants along the Rum are fragile and excesive use can destroy the scenic and natural qualities of the river.

A recreation management plan for the entire river is needed to provide properly placed and designed campsites for recreationists, and tough river user regulations to prevent destruction of riverside lands and alleviate trespassing and littering.

Other problems

Utility crossings and public roads, while all necessary along the Rum River, are often constructed with little thought given to their detrimental effect on a river. Usually, they can be built in a way to have little impact. Grading and filling too is often more damaging than necessary. Local ordinances do not adequately protect the river from these kinds of activities and structures.

The route descriptions on page 12 of A Management Plan for the Rum River shows where grading and filling, and the construction of powerlines and bridges already impair the natural character of the river. It must be assumed that without new regulations, these activities will continue to degrade the values that qualify the Rum for designation.

REASONABLENESS

The proposed rule for the Rum River is reasonable in that it:

1) complies with the provisions of Minn. Reg. NR 78-81, differing only "to the extent necessary to take account of the particular attributes of the area"; and

2) "gives emphasis to the preservation and protection of the area's scenic, recreational, natural, historic, and similar values" (NR 78 (g) (1) (bb)). The proposed rule would preserve and protect the Rum River and nearby lands better than other methods now practical.

Statewide standards

The proposed management plan for the Rum River complies with Minn. Reg. NR 78-81. These statewide standards require that the management plan "place no unreasonable restrictions upon compatible, pre-existing, economic uses of particular tracts of land" (Minn. Reg. NR 78 (g) (1) (bb)). Since these standards have already been approved through the required public hearings, the DNR must assume that they themselves comply with that requirement and that the management plan also "places no unreasonable restrictions," since it complies with the statewide standards.

In some cases "particular attributes" have warranted a change in the standards. These changes are shown and explained in Table 3, A Management Plan for the Rum River p. 44; and Minn. Reg. (proposed) NR 2720 (A) (4) (a-f) of the Rules and Regulations, A Management Plan for the Rum River, p. 110.

Minn. Reg. 78 (f) (1-3) provides criteria for classifying a river wild, scenic or recreational. The management plan proposes that there be wild, scenic and recreational sections of the Rum River. The proposed classification's are shown and their reasonableness explained in A Management Plan for the Rum River, pages 36-38.

Effectiveness

The proposed management plan would more effectively preserve and protect the Rum River in its present condition than other methods now in effect or now practical.

A Management Plan for the Rum River, pages 41-70, explains the methods that would be used to preserve the river, and why these management techniques would be effective. The Management Maps show the areas along the river that are to be included in the land use district, the areas to be zoned, and shorelands to be acquired in fee title or scenic easements (acquisition, of course, will depend on willing sellers'.

Here is a summary of the part of the management plan that explains how the proposed rule would effectively alleviate many of the present and anticipated threats to the Rum River:

Land use provisions: The following land use provisions would take effect in the land use district.

Minimum lot area: County and city zoning adopted after designation would require that newly platted riverside lots be at least two acres in the recreational land use districts, four acres in the scenic districts and six acres in the wild district. These lot area requirements would help prevent overcrowding along the river, and thus help preserve the natural values of the Rum.

Building setbacks: The river and bluffline setback provisions would further protect the natural character of the river by making new buildings less obvious from the river and by helping prevent erosion of blufflands. Setbacks from

the river vary from 100 to 200 feet, and setbacks from bluffs vary from 20 to 40 feet, depending on whether a river segment is classified recreational, scenic or wild.

Sewage system standards: Most of Isanti and Anoka counties are covered with sandy soils commonly called the Anoka Sand Plain. Most of the soils found in the sand plain are well- to excessively well-drained and are suitable for development. However, some soils occupy flat, poorly drained areas where the water table is too high to allow economical installation of septic systems.

While most of the Anoka Sand Plain is flat to gently sloping, steep slopes are often found near the Rum. Installation of septic systems on these slopes can result in effluent seepage onto the surface of the hills.

In Mille Lacs County are alluvial lands, in Onamia is very fine sandy loam on the floodplain, and in Milaca is very find sandy loam on the uplands. But because the water table often rises to within four feet of the surface, these soils may be unsuitable for septic systems.

Wild and scenic river setback standards generally safeguard against contamination of the water table and runoff: the greater the distance between the septic system and the river, the better the filtration. But because of the particularly poor soils near much of the Rum River, additional measures are needed to insure that septic systems are effective.

The plan proposes that local units of government adopt ordinances that would require both percolation tests and soil borings before approval of septic system permits. Both the local community and the landowners could then be fairly confident that the sewage system would neither pollute public water nor back up into a basement.

The plan also proposes that these standards apply to newly subdivided lands. In other words, prior to approval of a plat or subdivision, the subdivider would be required to perform all necessary testing to prove that soils on all lots were suitable for septic systems. This would prevent the subdivison and subsequent development of lands not capable of supporting adequate on-site sewage disposal systems.

Building placement requirements: These provisions were modified for the Rum River to help prevent the erosion and siltation problems common to the area. As they are stated in the plan, placing structures on areas that slope more than 12 percent would require that special conditions be met.

Vegetative cutting: These provisions would insure that buildings be at least partially screened from the river. These regulations which would prohibit clear-cutting and would also help prevent some bank erosion.

Permitted land uses: Land uses would be regulated by local ordinance to prevent activities and developments that would degrade the aesthetic and natural qualities of the Rum. Generally, these provisions are stricter than the local provisions now in effect. The management plan for the Rum would insure that local ordinances are reasonably consistent.

Other provisions: The amendment of local ordinances in accordance with the plan would insure that grading and filling and the construction of utility crossings and public roads would have as little effect on the river as possible.

Land acquisition: Zoning is inadequate to protect some lands since the purpose of zoning is to guide development, not prevent it. In such cases, acquisition is preferred. The DNR, can afford a more comprehensive acquisition program than local units of government.

Scenic easements: Scenic easement acquisition is a relatively new concept which is specifically prescribed in the wild and scenic rivers act to keep natural riverside areas in their present condition.

A scenic easement is a state-held interest in land that limits the extent to which the landowner may develop that property. Briefly, the landowner is paid to keep his land the way it is. This easement remains in effect indefinitely. Scenic easements would be purchased on selected lands, whose values could not be sufficiently protected by zoning alone. The specific conditions of the easement are negotiated between the DNR and the landowner. The landowner then is paid the value of the property rights he has sold. Scenic easements cannot be acquired by the DNR without the landowner's consent.

Scenic easement acquisition of certain areas can protect and preserve riverside vegetation better than the land use regulations by not allowing any healthy, natural vegetation to be cut or removed. By protecting riverside vegetation and preventing development, scenic easements would preserve habitat for many fish and wildlife species. Preservation of riverside vegetation also helps to prevent erosion. Steeply sloped, heavily wooded areas will be given high priority for scenic easement acquisition, as these areas could be severely damaged by vegetative cutting.

Scenic easements can protect especially scenic and natural areas by not allowing development of these areas. In many cases, the most scenic lands along the river also have the highest development potential. Only by reimbursing the landowners for their loss can these types of areas be totally preserved. The current rate of subdivision of riverside lands indicates that easements on these highly developable lands need to be purchased soon or some unique natural lands could be lost to development.

Scenic easements can provide protection for parks, forests and other public lands. Often, lands adjacent to public lands are extremely attractive places to build. Such development can impair the values of public land. Therefore, lands adjacent to public lands will have a high priority for scenic easement acquisition.

Scenic easement acquisition of lands having historical or scientific values can be a good tool for preserving them. Perhaps the major threats to historical sites are development and commercial exploitation. Acquisition of scenic easements on these areas could prevent their loss.

Fee title: The DNR would buy land to protect the outstanding values of a river. Outright purchase (fee title acquisition), however, costs more than buying scenic easements and removes land from local tax rolls. The DNR, therefore, would only buy:

*Land possessing outstanding scenic, natural recreational, scientific, historical or other similar values that can best be protected by placing such lands in public ownership.

*Lands that would consolidate existing blocks of public land and enhance the recreational value and preserve the natural character of the area.

*Lands to be used as recreational sites such as campsites, rest areas and accesses.

*Some lands proposed for scenic easement acquisition if property owners are unwilling to sell an easement, but would sell fee title.

Areas recommended for fee title acquisition are shown on the Management Maps. Purchase, of course, requires a willing seller.

Use easements: Use easements also are interests in land. In this case, however, a landowner is paid for allowing certain public uses of his property. Use easements are now used by the DNR and local units of government for snowmobile trails and along designated trout streams. If any use easements were purchased along the Rum River, they would be used primarily for portage trails and possibly accesses and campsites. As with scenic easements, a landowner must be a willing seller.

Land exchange: The DNR could exchange land with willing property owners to increase the amount of public land in the land use district.

Land exchanges would be used only to acquire in fee title lands that meet the criteria for outright purchase. Land would not be exchanged if any other DNR management programs would suffer.

Recreation management: The management plan for the Rum proposes that the DNR build several sites-- campsites, rest areas, and accesses-- along the river.

Besides simply providing sites for canoeist and other recreationists, the construction of these sites may ease conflicts between canoeists and riparian owners; a canoeist is less likely to trespass on private land if a public site is available.

Designation of the river would mean the adoption of stricter river user regulations to further ease conflicts between recreationists and riverside landowners. In addition, the DNR could develop regulations to ease conflicts between different kinds of river users if public demand called for such regulations. At the present time there is no specific unit of government or agency that landowners and river users can contact when problems arise.

In addition, because the Rum River has such a tremendous potential for both private and public recreational development, the plan proposes to use the land use regulations to obtain more control over such development. Briefly, the plan would make all public and private commercial recreation development, beyond what is recommended in the plan, conditional uses that need DNR approval and local governmental approval. This landuseoriented proposed regulation would be a key factor to controling recreational use of the river, and may be the only legal tool to prevent overuse of the river. The only other actions that the DNR could take to attack recreational overuse is the closing of state-owned sites and the imposition of surface use controls, after the problem already exists. Designation of the river and the adoption of the proposed regulations is the only means available at this time to prevent overdevelopment of recreational facilities on the entire Rum River.

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

RECEIVED
JUL 13 1977
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Inclusion in the Minnesota Wild, Scenic and Recreational River's System of the Portion of the Rum River from the Ogechie Lake Spillway to a line crossing the River between the center lines of Rice Street and Madison Street in the City of Anoka, and of the Proposed Adoption of a Management Plan for this proposed Wild, Scenic and Recreational River.

AFFIDAVIT OF MAILING

Sherrylee Nunnelee, being first duly sworn, deposes and says:

That on the 3rd day of June, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, and with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State

Sherrylee Nunnelee

Subscribed and sworn to before me this 3rd day of June, 1977.

Janis M. Bock

JANIS M. BOCK
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
My Comm. Expires Sept. 8, 1983

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

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CERTIFICATION

I hereby certify that the attached 506 labels and one sheet(s) constitute the complete list of persons, associations, and other interested groups who as of 3:00 O'clock PM, this 25th day of May, 1977, have requested pursuant to Minnesota Statutes 1974, Section 15.0412, Subd. 4, that their names be place on file with the Secretary of State for the purpose of receiving notice of public hearings on proposed rules on the subjects captioned above.

Joan Anderson Growe
SECRETARY OF STATE
JOAN ANDERSON GROWE

BY: Ceil Dion

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

RECEIVED
JUN 7 1977
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Inclusion in the Minnesota Wild, Scenic and Recreational River's System of the Portion of the Rum River From the Ogechie Lake Spillway to a line crossing the River between the center lines of Rice Street and Madison Street in the City of Anoka, and of the Proposed Adoption of a Management Plan for this proposed Wild, Scenic and Recreational River.

ORDER FOR HEARING

In accordance with the Minnesota Wild and Scenic River Act (Minnesota Statutes, Sections 104.31 through 104.40), the Commissioner of Natural Resources has prepared a Management Plan for the above-captioned segment of river as a component of the State's Wild and Scenic River's system, the Commissioner must hold public hearings in each affected county, but not before copies of the Management Plan have been available to the public for at least 60 days.

NOW, THEREFORE, IT IS ORDERED this 23rd day of May, 1977, that a Public Hearing be held on the above- captioned matter, in the manner provided by Minnesota Statutes, Sections 15.0411 through 15.051 and Section 15.052 at:

Anoka Minnesota, on Wednesday, August 10, 1977, in the Fred Moore Junior High School Auditorium (1523 Washington), at 7:00 PM.

Milaca, Minnesota, on Thursday, August 11, 1977, in the Milaca Senior High School Little Theater, at 7:00 PM.

Elk River, Minnesota, on Monday, August 15, 1977, in the Parker Elementary School Gymnasium (500 School Street, turn left off of North-Bound Hwy. 169), at 7:00 PM.

Cambridge, Minnesota, on Tuesday, August 16, 1977, in the Cambridge Junior High School Lecture Hall, at 7:00 PM.

IT IS FURTHER ORDERED that Notice of Hearing be provided by mail or publication, as possible and appropriate, to the Secretary of State's mailing list, members of the Legislature, affected local government bodies, shoreland owners, conservation and outdoor recreation groups, and the general public.

IT IS FURTHER ORDERED that the Notice of Hearing name places where copies of the Management Plan will be available for inspection.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES



MICHEAL C. O'DONNELL, Acting Commissioner
Department of Natural Resources

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Inclusion in the Minnesota Wild, Scenic and Recreational River's System of the Portion of the Rum River from the Ogechie Lake Spillway to a line crossing the River between the center lines of Rice Street and Madison Street in the City of Anoka, and of the Proposed Adoption of a Management Plan for this proposed Wild, Scenic and Recreational River.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held on the above-captioned matter, in the manner provided by Minnesota Statutes, Section 15.0411 through 15.051, and Section 15.052 at:

Anoka, Minnesota, on Wednesday, August 10, 1977, in the Fred Moore Junior High School Auditorium (1523 Washington), at 7:00 p.m.

Milaca, Minnesota, on Thursday, August 11, 1977, in the Milaca Senior High School Little Theater, at 7:00 p.m.

Elk River, Minnesota, on Monday, August 15, 1977, in the Parker Elementary School Gymnasium (500 School Street, Turn left off of North-Bound Hwy. 169), at 7:00 p.m.

Cambridge, Minnesota, on Tuesday, August 16, 1977, in the Cambridge Junior High School Lecture Hall, at 7:00 p.m.

The hearing shall continue until all representatives of associations and other interested or affected persons or groups have had an opportunity to be heard concerning the above-captioned matter by submitting oral or written data, statements, or arguments.

Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to:

Office of Hearing Examiners
Subject: Rum River Rules Hearing
1745 University Avenue
St. Paul, Minnesota 55105
Telephone: (612)-296-8107

either before the hearing or within 20 days after the close of the hearing. The hearing record will be kept open to receive these written statements through Monday, September 5, 1977.

The proposed Management Plan relates to the following matters:

Reasons for including the Rum River in the Minnesota Wild, Scenic and Recreational River's System

The proposed classification of the river or segments of the river.

The proposed land use district boundaries which shall not exceed 320 acres per each river mile on both side (not each side) of the river.

The proposed methods for preserving the river and it's adjacent lands, including the recommended land acquisition.

The proposed regulations for local land use control, including such matters as lot size and building height and setback requirements, vegetative cutting provisions, use within the land use districts, and criteria for utility crossings, public road and river crossings.

The proposed plan for recreational management within the land use districts, including the location and design of campsites, rest areas, and accesses.

The proposed plan for administration of the management plan.

Copies of the management plan are available for inspection at the public libraries in Anoka, Cambridge, Princeton, Milaca, the ECOL Library in Minneapolis, the State Legislative Library, and at the Department of Natural Resources, Centennial Building, St. Paul, MN.

Copies of the management plan will be available at the public hearings. For those unable to attend the hearings, copies are available for review at the above-mentioned locations. In addition, a copy may be obtained at no charge by contacting the River's Section, Division of Parks and Recreation, B95 Centennial Building, St. Paul, MN 55155. Phone: (612)-296-2573.

The proposed Management Plan for the Rum River has been prepared in accordance with Minnesota Statutes 104.35 and the Statewide Rules and Regulations relating to the Wild, Scenic and Recreational Rivers System, Minnesota Regulations NR 78-81.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officals. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, phone (612)-296-5615.

Dated this 23rd day of May, 1977.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

MICHAEL C. O'DONNELL, Acting Commissioner
Department of Natural Resources

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE WILLIAM B. NYE
COMMISSIONER OF THE
DEPARTMENT OF NATURAL
RESOURCES, STATE OF
MINNESOTA

In the Matter of the Proposed
Inclusion in the Minnesota Wild,
Scenic and Recreational River's
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from the Ogechie Lake Spillway to a line
crossing the River between the center
lines of Rice Street and Madison Street
in the City of Anoka, and of the Proposed
Adoption of a Management Plan for this
proposed Wild, Scenic and Recreational River.

I, Special Assistant Attorney General A. W. Clapp III, have examined the proposed rule and all related documents. Based on that and my familiarity with applicable statutes and regulations, I declare that all required procedures have been followed.

Dated: Jan. 12, 1978

A. W. Clapp III

Special Assistant Attorney General

STATE OF MINNESOTA

BEFORE WILLIAM B. NYE,
COMMISSIONER OF NATURAL RESOURCES
STATE OF MINNESOTA

In the Matter of the Proposed Inclusion in the Minnesota Wild, Scenic and Recreational Rivers System of the Portion of the Rum River from the Ogechie Lake Spillway to a line crossing the River between the center lines of Rice Street and Madison Street in the City of Anoka, and of the Proposed Adoption of a Management Plan for this proposed Wild, Scenic and Recreational River.

ORDER ADOPTING RULE

WHEREAS, public hearings on the above-captioned matter have been held, and

WHEREAS, the REPORT OF HEARING EXAMINER finds all statutory and regulatory requirements have been met, and

WHEREAS, the Commissioner's FINDINGS and the rule which were submitted to the Chief Hearing Examiner have been modified by eliminating NR 2720 C. 8 in response to his finding of substantial change.

WHEREAS, the proposed final rule drafted per the FINDINGS AND CONCLUSIONS OF THE COMMISSIONER has been approved by the chief hearing examiner,

NOW THEREFORE, pursuant to the authority vested in me by Minnesota Statutes Section 104.31 through 104.40, I adopt the rules identified as Minnesota Department of Natural Resources Rules and Regulations, Chapter 27, consisting of Minnesota Regulations NR 2700, 2710 and 2720.

Dated: January 11, 1978

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

William B. Nye, Commissioner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Inclusion in the Minnesota Wild, Scenic and Recreational River's System of the Portion of the Rum River from the Ogechie Lake Spillway to a Line Crossing the River Between the Center Lines of Rice Street and Madison Street in the City of Anoka, and of the Proposed Adoption of a Management Plan for this Proposed Wild, Scenic and Recreational River.	REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on August 10, 1977, before Howard L. Kaibel, Jr., a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Natural Resources on October 19, 1977; and

WHEREAS, the Department of Natural Resources has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Department of Natural Resources has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 2, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules, except for the new subsection NR 2720(c)(8), are not substantially different from those proposed at the public hearing and that the Department of Natural Resources has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Natural Resources has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated: December 27, 1977.

Duane R. Harves by DAB

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 — 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

January 4, 1978

Mr. William Nye
Commissioner
Department of Natural Resources
3rd Floor, Centennial Office Bldg.
658 Cedar Street
St. Paul, Minnesota 55155

RE: Our File: DNR-77-009-HK (Rum River, Wild and Scenic Designation)

Dear Commissioner Nye:

At the time I submitted the report of the Chief Hearing Examiner with regard to the substantial change determination in the above referenced matter, I indicated that the Hearing Examiner had also spotted some typographical errors which should be corrected before you have the rules finally adopted and published in the State Register.

Enclosed with this letter is a copy of Mr. Kaibel's memorandum to me. The items which are brought to your attention are all found on the second page.

Yours very truly,

DUANE R. HARVES
Chief Hearing Examiner

DH:nt
Enclosure

cc: A. W. Clapp, III
Special Assistant Attorney General

RECEIVED
JAN 6 1978
ATTORNEY GENERAL
Dept. of Natural Resources

ADM... 1000

STATE OF MINNESOTA

DEPARTMENT OFFICE OF HEARING EXAMINERS

Office Memorandum

TO : DUANE R. HARVES

DATE: December 23, 1977

FROM : HOWARD L. KAIBEL, JR.

PHONE: 296-8107

SUBJECT: RE: DNR-77-009-HK, Rum River-Scenic Designation, Substantial Change Determination.

My examination of the Commissioner's proposed revisions reveals only one change which appears clearly "substantial" as that term is defined in Uniform Rule HE 108. That is the new section NR 2720(C)(8) relating to the development of new snowmobile trails within the land use district.

The expansion of the originally proposed (immediately preceding) subsection dealing with snowmobiles, NR 2720(C)(7) was specifically presented at the hearing in such a way as to invite comment in the Department's supplementary testimony (Comment S, P.6). It was specifically circulated to the most active hearing participants, including particularly the most vocal opponent of the snowmobile provisions -- the Sierra Club. A Sierra Club representatives attended a subsequent hearing where these provisions were fairly and exhaustively discussed.

It is clear that it is not a substantial change as the legislature intended that term to be defined under the Administrative Procedures Act. (All this presumes that the proposed expansion is not intended to change the law regarding the right to snowmobile on public roads as is currently provided in the uniform rule. If that presumption is erroneous and this is the Commissioner's intention in omitting such permitted use in the listing in subsection (7) it is in my judgment clearly substantial, but I am sure that is not the intent. On final adoption, this ambiguity should be clarified by adding the public road exception as an additional clause "c" in this subsection.)

The new proposed subsection (8), on the other hand, was never presented on the record and represents a substantial departure from the rules as originally proposed. As a separate section permitting development of snowmobile trails if approved by the DNR the proposal clearly contemplates development of trails other than those "established through the DNR's grant-in-aid program." This further expansion of the exception to the uniform rule was never presented to the public in such a way as to invite reaction. The above discussed expanded provision explicitly related only to maintenance of the existing DNR trail system. The sole justification on the record was that the existing trail involves short term leases which might force relocation. Hearing

participants and all potential participants who received notice of the hearing were led to believe that the snowmobile exception in this district would be limited to trails established "through the DNR's grants-in-aid program." In fact, in comment S, "the DNR staff agrees that snowmobile trail development will not enhance the qualities of the Rum River," defending only the "established, pre-existing use that must be allowed to continue...." The Examiner and I think in fairness the public, were led to believe that this exception was limited to the existing DNR snowmobile trail system which makes incursions into the land use district in only four places. Snowmobile use was objected to vigorously and is contrary to the Uniform Rule relating to such districts. If a virtually unlimited exception is to be added for this district, it should be done only after a new hearing with proper notice to affected parties.

My cursory review also revealed additional matters which, though not relevant to your substantial change determination, should probably be called to the Department's attention, as follows:

(a) In the final proposed copy for the State Register, Rule 2720(C)(4) changes a ";" to a "," without the proper indication through bracketing and underlineing that the change is intended. I assume that it is a typographical error.

(b) The Commissioner's findings explicitly adopt the hearing examiner's recommendations except for listed exceptions. It follows that the Commissioner intends to adopt recommendation 8(d) to delete everything after the ";" in proposed rule 2720(C)(5)(a) which is now 2720(C)(4)(a) in the final copy. That final copy however omits this deletion.

(c) The final copy as proposed for the State Register in 2720(A)(4)(e)(P.5) appears to bracket the word "and" within a larger set of brackets deleting a longer phrase.

HLK:ef

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Inclusion in the Minnesota Wild, Scenic and Recreational River's System of the Portion of the Rum River from the Ogechie Lake Spillway to a line crossing the River between the center lines of Rice Street and Madison Street in the City of Anoka, and of the Proposed Adoption of a Management Plan for this proposed Wild, Scenic and Recreational River.

FINDINGS AND CONCLUSIONS
OF THE COMMISSIONER

I have read the REPORT OF HEARING EXAMINER, who has concurred in the proposed designation, with specific recommendations to amend the proposed rule. I adopt the hearing examiner's FINDINGS OF FACT and CONCLUSIONS as mine and incorporate them by reference in this document, except for the following:

ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS.

The following findings and conclusions are made in supplement to the hearing examiner's report, to elaborate and comment on some recommendations of the hearing examiner and to bring forth some additional findings which were addressed at the hearings, but were not addressed in the hearing examiner's report.

FINDINGS

1. The hearing examiner has indicated in his finding number "7" that the evidence given at the hearing supports classifying the segment of the river between Princeton and Cambridge as "wild" rather than "scenic" as proposed in the rules. I do not concur with this finding, because this segment's water quality has not been shown to be excellent, as required by Minnesota Statutes, Section 104.33, Subdivision 2. In response to the hearing examiner's recommendation of immediately reinstitating proceedings to reclassify this section as "wild", I

will request that the Pollution Control Agency monitor the water quality of this portion of the Rum River and determine if the water quality is excellent. If the water quality is excellent the DNR will restudy the area to determine if the adjacent shoreland possesses the necessary values to qualify for the "wild" classification under Minnesota Statutes Section 104.33, Subdivision 2 and propose amending this management plan through new public hearings.

2. I do not concur with the hearing examiner's findings number "8(a)", on the basis that if the examiner is correct in his opinion that municipalities have the flexibility in Minn. Stats., Section 462.357 to dispense with formal variance notice and hearing provisions, then there is no need to add a regulation that specifically allows this for cities along the Rum River. Furthermore, I do have concerns as to whether such a provision can properly be placed in the form of a state regulation, as it may exceed the authority granted to cities in 462.357.

Therefore, I find it neither needed or reasonable to amend the rule, as the hearing examiner has suggested.

3. I do not concur with the hearing examiner's finding number "8 (b)," due to a possible misinterpretation of NR 80, regarding the use of snowmobiles in a Wild and Scenic River district by both the examiner and the Department staff.

NR2720 C. 8., as proposed, would have allowed new snowmobile trail development on publicly-owned lands. Department staff testified at the hearing that the intention was to allow continued use of the snowmobile trail system on both private and public lands, and to allow development of new trails where needed, to replace existing trails. Due to short term leases on private lands for these trails, it can be expected that in order to allow continuation of this pre-existing use, some new trail development must be allowed.

It should be noted that trail development would be addressed through the provisions of NR 2720 A. 4. e., which would require approval from the department before a new trail could be developed. The hearing examiner has said that the pre-existence of a snowmobile system by itself is not a "particular attribute" to the area, therefore there is no legal authority to allow additional trail development as proposed. However, it must be noted that nowhere in the Wild

and Scenic Rivers Act or NR 78-81 is the development of new snowmobile trails strictly prohibited, as the examiner has indicated. In fact, the hearing examiner's recommended change to proposed rule NR 2720 C. 8. would not result in prohibiting new trail development, as intended. The recommended language would only allow use of existing trails across public lands.

NR 80 (b) (3) prohibits the use of snowmobiles only on publicly-owned lands within the land use district. Furthermore, this provision specifically allows that snowmobiles may be exempted from this provision, when addressed by the management plan, thus not requiring that a "particular attribute" be present.

It is therefore reasonable and needed to amend both the examiner's recommended language and the Department's proposed rule in order to allow continued use of the existing snowmobile trail on public lands by using the following provision in place of NR 2720 c. 8.:

Snowmobile use on lands in the Wild, Scenic and Recreational land use districts shall be allowed:

a. On private lands, only with the permission of the appropriate landowner.

b. On public trails specifically designated for snowmobile use.

4. It was recommended by the hearing examiner in his findingg 8 (f) that the proposed rule NR 2720 C. 7. be revised to state that:

"The Division of Enforcement shall allocate funds for enforcement of wild, scenic and recreational river user regulations (Minn. Reg. NR 80)."

I cannot concur with the hearing examiner's findings. Such a provision would be possible <u>if</u> the Division of Enforcement were funded by the legislature <u>specifically</u> for enforcement of wild, scenic and recreational river user regulations. However, this is not the present situation.

The Division of Enforcement is allocated funds by the legislature to enforce all Department of Natural resource rules and regulations including Minn. Reg. NR 80. Although the Division of Enforcement cannot allocate funds as recommended, it can take appropriate action, within the limits of available funding and personnel, to insure expeditious enforcement of these regulations. I therefore am revising proposed rule NR 2720 C. 7. by adding:

> "The Division of Enforcement shall take appropriate action, within the limits of available funding and personnel, to insure expeditious enforcement of wild, scenic and recreational river user regulations."

5. Proposed rule NR 2720 D. 6. did not take into account the fact that some counties or cities that do not now have more restrictive zoning regulations may wish to adopt more restrictive regulations in the future, providing additional protection to the river's natural values. I therefore amend the proposed rule as follows:

"Any of the involved counties or cities may retain or adopt regulations which are more restrictive than those required by this plan."

6. Since proposed rule NR 2720 C. 4. was removed from the final rule, proposed rules NR 2720 C. 5. through C. 10 will now be renamed to NR 2720 C. 4 through C. 9 . respectively for the final rule. Also, since proposed rule NR 2720 C. 8. was deleted and replaced with one provisions relating to snowmobiles, it shall be named NR 2720 C. 7.

7. Upon further review of the proposed rules, it has been found that the proposed designated tributary "Estes Brook" (NR 2720 A. 2. e.), is not in fact a tributary of the Rum River proper, and will therefore be deleted from the final rule. Proposed rule NR 2720 A. 2.f. through A. 2.n. will then have to be renamed to NR 2720 A. 2.e. through A. 2.m. respectively for the final rule.

8. Due to changes made in the rules that apply to Municipalities, I find that reference to "NR 2720 D." in proposed rule NR 2720 A. 1. a. will have to be renamed to read "NR 2720 A. 4. g.".

9. Due to re numbering, reference to NR 2720 "C. 5." shall be changed to "C. 4 ." for NR 2720 C. 9 . of the final rule.

10. During the course of the hearings, the examiner noted several sections in the proposed rules that needed change, clarification or further enumeration and he specifically requested Department staff to draft amended language. The requested revisions were submitted by staff on September 1, 1977, more than ten days prior to the continuance hearing of September 16, 1977. Since the amended language was not addressed by the hearing examiner's report, it can only be assumed that the amendments met with his approval (as expressed to Department staff while off the hearing record). Therefore, I find that the following amendments to the proposed rule are needed and reasonable, and they do not change the intent of the proposed regulations as noticed or presented at the hearing:

a. It was noted at the hearing, through public testimony, that the City of Ramsey had recently received notice from the Metropolitan Sewer District, that public sewer would soon be made available to a portion of the city. Since one of the major criteria for classification of areas along the river as rural or urban was whether or not public sewer is or soon will be available, it is both needed and reasonable to classify a portion of the City of Ramsey as an urban area. (Results in requiring less restrictive land use standards, and differing standards when sewer is finally available.) Therefore, any mention of the City of Ramsey in the regulations shall separate "that portion located in the S½ of Section 19, T32N-R24W; and Sections 25, 36 and the S½ of Section 24, T32N-R23W"as an urban area.

b. It was noted by the hearing examiner several times during the course of the hearings that references to regulations which apply in areas classified urban (cities with public sewer availability) were unclear and difficult for anyone including Department staff to comprehend. Recommended changes to better clarify the intent and application of these proposed rules were drafted by Department staff and were submitted for

the record. These changes were quite extensive and are therefore adopted as my changes by reference from the DNR memorandum, entitled "Additional Testimony For Rum River Hearing continuance". (Comment S of the public hearing record.)

c. Testimony was submitted by the Minnesota Department of Transportation (MN/DOT) which expressed several concerns about the proposed rules. These concerns were not addressed by the hearing examiner in his findings or by Department staff in the hearing record, due to their late submission. Most of the concerns received from MN/DOT on the Rum River proposed rules concern the Recommendations (NR 2720 E.), which will be stricken from the final rule. However, one of MN/DOT's comments relate to the indirect effects designation would have on the proposed U.S. Highway #169 improvements. Adoption of the proposed rules would, according to federal regulations, require documentation and analysis of the proposed upgrading on a major scale. An Environmental Impact Statement for this project has already been reviewed by the DNR. Wild and Scenic River standards would not prohibit completion of the project. A provision which considers two proposed county bridge crossings as pre-existing uses of riverside lands has been reviewed and evidently approved by the hearing examiner. Therefore, it seems reasonable and needed that the following amendments to NR 2720 A. 5. be made: The proposed bridges across the Rum River located at about Section 25, T32N-R25W and at about Sections 13 and 24, T32N-R25W (Also referred to as the Anoka County Road #20 and #57 bridge proposals) and the three (3) proposed bridge crossings for U.S. Highway #169 in Mille Lacs County shall be considered pre-existing uses of riverside lands, because they have been

included in existing long range thoroughfare plans for the area or Environmental Impact Statements have been finalized. However, any development of these bridges shall comply with the construction and permit requirements of Minnesota Regulations NR 79 (j). In addition, reconstruction, replacement or upgrading of existing bridge crossings shall be considered in compliance with the policy of the Management plan when the procedures of Minnesota Regulations NR 79 (j) are followed.

d. At the hearing, DNR staff submitted to the hearing examiner the following language for NR 2720 A. 6.

"Replacement of substandard structures may be allowed, limited or prohibited by the local ordinance."

The hearing examiner requested this amendment to the rules at the hearing, and therefore I consider this change needed and reasonable.

CONCLUSIONS

I. The rule amendments recommended by the hearing examiner are justified, except as noted herein and that the amendment language in these findings and the attached documents for publication in the State Register are needed and reasonable to comply with the hearing examiner's requests.

The Chief Hearing Examiner has determined that the changes specified above are not considered substantial and would not require rehearing.

Dated January 11, 1978

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

William B. Nye, Commissioner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Inclusion in the Minnesota Wild, Scenic and Recreational River's System of the Portion of the Rum River from the Ogechie Lake Spillway to a Line Crossing the River Between the Center Lines of Rice Street and Madison Street in the City of Anoka, and of the Proposed Adoption of a Management Plan for this Proposed Wild, Scenic and Recreational River.	)	REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Howard L. Kaibel, Jr. of the Minnesota Office of Hearing Examiners on the Tenth day of August, 1977, in the Fred Moore Junior High School Auditorium, 1523 Washington, Anoka, Minnesota, commencing at approximately 7:00 p.m. Additional hearings were conducted as follows:

August 11, 1977, at 7:00 p.m. in Milaca;

August 15, 1977, at 7:00 p.m. in Elk River;

August 16, 1977, at 7:00 p.m. in Cambridge; and

September 16, 1977, at 12:00 noon, in Saint Paul;

all in the State of Minnesota.

William Augustus Clapp, III, Special Assistant Attorney General, represented the Department of Natural Resources. Also appearing on behalf of the Department were Dale Homuth, Rivers Project Leader, and Wayne Sames, Assistant Rivers Coordinator.

The hearings continued until all representatives of associations or other interested groups or persons had an opportunity to participate and be heard concerning the adoption of the proposed rule. The additional September 16 hearing date, granted in response to a specific motion for additional time by an affected member of the public, permitted exhaustive analysis of the Staff's proposed rule and justification. Over 200 persons attended the hearings, and the transcript of the testimony is

537 pages long. More than 170 pages of written comments were submitted after the close of the hearings.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Department shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall also clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412, within ten calendar days. Thereafter, the Department shall be responsible for filing the rules with the Attorney General.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. That on May 20, 1977, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. That on June 6, 1977, a Notice of Hearing and a copy of the proposed rules were published at 1 State Register 1755.

3. That on June 3, 1977, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. That on July 13, 1977, the Department filed the following documents:

(a) The Order for Hearing;

(b) The Notice of Hearing as mailed;
(c) The Affidavit of Mailing;
(d) The Secretary of State's Certificate;
(e) The Statement of Need;
(f) The Statement of Evidence, including the names of witnesses to be called; and
(g) The names of Department personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. That the record remained open through September 23, 1977, for the receipt of written comments and statements.

6. That statutory authority to promulgate the proposed rule is found in Minn. Stat. § 104.35. This section of the law and the proceeding herein involve the second step of a two-step process for designating wild, scenic and recreational rivers provided for in Minn. Stat. § 104.31, et seq.

The first step in this process (described in Minn. Stat. § 104.34) was the establishment of a single uniform set of standards and criteria for management of designated rivers. In 1974, the Department of Natural Resources held rules hearings for rules setting forth these uniform land use controls and other management policies. The rules thereafter promulgated, pursuant to Minnesota Statutes, ch. 15, the Administrative Procedures Act, are contained in Minn. Rules NR 78-81. Many of the criticisms and concerns that were voiced in these hearings are actually differences with these uniform, previously-promulgated standards.

This proceeding is limited to the second part of the wild and scenic river designation process, that is, analyzing and classifying particular rivers. The Uniform rules are consequently properly considered only insofar as "particular attributes" of this area require "controls that differ from the statewide standards and criteria" (Minn. Stat. § 104.35, subd. 1).

7. That the adequacy of the Staff documentation of the need for and reasonableness of the proposed classification and designation is best described in written comments (DD) submitted by Roger Williams of the State Planning Agency:

> I would like to commend your staff for the quality of this plan. In commenting on other plans we have expressed concern that the analysis section was superficial. This draft's description of the natural, scenic, historic and recreational values of the area is more explicit and easier to follow ....
>
> The management techniques section of the plan also does a much better job of describing the state's interest in and potential for management of the area. The land use control provisions of the wild, scenic and recreational rivers program are carefully and simply stated. The existing local land use controls are defined. Data is presented documenting the rapidly expanding population of effected counties and the pressure for development of the areas adjacent to the river. The river's location within an hours drive of most of the state's population, its substantially natural condition and suitability for many types of recreation, document its statewide significance. Given this data, the need for and reasonablensss of the proposed designation is established. Designation of the river is in the state's best interest.
>
> This draft plan is the best Minnesota Wild and Scenic River Plan the State Planning Agency has seen to date....

The plan is also the best that the Hearing Examiner has seen, and is doubtless the major reason for the widespread public acceptance evident throughout the hearing process. Another reason for this public acceptance is a series of compromises made before the hearing process was begun, with a local broad based citizens advisory council, described by the DNR project leader in Elk River (III, p. 330):

> The whole Rum River Plan is compromise, as Ron Wheat knows there because we sat down with the advisory council and hashed out issues one by one and each one of these provisions in this plan was voted on and they gave us a recommendation and we stuck with the recommendations, they were all good recommendations, but there were two sides to every issue and there were extreme ends and one in the middle. ... [t]hat happens a lot, that's life.

Unfortunately, these compromises are not always in accord with the evidence or the state's best interests. In such cases, it is illegal for the commissioner to "stick with them" as proposed herein by Department Staff. The local advisory committee was representative only of this generation of local citizens. The Legislature requires that the commissioner make his decisions in the interests of protecting present and future generations of citizens throughout the state.

A good example of diverging local and state interests is the proposed classification of the river between Princeton and Cambridge as scenic. The evidence supports classifying this segment as "wild" to afford it the greater protection from new development. Department Staff did not present any contrary evidence other than an undocumented allegation that the water quality in this stretch of the river may be less than "excellent" as required by the statute, at least until the Pollution Control Agency forces upstream municipalities to comply with water quality laws. The uncontradicted description of this section of the river provided by a spokesman for the North Star Chapter of the Sierra Club (I, p. 94, et seq.) clearly requires the more restrictive classification. This spokesman later admitted in final written comments (B) that "in all candor" such a change in the rule would be "substantial" as that term is defined in uniform procedural Rule HE 108, requiring an additional hearing after new notice to affected property owners. It is specifically found that the revision would be substantial. The spokesman further urges and it is accordingly recommended that the delay in overall protection for the river should be avoided by classifying the river as scenic for now, and immediately reinstituting proceedings to reclassify this section as wild after further hearings. In adopting his final designation order, the commissioner should clearly indicate this intention to local governmental units, strongly urging them to enact the stronger minimum zoning requirements along this stretch of the river in order to avoid the expense of revising land use controls twice.

8. That no specific recitation of all the facts and comments introduced by the DNR and the public with regard to the proposed management plan is necessary as a specific finding in this Report. Those facts and comments, including the specific responses of the Department of Natural Resources to the concerns voiced by the opponents of the plans, are contained in the record. The following areas of concern, however, do require specific comment and insubstantial revision:

(a) A further provision is needed to avoid unnecessary formal variance proceedings, as requested by the City of Ramsey and Attorney John Berglund. While the variance requirement is essential in order to require Department approval of exceptions to the zoning protections, all of the other zoning procedures should not be necessary when the Department approves the exception. As Mr. Berglund points out, "Application must be made, notice must be sent to the surrounding land owners, notice must be published in a weekly newspaper and at least two administrative hearings must be held. This is certainly time consuming and expensive." It is also a waste of valuable time for local planning and zoning commission members. In Mr. Berglund's case, it is simply silly to do all of this 21 more times for the 21 individual lots in a plat that has already received city approval if the Department is not going to contest any of the variances. While counties must go through notice and hearing procedures for all variances (Minn. Stat. § 394.26), municipalities are permitted more flexibility (Minn. Stat. § 462.357, subd. 6). This flexibility can be taken advantage of in situations where the Staff indicated DNR representatives would simply attend the hearings and approve the variance the same evening to expedite matters. This can be accomplished by adding a qualified procedural exception to the automatic total exception that is already contained in the Uniform rules by adding a new section 2720 (A)(4)(f):

> f. Because of the large number of existing plats along some sections of the Rum River, Minnesota regulations NR 81(B)(2)(bb) is modified by adding the following sentence: (vii) Municipalities may provide by ordinance, procedures for dispensing with formal variance notice and hearing provisions where advance certification of the commissioner is obtained on the permit application indicating that it is consistent with past practice in the area.

(b) The snowmobile trail provisions of proposed section 2720(C)(8) was repeatedly objected to by the public and the Department failed to document the legal authority, need for or reasonableness of this provision. Use of snowmobiles in the protected district is prohibited by the Uniform rule except on public

roads. When asked specifically to identify the "particular attributes" of this area that would provide legal authority under the statute for an exception here, the Staff was unable to identify any other than "only the preexistence of an extensive snowmobile trail system." While this is one of the "compatible, preexisting, economic uses of particular tracts of land" which should be permitted as an exception to the snowmobile restrictions, it is not a "particular attribute" giving rise to legal authority to create additional snowmobile trails as proposed. Closer examination shows moreover, that except for land use district crossings (which are on public roads and therefore allowed in any case) the existing snowmobile trail system makes incursions into the land use district in only four places totaling less than seven miles of a total of 146 river miles in the district. In each of these four cases, public road alternatives exist which would allow simple rerouting in the event some future land owner refuses to renew existing leases. This section should consequently be changed to read: "Continued use of the existing snowmobile trail shall be permitted" (V, p. 530).

(c) Similarly, when the Staff was asked to identify "particular attributes" justifying keeping public camp and rest sites away from existing private sites, the response was simply: "There are none that I can think of." Proposed provision 2720(c)(4) must consequently be stricken on final adoption.

(d) An excellent example of a compromise with the local advisory committee which is not supported by the facts is the proposed limitation on the authority of the commissioner to designate future camp and rest sites. No evidence was presented to substantiate that this would have the intended effect of discouraging the public from canoeing on the river. That intended effect would also appear to be contrary to the Legislature's intent in earlier designating this river as a canoe and boating route. The evidence does show that the limitation clearly would have the effect of discriminating against family use of this

recreation facility, and that it will increase incidents of unlawful tresspass and destruction of private property. As the Statement of Need indicates, inadequate facilities in relation to use "will undoubtedly cause land owners increasing problems with litter, noise and tresspassing, ... [a]n open pasture is a tempting sight to a canoeist who has no other place to camp." Indeed, camping may be among the least offensive and destructive of tresspass activities in the event of inadequate facilities. Adequacy of recreation facilities is a matter properly left to the sound discretion of the commissioner, particularly where no study or evidence whatsoever has been presented as to the level of use. Giving local zoning authorities a veto over such decisions by making them "conditional uses" is contrary to one of the basic expressed purposes of designation: avoidance of potential parochialism in local government land use decisions. The Statement of Need cites this inadequacy specifically, indicating that local zoning authorities "cannot preserve the river as well as the state can through a comprehensive management plan for the entire Rum River. Local units of government can only control lands within their boundaries. Along the Rum, there are 13 separate counties and cities in three regional development commissions (RDCs)." Strong local government objections to any department acquisition of taxable land was repeatedly expressed throughout the record. Upon final adoption, reference to subsections (aa), (cc), (dd) and (ff) should be stricken from the second sentence of proposed section 2720(A)(4)(e). The remainder of this sentence should then be stricken in its entirety because it would make private campgrounds a conditional use in all land use districts. Such uses are already conditional uses in the Uniform rule in scenic and recreational rivers and are non-permitted uses in wild rivers. There is no justification in this record for making private camp grounds conditional uses in wild river districts. Similarly, the proposed limitation on acquisition priorities contained in the language after the semicolon in proposed rule 2720(C)(5)(a) should

be stricken, with the additional reason that a limitation on the number of "priorities" is a meaningless limitation anyway.

(e) The "recommendations" section 2720(E) should be stricken as agreed at the hearing. It has no place in an agency rule.

(f) Both proponents and opponents of designation were unanimous in urging increased department law enforcement as an essential ingredient in the reasonableness of designation. It was reported without contradiction that the number of enforcement personnel in this entire district (which includes Mille Lacs Lake) has not been increased since 1949. While the level of overall enforcement activity may be a matter for legislative attention, the mandatory allocation of part of that activity to this resource is properly a matter for these rules. Designation without some provision for at least occasional minimal patrols to enforce litter and tresspass laws is specifically found to be unreasonable. The enforcement section of the proposed rule, 2720(C)(7), must be revised upon final adoption in accord with the previous section relating to maintenance: "The division of enforcement shall allocate funds for enforcement of wild, scenic and recreational river user regulations (Minn. Reg. NR 80)."

CONCLUSIONS

1. That the hearing in this matter was held pursuant to proper notice, authority and substantive procedures of law and rule.

2. That the Department of Natural Resources duly acquired and now has jurisdiction over the within proceeding.

3. That the Department of Natural Resources proposed management plan with the modifications herein recommended complies with all statutory and rule requirements relating thereto.

4. That the area proposed with the modifications herein recommended in the classification thereof meets the criteria for designation.

5. The proposed management plan will impose certain restrictions on land owners in the affected area, but the restrictions

on individual use prerogatives are outweighed by the public's interest in managing and preserving a segment of one of the state's valuable scenic and recreational rivers.

6. That the rules hereinafter recommended for adoption will properly implement the legislative mandate of the wild and scenic rivers act.

7. That there is a need for the adoption of the proposed rules as hereinafter recommended.

8. That individually and taken together, the rules as hereinafter recommended for adoption are a reasonable implementation of the Legislature's delegated responsibility.

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the proposed rules of the Department of Natural Resources be promulgated, approved and adopted after attention to the modifications suggested by the Findings.

IT IS FURTHER RECOMMENDED, though not necessary to the determination of the issues at hand:

1. That based upon the experience of this and the other prior river designation proceedings, considerable revisions are needed for the Uniform rules (NR 78-81). The need to introduce flexibility into the arbitrary setback provisions where a structure could not be seen from the river is just one example of where such attention is needed based on this record. Another indication is the tortuous finally-proposed condition of section D, both as to the distinction between counties and "sewer-available" areas and as to the land use provisions. (It is getting to the point where even experienced Staff and Hearing Examiners have considerable difficulty with interpretation and interrelation of the various provisions.) Notice in the State Register soliciting public input in this regard would doubtless engender additional constructive suggestions for revision.

2. That the attention of River Section Staff should be forthwith turned from wild and scenic river designation to shoreland zoning classification. It was reported during the Cambridge

hearing that all the rivers in the state have been classified "general development" without distinguishing areas deserving of the more restrictive "natural environment" protections because the computer system worked only on lakes (IV, p. 393). The comparative mileage of protectable rivers and streams (including the various tributaries to the Rum that the public urged be protected occasionally in this record) and consequent comparable long range public benefit defies description. Enforcement of the zoning protections under the shoreland ordinance is done by local zoning authorities with little or no state resource fund expenditure. The public repeatedly expressed its preference throughout this record for this kind of locally administered shoreland protection. The 200 foot setback requirement for "natural environment" streams is equal to that for designated wild rivers and exceeds requirements for scenic (150 feet) and recreational (100 feet) rivers. Had the Rum River been properly classified in the first place, this setback requirement would clearly have been in effect for most of this district all along, and probably would have prevented some of the existing substandard plats. The public might then have welcomed the direct state land use control of the wild and scenic designation in return for some of its lesser restrictions and easement compensation.

Dated: October 19, 1977.

HOWARD L. KAIBEL, JR.
Hearing Examiner