

Minnesota Attorney General: Administrative Rules Proceedings

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ADMIN 1000 (Rev. 1/79)
SF-00006-01

#603

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO : JOSEPH N. ALEXANDER
Commissioner
Department of Natural Resources

DATE: July 14, 1980

Attn: HEDIA RIEKE

FROM : JERRY ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the Matter of the Proposed Adoption of Rules for Appropriation of Waters of the State

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

JA/bw
Enclosure
cc: Duane Harves
Susan Robertson

Our File #005

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JOSEPH N. ALEXANDER
Commissioner
Department of Natural Resources

DATE: July 8, 1980

Attn: HEDIA RIEKE

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Adoption of Rules for Appropriation of Waters of the State

The rules in the above-captioned matter have not been approved by this office and are being returned to you for the following reason.

Subsequent to my initial review of these rules, section 1.5057 A. was amended in an attempt to meet certain concerns, which I requested that the agency address, raised in a letter written to this office. While the changes that were made appear to address those concerns adequately, those changes failed to take into account an objection raised by the Hearing Examiner in his Report.

Specifically, the Hearing Examiner found, in paragraph 14, that a definition of "regional" was required to make the rules reasonable. Initially, in the rules first submitted to this office, "regional level" was defined in section 1.5057 A. This definition has been deleted, however, leaving the rules without the required definition. Further, as presently written, section 1.5057 A. does not permit delegation to regional levels of government, which might be considered to contravene the statute. Therefore, this section must be redrafted to comply with the statute and the Hearing Examiner's Report, taking into consideration the comments addressed in the letter that I attached to my previous memorandum.

If you have any questions concerning the issue discussed above, please do not hesitate to contact me. After any action that may be taken in response to this memorandum, these rules may be resubmitted for approval. At the time of resubmission to this office, please insure that the original and two copies of the new Order Adopting and the Rules as Adopted are submitted as they are necessary for filing with the Secretary of State. In this regard, I suggest that the new Order Adopting be separate from any additional Findings of Fact that may be made, thereby permitting the Order Adopting to be a single document rather than incorporating the two previous Orders. (See example attached.)

Additionally, should you determine to amend these rules, you should contact the Chief Hearing Examiner regarding resubmission of the rules to that office.

JSA/bw
Encl.
cc: Duane Harves
Susan Robertson

Air File #603

* Hedia Rieke from DNR called on 6/5/80 and would like AG's reviewer to call her before a final decision is made on these rules SEH (6-0515)

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 6/4 DUE DATE 6/24 7/12

Resubmitted and Received 7/2

a. Returned to Agency w/o Filing w/Secretary of State _____

b. Approved _____ Date Sent Back to Agency 6/24 7/8

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1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓ ?
5. Notice of Hearing ✓ 1.8.80 - 1.10.80 - 1.15.80
   Sufficiency ?
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List not submitted but see HE Rpt
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓ 11.26.79
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
    Attachment to HE report, Comment B ✓
13. Agency's Findings of Fact ✓
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable ✓
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable A) 10.28.77 B) 5.31.79
20. Petition by Public, where applicable N/A

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF PROPOSED RULES)
FOR WATER APPROPRIATION.)

ORDER OF THE
CHIEF HEARING EXAMINER

WHEREAS, the above-entitled rules were previously submitted for review by the Chief Hearing Examiner, following which orders were issued dated May 27 and June 30, 1980; and

WHEREAS, after submitting the rules to the Attorney General for review as to form and legality following the Chief Hearing Examiner's Order dated June 30, 1980, the rules were returned to the agency as having not been approved, by memorandum of the Attorney General dated July 8, 1980, wherein the Attorney General required that certain changes be made to the rules for purposes of form and legality; and

WHEREAS, on July 8, 1980, the Department of Natural Resources resubmitted the rules, with the changes as required by the Attorney General, to the Chief Hearing Examiner for review of those changes; and

WHEREAS, the Chief Hearing Examiner, having reviewed the changes, finds that the changes in the rules, after considering the elements contained in Rule 9 MCAR § 2.111, are not substantially different from the rules as proposed.

NOW, THEREFORE, upon receipt of this Order, 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, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 11th day
of July, 1980.

DUANE R. HARVES
Chief Hearing Examiner

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ~~Attorney General~~
Natural Resources

TO : JERRY ANDERSON
Spec. Asst. Attorney General

DATE: 7-1-80

FROM : BILL CLAPP Bill
Spec. Asst. Attorney General

PHONE:

SUBJECT: Water Appropriation Rules

The rules have been amended as you required. Attached are 3 copies of the new final rule, showing changes from the rule that was noticed, plus 3 copies each of the Commissioner's Supplementary Findings and Order, and Harves's additional review for substantial change.

You will see that Commissioner's new finding #6 recognizes the merit of Derryl Peterson's memorandum.

BC-dm
enc.

RECEIVED
JUL 2 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PRINTED ON RECYCLED PAPER

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the
Adoption of Proposed
Rules for Appropriation
of Waters of the State

SUPPLEMENTARY
FINDINGS AND ORDER
OF THE COMMISSIONER

Having reviewed for form and legality the rules for water appropriation adopted by me on May 9, 1980, the office of the Attorney General has by letter to me of June 4, 1980, specified certain changes that must be made before that Office will approve the rule. That Office also submitted to me a letter from the attorneys for four metropolitan area watershed districts, for my consideration.

Accordingly, my Findings and Order of May 9, 1980, is amended to acknowledge that "shall" rather than "may" is the appropriate word in 6 MCAR §§ 1.5052 C. and 1.5053 A.1.b.(7), and is further amended by adding a finding:

6. As indicated in finding 14 of the Report of the Hearing Examiner, a watershed district is an appropriate "regional" unit of government to which to delegate permit authority in the manner set out in § 1.5057 A. Also as noted by the hearing examiner, regional development commissions are not appropriate. Soil and water conservation districts also would be inappropriate delegatee, because (1) their boundaries being coterminous with county boundaries, they are not "regional" and (2) they are not regulatory bodies.

Therefore I find that the only regional level of government to which delegation of water appropriation permit authority should be made, is watershed districts. The list can be expanded in the future as warranted.

NOW THEREFORE IT IS ORDERED that the rule adopted by me on May 9, 1980, is readopted with the changes required by the Office of the Attorney General, and with the change indicated by my Finding 6.

Dated June 27, 1980.

by Eugene T. Stern, Assistant Commissioner.
for JOSEPH N. ALEXANDER
Commissioner

original

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER of the
Adoption of Proposed Rules
For Appropriation of Waters
of the State

FINDINGS AND
ORDER OF THE
COMMISSIONER

I have read the report of the Hearing Examiner and reviewed the record. I accept his findings and adopt them as my own, except for the following of his findings:

1. Finding 13. The Department agrees with the need to define domestic use and has amended 6 MCAR § 1.5050D to include a definition to that effect. In regard to this finding the definition of domestic use does not include use for lawn watering. This use is not "domestic use" in the ordinary sense and is exempt from permit as long as the appropriation for this use is less than 10,000 gallons per day or 1 million gallons per year, any use in excess of these amounts would be construed to represent substantial withdrawal requiring a permit.

2. Finding 25. The language of 6 MCAR § 1.5052B.3.b was modified by the Department in its suggested changes to the proposed rules submitted January 25, 1980. Accordingly this finding is no longer applicable.

3. Finding 26. Since Minn. Stat. § 105.416 subd. 2, in part, specifically states: "The commissioner may in any specific application waive any of the requirements of clauses (d) to (f), when the necessary data is already available" (underlining added) it is not inconsistent to use the word "may" in 6 MCAR § 1.5053A.1.b.(7). Provision of

Minn. Stat. § 105.417, subd. 1 again uses the language "may waive" in regard to limitations and requirements of Minn. Stat. § 105.417, subd. 2 through 5 relating to natural and artificial watercourses and water basins, trout streams and contingency planning. Consequently, the Department used the word "may" in 6 MCAR § 1.5052C to maintain consistency with Minn. Stat. § 105.417, subd. 1.

The language of 6 MCAR § 1.5051C which provides the commissioner "shall waive" requirements of 6 MCAR § 1.5051 and § 1.5053 is not directly mandated by Minn. Stat. ch. 105 but is inserted in the proposed rules since it would be unreasonable to require data that are already available.

The Department position, in regard to this finding, is that the use of the word "may" in 6 MCAR § 1.5053A.1.b.(7) and § 1.5052C is consistent with the statutory language and the use of the word "shall" in 6 MCAR § 1.5051C is not inconsistent with the requirement for reasonable application of the proposed rules.

4. Finding 27. The Department, in consideration of the records and this finding, has amended the language of 6 MCAR § 1.5053A.2.b.(6) to make the limitation less arbitrary while still providing for some limitations where facts are unavailable, thus protecting the rights of other downstream riparian users, consistent with riparian case law.

5. Finding 38. The Department does not wish to make any "substantial change" in the proposed rules and consequently is not including in the final rules the provisions of 6 MCAR § 1.5053E relating to air conditioning systems added in its changes dated January 25, 1980. Since there will be considerable research and study effort in

the next year concerning water conservation, the Department will not at this time attempt to provide for specific water conservation policy relating to air conditioning but may propose changes in the rules, as future amendments, after more research and study.

Attached herewith is an index sheet which reference the Hearing Examiner's findings and the changes in the language in the final rules.

NOW THEREFORE IT IS ORDERED that the attached rules, identified as 6 MCAR §§ 1.5050-1.5057, numbering 39 pages, are adopted as rules of the Department of Natural Resources.

Dated: May 9 , 1980

Joseph N. Alexander
Commissioner
Department of Natural Resources

INDEX SHEET

Finding 10, page 2, 6 MCAR § 1.5050 C.5.

Finding 11, page 4, 6 MCAR § 1.5050 E.

Finding 12, page 1, 6 MCAR § 1.5050 B.

Finding 13, page 3, 6 MCAR § 1.5050 D.

Finding 14, page 35, 6 MCAR § 1.5057 A.

Finding 15, page 7, 6 MCAR § 1.5051 B.4.

Finding 16, page 10, 6 MCAR § 1.5052 A.1.j.

Finding 17, page 9,6 MCAR § 1.5052 A.1.f.

Finding 18, page 9, 6 MCAR § 1.5052 A.1.d.

Finding 19, page 9, 6 MCAR § 1.5052 A.1.e.

Finding 20, page 12, 6 MCAR § 1.5052 B.1.b.

Finding 21, page 12, 6 MCAR § 1.5052 B.1.e.

Finding 22, page 12, 6 MCAR § 1.5052 B.2.b.

Finding 23, page 13, 6 MCAR § 1.5052 B.2.d.(2).

Finding 24, page 13, 6 MCAR § 1.5052 B.2.f.

Finding 25, page 14, 6 MCAR § 1.5052 B.3.b.

Finding 26, See Commissioner's Order.

Finding 27, page 17, 6 MCAR § 1.5053 A.2.b.(6).

Finding 28, page 25, 6 MCAR § 1.5054 D.1.

page 24, 6 MCAR § 1.5054 B.4.

page 25, 6 MCAR § 1.5054 D.1.a.

Finding 29, page 20, 6 MCAR § 1.5053 E.2.a.

Finding 30, page 21, 6 MCAR § 1.5053 E.2.c.

Finding 31, page 28, 6 MCAR § 1.5055 B.4.a.

Finding 32, page 30, 6 MCAR § 1.5056 B.1.b.

Finding 33, page 30, 6 MCAR § 1.5056 B.2.b.

Finding 34, page 32, 6 MCAR § 1.5056 D.2. and 2.a. and 6 MCAR § 1.5056 E.3.

Finding 35, page 33, 6 MCAR § 1.5056 F.5.

Finding 36, page 34, 6 MCAR § 1.5056 F.10.

Finding 37, page 36, 6 MCAR § 1.5057 A.5.

Finding 38, see Commissioner's Order.

Finding 39, concurrence with January 25, 1980 comments.

INDEX SHEET

Finding 10, page 2, 6 MCAR § 1.5050 C.5.

Finding 11, page 4, 6 MCAR § 1.5050 E.

Finding 12, page 1, 6 MCAR § 1.5050 B.

Finding 13, page 3, 6 MCAR § 1.5050 D.

Finding 14, page 35, 6 MCAR § 1.5057 A.

Finding 15, page 7, 6 MCAR § 1.5051 B.4.

Finding 16, page 10, 6 MCAR § 1.5052 A.1.j.

Finding 17, page 9,6 MCAR § 1.5052 A.1.f.

Finding 18, page 9, 6 MCAR § 1.5052 A.1.d.

Finding 19, page 9, 6 MCAR § 1.5052 A.1.e.

Finding 20, page 12, 6 MCAR § 1.5052 B.1.b.

Finding 21, page 12, 6 MCAR § 1.5052 B.1.e.

Finding 22, page 12, 6 MCAR § 1.5052 B.2.b.

Finding 23, page 13, 6 MCAR § 1.5052 B.2.d.(2).

Finding 24, page 13, 6 MCAR § 1.5052 B.2.f.

Finding 25, page 14, 6 MCAR § 1.5052 B.3.b.

Finding 26, See Commissioner's Order.

Finding 27, page 17, 6 MCAR § 1.5053 A.2.b.(6).

Finding 28, page 25, 6 MCAR § 1.5054 D.1.

page 24, 6 MCAR § 1.5054 B.4.

page 25, 6 MCAR § 1.5054 D.1.a.

Finding 29, page 20, 6 MCAR § 1.5053 E.2.a.

Finding 30, page 21, 6 MCAR § 1.5053 E.2.c.

Finding 31, page 28, 6 MCAR § 1.5055 B.4.a.

Finding 32, page 30, 6 MCAR § 1.5056 B.1.b.

Finding 33, page 30, 6 MCAR § 1.5056 B.2.b.

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Joseph N. Alexander
Commissioner
Department of Natural Resources
Attn: Bill Clapp

DATE: June 24, 1980

FROM : Jerry S. Anderson
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Adoption of Rules for Appropriation of Waters of the State

The rules in the above-captioned matter have not been approved by this office and are being returned to you for the following reasons:

1. In numerous instances, the rules grant to the commissioner unbridled discretion in decision-making. Generally, this has been done through the use of the term "may" or other discretionary language. These attempts to provide the commissioner with discretion or flexibility in his decision-making are violative of Minn. Stat. § 15.0412, subd. 3, which requires an agency to establish by rule "every agency statement of general applicability and future effect . . . made to implement or make specific the law enforced or administered by [the agency]." Thus, agency flexibility and discretion must be achieved by careful, complete selection of criteria that are not impermissibly vague but are sufficiently broad to provide agency flexibility. Predictability and nondiscriminatory application of the rules must be achieved and made available to all applicants who meet the stated criteria. The following is a list of the improper rules.

   A. Section 1.5051 B.8.b. The added phrase "where required by the commissioner," without criteria qualifying when hydrologic studies will be required, is impermissible. As written this rule gives no indication as to how the commissioner will decide to require a hydrologic study.

   B. Section 1.5052 C. The "may" here would permit the commissioner not to waive any of the provisions even though the listed conditions were met. The "may" could easily be changed to a "shall."

   C. Section 1.5053 A.1.b.(3). This rule includes no criteria for determining when the commissioner will deem information relating to ground water quality necessary.

   D. Section 1.5053 A.1.b.(7). The use of the word "may" is impermissibl in this situation. Again, the "may" would seem to easily be replace with "shall."

   E. Section 1.5053 E.2.a. The use of the word "may" in two instances in this rule is impermissible. In these instances the commissioner has been given discretion not to direct or not to amend even though listed criteria have been met, without stating criteria for making the final decision.

F. Section 1.5053 E.2.c. The use of the word "may" would permit the commissioner not to require the permittee to discharge excess water in the required manner even though to do so was shown to be feasible and practible, and therefore is impermissible.

G. Section 1.5054 B.3.d. The use of the word "may" is impermissible, similar to the previous discussion.

H. Section 1.5055 B.4.a. The "may" in the new language should be changed to "shall."

I. Section 1.5056 A.1. The second sentence states that reasonable time extensions may be permitted, which suggests that they may not be permitted without stating criteria for not permitting such time extensions.

J. Section 1.5056 B.2.a. The second sentence contains no criteria for distinguishing times when the commissioner will require permittees to pay costs and times when the commissioner will not require permittees to pay costs.

K. Section 1.5056 C.2. This section permits additional information to be required without limitation and without stating criteria as to when or why such information would be required.

L. Section 1.5056 D.1.b.(2). The use of the word "may" would allow the commissioner to refuse to extend the response period even though good cause was shown, and therefore this rule is impermissible as written.

M. Section 1.5056 F.5. Again, the second sentence in this section would allow the commissioner not to extend the time even though good cause was shown.

2. Section 1.5050 D. In the definition of "Domestic use," the words "for on" appear before "farm livestock watering." Either the "for" or the "on" should be deleted for clarity.

3. Section 1.5052 A.1.j. As written this factor does not state what economic impact is being considered, and thus is vague. In his report, paragraph 16, the Hearing Examiner suggests that the economic impact to be considered is that "of the proposed appropriation on existing and potential future users." The inclusion of this language in the rule would clarify this factor.

4. Section 1.5052 B. The first word in the second paragraph, "Decision," should be "Decisions."

5. Section 1.5052 B.2.f. The last cross-reference citation in the first paragraph, which presently reads 1.5055 D.1.b., apparently should be 1.5056 D.1.b.

6. Section 1.5052 B.3.b. Pursuant to Minn. Stat. § 105.45, the commissioner's determination must be based upon substantial evidence. The rule, however, provides a differing standard of "adequate facts and evidence." Because an agency's rules may not contravene a statute, this rule must be rewritten to conform to the statutory requirement.

7. Section 1.5053 E.1.a. The provision for requiring, in addition to all of the other information that is required under these rules, all "necessary information" is vague and overly broad. Such a requirement would permit unlimited discretion in the information required. If additional specific information is needed by the commissioner to determine whether a permit should be granted, that information should be detailed.

8. Section 5056 E. In the second paragraph, a comma should be inserted after "commissioner" in the first sentence.

9. Section 1.5057 A.2. "Review" is misspelled.

10. Section 1.5057 A. Attached to this memorandum is a copy of a letter, written by Desyl L. Peterson, that raises a number of questions about this section. These questions appear to have some merit and should be considered. Therefore, this office requests that the commissioner submit a response to the issues discussed in the letter before we make a determination as to the form and legality of this rule.

Upon consideration of the issues raised in this memorandum, and any subsequent action taken by the commissioner, these rules may be resubmitted for approval. Please be advised that the Chief Hearing Examiner requests that any changes other than those that are merely typographical or those that go only to form that are made subsequent to his review be resubmitted to that office. Therefore, this office suggests that you contact the Chief Hearing Examiner regarding any changes made pursuant to this memorandum.

At the time of resubmission to this office, please insure that the original and two copies of the new Order Adopting and the Rules as Adopted are submitted as they are necessary for filing with the Secretary of State. Also, please indicate in a transmittal memorandum that the rules are a resubmission.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to contact me.

JES:mb
cc: Duane Harves
Susan Robertson

A6

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JOSEPH N. ALEXANDER
COMMISSIONER OF NATURAL RESOURCES

In the matter of the Proposed
Adoption of Rules by the
Commissioner of Natural Resources
Governing the Appropriation of
Waters of the State

ORDER ADOPTING
RULES

The above-entitled matter came on for hearing before Howard L. Kaible, Hearing Examiner of the Hearing Examiner's Office of the State of Minnesota on January 8, 1980 at 9:00 A.M. in Detroit Lakes, Vocational-Technical Institute; January 10, 1980 at 9:00 A.M. in St. Paul, State Capitol Building; and January 15, 1980 at 9:00 A.M. in Southwest State University, after proper notice required by Minn. Stat. Section 15.0412 (1978) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules for the Appropriation of Waters of the State are adopted this 14 day of July, 1980, pursuant to authority vested in me by Minn. Stat. Section 105.415.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

Joseph N. Alexander

JOSEPH N. ALEXANDER, COMMISSIONER

RULES FOR APPROPRIATION OF WATERS OF THE STATE

Department of Natural Resources
Division of Waters

Rules for Appropriation of Waters of the State

6 MCAR § 1.5050 General provisions.

A. Statement of policy.

The purpose of these rules is to provide for the orderly and consistent review of permit applications for appropriation and use of waters of the state in order to conserve and utilize the water resources of the state in the public interest. In the application of these rules, the Department of Natural Resources shall be guided by the policies and requirements declared in Minn. Stat. ch. 105 and 116 D.

Any appropriation must be consistent with laws and rules of federal, state and local governments.

B. Scope.

These rules set forth minimum standards and criteria pertaining to the regulation, conservation and allocation of the water resources of the state, including the review, issuance and denial of water appropriation applications and the modification, suspension or termination of existing permits.

Further provisions for the administration of these rules are found in Minn. Stat. ch. 105. Permits for water appropriation for mining shall be in agreement with provisions of Minn. Stat. § 105.64.

C. Jurisdiction.

Permits shall be required for, and these rules shall apply to, any appropriation of waters of the state, except for the following:

1. Appropriation of water for domestic uses serving less than 25 persons for general residential purposes.

2. Test pumping of a ground water source.

3. Withdrawal for any use at a rate not to exceed 10,000 gallons per day and totaling no more than 1 million gallons per year.

4. Agricultural field tile or open ditch drainage systems, including pumping, to remove water from crop lands. This shall not preclude the need for compliance with Minn. Stat. ch. 106 and for permits for changes in course, current or cross-section of public waters in the event that the agricultural drainage system adversely affects public waters. Adverse effects on public waters may include partial or complete drainage of public waters, high water or flooding conditions on surrounding lands and accelerated erosion and sedimentation.

5. Reuse and discharge of ~~of waste~~ waters resulting from an appropriation of waters of the state for which a permit has been granted, ~~The reuse of waste waters shall~~ be subject to applicable laws, and rules of other ~~governmental agencies~~ state and federal governmental agencies.

D. Definitions.

For the purpose of these regulations, the terms or words defined in this section have the meanings given therein, except where the context clearly indicates otherwise. The word "shall" is mandatory, not permissive.

"Aquifer" means any water bearing bed or stratum of earth or rock capable of yielding ground water in sufficient quantities that can be extracted.

"Appropriation" shall have the meaning prescribed in Minn. Stat. § 105.37, subd. 5, "Appropriation includes but is not limited to taking, regardless of the use to which the water is put".

"Artesian aquifer" or "confined aquifer" means a water body or aquifer overlain by a layer of material of less permeability than the aquifer. The water is under sufficient pressure so that when it is penetrated by a well, the water will rise above the top of the aquifer. A flowing artesian condition exists when the water flow is at or above the land surface.

"Basin" means a depression capable of containing water which may be filled or partly filled with waters of the state. It may be a natural, altered or artificial depression.

"Commissioner" refers to the Commissioner of the Department of Natural Resources or the Commissioner's authorized representative.

"Consumptive use" or "consumption" refers to water withdrawn and not directly returned to the same waters as the source for immediate further use in the area.

"Division" means the Division of Waters, Department of Natural Resources.

"Domestic use" means use for general household purposes for human needs such as cooking, cleaning, drinking, washing and waste disposal and uses for on-farm livestock watering excluding commercial livestock operations which use more than 10,000 gallons per day and 1 million gallons per year.

"Dug pit" means an artificial excavation such as sump, trench, pond, water hole or other basin constructed for the purpose of intercepting and capturing surface and ground water, and often involving ground water under water table or unconfined conditions.

"Ground water" means subsurface water in the saturated zone. The saturated zone may contain water under atmospheric pressure (water table condition), or greater than atmospheric pressure (artesian condition).

"Protected flow" is defined as the amount of water required in the watercourse to accommodate instream needs such as water-based recreation, navigation, aesthetics, fish and wildlife habitat, water quality and needs by downstream higher priority users located in reasonable proximity to the site of appropriation.

"Protection elevation" is defined as the water level of the basin necessary to maintain fish and wildlife habitat, existing uses of the surface of the basin by the public and riparian landowners, and other values which must be preserved in the public interest.

"Public water supply" refers to the various supplies of water used primarily for domestic supply purposes and obtained from a source or sources by a municipality, a water district, a person or corporation where water is delivered through a common distribution system, as further defined in Minn. Stat. § 144.382, subd. 4.

"Safe yield for water table condition" means the amount of ground water that can be withdrawn from an aquifer system without degrading the quality of water in the aquifer and without allowing the long term average withdrawal to exceed the available long term average recharge to the aquifer system based on representative climatic conditions.

"Safe yield for artesian condition" means the amount of ground water that can be withdrawn from an aquifer system without degrading the quality of water in the aquifer and without the progressive decline in water pressures and levels to a degree which will result in a change from artesian condition to water table condition.

"Water table aquifer" or "unconfined aquifer" means an aquifer where ground water is under atmospheric pressure.

"Waters of the state" means any waters, surface or underground, except those surface waters which are not confined but are spread and diffused over the land "Waters of the state" includes all boundary and inland waters (Minn. Stat. § 105.37, subd. 7)

"Watercourse" means any natural, altered or artificial channel having definable beds and banks capable of conducting confined runoff from adjacent lands (Minn. Stat. § 105.37, subds. 10,11 and 12).

"Well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed where the intended use is for the location, diversion, or acquisition of ground waters (Minn. Stat. § 156A.02, subd. 1).

E. Coordination with other agencies.

Nothing in these rules is intended to supersede or rescind the laws, rules, regulations, standards, and criteria of other international, federal, state, regional, or local governmental subdivisions with the authority to regulate the appropriation of waters of the state. The issuance of a permit shall not confer upon the applicant the approval of any other unit of government for the proposed project. The Department shall coordinate the review of permit applications with

other units of government having jurisdiction in such matters.

E.F. Severability.

The provisions of these regulations shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof, shall not make void any other paragraph, subparagraph, subdivision or any other part.

6 MCAR § 1.5051 General requirement for applying for permits.

A. Application forms required.

1. Applications shall be submitted for each surface or ground water source from which water is proposed to be appropriated. A separate application shall be required for the following:

a. For each distribution system if the water is used in more than one common distribution system.

b. For each well(s) completed in different aquifers if ground water is to be appropriated from separate wells completed in more than one aquifer.

c. For each basin or watercourse involved if surface water is to be appropriated from several different basins or watercourses.

2. The applicant must provide written evidence of ownership, or control of, or a license to use the land overlying the ground water source or abutting the surface water source from which water will be appropriated.

B. Applicant responsibilities.

All applicants shall submit the following information when it is reasonably available. Additional submittals may be required as prescribed in 6 MCAR § 1.5053 and where deemed necessary by the commissioner in order to adequately evaluate the applications:

1. A completed application on forms supplied by the commissioner.

2. The required application fee (Minn. Stat. § 105.44, subd. 10).

3. Aerial photographs, maps, sketches, detailed plat, topographic maps or other descriptive data sufficient to show:

a. The location of the area of use.

b. The outline of the property owned, or controlled by the applicant in proximity to the area of use.

c. The location of the proposed point of appropriation such as well(s) location, stream bank pump(s) or the location of other facilities for appropriation of water.

d. If ground water is involved, the location of test hole borings which have been drilled on the property from which the appropriation will be made.

4. Signed statement that copies of the application and accompanying documents have been sent to ~~governmental units as required by Minn. Stat. § 105.44, subd. 1.~~ the mayor of the city, secretary of the board of soil and water conservation district or the manager of a watershed district if the proposed project is within or affects a watershed district or soil and water conservation district or a city.

5. Statement of justification supporting the reasonableness and practicality of use in respect to adequacy of the water source, amounts of use and purpose, including available facts on:

a. Hydrology and hydraulics of the water resources involved, including, for surface waters, the applicant's analysis of the effect of proposed withdrawals on levels and flows and anticipated impacts, if any, on instream flow or lake level conditions to the extent that such facts are not already available to the commissioner.

b. Proposed pumping schedule including rates, times and duration.

c. Amounts of water to be appropriated on a maximum daily, monthly and annual basis.

d. Means, methods and techniques of appropriation.

e. Alternative sources of water or methods which were considered, to attain the appropriation objective and why the particular alternative proposed in the application was selected.

6. Information on any water storage facilities and capacities and any proposed reuse and conservation practices.

7. Application for use of surface water shall include the following additional data:

a. A contingency plan which describes the alternatives the applicant will utilize if at any time appropriation is restricted to meet instream flow needs or to protect the level of a basin. The contingency plan shall be feasible, reasonable and practical, otherwise the applicant shall submit a ~~notarized~~ as part of the applicatio

written statement agreeing in such case to withstand the results of no appropriation (Minn. Stat. § 105.417, subd. 5).

b. For appropriation from natural basins or natural watercourses, facts to show that reasonable alternatives for appropriating water have been considered including use of water appropriated during high flows and levels and stored for later use and the use of ground water.

c. For basins less than 500 acres in surface area the applicant shall:

(1) Notify all riparian landowners and provide the commissioner with a list of all landowners notified.

(2) Attempt to obtain a signed statement from as many riparian landowners as the applicant is able to obtain stating their support to the proposed appropriation; and

(3) Provide an accounting of number of signatures of riparian owners the applicant is unable to obtain (Minn. Stat. § 105.417, subd. 3(c)).

8. Application for use of ground water, except for agricultural irrigation (6 MCAR § 1.5053A) shall include the following data:

a. Test hole logs (if any) and water well record(s);

b. Hydrologic test data; ~~and or~~ and

c. Hydrologic studies, if the above data are insufficient to allow the commissioner to properly assess the capability of the aquifer system in the area of withdrawal or are inadequate to allow assessment of the effects of the proposed appropriation on the water resource and on nearby wells.

C. Waiver of requirements.

Whenever information required by 6 MCAR § § 1.5051 and 1.5053 are unnecessary or inapplicable the commissioner shall waive those requirements.

6 MCAR § 1.5052 Commissioner's actions on permit applications.

Upon receipt of the information required from the applicant under 6 MCAR § § 1.5051 and 1.5053, where applicable, the commissioner shall take action on the application as follows:

A. Review and analysis of data.

1. The commissioner shall consider the following factors, as applicable:

a. The location and nature of the area involved and the type of appropriation and its impact on the availability, distribution and condition of water and related land resources in the area involved.

b. The hydrology and hydraulics of the water resources involved and the capability of the resources to sustain the proposed appropriation based on existing and probable future use.

c. The probable effects on the environment including anticipated changes in the resources, unavoidable detrimental effects and alternatives to the proposed appropriation.

d. The relationship, consistency and compliance with existing federal, state and local laws, rules, ~~and~~ legal requirements and water management plans.

e. The public health, safety and welfare served or impacted by the proposed appropriation.

f. The quantity, quality and timing of any waters returned after use and the impact on the receiving waters involved.

g. The efficienty of use and intended application of water conservation practices.

h. The comments of local and regional units of government, federal and state agencies, private persons and other affected or interested parties.

i. The adequacy of state water resources availability when diversions of any waters of the state to any place outside of the state are proposed.

j. The economic benefits of the proposed appropriation based on supporting data when supplied by the applicant.

2. The commissioner shall further consider the following factors for appropriation from watercourses:

a. Historic streamflow records, and where streamflow records are not available, estimates based on available information on the watershed, climatic factors, runoff and other pertinent data.

b. Physical characteristics such as discharge, depth and temperature and an analysis of the hydrologic characteristics of the watershed.

c. Aquatic system of the watercourse, riparian vegetation and existing fish and wildlife management within the watercourse.

d. Frequency of occurrence of high and low flows.

e. Feasibility and practicability of off-stream storage of high flows for use in providing water supply during periods of normal low flows, when supply is limited by existing and anticipated use.

~~f. Existing federal,-state, regional and local water management plans.~~

~~g. Impact of the appropriation on the public interest.~~

3. The commissioner shall further consider the following factors for appropriation from basins:

a. Total volume of water within the basin.

b. Slope of the littoral zone.

c. Available facts on historic water levels of the basin and other relevant hydrologic factors.

d. Cumulative long-range ecological effects of the proposed appropriation.

~~e.--Impact of the appropriation on the public interest.~~

~~f.~~ e. Natural and artificial controls which affect the water levels of the basin.

4. The commissioner shall further consider the following factors for appropriation of ground water:

a. Type and thickness of the aquifer.

b. ~~Limit~~ Subsurface area of the aquifer.

c. Area of influence of the proposed well(s).

d. Existing water levels in the aquifer and projected water levels due to the proposed appropriation.

e. Other hydrologic and hydraulic characteristics of the aquifer involved.

f. Probable interference with neighboring wells.

B. Decision on applications.

The commissioner is authorized to grant permits, with or without conditions, or deny them. In all cases, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the city may demand a hearing in the manner specified in Minn. Stat. § 105.44, subd. 3, within 30 days after receiving mailed notice outlining the reasons for denying or modifying an application.

Decisions by the commissioner are further subject to the administrative provisions of Minn. Stat. § § 105.44 - 105.463 and § 105.64. These sections include information and requirements on procedure, authority, timing of actions, fees, notice, investigations, violations and penalties and special provisions regarding mining operations.

Based on these statutory requirements and other applicable provisions of Minn. Stat. ch. 105 the commissioner shall make decisions as follows:

1. No permit shall be granted if:

a. For application involving diversion of any waters of the state, surface or ground water, to a place outside the state, the remaining waters in the state will not be adequate to meet the state water resources needs during the specified life of the diversion (Minn. Stat. § 105.405, subd. 2).

b. ~~There are adequate supplies of waters of the state for the purpose intended, in the area involved.~~ There is no conflict between competing users but the quantity of available waters of the state, in the area involved, are inadequate to provide the amounts of waters proposed to be appropriated.

c. The appropriation is not reasonable, practical, and does not adequately protect public safety and promote the public welfare (Minn. Stat. § 105.45).

d. The appropriation is not consistent with approved state, regional and local water and related land resources management plans, provided that regional and local plans are consistent with statewide plans (Minn. Stat. § 105.41, subd. 1a.).

e. There is an unresolved conflict between competing users for the waters involved and the conflict has not been resolved pursuant to provision of 6 MCAR § 1.5055.

2. Approval of any surface water appropriation application shall be further subject to the following:

a. For all watercourses, proposals for appropriation during periods of flood flows and high water levels shall be given first consideration unless this is not practical, reasonable or feasible (Minn. Stat. § 105.41, subd. 1a).

b. For natural and altered watercourses, except for drainage ditches established under Minn. Stat. ch. 106, consumptive appropriation may be limited consistent with Minn. Stat. § 105.417, subd. 2, provided that adequate data are available to set such limits for watercourses. Where protected flow is designated by the commissioner, no appropriation shall be allowed when the flow is below that protected flow.

c. Permits to appropriate water for any purpose from streams designated trout streams by commissioner's orders, pursuant to Minn. Stat. § 101.42, shall be limited to temporary appropriations when not in conflict with the special designation, such as during periods of high flows or high water levels (Minn. Stat. § 105.417, subd. 4).

d. For natural and altered basins the commissioner shall:

(1) Establish a protection elevation below which no appropriation shall be allowed (Minn. Stat. § 105.417, subd. 3(b)).

(2) Limit the collective maximum annual withdrawals to not exceed a total volume of water amounting to one-half acre-foot per acre of surface water basin based on Minnesota Department of Natural Resources Bulletin No. 25, "An Inventory of Minnesota Lakes". The actual collective annual allocation may be considerably less than the maximum. This limitation is as provided by Minn. Stat. § 105.417, subd. 3(a).

(3) For natural and altered basins less than 500 acres, an application shall not be approved if the commissioner determines that the proposed appropriation would lower the water levels in the basin to an extent which would deprive the public and riparian property owners of reasonable use of and access to the water.

e. The establishment of protected elevation and limitation on maximum withdrawals contained in sections d.(1). and d.(2). above shall not apply to artificial and altered basins constructed primarily for the purpose of storing high waters and flood flows as water conservation contingency flow alternatives when such alternatives are approved by the commissioner.

f. Protected flows ~~of watercourses~~ and protection elevations ~~of basins~~ shall be established for the purposes as defined in 6 MCAR § 1.5050D and shall be based on available information considered in 6 MCAR § 1.5052 A.2. and A.3. For new applications the proposed establishment of protected flows or protection elevations shall be part of the permit process outlined in 6 MCAR § 1.5052 B. including opportunity for public hearing. Existing permittees who will be affected by the proposed establishment of protected flows or protection elevations shall be notified of such proposals and shall be provided opportunity for public hearing before modification of their permits based on the procedures outlined in 6 MCAR § 1.5056 D.1.b.

Upon the submission of data set forth in 6 MCAR § 1.5052 A.2. or A.3. for a specified watercourse segment or basin by a state agency agreeing to pay the costs of any necessary public hearings, the commissioner shall establish requested

protected flows and elevations.

3. Approval of appropriation from ground water shall be further subject to the following:

a. The amounts and timing of water appropriated shall be limited to the safe yield of the aquifer to the maximum extent feasible and practical. Safe ~~yield means the amount of ground water that can be withdrawn from an aquifer system without degrading the quality of water in the aquifer and without allowing the long-term average withdrawal to exceed the available long-term average recharge to the aquifer system based on representative climatic conditions.~~

~~b. If the commissioner determines that the proposed appropriation of ground water would result in reduction of flows in a watercourse below a protected flow or levels in a basin below a protected elevation, the amount and timing of the water appropriation shall be limited so it does not affect the protected flow or elevation.~~

b. If the commissioner determines, based on substantial evidence, that a direct relationship of ground and surface waters exists such that there would be adverse impact on the surface waters through reduction of flows or levels below protected flows or protection elevations the amount and timing of the proposed appropriation from ground water shall be limited.

c. Appropriation of ground water shall not be approved or shall be issued on a conditional basis in those instances where sufficient hydrologic data are not available to allow the commissioner to adequately determine the effects of the proposed appropriation. If a conditional appropriation is allowed, the commissioner shall make further approval, modification or denial when sufficient hydrologic data are available.

d. The commissioner shall limit the use of dug pits for appropriating water when such pits are so located that they may reasonably be expected to affect protected flows of watercourses or protected elevations of basins.

C. Waiver of requirements.

The commissioner ~~may~~ shall waive any of the provisions of 6 MCAR § 1.5052B. if it is determined that conditions are such that implementation of a provision would be unnecessary or inapplicable or if an applicant provides sufficient evidence to show just cause why such provision would not be reasonable, practical or in the public interest. In the event the commissioner does not grant an applicant's request for waiver the applicant may demand a hearing.

D. Specific types of appropriation and use.

Additional requirements and decisions governing ~~specific types of uses such~~ as agricultural irrigation, public water supplies, dewatering, water level maintenance and mining are also contained in 6 MCAR § 1.5053.

6 MCAR § 1.5053 Special additional requirements and conditions for certain specific types of appropriation.

A. Agricultural irrigation including use of water for wild rice paddies.

1. For ground water appropriation, the applicant must submit to the commissioner the following data in addition to the requirements of 6 MCAR § 1.5051:

a. If the application is for use of ground water from an aquifer system for which adequate ground water availability data are available and therefore is designated by the commissioner as a Class A application, (Minn. Stat. § 105.416, subd. 1):

(1) Copies of test hole log(s) to identify the aquifer the proposed well will penetrate.

(2) Copies of the water well record(s) and production test data.

(3) Additional aquifer test data as may be required by the commissioner if the test holes, water well records and production test data are insufficient to allow the commissioner to properly assess the capability of the aquifer system in the area of withdrawal, or are inadequate to allow assessment of the effects of the proposed appropriation on other nearby wells.

b. If the application is for use of ground water from an aquifer system for which inadequate ground water availability data are available and therefore is designated by the commissioner as a Class B application, (Minn. Stat. § 105.416, subd. 1) the applicant shall supply the following additional information as required by Minn. Stat. § 105.416, subd. 2 including:

(1) Copies of test hole log(s) to identify the aquifer the proposed well will penetrate.

(2) Copies of water well record(s) and production test data.

(3) The anticipated ground water quality in terms of the measures of quality commonly specified for the proposed water use, <u>when existing data indicate the water supply is not suitable for irrigation</u>.

(4) The location of each domestic well, for which information is

readily available, located within the area of influence or within 1½ mile radius of the proposed irrigation well, whichever is less.

(5) Readily available information from water well records, reports, studies and field measurements regarding the domestic wells within the area of influence or a 1½ mile radius of the proposed irrigation well whichever is less, such as:

(a) owner's name, address and phone number.

(b) depth of well (in feet).

(c) diameter of well and casing type (concrete curb, steel, wooden, clay tile, etc).

(d) non-pumping water level (in feet) below land surface.

(e) age of well (when constructed).

(f) type of pump (shallow-jet, deep well jet, submersible reciprocating, etc.) and rate of discharge.

(g) length of drop pipe in well.

(6) Results of a pumping test of the aquifer system as required in Minn. Stat. § 105.416, subd. 2.(e).

(7) The commissioner ~~may~~ shall in any specific application, waive any of the requirements of 6 MCAR § 1.5053A.1.b.(1). - (6)., when the necessary data are already available, as required in Minn. Stat. § 105.416, subd.2.

2. The commissioner's actions.

a. The commissioner shall analyze, and evaluate applications based on facts supplied by the applicant pursuant to 6 MCAR § § 1.5051 and 1.5053A.1. Decisions shall be subject to the applicable procedures outlined in 6 MCAR § 1.5052 and based on recommendations of the soil and water conservation district, soil surveys and other available data on soil characteristics relating to soil suitability for agricultural irrigation and adequacy of existing or proposed soil and water conservation measures in order to protect water quality and prevent erosion and sedimentation.

b. The commissioner shall determine the amount of water allowed to be used under 6 MCAR § 1.5053 A.2.a. based on:

(1) Acreage of lands involved.

(2) Climatic characteristics of the area involved.

(3) Dominant soil types of the acreage to be irrigated and major crops to be irrigated.

(4) Best available technology, methodology and crop-water use requirement information including, but not limited to, "Irrigation Guide for Minnesota", Soil Conservation Service, U.S. Department of Agriculture, St. Paul, Minnesota, 1976.

(5) When adequate data on soil moisture and local climatic conditions are available for the area, the commissioner may ~~prescribe a limitation on the amounts and timing of appropriation during each season~~ in cooperation with irrigators and agricultural experts establish an irrigation scheduling system to provide for improved conservation of water.

(6) For irrigation from surface water, where stream flow or lake level records are unavailable or when available records indicate that flows or levels during the irrigation season would be inadequate, if all potential riparian landowners would use the water for irrigation, the amount of appropriation shall be limited to no more than one-half acre-foot per acre of riparian land owned or controlled by the applicant except for appropriation for wild rice paddies as is provided in (7). Riparian lands for the purpose of these rules shall be those 40 acre tracts or government lots, or portions thereof, that directly abut a basin or watercourse. This provision shall apply until a protected flow or protection elevation has been established in accordance with 6 MCAR § 1.5052 B.2. and 3.

(7) The amount of appropriation for wild rice paddies shall be based on consideration of climatic characteristics of the area and the best available technology relating to amounts of water needed to raise wild rice.

~~3.--Well interference problems involving appropriation for irrigation.~~

~~a.--For new applications.~~

~~If the commissioner determines that an adequate supply of water is~~

available-and-that-the-proposed-project-is-reasonable-and-practical-as-determined based-on-6-MCAR-§§-1.5052-and-1.5053A.2.,-but-that-there-is-a-probable-interference-with-public-water-supply-well(s)-and-private-domestic-well(s)-which-may-result-in reducing-the-water-levels-beyond-the-reach-of-those-wells,-the-following-procedures shall-apply:

(1)--The-applicant-shall-be-responsible-for-obtaining-and-providing to-the-commissioner,-available-information-including-depth,-diameter,-non-pumping-and pumping-levels,-quality-and-well-construction-details-for-all-domestic-and-public water-supply-wells-located-within-the-area-of-influence-of-the-proposed-appropriation well.

(2)--The-commissioner-may-require-aquifer-tests-or-other-field-tests to-be-conducted-pursuant-to-Minn.-Stat.-§-105.416,-subd.-2.

(3)--The-commissioner-shall-determine-the-probable-interference-with the-domestic-and-public-water-supply-wells-based-on-theoretical-computations-using available-information-regarding-the-aquifer-characteristics-obtained-from-the-aquifer tests-and/or-from-hydrologic-studies,-and-the-probable-effects-of-lowering-the-water-levels-in-the-domestic-and-public-water-supply-wells-due-to-the-proposed-irrigation use-in-the-area.--For-public-water-supply-wells-only-the-probable-interference-with that-portion-which-is-used-for-domestic-water-supply-is-considered.

(4)--The-commissioner-shall-provide-the-prospective-appropriator-with an-evaluation-of-the-nature-and-degree-of-effect-of-the-appropriation-on-the-water levels-of-the-domestic-well(s)-and-public-water-supply-well(s).

(5)--The-commissioner-shall-not-issue-the-permit-until-the-applicant submits-a-written-agreement-signed-by-himself-and-all-parties-identified-under-6-MCAR §-1.5053-A.3.a.(3).-as-having-probable-interference,-outlining-the-measures-that will-be-taken-to-insure-maintenance-of-water-supplies-to-such-identified-parties-to-the-extent-that-would-have-existed-absent-the-proposed-appropriation.--In-cases-where no-agreement-can-be-reached,-the-commissioner-shall-implement-the-settlement-procedure-identified-in-6-MCAR-§-1.5053-A.3.e.

b.--For existing permits.

If complaints are made to the commissioner by private domestic well owner(s) or public water supply authority regarding the effects of water appropriation for agricultural irrigation on the domestic water supplies, the following procedures shall be followed:

(1)--The commissioner shall provide complaint forms to the parties making the complaint, thereafter referred to as "complainant".

(2)--Upon receipt of the completed complaint forms the commissioner shall notify the permittee, the applicable watershed district, and the soil and water conservation district and any other governmental agency or person who may be affected or has expressed interest in the complaint.

(3)--The commissioner shall investigate and assess the complaint by:

(a)--Analyzing and evaluating the submitted complaint forms, hydrologic facts and characteristics of the water supply systems involved.

(b)--Requesting additional facts from the complainant(s) and the permittee when necessary.--In order to assure that available data on domestic well(s) are provided, the complainant shall cooperate with the permittee in providing such facts as may be available and allowing the commissioner access to obtain necessary available facts.--If the complainant does not cooperate in providing available facts or allowing the commissioner access to the domestic well(s), the commissioner shall dismiss the complaint.

(c)--Conducting, if necessary, a field investigation.

(d)--Additional hydrologic tests and evaluation may be required if hydrologic information is unavailable or inadequate to make a determination of necessary facts in the matter.--The timing and conduct of such tests shall be in accordance with the provision of Minn. Stat. § 105.41, subd. 1a, relating to modifying or restricting appropriation for irrigation.

(e)--In evaluating the probable influence of the irrigation water appropriation on the domestic well(s) and public water supply well(s) the commissioner

shall-consider-whether-the-domestic-well(s)-provides-a-dependable-water-supply-while meeting-the-appropriate-health-requirements-for-the-existing-use-of-the-affected-well. For-public-water-supply-wells-only-the-probable-interference-with-that-portion-which is-used-for-domestic-water-supply-is-considered.

(4)--Where-adverse-effects-on-the-domestic-well(s)-are-substantiated, the-commissioner-shall-notify-the-permittee-of-the-facts-and-findings-of-the-complaint evaluation.--In-the-event-that-the-commissioner-determines-that-the-domestic-water-supply-is-endangered-the-commissioner-may,-pursuant-to-6-MCAR-§-1.5055E.,-restrict, or-cancel-the-appropriation-until-such-time-as-a-decision-has-been-made-by-either negotiation,-settlement-or-hearing.

The-permittee-shall-within-30-days-after-written-notification-by-the-commissioner take-appropriate-action-by:

(a)--Negtiating-a-reasonable-agreement-with-the-affected-well owner(s).--If-no-agreement-is-reached-the-settlement-proceedure-outlined-in-6-MCAR S-1.5053A.3.e.-shall-apply;-or

(b)--Requesting-public-hearing.

e.--Settlement.

If-the-applicant-or-permittee-and-the-complainant(s)-have-been-unable to-negotiate-a-reasonable-agreement-pursuant-to-6-MCAR-§-1.5053-A.3.a.(5).-and A.3.b.(4).-the-following-proceedure-shall-be-implemented:

(1)--The-applicant-or-permittee-shall-submit-a-notarized-written-offer to-the-complainant,-with-a-copy-to-the-commissioner,-within-40-days-after-the-receipt of-the-written-notification-provided-in-6-MCAR-§-1.5053-A.3.b.(4).,-based-on-the following:

(a)--If-an-existing-domestic-well-provides-an-adequate-domestic water-supply-which-meets-state-health-standards-and-such-well-no-longer-serves-as-an adequate-supply-because-of-a-proposed-or-permitted-irrigation-well-in-the-vicinity the-applicant-or-permittee-shall-be-responsible-for-all-costs-necessary-to-provide an-adequate-supply-with-the-same-quality-and-quantity-as-prior-to-the-applicant's-or

~~permittee's interference.~~

~~(b) If an existing well provides an adequate domestic water supply but does not meet state health standards and such well would no longer serve as an adequate supply because of the irrigation well in the vicinity, the applicant or permittee shall be responsible for that portion of costs of providing an adequate supply, but shall not be responsible for those costs necessary to bring the domestic well(s) to state health standards.~~

~~(2) The complainant shall submit written argument to the commissioner as to why the offer is not reasonable, within 10 days from the receipt of the notarized written offer. If no response is received from the complainant, within the time limit, the commissioner shall dismiss the complaint.~~

~~(3) The commissioner shall make a decision based on the written offer and arguments and available facts, within 10 days, as follows:~~

~~(a) That the applicant or permittee has submitted a reasonable offer, the commissioner shall issue or continue the permit involved;~~

~~(b) That the applicant or permittee has not submitted a reasonable offer, the commissioner, after notice and opportunity for hearing, shall deny, modify or terminate the permit involved.~~

~~(c) That there is a need for a public hearing in which case it is ordered.~~

B. Public water supplies.

1. The applicant ~~may~~ shall be required to submit to the commissioner all or portions of the following data in addition to the requirements of 6 MCAR § 1.5051:

a. The number of domestic users.

b. Reasonable projection of population growth.

c. The number and type of industrial and commercial users of the public water supply system.

d. The amount of water to be supplied to domestic, industrial and commercial users respectively.

e. Other uses by type of use and amount to be used from the public water supply system such as:

(1) golf courses.

(2) recreational lake level maintenance.

(3) water transferred to other supply systems.

f. Information regarding the quantity of the appropriated water to be used in distribution and waste water treatment facilities, not including volume of actual waste water.

g. Details on emergency plans for water shortage periods outlining public information programs, priorities for limitations of discretionary water use, and alternate sources of public water supplies.

2. The commissioner's actions.

The commissioner shall allow the appropriation of water for public water supply systems based on evaluation and analysis of the data submitted by the applicant under provisions of 6 MCAR § § 1.5051 and 1.5053B.1., and the procedures outlined in 6 MCAR § 1.5052 and subject to 6 MCAR § 1.5053 B.3.

3. Appropriation permits issued to public water supply authorities shall be subject to requirements of Minn. Stat. § 105.418 relating to critical water deficiency periods and restriction of non-essential uses.

C. Water level maintenance for basins.

1. For water appropriation applications for the purpose of establishing and maintaining water levels for basins the applicant shall submit the following data in addition to the requirements of 6 MCAR § 1.5051:

a. Information on the basin and proposed source of supply or source of discharge, including facts indicating how the water will be appropriated and discharged and the proximity of the basin to the proposed source of supply or source of discharge.

b. Information on the design of any discharge facility into or out of the basin.

2. The commissioner shall evaluate and make decisions on applications based on facts supplied by the applicant and subject to the applicable procedures outlined in 6 MCAR § 1.5052 and the following determinations:

a. Effects on public welfare of the proposed appropriation.

b. The proposed appropriation is reasonable, practical, technically feasible and effectively accomplishes its purpose.

c. The proposed appropriation will have minimal or no detrimental effect on the basin, the proposed source of supply or the receiving water and property of riparian owners.

d. The quality of the water of the basin or the receiving water source will not be detrimentally impaired by the appropriation.

e. The proposed appropriation is consistent with 6 MCAR § 1.5024 B.1.b., public waters permits rules.

D. Dewatering.

Dewatering, which involves appropriation of water from ground or surface water sources for purpose of removing excess water shall be subject to water appropriation permit requirements, unless otherwise exempted by these rules. The commissioner shall evaluate and make decisions on such application based on applicable provisions of 6 MCAR § § 1.5051 and 1.5052 and the following additional requirements:

1. The applicant must show there is a reasonable necessity for such dewatering and the proposal is practical.

2. The applicant must show that the excess water can be discharged without adversely affecting the public interest in the receiving waters, and that the carrying capacity of the outlet to which waters are discharged is adequate.

3. The proposed dewatering is not prohibited by any existing laws.

E. Mining and processing of metallic minerals and peat.

1. All applicants for permits for mining and processing of metallic minerals and peat must provide the following information in addition to the requirements of

Minn. Stat. § 105.64 and 6 MCAR § 1.5051:

a. All plans and specifications regarding withdrawal, use, storage and disposal of waters of the state ~~and necessary information regarding water withdrawal, use and reuse practices~~.

b. Details of the rate, volumes and source of water to be appropriated and consumed in processing, including all losses such as uncontrolled seepage, evaporation, plant losses and discharge volumes.

c. Criteria used in estimating the proposed appropriation, distribution and discharge based on climatic averages and extremes.

d. Details of sources, rates, and volumes of water released from the mining operations involved.

e. Details of the hydrologic and hydraulic impacts and effects of the operation on the watershed(s) including changes in basins, watercourses and ground water systems.

2. The commissioner shall analyze, evaluate, and make decisions on appropriations for mining and processing of metallic minerals based on facts submitted by the applicant pursuant to 6 MCAR § § 1.5051 and 1.5053E.1., subject to the conditions outlined in 6 MCAR § 1.5052 and the following considerations:

a. The commissioner ~~may~~ shall direct the applicant to utilize available surplus water from preexisting mining operations or facilities, whether owned or controlled by the applicant or others, whenever feasible and practical unless justification is provided on why such practice should not be allowed. If the commissioner finds that an existing ~~appropriation~~ permittee has available unused water, for which there is inadequate justification, the commissioner, after notice and opportunity for hearing, ~~may~~ shall amend the existing permit to promote better utilization of the water.

b. The commissioner shall base the allocation of water on consideration of the legal requirements for water quality, the impact of the appropriation on those requirements and the following order of priorities of water supply sources located within reasonable distance to the mining or processing site:

(1) Runoff from the mining areas;

(2) Water from active mine pits and tailing basins when such water is not utilized for other purposes or operations;

(3) Water from existing mining operation reservoirs where such water is not utilized for other purposes or operations;

(4) Water from other mining and processing operations;

(5) Water from inactive mine pits;

(6) Water from streams appropriated during periods of high flows;

(7) Water from ground water sources;

(8) Water collected and stored behind off-stream impoundments;

(9) Water collected and stored behind impoundments on streams; and

(10) Water from natural basins greater than 500 acres in size.

c. If the disposal of excess water is necessary and if any mining operation in the area has caused or will cause a substantial reduction in watercourse flow, the commissioner ~~may~~ shall where feasible and practical require the permittee to discharge excess water in a manner that would restore the flow. Such action shall consider the existing and anticipated use of excess water by higher priority users and must be in compliance with appropriate rules of the Minnesota Pollution Control Agency.

6 MCAR § 1.5054. Well interference problems involving appropriation.

A. For new applications.

If the commissioner determines that an adequate supply of water is available and that the proposed project is reasonable and practical as determined based on 6 MCAR § § 1.5052 and 1.5053 A~~.2.~~, but that there is a probable interference with public water supply well(s) and private domestic well(s) which may result in reducing the water levels beyond the reach of those wells, the following procedures shall apply:

1. The applicant shall be responsible for obtaining and providing to the commissioner, available information including depth, diameter, non-pumping and pumping levels, quality and well construction details for all domestic and public water supply wells located within the area of influence of the proposed appropriation well.

2. The commissioner may require aquifer tests or other field tests to be conducted~~.pursuant to Minn. Stat. S 105.416, subd. 2~~.

3. The commissioner shall determine the probable interference with the domestic and public water supply wells based on theoretical computations using available information regarding the aquifer characteristics obtained from the aquifer tests an/or from hydrologic studies, and the probable effects of lowering the water levels in the domestic and public water supply wells due to the proposed ~~irrigation~~ appropriation in the area. For public water supply wells only the probable interference with that portion which is used for domestic water supply is considered.

4. The commissioner shall provide the prospective appropriator with an evaluation of the nature and degree of effect of the appropriation on the water levels of the domestic well(s) and public water supply well(s).

5. The commissioner shall not issue the permit until the applicant ~~submits a written agreement signed by himself and all parties identified under 6 MCAR § 1.5053 A.3.a.(3). as having probable interference, outlining the measures that will be taken to insure maintenance of water supplies to such identified parties to the extent that would have existed absent the proposed appropriation. In cases where no agreement can be reached, the commissioner shall implement the settlement procedure identified~~

~~in 6 MCAR § 1.5053 A.3.e.~~ agrees to exercise any of the following options within 30 days after written notification by the commissioner:

a. accept a modification or restriction of the permit application to provide for an adequate domestic water supply; or

b. submit a written agreement signed by the applicant and all parties identified under 6 MCAR § 1.5054 A.3. as having probable interference. Such agreement shall outline the measures that will be taken to insure maintenance of water supplies to such identified parties to the extent that would have existed absent the proposed appropriation. In cases where no agreement can be reached, the commissioner shall implement the settlement procedure identified in 6 MCAR § 1.5054.D.

B. For existing permits.

If complaints are made to the commissioner by private domestic well owner(s) or public water supply authority regarding the effects of a water appropriation ~~for agricultural irrigation~~ on the domestic water supplies, the following procedures shall be followed:

1. The commissioner shall provide complaint forms to the parties making the complaint, thereafter referred to as "complainant."

2. Upon receipt of the completed complaint forms the commissioner shall notify the permittee, the applicable watershed district, and the soil and water conservation district and any other governmental agency or person who may be affected or has expressed interest in the complaint.

3. The commissioner shall investigate and assess the complaint by:

a. Analyzing and evaluating the submitted complaint forms, hydrologic facts and characteristics of the water supply systems involved.

b. Requesting additional facts from the complainant(s) and the permittee when necessary. In order to assure that available data on domestic well(s) are provided, the complainant shall cooperate with the permittee in providing such facts as may be available and allowing the commissioner access to obtain necessary available facts.

If the complainant does not cooperate in providing available facts or allowing the commissioner access to the domestic well(s), the commissioner shall dismiss the complaint.

c. Conducting, if necessary, a field investigation.

d. Additional hydrologic tests and evaluation ~~may~~ shall be required if hydrologic information is unavailable or inadequate to make a determination of necessary facts in the matter. For irrigation appropriations, the timing and conduct of such tests shall be in accordance with the provision of Minn. Stat. § 105.41, subd. 1a. relating to modifying or restricting appropriation for irrigation.

e. In evaluating the probable influence of the ~~irrigation~~ water appropriation on the domestic well(s) and public water supply well(s) the commissioner shall consider whether the domestic well(s) provides a dependable water supply while meeting the appropriate health requirements for the existing use of the affected well. For public water supply wells only the probable interference with that portion which is used for domestic water supply is considered.

4. Where adverse effects on the domestic well(s) are substantiated, the commissioner shall notify the permittee of the facts and findings of the complaint evaluation. In the event that the commissioner determines that the domestic water supply is endangered the commissioner ~~may~~ shall pursuant to 6 MCAR § 1.5055~~6~~ E., unless a temporary solution is worked out, restrict or cancel the appropriation until such time as a decision has been made by either negotiation, settlement or hearing.

5. The permittee shall within 30 days after written notification by the commissioner take appropriate action by exercising any of the following options:

a. Requesting the commissioner to modify or restrict the permit in order to provide for an adequate domestic water supply.

b. Negotiating a reasonable agreement with the affected well owner(s). If no agreement is reached, the settlement procedure outlined in 6 MCAR § ~~1.5053-A.3.e.~~ 1.5054 D. shall apply; or

c. Requesting a public hearing.

C. New domestic wells installed after appropriation permits have been issued.

In the event that new domestic wells, exempt from permit requirements, are installed in area of adequate ground water supplies where permits have been issued for appropriation the following shall apply:

1. It shall be the responsibility of the prospective new domestic well owner to insure that the new domestic well will be constructed at adequate depth so that it will provide an adequate domestic water supply which will not be limited by the permitted appropriation.

2. Holders of valid permits for appropriation of water in areas where adequate water supplies are available shall not be responsible for well interference problems, involving new domestic wells exempt from permit, when such exempt domestic wells are installed subsequent to authorized appropriation.

D. Settlement

If the applicant or permittee and the complainant(s) have been unable to negotiate a reasonable agreement pursuant to 6 MCAR § ~~1.5053-A.3.a.(5)-and-A.3.b.(4).~~ 1.5054 A.5 and B.5. the following procedure shall be implemented:

1. The applicant or permittee shall submit to the complainant a notarized written offer including a statement that the complainant must respond in writing to the commissioner within 10 days from the receipt of the offer either accepting the offer or explaining why it is rejected. The offer must be submitted to the complainant with a copy to the commissioner within 40 days after the receipt of the written notification provided in 6 MCAR § 1.5054 A.5. and B.5., based on the following:

a. If an existing domestic well provides an adequate domestic water supply which meets state health standards (MHD 7 MCAR § 1.217 to § 1.222) and such well no longer serves as an adequate supply because of ~~a~~ the proposed or permitted ~~irrigation~~ appropriation in the vicinity the applicant or permittee shall be responsible for all costs necessary to provide an adequate supply with the same quality as prior to the applicant's or permittee's interference.

b. If an existing well provides an adequate domestic water supply but does not meet state health standards (MHD, 7 MCAR § 1.217 to 1.222.) and such well would no longer serve as an adequate supply because of the proposed or permitted ~~irrigation~~ appropriation in the vicinity, the applicant or permittee shall be responsible for that portion of costs of providing an adequate water supply, but shall not be responsible for those costs necessary to bring the domestic well(s) to state health standards.

2. The complainant shall, ~~submit-written-argument-to-the-commissioner-as-to why-the-offer-is-not-reasonable~~ within 10 days from the receipt of the notarized written offer respond to the commissioner in writing either accepting the offer or making argument on why the offer is not reasonable. If no response is received from the complainant, within the time limit, the commissioner shall dismiss the complaint.

3. If the offer is not accepted the commissioner shall make a decision based on the written offer and arguments and available facts, within 10 days, as follows:

a. That the applicant or permittee has submitted a reasonable offer, the commissioner shall issue or continue the permit involved;

b. That the applicant or permittee has not submitted a reasonable offer, the commissioner, after notice and opportunity for hearing, shall deny, modify or terminate the permit involved.

c. That there is a need for a public hearing in which case it is ordered.

6 MCAR § 1.50545 Water use conflicts.

A. Conflict defined.

For the purpose of these rules a conflict occurs where the available supply of waters of the state in a given area is limited to the extent that there are competing demands among existing and proposed users which exceed the reasonably available waters. Existing and proposed appropriations could in this situation endanger the supply of waters of the state so that the public health, safety and welfare would be impaired.

B. Procedure.

Whenever the total withdrawals and uses of ground or surface waters would exceed the available supply based on established resource protection limits, including protection elevations and protected flows for surface water and safe yields for ground water, resulting in a conflict among proposed users and existing legal users the following shall apply:

1. In no case shall a permittee be considered to have established a ~~priority~~ right of use or appropriation by obtaining a permit.

2. The commissioner shall analyze and evaluate the following:

a. The reasonableness for use of water by the proposed and existing users.

b. The water use practices by the proposed and existing users to determine if the proposed and existing users are or would be using water in the most efficient manner in order to reduce the amount of water required.

c. The possible alternative sources of water supply available to determine if there are feasible and practical means to provide water to satisfy the reasonable needs of proposed and existing users.

3. If conflicts can be resolved by modifying the appropriation of the proposed and existing users, the commissioner shall do so.

4. If conflicts cannot be resolved through modification of proposed and existing permits the commissioner shall base the decision regarding issuance ~~or denial~~ of new applications and retention, modification or termination of existing permits on

the basis of existing priorities of use established by the legislature as follows:

a. If the unresolved conflict involved users who are or would be in the same priority class, the commissioner ~~may~~ shall require the proposed users and existing permitted users to develop and submit a plan which will provide for proportionate distribution of the limited water available among all users in the same priority class. The commissioner shall withhold consideration of new applications, and shall, if the existing permitted appropriations endanger the supply of waters of the state, suspend or limit the existing permits, until a plan is approved by the commissioner.

(1) The plan must include proposals for allocating the water which address the following:

(a) possible reduction in the amounts of appropriation so that each user would receive a proportionate amount of water for use.

(b) possible restrictions in the timing of withdrawals so that each user would be allowed to withdraw a proportionate share of water for use over certain periods of time.

~~(2)--The commissioner may withhold consideration of new applications and suspend appropriations under existing permits until a plan is submitted and approved by the commissioner.~~

~~(3)~~(2) If the commissioner approves the proposed plan, new permits will be issued and existing permits will be amended in accordance with that plan.

~~(4)~~(3) If the commissioner determines that the proposed plan is not practical, or reasonable the commissioner ~~may~~ shall develop a new plan or modify the proposed plan to provide proportionate share of water among the users involved. The commissioner shall issue new permits and amend existing permits based on that plan.

b. If the unresolved conflict involves users who are or would be in a different priority class the available water supply shall be allocated to existing and proposed users based on the relative priority of use. Highest priority users shall be satisfied first. Any remaining available water supply shall be allocated to the next succeeding priority users, until no further water is available. Users in the same priority class shall be offered the same option as provided in section B.4.a. above.

~~e.~~ C. All actions by the commissioner shall be made after notice and opportunity for public hearing.

6 MCAR § 1.5055~~6~~ Provisions and conditions of permits.

Water appropriation permits shall include the following provisions and conditions, unless otherwise required by law:

A. Term of permits.

Permits shall be issued for temporary or for long-term appropriation.

1. Temporary permits involve a one-time, limited life, not more than 12 months, non-recurring appropriation of waters of the state, such as for highway construction, exploratory drilling for minerals, hydrostatic testing of pipelines and other short-term projects. ~~Reasonable~~ Requested time extensions ~~may~~ shall be permitted, but in no case shall the total length of time the permit remains in force exceed two years.

2. Long-term permits will remain in effect subject to applicable permit provisions and conditions of the permit, the law and these rules, provided that in cases where the permittee is not the landowner of record, the term of the permit shall be the same as that of the property rights or license held.

B. Monitoring.

All permittees shall measure and keep monthly and yearly records of the quantity of water used or appropriated at the point of taking from each source under permit.

1. Measuring water appropriated.

Each installation for appropriating or using water shall be equipped with a device or employ a method to measure the quantity of water appropriated to ~~not less than~~ within ten percent of actual withdrawal.

a. The commissioner shall determine the method to be used for measuring water appropriated based on:

(1) the quantity of water appropriated or used;

(2) the source and location of the appropriation;

(3) the method of appropriating or using water;

(4) other facts supplied by the permittee.

b. The commissioner shall require flow meters to be used whenever the rate of appropriation is ~~at or~~ greater than ~~1000~~ 1500 gallons per minute, unless the permittee can show justification why flow meters cannot practically be used or are not necessary considering the factors contained in 6 MCAR § 1.5056 B.1. and B.1.a. Such justification must be supported by facts which indicate the technical difficulties which would be encountered if flow meters were required.

2. Measuring water levels.

a. For surface water appropriations, where applicable, the permittee shall measure flows or levels in the watercourse or basin at a specific gage designated by the commissioner and located within the area of appropriation. The commissioner ~~may~~ shall require permittees to pay necessary costs of establishing and maintaining such gages as provided in 6 MCAR § 1.5000, rules for permit fees.

b. For ground water appropriation, the commissioner, based on ~~the need for ground water data in specific areas,~~ availability of hydrologic data on the aquifer involved, frequency and rate of pumping and probability of conflict or well interference, shall require the permittee to measure and keep records of the water levels in each production well at reasonable times prescribed in the permit. Observation wells may be required as a condition of the permit to better evaluate hydrologic conditions and effects in areas where hydrologic data are unavailable, where probable conflict or well interference problems may occur and where such wells are required by law.

C. Reporting.

Annual calendar year monthly records of the amount of water appropriated or used and the water level measurements shall be recorded for each installation. Such readings and the total amount of water appropriated and used shall be reported annually to the commissioner, on or before February 15 of the following year upon forms to be supplied by the commissioner unless otherwise specified in the permit.

1. Such records shall be submitted with an annual water appropriation processing fee as required by Minn. Stat. § 105.37~~4~~1, subd. 5 for each permit whether or not any water was appropriated during the year.

2. Additional information ~~may~~ shall be required such as acreage irrigated, identification of water disposal sites and amount of water discharged when necessary for the statewide water information system (Minn. Stat. § 105.41, subd. 2).

3. Failure to report and pay the fee shall be sufficient cause for terminating a permit 30 days following written notice by the commissioner of the violation of the permit.

4. No fee is required from any state agency as defined in Minn. Stat. § 16.011 or any federal agency.

D. Changes to permits.

1. Amendments.

a. Request for amendments by permittees.

(1) Major modification of any water appropriation permits shall not be made before obtaining the written permission from the commissioner. Major modification ~~may~~ includes changes such as substantial increase or decrease in the rate and quantity of water withdrawn, any change in source of appropriation or substantial change in the amount of land irrigated, when applicable.

(2) Request for amendment ~~may~~ can be made by letter or on forms supplied by the commissioner. New applications ~~may~~ shall be required when there are changes in the source of supply, the purpose of appropriation, or when the proposed increases in rates and amounts of water would probably create conflict or well interference.

(3) Requests for amendments shall be reviewed as if they were for a new application, subject to provisions of 6 MCAR § § 1.5050 - 1.5057.

b. Amendments initiated by the commissioner.

Pursuant to authority in Minn. Stat. § 105.44, subd. 9, the commissioner may modify or amend any existing permits based on the following procedures and the criteria in 6 MCAR §§ 1.5052 and 1.5053, where applicable.

(1) The commissioner shall notify the permittee of the intent to amend the permit. The notice will include details on modifications to be implemented by the permittee and the timing to complete the modifications.

(2) The permittee shall respond within 30 days from receipt of the notice. Such response period ~~may~~ shall be thereafter extended by the commissioner for good cause shown.

(3) If no response is received in 30 days and no extension of response time is authorized by the commissioner, the proposed amendments shall be made.

(4) The commissioner based on the permittee's response and the criteria established in these rules shall either modify the proposed amendment or adopt the original proposed amendment.

c. All amendments and modifications are made after notice and opportunity for hearing.

2. Transfers or assignments.

If the property involving a water appropriation permit is sold, transferred or assigned to another person, the permit may be transferred to the transferree, without the necessity of reapplication, subject to the following:

~~a.--The permittee shall notify the commissioner of any sale, transfer or assignment of property involved within 30 days thereafter.~~

~~b.--The permittee shall notify the transferree of the existence of a permit on the subject property and the necessity for transfer notification.~~

~~c.--The transferree shall submit written notification to the commissioner stating the intention to continue the appropriation as stated in the permit.--If the transferree intends to modify the existing permit, new application may be required subject to the provisions of 6 MCAR § 1.5055 D.1.~~

a. The transferree shall, within 90 days after date of property sale, transfer or assignment, or within a longer period of time allowed by the commissioner for good cause shown, submit written notification to the commissioner stating the intention to continue the appropriation as stated in the permit. If the transferree

intends to make major modifications to the existing permit, new application shall be required subject to the provisions of 6 MCAR § 1.5056 D.1.

~~d.~~b. No permit is assigned except with the written consent of the commissioner.

E. Limitations on permits.

All permits issued by the commissioner since 1949 are subject to the provisions of Minn. Stat. § 105.44, subd.9 relating to cancellation and conditions of permits and Minn. Stat § 105.45 relating to terms and reservations with respect to the amount and manner of such use or appropriation or method of construction or operation of controls as appears reasonably necessary for the safety and welfare of the people of the state.

The commissioner,subject to the terms and conditions of such existing permits, may modify, restrict or cancel an existing appropriation or use until such time as a decision has been reached by either negotiation, settlement or after a public hearing. If a permit does not contain a provision which restricts appropriation or use for the protection of safety or welfare of the people of the state the commissioner cannot modify or restrict an existing appropriation until opportunity is provided for a public hearing and where ordered a public hearing has been completed.

F. Terminations.

Permits ~~may~~ shall be terminated under the following:

1. Request by the permittee.

2. When any of its provisions are violated.

3. When the permittee sells, transfers or assigns the property ~~rights~~ described in the permit and ~~no-transfer-is-requested-by~~ the transferree ~~within-90-days-of-transfer-of-title~~ does not wish to continue appropriating.

4. Upon finding that the permittee has violated the provisions of any applicable laws and rules.

5. Where the permittee has ~~ceased~~ not,for 5 consecutive years,from the date

of issuance of the permit, appropriated ~~to use the water and no reasonable justification is shown~~. Such time shall be extended by the commissioner for good cause shown.

6. When the lease or contract for deed is forfeited or cancelled.

7. Permits for agricultural irrigation ~~may~~ shall be subject to termination by the commissioner upon justifiable recommendation of the supervisors of the soil and water conservation district, wherein the land irrigated is located, regarding the inadequacy of the soil and water conservation measures.

8. When the commissioner deems it necessary for the conservation of the water resources of the state or in the interest of public health, safety and welfare.

9. When the commissioner deems it necessary pursuant to 6 MCAR § § 1.5054 and ~~1.5053~~A. 1.5055.

10. Any action pursuant to 2,4,5,6,7,8 and 9 above shall be subject to appropriate notice and opportunity for hearing, except as provided in 6 MCAR § 1.5055~~6~~E.

11. In the case of permits for mining issued in conjunction with Minn. Stat. § 105.64 procedures for termination shall be subject to provisions of Minn. Stat. § 105.64, subd. 6.

6 MCAR § 1.50567 Miscellaneous provisions.

A. Local permits.

The commissioner, pursuant to Minn. Stat. § 105.41, subd. 1b, ~~may~~ shall delegate to municipal, county, or regional level of government, the authority to process and approve permits applications for the appropriation and use of waters of the state in amounts of more than 10,000 gallons per day and more than 1 million gallons per year, but less than 3.6 million gallons per year, ~~subject to all of the following requirements~~:

Such delegation shall be made at the municipal, county or regional level which means a governmental entity, or several governmental entities in combination, having authority or jurisdiction over areas of geographical extent beyond the limits of a single county, or a watershed district.

The delegation by the commissioner shall be subject to the following requirements:

1. The ~~local~~ authorized unit of government has established an administrative process which includes provisions for establishing a water appropriation management planning process consistent with 6 MCAR § 1.50578.

2. The review and approval of applications are consistent with the applicable provisions of these rules.

3. A formalized agreement is made and signed by the commissioner and the appropriate municipal, county or regional level authority involved.

4. Copies of all applications and records of local actions on applications are provided to the commissioner upon receipt and action.

5. Records of water appropriation amounts and the processing fee shall be submitted by the permittee to the commissioner as required by 6 MCAR § 1.50556B and C. and Minn. Stat. § 105.41, subd. 5.

B. Water conservation.

In order to maintain water conservation practices in the water appropriation and use regulatory program it is necessary that existing and proposed appropriators and users of waters of the state employ the best available means and practices based on economic considerations for assuring wise use and development of the waters of the state in the most practical and feasible manner possible to promote the efficient use of waters.

Based on data submitted by applicants and permittees and current information on best available water conservation technology and practice the commissioner, in cooperation with the owners of water supply systems, may analyze the water use practices and procedures and may require a more efficient use of water to be employed by the permittee or applicant, subject to notice and opportunity for hearing.

C. Abandonment of wells.

The permittee shall notify the commissioner prior to abandoning, removing, coverning, plugging or filling the well or wells by means of which a water appropriation was made. The commissioner shall require abandonment procedures and methods consistent with Minn. Health Department rules, ~~MHD-218~~ 7 MCAR § 1.218.

D. Field investigations.

In order to fully evaluate water appropriations, the commissioner may conduct field investigations to determine the nature and scope of the appropriation and the impact it has or will have on water and related land resources. Such field inspection ~~may~~ shall be made in a timely fashion and ~~may~~ shall be coordinated with one or more of the following divisions of the Department: enforcement, fish and wildlife, forestry, minerals, lands and parks and recreation. A fee ~~may~~ shall be charged for field inspections subject to 6 MCAR § 1.5000, subd. G.1. - G.5, rules for permit fees.

E. Information on appropriation permit laws.

The applicants or existing permittees shall, upon request to the commissioner, be furnished copies of applicable portions of the law or synopsis, where they exist, relating to their proposed or existing appropriation.

6 MCAR § 1.50578 Water appropriation and use management plans.

A. In order to address the provisions of Minn. Stat. §§105.403, 105.405 and § 105.41, subd. 1a, the commissioner, in cooperation with other state and federal agencies, regional commissions and authorities, local governments and citizens, establishes the following process for the preparation and implementation of the elements of any state, regional and local plan relating to water appropriation and use.

B. Criteria and procedures.

Since the availability, distribution and utilization of waters of the state and the character and use of related land resources vary considerably throughout the state, a comprehensive water appropriation management planning process must be based on these considerations and according to the following principles and procedures:

1. Water appropriation management plans should be prepared for specific definable areas of the state on consideration of:

a. The hydrologic and physical characteristics of the water and related land resources for which a management plan is necessary. The area must be of sufficient size and areal extent so that the interrelationship of geohydrologic and climatic factors can be adequately defined and managed.

b. The determination by the commissioner of the need for establishment of a water appropriation management plan for the waters of the state within a specific definable area based on:

(1) Areas where development of the waters of the state is, or is likely to, increase considerably within the next 5-10 years.

(2) Areas where severe water availability problems exist or are soon likely to exist.

(3) Areas where there are adequate facts and available geohydrologic data relating to the availability, distribution and use of the waters of the state and where there is local interest in establishing water appropriation management plans.

2. Upon establishment of the need for a water appropriation management plan pursuant to B.1. above, the commissioner shall establish a management planning process including procedures, a public participation process and development of a planning team consisting of representatives of the Department, permittees and any other interested, concerned and involved government or citizen group listed in section A above, to review and cooperate in preparation of the plan.

C. General requirements and contents.

Every water appropriation plan should, at a minimum, include:

1. An evaluation of the amount and dependability of information on the hydrologic systems of the area and the adequacy of the information to provide necessary facts on the amounts of water which can be reasonably withdrawn from the waters of the state in the area without creating major environmental problems or diminishing the long-term seasonal supply of water for various purposes. This will provide essential background information for establishing protected flows and protection elevations, 6 MCAR § 1.5052 B.2.f.

2. An evaluation of data on stream quality and flows, lake water quality and levels, ground water quality and levels, and climatic factors. This will provide essential data useful to the applicant and the commissioner in permit application considerations, 6 MCAR § 1.5051, § 1.5052 and § 1.5053.

3. An evaluation of present and anticipated future use of waters and lands and the amounts and distribution of use within the area. This will facilitate the determinations necessary under 6 MCAR § 1.5052 A.1.b.

4. An evaluation of the problems and concerns relating to the use of the waters in the area.

5. Water conservation alternatives and methods and procedures for dealing with water shortages or excesses during periods of deficient or excess water, see 6 MCAR § 1.5051 B.6., § 1.5053 B.1.g. and § 1.5058 B.

6. Considerations of the relationship of the water appropriation and use management plan to other water resources programs of the state, such as floodplain

management, shoreland management, water surface use management, water quality management, soil and water conservation management and agricultural land management.

APPROVED AS TO FORM AND LEGALITY

JUL 14 1980 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 14 1980
Joan Anderson Growe
Secretary of State

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STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of Proposed Rules for Water Appropriation.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came duly on for hearing before State Hearing Examiner Howard L. Kaibel, Jr., in Detroit Lakes, Minnesota, on January 8, 1980. Continued hearings were conducted in Saint Paul on January 10, and in Marshall on January 15, 1980.

All interested persons, representatives of individuals or associations, and other interested groups present at the hearing had an opportunity to present evidence, make statements and question Department of Natural Resources Staff (hereinafter "Department Staff") witnesses, and to submit written comments following the hearing. Approximately 90 people attended the three hearings, and 25 written comments were submitted. The written comments cited in this Report have been marked alphabetically for identification.

Augustus W. Clapp, III, Special Assistant Attorney General, Third Floor, Centennial Office Building, 658 Cedar Street, Saint Paul, Minnesota 55155, appeared for and on behalf of the Department Staff. Mrs. Hedia Rieke, Supervisor of the Water Appropriation Unit of the Division of Waters, presented the proposed rules at the hearings. Lee W. Hanson, P.O. Box 966, 201 Hall Building, First Street North, St. Cloud, Minnesota 56301, appeared on behalf of the Irrigators Association of Minnesota.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Department shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4 (1978). The submission to the Chief Hearing Examiner shall precede review by the Attorney General. 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 (1978) within ten calendar days. The Department will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

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

BACKGROUND

The Department of Natural Resources (formerly the "Department of Conservation") has had as a primary, forty-year responsibility, the conservation and

management of Minnesota's water resources. Pursuant to legislative authorization and supervision, the commissioners and staff of the Department have developed policies and procedures including a permit system governing the appropriation (i.e. taking) of surface water (i.e. rivers and lakes) and groundwater (i.e. water underground - "aquifers") and the use of such waters. Beginning in 1973, the State Legislature directed the Department to spell out its policies and procedures "governing the allocation of waters among potential water users" as formal published "Rules" (Minn. Stat. §§ 105.41, subd. 1a and 105.415). The proposed rules considered herein are an attempt by the Department to comply with that directive.

FINDINGS OF FACT

1. On November 13, 1979, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On November 26, 1979, a Notice of Hearing and a copy of the proposed rules were published at 4 State Register 854.

3. On November 28, 1979, 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. On December 7, 1979, the Department filed the following documents with the Hearing Examiner:

(a) The Order for Hearing and authorizing resolution.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate and list.
(f) The Statement of Need and Reasonableness.
(g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 2 State Register 985 (November 14, 1977).
(h) The names of Department personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

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

5. The record remained open through February 4, 1980, for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing. The period for preparation of this Report was duly extended indefinitely, pursuant to the joint request of the Department and the Hearing Examiner, as provided in Minn. Stat. § 15.0412, subd. 4, to permit expedited completion of a Report involved in a different Department of Natural Resources proceeding.

6. The statutory authority for the promulgation of these rules by the Department is contained in Minn. Stat. §§ 105.415, 105.403 and 105.405.

7. A detailed discussion of the need for and reasonableness of each of the provisions of the proposed rules is unnecessary on this record. Such an analysis is contained in the Statement of Need and Reasonableness submitted by

the Department and distributed to all hearing participants. Therefore, except as hereinafter noted with regard to specific provisions, the proposed rules are found to be needed and reasonable, and the Department has documented this by an affirmative presentation of facts. The Department has also demonstrated that the rules are authorized by statute, except as hereinafter noted. The extensive duplication of statutory language involved is crucial to the ability of persons affected by the rules to comprehend their meaning and effect.

8. The Department Staff was generally deservedly commended by the public for meeting exhaustively with representatives of primarly affected organizations and other members of the public prior to initiation of this rules hearing, and for their willingness to consider further revisions to accommodate the concerns expressed by the public at the hearings.

Most of the provisions and sections were consequently not opposed, and this Report is generally limited to those that were. All of the concerns discussed on the record and in written comments have been carefully considered in the preparation of this Report. Specific reference to many, if not most, of those concerns is omitted because the Department Staff has recognized their validity and agreed to rectify them in its final written comments. (The first 14 pages of the Department Staff's final written comments, Comment B, containing those rectifications are attached for the convenience of persons ordering this Report.) Except as otherwise indicated in subsequent Findings, these proposed revisions are needed, reasonable and statutorily authorized. Except as otherwise indicated in subsequent Findings, they do not appear to be "substantial changes" requiring a new notice and hearing prior to adoption pursuant to 9 MCAR § 2.111.

Many of the remaining concerns dealt with in subsequent Findings may seem on the surface to be trivial or "minor clarifications". It is crucial in reviewing judgments herein on those matters as to documentation of need and reasonableness to fully appreciate how important these rules and their interpretation can be to the lives and livelihoods of potentially affected members of the public. Department Staff admitted that in the past the public has received different answers to the same questions, depending on who was sitting behind the desk. They also admitted that field hydrologists and conservation officers have made mistakes such as establishing "protected flows" on the Long Prairie River which adversely affected 25 irrigators without notice or a hearing. The Findings and Recommendations herein consequently attempt to minimize areas of variable interpretation and ensure due process, with regard to provisions objected to by the public.

There are many areas remaining in the proposed rules of broad discretion which were not objected to by the public and which do not appear to have potential for significant adverse impact. For example, the requirement of groundwater quality data in permit applications has been revised in the Department Staff final written comments to add "where required by the Commissioner". This should resolve the concern of the public that such data should only be required in special situations, such as areas where salt content may cause problems. The provision still involves unbridled discretion and arguably special types of circumstances should be spelled out to make this discretion reviewable. Such discretion was not, however, a concern of the public,

and its abuse is not likely to have a significant adverse impact on the rights and interests of the public.

Similarly, the following list of provisions of the proposed rules involve total discretion without any standards or criteria. These provisions were not specifically objected to by the public, and spelling out of criteria does not appear to be necessary to find them reasonable.

Page 26 - Commissioner may withhold consideration of new applications or suspend appropriations during the period of resolution of conflicts over utilization of available water supplies.

Page 26 - Commissioner may modify or develop new plans for resolution of water conflicts among users of the same statutory priority.

Page 28 - Reasonable extensions of temporary permits may be granted.

Page 29 - Commissioner may require permittees to pay the costs of stream flow gauges.

Page 30 - In addition to the reports required in the rule, additional information may be required.

Page 35 - Field investigations may be made in a timely fashion and may be coordinated with other divisions of the Department.

Page 35 - A fee may be charged for field inspections.

Page 37 - "Every water appropriation plan should, at a minimum, include. . . ."

9. The general approach taken in the proposed rules is a conservative one in the sense of minimizing regulatory involvement. This approach is reasonable and in accord with the state of the law in Minnesota relating to water appropriation.

Several witnesses urged a more active governmental role to protect the investments of "prior users" from potential conflicts. Providing such protection would require much more government regulation and interference than that complained of in these hearings. An informative description of New Mexico practices submitted by Mr. Bergsrud (Comment f) shows vividly that adequate protection of the "rights" of prior appropriators requires: Regulation of the purchase and sale of "rights"; allocation and adjudication of individual annual appropriations; strict regulation of allocations to keep appropriation rates in line with recharge of the source; careful metering and government monitoring of legal and illegal uses; and a sizable and expensive regulatory and enforcement bureaucracy. Such regulation may well be required at some time in the future if, for example, apportionments among irrigators effectively eliminates that use in some part of the state or if some lower priority user under the statute, such as a utility, someday finds its use effectively curtailed. If and when such an eventuality occurs, establishment and regulation of "water rights" will involve questions and costs that must properly be addressed by the legislature.

Protection of prior users in most western states is a result of a common law approach in those states establishing water rights. Minnesota has a legislatively modified legal approach ensuring "reasonable use" of water to all existing and future "riparian owners", with a priority system for resolving conflicts based on types of uses. Revision of this legal approach is a fundamental matter, requiring legislative action.

OK * 10. The Department Staff did not introduce any documentation of either the need for or the reasonableness of limiting its "reuse" exemption provision in the jurisdiction section (5050 C.5. - page two) to "waste" waters. The Department Staff agreed at the hearing with a Minnesota Power and Light Company (hereinafter "MP&L") recommendation that the exemption be expanded to include other reuse of water appropriated pursuant to a valid department permit. However, the attached final written comment revision of that section would add the words "or a discharge" to the exemption without eliminating the word "waste". Given the definition of "appropriation" in the statute and proposed rules, discharges are clearly not subject to permitting provisions in the first place, so the proposed added language would exempt nothing. For this provision to be found reasonable, "waste" must be either eliminated or defined, to clarify what kinds of reuse are not exempted. (Note that the rule can be shortened by nine words by changing the first period to a comma and striking the first nine words of the second sentence.) Elimination of the word "waste" and the other unnecessary verbiage do not appear to be substantial changes. complied with

11. Boise Cascade Company discussed at length the problems associated with multiple jurisdictions, particularly the role of the International Joint Commission's authority over boundary water appropriations. These problems are real and it would be unreasonable to leave them totally to resolution through future litigation, without at least providing notice that the rules are not intended to supersede other authority extant elsewhere. The written comment (e) from four metropolitan watershed districts points out that the public water rules contain explicit recognition and notice of potential concurrent jurisdiction, recommending excellent possible language. This or similar notice and disclaimer is essential to make the proposed jurisdiction section reasonable. See page 2. C.5 also page 4 E.

12. At the hearing and in written comments, counsel for Pickands-Mather argued strongly that various provisions of the rule could be misinterpreted as asserting authority beyond the very specific limitations of Minn. Stat. § 105.64, subd. 6, with regard to mining permits. Department Staff responded that they could include reference to that statute as a "commissioner consideration", but did not do so in the attached final written comment revisions. It is clear on this record that there is a considerable potential for misinterpretation on the part of this and future Department Staff members as to the application of the rule. The statutory provision is not just a consideration, it is a very specific superseding limitation. This is a good example of where it is crucial to avoid the possiblity of getting different amswers in the future from different persons behind the same desk. To avoid the potential for future misinterpretation and needless litigation, the jurisdiction section or the scope section must be amended to clearly state that nothing in these rules is intended to contravene the specific limitation of Minn. Stat. § 105.64, subd. 6, relating to mining permits. This would not appear to be a substantial change. complied with

13. The definition section of the proposed rules (5050 D.) unreasonably fails to set forth the Department Staff's interpretation of "domestic use". The argument section of the Department's final written comments (b) sets forth

their definition, which is crucial to the interpretation of the statute and the rules. That section indicates that the Department Staff's interpretation of "domestic use" is "general residential purposes" including watering of lawns and livestock and other small uses totaling less than 10,000 gallons per day and no more than one million gallons per year. This term is key to the priority and interference provisions of state statutes which have been incorporated into the proposed rules and its definition is essential to finding those provisions reasonable. Earlier drafts of the proposed rules contained an even more detailed and specific definition. There was no affirmative presentation of facts documenting the reasonableness of leaving this vital concept totally to case-by-case interpretation. The above definition identifying inclusions and overall maximums could certainly be more specific, but it is better than leaving the term totally undefined. Its inclusion would not appear to be a substantial change.

definition now included page 3.

14. In prehearing comments on an earlier draft of the proposed rules, the State Planning Agency strongly urged inclusion of a definition of "regional" units of government. Watershed districts and soil and water conservation districts joined in this recommendation at the hearings. The need for a definition is strengthened by the addition of the term to the comments the commissioner must consider in the Department's final proposed revisions attached to this Report (5052 A.1.h.). The other place that the term is used is in the "local permits" section of the proposed rules (5056 A.) allowing delegation of the authority to process and approve permits for approprations of less than 3.6 million gallons per year. This local assumption of permitting authority is mandated by Minn. Stat. § 105.41, subd. 1b, which provides for delegation of Department authority to the "municipal, county, or regional level". Watershed districts sought to be included in a "regional level" definition and appear to be good candidates for such delegations. The Legislature has specifically set forth a mandatory review role for watershed districts in all present permit proceedings and they appear to be the only potential class of "regional governments" that the Legislature has given an explicit permitting authority for water appropriations. Moreover, where watershed districts are already implementing their authority to process permits for appropriations of less that one million gallons per year, it is only reasonable that they should be the local authority to process permits for appropriations of one million to 3.6 million gallons per year, as pointed out in comment (e) from four metropolitan area watershed districts. Soil and water conservation district representatives also very strongly supported including their districts in the definition of "regional" units. They indicated that in one case three such districts have appropriated money for monitoring wells and employ a man to administer the water conservation program in the three counties involved. The Department Staff's response at the hearing, that it wishes to avoid being forced to choose between competing governmental entities, is unconvincing. Regardless of how regional level is defined, the Department will still be forced to choose between such units and cities and counties.

The Department Staff's final written comment proposes resolution of the problem in the local permit section by defining regional as being regional development commissions as defined in Minn. Stat. Ch. 462 and allowing

counties, municipalities and regional development commissions to further delegate the authority to watershed districts. (It should be noted that the Metropolitan Council is explicitly excluded from this chapter of the statutes so that technically there would be no "regional level" at all in the seven county metro area under this definition.) There has been no documentation of either the need for such a restrictive definition of the statute or for the reasonableness of the resulting construct. In prehearing comments on a similar approach in an earlier draft, the State Planning Agency (which is the agency with primary responsibility for coordinating and assisting regional development commissions) indicates that this is an "inappropriate role" for the regional development commissions. "The role of a regional development commission is to facilitate planning and intergovernmental cooperation. The issuance of water appropriation permits by a regional development commission would place the commission in a regulatory posture." Similarly, prehearing comments from the State Water Planning Board Staff recommend that "regional development commissions should be deleted and watershed districts might be added." It makes no sense to promulgate a "requirement" that a regional development commission or county or municipality "has established an administrative process" for dealing with permits as a condition of delegating local permit authority, if the regional development commission, county or municipality will simply be further delegating the authority to a watershed district. There also does not appear to be statutory authority for this new Department Staff approach. The regional development commission statute (Minn. Stat. Ch. 462) does not appear to give them authority to implement a permit administration program. The functions outlined are solely planning and not administration.

It would not appear to be a substantial change to include a definition of regional governments as local units of government other than cities, counties, or townships; including where appropriate: regional development commissions, watershed districts and soil and water conservation districts. There also appears to be support in the record for some spelling out of the criteria to be applied in resolution of conflicts between competing local permit authorities such as those proposed by the watershed district comments. Additional criteria that might be applied are geographic size of the governmental unit and the experience and size and expertise of the permit staff involved. Perhaps preference of potentially affected appropriators should also be a consideration. In any case, there is a clear legislative mandate to experiment with an expanded permit role for local government, the parameters of which should be adequately spelled out in the proposed rules. Some definition of "regional" is essential to make the rules reasonable.

Does not appear in "definition" section

15. Proposed Section 5051 B.4. (page 6) would require that all permit applications be accompanied by a "signed statement that copies of the application have been sent to governmental units as required by Minn. Stat. § 105.44, subd. 1." As pointed out in comment (e) from four watershed districts, this section should specify what those units are so that affected applicants will not have to consult the statute, changing "goverment units" to "cities, watershed districts and soil and water conservation districts with jurisdiction over the property involved." This revision would not significantly lengthen

complied with - slightly different wording see p. 7

the rules and a repetition of the statutory provisions is specifically found to be crucial to the ability of affected persons to comprehend the rule's meaning and effect.

16. Mr. Lappegaard, representing the Shiely Company, strongly urged that economic considerations be explicitly recognized as a "commissioner consideration" in permit review, by adding it as a new item 5052 A.1.j. on page eight. Such explicit recognition was also recommended by the Pollution Control Agency (comment g). This issue is one of inevitable damnation for Department Staff as inclusion of the consideration was emphatically both urged and rejected. Irrigation representatives, for example, at Detroit Lakes argued strongly against any recognition of "economic considerations" suggesting that such matters are none of the Department's business. On the other hand, other irrigation representatives at the St. Paul hearing urged that "economic impact" be specified as a consideration in the process of establishing protected levels and flows. In the argument section of the Department Staff's final written comment, specification is rejected:

> Although an applicant or permitee may submit economic evidence to support a proposed or existing appropration, the commissioner is bound by the requirements of 6 MCAR § 116D.04, subd. 6, in making decisions on water appropriations involving new or existing permits.

The writer of the comment obviously meant Minn. Stat. 116D.04, subd. 6, a section of the Environmental Policy Act which explicitly applies to water appropriation permits. This statute says in part, "economic considerations alone shall not justify such conduct" clearly indicating that the Legislature intended that economics must be examined and weighed as a factor. At the hearing the Department Staff conceded that economic evidence would undoubtedly receive consideration when it is submitted. It is consequently necessary that the factor be listed in the proposed rule for it to be found reasonable. Addition of language such as the following would not appear to be a substantial change: "j. The economic impact of the proposed appropriation on existing and potential future users."

section is added but in different words. see p. 9

17. Like economic impact, evidence related to water quality impacts will clearly be offered and considered wherever that is a significant consideration. Although several witnesses urged deletion to all references to water quality, leaving such matters to the Pollution Control Agency, this would be contrary to the above cited section of the Environmental Policy Act. None of the hearing participants urged that the Department should not look at "quality" in irrigation permits when it comes to salt content and the impact of its "discharge" on soils. The rules must accordingly provide notice to applicants that water quality is a potential consideration.

18. The proposed rules would require consideration of existing water management plans only in the case of permit applications for appropriations from watercourses. Such plans would not be considered for groundwater or basin appropriations. Minn. Stat. § 105.41, subd. 1A, requires consideration of such plans for all permit applications. Counsel for Department Staff agreed at the final hearing that subsection 5052 A.2.f. should be moved to section 5052 A.1., but the revision is not contained in the attached Department Staff final written comments. The revision must be made for the rules to

complied with see p. 9

be found reasonable and not contrary to statute. It would not appear to be a substantial change.

19. The proposed rules would require the commissioner to consider the "impact of the appropriation on the public interest" only for basin and watercourse appropriation applications and not for groundwater appropriation applications. Minn. Stat. § 105.45 requires consideration of protection of public safety and promotion of public welfare for all appropriation applications. For the rule to be found reasonable and not contrary to statute, this consideration in 5052 A.2.g. and 5052 A.3.e. must be deleted and inserted as a subsection in 5052 A.1.

20. Proposed section 5052 B.1.b. (page 11) would mandate denial of permits where "the quantity of available waters of the state, in the area involved, are inadequate to provide the amounts of waters proposed to be appropriated." (This is the slightly revised language contained in the attached final written comments from Department Staff.) The Statement of Need indicates simply that this subsection:

> Is necessary to restrict issuance of permits in those areas where there are no available supplies. This protects the public interest in the resources and also protects the proposed appropriator from expending funds when a supply will not be dependable. (Page 11)

It is important to understand that this provision would be limited to situations where there are no other existing or proposed appropriators in the area involved, because whenever there are two or more existing or proposed users a "conflict" arises under the proposed rules which is resolved by proposed section 5054 beginning on page 25. It is thus difficult to understand how this provision would protect "the public interest in the resources." Other provisions in the rule relating to "safe yields" and protected flows and elevations should adequately protect any public interest. Thus, the sole remaining justification for this proposed subsection is to protect the proposed appropriator from expending funds on unreliable supplies. It should be noted that the treatment of this situation is inconsistent with the treatment of the same situation in the conflict resolution section. There the Department's final written comments would drop the words "or denied" so that permits would be issued but effectively curtailed through allocations by the commissioner according to the statutory priority system. It is, thus, crucial that the narrow application of this subsection be specified to avoid potential misapplication, by inserting language such as "there is no conflict between competing users, but". With such a revision the subsection appears to be needed, reasonable and statutorially authorized.

21. Proposed section 5052 B.1.e. would mandate permit denial in cases of unresolved conflicts between competing users. Technically, the words "until the conflict is resolved pursuant to section 5054" should be added to make the subsection consistent with the Statement of Need. It should be further noted that this section would still be inconsistent with the proposed conflict resolution rule 5054 B.4.a.(2) (page 26) which indicates that "the commissioner may withhold consideration of new applications" instead of the herein mandated denial. The inconsistency must be eliminated in one place or the

other for the rule to be found necessary and reasonable. One way of eliminating the inconsistency would be to make section 5052 B.1.e. into a separate subsection stating that if the commissioner determines that approval of an application would create an unresolved conflict, the conflict shall be resolved pursuant to section 5054.

see p 12 some wds. added but conflict may still exist ? OK

22. MP&L (comment a) points out correctly that "consumptive" must be added to the last sentence of proposed section 5052 B.2.b. to avoid misstating the statute. (page 11)

see page 12 added to 1st sentence, which appears correct.

23. Proposed subsection 5052 B.2.d.(2) (page 11) restates the statutory limit on appropriations from water basins of one-half acre foot of water per acre of basin surface. Duplication of the statutory language is crucial to the ability of persons affected the rules to comprehend their full meaning and effect. The Department did not contradict expert testimony that the statutory limit is outdated and no longer valid. It follows that documentation of need and reasonableness is limited to the fact that the statutory limit exists. Consequently, the provision cannot be found to have been documented as both needed and reasonable unless it is limited by inserting language such as "as long as so limited by Minn. Stat. § 105.417, subd. 3 A" as Department Staff agreed to do at the the hearing.

complied with see p. 13

24. A major portion of the hearing was devoted to discussing methods of establishing protected flows for watercourses and protected elevations for water basins, to avoid the kinds of problems associated with this process in the past. The attached Department written comment revisions to section 5052 B.2.f. on page 12 generally meet the concerns of irrigators. The revisions do not solve the problems urgently discussed by electric utilities and the Environmental Quality Board Power Plant Siting Staff (comment d). These members of the affected public pointed out that the mechanism must include a method of making such determinations prior to the permit application stage to be reasonable. The Department Staff agreed at the hearing in St. Paul that they would have no problem with allowing initiation of the protected flow establishment process by petition, outside of the permit application process, if it is limited so that initiation is not open to "anybody". Department Staff indicated:

> That's a different ballgame, and that could just, you know, lead to just a multitude of these all over the state, for us to have to come and try to react to instantaniously and we wouldn't be able to do it. If it involves a given permit situation, absolutely. But remember now there may be certain situations where because of the facts that are there we won't even be involved in setting protected flows and levels, and in-stream flow at that particular time. There may not be enough problems in terms of water appropriation in that given area to even worry about it at that point in time.

Addition of modified EQB proposed language to the end of the Department revision, such as the following, would make the rule reasonable:

> Upon the submission of data set forth in sections 5052 A.1. or A.2. for a specified watercourse segment or basin by a state agency agreeing to pay the costs of any necessary public hearings, the Department shall establish requested protected flows and elevations.

complied with p. 13

The change does not appear to be substantial.

25. Proposed subsection 5052 B.3.b. requires that appropriations be limited so that they do not "affect" protected flows or elevations. That language is ambiguous, as arguably all approprations either always or never have an effect on protected flows and elevations. The language problem was discussed at the hearing but no revision is suggested in Department Staff final written comments. This ambiguity renders the rule unreasonable, but use of the term "violate" instead of "affect", as suggested in prehearing comments by the Water Planning Board Staff, would eliminate the problem.

wording changed see p. 14

26. Proposed subsection 5053 A.1.b.(7) (page 15) providing for a waiver of required information "when the necessary data are already available" must be revised to eliminate the discretionary language. The "may" must be changed to "shall" for the provision to be found reasonable. MP&L points out correctly (comment a) that it would be unreasonable to require data that is already available. The provision is also inconsistent with section 5051 C. which is a mandatory waiver whenever information is "unnecessary" for all information required in sections 5051 and 5053. That subsection makes section 5053 A.1.b.(7) redundant and unnecessary. It consequently appears that the provision should be eliminated.

not eliminated see F. of F and page 17

27. The Department Staff did not document by an affirmative presentation of facts either the need for or reasonableness of its proposed section 5053 A.2.b.(6) (page 16) limit on surface water irrigation appropriations of one-half acre foot of water per acre of riparian land. As University of Minnesota Agricultural Engineer Bergsrud points out (comment f) the original basis of this administrative convenience is outdated and the provision is indefensibly arbitrary where adequate water is available for economical irrigation, particularly where it discriminates against small land owners. The sole fact cited in the Statement of Need relating to this provision is the general observation that irrigation appropriations occur at times when surface water flows and levels are lowest. The protected flow and elevation provisions in the proposed rules are adequate protections against unwise surface water irrigation which are tied directly to the key concern, availability of water.

The statutory limit discussed in a previous Finding on collective annual withdrawals from water basins, contains a waiver provision to ensure against arbitrary utilization where water supplies are adequate. Department Staff testified that they have waived that annual limit in situations where there is adequate recharge of particular basins. One Department Staff representative thought that there was also a waiver provision in the rules for this riparian land limitation, but on closer questioning agreed there is none in the rules as proposed. The riparian land acreage limitation consequently circumvents the legislative judgment that annual limits should be waived where recharge is adequate, by imposing a further absolute limitation regardless of recharge or water availability generally.

Where basin and watercourse recharge is adequate to support larger appropriations by riparian owners, the provision would encourage wasteful investment in wells for groundwater appropriation because there is no similar acreage limit on groundwater appropriation. The only limit on groundwater appropriations which directly affect surface waters under the proposed rules

occurs when those appropriations cause violations of protected flows or elevations. To do otherwise with surfacewater appropriations, particularly in cases of surplus supply in watercourses flowing out of the state (discouraged under Minn. Stat. §§ 105.405 and 111.82) is not reasonable.

The Department Staff argument that the limit avoids potential conflicts among riparian owners over allocations which would otherwise have to be dealt with by the Department Staff in the permitting process, is unconvincing. The proposed rules would specifically provide for Department Staff resolution of such conflicts. That process is infinitely preferable to the arbitrary limits established in this proposed provision.

some language added - see page 18 and F. of F. #4

28. In the attached final written comment revisions, the Department Staff has revised and redrafted the irrigation well interference section (5053 A.3.) so that it would apply equally to all large appropriators drying up domestic wells. The revisions and other provisions are needed, reasonable and the changes appear to be insubstantial. However, there are three needed minor revisions which must also be made in order to make the rule reasonable. First, the section 5053 A.3.c.(1) (page 19) notarized written offer to the complainant must contain notice to the complainant that he must respond in writing to the commissioner within ten days or the complaint will be dismissed, for the dismissal provision to be found reasonable.

entire section renumbered as 5054 see p. 27

complied with see p. 30

Secondly, section 5053 A.3.b.(4) (page 18) would give the commissioner the discretion to cancel or not cancel the interfering appropriation after the adverse affect on the domestic well has been substantiated. This discretionary approach was objected to strongly. It potentially leaves the domestic user without water while negotiations, hearings, offers and decisionmaking take place. There are no standards contained in the proposed rule to apply in deciding when the commissioner "may" and when he "may not" restrict or cancel the appropriation while the interference problem is being resolved. As such it is not properly a "rule" setting forth predictable, adjudicable policy for either domestic or irrigation users. Department Staff responded that "may" could be changed to "shall" adding "unless a temporary solution is worked out". This revision which was not included in the attached Department Staff written comments, is needed to make the provision a rule and for the section to be found reasonable. The change does not appear to be a substantial one requiring a new hearing, as the potentiality of restriction is merely made more definite and predictable for all concerned.

complied with see p. 29.

Finally, the State Water Planning Board Staff (comment c) points out that "the references to 'state health standards' are vague and should be clarified." Technically, the Minn. Stat. § 105.416, subd. 3 requirement ("MHD 217-222") should be inserted. The duplication of statutory language is crucial to the ability of affected persons to comprehend the rule's full meaning and effect.

complied with see p. 30

29. Pickands-Mather Company (comment h) urged deletion of language allowing the commissioner to direct use of available water from surplus supplies in preexisting mines "whether owned or controlled by the applicant or others" from section 5053 E.2.a. (page 23). Upon careful consideration, the language cannot be found unreasonable, because of the controling condition: "whenever feasible and practical unless justification is provided why such

practices should not be allowed." The language merely requires an applicant to investigate purchase of available supplies. If the other owner will not sell, it is not "feasible" and if the cost exceeds alternative sources, absent significant environmental degradation, it is not "practical". The explicit right of a contested case hearing in the event of disagreement is a factor in this judgment.

30. The use of the "feasible and practical" language in the rule subsection relating to surplus mine water discussed in the immediately preceeding Finding, requires use of the same standard in section 5053 E.2.c. (page 24) relating to discharges for stream flow maintenance. Addition of that qualification will make the rule consistent with the Statement of Need and will make it reasonable by eliminating potential misinterpretation caused by the omission, as urged by Pickands-Mather Company (comment n). complied with see p. 26

31. "May" must be changed to "shall" in the "conflict resolution" section 5054 B.4.a. (page 26) for the rule to meet the need outlined in the Statement of Need. The rule generally provides for a two-step resolution of such conflicts. First, the commissioner attempts resolution through modification of proposed and existing permits. Secondly, if that fails he "may" require users in the same priority class to submit a plan for proportionate distribution which the commissioner may approve or modify. "The commissioner shall issue new permits and amend existing permits based on that plan." Thus, failure to require submission of a plan would leave conflicts unresolved. Department Staff did not introduce any affirmative presentation of facts documenting the need for or reasonableness of leaving such conflicts unresolved. Use of the word "shall" will cure this problem. complied with see p. 33

32. The Department Staff has not adequately documented either the reasonableness of or the statutory authority for requiring flow meters on all appropriations of 1,500 gallons per minute or more, as is proposed in revised section 5055 B.1.b. (page 29). The rules as proposed in the Notice of Hearing would have required use of a device or method to measure appropriations within ten percent accuracy using statutory criteria to determine the method, except that meters would be required for appropriations over 1,000 gallons per minute unless there were technical reasons why meters could not be employed. In response to irrigator objections, the Department Staff in attached final written revisions has agreed to change the automatic meter requirement to apply it to all appropriations over 1,500 gallons per minute. This revision is acceptable to irrigators, but the provision would still be objectionable to mining companies. They contend that use of charts employing the capacity of pumps and the resistance or distance that the water is pumped, yields results that are comparably accurate. A representative of an independent association of well drillers concured with this testimony. The evidence further indicates that utilizing meters does not ensure accuracy within ten percent including a study of North Dakota meters which indicated that 26 percent of the meters were more than plus or minus ten percent accurate and 11 percent were not operating. On the other hand, a Hearing Examiner Report in a previous mining company dewatering permit proceeding (DNR-79-001-HK) indicates that the method proposed by the mining companies may also involve questionable accuracy. That

Report indicates that accuracy of measurement can be very important to downstream property owners affected by dewatering discharges and that the method utilized by the mining companies produced an estimated flow of 17 cubic feet per second as opposed to a measured flow of 19.54 cubic feet per second. This 15 percent inaccuracy is not conclusive according to the report because of undetermined impacts of settling basin runoff, but the magnitude of the difference is impressive, amounting to roughly 15 million gallons per day.

No specific factual data was introduced with regard to appropriations of 1,500 gallons per minute or more. Permits specify rates and volumes, but Department Staff did not include in its Statement of Need and other evidence any data as to how many users appropriate at rates of greater than 1,500 gallons per minute, what kind of appropriators they are or what volumes are involved. (It is important to realize that the per minute rate of appropriation is not meaningfully related to annual quantity. The mining company in the above-referenced case, for example, pumps 24-hours a day all year long while irrigators may pump for only very short periods over a span of only three months a year.)

The statute involved (Minn. Stat. § 105.41, subd. 4) requires that for "each installation" the:

> . . .determination of the method to be used for measuring water quantity shall be based upon the quantity of water appropriated or used, the source of water, the method of appropriating or using water, and any other facts supplied to the commissioner.

There is no specific factual information in the record to support a conclusion that flow meters should always be the best method of measuring water quantity for all installations whose rate of appropriation exceeds 1,500 gallons per minute, regardless of quantity, source, location or method of appropriation or other individual facts that might be supplied to the commissioner.

The Minnesota Association of Commerce and Industry in a prehearing comment on an earlier draft, suggested adding to the "cannot use" technical exception, the words "or are not necessary". This addition, adding "considering the factors contained in section 5055 B.1.a." (the statutory factors) would yield a reasonable provision that is statutorily authorized. Such a revision does not appear to constitute a substantial change. It would permit future factual determination of disputes over the propriety and efficiency of alternative measuring methods.

complied with see p. 36

33. Frequency of measurement and reporting of water levels in wells has apparently been a very troublesome matter for both Department Staff and the public. An earlier August 1979 draft of the proposed rules contained specific requirements depending upon the type of use involved: irrigators every two weeks from April 1 to December 1 and at least once a month from December to March; public water suppliers twice a month from April to September and once a month from October to March after the pump has been shut off six hours; and all others twice a month throughout the year with a "static" test at three-month intervals. Apparently in response to criticisms of this approach in written comments and at public meetings, the final draft of the proposed rules considered herein eliminated all specific requirements, substituting simply "at reasonable times prescribed in the permit". The subject was still a major

see page 36 5056 B.2.b

concern of the public at these hearings. No criteria or standards are specified in the rule and there is no discussion of the provision in the Department Staff Statement of Need and Reasonableness. Documentation is consequently lacking as to reasonableness of the proposed provision. If the standards or criteria to be utilized are specified, the rule provision will be reasonable. If the criteria are: availability of hydrologic data on the aquifer involved, frequency and rate of pumping and probability of conflict or well interference; the revision would not appear to be a substantial change. renumbered to 5056

34. Proposed section 5055 D.2. (page 31) relating to transfers or assignments was objected to strongly, particularly the transferor notice requirement. The attached Department Staff final comment revisions would place the notice requirement on the transferee and extend the time limit to 90 days. At the Detroit Lakes hearing the Department Staff rejected a suggested alternative of automatic suspension of a permit for failure to notify within 120 days, indicating that the Department would not punish an owner for late notice and would, in fact, be happy to get information belatedly on the name and address of the new property owner for future correspondence. Time limits were objected to strongly by members of the public. It is important to understand that what is involved is actually not in most cases a physical transfer of a permit document from one landowner to another. The "permit transfer" is in most cases a simple change in departmental records to reflect change in landowners, so that the new landowner can continue appropriating without going through a cumbersome reapplication process. Therefore, in accord with the documentation on the record, three changes are necessary to find these provisions needed and reasonable. First, the language should be clarified by adding "may be transfered without the necessity of reapplication". Secondly, a provision should be added allowing the commissioner to extend the time limit "for good cause shown" as is done with other time limits in this section of the rules such as 5055 A.1. and 5055 D.1.b.(2). Finally, item number three of section 5055 F. (mandatory terminations, page 32) must be either eliminated or strike everything after the word "transferee" and substitute "does not wish to continue irrigating" which the Department Staff indicated was the intent of this subsection at the final hearing.

complied with see page 38

complied with see p. 38

complied with see p. 39

35. The revised language in the attached Department Staff final comments relating to section 5055 F.5. (termination for failure to appropriate within five years) needs further revision to be found needed or reasonable. The Department Staff agreed at the final hearing that termination should be limited to unused paper permits, as the statute is limited to such permits. The rule as proposed would encourage appropriations even when not needed, at least once every five years to avoid the necessity of reapplication, wasting water resources. No documentation was introduced of the need for or reasonableness of the provision as originally proposed. The Department Staff final comment revision is more in accord with the legislative intent to void unused "paper" permits but retention of the word "ceased" results in ambiguity implying some prior use which has "ceased". With further revision to clarify that the language applies only to unused permits, the provision is needed, reasonable and statutorially authorized. The provision could also more clearly state the statutory provision that the five-year period can be extended "for good cause shown".

not sure objection is met see p. 30

complied with see p. 40

36. Proposed section 5055 F.6. providing automatic mandatory termination of permits "when the lease or contract for deed is forfeited or cancelled" was criticized at the final hearing and in MP&L written comments (a). There was no affirmative presentation of facts in the Statement of Need or elsewhere documenting the need for or reasonableness of this provision. On the contrary, the Department Staff indicated that in the past they have "reinstated" permits in such situations, though the rules make no provision for such a process. The problems involved would be remedied by adding subsection six to the list of terminations requiring notice and an opportunity for a hearing, set forth in 5055 F.10. complied with see p. 40

37. Comment (e) from four metropolitan watershed districts correctly points out that specific reference to the processing fee is needed in section 5056 A.5. (page 34) for the rule to be found reasonable, by adding "and 6 MCAR § 1.5000 F" and/or citing the statute as is done in 5055 C.1. complied with see p. 41

38. An earlier August 1979 draft of the proposed rules contained a special provision relating to air conditioning which basically would require storage and reuse of heating and cooling water. Prehearing comments from the Minnesota Association of Commerce and Industry objected vigorously to the proposed provision and it was deleted from the final draft which was noticed for this hearing. Written comments from the Metropolitan Council objected to the deletion. When the Hearing Examiner called this to the attention of Department Staff asking for their response to the Metropolitan Council concern, Department Staff indicated that they were changing their minds and wished to reinstate the proposed provision. It is consequently included in the attached proposed final written revisions. The Statement of Need and the other evidence submitted by the Department does not contain a specific affirmative presentation facts documenting either the need for or the reasonableness of this particular provision. This also appears to be the specific kind of situation which the "substantial change" rule (9 MCAR § 2.111) was intended to address. The Association of Commerce and Industry was not represented at these hearings and might have been if they had known that this provision would be reinstated, to present their evidence and arguments against its inclusion. It appears to be consequently the kind of change that must be made after a new notice and hearing prior to final adoption or as a subsequent amendment once the rules have been adopted. The final decision on substantial change must ultimately be made by the Chief Hearing Examiner. not in this rule. see F. of F

39. Bloomington and other city officials urged special treatment for dewatering projects for construction. These officials were unsure of the gallonage involved in such projects and could not estimate what proportion, if any, exceed the 10,000 gallon per day - one million gallon per year exemption. Department Staff agreed to look at the request and the argument section of its final written comments rejects fashioning special treatment for such dewatering. In the absence of better documentation of the need for special treatment and in the absence of any indication that dewatering projects have ever involved particular permit problems, the Department Staff rejection cannot be found to be unreasonable. City official's attention is called to Minn. Stat. § 15.0415 which provides for procedures for petitioning for the adoption of an amendment to the rules in the event difficulties arise in the future.

CONCLUSIONS

1. Those portions of the foregoing Findings which are more properly denominated Conclusions, are hereby adopted as such.

2. The Department duly acquired and now has jurisdiction over the within proceeding.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. The Department has documented its statutory authority to adopt the proposed rules, except as otherwise noted in the foregoing Findings.

5. The Department has demonstrated the need for and reasonableness of its proposed rules as hereinafter recommended for adoption with an affirmative presentation of facts, except as otherwise noted in the foregoing Findings.

RECOMMENDATION

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

Dated: April 1, 1980.

HOWARD L. KAIBEL, JR.
Hearing Examiner

POPHAM, HAIK, SCHNOBRICH, KAUFMAN & DOTY, LTD.

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June 12, 1980

RECEIVED
JUN 1[illegible] 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Mr. Michael Miles
Assistant Attorney General
Room G25 - Administration Building
St. Paul, Minnesota 55155

Re: Proposed Rules for Water Appropriation
Our File No. 4467-001

Dear Mr. Miles:

On behalf of the Minnehaha Creek Watershed District, Nine Mile Creek Watershed District, Riley-Purgatory Creek Watershed District and Lower Minnesota River Watershed District I would like to comment on the legality of the proposed rules for water appropriation as they have been submitted to you for your review.

Specifically, 6 MCAR, Section 1.5057.A. appears to have significant legal problems. That section is based on Minnesota Statutes, Section 105.41, subd. 1b, which states that the Department of Natural Resources shall specify by regulation that permits for certain levels of water appropriation be processed and approved at the municipal, county or regional level. The proposed rules attempt to define "regional level" as "a single governmental entity or several governmental entities in combination which have authority or jurisdiction over areas of geographical extent beyond the limits of a single county." This definition as proposed creates a significant legal problem. A watershed district, such as the Riley-Purgatory Creek Watershed District, has jurisdiction over property located in both Hennepin and Carver counties and, thus, would appear to be a regional level of government under this definition. In contrast, Nine Mile Creek Watershed District has jurisdiction over property located solely within Hennepin County and, thus, would not appear to qualify as a regional level of government under this definition. There is no rational reason for any distinction between these two watershed districts, and we believe legally that they should be treated equally.

Thus, we would recommend that the regional level of government be defined in the rules specifically to include watershed districts. Watershed districts are regional in the sense that they cross boundaries of numerous political subdivisions. In some instances those boundaries are only city boundaries, but in other instances, a watershed district may cross boundaries involving cities, townships and counties. The very purpose for the organization of watershed districts is to present a coordinated and consistent management of water resources within a hydrologic watershed. They are necessarily regional in order to accomplish this purpose. Therefore, we would suggest that following the words "regional level of government" the following be added: "including but not limited to watershed districts". In the alternative, we would suggest the use of the language suggested by the hearing examiner which is as follows: "local units of government other than cities, counties or townships, including where appropriate: regional development commissions, watershed districts, and soil and water conservation districts." Report of Hearing Examiner, DNR-80-004-HK, page 7.

Additionally, we would like to call to the attention of the Attorney General that there is no statutory authority for the proposal in 6 MCAR, Section 1.5057.A. that a county or municipal government could contract with a watershed district for the administration of permits. We agree with the hearing examiner's report on this point as well as his conclusion that it makes no sense to promulgate a requirement that a regional development commission, county or municipality establish an administrative process for dealing with permits if the political subdivision will simply be further delegating the authority to a watershed district. Further, the hearing examiner notes that the Regional Development Commission Statute (Minn. Stat. Chapter 462) does not appear to give those agencies authority to implement a permit administration program. Report of Hearing Examiner, page 7.

We appreciate very much the opportunity to provide these comments to you regarding the water appropriation rules and request that you seriously consider them in your review of the form and legality of the rules.

Very truly yours,

Desyl L. Peterson

DLP/mp

cc Board of Managers - Minnehaha Creek Watershed District
Board of Managers - Nine Mile Creek Watershed District
Board of Managers - Riley-Purgatory Creek Watershed District
Board of Managers - Lower Minnesota River Watershed District

DNR-80-004-HK

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF PROPOSED)
RULES FOR WATER APPROPRIATION.)

ORDER OF THE
CHIEF HEARING EXAMINER

WHEREAS, the above-entitled rules were previously submitted to and reviewed by the Chief Hearing Examiner, following which an Order dated May 27, 1980, was issued; and

WHEREAS, after submitting the rules to the Attorney General for review as to form and legality, the rules were returned to the agency as having not been approved by memorandum dated June 24, 1980, wherein the Attorney General required that certain changed be made to the rules for purposes of form and legality; and

WHEREAS, on June 27, 1980, the Department of Natural Resources resubmitted the rules, with the changes as required by the Attorney General, to the Chief Hearing Examiner for review of those changes; and

WHEREAS, the Chief Hearing Examiner, having reviewed the changes, finds that the changes in the rules, after considering the elements contained in Rule 9 MCAR § 2.111, are not substantially different from the rules as proposed.

NOW, THEREFORE, upon receipt of this Order, 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, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 30th day
of June, 1980.

DUANE R. HARVES
Chief Hearing Examiner

Com B

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

Office Memorandum

TO : Howard Kaibel
Hearing Examiner

DATE: February 4, 1980

FROM : Hedia Rieke, Supervisor
Water Appropriation Permits

Hedia Rieke

PHONE: 0515

SUBJECT: CHANGES TO PROPOSED RULES FOR WATER APPROPRIATION

In response to comments and recommendations we received at the Public Hearings, we are hereby making certain changes to the proposed rules for water appropriation.

Please note a new section numbered 6 MCAR § 1.5054 is included.* It deals with well interference problems involving all types of water appropriation and domestic water supplies. The language in this section is similar to what was in the original draft and which applied only to water appropriation for agricultural irrigation.

Please note that by introducing the new Section, the numbering of the subsequent sections changes. Therefore, whenever a reference is made to a subsection of the proposed rules, the new numbering is used. We are also enclosing a copy of arguments against consideration by the Commissioner of certain changes proposed at the hearings. The statement of need and reasonableness contains enough arguments regarding other changes suggested at the hearings but not considered by us in the proposed rules.

HR/jl

cc: Larry Seymour

* Thus 3. in 6 MCAR § 1.5053 (well interference problems involving appropriation for irrigation) should be eliminated

CHANGES TO THE PROPOSED RULES FOR APPROPRIATION OF WATERS OF THE STATE

Page 1, 6 MCAR § 1.5050

A. Statement of policy.

Change Minn. Stat. ch. 116 to 116D. (first paragraph).

Page 1, 6 MCAR § 1.5050

B. Scope.

These rules set forth minimum standards and criteria pertaining to the regulatinn, conservation and allocation of the water resources of the state, including the review, issuance and denial of water appropriation applications and the modification, suspension or termination of existing permits.

Page 2, 6 MCAR § 1.5050 C.5.

5. Reuse and discharge of waste waters resulting from an appropriation of waters of the state for which a permit has been granted. The reuse and discharge of waste waters shall be subject to applicable laws, and rules of other state and federal governmental agencies.

Page 3, 6 MCAR § 1.5050

D. Definitions.

"Safe yield for water table condition" means the amount of ground water that can be withdrawn from an aquifer system without degrading the quality of water in the aquifer and without allowing the long term average withdrawal to exceed the available long term average recharge to the aquifer system based on representative climatic conditions.

"Safe yield for artesian condition" means the amount of ground water that can be withdrawn from an aquifer system without degrading the quality of water in the aquifer and without the progressive decline in water pressures and levels to a degree which will result in a change from artesian condition to water table condition.

"Waters of the state" means any waters, surface or underground, except those

surface waters which are not confined but are spread and diffused over the land "Waters of the state" includes all boundary and inland waters (Minn. Stat. § 105.27, subd. 7).

Page 6, 6 MCAR § 1.5050 B.5.a.

a. Hydrology and hydraulics of the water resources involved, including, for surface waters, the applicant's analysis of the effect of proposed withdrawals on levels and flows and anticipated impacts, if any, on instream flow or lake level conditions, to the extent that such facts are not already available to the commissioner.

Page 6, 6 MCAR § 1.5051 B.7.a.

a. A contingency plan which describes the alternatives the applicant will utilize if at any time appropriation is restricted to meet instream flow needs or to protect the level of a basin. The contingency plan shall be feasible, reasonable and practical, otherwise the applicant shall submit as part of the application written statement agreeing in such case to withstand the results of no appropriation (Minn. Stat. § 105.417, subd. 5).

Page 7, 6 MCAR § 1.5051 B.8.b.

b. Hydrologic test data and where required by the commissioner, hydrologic study(ies).

Page 8, 6 MCAR § 1.5052 A.1.h.

h. The comments of local and regional units of government, federal and state agencies, private persons and other affected or interested parties.

Page 10, 6 MCAR § 1.5052 A.4.b.

b. Subsurface area of the aquifer.

Page 11, 6 MCAR § 1.5052 B.1.b.

b. The quantity of available waters of the state, in the area involved, are inadequate to provide the amounts of waters proposed to be appropriated.

Page 12, 6 MCAR § 1.5052 B.2.f.

f. Protected flows and protection elevations shall be established for the purposes

as defined in 6 MCAR § 1.5050 D. and shall be based on available information considered in 6 MCAR § 1.5052 A.2. and A.3. For new applications the proposed establishment of protected flows or protection elevations shall be part of the permit process outlined in 6 MCAR § 1.5052 B. including opportunity for public hearing. Existing permittees who will be affected by the proposed establishment of protected flows or protection elevations shall be notified of such proposals and shall be provided opportunity for public hearing before modification of their permits based on the procedures outlined in 6 MCAR § 1.5055 D.1.b.

Page 12, 6 MCAR § 1.5052 B.3.a.

a. The amounts and timing of water appropriated shall be limited to the safe yield of the aquifer to the maximum extent feasible and practical. ~~Safe-yield-means the-amount-of-ground-water-that-can-be-withdrawn-from-an-aquifer-system-without-degrading-the-quality-of-water-in-the-aquifer-and-without-allowing-the-long-term-average withdrawal-to-exceed-the-available-long-term-average-recharge-to-the-aquifer-system based-on-representative-climatic-conditions.~~

Page 12, 6 MCAR § 1.5052 B.3.b.

b. If the commissioner determines, based on adequate facts and evidence, that a direct relationship of ground and surface waters exists such that there would be adverse impact on the surface waters through reduction of flows or levels below protected flows or protection elevations the amount and timing of the proposed appropriation from ground water shall be limited.

Page 13, 6 MCAR § 1.5052 D. Specific types of appropriation and use.

Additional requirements and decisions governing agricultural irrigation, public water supplies, dewatering, water level maintenance, air conditioning systems and mining are also contained in 6 MCAR § 1.5053.

Page 14, 6 MCAR § 1.5053 A.1.a.(3).

(3) The anticipated ground water quality in terms of the measures of

quality commonly specified for the proposed water use, where deemed necessary by by the commissioner.

Page 16, 6 MCAR § 1.5053 A.2.b.(5).

(5) When adequate data on soil moisture and local climatic conditions are available for the area, the commissioner may in cooperation with irrigators and agricultural experts establish an irrigation scheduling system to provide for improved conservation of water.

Page 20, 6 MCAR § 1.5053 B.1.

1. The applicant shall be required to submit to the commissioner all or portions of the following data in addition to the requirements of 6 MCAR § 1.5051.

Page 22, 6 MCAR § 1.5052

insert new subsection E.

E. Air conditioning systems.

The commissioner shall evaluate and make decisions on applications for air conditioning systems based on facts supplied by the applicant pursuant to 6 MCAR § 1.5051 and subject to the provisions of 6 MCAR § 1.5052. Water used for heating and cooling shall be reused or stored on the site to the maximum extent feasible and practical subject to the laws and rules of other state and federal agencies.

Page 22, 6 MCAR § 1.5052

Change E. Mining and processing of metallic minerals and peat to F.

Page 23, 6 MCAR § 1.5052 F(e).2.a.

a. part of the second paragraph should read:

If the commissioner finds that an existing permittee has available water. . .

Page 25, 6 MCAR § 1.5054.B.1.

1. In no case shall a permittee be considered to have established a right of use or appropriation by obtaining a permit.

Page 25, 6 MCAR § 1.5055(4)B.4.

Delete "~~or denial~~" at the end of the second line.

Page 28, 6 MCAR § 1.5056(5)B.1.

1. Each installation for appropriating or using water shall be equipped with a device or employ a method to measure the quantity of water appropriated to within ten percent of actual withdrawal.

Page 29, 6 MCAR § 1.5056(5)B.1.a.

a. The commissioner shall require flow meters to be used whenever the rate of appropriation is greater than 1500 gallons per minute, unless the permittee can show justification why flow meters cannot practically be used. Such justification must be supported by facts which indicate the technical difficulties which would be encountered if flow meters were required.

Page 30, 6 MCAR § 1.5056(5)C.1.

1. Such records shall be submitted with an annual water appropriation processing fee as required by Minn. Stat. § 105.41, subd. 5, for each permit whether or not any water was appropriated during the year.

Page 30, 6 MCAR § 1.5056(5)D.1.a.(1).

(1) Major modification or any water appropriated permit shall not be made before obtaining the written permission from the commissioner. Major modification includes changes such as substantial increase or decrease in the rate and quantity of water withdrawn, any change in source of appropriation or substantial change in the amount of land irrigated, when applicable.

Page 30, 6 MCAR § 1.5056(5)D.1.a.(2).

(2) Request for amendment may be made by letter or on forms supplied by the commissioner. New applications shall be required when there are changes in the source of supply, the purpose of appropriation, or when the proposed increases in rates and amounts of water would probably create conflict or well interference.

Page 31, 6 MCAR § 1.5056(5)D.2. Transfers or assignments.

If the property involving a water appropriation permit is sold, transferred or assigned to another person, the permit may be transferred to the transferree, subject to the following:

a. The transferree shall, within 90 days after date of property sale, transfer or assignment, submit written notification to the commissioner stating the intention to continue the appropriation as stated in the permit. If the transferree intends to make major modifications to the existing permit, new application shall be required subject to the provisions of 6 MCAR § 1.5056 D.1.

b. No permit is assigned accept with the written consent of the commissioner.

Page 32, 6 MCAR § 1.5056(5) F.

F. Terminations.

Permits shall be terminated under the following:

1. Request by the permittee.

2. When any of its provisions are violated.

3. When the permitee sells, transfers or assigns the property described in the permit and the transferree has not met the requirements of 6 MCAR § 1.5056D.2.a. and b.

4. Upon finding that the permittee has violated the provisions of any applicable laws and rules.

5. Where the permittee has ceased for 5 consecutive years, from the date of issuance of the permit, to use the water and no reasonable justification is shown.

6. When the lease or contract for deed is forfeited or cancelled.

7. Permits for agricultural irrigation shall be subject to termination by the commissioner upon justifiable recommendation of the supervisors of the soil and water conservation district, wherein the land irrigated is located, regarding the inadequacy of the soil and water conservation measures.

8. When the commissioner deems it necessary for the conservation of the water resources of the state or in the interest of public health, safety and welfare.

9. When the commissioner deems it necessary pursuant to 6 MCAR §§ 1.5054 and 1.5055.

10. Any action pursuant to 2,4,5,7,8,and 9 above shall be subject to appropriate notice and opportunity for hearing, except as provided in 6 MCAR § 1.5056 E.

11. In the case of permit for mining issued in conjunction with Minn. Stat. § 105.64 procedures for termination shall be subject to provisions of Minn. Stat. § 105.64, subd. 6.

Page 34, 6 MCAR § 1.5057 (6) A. and A.1.

A. The commissioner, pursuant to Minn. Stat. § 105.41, subd. 1b, shall delegate the authority to process and approve permit applications for the appropriation and use of waters of the state in amounts of more than 10,000 gallons per day and more than 1 million gallons per year, but less than 3.6 million gallons per year. Such delegation shall be made at the municipal or county or at the regional level, as defined in Minn. Stat. § 462.384, subd. 5, upon request to the commissioner by a municipal, county or regional governmental entity having statutory authority to control the use of waters.

This shall not preclude county, municipal or authorized regional governments from further delegating responsibilities for administration of this permitting authority to a watershed district located within the municipal, county or regional boundaries.

The delegation by the commissioner shall be subject to the following requirements:

1. The authorized unit of government has established an administrative process which includes provisions for establishing a water appropriation management planning process consistent with 6 MCAR § 1.5058.

Page 36, 6 MCAR § 1.5058 (7) A.

In order to address the provisions of Minn. Stat. §§ 105.403, 105.405 and § 105.41, subd. 1a, the commissioner, in cooperation with other state and federal

agencies, regional commissions and authorities, local governments and citizens, establishes the following process for the preparation and implementation of the elements of any state, regional and local plan relating to water appropriation and use.

Page 36, 6 MCAR § 1.5058(7) B.1.b.(2).

(2) Areas where severe water availability problems exist or are soon likely to exist, see 6 MCAR § 1.5055.

Page 37, 6 MCAR § 1.5058(7) B.2.

Upon establishment of the need for a water appropriation management plan pursuant to B.1. above, the commissioner shall establish a management planning process including procedures, a public participation process and development of a planning team consisting of representatives of the Department, permittees and any other interested, concerned and involved government or citizen group listed in section A above, to review and cooperate in preparation of the plan.

Page 37, 6 MCAR § 1.5058(7) C.1.

1. An evaluation of the amount and dependability of information on the hydrologic systems of the area and the adequacy of the information to provide necessary facts on the amounts of water which can be reasonably withdrawn from the waters of the state in the area without creating major environmental problems or diminishing the long-term seasonal supply of water for various purposes. This will provide essential background information for establishing protected flows, 6 MCAR § 1.5052 B.2.f., protection elevations, 6 MCAR § 1.5052 B.2.d, and safe yields, 6 MCAR § 1.5052 B.3.a.

2. An evaluation of data on stream quality and flows, lake water quality and levels ground water quality and levels, and climatic factors. This will provide essential data useful to the applicant and the commissioner in permit application considerations, 6 MCAR § 1.5051, § 1.5052 A and § 1.5053.

3. An evaluation of present and anticipated future use of waters and lands and the amounts and distribution of use within the area. This will facilitate the determinations necessary under 6 MCAR § 1.5052 A.1.b.

4. An evaluation of the problems and concerns relating to use of the waters within the area.

5. Water conservation alternatives and methods and procedures for dealing with water shortages or excesses during periods of deficient or excess water, see 6 MCAR § 1.5051 B.6., § 1.5053 A.1.g. and § 1.5057 B.

6. Considerations of the relationship of the water appropriation and use management plan to other water resources programs of the state, such as floodplain management, shoreland management, water surface use management, water quality management, soil and water conservation management and agricultural land management.

6 MCAR § 1.5054. Well interference problems involving appropriation.

A. For new applications.

If the commissioner determines that an adequate supply of water is available and that the proposed project is reasonable and practical as determined based on 6 MCAR §§ 1.5052 and 1.5053, but that there is a probable interference with public water supply well(s) and private domestic well(s) which may result in reducing the water levels beyond the reach of those wells, the following procedures shall apply:

1. The applicant shall be responsible for obtaining and providing to the commissioner, available information including depth, diameter, non-pumping and pumping levels, quality and well construction details for all domestic and public water supply wells located within the area of influence of the proposed appropriation well.

2. The commissioner may require aquifer tests or other field tests to be conducted.

3. The commissioner shall determine the probable interference with the domestic and public water supply wells based on theoretical computations using available information regarding the aquifer characteristics obtained from the aquifer tests and/or from hydrologic studies, and the probable effects of lowering the water levels in the domestic and public water supply wells due to the proposed appropriation in the area. For public water supply wells only the probable interference with that portion which is used for domestic water supply is considered.

4. The commissioner shall provide the prospective appropriator with an evaluation of the nature and degree of effect of the appropriation on the water levels of the domestic well(s) and public water supply well(s).

5. The commissioner shall not issue the permit until the applicant agrees to exercise any of the following options within 30 days after written notification by the commissioner:

a. accept a modification or restriction of the permit application to provide for an adequate domestic water supply; or

b. submit a written agreement signed by the applicant and all parties identified under 6 MCAR § 1.5054 A.3 as having probable interference. Such agreement shall outline the measures that will be taken to insure maintenance of water supplies to such identified parties to the extent that would have existed absent the proposed appropriation. In cases where no agreement can be reached, the commissioner shall implement the settlement procedure identified in 6 MCAR § 1.5054.D.

B. For existing permits.

If complaints are made to the commissioner by private domestic well owner(s) or public water supply authority regarding the effects of a water appropriation on the domestic water supplies, the following procedures shall be followed:

1. The commissioner shall provide complaint forms to the parties making the complaint, thereafter referred to an "complainant."

2. Upon receipt of the completed complaint forms the commissioner shall notify the permittee, the applicable watershed district, and the soil and water conservation district and any other governmental agency or person who may be affected or has expressed interest in the complaint.

3. The commissioner shall investigate and assess the complaint by:

a. Analyzing and evaluating the submitted complaint forms, hydrologic facts and characteristics of the water supply systems involved.

b, Requesting additional facts from the complainant(s) and the permittee when necessary. In order to assure that available data on domestic well(s) are provided, the complainant shall cooperate with the permittee in providing such facts as may be available and allowing the commissioner access to obtain necessary available facts. If the complainant does not cooperate in providing available facts or allowing the commissioner access to the domestic well(s), the commissioner shall dismiss the complaint.

c. Conducting, if necessary, a field investigation.

d. Additional hydrologic tests and evaluation may be required if hydro-

logic information is unavailable or inadequate to make a determination of necessary facts in the matter. For irrigation appropriations, the timing and conduct of such tests shall be in accordance with the provision of Minn. Stat. § 105.41, subd. 1a. relating to modifying or restricting appropriation.

e. In evaluating the probable influence of the water appropriation on the domestic well(s) and public water supply well(s) the commissioner shall consider whether the domestic well(s) provides a dependable water supply while meeting the appropriate health requirements for the existing use of the affected well. For public water supply wells only the probable interference with that portion which is used for domestic water supply is considered.

4. Where adverse effects on the domestic well(s) are substantiated, the commissioner shall notify the permittee of the facts and findings of the complaint evaluation. In the event that the commissioner determines that the domestic water supply is endangered the commissioner may, pursuant to 6 MCAR § 1.5056 E. restrict, or cancel the appropriation until such time as a decision has been made by either negotiation, settlement or hearing.

The permittee shall within 30 days after written notification by the commissioner take appropriate action by exercising any of the following options:

1. Requesting the commissioner to modify or restrict the permit in order to provide for an adequate domestic water supply.

2. Negotiating a reasonable agreement with the affected well owner(s). If no agreement is reached, the settlement procedure outlined in 6 MCAR § 1.5054 D. shall apply; or

3. Requesting a public hearing.

C. New domestic wells installed after appropriation permits have been issued.

In the event that new domestic wells, exempt from permit requirements, are installed in area of adequate ground water supplies where permits have been issued for appropriation the following shall apply:

1. It shall be the responsibility of the prospective new domestic well

owner to insure that the new domestic well will be constructed at adequate depth so that it will provide an adequate domestic water supply which will not be limited by the permitted appropriation.

2. Holders of valid permits for appropriation of water in areas where adequate water supplies are available shall not be responsible for well interference problems, involving new domestic wells exempt from permit, when such exempt domestic wells are installed subsequent to authorized appropriation.

D. Settlement

If the applicant or permittee and the complainant(s) have been unable to negotiate a reasonable agreement pursuant to 6 MCAR § 1.5054 A.5 and B.4. the following procedure shall be implemented:

1. The applicant or permittee shall submit a notarized written offer to the complainant, with a copy to the commissioner, within 40 days after the receipt of the written notification provided in 6 MCAR § 1.5054 A.5 and B.4., based on the following:

a. If an existing domestic well provides an adequate domestic water supply which meets state health standards and such well no longer serves as an adequate supply because of the proposed or permitted appropriation in the vicinity the applicant or permittee shall be responsible for all costs necessary to provide an adequate supply with the same quality and quantity as prior to the applicant's or permittee's interference.

b. If an existing well provides an adequate domestic water supply but does not meet state health standards and such well would no longer serve as an adequate supply because of the proposed or permitted appropriation in the vicinity, the applicant or permittee shall be responsible for that portion of costs of providing an adequate water supply, but shall not be responsible for those costs necessary to bring the domestic well(s) to state health standards.

2. The complainant shall submit written argument to the commissioner as to

why the offer is not reasonable, within 10 days from the receipt of the notarized written offer. If no response is received from the complainant, within the time limit, the commissioner shall dismiss the complaint.

3. The commissioner shall make a decision based on the written offer and arguments and available facts, within 10 days, as follows:

a. That the applicant or permittee has submitted a reasonable offer, the commissioner shall issue or continue the permit involved;

b. That the applicant or permittee has not submitted a reasonable offer, the commissioner, after notice and opportunity for hearing, shall deny, modify or terminate the permit involved.

c. That there is a need for a public hearing in which case it is ordered.

Arguments against consideration by the commissioner
of certain changes proposed at the Hearings

1. Page 12, 6 MCAR § 1.5052 B.3.a. Use of safe yield concept.

Safe yield of a ground water basin is defined as the amount of water that can be withdrawn from it annually without producing an undesired result which includes not only the depletion of the ground water reserves, but also the intrusion of water of undesirable quality, the depletion of streamflow by induced infiltration, and the deterioration of theeconomic advantages of pumping. It is a well established concept used as a protection measure to the ground water supplied from overpumping and mining.

The optimal yield is determined by the selection of an optimal groundwater management scheme from a set of possible alternative schemes. The optimal scheme is the one that best meets a set of economic and/or social objectives associated with the uses to which the water is to be put . In some cases and at some points, in time, consideration of the present and future costs and benefits may lead to optimal yields that involve mining ground water, perhaps even to depletion. In other situations optimal yields may reflect the need for complete conservation. In general the optimal yield will be between these two extremes and may correspond to the safe yield.

What we want to provide in these rules is a protection measure based on the resource capabilities. This can be accomplished through the introduction of the safe yield concept and not the optimal yield concept which as stated above is a policy measure.

2. Page 8, 6 MCAR § 1.5052 A.1.f.

Consideration of quality factors in the review and analysis of permit applications.

The Department of Natural Resources has a greatly expanded role in surface and ground water management as characterized by its charges to promote the full use and enjoyment of waters of the state. DNR administers major conservation quality related programs in fish, wildlife, recreation, forestry, mining and shoreland management affecting both water quality and water quantity. Specific directives are given to the DNR in administration of its water appropriation permit program. The Department through this permit program is charged with developing and managing water resources to assure supplies are adequate to meet long range seasonal requirements of water quality and quantity. The statutes set forth requirements that protected low flows and protection elevation be established to safeguard water availability for instream and inlake uses including water quality needs.

Specific legislative references directing the commissioner to take into consideration quality factors are:

Minn. Stat. § § 98.48, subd. 9, 101.42, subd. 17, 105.39, 105.403, 105.417, 105.44, 105.45 and 105.485.

The Department does not specifically regulate the discharge of waste waters in terms of quality constituents of such waters except as relating to protection of natural resources values, and any considerations in water appropriation permit applications relating to quality are supplementary and complementary to the generally more specific discharge permit applications requirements of the Minn. Pollution Control Agency and the Federal Environmental Protection Agency. Also coordination among the agencies involved in surface and ground water quality and quantity management is required by various statutes.

We believe even though there may be apparent overlaps of authority dealing with quality-quantity considerations, in various programs administered by various agencies, this may lead to proper integration of water quality-quantity relationships.

3. Establishment of a procedure for temporary permit applications.

Temporary permit applications which involve a one-time no more than two years appropriation of waters of the state require the same information as for long-term permit applications as provided in 6 MCAR § 1.5051 and § 1.5053. The impacts of a temporary appropriation can and are in many cases similar to long-term appropriation. Therefore they are reviewed with the same considerations and under the same requirements. The proposed rules provide for enough flexibility and waiver of information and requirements when justifications are provided for. Further, Minn. Stat. § 105.44, subd. 2 provides local units of government with a 30 day period to file their recommendations on permit applications to the commissioner. This time delay applies to both types of permit applications.

Therefore, we believe there is no need to have a specific procedure for temporary permit applications.

4. Definition for domestic uses.

6 MCAR § 1.5050 C.1. defines domestic uses as uses for general residential purposes. Livestock, lawn watering and other small uses are generally exempted from permits under 6 MCAR § 1.5050 C.2. (less than 10,000 gpd and no more than 1 mgy).

5. Economic factors.

Although an applicant or permittee may submit economic evidence to support a proposed or existing appropriation the Commissioner is bound by the requirements of 6 MCAR § 116.D.04 Subd. 6. in making decisions on water appropriations involving new or existing permits.

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Attorney General
Natural Resources

TO : JOANNE HINDERACKER
Special Assistant Attorney General

DATE: 6-2-80

FROM : BILL CLAPP Bill
Special Assistant Attorney General

PHONE:

SUBJECT: Rules for Water Appropriation

Final rules have been adopted by the Commissioner of Natural Resources. The chief hearing examiner has reviewed them. You have a copy of his report. The rules we submit to you are the same ones submitted to the hearing examiner.

Having trained at the feet of Lee Sheehy on the evils of "may", Duane used to give us warnings of things your office would balk at. Now he says: if I think it is illegal, then I must think it is unreasonable, and therefore it shall not pass. Ergo, who needs you, Hinderacker. I attribute his straying from his turf to a commendable zeal. I ask you to consider his remarks as you do your review for legality, and I ask you to also consider my reactions to them, which follow - using Duane's numbering.

1. A. 6MCAR § 1.5051B: "where deemed necessary by the commissioner". The first sentence of Minn. Stat. § 105.44 subd. 1 reads.

> Each application for a permit required by sections 105.37 to 105.55 shall be accompanied by maps, plans, and specifications describing the proposed appropriation and use of waters . . . and such other data as the commissioner may require.

The rule reins in that discretion with the words "necessary . . . in order to adequately evaluate the applications". If the statute is legal, how could the rule be illegal.

1. B. 6MCAR § 1.5051B.8.b. "where required by the commissioner". The clause was added to the rule because of public testimony. It is, after all, a waiver provision.

1.C. 6MCAR § 15053A.2.b.(5) "the commissioner may . . . establish an irrigation scheduling system". What's being talked about is a schedule for an individual permit, not something of general application. The phrase "in cooperation with irrigators and agricultural experts" is the control on discretion that was asked for at the hearings.

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1.D. 6MCAR § 1.5053E.2.a. "may direct" and "may amend". The first is limited by "feasible and practical" and by an opportunity to argue against it. The second is limited by the contested case process.

1.E. 6MCAR § 1.5053E.2.c. The "may" is conditioned not only by "feasible and practical", but also by the entire last sentence.

1.F. 6MCAR § 1.5054B.3.d. "may be required". If there was a period after "required", I would agree with Duane. But with the "if" clause there, I see no problem.

1.G. 6MCAR § 1.5055B.4.a. "may suspend or limit". That authority is controlled by 5056E.

1.H. 6MCAR § 1.5056C.2. "may be required". The annual reporting requirement is spelled out in Minn. Stat. § 105.41 subd. 5. The commissioner is given discretionary authority to require additional information in § 105.41 subd. 2, 2d para., and in § 105.41 subd. 3.

1. I. 6MCAR § 1.5056E. "may modify, restrict, or cancel". The authority can only be exercised if the permit has a condition allowing it. If it doesn't, there must be a hearing if the permittee wants it.

1.J. 6MCAR § 1.5057D. "may conduct field investigations". I don't see the problem. Field investigations are authorized: see §§ 105.44 subd. 10 2d para., 105.45 1st para., and 105.462. Note in § 105.44 subd. 10 2d para., that a fee for field investigation may be collected only on mandatory - EAW actions.

2. 6MCAR § 1.5052B.3.b. "based on adequate facts and evidence". The phrase is surplusage, but harmless. Everything in these rules is subject to contested case proceedings and therefore any commissioner decision made is subject to the substantial evidence test. The clause was inserted (see the stricken b. immediately above) to assuage public concern that the commissioner would too glibly find an association between an appropriation and low flow on some distant stream.

3. 6MCAR § 1.5052B.3.c. "sufficient". The commissioner is here, as elsewhere, controlled by the contested case process and the substantial evidence test.

4. 6MCAR § 1.5053E.1.a. "necessary". Same answer as above.

5. 6MCAR § 1.5058. This section is a Department burden, and has nothing to do with plans of individuals.

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report at the end of the fiscal year. This report shall indicate which work elements were not completed and which objectives were and were not achieved. For each work element and objective not successfully completed, the RDC shall provide an explanation of such as well as an indication of the amount of time needed to complete the remaining activity.

4. No sooner than thirty days after the completion of the fiscal year, OLUA shall determine, based on its review of the RDC completion report, whether or not the work program has been completed in an acceptable manner and whether or not the grant agreement between SPA and the RDC has been fulfilled.

Arthur Sidner, Director
State Planning Agency

Department of Natural Resources

Proposed Rules for Appropriation of Waters of the State

Notice of Hearing

A public hearing will be held:

Tuesday, January 8, Detroit Lakes, Vocational-Technical Institute Multi-Purpose room,

Thursday, January 10, St. Paul, 123 State Capitol Building,

Tuesday, January 15, Marshall, Southwest State University, Student Center (which is near the dome), rooms 158 and 159.

Each day of hearing will begin at 9:00 a.m. The hearing will be conducted as provided by the rule-making provisions of Minn. Stat. §§ 15.041-15.052 and the rules of the Office of Hearing Examiners.

All representatives of associations or other interested groups and interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules. Statements may be made orally and written materials may be submitted at the hearing. Statements or briefs may be submitted without personally appearing at the hearing. In addition, written materials may be submitted by mail to:

Howard Kaibel
1745 University Avenue
St. Paul, Minnesota 55105
Telephone: (612) 296-8107

either before the hearing or within 5 days after the close of the hearing, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

The proposed rules are required by Minn. Stat. § 105.415 and are related primarily to Minn. Stat. §§ 105.41-105.418 and 105.44, subd. 8. They establish standards for granting and denying permits to take water from waterbasins, watercourses, and underground in quantities exceeding 10,000 gallons per day or 1 million gallons per year. Subjects covered include: applying for a permit; basic decision criteria for granting and denying; establishing lake levels and stream flows below which appropriation must stop; irrigation; resolving conflicts between appropriators; using water in the mining and processing of metallic minerals and peat; water for air conditioning; public water supplies; delegating DNR authority over water appropriation to cities and counties; wild rice paddies; water management planning.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Natural Resources, Division of Waters, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

Twenty-five days prior to the hearing a Statement of Need and Reasonableness will be available for review at the department and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the department at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available after which date the department may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the department. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report) or to the department (in the case of the department's submission or resubmission to the Attorney General).

Under Minn. Stat. § 10A.01, subd. 11 (1978), a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute "lobbyist" means any individual engaged for pay or other consideration or authorized by another individual or association to spend money who spends more than five (5) hours of any month or more than $250 not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or who spends more than $250, not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. "Lobbyist" does not include any: (a) public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity; (b) party or his

representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action: (c) individual in the course of selling goods or services to be paid for by public funds; (d) news media or their employees or agents acting in the ordinary course of business of publishing or broadcasting news items, editorials or other comments or paid advertisements which directly or indirectly urge official action; (e) paid expert witness whose testimony is requested either by the body before which he is appearing or one of the parties to a proceeding, but only to the extent of preparing or delivering testimony; or (f) stockholder of a family farm corporation as defined in § 500.24, subd. 1, who does not spend over $250, excluding travel expenses, in any year in communicating with public officials.

Questions regarding lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155; telephone (612) 296-1720.

Joseph N. Alexander
Commissioner of Natural Resources

Rules as Proposed (all new material)

6 MCAR § 1.5050 General provisions.

A. Statement of policy. The purpose of these rules is to provide for the orderly and consistent review of permit applications for appropriation and use of waters of the state in order to conserve and utilize the water resources of the state in the public interest. In the application of these rules, the Department of Natural Resources shall be guided by the policies and requirements declared in Minn. Stat. chs. 105 and 116.

Any appropriation must be consistent with laws and rules of federal, state and local governments.

B. Scope.

These rules set forth minimum standards and criteria pertaining to the regulation, conservation and allocation of the water resources of the state, including the review, issuance and denial of water appropriation applications.

Further provisions for the administration of these rules are found in Minn. Stat. ch. 105.

C. Jurisdiction.

Permits shall be required for, and these rules shall apply to, any appropriation of waters of the state, except for the following:

1. Appropriation of water for domestic uses serving less than 25 persons for general residential purposes.

2. Test pumping of a ground water source.

3. Withdrawal for any use at a rate not to exceed 10,000 gallons per day and totaling no more than 1 million gallons per year.

4. Agricultural field tile or open ditch drainage systems, including pumping, to remove water from crop lands. This shall not preclude the need for compliance with Minn. Stat. ch. 106 and for permits for changes in course, current or cross-section of public waters in the event that the agricultural drainage system adversely affects public waters. Adverse effects on public waters may include partial or complete drainage of public waters, high water or flooding conditions on surrounding lands and accelerated erosion and sedimentation.

5. Reuse of waste waters resulting from an appropriation of waters of the state for which a permit has been granted. The reuse of waste waters shall be subject to applicable laws, and rules of other governmental agencies.

D. Definitions. For the purpose of these regulations, the terms or words defined in this section have the meanings given therein, except where the context clearly indicates otherwise. The word "shall" is mandatory, not permissive.

1. "Aquifer" means any water bearing bed or stratum of earth or rock capable of yielding ground water in sufficient quantities that can be extracted.

2. "Appropriation" shall have the meaning prescribed in Minn. Stat. § 105.37, subd. 5, "Appropriation includes but is not limited to taking, regardless of the use to which the water is put."

3. "Artesian aquifer" or "confined aquifer" means a water body or aquifer overlain by a layer of material of less permeability than the aquifer. The water is under sufficient pressure so that when it is penetrated by a well, the water will rise above the top of the aquifer. A flowing artesian condition exists when the water flow is at or above the land surface.

4. "Basin" means a depression capable of containing water which may be filled or partly filled with waters of the state. It may be a natural, altered or artificial depression.

5. "Commissioner" refers to the Commissioner of the Department of Natural Resources or the Commissioner's authorized representative.

6. "Consumptive use" or "consumption" refers to water withdrawn and not directly returned to the same waters as the source for immediate further use in the area.

7. "Division" means the Division of Waters, Department of Natural Resources.

8. "Dug pit" means an artificial excavation such as sump, trench, pond, water hole or other basin constructed for the purpose of intercepting and capturing surface and ground

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

water, and often involving ground water under water table or unconfined conditions.

9. "Ground water" means subsurface water in the saturated zone. The saturated zone may contain water under atmospheric pressure (water table condition), or greater than atmospheric pressure (artesian condition).

10. "Protected flow" is defined as the amount of water required in the watercourse to accommodate instream needs such as water-based recreation, navigation, aesthetics, fish and wildlife habitat, water quality and needs by downstream higher priority users located in reasonable proximity to the site of appropriation.

11. "Protection elevation" is defined as the water level of the basin necessary to maintain fish and wildlife habitat, existing uses of the surface of the basin by the public and riparian landowners, and other values which must be preserved in the public interest.

12. "Public water supply" refers to the various supplies of water used primarily for domestic supply purposes and obtained from a source or sources by a municipality, a water district, a person or corporation where water is delivered through a common distribution system, as further defined in Minn. Stat. § 144.382, subd. 4.

13. "Water table aquifer" or "unconfined aquifer" means an aquifer where ground water is under atmospheric pressure.

14. "Waters of the state" means any waters, surface or underground, except those surface waters which are not confined but are spread and diffused over the land (Minn. Stat. § 105.37, subd. 7).

15. "Watercourse" means any natural, altered or artificial channel having definable beds and banks capable of conducting confined runoff from adjacent lands (Minn. Stat. § 105.37, subds. 10, 11 and 12).

16. "Well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed where the intended use is for the location, diversion, or acquisition of ground waters (Minn. Stat. § 156A.02, subd. 1).

E. Severability. The provisions of these regulations shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof, shall not make void any other paragraph, subparagraph, subdivision or any other part.

6 MCAR § 1.5051 General requirements for applying for permits.

A. Application forms required.

1. Applications shall be submitted for each surface or ground water source from which water is proposed to be appropriated. A separate application shall be required for the following:

a. For each distribution system if the water is used in more than one common distribution system.

b. For each well(s) completed in different aquifers if ground water is to be appropriated from separate wells completed in more than one aquifer.

c. For each basin or watercourse involved if surface water is to be appropriated from several different basins or watercourses.

2. The applicant must provide written evidence of ownership, or control of, or a license to use the land overlying the ground water source or abutting the surface water source from which water will be appropriated.

B. Applicant responsibilities. All applicants shall submit the following information when it is reasonably available. Additional submittals may be required as prescribed in 6 MCAR § 1.5053 and where deemed necessary by the commissioner in order to adequately evaluate the applications:

1. A completed application on forms supplied by the commissioner.

2. The required application fee (Minn. Stat. § 105.44, subd. 10).

3. Aerial photographs, maps, sketches, detailed plat, topographic maps or other descriptive data sufficient to show:

a. The location of the area of use.

b. The outline of the property owned, or controlled by the applicant in proximity to the area of use.

c. The location of the proposed point of appropriation such as well(s) location, stream bank pump(s) or the location of other facilities for appropriation of water.

d. If ground water is involved, the location of test hole borings which have been drilled on the property from which the appropriation will be made.

4. Signed statement that copies of the application have been sent to governmental units as required by Minn. Stat. § 105.44, subd. 1.

5. Statement of justification supporting the reasonableness and practicality of use in respect to adequacy of the water source, amounts of use and purposes, including available facts on:

a. Hydrology and hydraulics of the water resources involved to the extent that such facts are not already available to the commissioner.

b. Proposed pumping schedule including rates, times and duration.

c. Amounts of water to be appropriated on a maximum daily, monthly and annual basis.

d. Means, methods and techniques of appropriation.

e. Alternative sources of water or methods which were considered, to attain the appropriation objective and why the particular alternative proposed in the application was selected.

6. Information on any water storage facilities and capacities and any proposed reuse and conservation practices.

7. Application for use of surface water shall include the following additional data:

a. A contingency plan which describes the alternatives the applicant will utilize if at any time appropriation is restricted to meet instream flow needs or to protect the level of a basin. The contingency plan shall be feasible, reasonable and practical, otherwise the applicant shall submit a notarized written statement agreeing in such case to withstand the results of no appropriation (Minn. Stat. § 105.417, subd. 5).

b. For appropriation from natural basins or natural watercourses, facts to show that reasonable alternatives for appropriating water have been considered including use of water appropriated during high flows and levels and stored for later use and the use of ground water.

c. For basins less than 500 acres in surface area the applicant shall:

(1) Notify all riparian landowners and provide the commissioner with a list of all landowners notified.

(2) Attempt to obtain a signed statement from as many riparian landowners as the applicant is able to obtain stating their support to the proposed appropriation; and

(3) Provide an accounting of number of signatures of riparian owners the applicant is unable to obtain (Minn. Stat. § 105.417, subd. 3(c)).

8. Application for use of ground water, except for agricultural irrigation (6 MCAR § 1.5053 A.) shall include the following data:

a. Test hole logs (if any) and water well record(s).

b. Hydrologic test data and, or, hydrologic study(ies).

C. Waiver of requirements. Whenever information required by 6 MCAR §§ 1.5051 and 1.5053 are unnecessary or inapplicable the commissioner shall waive those requirements.

6 MCAR § 1.5052 Commissioner's actions on permit applications. Upon receipt of the information required from the applicant under 6 MCAR §§ 1.5051 and 1.5053, where applicable, the commissioner shall take action on the application as follows:

A. Review and analysis of data.

1. The commissioner shall consider the following factors, as applicable:

a. The location and nature of the area involved and the type of appropriation and its impact on the availability, distribution and condition of water and related land resources in the area involved.

b. The hydrology and hydraulics of the water resources involved and the capability of the resources to sustain the proposed appropriation based on existing and probable future use.

c. The probable effects on the environment including anticipated changes in the resources, unavoidable detrimental effects and alternatives to the proposed appropriation.

d. The relationship, consistency and compliance with existing federal, state and local laws, rules and legal requirements.

e. The public health, safety and welfare served or impacted by the proposed appropriation.

f. The quantity, quality and timing of any waters returned after use and the impact on the receiving waters involved.

g. The efficiency of use and intended application of water conservation practices.

h. The comments of local units of government, federal and state agencies, private persons and other affected or interested parties.

i. The adequacy of state water resources availability when diversions of any waters of the state to any place outside of the state are proposed.

2. The commissioner shall further consider the following factors for appropriation from watercourses:

a. Historic streamflow records, and where streamflow records are not available, estimates based on available information on the watershed, climatic factors, runoff and other pertinent data.

b. Physical characteristics such as discharge, depth and temperature and an analysis of the hydrologic characteristics of the watershed.

c. Aquatic system of the watercourse, riparian vegetation and existing fish and wildlife management within the watercourse.

d. Frequency of occurrence of high and low flows.

e. Feasibility and practicability of off-stream storage of high flows for use in providing water supply during periods of normal low flows, when supply is limited by existing and anticipated use.

f. Existing federal, state, regional and local water management plans.

g. Impact of the appropriation on the public interest.

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3. The commissioner shall further consider the following factors for appropriation from basins:

a. Total volume of water within the basin.

b. Slope of the littoral zone.

c. Available facts on historic water levels of the basin and other relevant hydrologic factors.

d. Cumulative long-range ecological effects of the proposed appropriation.

e. Impact of the appropriation on the public interest.

f. Natural and artificial controls which affect the water levels of the basin.

4. The commissioner shall further consider the following factors for appropriation of ground water:

a. Type and thickness of the aquifer.

b. Limit of the aquifer.

c. Area of influence of the proposed well(s).

d. Existing water levels in the aquifer and projected water levels due to the proposed appropriation.

e. Other hydrologic and hydraulic characteristics of the aquifer involved.

f. Probable interference with neighboring wells.

B. Decision on applications. The commissioner is authorized to grant permits, with or without conditions, or deny them. In all cases, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the city may demand a hearing in the manner specified in Minn. Stat. § 105.44, subd. 3, within 30 days after receiving mailed notice outlining the reasons for denying or modifying an application.

Decision by the commissioner are further subject to the administrative provisions of Minn. Stat. §§ 105.44-105.463 and 105.64. These sections include information and requirements on procedure, authority, timing of actions, fees, notice, investigations, violations and penalties and special provisions regarding mining operations.

Based on these statutory requirements and other applicable provisions of Minn. Stat. ch. 105 the commissioner shall make decisions as follows:

1. No permit shall be granted if:

a. For application involving diversion of any waters of the state, surface or ground water, to a place outside the state, the remaining waters in the state will not be adequate to meet the state water resources needs during the specified life of the diversion (Minn. Stat. § 105.405, subd. 2).

b. There are inadequate supplies of waters of the state for the purpose intended, in the area involved.

c. The appropriation is not reasonable, practical, and does not adequately protect public safety and promote the public welfare (Minn. Stat. § 105.45).

d. The appropriation is not consistent with approved state, regional and local water and related land resources management plans, provided that regional and local plans are consistent with statewide plans (Minn. Stat. § 105.41, subd. 1a.).

e. There is an unresolved conflict between competing users for the waters involved.

2. Approval of any surface water appropriation application shall be further subject to the following:

a. For all watercourses, proposals for appropriation during periods of flood flows and high water levels shall be given first consideration unless this is not practical, reasonable or feasible (Minn. Stat. § 105.41, subd. 1a).

b. For natural and altered watercourses, except for drainage ditches established under Minn. Stat. ch. 106, appropriation may be limited consistent with Minn. Stat. § 105.417, subd. 2, provided that adequate data are available to set such limits for watercourses. Where protected flow is designated by the commissioner, no appropriation shall be allowed when the flow is below that protected flow.

c. Permits to appropriate water for any purpose from streams designated trout streams by commissioner's orders, pursuant to Minn. Stat. § 101.42, shall be limited to temporary appropriations when not in conflict with the special designation, such as during periods of high flows or high water levels (Minn. Stat. § 105.417, subd. 4).

d. For natural and altered basins the commissioner shall:

(1) Establish a protection elevation below which no appropriation shall be allowed (Minn. Stat. § 105.417, subd. 3(b)).

(2) Limit the collective maximum annual withdrawals to not exceed a total volume of water amounting to one-half acre-foot per acre of surface water basin based on Minnesota Department of Natural Resources Bulletin No. 25, "An Inventory of Minnesota Lakes." The actual collective annual allocation may be considerably less than the maximum (Minn. Stat. § 105.417, subd. 3(a)).

(3) For natural and altered basins less than 500 acres, an application shall not be approved if the commissioner determines that the proposed appropriation would lower the water levels in the basin to an extent which would deprive the public and riparian property owners of reasonable use of and access to the water.

e. The establishment of protected elevation and limitation on maximum withdrawals contained in sections d.(1) and d.(2) above shall not apply to artificial and altered basins constructed primarily for the purpose of storing high waters and flood flows as water conservation or contingency flow alternatives when such alternatives are approved by the commissioner.

f. Protected flows of watercourses and protection elevations of basins shall be established for the purposes as

defined in 6 MCAR § 1.5050 D. and shall be based on available information considered in 6 MCAR § 1.5052 A.2. and A.3.

3. Approval of appropriation from ground water shall be further subject to the following:

a. The amounts and timing of water appropriated shall be limited to the safe yield of the aquifer to the maximum extent feasible and practical. Safe yield means the amount of ground water that can be withdrawn from an aquifer system without degrading the quality of water in the aquifer and without allowing the long-term average withdrawal to exceed the available long-term average recharge to the aquifer system based on representative climatic conditions.

b. If the commissioner determines that the proposed appropriation of ground water would result in reduction of flows in a watercourse below a protected flow or levels in a basin below a protected elevation, the amount and timing of the water appropriation shall be limited so it does not affect the protected flow or elevation.

c. Appropriation of ground water shall not be approved or shall be issued on a conditional basis in those instances where sufficient hydrologic data are not available to allow the commissioner to adequately determine the effects of the proposed appropriation. If a conditional appropriation is allowed, the commissioner shall make further approval, modification or denial when sufficient hydrologic data are available.

d. The commissioner shall limit the use of dug pits for appropriating water when such pits are so located that they may reasonably be expected to affect protected flows of watercourses or protected elevations of basins.

C. Waiver of requirements. The commissioner may waive any of the provisions of 6 MCAR § 1.5052 B. if it is determined that conditions are such that implementation of a provision would be unnecessary or inapplicable or if an applicant provides sufficient evidence to show just cause why such provision would not be reasonable, practical or in the public interest. In the event the commissioner does not grant an applicant's request for waiver the applicant may demand a hearing.

D. Specific types of appropriation and use. Additional requirements and decisions governing specific types of uses such as agricultural irrigation, public water supplies, dewatering, water level maintenance and mining are also contained in 6 MCAR § 1.5053.

6 MCAR § 1.5053 Special additional requirements and conditions for certain specific types of appropriation.

A. Agricultural irrigation including use of water for wild rice paddies.

1. For ground water appropriation, the applicant must submit to the commissioner the following data in addition to the requirements of 6 MCAR § 1.5051:

a. If the application is for use of ground water from an aquifer system for which adequate ground water availability data are available and therefore is designated by the commissioner as a Class A application, (Minn. Stat. § 105.416, subd. 1):

(1) Copies of test hole log(s) to identify the aquifer the proposed well will penetrate.

(2) Copies of the water well record(s) and production test data.

(3) Additional aquifer test data as may be required by the commissioner if the test holes, water well records and production test data are insufficient to allow the commissioner to properly assess the capability of the aquifer system in the area of withdrawal, or are inadequate to allow assessment of the effects of the proposed appropriation on other nearby wells.

b. If the application is for use of ground water from an aquifer system for which inadequate ground water availability data are available and therefore is designated by the commissioner as a Class B application, (Minn. Stat. § 105.416, subd. 1) the applicant shall supply the following additional information as required by Minn. Stat. § 105.416, subd. 2 including:

(1) Copies of test hole log(s) to identify the aquifer the proposed well will penetrate.

(2) Copies of water well record(s) and production test data.

(3) The anticipated ground water quality in terms of the measures of quality commonly specified for the proposed water use.

(4) The location of each domestic well, for which information is readily available, located within the area of influence or within a 1½ mile radius of the proposed irrigation well, whichever is less.

(5) Readily available information from water well records, reports, studies and field measurements regarding the domestic wells within the area of influence or a 1½ mile radius of the proposed irrigation well whichever is less, such as:

(a) owner's name, address and phone number.

(b) depth of well (in feet).

(c) diameter of well and casing type (concrete curb, steel, wooden, clay tile, etc.).

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(d) non-pumping water level (in feet) below land surface.

(e) age of well (when constructed).

(f) type of pump (shallow-jet, deep well jet, submersible reciprocating, etc.) and rate of discharge.

(g) length of drop pipe in well.

(6) Results of a pumping test of the aquifer system as required in Minn. Stat. § 105.416, subd. 2.(e).

(7) The commissioner may in any specific application, waive any of the requirements of 6 MCAR § 1.5053 A.1.b. (1)-(6), when the necessary data are already available.

2. The commissioner's actions.

a. The commissioner shall analyze, and evaluate applications based on facts supplied by the applicant pursuant to 6 MCAR §§ 1.5051 and 1.5053 A.1. Decisions shall be subject to the applicable procedures outlined in 6 MCAR § 1.5052 and based on recommendations of the soil and water conservation district, soil surveys and other available data on soil characteristics relating to soil suitability for agricultural irrigation and adequacy of existing or proposed soil and water conservation measures in order to protect water quality and prevent erosion and sedimentation.

b. The commissioner shall determine the amount of water allowed to be used under 6 MCAR § 1.5053 A.2.a. based on:

(1) Acreage of lands involved.

(2) Climatic characteristics of the area involved.

(3) Dominant soil types of the acreage to be irrigated and major crops to be irrigated.

(4) Best available technology, methodology and crop-water use requirement information including, but not limited to, "Irrigation Guide for Minnesota," Soil Conservation Service, U.S. Department of Agriculture, St. Paul, Minnesota, 1976.

(5) When adequate data on soil moisture and local climatic conditions are available for the area, the commissioner may prescribe a limitation on the amounts and timing of appropriation during each growing season.

(6) For irrigation from surface water the amount of appropriation shall be limited to no more than one-half acre-foot per acre of riparian land owned or controlled by the applicant except for appropriation for wild rice paddies as is provided in (7). Riparian lands for the purpose of these rules shall be those 40 acre tracts or government lots, or portions thereof, that directly abut a basin or watercourse.

(7) The amount of appropriation for wild rice paddies shall be based on consideration of climatic characteristics of the area and the best available technology relating to amounts of water needed to raise wild rice.

3. Well interference problems involving appropriation for irrigation.

a. For new applications. If the commissioner determines that an adequate supply of water is available and that the proposed project is reasonable and practical as determined based on 6 MCAR §§ 1.5052 and 1.5053 A.2., but that there is a probable interference with public water supply well(s) and private domestic well(s) which may result in reducing the water levels beyond the reach of those wells, the following procedures shall apply:

(1) The applicant shall be responsible for obtaining and providing to the commissioner, available information including depth, diameter, non-pumping and pumping levels, quality and well construction details for all domestic and public water supply wells located within the area of influence of the proposed appropriation well.

(2) The commissioner may require aquifer tests or other field tests to be conducted pursuant to Minn. Stat. § 105.416, subd. 2.

(3) The commissioner shall determine the probable interference with the domestic and public water supply wells based on theoretical computations using available information regarding the aquifer characteristics obtained from the aquifer tests and/or from hydrologic studies, and the probable effects of lowering the water levels in the domestic and public water supply wells due to the proposed irrigation use in the area. For public water supply wells only the probable interference with that portion which is used for domestic water supply is considered.

(4) The commissioner shall provide the prospective appropriator with an evaluation of the nature and degree of effect of the appropriation on the water levels of the domestic well(s) and public water supply well(s).

(5) The commissioner shall not issue the permit until the applicant submits a written agreement signed by himself and all parties identified under 6 MCAR § 1.5053 A.3.a. (3) as having probable interference, outlining the measures that will be taken to insure maintenance of water supplies to such identified parties to the extent that would have existed absent the proposed appropriation. In cases where no agreement can be reached, the commissioner shall implement the settlement procedure identified in 6 MCAR § 1.5053 A.3.c.

b. For existing permits. If complaints are made to the commissioner by private domestic well owner(s) or public water supply authority regarding the effects of water appropriation for agricultural irrigation on the domestic water supplies, the following procedures shall be followed:

(1) The commissioner shall provide compliant forms to the parties making the complaint, thereafter referred to as "complainant."

(2) Upon receipt of the completed complaint forms the commissioner shall notify the permittee, the applicable watershed district, and the soil and water conservation

district and any other governmental agency or person who may be affected or has expressed interest in the complaint.

(3) The commissioner shall investigate and assess the complaint by:

(a) Analyzing and evaluating the submitted complaint forms, hydrologic facts and characteristics of the water supply systems involved.

(b) Requesting additional facts from the complainant(s) and the permittee when necessary. In order to assure that available data on domestic well(s) are provided, the complainant shall cooperate with the permittee in providing such facts as may be available and allowing the commissioner access to obtain necessary available facts. If the complainant does not cooperate in providing available facts or allowing the commissioner access to the domestic well(s), the commissioner shall dismiss the complaint.

(c) Conducting, if necessary, a field investigation.

(d) Additional hydrologic tests and evaluation may be required if hydrologic information is unavailable or inadequate to make a determination of necessary facts in the matter. The timing and conduct of such tests shall be in accordance with the provision of Minn. Stat. § 105.41, subd. 1a. relating to modifying or restricting appropriation for irrigation.

(e) In evaluating the probable influence of the irrigation water appropriation on the domestic well(s) and public water supply well(s) the commissioner shall consider whether the domestic well(s) provides a dependable water supply while meeting the appropriate health requirements for the existing use of the affected well. For public water supply wells only the probable interference with that portion which is used for domestic water supply is considered.

(4) Where adverse effects on the domestic well(s) are substantiated, the commissioner shall notify the permittee of the facts and findings of the complaint evaluation. In the event that the commissioner determines that the domestic water supply is endangered the commissioner may, pursuant to 6 MCAR § 1.5055 E. restrict, or cancel the appropriation until such time as a decision has been made by either negotiation, settlement or hearing.

The permittee shall within 30 days after written notification by the commissioner take appropriate action by:

(a) Negotiating a reasonable agreement with the affected well owner(s). If no agreement is reached the settlement procedure outlined in 6 MCAR § 1.5053 A.3.c. shall apply; or

(b) Requesting a public hearing.

c. Settlement. If the applicant or permittee and the complainant(s) have been unable to negotiate a reasonable agreement pursuant to 6 MCAR § 1.5053 A.3.a. (5) and A.3.b. (4) the following procedure shall be implemented:

(1) The applicant or permittee shall submit a notarized written offer to the complainant, with a copy to the commissioner, within 40 days after the receipt of the written notification provided in 6 MCAR § 1.5053 A.3.b. (4), based on the following:

(a) If an existing domestic well provides an adequate domestic water supply which meets state health standards and such well no longer serves as an adequate supply because of a proposed or permitted irrigation well in the vicinity the applicant or permittee shall be responsible for all costs necessary to provide an adequate supply with the same quality and quantity as prior to the applicant's or permittee's interference.

(b) If an existing well provides an adequate domestic water supply but does not meet state health standards and such well would no longer serve as an adequate supply because of the irrigation well in the vicinity, the applicant or permittee shall be responsible for that portion of costs of providing an adequate water supply, but shall not be responsible for those costs necessary to bring the domestic well(s) to state health standards.

(2) The complainant shall submit written argument to the commissioner as to why the offer is not reasonable, within 10 days from the receipt of the notarized written offer. If no response is received from the complainant, within the time limit, the commissioner shall dismiss the complaint.

(3) The commissioner shall make a decision based on the written offer and arguments and available facts, within 10 days, as follows:

(a) That the applicant or permittee has submitted a reasonable offer, the commissioner shall issue or continue the permit involved;

(b) That the applicant or permittee has not submitted a reasonable offer, the commissioner, after notice and opportunity for hearing, shall deny, modify or terminate the permit involved.

(c) That there is a need for a public hearing in which case it is ordered.

B. Public water supplies.

1. The applicant may be required to submit to the commissioner all or portions of the following data in addition to the requirements of 6 MCAR § 1.5051;

a. The number of domestic users.

b. Reasonable projection of population growth.

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c. The number and type of industrial and commercial users of the public water supply system.

d. The amount of water to be supplied to domestic, industrial and commercial users respectively.

e. Other users by type of use and amount to be used from the public water supply system such as:

(1) golf courses.

(2) recreational lake level maintenance.

(3) water transferred to other supply systems.

f. Information regarding the quantity of the appropriated water to be used in distribution and waste water treatment facilities, not including volume of actual waste water.

g. Details on emergency plans for water shortage periods outlining public information programs, priorities for limitations of discretionary water use, and alternate sources of public water supplies.

2. The commissioner's actions. The commissioner shall allow the appropriation of water for public water supply systems based on evaluation and analysis of the data submitted by the applicant under provisions of 6 MCAR §§ 1.5051 and 1.5053 B.1., and the procedures outlined in 6 MCAR § 1.5052 and subject to 6 MCAR § 1.5053 B.3.

3. Appropriation permits issued to public water supply authorities shall be subject to requirements of Minn. Stat. § 105.418 relating to critical water deficiency periods and restriction of non-essential uses.

C. Water level maintenance for basins.

1. For water appropriation applications for the purpose of establishing and maintaining water levels for basins the applicant shall submit the following data in addition to the requirements of 6 MCAR § 1.5051:

a. Information on the basin and proposed source of supply or source of discharge, including facts indicating how the water will be appropriated and discharged and the proximity of the basin to the proposed source of supply or source of discharge.

b. Information on the design of any discharge facility into or out of the basin.

2. The commissioner shall evaluate and make decisions on applications based on facts supplied by the applicant and subject to the applicable procedures outlined in 6 MCAR § 1.5052 and the following determinations:

a. Effects on public welfare of the proposed appropriation.

b. The proposed appropriation is reasonable, practical, technically feasible and effectively accomplishes its purpose.

c. The proposed appropriation will have minimal or no detrimental effect on the basin, the proposed source of supply or the receiving water and property of riparian owners.

d. The quality of the water of the basin or the receiving water source will not be detrimentally impaired by the appropriation.

e. The proposed appropriation is consistent with 6 MCAR § 1.5024 B.1.b., public waters permits rules.

D. Dewatering. Dewatering, which involves appropriation of water from ground or surface water sources for purpose of removing excess water shall be subject to water appropriation permit requirements unless otherwise exempted by these rules. The commissioner shall evaluate and make decisions on such application based on applicable provisions of 6 MCAR §§ 1.5051 and 1.5052 and the following additional requirements:

1. The applicant must show there is a reasonable necessity for such dewatering and the proposal is practical.

2. The applicant must show that the excess water can be discharged without adversely affecting the public interest in the receiving waters, and that the carrying capacity of the outlet to which waters are discharged is adequate.

3. The proposed dewatering is not prohibited by any existing laws.

E. Mining and processing of metallic minerals and peat.

1. All applicants for permits for mining and processing of metallic minerals and peat must provide the following information in addition to the requirements of Minn. Stat. § 105.64 and 6 MCAR § 1.5051:

a. All plans, specifications and necessary information regarding water withdrawal, use and reuse practices.

b. Details of the rate, volumes and source of water to be appropriated and consumed in processing, including all losses such as uncontrolled seepage, evaporation, plant losses and discharge volumes.

c. Criteria used in estimating the proposed appropriation, distribution and discharge based on climatic averages and extremes.

d. Details of sources, rates, and volumes of water released from the mining operations involved.

e. Details of the hydrologic and hydraulic impacts and effects of the operation on the watershed(s) including changes in basins, watercourses and ground water systems.

2. The commissioner shall analyze, evaluate, and make decisions on appropriations for mining and processing of metallic minerals based on facts submitted by the applicant pursuant to 6 MCAR §§ 1.5051 and 1.5053 E.1., subject to the conditions outlined in 6 MCAR § 1.5052 and the following considerations:

a. The commissioner may direct the applicant to utilize available surplus water from preexisting mining operations or facilities, whether owned or controlled by the applicant or others, whenever feasible and practical unless justification is provided on why such practice should not be allowed. If the commissioner finds that an existing appropria-

tion has available unused water, for which there is inadequate justification, the commissioner, after notice and opportunity for hearing, may amend the existing permit to promote better utilization of the water.

b. The commissioner shall base the allocation of water on consideration of the legal requirements for water quality, the impact of the appropriation on those requirements and the following order of priorities of water supply sources located within reasonable distance to the mining or processing site:

(1) Runoff from the mining areas;

(2) Water from active mine pits and tailing basins when such water is not utilized for other purposes or operations;

(3) Water from existing mining operation reservoirs where such water is not utilized for other purposes or operations;

(4) Water from other mining and processing operations;

(5) Water from inactive mine pits;

(6) Water from streams appropriated during periods of high flows;

(7) Water from ground water sources;

(8) Water collected and stored behind off-stream impoundments;

(9) Water collected and stored behind impoundments on streams; and

(10) Water from natural basins greater than 500 acres in size.

c. If the disposal of excess water is necessary and if any mining operation in the area has caused or will cause a substantial reduction in watercourse flow, the commissioner may require the permittee to discharge excess water in a manner that would restore the flow. Such action shall consider the existing and anticipated use of excess water by higher priority users and must be in compliance with appropriate rules of the Minnesota Pollution Control Agency.

6 MCAR § 1.5054 Water use conflicts.

A. Conflict defined. For the purpose of these rules a conflict occurs where the available supply or waters of the state in a given area is limited to the extent that there are competing demands among existing and proposed users which exceed the reasonably available waters. Existing and proposed appropriations could in this situation endanger the supply of waters of the state so that the public health, safety and welfare would be impaired.

B. Procedure. Whenever the total withdrawals and uses of ground or surface waters would exceed the available supply based on established resource protection limits, including protection elevations and protected flows for surface water and safe yields for ground water, resulting in a conflict among proposed users and existing legal users the following shall apply:

1. In no case shall a permittee be considered to have established a priority of use or appropriation by obtaining a permit.

2. The commissioner shall analyze and evaluate the following:

a. The reasonableness for use of water by the proposed and existing users.

b. The water use practices by the proposed and existing users to determine if the proposed and existing users are or would be using water in the most efficient manner in order to reduce the amount of water required.

c. The possible alternative sources of water supply available to determine if there are feasible and practical means to provide water to satisfy the reasonable needs of proposed and existing users.

3. If conflicts can be resolved by modifying the appropriation of the proposed and existing users, the commissioner shall do so.

4. If conflicts cannot be resolved through modification of proposed and existing permits the commissioner shall base the decision regarding issuance or denial of new applications and retention, modification or termination of existing permits on the basis of existing priorities of use established by the legislature as follows:

a. If the unresolved conflict involves users who are or would be in the same priority class, the commissioner may require the proposed users and existing permitted users to develop and submit a plan which will provide for proportionate distribution of the limited water available among all users in the same priority class.

(1) The plan must include proposals for allocating the water which address the following:

(a) possible reduction in the amounts of appropriation so that each user would receive a proportionate amount of water for use.

(b) possible restrictions in the timing of withdrawals so that each user would be allowed to withdraw a proportionate share of water for use over certain periods of time.

(2) The commissioner may withhold consideration of new applications and suspend appropriations under

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existing permits until a plan is submitted and approved by the commissioner.

(3) If the commissioner approves the proposed plan, new permits will be issued and existing permits will be amended in accordance with that plan.

(4) If the commissioner determines that the proposed plan is not practical or reasonable the commissioner may develop a new plan or modify the proposed plan to provide proportionate share of water among the users involved. The commissioner shall issue new permits and amend existing permits based on that plan.

b. If the unresolved conflict involves users who are or would be in a different priority class the available water supply shall be allocated to existing and proposed users based on the relative priority of use. Highest priority users shall be satisfied first. Any remaining available water supply shall be allocated to the next succeeding priority users, until no further water is available. Users in the same priority class shall be offered the same options as provided in section B.4.a. above.

c. All actions by the commissioner shall be made after notice and opportunity for public hearing.

6 MCAR § 1.5055 Provisions and conditions of permits.

Water appropriation permits shall include the following provisions and conditions, unless otherwise required by law:

A. Term of permits.

Permits shall be issued for temporary or for long-term appropriation.

1. Temporary permits involve a one-time, limited life, not more than 12 months, non-recurring appropriation of waters of the state, such as for highway construction, exploratory drilling for minerals, hydrostatic testing of pipelines and other short-term projects. Reasonable time extensions may be permitted, but in no case shall the total length of time the permit remains in force exceed two years.

2. Long-term permits will remain in effect subject to applicable permit provisions and conditions of the permit, the law and these rules, provided that in cases where the permittee is not the landowner of record, the term of the permit shall be the same as that of the property rights or license held.

B. Monitoring. All permittees shall measure and keep monthly and yearly records of the quantity of water used or appropriated at the point of taking from each source under permit.

1. Measuring water appropriated. Each installation for appropriating or using water shall be equipped with a device or employ a method to measure the quantity of water appropriated to not less than ten percent of actual withdrawal.

a. The commissioner shall determine the method to be used for measuring water appropriated based on:

(1) the quantity of water appropriated or used;

(2) the source and location of the appropriation;

(3) the method of appropriating or using water;

(4) other facts supplied by the permittee.

b. The commissioner shall require flow meters to be used whenever the rate of appropriation is at or greater than 1000 gallons per minute, unless the permittee can show justification why flow meters cannot practically be used. Such justification must be supported by facts which indicate the technical difficulties which would be encountered if flow meters were required.

2. Measuring water levels.

a. For surface water appropriations, where applicable, the permittee shall measure flows or levels in the watercourse or basin at a specific gage designated by the commissioner and located within the area of appropriation. The commissioner may require permittees to pay necessary costs of establishing and maintaining such gages as provided in 6 MCAR § 1.5000, rules for permit fees.

b. For ground water appropriation, the commissioner, based on the need for ground water data in specific areas, shall require the permittee to measure and keep records of the water levels in each production well at reasonable times prescribed in the permit. Observation wells may be required as a condition of the permit to better evaluate hydrologic conditions and effects in areas where hydrologic data are unavailable, where probable conflict or well interference problems may occur and where such wells are required by law.

C. Reporting. Annual calendar year monthly records of the amount of water appropriated or used and the water level measurements shall be recorded for each installation. Such readings and the total amount of water appropriated and used shall be reported annually to the commissioner, on or before February 15 of the following year upon forms to be supplied by the commissioner unless otherwise specified in the permit.

1. Such records shall be submitted with an annual water appropriation processing fee as required by Minn. Stat. § 105.37, subd. 5, for each permit whether or not any water was appropriated during the year.

2. Additional information may be required such as acreage irrigated, identification of water disposal sites and amount of water discharged.

3. Failure to report and pay the fee shall be sufficient cause for terminating a permit 30 days following written notice by the commissioner of the violation of the permit.

4. No fee is required from any state agency as defined in Minn. Stat. § 16.011 or any federal agency.

D. Changes to permits.

1. Amendments.

a. Request for amendments by permittees.

(1) Major modification of any water appropria-

tion permit shall not be made before obtaining the written permission from the commissioner. Major modification may include substantial increase or decrease in the rate and quantity of water withdrawn, any change in source of appropriation or substantial change in the amount of land irrigated, when applicable.

(2) Request for amendment may be made by letter or on forms supplied by the commissioner. New applications may be required when there are changes in the source of supply, the purpose of appropriation, or when the proposed increases in rates and amounts of water would probably create conflict or well interference.

(3) Requests for amendments shall be reviewed as if they were for a new application, subject to provisions of 6 MCAR §§ 1.5050-1.5056.

b. Amendments initiated by the commissioner.

Pursuant to authority in Minn. Stat. § 105.44, subd. 9, the commissioner may modify or amend any existing permits based on the following procedures and the criteria in 6 MCAR §§ 1.5052 and 1.5053, where applicable:

(1) The commissioner shall notify the permittee of the intent to amend the permit. The notice will include details on modifications to be implemented by the permittee and the timing to complete the modifications.

(2) The permittee shall respond within 30 days from receipt of the notice. Such response period may be thereafter extended by the commissioner for good cause shown.

(3) If no response is received in 30 days and no extension of response time is authorized by the commissioner, the proposed amendments shall be made.

(4) The commissioner based on the permittee's response and the criteria established in these rules shall either modify the proposed amendment or adopt the original proposed amendment.

c. All amendments and modifications are made after notice and opportunity for hearing.

2. Transfers or assignments.

If the property involving a water appropriation permit is sold, transferred or assigned to another person, the permit may be transferred to the transferee, subject to the following:

a. The permittee shall notify the commissioner of any sale, transfer or assignment of property involved within 30 days thereafter.

b. The permittee shall notify the transferee of the existence of a permit on the subject property and the necessity for transfer notification.

c. The transferee shall submit written notification to the commissioner stating the intention to continue the appropriation as stated in the permit. If the transferee intends to modify the existing permit, new application may be required subject to the provisions of 6 MCAR § 1.5055 D.1.

d. No permit is assigned except with the written consent of the commissioner.

E. Limitations on permits. All permits issued by the commissioner since 1949 are subject to the provisions of Minn. Stat. § 105.44, subd. 9 relating to cancellation and conditions of permits and Minn. Stat. § 105.45 relating to terms and reservations with respect to the amount and manner of such use or appropriation or method of construction or operation of controls as appears reasonably necessary for the safety and welfare of the people of the state.

The commissioner subject to the terms and conditions of such existing permits, may modify, restrict or cancel an existing appropriation or use until such time as a decision has been reached by either negotiation, settlement or after a public hearing. If a permit does not contain a provision which restricts appropriation or use for the protection of safety or welfare of the people of the state the commissioner cannot modify or restrict an existing appropriation until opportunity is provided for a public hearing and where ordered a public hearing has been completed.

F. Terminations. Permits may be terminated under the following:

1. Request by the permittee.

2. When any of its provisions are violated.

3. When the permittee sells, transfers or assigns the property rights described in the permit and no transfer is requested by the transferee within 90 days of transfer of title.

4. Upon finding that the permittee has violated the provisions of any applicable laws and rules.

5. Where the permittee has ceased for 5 consecutive years to use the water and no reasonable justification is shown.

6. When the lease or contract for deed is forfeited or cancelled.

7. Permits for agricultural irrigation may be subject to termination by the commissioner upon justifiable recommendation of the supervisors of the soil and water conservation district, wherein the land irrigated is located, regarding the inadequacy of the soil and water conservation measures.

8. When the commissioner deems it necessary for the conservation of the water resources of the state or in the interest of public health, safety and welfare.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

9. When the commissioner deems it necessary pursuant to 6 MCAR § 1.5054 and 1.5053A.

10. Any action pursuant to 2,4,5,7,8 and 9 above shall be subject to appropriate notice and opportunity for hearing, except as provided in 6 MCAR § 1.5055 E.

11. In the case of permits for mining issued in conjunction with Minn. Stat. § 105.64 procedures for termination shall be subject to provisions of Minn. Stat. § 105.64, subd. 6.

6 MCAR § 1.5056 Miscellaneous provisions.

A. Local permits. The commissioner, pursuant to Minn. Stat. § 105.41, subd. 1b, may delegate to municipal, county, or regional level of government, the authority to process and approve permits for the appropriation and use of waters of the state in amounts of more than 10,000 gallons per day and more than 1 million gallons per year, but less than 3.6 million gallons per year subject to all of the following requirements:

1. The local unit of government has established an administrative process which includes provisions for establishing a water appropriation management planning process consistent with 6 MCAR § 1.5057.

2. The review and approval of applications are consistent with the applicable provisions of these rules.

3. A formalized agreement is made and signed by the commissioner and the appropriate municipal, county or regional level authority involved.

4. Copies of all applications and records of local actions on applications are provided to the commissioner upon receipt and action.

5. Records of water appropriation amounts and the processing fee shall be submitted by the permittee to the commissioner as required by 6 MCAR § 1.5055 B. and C.

B. Water conservation. In order to maintain water conservation practices in the water appropriation and use regulatory program it is necessary that existing and proposed appropriators and users of waters of the state employ the best available means and practices based on economic considerations for assuring wise use and development of the waters of the state in the most practical and feasible manner possible to promote the efficient use of waters.

Based on data submitted by applicants and permittees and current information on best available water conservation technology and practice the commissioner, in cooperation with the owners of water supply systems, may analyze the water use practices and procedures and may require a more efficient use of water to be employed by the permittee or applicant, subject to notice and opportunity for hearing.

C. Abandonment of wells. The permittee shall notify the commissioner prior to abandoning, removing, covering, plugging or filling the well or wells by means of which a water appropriation was made. The commissioner shall require abandonment procedures and methods consistent with the Minn. Health Department rules, MHD 218.

D. Field investigations. In order to fully evaluate water appropriations, the commissioner may conduct field investigations to determine the nature and scope of the appropriation and the impact it has or will have on water and related land resources. Such field inspection may be made in a timely fashion and may be coordinated with one or more of the following divisions of the Department: enforcement, fish and wildlife, forestry, minerals, lands and parks and recreation. A fee may be charged for field inspections subject to 6 MCAR § 1.5000, subd. G.1.-G.5, rules for permit fees.

E. Information on appropriation permit laws. The applicants or existing permittees shall, upon request to the commissioner, be furnished copies of applicable portions of the law or synopsis, where they exist, relating to their proposed or existing appropriation.

6 MCAR § 1.5057 Water appropriation and use management plans.

In order to address the provisions of Minn. Stat. § 105.403 and § 105.41, subd. 1a, the commissioner, in cooperation with other state and federal agencies, regional commissions and authorities, local governments and citizens, establishes the following process for the preparation and implementation of the elements of any state, regional and local plan relating to water appropriation and use.

B. Criteria and procedures. Since the availability, distribution and utilization of waters of the state and the character and use of related land resources vary considerably throughout the state, a comprehensive water appropriation management planning process must be based on these considerations and according to the following principles and procedures:

1. Water appropriation management plans should be prepared for specific definable areas of the state on consideration of:

a. The hydrologic and physical characteristics of the water and related land resources for which a management plan is necessary. The area must be of sufficient size and areal extent so that the interrelationship of geohydrologic and climatic factors can be adequately defined and managed.

b. The determination by the commissioner of the need for establishment of a water appropriation management plan for the waters of the state within a specific definable area based on:

(1) Areas where development of the waters of the state is, or is likely to, increase considerably within the next 5-10 years.

(2) Areas where severe water problems exist or are soon likely to exist.

(3) Areas where there are adequate facts and available geohydrologic data relating to the availability, distribution and use of the waters of the state and where there is local interest in establishing water appropriation management plans.

2. Upon establishment of the need for a water appro-

priation management plan pursuant to B.1. above, the commissioner shall establish a management planning process including procedures, a public participation process and development of a planning team consisting of representatives of the Department and any other interested, concerned and involved government or citizen group listed in section A above, to review and cooperate in preparation of the plan.

C. General requirements and contents. Every water appropriation plan should, at a minimum, include:

1. An evaluation of the amount and dependability of information on the hydrologic systems of the area and the adequacy of the information to provide necessary facts on the amounts of water which can be reasonably withdrawn from the waters of the state in the area without creating major environmental problems or diminishing the long-term seasonal supply of water for various purposes.

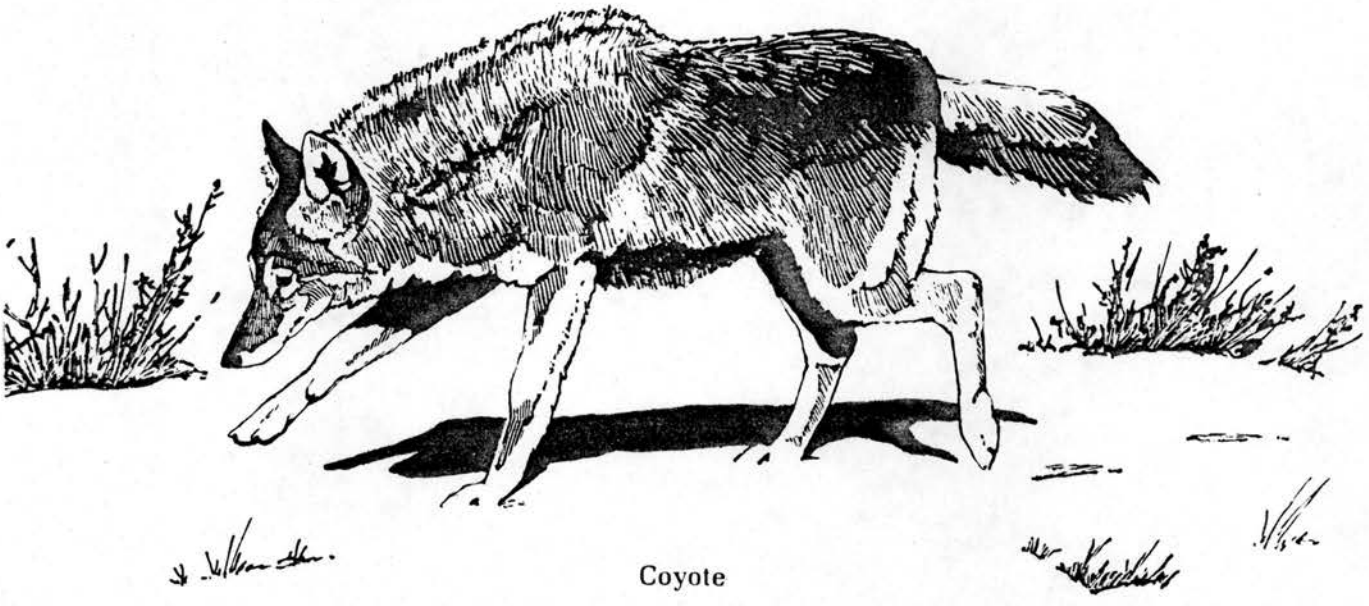
2. An evaluation of data on stream quality and flows, lake water quality and levels, ground water quality and levels, and climatic factors.

3. An evaluation of present and anticipated future use of waters and lands and the amounts and distribution of use within the area.

4. An evaluation of the problems and concerns relating to use of the waters within the area.

5. Water conservation alternatives and methods and procedures for dealing with water shortages or excesses during periods of deficient or excess water.

6. Considerations of the relationship of the water appropriation and use management plan to other water resources programs of the state, such as floodplain management, shoreland management, water surface use management, water quality management, soil and water conservation management and agricultural land management.



Coyote

A NOMAD, the male coyote may roam over territories as large as 36 square miles in search of carrion. It feeds on mice, snowshoe hares, porcupines, and occasionally livestock such as sheep and small calves. The coyote resembles a small German shepherd with a bottle-shaped tail. Its shaggy, grayish coat turns white at the throat and belly. Although subjected to widespread poisoning and trapping programs, the coyote survives because of its high birth rate and its ability to adapt. Like the timber wolf, coyotes mate for life, usually in February, producing five or six pups in April. Most coyotes live less than two years in the wild, although one animal is known to have reached 13 years of age. (Drawing by Dan Metz, courtesy of the Department of Natural Resources)

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF HEARING EXAMINERS

Office Memorandum

TO : A. W. CLAPP, III
Special Assistant Attorney General

DATE: May 27, 1980

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 6-8100

SUBJECT: PROPOSED RULES FOR WATER APPROPRIATION
DNR-80-004-HK

Enclosed is the Order and Memorandum of the Chief Hearing Examiner in the above-referenced rules.

We have retained the copy of the Commissioner's Order dated May 9, 1980, and the proposed final rules for our file.

Pursuant to 9 MCAR § 2.111, a copy of this Order has been sent to Special Assistant Attorney General Joanne Hinderaker.

DRH:sh
Enc.
cc: Joanne Hinderaker
Hedia Rieke

RECEIVED
MAY 28 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF PROPOSED RULES) FOR WATER APPROPRIATION.)

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, the above-entitled matter was heard before State Hearing Examiner Howard L. Kaibel, Jr., on January 8 through January 15, 1980, following which the Hearing Examiner issued his Report on April 1, 1980; and

WHEREAS, by Order of Joseph N. Alexander, Commissioner, the Department of Natural Resources (hereinafter "Department"), by Order dated May 9, 1980, proposes to adopt the rules as recommended by the Hearing Examiner with modifications; and

WHEREAS, on May 13, 1980, pursuant to the provisions of Rule 9 MCAR § 2.110, the Department submitted the rules to the Chief Hearing Examiner for his review pursuant to the provisions of Minn. Stat. § 15.052, subd. 4, which review includes the issues of substantial changes in the rules and compliance with the provisions of Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Chief Hearing Examiner having completed the aforementioned rule review, finds that the changes in the rules as submitted, after considering the elements contained in Rule 9 MCAR § 2.111, are not substantially different from the rules as proposed; and

WHEREAS, the Chief Hearing Examiner finds that the Department has complied with the provisions of Minn. Stat. § 15.0412, subd. 4, with the following exceptions:

1. Throughout the rules, terms and phrases are used which grant the Commissioner and/or the Department unbridled discretion to impose additional burdens on applicants or permitees without sufficient standards or criteria under which this discretion will be exercised. This unbridled discretion is illegal and, as it is illegal, renders the rule unreasonable. Thus, there must be a conclusion that, in the instances enumerated

below, the Department has failed to comply with the provisions of Minn. Stat. § 15.0412, subd. 4, by failing to make an affirmative presentation of facts establishing the reasonableness of the particular rule. The sections wherein this finding applies are as follows:

A. 6 MCAR § 1.5051 B.: the phrase "where deemed necessary by the commissioner".

B. 6 MCAR § 1.5051 B.8.b.: the phrase "where required by the commissioner".

C. 6 MCAR § 1.5053 A.2.b.(5): the term "the commissioner may...establish an irrigation scheduling system...". (Additionally, this could be viewed as giving discretion in the Commissioner to establish an additional standard or rule.)

D. 6 MCAR § 1.5053 E.2.a.: the phrases "The commissioner may direct the applicant..." and "if the commissioner finds ...may amend the existing permit...".

E. 6 MCAR § 1.5053 E.2.c.: the phrase "...the commissioner may where feasible and practical require the permittee...".

F. 6 MCAR § 1.5054 B.3.d.: the phrase "additional hydrologic tests and evaluation may be required...".

G. 6 MCAR § 1.5055 B.4.a.: the phrase "The commissioner shall withhold consideration of new applications and may suspend or limit...".

H. 6 MCAR § 1.5056 C.2.: the phrase "Additional information may be required...". (While statutory language is repeated in 1.5056 C.1., the statute is silent relative to additional information as required in this section.)

I. 6 MCAR § 1.5056 E.: in the second paragraph, the phrase "...may modify, restrict or cancel...". (Additionally, this language appears to be contrary to the provisions of Minn. Stat. § 105.45 which requires all decisions to be based on substantial evidence, after a hearing.)

J. 6 MCAR § 1.5057 D.: the phrase "...the commissioner may conduct field investigations...".

2. Rule 6 MCAR § 1.5052 B.3.b. contains the phrase "If the commissioner determines, based on adequate facts and evidence,...". This language is unreasonable as it is vague and, in addition, is contrary to the statutory test for all commissioner determinations found in Minn. Stat. § 105.45 wherein the commissioner's determinations must be based on substantial evidence.

3. Rule 6 MCAR § 1.5052 B.3.c. contains the phrase "Appropriation of ground water shall not be approved or shall be issued on a conditional basis in those instances where sufficient hydrologic data...". This language is unreasonably vague by use of the word "sufficient" without defining the term or stating who determines sufficiency and under what standards.

4. Rule 6 MCAR § 1.5053 E.1.a. reads "All plans, specifications and necessary information regarding water withdrawal, use and reuse practices." The term "necessary information" is unreasonably vague, not defined, and fails to detail who determines what information is necessary and under what standards the decision will be made.

5. Rule 6 MCAR § 1.5058 contains rules relating to water appropriation and use management plans. If these rules are burdens which are placed solely on the Department under Minn. Stat. §§ 105.403 and 105.405, they may stand. However, if these are the "plans" discussed in prior rules which "may" be required of individuals, the use of the term "should" in 1.5058 B.1. and the use of the term "should, at a minimum," in 1.5058 C. are unreasonably vague. If these provisions are not mandatory requirements, the rule should so state in no uncertain terms. If they are mandatory, the term "at a minimum" implies discretion in the Department to require something more than is detailed in the rule and thus would be unreasonable as illegal.

NOW, THEREFORE, based on the foregoing and pursuant to the provisions of Minn. Stat. § 15.052, subd. 4, and Rule 9 MCAR § 2.111, the Department shall either withdraw the provisions of the rules detailed above or reconvene the rules hearing.

Dated this 27th day
of May, 1980.

DUANE R. HARVES
Chief Hearing Examiner

M E M O R A N D U M

A review of the rules under consideration herein will reveal numerous instances wherein discretionary language is used which were not detailed in the foregoing Order. All of these discretionary grants are separable into four different categories. For the reasons set forth below, some types of discretionary grants are permissible, while others are not.

As pointed out in the Commissioner's Order dated May 9, 1980, Minn. Stat. §§ 105.416, subd. 2, and 105.417, subd. 1, give the Commissioner authority to waive certain statutory requirements. Thus, in those instances where the statutory requirements are repeated in the rules, with a repetition of the discretion in the Commissioner, they were not discussed as they would be within the statutory authority.

Secondly, in instances where the discretion is in the applicant or permittee rather than the Department, the language has been allowed to stand.

Thirdly, in some instances, it was the opinion of the Chief Hearing Examiner that although the discretion was left in the Department, that sufficient standards and criteria were enumerated under which the discretion would be exercised and thus were found to be legal.

Lastly, there are several instances where the Commissioner or the Department have discretion to waive certain filing requirements, which requirements are not necessarily statutory requirements as discussed previously in this Memorandum. It has been argued that the authority to adopt a rule includes, inherently,

the authority to create a provision for the waiver of the requirement or the granting of a variance from the requirement. It is the opinion of the Chief Hearing Examiner that a rule is legal and thus reasonable if the departmental discretion is such that it does not give discretion to impose additional burdens on those affected by the rule but rather gives discretion to relieve those affected from certain provisions of the rule. Thus, in this particular set of rules, the sections allowing the Department to relieve applicants or permittees from the requirements of the rules have been approved.

DRH

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

Notice of Intent to Solicit Outside Opinion on Rules for Water Appropriation

The Department of Natural Resources has begun drafting rules containing standards and criteria for granting and denying permits for the appropriation of surface water and groundwater in quantities greater than the domestic needs of 25 persons (generally 10,000 gallons per day, 1,000,000 gallons per year).

Statutory basis for the rules is found in Minnesota statutes sections 105.37, subdivision 7, 105.38 clause 2, 105.41, 105.415, 105.44 subdivision 8, and Laws of Minnesota 1977 Chapter 446, Sections 2, 3, 4, 5, 12, 18, 19, and 20.

The matters covered include appropriation from lakes, streams and underground sources for domestic, municipal, agricultural, commercial, industrial, and power plant purposes.

The Department welcomes information and opinions concerning the subject matter of the rules. Written statements and oral statements by telephone or in person may be sent or made to

Dan Knuth
DNR, Division of Waters
444 Lafayette Road
St. Paul, MN 55101
(612) 296-4800

Statements will be accepted through January 13, 1978.

Dated: Oct. 28, 1977

Gerald D. Seinwill
Director, Division of Waters

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

Notice of Intent to Solicit Outside Opinion on Rules for Water Appropriation

The Department of Natural Resources has begun drafting rules containing standards and criteria for granting and denying permits for the appropriation and use of surface and ground waters of the State, exclusive of the domestic needs of less than 25 persons.

Statutory basis for the rules is found in Minnesota Statutes Chapter 105 including but not limited to: 105.37, 105.38, 105.41 through 105.541, 105.55 and 105.64.

The matters covered by the proposed rules include appropriation from lakes, streams, and ground water sources for domestic, municipal, agricultural, commercial, industrial, power plant, mining, dewatering, recreational and other purposes.

Copies of the draft proposed rules will be available for review and comment by July 12, 1979. The Department welcomes information, opinions and comments concerning the subject matter of the proposed rules. Copies of the proposed draft can be obtained, and written and/or oral statements or comments can be sent or made to:

Hedia Rieke
Department of Natural Resources
Division of Waters
444 Lafayette Road
St. Paul, MN 55101
(612) 296-4800

Statements will be accepted through August 10, 1979.

Dated 31 May, 1979

Larry Seymour, Director
Division of Waters

Department of Natural Resources

Proposed Rules for Water Appropriation

Notice of Hearing

A public hearing will be held

Tuesday, January 8, Detroit Lakes, Vocational-Technical Institute Multi-Purpose room,

Thursday, January 10, St. Paul, 123 State Capitol Building,

Tuesday, January 15, Marshall, Southwest State University, Student Center (which is near the dome), rooms 158 and 159.

Each day of hearing will begin at 9:00 a.m. The hearing will be conducted as provided by the rule-making provisions of Minn. Stat. §§ 15.041 - 15.052 and the rules of the Office of Hearing Examiners.

All representatives of associations or other interested groups and interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules. Statements may be made orally and written materials may be submitted at the hearing. Statements or briefs may be submitted without personally appearing at the hearing. In addition, written materials may be submitted by mail to:

Howard Kaibel
1745 University Avenue
St. Paul, Minnesota 55105
Telephone: (612) 296-8107

either before the hearing or within 5 days after the close of the hearing, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

The proposed rules are required by Minn. Stat. § 105.415 and are related primarily to Minn. Stat. §§ 105.41 - 105.418 and 105.44, subd. 8. They establish standards for granting and denying permits to take water from waterbasins, watercourses, and underground in quantities exceeding 10,000 gallons per day or 1 million gallons per year. Subjects covered include: applying for a permit; basic decision criteria for granting and denying; establishing lake levels and stream flows below which appropriation must stop; irrigation; resolving conflicts between appropriators; using water in the mining and processing of metallic minerals and peat; ~~water for air conditioning~~; public water supplies; delegating DNR authority over water appropriation to cities and counties; wild rice paddies; water management planning.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Natural Resources, Division of Waters, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. Twenty-five days prior to the hearing a statement of need and reasonableness will be available for review at the department and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the department at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available after which date the department may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the department. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report) or to the department (in the case of the department's submission or resubmission to the Attorney General).

Under Minn. Stat. 10A.01, subd. 11 (1978), a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute "lobbyist" means any individual engaged for pay or other consideration or authorized by another individual or association to spend money who spends more than five (5) hours of any month or more than $250 not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or who spends more than $250, not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. "Lobbyist" does not include any: (a) public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity; (b) party or his representative

appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action: (c) individual in the course of selling goods or services to be paid for by public funds; (d) news media or their employees or agents acting in the ordinary course of business of publishing or broadcasting news items, editorials or other comments or paid advertisements which directly or indirectly urge official action; (e) paid expert witness whose testimony is requested either by the body before which he is appearing or one of the parties to a proceeding, but only to the extent of preparing or delivering testimony; or (f) stockholder of a family farm corporation as defined in § 500.24, subd. 1, who does not spend over $250, excluding travel expenses, in any year in communicating with public officials.

Questions regarding lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155; telephone (612) 296-1720.

DNR-80-004-HK

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF THE PROPOSED RULES OF THE DEPARTMENT OF NATURAL RESOURCES FOR APPROPRIATION OF WATERS OF THE STATE.	ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, on November 29, 1979, the Department of Natural Resources, by its Special Assistant Attorney General, A. W. Clapp, III, submitted a request to the Chief Hearing Examiner for approval of the incorporation by reference of certain documents in rules to be proposed; and

WHEREAS, pursuant to Minnesota Statutes 1978, § 15.0412, subd. 4, agencies may incorporate by reference provisions of federal law or rule or other materials from sources which the Chief Hearing Examiner determines are conveniently available for viewing, copying and acquisition by interested persons; and

WHEREAS, the Chief Hearing Examiner has reviewed the DNR Bulletin #25 and SCS's Irrigation Guide for Minnesota and has found them to be in excess of 3,000 words and has determined that they would exceed five pages of publication in the State Register; and

WHEREAS, the Department of Natural Resources has indicated that DNR Bulletin #25 is available for review at the DNR regional offices in Bemidji, Grand Rapids, Brainerd, New Ulm, Rochester, and St. Paul, and at the DNR Division of Waters office at 444 Lafayette Road, St. Paul; Irrigation Guide for Minnesota is available for review at each county's SCS office and a copy may be obtained from the U. S. Department of Agricultural Soil and Conservation Service, 316 North Robert, St. Paul; and the Chief Hearing Examiner thus finds that the documents are thereby conveniently available for viewing, copying and acquisition by interested persons.

NOW, THEREFORE, IT IS ORDERED that the Department of Natural Resources shall have the approval of the Chief Hearing

Examiner to incorporate by reference in their proposed rules the above-referenced documents.

Dated this 3rd day of December, 1979.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed Adoption
of Rules of DNR - Waters Division
Governing the Appropriation of Waters of the State.

I hereby certify that the attached 333 labels 3 sheets constitute the complete list of persons, associations, and other interested groups who as of 2:45 o'clock P.M, this 13th day of November, 1979, have requested pursuant to M.S. 1976, 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State
Joan Anderson Growe
By Donna M. Scott

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the matter of the Proposed Adoption of
Rules Governing the Appropriation of
Waters of the State

AFFIDAVIT OF MAILING

Sandra Faunce, being first duly sworn, deposes and says:

That on the 28th day of November, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United State 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 address listed on the attached Certificate of the Secretary of State.

Sandra Faunce

Subscribed and sworn to before me
this 27th day of November, 1979

J. Dale McClain
NOTARY PUBLIC - MINNESOTA

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

Rules for
Water Appropriation

CERTIFICATE
OF
COMPLIANCE

I have worked with the agency in the drafting of these rules and in the proceedings for their adoption. Based on that familiarity, I attest that the procedures required by law and rule have been followed.

Dated: June 2, 1980.

A. W. Clapp III

A. W. CLAPP, III
Special Assistant
Attorney General

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of Proposed Rules
for Water Appropriation

ORDER FOR HEARING

- - - - - - - -

Rules have been drafted for appropriation and use of waters of the state, pursuant to Minnesota Statutes Section 105.415. The present draft has benefitted from the advice of a citizen's advisory committee, and from some 160 members of the public who attended seven meetings held around the state in October.

NOW THEREFORE IT IS ORDERED that a public hearing be held in the manner provided in the rule-making provisions of the Administrative Procedures Act, to consider the adoption of the proposed rules. The hearing shall be held Tuesday, January 8 at Detroit Lakes Vocational-Technical Institute Multi-Purpose room; Thursday, January 10, St. Paul, 123 State Capitol Building, and Tuesday, January 15, Marshall Southwest State University, Student Center (which is near the dome), rooms 158 and 159. Each day of hearing will begin at 9:00 A.M.

Dated: November 13, 1979.

Joseph N. Alexander

JOSEPH N. ALEXANDER
Commissioner of Natural Resources

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

STATEMENT OF NEED AND REASONABLENESS

PROPOSED RULES FOR APPROPRIATION OF WATERS OF THE STATE

6 MCAR S 1.5050 General provisions.

A. Statement of Policy.

These proposed rules were drafted in response to legislative directives contain in Minn. Stat. §. 105.415 as follows:

> "Notwithstanding the provision in section 105.41, subdivision 1a, stating that the commissioner of natural resources shall submit to the legislature by January 1, 1975, for its approval proposed rules governing the allocation of waters among potential water users, and notwithstanding the provision in section 105.42, subdivision 1a, stating that the commissioner shall recommend by January 15, 1975, to the legislature a comprehensive law containing standards and criteria governing the issuance and denial of permits under the section, the commissioner shall prior to January 30, 1978, adopt rules containing standards and criteria for the issuance and denial of the permits required by sections 105.41 and 105.42."

The Department was unable to meet the January 30, 1978 deadline because of staffing problems and, as a result of discussion with the 1979 legislature it was agreed that the Department would prepare draft rules, conduct a series of public meetings on the proposed rules and attempt to hold public hearings in late 1979. A series of 7 public meetings were held in October of 1979 at various locations around the state. In order to accommodate the Hearing Examiner's schedule and to avoid the anticipated attendance problems during the Christmas - New Year's holiday season the hearings have been scheduled for January 1980.

Laws of other agencies which are directly related to applicable portions of these proposed rules include Minn. Stat. ch. 106, Drainage; ch. 116D, State Environmental Policy; ch. 116, Pollution Control Agency; ch. 144, Department of Health and the rules which have been promulgated to further effectuate these laws including: Environmental Quality Council Rules, 6 MCAR § 3.021; Public Water Supply Rules, 1978, 7 MCAR § 1.145;

Water Supply Rules, MHD 136.144; Water Well Construction Code, 7 MCAR § 1.210; Water Pollution Control Rules, 1978, WPC.1 through 41.

These proposed rules are necessary to meet State Law and to provide a comprehensive state water appropriation program which controls the appropriation and use of surface and underground waters of the state.

B. Scope.

These proposed rules apply to requirements of Minn. Stat. § 105.41 and further supplement, complement and relate to Minn. Stat. § 105.38, subd. (2); § 105.39; § § 105.416-105.418, § 105.42; § § 105.44 - 105.461; § 105.49; § 105.51; § 105.541; § 105.55; and § 105.64.

The proposed rules include provisions governing the appropriation and use of surface and ground waters involving conservation, allocation and development of waters of the state. The proposed rules provide standards and criteria for applications for new permits; review and decisions on the issuance or denial of permits; resolution of water use conflicts and well interference problems; the review, modification, cancellation, transfer and termination of existing permits and the relationship of state water appropriation and use guidelines to local permits and state and local water appropriation management planning.

The broad scope of these proposed rules is necessary to also provide proper minimum standards, criteria, guidance and directives to water users and all levels of government concerned, involved and interested in water appropriation and use.

C. Jurisdiction.

Minn. Stat. § 105.38 provides in part:

> "In order to conserve and utilize the water resources of the state in the best interests of the people of the state, and for the purpose of promoting the public health, safety, and welfare, it is hereby declared to be the policy of the state:
> The state, to the extent provided by law from time to time, shall control the appropriation and use of surface and underground waters of the state."

Specific statutory directive on the jurisdiction of the Commissioner is contained in Minn. Stat. § 105.41, subd. 1:

> "It shall be unlawful for the state, any person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state to appropriate or use any waters of the state, surface or underground, without the written permit of the commissioner. Nothing in this section shall be construed to apply to the use of water for domestic purposes serving less than 25 persons."

In order to clarify this provision the legislature enacted Minn. Stat. § 105.41, subd. 1b. which states in part:

> "No permit shall be required for the appropriation and use of less than a minimum amount to be established by the commissioner by regulation."

Accordingly, these proposed rules exempt from permits:

1. The appropriation of water for domestic uses serving less than 25 persons, for residental purposes (6 MCAR § 1.5050 C.1.).

2. Test pumping to determine adequacy of a ground water source (6 MCAR § 1.5050 C.2.). This provision is necessary to allow pumping of water at sufficient rates and quantities in order to adequately evaluate the availability and dependability of the water source and the possible effects of proposed withdrawals on other uses. Test pumping is not a continuing process and will likely not exceed more than 1 million gallons except in unusual circumstances requiring prolonged one-time pumping to evaluate a complex system.

3. Withdrawal for any use at a rate not to exceed 10,000 gallons per day and totalling no more than 1 million gallons per year. (6 MCAR § 1.5050 C.3.). In order to develop a reasonable amount of water which would be exempted from permits the Department used the statutory provision relating to exemption of domestic uses serving less than 25 persons. Therefore, the maximum annual withdrawal exempt from permit is based on an average daily per capita domestic use of 115 gallons times 365 days times 24 persons which equals 1,007,400 gallons per year. For practical application,

this is rounded off to 1 million gallons per year.

The per capita value of 115 gallons per day is supported by estimated water use values for domestic use contained in a number od documents including:

U.S. Geological Survey Bulletin 679, "Estimated Use of Water in the United States in 1970";

"Domestic Use from Non-Central Systems", Appendix C.2. and "Domestic Use from Central Systems" Appendix C.3, Nationwide Analysis Report, 1975, U.S. Water Resources Council.

The Second National Water Assessment by the U.S. Water Resources Council, April 1978; Part III: Functional Water Use Source: 1975 Nationwide Analysis;

Upper Mississippi and Souris-Red-Rainy Regions, 1975 National Water Assessment;

"Water Quantity Requirements for Public Supplies and Other Uses" U.S.G.S.; Water Resources Division, J.C. Kammerer in Handbook of Water Resources and Pollution Control: Van Nostrand Reihold Co., N.Y, 1976 p.p. 44-83.

A review of a number of estimates of residential water use by the Water Planning Board staff indicated that the 115 gallons per day per capita use figure is a reasonable value (Appendix "A" attached).

The maximum daily use value was derived by taking the 115 gallons per day per capita use times 24 persons times 3.5 which is equal to 9,660 gallons per day. For practical application the value was rounded to 10,000 gallons per day. The only estimate of maximum daily use is in a reference document "Handbook of Water and Pollution Control, Source #7" which indicates that maximum daily residential use was between 1.1 and 2.9 times the average daily use. Comments of the Water Planning Board staff on the selected maximum daily value of 10,000 gallons per day are in Appendix A.

There were no adverse comments regarding the selected values of 1 million gallons per year and 10,000 gallons per day at any of the public meetings or in any written submittals on the draft rules. The Department maintains that these are reasonable values for exemptions and it should be noted that the Department has in the past exempted appropriation of this magnitude from permit considerations.

4. Agricultural field tile or open ditch drainage systems when public waters are not adversely affected (6 MCAR § 1.5050 C.4.). This exemption is based on past agreements with the legislature that the legislative interest is not to interfere with normal on-farm drainage practices to improve production of food and fiber, unless such drainage practices would have an adverse effect on public waters. This is in furtherance of Minn. Stat. § 106.021, subd. 6 which sets criteria for proposed drainage systems:

> "County boards or courts must consider the following criteria when establishing and improving drainage systems for which a preliminary order pursuant to section 106.101, has not been issued prior to March 26, 1976:
>
> (a) The private and public benefits and costs derived from the proposed project;
>
> (b) The present and anticipated agricultural land acreage availability and use within the project area;
>
> (c) The flooding characteristics of project lands involved;
>
> (d) The alternative measures for the conservation, allocation, and development of the drainage waters;
>
> (e) The water quality effects as a result of the proposed project;
>
> (f) The fish and wildlife resources affected by the proposed project;
>
> (g) The shallow ground water availability, distribution, and use in the project area;
>
> (h) The overall environmental impact of all the criteria in items (a) to (g);
>
> (i) The present and anticipated land use within the project area."

Rules for public waters permits in 6 MCAR § 1.5024 D. also exempt drain tile from permits, unless public waters are adversely affected:

> "No permit shall be required to maintain the hydraulic adequacy of . . . agricultural drain tile outfall or ditch which has been functioning within the previous five (5) years if such work does not alter the original course, current or cross-section of public waters."

In addition, it would be impractical to attempt to regulate the appropriation of waters by the great number of existing and future field tile systems in the state since the location and extent of these systems, especially those wholly on private lands, are largely unknown.

Based on the above considerations the Department maintains this exemption is reasonable.

5. The reuse of waste waters resulting from an appropriation of waters of the state for which a permit has been granted, (6 MCAR § 1.5050 C.5.). This provision is necessary to prevent overregulation and duplication of efforts since many permits will contain specific provisions relating to the reuse of water, whenever practical and feasible,as water conservation measures. The Department does not specifically regulate the discharge of waste waters in terms of the quality constituents of such waters except as relating to protection of natural resources values, and any provision in water appropriation permits relating to such quality considerations are supplementary and complementary to the generally more specific discharge permit requirements of the Minnesota Pollution Control Agency and the Federal Environmental Protection Agency.

D. Definitions. The Definitions used in these rules are necessary to clarify terms used in considerations of water appropriation.

"Appropriation" is defined in Minn. Stat. § 105.37, subd. 5:

> "Appropriating" includes but is not limited to "taking", regardless of the use to which the water is put.

This broad definition is intended to include <u>any</u> physical transfer of waters of the state <u>regardless</u> of the means, methods and purposes.

"Waters of the state" is defined in Minn. Stat. § 105.37, subd. 7:

> "Waters of the state" means any waters, surface or underground, except those surface waters which are not confined but spread and diffused over the land. "Waters of the state" includes all boundary and inland waters.

This definition is intended to include all surface bodies of water which are confined within containment areas having definable beds and banks and all waters contained in underground water systems. This does exclude runoff, snowmelt and seepage.

The definition of protected flow is necessary to provide the regulation required by Minn. Stat. § 105.417, subd. 2 as follows:

> "Where data are available, permits to appropriate water from natural and altered natural watercourses shall be limited so that consumptive appropriations are not made from the watercourses during periods of specified low flows in order to safeguard water availability for instream uses and for downstream higher priority users located in reasonable proximity to the site of appropriation."

The term protected flow is used to describe the specified flow required to safeguard water availability for instream uses and downstream high priority users. Instream uses which require protection include considerations of those values which are provided within the stream for fish and wildlife habitat, water-based recreation, navigation, aesthetics and water quality. The importance of these instream uses is substantiated by the June 6, 1978, message of President Carter sent to Congress relating to his water policy initiatives and by the Interagency Task Force reports prepared May 1979, pursuant to directive dated July 12, 1978 from the President of the United States regarding instream flow needs.

The Definition of protection elevation is directly related to the statutory requirements of Minn. Stat. § 105.417, subd. 3.b.:

> "As a condition to any surface water appropriation permit, the commissioner of natural resources shall establish an elevation for the subject waterbasin, below which no appropriation shall be allowed. During the determination of the elevation which for the purposes of this section shall be known as the "protection elevation," the commissioner shall take into account the elevation of important aquatic vegetation characteristics related to fish and wildlife habitat, existing uses of the waterbasin by the public and riparian land owners, the total volume within the waterbasin and the slope of the littoral zone."

6 MCAR § 1.5051 General requirements for applying for permit.

This section is necessary to provide guidance and standards for prospective water appropriation permit applicants. The procedures and standards are authorized under provisions of Minn. Stat. § 105.44.

A. Application forms required.

It is necessary to maintain separate records of use from each surface or ground water source in order to adequately evaluate the effects of proposed appropriation on each specific water source involved.

The requirement of 6 MCAR § 1.5051 A.2. regarding evidence of ownership or control is necessary to protect the rights of the public and other parties and to insure that the proposed water user has the necessary legal authority to occupy the lands from which water will be appropriated.

B. Applicant responsibilities.

Subsections B.1. to 4. are necessary to fulfill the specific legislative requirements of Minn. Stat. § 105.44, subd. 1:

> "Each application for a permit required by sections 105.37 to 105.55 shall be accompanied by maps, plans, and specifications describing the proposed appropriation and use of waters, or the changes, additions, repairs or abandonment proposed to be made, or the public water affected, and such other data as the commissioner may require. This data may include but not be limited to a statement of the effect the actions proposed in the permit application will have on the environment, such as: (a) changes in water and related land resources which are anticipated; (b) unavoidable but anticipated detrimental effects; (c) alternatives to the actions proposed in the permit. If the proposed activity, for which the permit is requested, is within a city or is within or affects a watershed district or a soil and water conservation district, a copy of the application together with maps, plans and specifications shall be served on the secretary of the board of managers of the district and the secretary of the board of supervisors of the soil and water conservation district and on the mayor of the city. Proof of such service shall be included with the application and filed with the commissioner."

Subsection B.5, Statement of justification, is necessary to fulfill the specific requirement of Minn. Stat. § 105.45 which states in part:

"In all permit applications the applicant has the burden of proving that the proposed project is reasonable, practical, and will adequately protect public safety and promote the public welfare."

Subsections B.5.a. to e. provide guidance to the applicant regarding factors to be used in proving reasonableness and practicability. In order to reduce excessive burden on small appropriators the requirements are based on available facts.

Subsection B.6. is necessary to provide facts which address the requirements of Minn. Stat. § 105.39, subd. 1 relating to water conservation. Although a detailed statewide water conservation program has not been established, the Commissioner must include considerations of water conservation to fulfill the legislative intent to provide for wise use and development of waters of the state as further required by Minn. Stat. § 105.38 previously cited in the discussion of jurisdiction.

Subsection B.7.a. is necessary to fulfill the requirements of Minn. Stat. S 105.417, subd. 5 as follows:

"No application for use of surface waters of the state for any purpose is complete until the applicant submits, as part of the application, a contingency plan which describes the alternatives he will utilize if further appropriation is restricted due to the flow of the stream or the level of a water basin. No surface water appropriation for any purpose shall be allowed unless the contingency plan is feasible or the permittee agrees to withstand the results of no appropriation."

Subsection B.7.b. is necessary to fulfill the legislative directives of Minn. Stat. § 105.41, subd. 1.a. as follows:

"Appropriation and use of surface water from streams during periods of flood flows and high water levels shall be encouraged subject to consideration of the purposes for use, quantities to be used, and the number of persons appropriating water."

This provision will also provide an additional means for utilizing conservation practices as previously discussed.

Subsection B.7.c. is necessary to meet the legislative requirements of Minn. Stat. § 105.417, subd. 3.c. as follows:

"As part of any application for appropriation of water for any purpose from a waterbasin of less than 500 acres in surface area, the applicant shall obtain a signed statement from as many landowners with land riparian to the subject waterbasin stating their support to the proposed appropriation as he is able to obtain and it shall indicate the number whose signature he is unable to obtain."

The only added language is the requirement in subsection c.(1). which provides riparian landowners with notification. This is necessary to allow the Commissioner to determine if there is adequate knowledge by affected parties of any proposed actions.

Subsection B.8. is necessary to insure that sufficient ground water data are available to assess the impacts of ground water appropriation. This subsection requires copies of water well records and production test data to be submitted with the application. Minn. Stat. ch. 105 does not require a permit to construct a well but only to appropriate water. The information necessary to evaluate an appropriation application must include facts on the types of subsurface materials and aquifer systems involved, the capability of aquifer systems to yield sufficient water and the hydrologic characteristics of the well as related to the proposed appropriation. Therefore, a well must be in place before a water appropriation application can be fully considered and there is no state law restricting installation of a well except for specific local government requirements and for state well construction requirements of the Minnesota Health Department, which have been established to protect public health as related to water quality considerations.

6 MCAR § 1.5052 Commissioner's actions on permit applications.

This section is necessary to provide explanations of the procedures, practices and criteria which the Commissioner will employ in reviewing and analyzing permit applications and making decisions on permit issuance, modification or denials.

Subsections A.1.a. to i. provide a listing of factors which are considered by the Commissioner in reviewing and analyzing applications in order to meet the various requirements of Minn. Stat. Ch. 105 relating to water appropriation from any water source, surface or underground.

Subsections A.2. and A.3. are necessary to provide a listing of additional factors which are applicable only to appropriation from watercourses or basins and which are especially pertinent as criteria for establishing protected flows or protection elevations.

Subsection A.4. is necessary to provide a listing of factors that are essential in evaluating the adequacy of a ground water source and the probable effects on neighboring wells.

Subsection B. is necessary to provide the procedures, conditions and criteria which govern the Commissioner's actions on permit issuance or denial.

Subsections B.1. and 2. contain the specific legislative references which apply to each of the particular provisions except for subsections B.1.b. and B.1.e. and subsection B.2.e.

Subsection B.1.b. is necessary to restrict issuance of permits in those areas where there are no available supplies. This protects the public interest in the resources and also protects the proposed appropriator from expending funds when a supply will not be dependable.

Subsection B.1.e. is necessary to provide a means for withholding permit issuance when available supplies are limited and conflicts would occur with existing users in an area. In such cases a decision on permit issuance is dependent on resolution of the conflict as provided in 6 MCAR § 1.5054.

Subsection B.2.e. is necessary to provide an exemption for artificial and altered basins that are constructed as a result of the requirements of 6 MCAR § 1.5052 B.2.a. and § 1.5051 B.7.a. Since the major purpose for the artificial or altered basin may be to store water for subsequent use at later times and since the permits issued for such purposes would be subject to adequate public hearings before issuance, to protect rights of others, it would be unreasonable and unpractical to impose the protection limit requirements on those waters.

Subsection B.3.a. is necessary to fulfill the intent of Minn. Stat. § 105.405, subd. 1. which provides:

> "The commissioner shall develop and manage water resources to assure a supply adequate to meet long range seasonal requirements for domestic, municipal, industrial, agricultural, fish and wildlife, recreational, power, navigation, and quality control purposes from surface or ground water sources, or from a combination of these."

It is also necessary to fulfill the provisions of Minn. Stat. § 105.45 which states in part:

> "In granting a permit the commissioner may include therein such terms and reservations with respect to the amount and manner of such use or appropriation or method of construction or operation of controls as appears reasonably necessary for the safety and welfare of the people of the state."

The establishment of a safe yield factor as a protection measure for ground water is consistent with the legislative provisions relating to protection levels and flows for basins and watercourses and is a reasonable requirement to safeguard the ground water supplies from overpumping and "mining" which could deplete the ground water to an extent that it could endanger public safety (lack of adequate drinking water) and welfare (prohibitive cost of water and deficiencies of supply for future generations). The establishment of safe yield limitations will generally apply only to areas of known or most probable heavy ground water pumpage where persistent ground water level declines are or would be large. In determining the safe yield the Commissioner must be guided by facts on recharge and pumping rates

and a range of climatic conditions over a sufficient period of time that it includes representative excesses and deficiencies in terms of temperature, precipitation and other related climatic occurrences.

Subsection B.3.b. and d. are necessary to provide the mandated protection of flows and levels of watercourses and basins where the appropriation of ground water would have sufficient effect on such flows and levels. The restrictions on use provided by B.3.b. and B.3.d. will only be applied when adequate facts and evidence show the extent of interrelationships of ground and surface water is such that there would be adverse impacts on the surface waters.

Subsection B.3.c. Although permits may be issued allowing appropriation from ground water the permits will contain specific conditions which advise the permittee that his/her permit may be modified in the future when additional facts become available. This is a protection of the public interest and it also allows the permittee to make a value judgement regarding the amount of investment in a proposed appropriation enterprise. It is consistent with provision of Minn. Stat. § 105.44, subd. 2 and § 105.45.

Subsection C. Waiver of requirements.

This is consistent with Minn. Stat. §§ 105.44 and 105.45 relating to the Commissioner's authority and with Minn. Stat. § 105.417, subd. 1 which states:

> "The commissioner may waive any limitation or requirement in subdivisions 2 to 5 for just cause."

6 MCAR § 1.5053 Special additional requirements and conditions for certain specific types of appropriation.

This section is necessary to provide additional requirements setting guidelines, standards and criteria which are applicable only to each of 5 specific types of water appropriation: agriculture, public water supplies, water level maintenance for basins, dewatering and mining and processing of metallic minerals and peat. 6 MCAR § 1.5051 provides basic requirements applicable to all applications for appropriation. However, for each of the 5 specific types of appropriation in this section there are either special legislative requirements or there is a need for additional requirements which would not be satisfied by the provision of 6 MCAR § 1.5051 alone. The following specific types of appropriation: agricultural irrigation, (A.) public water supply (B.) and mining of metallic minerals and peat (E.) require specific actions by the Commissioner, pursuant to statutes, which are in addition to the provisions of 6 MCAR § 1.5052.

A. Agricultural irrigation including use of water for wild rice paddies.

This section is necessary to meet legislative requirements of Minn. Stat. sections 105.416, 105.41, subd. 1a, and 105.44, subds. 8 and 9(4), which relate specifically to appropriation of water for agricultural irrigation.

Subsection A.1. contains provisions which are mandatory requirements of Minn. Stat. § 105.416, subds. 1 and 2 as follows:

> "Subd. 1. PERMIT. Permit applications required by Minnesota Statutes, Section 105.41, for appropriation of groundwater for purposes of agricultural irrigation shall be processed as either class A or class B applications. Class A applications are for wells located in areas for which the commissioner of natural resources has adequate groundwater availability data. Class B are those for all other areas. The commissioner shall evaluate available groundwater data, determine its adequacy, and designate areas A and B statewide. The commissioner shall solicit, receive, and evaluate groundwater data from soil and water conservation districts, and where appropriate revise his area A and B designations. The commissioner of natural resources shall file with the secretary of state a commissioner's order defining these areas by county and township. Additional areas may be added by a subsequent order of the commissioner. Class A and B applications shall be processed in the order received." See Appendix B.

"Subd. 2. CLASS B PERMITS; INFORMATION REQUIREMENTS. Class B applications are not complete until the applicant has supplied the following data:

(a) A summary of the anticipated well depth and subsurface geologic formation expected to be penetrated by the well. For glacial drift aquifers, this data shall include the logs of test holes drilled for the purpose of locating the site of the proposed production well;

(b) The formation and aquifer expected to serve as the groundwater source;

(c) The maximum daily, seasonal and annual pumpage expected;

(d) The anticipated groundwater quality in terms of the measures of quality commonly specified for the proposed water use;

(e) The results of a pumping test supervised by the commissioner or his designee, conducted at a rate not to exceed the proposed pumping rate for a period not to exceed 72 hours for wells under water table conditions and not to exceed 24 hours for wells under artesian conditions. Before, during and after the pumping test the commissioner shall require monitoring of water levels in one observation well located at such distance from the pumping well which he has reason to believe may be affected by the new appropriation. The permit applicant shall be responsible for all costs of the pumping tests and monitoring in the one observation well. He shall be responsible for the construction of this one observation well if suitable existing wells cannot be located for this purpose. If the commissioner believes that more than one observation well is needed he shall instruct the applicant to install and monitor additional observation wells. The commissioner shall reimburse the applicant for these added costs; and

(f) Upon determination of the area of influence of the proposed well, the location of existing wells within the area of influence which were reported pursuant to section 156A.07, together with readily available facts on depths, geologic formations, pumping and nonpumping water levels and details of well construction as related to the commissioner of health "Water Well Construction Code".

The commissioner may in any specific application waive any of the requirements of clauses (d) to (f) when the necessary data is already available."

Subsections A.1.a.(1).,(2). and (3). contain specific data requirements which must be provided for Class A applications mandated by Minn. Stat. § 105.416, subd. 1 to adequately evaluate the adequacy and characteristics of the ground water source. Subsection A.1.a.(3). is necessary in those situations where available ground water

information and studies are sufficient to allow the general ground water aquifer system from which water is proposed to be withdrawn to be designated as a system for which Class A applications are required but there is an insufficient level of information on the specific points and areas of the proposed appropriation.

Subsection 1.5053 A.1.b. contains specific data requirements which must be provided for Class B applications as mandated by Minn. Stat. § 105.416, subd. 2. Since Class B applications involve appropriations from specific aquifer systems for which little or no ground water information is available there is a need for considerably more factual data than is required for Class A applications as provided for in 6 MCAR § 1.5053 A.1.b.(1). through (6).

The waiver of data required by 6 MCAR § 1.5053 A.1.b.(1). through (6). is provided for in Minn. Stat. § 105.416, subd. 2.

Subsection A.2. is necessary to provide explanations of the procedures and practices and criteria which the Commissioner will employ in reviewing and analyzing permit applications and making decisions on permit issuance, modification or denials.

Subsection A.2.a. is necessary to meet the requirements of Minn. Stat. § 105.416, subd. 3 as follows:

> "The commissioner shall issue permits for irrigation appropriation from groundwater only where he determines that proposed soil and water conservation measures are adequate, based on recommendations of the soil and water conservation districts."

Subsections A.2.b.(1). to (4). are necessary to provide the Commissioner with an adequate basis for evaluating the irrigation proposal in respect to its reasonability and practicality and the reasonable amounts of water which should be allocated for the irrigation proposal.

Subsection A.2.b.(5). is necessary to allow the Commissioner to allocate water for irrigation in a manner which provides for most efficient use of the available water. It is based on development of an adequate data base which will not only benefit the public through better water and energy related conservation practices but will also benefit the appropriator in terms of savings in energy costs of pumping and distributing

water and will allow more efficient crop production by providing for application of water at times and in quantities when it will be of maximum benefits to the crops without wasting money and effort.

Subsection A.2.b.(6). establishes limitations on the amounts of irrigation water which may be withdrawn from surface water based on riparian acreage owned or controlled by the applicant. Water use for irrigation is largely a consumptive use because, with a properly designed irrigation system, most of the water is either consumed by the crops or is lost to evapotranspiration. Irrigation is practiced during the growing season period when flows and levels in watercourses and basins are generally at lower levels and consequently the impacts on watercourses and basins of consumptive withdrawals are greatest at this time.

The Commissioner, since the mid 1950's, has limited the withdrawal of water for irrigation (except for wild rice) from surface water based on one-half acre foot per acre of those riparian lands which are in 40 acre tracts or governmental lots directly abutting a watercourse or a basin. The value of one-half acre foot (6 inches) per acre per year was developed after consultation with University of Minnesota School of Agriculture Specialists as a reasonable amount of supplemental water which was necessary to sustain crops, throughout most of the state, during periods of low or deficient precipitation. It was not developed to provide for supplemental water to increase crop yields as is presently the practice. Since the impacts of irrigation on surface water are greatest during the periods of lower water levels and flows it is reasonable to limit any appropriations which could adversely affect the flows and levels.

The limitations on applicable riparian acreage used in establishing the basis for determining the total allowable appropriation is based on considerations of the cumulative effects of withdrawals from surface waters along the entire reach of a watercourse or shoreline of a water basin. Under this limitation each party who owns or controls riparian 40 acre tracts or government lots, or portion thereof, abutting a watercourse or a basin is entitled to apply for withdrawal of a maximum of 20 acre feet of water for irrigation for each 40 acres of riparian lands. It is recognized

that if all of the parties owning or controlling all of the qualifying riparian acreages along a watercourse or basin were granted permits for irrigation and if they appropriated the maximum allowable amounts at the same time there would, in many instances, be insufficient water available to maintain any flows or levels in the surface water involved.

Although the limitations prescribed for irrigation use from surface water is set at a maximum limit of one-half acre foot (6 inches) per acre of qualifying riparian lands the actual amount allocated for irrigation purposes is subject to further restrictions and limits as prescribed in 6 MCAR § 1.5052 B.2. in order to protect instream uses and higher priority users.

Irrigation for wild rice paddies employs different water use practices, timing of withdrawal and partial return of appropriated water, than other agricultural withdrawal for crop irrigation and accordingly limitation on wild rice uses are less restrictive (6 MCAR § 1.5053 A.2.b.(7).). The water for wild rice paddies is withdrawn and contained in confined areas. Most of the water is withdrawn during spring and early summer when the levels and flows of surface waters are generally high. Water not utilized by the wild rice crop and not evaporated and transpired is generally returned to surface water sources during times when flows and levels in the surface water sources are low, in mid and late summer. This returned water is beneficial in maintaining flows and levels of the surface water at this time.

The practices employed in production of wild rice are therefore considered to meet the legislative provision of Minn. Stat. § 105.41, subd. 1.a. relating to appropriation and use during periods of high waters and flood flows. Therefore, the allocation of water based largely on climatic condition and best available technology is considered reasonable.

Subsection A.3. Well interference problems involving appropriation for irrigation.

This subsection is necessary to meet legislative provisions of Minn. Stat. § 105.41, subd. 1.a.:

> "The commissioner shall submit to the legislature by January 1, 1975, for its approval, proposed rules governing the alloca-

tion of waters among potential water users. These rules shall be based on the following priorities for appropriation and use of water:

First priority. Domestic water supply, excluding industrial and commercial uses of municipal water supply.

Second priority. Any use of water that involves consumption of less than 10,000 gallons of water per day. For purposes of this section "consumption" shall mean water withdrawn from a supply which is lost for immediate further use in the area.

Third priority. Agricultural irrigation, involving consumption in excess of 10,000 gallons per day, and processing of agricultural products.

Fourth priority. Power production, involving consumption in excess of 10,000 gallons per day.

Fifth priority. Other uses involving consumption in excess of 10,000 gallons per day."

"The commissioner shall not modify or restrict the amount of appropriation from a groundwater source authorized in a permit issued pursuant to section 105.44, subdivision 8, between May 1 and October 1 of any year, unless the commissioner determines the authorized amount of appropriation endangers any domestic water supply."

and Minn. Stat. § 105.416, subd. 3:

"The commissioner shall issue permits for irrigation appropriation from groundwater only where he determines that water supply is available for the proposed use without reducing water levels beyond the reach of vicinity wells constructed in accordance with the water well construction code, contained in the rules of the Minnesota state commissioner of health, MHD 217 to 222."

It is important to note that this section relates only to new or existing appropriations for irrigation and only in these circumstances where there are generally adequate supplies of ground water available but the problem is one of localized interference with domestic wells due to the proposed quantities and rates of pumpage. If the problem involves a proposal to appropriate water from ground water systems which have very limited supplies of available water to serve various needs the procedures of 6 MCAR § 1.5054 relating to water use conflicts apply.

Subsections A.3.a.(1). to (3). are necessary to provide adequate facts to allow the Commissioner to determine the effects of a proposed appropriation on domestic wells.

Subsection A.3.a.(4). establishes a procedure for notifying a proposed appropriator to resolve an interference problem through negotiation with affected domestic well owners before the formalized resolution process of subsection A.3.c. occurs and provides for further actions through a formalized resolution process if negotiations cannot be promptly resolved.

Subsection A.3.b. contains procedures to be followed in matters involving interference with domestic wells caused by water appropriation for irrigation under existing permits. This section is necessary to provide guidelines and standards to resolve complaints from domestic well owners after permits have been issued and in effect.

Subsections A.3.b.(1). through (3). establish necessary procedures for determining the validity of a well interference complaint.

Subsection A.3.b.(4). is necessary to provide a means to safeguard and promote health, safety and welfare of the domestic well owners in those circumstances where the domestic well owners would be deprived of a water supply necessary for basic human survival. This section is consistent with the legislative requirement of Minn. Stat. § 105.38 which establishes the controls of appropriation and use of waters of the state "in the best interests of the people of the state and for the purpose of promoting the public health, safety and welfare."

There is no specific legislative language in Minn. Stat. ch. 105 which states that the Commissioner may specifically restrict or cancel an existing permitted appropriation because of interference with domestic water supplies, prior to conducting a public hearing. However, the Commissioner maintains that such actions are necessary in order to adequately protect domestic water users. It should be noted that such restriction or cancellation actions are temporary actions and are intended only as emergency provisions to provide water for basic human needs until the matter has been resolved either through formalized settlement or appropriate hearing procedures. It would be

unreasonable to allow continued pumping by an irrigator if it is established that the irrigator is depriving a party of the basic water necessary for life. It is also important to note that the language says the Commissioner may restrict or cancel. This provision allows an appropriator to work out arrangements to furnish the basic domestic water supply necessary to affected parties without ceasing pumping where such cessation could result in serious crop damage or failure. If such water supplies were furnished during the period before a formal settlement was reached or a public hearing was held it would be unreasonable and unnecessary for the Commissioner to restrict or cancel the appropriation.

A further explanation of the specific legislative authority and circumstances under which the Commissioner may restrict or cancel existing appropriations is contained in the discussion of 6 MCAR § 1.5055.E.

Subsection A.3.c., Settlement, is necessary to provide a formalized procedure to resolve well interference problems affecting well owners when no agreement or solution is reached through the more informal actions prescribed in subsections A.3.a. and b.

Subsection A.3.c.(1). establishes standards which the Commissioner will follow in seeking resolution of the problem in a manner consistent with the statutory requirements. Existing laws contain 2 specific sections regarding the protection of domestic water supplies as follows:

> Minn. Stat. § 105.41, subd. 1a. "The commissioner shall not modify or restrict the amount of appropriation from a groundwater source authorized in a permit issued pursuant to section 105.44, subdivision 8, between May 1 and October 1 of any year, unless the commissioner determines the authorized amount of appropriation endangers any domestic water supply."
>
> Minn. Stat. § 105.416, subd. 3. "Issuance of new permits; conditions. The commissioner shall issue permits for irrigation appropriation from groundwater only where he determines that proposed soil and water conservation measures are adequate based on recommendations of the soil and water conservation districts and that water supply is available for the proposed use without reducing water levels beyond the reach of vicinity wells constructed in accordance with the water well construction code, contained in the rules of the Minnesota state commissioner of health, MHD 217 to 222."

These sections both mandate that the Commissioner provide a means of protecting domestic water users. However, in one section the language is more general and refers to"endangering a domestic water supply"and in the other section there is specific language which states "the commissioner shall not issue a permit if it reduces water levels beyond the reach of vicinity wells constructed in accordance with the water well construction code MHD 217 to 222."

In order to provide a consistent and reasonable application of this legislative language the Commissioner has developed procedures in subsections A.3.c.(1). (a). and c.(1).(b). which integrates both the adequacy of supply of existing domestic wells and the condition of the domestic wells as related to the state well construction standards, which are necessary in the interests of the well owners' health and the protection of ground water systems from contamination caused by poor construction.

The Commissioner maintains it would be unreasonable to require an existing irrigator to pay the costs of bringing a poorly constructed non-conforming well into compliance with state well construction standards since the poor construction condition is solely the responsibility of the domestic well owner. However, the necessity of providing an adequate supply of water when such supply would be endangered or when water levels would be reduced beyond "the reach of the vicinity wells" is a reasonable requirement which the legislature requires the Commissioner to provide for.

It has been advocated by some parties that the Commissioner should insert further conditions relating to "a reasonable effort to capture water by the domestic well owner" in these rules. The Commissioner maintains that establishment of such conditions would not be a reasonable exercise of his authority for the following reasons:

1. The imposition of "a reasonable effort to capture" provision would be an arbitrary action by the Commissioner since there is no technical basis for determining what a reasonable effort may be in a given circumstance because ground water occurs under greatly varying conditions of water pressure head, depth, and aquifer thickness throughout the state.

2. If a domestic well owner had an existing well which provided an adequate dependable supply over a number of years, without any supply problems, the well owner should not be penalized for not having a deeper well when such cost was not necessitated. It would be unreasonable and there is no legal authority for the Commissioner to require a domestic well owner to drill wells deeper than necessary.

The burden of proof in any instance is not on the domestic well owner but on the permittee or applicant as provided in Minn. Stat. § 105.45 as follows:

> "In all permit applications the applicant has the burden of proving that the proposed project is reasonable, practical and will adequately protect public safety and promote the public welfare."

The Commissioner's responsibility is to determine the facts in well interference disputes and to make decisions based on these facts. If the facts support a conclusion that an existing domestic water supply is adequate but such supply would be endangered or would be no longer available as a result of a permitted irrigation appropriation the Commissionr's actions should be considered reasonable and necessary.

In any well interference matters the Commissioner's decisions on resolution of the matter are subject to appeal through appropriate and applicable legal procedures.

Subsection B. Public Water Supplies.

This section is necessary to provide further guidelines and standards relating to appropriation for public water supplies. It requires additional specific facts not provided for in the general data requirement section of 6 MCAR § 1.5051. It is important to have facts on the different types of users who are supplied water and the amounts furnished for each type in order to address the requirements of Minn. Stat. § 105.41, subd. 1a. and § 105.416, subd. 3, relating to protection of domestic supplies and Minn. Stat. § 105.418 relating to conservation of public water supplies as follows:

> "During periods of critical water deficiency as determined by the governor and declared by order of the governor, public water supply authorities appropriating water shall adopt and enforce restrictions consistent with rules adopted by the commissioner of natural resources within their areas of jurisdiction to restrict lawn sprinkling, car washing, golf course and park irrigation, and other non-essential uses, together

with appropri[redacted]e penalties for failure to com[redacted] with the restrictions. The commissioner may adopt emergency rules pursuant to section 15.0412, subdivision 5 relating to matters covered by this section during the year 1977. Disregard of critical water deficiency orders, even though total appropriation remains less than that permitted, shall be adequate grounds for immediate modification of any public water supply authority's appropriation permit."

Subsection C. Water level maintenance for basins.

This section is necessary to provide information and procedures which are pertinent primarily to appropriation of water for water level maintenance of basins and are not provided for in 6 MCAR § 1.5051. It should be noted that appropriation of water from other sources to maintain levels in a particular basin may not generally be a wise use of the waters of the state and such use should only be allowed if there are detailed technical facts and studies which support the hydrologic practicality of the proposal and only if higher priority uses can be satisfied first.

Subsection D. Dewatering.

This section is necessary to provide additional supporting facts which justify the need for removing excess water in order to prevent unnecessary waste of water for various purposes. It is important to note that these provisions do not relate to dewatering which is accomplished by agricultural field tile and ditch systems as exempted in 6 MCAR § 1.5050 C.4.

Subsection E. Mining and processing of metallic minerals and peat.

This section is necessary to provide specific information and establish procedures which are applicable only to mining and which further supplement and complement Minn. Stat. § § 105.37 to 105.55 and Minn. Stat. § 105.64 which states:

> "Drainage or Diversion to Facilitate Mining. Subdivision 1. The commissioner of natural resources may grant permits for the drainage, diversion, control, or use of any waters under his jurisdiction when necessary for the mining of iron ore, taconite, copper, copper-nickel or nickel, wherever situated, as herein provided.
>
> Subd. 2. Application for such permit shall be made to the commissioner in such form as he shall prescribe by the owner of the iron ore, taconite, copper, copper-nickel or nickel deposits affected or by the owner of the right to mine the same. Except as otherwise herein provided, all matters pertaining to such

application, to the proceedings thereon, and to any permit issued thereon shall be governed by the provisions of sections 105.37 to 105.55 relating to applications and permits affecting waters, so far as applicable.

Subd. 3. A permit shall be granted hereunder only upon determination by the commissioner of the following conditions.

(1) That the proposed drainage, diversion, control, or use of waters will be necessary for the mining of substantial deposits of iron ore, taconite, copper, copper-nickel or nickel, and that no other feasible and economical method therefore is reasonably available;

(2) That the proposed drainage, diversion, control, or use of waters will not substantially impair the interests of the public in lands or waters or the substantial beneficial public use thereof except as expressly authorized in the permit, and will not endanger public health or safety;

(3) That the proposed mining operations will be in the public interest, and that the public benefits resulting therefrom will be sufficient to warrant the proposed drainage, diversion, or control of waters.

Subd. 4. In any case where the operations authorized by a permit hereunder may affect any public or private property not owned by the permittee, before proceeding with such operations, he shall acquire all rights or easements necessary therefor, shall pay or furnish security for the payment of all damages to such property that may result therefrom, and shall furnish such evidence of compliance with the provisions hereof as the commissioner may require. Neither the state nor any of its officers, agents, or employees shall incur any liability on account of any act or omission of the permittee, his agents or servants, under or in connection with any such permit.

Subd. 5. Notwithstanding any other limitations prescribed by law, every permit hereunder shall be granted for such term as the commissioner shall find necessary for the completion of the proposed mining operations, and he may allow and prescribe in the permit such time as he deems reasonable for the commencement of any operations or construction under the permit or the exercise of the rights granted thereby. The original term of the permit or the time allowed for the performance of any condition thereof may be extended by the commissioner for good cause shown upon application of the permittee. In any permit issued hereunder the commissioner may prescribe such conditions as he deems necessary and practicable for restoration of the waters affected to their former condition after completion of the mining operations or after expiration or cancelation of the permit, and may prescribe such other conditions as he deems necessary for protection of the public health, safety, and welfare, and may require the permittee to furnish a bond to the state, in such form and amount as the commissioner deems appropriate, as security for compliance with the conditions of the permit and all applicable provisions of law.

Subd. 6. Every permit issued hereunder shall be irrevocable for the term thereof and for any extension of such term except as follows:

(1) A permit may be modified or canceled by the commissioner at the request or with the consent of the permittee upon such conditions as the commissioner deems necessary for protection of the public interest;

(2) Subject to appeal in the manner provided by sections 105.37 to 105.55, a permit may be modified or canceled by the commissioner in case of any breach of the terms or conditions thereof or in case of any violation of law pertaining thereto by the permittee, his agents or servants, or in case the commissioner finds such modification or cancelation necessary to protect the public health or safety, or to protect the public interests in lands or waters against substantial injury resulting in any manner or to any extent not expressly authorized by the permit, or to prevent substantial injury to persons or property resulting in any manner or to any extent not so authorized, upon at least 30 days written notice to the permittee, stating the grounds of the proposed modification or cancelation and giving the permittee an opportunity to be heard thereon;

(3) By written order to the permittee the commissioner may forthwith suspend operations under a permit if he finds it necessary in an emergency to protect the public health or safety or to protect public interests in lands or waters against imminent danger of substantial injury in any manner or to protect persons or property against such danger, and may require the permittee to take any measures necessary to prevent or remedy such injury; provided that no such order shall be in effect for more than 30 days from the date thereof without giving the permittee at least ten days' written notice of such order and an opportunity to be heard thereon.

Subd. 7. This section shall not amend, supersede, or repeal any existing law, but shall be supplementary thereto."

Subsection E.1. a . through e . require submission of factual data which may not be generally provided for in 6 MCAR § 1.5051 but which are necessary for adequate evaluation of and decisions on mining appropriation proposals which usually involve a number of varying and complex aspects of water use and related land uses.

Subsection E.2. contains guidelines and standards to be used by the Commissioner in allocating water for mining purposes.

Subsection E.2.a. is necessary to provide for maximum use of available water supplies in mining areas as a water conservation measure, a land use conservation

measure and to reduce, whenever practical and feasible, the need for construction of surface water impoundments which could adversely affect natural drainage systems and environmental values in mining areas. Since surface mining practices inherently require the disruption of substantial amounts of land and natural environment the Commissioner should, in the public interest, whenever possible require that water appropriation use practices are conducted in a manner which does not further disrupt additional lands and natural environment.

Subsection E.2.b. prescribes a priority listing of sources of water supply for mining appropriations which is intended to maximize use of readily available water from areas already affected by mining and minimizing the amount of water required to be used from relatively undisturbed surface and ground water sources. It is recognized that, in the implementation of the provisions of E.2.a. and b., the Commissioner will not require unreasonable use of water from sources in disturbed past or present mining areas when such use would be prohibited due to lack of legal ownership or control of the involved mining areas and when such authority could not be legally obtained.

Subsection E.2.e. is necessary to provide, whenever reasonable and practical, that excess water discharged from mining activities will be utilized in a beneficial manner to help augment low flows in watercourses which are located in reasonable proximity to the mining area from which excess waters are being discharged. It is important to note that the language is not mandatory but states that the Commissioner may require such measures of the permittee or applicant. In each instance the requirement will involve careful review and analysis of topographic and hydrologic conditions, evaluation of distances involved in transporting the excess water, and will be subject to a test of the reasonableness and practicability of such actions. The Commissioner maintains that this provision is reasonable and necessary and is consistent with the laws relating to conservation and wise use of waters and maintenance of instream flows. Since most surface mining activities result in considerable land disturbance and alterations of natural drainage the Commissioner must control such activities in a manner which will mitigate such disturbances.

6 MCAR § 1.5054 Water Use Conflicts.

This section is necessary to provide procedures and standards to guide the Commissioner's decisions in allocation of waters of the state in those areas when the amounts of waters of the state which are reasonably available for use are inadequate to meet the competing demands of the users. This situation is defined as a water use conflict. This section is needed to fulfill the requirements of Minn. Stat. § 105.405, subd. 1 which states:

> "The commissioner shall develop and manage water resources to assure a supply adequate to meet long range seasonal requirements for domestic, municipal, industrial, agricultural, fish and wildlife, recreational, power, navigation, and quality control purposes from surface or ground water sources."

It is also to meet the general provisions of Minn. Stat. § 105.41, subd. 1.a. relating to priorities of use, listed previously in the discussion on 6 MCAR § 1.5053 A.3., and the purpose and intent of Minn. Stat. §§ 105.38, subd. 2 and 105.39, subd. 1 previously listed in this statement of need.

Subsection B.1. is necessary to clarify the basic concept of water law under which the appropriate sections of Minn. Stat. ch. 105 relating to appropriation of waters of the state are administered. Minnesota water appropriation law is based on the English common law doctrine as modified by the Reasonable Use Theory and the Riparian Doctrine and is further modified by the specific provisions of Minn. Stat. § 105.38 and pertinent sections of Minn. Stat. ch. 105. Based on this body of legal practice and the statutory laws which modify that body of law the Commissioner maintains that no appropriation permit granted by the Commissioner guarantees the permittee an absolute priority of use or appropriation. This is further amplified by the provisions of Minn. Stat. § 105.44 subd. 9 as follows:

> "Limitations on permits. Except as otherwise expressly provided by law, every permit issued by the commissioner of natural resources under the provisions of Minnesota Statutes 1949, Sections 105.37 to 105.55, or any amendment thereof, shall be subject to the following:
>
> (1) Cancellation by the commissioner at any time if deemed necessary by him for any cause for the protection of the public interests;

(2) Such further conditions respecting the form of the permit or the cancellation thereof as the commissioner may prescribe and insert in the permit;

(3) All applicable provisions of law existing at the time of the issuance of the permit or thereafter enacted by the legislature;

(4) Any applications granted under subdivision 8, or deemed granted under the provisions thereof, shall likewise be subject to the foregoing provisions of this subdivision, and shall be subject also to cancellation by the commissioner upon the recommendation of the supervisors of the soil and water conservation district wherein the land be be irrigated is located."

Subsection B.2. is necessary to set the basic standards which the Commissioner will follow in analyzing and evaluating permits or applications under a water use conflict situation.

Subsection B.2.a. is based on the provisions of Minn. Stat. § 105.45 which states:

"In all permit applications the applicant has the burden of proving that the proposed project is reasonable, practical, and will adequately protect public safety and promote the public welfare."

Subsection B.2.b. is based on the provisions of Minn. Stat. § 105.38 that:

"In order to conserve and utilize the water resources of the state in the best interests of the people of the state, and for the purpose of promoting the public health, safety and welfare, it is hereby declared to be the policy of the state: . . . The state, to the extent provided by law from time to time, shall control the appropriation and use of surface and underground waters of the state."

It is also based on provisions of Minn. Stat. § 105.405, subd. 1 listed in the introductory explanation of this section and Minn. Stat. § 105.45 which states in part:

"In granting a permit the commissioner may include therein such terms and reservations with respect to the amount and manner of such use or appropriation or method of construction or operation of controls as appears reasonably necessary for the safety and welfare of the people of the state."

Subsection B.2.c. provides for the analysis and evaluation of alternative sources of water supply in areas of water use conflicts. This is necessary to allow consideration of all possible means of resolving a conflict situation. An example of an alter-

native water supply is the establishment of a rural water user district as provided for in Minn. Stat. ch. 110A.

Subsections B.3. and 4. set procedures for Commissioner's actions based on evaluation and analysis of the conflict situation. Subsection B.4.a. sets the standards and criteria for resolving conflicts between existing and proposed users who are in the same priority class. This is accomplished by development of a plan which provides for proportionate distribution of the available water among all users in the same priority class.

Subsection B.4.a.(4). prescribes procedures of the Commissioner if a plan provided by the existing and proposed users is not practical or reasonable.

Subsection B.4.b. provides for a systematic allocation of available water based on priorities established by the legislature.

Subsection C. provides that any actions taken by the Commissioner pursuant to 6 MCAR § 1.5054B. shall be subject to notice and opportunity for public hearing to assure that all involved parties have an adequate means of appealing the Commissioner's decisions.

6 MCAR § 1.5055 Provisions and conditions of permits.

This section is necessary to provide an explanation of the basic provisions which will apply to water appropriation permits. It is intended to complement, supplement and further explain the applicable statutory provisions of Minn. Stat. ch. 105 relating to Term (A), Monitoring (B), Reporting (C), Changes to permits (D), Limitations on permits (E), and Termination (F).

Subsection A. establishes 2 classes of appropriation permits, temporary permits which involve appropriations for only short periods of time and long term permits which extend over a considerable length of time. The statutory authority for prescribing the terms of permits is contained in Minn. Stat. § 105.44, subd. 9 and § 105.45 which have previously been listed in this statement of need.

Subsections B.and C.are further extensions of Minn. Stat § 105.41, subd. 4 and 5 as follows:

> "Subd. 4. It shall be unlawful for the state, any person, partnership, or association, private or public corporation, county, municipality, or other political subdivision of the state to appropriate or use any waters of the state, surface or underground, without measuring and keeping a record of the quantity of water used or appropriated as herein provided. Each installation for appropriating or using water shall be equipped with a device or employ a method to measure the quantity of water appropriated with reasonable accuracy. The commissioner's determination of the method to be used for measuring water quantity shall be based upon the quantity of water appropriated or used, the source of water, the method of appropriating or using water, and any other facts supplied to the commissioner.
>
> Subd. 5. Records of the amount of water appropriated or used shall be recorded for each such installation and such readings and the total amount of water appropriated shall be reported annually to the commissioner of natural resources on or before February 15 of the following year upon forms to be supplied by the commissioner.
>
> For the purpose of improving the state's water use data collections and dissemination system, there is established an annual water appropriation processing fee of $5 for each water appropriation permit in force at any time during the year. The fee is payable regardless of the amount of water appropriated during the year. The fee shall be paid at the time of making the annual report required by this section. Failure to pay the fee is sufficient cause for revoking a permit. No fee may be imposed on any state agency, as defined in section 16.011, or federal governmental agency holding a water appropriation permit."

Minn. Stat. § 105.41, subd. 2 and 3 include additional requirements for reporting as follows:

> "Subd. 2. . . The owner or person in charge of every installation for appropriating or using surface or underground water, whether or not under permit, shall file with the commissioner at such time as the commissioner determines necessary to the statewide water information system, a statement of the location thereof, its capacity, the purpose or purposes for which it is used, and such additional information that the commissioner may require, on forms provided by the commissioner.
>
> Subd. 3. The commissioner may examine any installation which appropriates or uses surface or underground water, and the owner of such installation shall supply such information concerning such installation as the commissioner may require."

Subsection B.1.b. establishes a requirement that flow meters be used whenever the appropriation rate is 1000 gallons per minute or greater unless justification is provided to show why flow meters cannot be practically used. This provision is intended to fulfill the requirements of Minn. Stat. § 105.41, subd. 4, without creating an unnecessary burden on users appropriating at lower rates, but is necessary to insure accurate records from users appropriating at large rates. It is recognized that some users appropriating at large rates (1000 gpm or more) may not be able to use flow meters because of the method of water withdrawal, such as withdrawal through diversion channels, the conditions of pumping, such as wells with sand problems, or other technical difficulties. In these instances the Commissioner shall allow other means of measurement providing reasonable accuracy based on justification provided by the permittee. The Commissioner maintains that such requirements are reasonable.

Subsection D. establishes procedures and conditions of permits which further explain legislative provisions of Minn. Stat. ch. 105 relating to amendments or transfers or assignments of permits.

Subsection D.1.a. relates to requests for amendments to permits by the permittee. It defines major modifications and requires written permission for such modification. Subsection D.1.a.(1). provides procedures for requesting amendments and establishes

procedures the Commissioner shall use in reviewing such requests by referencing the procedures for Commissioner's actions outlined in 6 MCAR § 1.5050 - 1.5055.

The authority of this section is in Minn. Stat. § 105.41, subd. 2 as follows:

> "It shall be unlawful for the owner of any installation for appropriating or using surface or underground water to increase the pumping capacity or make any major modification in such installation without the written permit of the commissioner previously obtained upon written application therefor to the commissioner."

Subsection D.1.b. establishes procedures the Commissioner will follow in the event the Commissioner initiates action to amend an existing permit. The Commissioner's authority to amend permits is contained in Minn. Stat. § 105.44, subd. 9 and § 105.45.

Subsection D.2. establishes procedures and conditions for transfers or assignments of permits from an authorized permit holder to another party. This subsection further explains the legislative provisions of Minn. Stat. § 105.41, subd. 6 which states:

> "Any appropriation or use permit may be transferred if the permittee conveys the real property where the source of water is located to the subsequent owner of the real property. The subsequent owner shall notify the commissioner of natural resources immediately after an appropriation or use permit is transferred pursuant to this section."

Subsection D.2.d. is necessary to allow the Commissioner to maintain proper records of the assignment and to insure that the assignee will understand the terms of the assigned permit and will be willing and able to assume the responsibilities required as conditions of the assigned permit.

Every appropriation permit issued by the Commissioner since 1950 has contained the provision that "No permit is assigned except with the written consent of the commissioner." The Commissioner maintains that this provision is a reasonable exercise of the authorities conferred by Minn. Stat. § 105.44, subd. 9 and § 105.45.

Subsection E., limitations on permits, relates directly to the provisions of Minn. Stat. § 105.44, subd. 9 regarding cancellation and conditions of permits which state :

"Except as otherwise expressly provided by law, every permit issued by the commissioner of natural resources under the provisions of Minnesota Statutes 1949, Sections 105.37 to 105.55, or any amendment thereof, shall be subject to the following:

(1) Cancellation by the commissioner at any time if deemed necessary by him for any cause for the protection of the public interests;

(2) Such further conditions respecting the term of the permit or the cancellation thereof as the commissioner may prescribe and insert in the permit;

(3) All applicable provisions of law existing at the time of the issuance of the permit or thereafter enacted by the legislature;

(4) Any applications granted under subdivision 8, or deemed granted under the provisions thereof, shall likewise be subject to the foregoing provisions of this subdivision, and shall be subject also to cancellation by the commissioner upon recommendation of the supervisors of the soil and water conservation district wherein the land to be irrigated is located."

It also relates to the portion of Minn. Stat. § 105.45 which provides that:

"In granting a permit the commissioner may include therein such terms and reservations with respect to the amount and manner of such use or appropriation or method of construction or operation of controls as appears reasonably necessary for the safety and welfare of the people of the state."

Although there is no specific legislative authority in Minn. Stat. §§ 105.38 - 105.55 relating to emergency actions by the Commissioner to cancel or restrict permits without prior hearing, there is a requirement in Minn. Stat. § 105.64, subd. 6.(3). relating to drainage or diversion of water to facilitate mining which contains specific language governing emergency actions pertaining to permits for mining as follows:

"By written order to the permittee the commissioner may forthwith suspend operations under a permit if he finds it necessary in an emergency to protect the public health or safety or to protect public interests in lands or waters against imminent danger of substantial injury in any manner or to any extent not expressly authorized by the permit, or to protect persons or property against such danger, and may require the permittee to take any measures necessary to prevent or remedy such injury; provided, that no such order shall be in effect for more than 30 days from the date thereof without giving the permittee at least ten days' written notice of such order and an opportunity to be heard thereon."

The Commissioner contends that the explicit language allowing suspension of operations under the section pertaining to mining is implied as legislative intent in providing for reasonable administration of other sections of Minn. Stat. ch. 105 under which similar emergency actions might be necessary.

Notwithstanding this contention the Commissioner maintains that there is adequate authority in Minn. Stat. § 105.44, subd. 9 to allow cancellation or restriction of permits, during an interim period until a public hearing is held. Water appropriation permits issued by the Commissioner since 1950 have contained a specific provision which states:

> "This permit may be terminated by the commissioner, without notice, at any time he deems it necessary for the conservation of the water resources of the state, or in the interest of public health and welfare, or for violation of any of the provisions of this permit, unless otherwise provided in the Special Provisions."

The Commissioner has no records indicating any arguments relating to this provision by any past applicants or permittees and the Commissioner maintains that 6 MCAR § 1.5055E. is a necessary and reasonable provision in order to protect public health, safety and welfare.

Subsection F. outlines the conditions under which a permit may be terminated as related to Minn. Stat. § § § 105.44, 105.45 and 105.46 and also provides that terminations of permits issued in conjunction with mining operations pursuant to Minn. Stat. § 105.64 shall be subject to the specific requirements of Minn. Stat. § 105.64, subd. 6.

6 MCAR § 1.5056, Miscellaneous provisions.

This section is necessary to provide information, procedures and requirements to satisfy provisions of Minn. Stat. ch. 105 not otherwise specifically addressed in other sections of the rules.

Subsection A. establishes procedures and requirements to allow processing and approval of certain water appropriation permits at the local level by municipal, county or regional governments. It is intended to satisfy part of the provisions of Minn. Stat. § 105.41, subd. 1.b. as follows:

> "Permits for more than the minimum amount but less than an intermediate amount to be specified by the commissioner by regulation shall be processed and approved at the municipal, county, or regional level based on regulations to be established by the commissioner by January 1, 1977. The regulations shall include provisions for reporting to the commissioner the amounts of water appropriated pursuant to local permits."

Since the proposed rules will provide the first official policy directives for supplementing and complementing the pertinent water appropriation sections of Minn. Stat. ch. 105 the Commissioner feels that the development of a process for local action on permits should proceed in a conservative fashion for several reasons:

1. Although the Commissioner has exercised considerable policy authority based on the laws prior to establishment of these rules, there is a need for development of further experience under the rules when promulgated in order to fully test the applicability and scope of the rules. Delegation of authority to local governments for control of relatively large amounts of appropriation would not be practical until there is adequate experience with the new rules and any problems related to them.

2. The determination of what constitutes an intermediate amount below which the local government should be given authority is difficult to determine since the magnitude of the amount of appropriation in itself is not the only consideration involved. In some instances relatively small amounts of appropriation may have a great impact such as in areas where there are existing or probable water use conflicts which require complex hydrologic analysis and evaluation.

In other instances relatively small amounts of water appropriation may involve

significant environmental effects which require detailed environmental analysis and development of appropriate measures and permit conditions. This process requires considerable technical expertise and experience which will likely in time be developed by local governments through training and administrative experience but to the Commissioner's knowledge is not generally available at this time to most local governments.

3. For many areas of the state adequate hydrologic information is not available to readily assess the impact of the appropriation. It would be costly for local units of governments to conduct hydrologic studies, especially when these studies extend beyond their boundaries.

4. There is no provision to provide local governments with funding assistance to develop the administrative and technical knowledge necessary to exercise adequate control of water appropriation permits and there have been no state funds allocated to the DNR to provide local governments with the required level of training and knowledge required.

For these reasons the Commissioner proposes establishment of the amount of water appropriation which could be administered at the local level at an amount not to exceed 3.6 million gallons per year, which is equivalent to an average daily appropriation of 10,000 gallons per day. The Commissioner feels this amount is a reasonable beginning amount over which local governments could assume control without encountering major problems or entailing substantial costs.

Subsection A.1. is needed to provide guidance to local governments in development of an adequate water appropriation planning process which will allow the local government to better administer local permits. It is not inconsistent with the legislative intent of Minn. Stat. § 105.403 in respect to the cooperative aspect of water appropriation management planning and also relates directly to the requirements of Minn. Stat. § 105.41, subd. 1.a. These legislative provisions are as follows:

"The commissioner of natural resources, in cooperation with other state and federal agencies, regional development commissions, the metropolitan council, local governmental units, and citizens, shall prepare a statewide framework and assessment water and related land resources plan for presentation to the legislature by November 15, 1975, for its review and approval or disapproval."

"No permit shall be issued under this section unless it is consistent with state, regional, and local water and related land resources management plans, provided that regional and local plans are consistent with statewide plans."

Subsections A.2. - 5. are necessary to provide a formalized procedure for effectuating and implementing a local permit program consistent with the laws and these proposed rules.

Subsection B, Water Conservation, is necessary to partially fulfill the legislative provisions of Minn. Stat. § 105.39, subd. 1 which states:

"The commissioner shall devise and develop a general water resources conservation program for the state. The program shall contemplate the conservation, allocation, and development of all the waters of the state, surface and underground, for the best interests of the people. The commissioner shall be guided by such program in the issuance of permits for the use and appropriation of the waters of the state."

Although this subsection does not provide for a detailed water conservation program it does provide for consideration and application in permits of water conservation concepts and practices which would be part of any detailed statewide water conservation program.

Subsection C, Abandonment of wells, is necessary to meet the requirements of Minn. Stat. § 105.51, subd. 3 which provides that:

"It shall be unlawful for the owner of any well having a casing six inches or more in inside diameter to abandon such well, or to cover or otherwise render the same inaccessible for inspection, or to permanently remove the pumps therefrom without notifying the commissioner of natural resources and complying with his recommendations relating thereto. The commissioner may make such recommendations and impose such conditions as he may find advisable in the public interest. The commissioner or his authorized agent shall be granted access at any reasonable time to inspect the site of any such well that has been abandoned, or for which notice of abandonment has been given under this subdivision."

Further legislative authority is provided in Minn. Stat. § 105.44, subd. 9 and § 105.45 in respect to protection of the public interests, public safety and welfare. The abandonment procedures are required to be consistent with the provisions of Minn. Department of Health rules, 7 MCAR § 1.218 C, Abandonment of wells, as follows:

> "Any water well which is to be abandoned must be abandoned in accordance with these rules. The owner of a well, which is no longer being used, will be ordered to sample the well and to disinfect or otherwise pump or remove the contamination before the well is plugged. If a well provides a potential or actual source of contamination for the aquifer, the commissioner may order that the well be permanently plugged and abandoned.
>
> 1. Temporary.
>
> a. Prior to placement into service or when temporarily removed from service, the well shall be sealed with a watertight steel cap. A well removed from service and not permanently abandoned may be temporarily abandoned on forms provided by the Department.
>
> b. The well shall be maintained whereby it is not a source or channel of contamination when not in service.
>
> c. Until a well is permanently abandoned by sealing procedures, all provisions for protection of the water against contamination and pollution and for maintaining satisfactory sanitary conditions around the well shall be carried out to the same extent as though the well were in routine use.
>
> 2. Permanent.
>
> a. General. A well that is to be permanently abandoned shall be disconnected from the system and the hole filled to prevent contaminating materials from entering the water-bearing ground formations. Concrete or cement grout shall be used for sealing material; however, if the well is so large that the use of these materials is not practical, the filling materials should be selected so as to restore natural conditions as nearly as possible. Neat cement grout or concrete as defined in 7 MCAR § 1.220C. (grouting) and 7 MCAR § 1.210C.13. are satisfactory for filling parts of wells in rock formations. Sand and heavy drilling fluid may be used in sand and gravel sections of wells.
>
> b. All materials, debris and obstructions that may interfere with sealing operations shall be removed from the well. Liner pipe shall be removed or perforated when necessary to assure placement of an effective seal. The administrative authority will be consulted for instruction in case of abandonment of a contaminated well or where there is a question of proper procedure.

c. All casing and screen may be salvaged except casing that has been cemented in palce. The well shall be filled with appropriate sealing materials as described in 7 MCAR § 1.218C.1. prior to removal of the casing.

d. The top of the hole shall be filled with 10 feet of cement or concrete grout to within 2 feet of the land surface. Casing remaining in the hole shall be cut off at least 2 feet below the surface. The remaining top 2 feet of hole shall be filled with native top soil.

e. An abandoned well shall be filled and sealed by one of the following methods in accordance with the materials penetrated, in such a manner as to prevent it from acting as a channel for pollution. A report of the method of sealing shall be filed with the commissioner on water well record forms provided:

(1) A well in unconsolidated deposits shall be filled with clean sand and puddled clay, neat cement grout or concrete grout to provide a permeability no greater than the natural condition.

(2) The section of a well in a cavernous or creviced rock (such as cavernous limestone or basalt lava rock, creviced granite, etc.) shall be filled with concrete or neat cement grout or alternative layers of concrete or neat cement grout, gravel or stone aggregate. The filling shall be completed at the top by a layer of neat cement grout or concrete grout extending at least ten feet (10 ft.) into the above overlying formation and finished as provided in 7 MCAR § 1.218 C.2.

(3) When concrete, cement grout, puddled clay or heavy drilling fluid is used for sealing an abandoned well, it shall be inserted in the well through a grout pipe from the bottom of the well upward to the surface under pressure and in one continuous operation.

(4) Test wells shall be sealed to prevent the well from being a channel for the vertical movement of water and a source of contamination to the ground water supply in accordance with well abandonment provisions of 7 MCAR § 1.218 C.

(5) The flow in a flowing well shall be confined, if possible and the well filled in accordance with well abandonment provisions of 7 MCAR § 1.218C.

f. The owner shall be responsible for the permanent sealing of an abandoned well except:

(1) As mutually agreed upon in a written contract between the owner and licensee and in accordance with these rules to protect the ground water aquifer.

(2) When the licensee improperly locates, constructs, or completes the well or fails to meet the conditions of his contract; in which case the licensee shall be responsible for the sealing of the well.

g. A licensee shall permanently abandon any well that he removes from service in accordance with 7 MCAR § 1.218C. and shall report such abandonment to the commissioner. A licensee shall report to the commissioner any unsealed abandoned water wells."

Subseetion D.,Field investigations, explains the procedures and conditions regarding field inspections of water appropriations by the Commissioner.

The authority of this section is contained in several sections of the law as follows:

Minn. Stat. § 105.39, subd. 2: "The commissioner is authorized to cause to be made all such surveys, maps investigations, and studies of the water resources and topography of the state as he may deem necessary to provide the informaiton to formulate a program and carry out the provisions of sections 105.37 to 105.55."

Minn. Stat. § 105.41, subd. 3: "The commissioner may examine any installation which appropriates or uses surface or underground water, and the owner of such installation shall supply such information concerning such installation as the commissioner may require."

Minn. Stat. § 105.44, subd. 10: "The commissioner shall establish pursuant to rules adopted in the manner provided by chapter 15, a schedule for field inspection fees which shall include actual costs related to field inspection such as investigations of the area affected by the proposed activity, analysis of the proposed activity, consultant services, and subsequent monitoring, if any, of the activity authorized by the permit.

Except as provided below, the commissioner may not issue a permit until all fees required by this section relating to the issuance of a permit have been paid. The time limits prescribed by subdivision 4, do not apply to an application for which the appropriate fee has not been paid. Field inspection fees relating to monitoring of any activity authorized by a permit may be charged and collected as necessary at any time after the issuance of a permit. No permit application or field inspection fee may be refunded for any reason, even if the application is denied or withdrawn. No permit application or field inspection fee may be imposed on any state agency, as defined in section 16.011, or federal governmental agency applying for a permit."

Existing rules governing permit fees are contained in 6 MCAR § 1.5000.

Subsection E. provides a procedure for assuring that applicants or permittees will be given an opportunity to obtain applicable sections of water appropriation laws or synopsis of such laws when they exist. It is intended as a public service to provide a better understanding of the permit process and requirements.

6 MCAR § 1.5057. Water appropriation and use management plans.

This section is intended to encourage and support the development of water appropriation management planning which is a necessary part of any overall state, regional or local comprehensive water management effort. It sets general parameters to be considered in establishing areas for planning and prescribes basic requirements and contents of water appropriation management plans. It is not intended to supercede, replace or conflict with any ongoing statewide water planning effort but is considered necessary to provide advice and directive of water appropriation management planning efforts consistent with these rules and the laws in Minn. Stat.§§ 105.403 and 105.41, subd. 1.a. which are listed elsewhere in this statement of need.

CONCLUSION.

The proposed water appropriation rules provide a systematic compendium of existing laws, policies and procedures relating to the appropriations and use of waters in Minnesota. They represent an effort to explain, clarify and further effectuate the various legislatively enacted portions of Minn. Stat. ch. 105 which were incorporated into law at various times during 1947, 1955, 1957, 1969, 1973, 1974, 1975, 1976, 1977, and 1978.

The proposed rules are structured in a manner which provides for a sequence of procedures, policies and requirements and actions to guide water appropriation permit applicants and permittees and the general public and the Commissioner in administration of the comprehensive water appropriation law of the state.

The Commissioner maintains that these proposed rules, prepared after considerable opportunity for public participation and meeting with interested or concerned parties, are necessary and reasonable and in substantial compliance with legislative intent.

Appendix A

ATTACHMENT 2

We have reviewed a number of estimates of both "public supply" and "residential" water use and have concluded that the 115 gallons per capita per day figure (used as a basis for the domestic water use-permit exemption) is adequate and should not be increased at this time.

Following is a list of sources which substantiate this conclusion:

1. "Domestic Use from Central Systems". (Appendix C-3, Nationwide Analysis Report, 1975, U.S. Water Resources Council).

   Source of Data: Original detailed municipal survey data on which the U.S.G.S. based its bulletin 676, "Estimated Use of Water in the United States in 1970".

Use Estimates: (Domestic-Central Systems)		
75.93 gpcd	ASA 701	(most of Minnesota is in this region)
83.61 gpcd	ASA 401	(several NE Mn. counties - L. Superior Region)
102.84 gpcd	ASA 901	(Red River Valley falls in this region

Comments:

** "Domestic central" is defined as the residual of total public supply less industrial and commercial uses- this implies that "line losses" and municipal uses such as firefighting are included in the domestic central estimate, thus overstating actual residential use.

** Residential per capita water use is treated as remaining constant to the year 2000. The N.W.A. assumes that efficiency in water use will be offset by an increase in water-using home appliances.

2. "Domestic Use from Non-Central Systems" (Appendix C-2, Nationwide Analysis Report, 1975, U.S. Water Resources Council).

   Source of data: Prepared by the U.S. Department of Agriculture for the W.R.C.

Use Estimates: (Typical Rural Domestic Use)	
20 gpcd	exterior uses
44 gpcd	interior uses
2 gpcd	waste (leakage, etc.)
66 gpcd	total rural domestic (running water under pressure)

10 gpcd (without running water under pressure)

A breakdown by type of use of the 66 gpcd is:

Exterior - 20 gpcd:	lawn and plant watering	30,000 gal/res/year
	vehicle washing	750 gal/res/year
	swimming pools	18,500 gal/res/year
Interior - 44 gpcd:	dishwashing	10 gal/load
	laundering	30 gal/load
	housecleaning	
	cooking & food preparation	
	garbage disposal	5 gal/load
	air conditioning	
	personal uses:	
	toilet flushing	6 gal/flush
	lavatory	1 gal/use
	bathing	20/40 gal/bath
Miscellaneous - 2 gpcd:		
	waste-leaking toilet	
	dripping faucets	
	pipe, gasket leaks	

Comment: Unlike domestic central use, it is assumed that per capita rural domestic use rates are expected to increase (from 66 gpcd in 1975 to 75 gpcd in 1985 gpcd in 2000). This, however, is still well within the DNR estimate.

3. The Second National Water Assessment by the U.S. Water Resources Council, April 1978, Part III: Functional Water Use Source: 1975 Nationwide Analysis (#'s 1 and 2).

Use estimates: - National Average -

Real average daily withdrawals (domestic) = 107 gpcd*

87 gpcd	central systems
66 gpcd	non-central systems

*this must include such uses as line losses and municipal use

List of typical domestic uses: (p. 42)

Source: Handbook of Environmental Control
Southwest Water Works Journal V. 46, #12, p. 18

Types of Household Use	Typical Daily Use gpd per family	gpd per capita
Drinking & Kitchen Water Use	8	2.00
Dishwasher (3 loads per day)	15	3.75
Toilet (16 flushes per day)	96	24.00
Bathing (4 baths or showers 1 day)	80	20.00
Laundering (6 loads/week)	34	8.50
Automobile washing (2/months)	10	2.50
Lawn Watering & swimming pools (180 hours/year)	100	25.00
Garbage Disposal (1% of other uses)	3	0.75
Total	346	86.50

4. Upper Mississippi River Basin Commission

   Water Resources Subregion Plan - Reference Handbook first draft, February 1979.

   Sources: Second National Water Assessment (#3 above) and UMRBC, 1975 National Water Assessment, Upper Mississippi and Souris-Red-Rainy Regions

Use estimates: (domestic)

66 gpcd	non-central use
105 gpcd	central "withdrawal"
85 gpcd	central "delivery to household"*

*difference is made up of delivery losses, fire protection, street washing, city maintenance, etc.

5. U.S.G.S., Estimated Use of Water in the United States in 1975 (G.S. Circular #765)

   Water Use for all municipal supplies - State of Minnesota 135 gpcd - all public supplies (including commercial and industrial uses) based upon U.S.G.S.'s estimates for domestic, industrial and commercial uses: domestic and "losses" = 61% of total use, therefore "domestic and loss" per capita use is 82.35 gpcd.

6. MDH estimates (Handbook of Environmental Control) estimates in 50 gpcd range.

7. "Water Quantity Requirements for Public Supplies and Other Uses" U.S.G.S., Raston, Va., Water Resources Division, J.C. Kammerer, in Handbook of Water Resources and Pollution Control". Van Nostrand Reihold Co., N.Y., 1976 pp. 44-83

   "Per capita use of water from public supplies nationwide averaged 165 gallons per day, including an estimated 75 gallons per person per day for residential uses."

8. Water Conservation in Housing Assistance Programs"
Proposed Report of Task Force #9
(programs administered by VA, FmHA and HUD)
(p.2) "Average daily water useage in the nearly 73 million U.S. residences is estimated at 70 gallons per person".

9. Consumer Reports, May 1978
"Water: Time to Start Saving"?
Marin County, California Estimate:
"Before the drought, 3-person family used an average of 320 gallons per day" (106 gallons per capita - in an affluent suburban area)
(drought "allotments" - 129 gallons for family of 3, or 43 gallons p.c.).

10. Water Planning Board Estimates - Minnesota (a) MDH - Municipal Water Use based on the last municipal water survey (water used) and "population" and "population served" estimates, an average per capita rate was calculated which includes all uses (including commercial, institutional, and industrial uses on public supplies) of 115 gallons per capita per day, and (b) MEA - Residential Water Use Forecasting Model based upon "residential" use portions of municipal supplies for 35 municipal systems for which such data was available, and "population" or "population served" data.- mean daily use per household was 72 gallons per capita.

Since central domestic uses are estimated in a range of 75-100 gpcd (with an accepted average of 85 gpcd) and rural domestic uses lower at 66 gpcd, and projected per capita increases are not substantial, it is reasonable (or even generous) to leave the theoretical limit for permit requirement purposes at 115 gpcd.

The only estimate of maximum daily use was in the Handbook of Water Resources and Pollution Control source #7)
"Maximum (residential) daily use was between 1.1 and 2.9 times the average daily use."
DNR permits based on 115 gpcd x 24 persons = 2760 gpd (avg) x 2.9 (max. use) = 8004 gpd (max)-
The DNR permit-appropriation limit of 10,000 gpd maximum also seems reasonable.

Water use in a municipality falls into four general categories: residential, institutional, commercial, and industrial. Water meters record the total amount of water pumped into a community and often, but not always, individual meters record individual consumption. Water withdrawals on the municipal system are all considered consumptive use when reported to Minnesota Department of Health. In other areas of water studies, this assumption cannot be made. The distinction between withdrawal and consumption, especially in an era of water shortages, also indicates that what was previously considered wastewater must be quantified because it has acquired a greater importance to those people who need water.

The number of people served by a supply and average daily consumption figures are recorded on the sanitary surveys at the Minnesota Department of Health. The population which the supply serves may be higher or lower than the census population. In calculating the community and state daily per capita consumption averages, the census counts were used if "population served" estimates were unavailable. The water consumption figures are those values most recently reported by each supply's operator (1975-77). Some of the smaller supplies do not meter their water but their populations are included in the state total of 3,097,520 people estimated to be served with municipal water. The total municipal water used daily in Minnesota amounts to 356,546,975 gallons. Thus, the daily average per capita consumption is 115 gallons.

How does this value compare to other estimates of municipal consumption? This statewide average falls well within the range of 60-300 gallons per capita per day (gpcd) as reported by the New York State Department of Health .[6] In ten years, municipal water supply consumption has increased almost 100 million gallons daily. The state's average per capita use of water in 1965 was about 108 gallons per day. A rise in consumption was predicted to reach 118 gpcd by the year 2020. In 1977, that value is not far from being realized. Our attention is immediately directed to an investigation and identification of excessive use of water.

The calculation of average daily water consumption was made for each municipality with special attention paid to very high (>300 gpcd) rates. A questionnaire was sent to the thirteen communities whose water use exceeded 300 gpcd to provide some insight into the underlying reasons for this seemingly excessive water use. Almost 75% of the communities in question reported that their water supply system served an industry, usually some form of food processing plant.

At the other end of the scale are estimates on the amount of water used by these rural domestic supplies. If a well serves a farm family, that water will probably be used for watering large gardens and animals. Most water estimates would not include these activities. Generally, the estimate given by the Department of Health for daily per capita consumption is 50 gallons. Two studies on domestic water use which are cited in the Handbook of Environmental Control[9] give values in this same range and include the following types of water use:

CLASS A LIST

COUNTY	TOWNSHIP	TWP.-RGE.	SECTIONS	STUDY
ANOKA (surface aquifer)		T30-R23	Sec. 5,6,7,8,17,18,19	U.S. Geological Survey
		T30-R24	Sec. 1,2,3,10,11,12 13,14,15,22-27, 34	Open File Report-Anoka Sand Plains (DOW
		T31-R22	Sec. 2-11,15-22,28-33	Bulletin 27)
		T31-R23	Sec. All Sections	
		T31-R24	Sec. 1-17, 21-27,35,36	
		T31-R25	Sec. 1,2,12	
	Columbus	T32-R22	Sec. All Sections	
	Ham Lake	T32-R23	Sec. All Sections	
	Grow	T32-R24	Sec. All Sections	
	Ramsey	T32-R25	Sec. 1,2,5,6-30,32-36	
	Linwood	T33-R22	Sec. All Sections	
		T33-R23	Sec. All Sections	
	Oak Grove	T33-R24	Sec. All Sections	
	Burns	T33-R25	Sec. 1,12,13,24,25,36	
	Oxford	T34-R22	Sec. 25-36	
	Athens	T34-R23	Sec. 25-36	
	Saint Francis	T34-R24	Sec. 25-36	
	Stanford	T34-R25	Sec. 25,36	
BECKER (surface aquifer)	Runeberg	T138-R36	Sec. 1	Park Rapids Study Area (Data Collection complete, U.S. Geological Survey will be publishing in near future.)
	Green Valley	T139-R36	Sec. 1-5,7-17,22-26, 35,36	
	Osage	T140-R36	Sec. 2-29,32-36	
	Carsonville	T140-R37	Sec. 1-14,18,24	
	Shell Lake	T140-R38	Sec. 1,2,3,10,11,12	
	Two Inlets	T141-R36	Sec. 29,30,31,32	
	Pine Point	T141-R37	Sec. 5-9,14-23,25-36	
	Round Lake	T141-R38	Sec. 1,12,13,24,25,26, 35,36	
	Round Lake	T142-R37	Sec. 31	
BENTON (surface aquifer)	Glendorado	T36-R28	Sec. 20,29,31,32	U.S. Geological Survey Open File Report-Anoka Sand Plains (DOW Bulletin 27)
	St. George	T36-R29	Sec. 28-36	
	Minden	T36-R30	Sec. 23,25-36	
	Sauk Rapids	T36-R31	Sec. 26,35,36	
BIG STONE (surface aquifer)	Akron	T121-R44	Sec. 26-36	U.S. Geological Survey Water Supply Paper 2039-B, Appleton Area
	Odessa	T121-R45	Sec. 25	
CASS (surface aquifer)	Becker	T134-R32	Sec. 3-10,15-22,27-36	Park Rapids Study Area (Data Collection complete, U.S. Geological Survey will be publishing in near future)
	Byron	T135-R32	Sec. 3-10,15-22,27-34	
	Poplar	T136-R32	Sec. 2-10,16-21,27-35	
	Ansel	T137-R32	Sec. 1-11,14-23,26-36	
	McKinley	T138-R32	Sec. All Sections	
	Deerfield	T139-R31	Sec. 6,7,18,19,30	

COUNTY	TOWNSHIP	TWP.-RGE.	SECTIONS	STUDY
CHIPPEWA (surface aquifer)	Tunsberg	T118-R41	Sec. 3-10,16,18,19	U.S. Geological Survey Water Supply Paper 2039-B, Appleton Area
	Lac Qui Parle	T118-R42	Sec. 1,12,13	
	Big Bend	T119-R41	Sec. 5,6,7,17,18,19, 20,28,29,30,31, 32,33	
	Kragero	T119-R42	Sec. 1-18, 20-28,35,36	
CHISAGO (bedrock aquifer)	Wyoming	T33-R21	Sec. 4-9,16-21,28-34	U.S. Geological Survey Open File Report, Anoka Sand Plains (DOW Bulletin 27)
	Chisago Lake	T34-R20	Sec. 6	
	Lent	T34-R21	Sec. 1-23,26-34	
	Sunrise	T35-R20	Sec. 2,9,10,11,15,16,17, 19,20,21,29,30,31	
	Branch Village	T35-R21	Sec. 4-9,16-36	
	Harris Village	T36-R21	Sec. 28,29,31,32,33	
DAKOTA (wells finished bedrock only)	All Townships			No irrigation study (Bedrock aquifer delineated fairly well in existing Hydrological Atlases)
DOUGLAS (surface aquifer)	Orange	T127-R36	Sec. 18,19,20,29,30	Water Resource Investigations 23-75, Viking Basin
	Hudson	T127-R37	Sec. 4-11,13-18,20-29, 33,34,35	
	Alexandria	T128-R37	Sec. 4-9,16-21,28-32	
	LaGrand	T128-R38	Sec. 1,2,3,4,9-16, 21-27,35,36	
	Belle River	T129-R36	Sec. 2-11,13-18,22, 23,24	
	Carlos	T129-R37	Sec. 12,13,14,15,22, 23,24,28,29,30, 31,32,33	
	Ida	T129-R38	Sec. 24,25,26,34,35,36	
	Spruce Hill	T130-R36	Sec. 3-10,16-20,24,25,32	
	Miltona	T130-R37	Sec. 1,2,3,10,12,13,15,24, 25,26,35	
	Leaf Valley	T130-R38	Sec. 3-10,16,17,18	
	Millerville	T130-R39	Sec. 1,2,3,11,12	
HENNEPIN (surface aquifer)		T118-R21	Sec. 1-5,9-15	U.S. Geological Study Open File Report-Anoka Sand Plains (DOW Bulletin 27)
		T119-R21	Sec. 2-30,32-36	
		T119-R22	Sec. 1,11,12	
	Champlin	T120-R21	Sec. 19,28-34	
	Dayton	T120-R22	Sec. 4,5,6,10,11,13,14, 22,24	

COUNTY	TOWNSHIP	TWP.-RGE.	SECTIONS	STUDY
HUBBARD (surface aquifer)	Badoura	T139-R32	Sec. All Sections	Park Rapids Study Area, (Data collection complete, U.S. Geological Survey will publish in near future)
	Crow Wing Lake	T139-R33	Sec. All Sections	
	Hubbard	T139-R34	Sec. All Sections	
	Straight River	T139-R35	Sec. All Sections	
	White Oak	T140-R32	Sec. 17,18,19,20,21, 26-36	
	Nevis	T140-R33	Sec. 11,12,13,14,15, 21-36	
	Henrietta	T140-R34	Sec. 19-36	
	Todd	T140-R35	Sec. 7,8,9,14-36	
ISANTI (surface aquifer)	Oxford	T34-R22	Sec. 1-24	U.S. Geological Survey Open File Report-Anoka Sand Plains (DOW Bulletin 27)
	Athens	T34-R23	Sec. 1-24	
		T34-R24	Sec. 1-24	
	Stanford	T34-R25	Sec. 1-5,10-14,24	
	North Branch	T35-R22	Sec. 24-29,31-36	
	Isanti	T35-R23	Sec. 3-9,16-20,29, 30,31,32,35	
	Bradford	T35-R24	Sec. All Sections	
	Spencer Brook	T35-R25	Sec. 1-30,32-36	
	Cambridge	T36-R23	Sec. 1,10-17,19-23, 26-34	
	Spring Vale	T36-R24	Sec. 5,6,7,8,17,18, 19,20,24-36	
	Wyanett	T36-R25	Sec. 1-5,7-36	
	Stanchfield	T37-R23	Sec. 23-27,31-36	
	Maple Ridge	T37-R24	Sec. 28-36	
	Dalbo	T37-R25	Sec. 36	
KANDIYOHI (surface aquifer)	New London	T121-R34	Sec. 2,3	U.S. Geological Survey Water Supply Paper 1899-E, Brooten - Belgrade Area
	Roseville	T122-R33	Sec. 4-10,13-24,27-32	
	Burbank	T122-R34	Sec. All Sections	
	Colfax	T122-R35	Sec. 1-6,9-15,23,24, 25,26,36	
MILLE LACS (surface aquifer)	Princeton	T36-R26	Sec. 19,20,24-36	U.S. Geological Survey Open File Report-Anoka Sand Plains (DOW Bulletin 27)
	Greenbush	T36-R27	Sec. 24,25,26,33,34, 35,36	
MORRISON (surface aquifer)	Bellevue	T39-R31	Sec. 1-6,8-16,21-27, 33,34,36	U.S. Geological Survey Water Supply Paper 2009-D Little Falls Area
		T39-R32	Sec. 1-6,8-17,20,21,22, 23,24,26,27,28, 29,32,33,34,35	
	Pierz	T40-R30	Sec. 7,8,17,18,19,20,30	
	Agram	T40-R31	Sec. 7-36	
	Little Falls	T40-R32	Sec. 8,17,18,19,20,28-36	
	Hillman	T41-R29	Sec. 29,30	
	Buh	T41-R30	Sec. 20,25,27-34,36	

OUNTY	TOWNSHIP	TWP.-RGE.	SECTIONS	STUDY
MORRISON (cont.)	Bell Prairie	T41-R32	Sec. 1,2,11,12,13,14, 23,24,26,34,35,36	
	Ripley	T42-R32	Sec. 3,10,11,14,15,23,24, 25,36	
	Two Rivers	T127-R29	Sec. 5,6,7,8,17,21,22,26, 27,28	
		T127-R30	Sec. 1,2,9,11,12,13,14,23	
	Swan River	T128-R29	Sec. 7,18,19,20,29,31,32	
	Pike Creek	T129-R29	Sec. 5,6,7,18,19	
		T129-R30	Sec. 24	
	Green Prairie	T130-R29	Sec. 7,16-21,28-33	
	Darling	T130-R30	Sec. 10,13,14,22,23,24,25, 26,27,35,36	
OTTER TAIL (surface aquifer)	Reynolds	T129-R34	Sec. 4,5	U.S. Geological Survey Water Resources Investigations, 23-75, Viking Basin
	Burleene	T130-R35	Sec. 3,9,10,16,17,19,20, 21,28,36	
	Eastern	T131-R36	Sec. 3-10,15-22,27-35	
	Parkers Prairie	T131-R37	Sec. 1-18,20-28, 34,35, 36	
	Leaf Mountain	T131-R39	Sec. 4,5	
	Woodside	T132-R36	Sec. All Sections	
	Elmo	T132-R37	Sec. 1-5, 8-36	
	Oak Valley	T133-R36	Sec. All Sections	
	Inman	T133-R37	Sec. 1,11,12,13,14,19,20, 22-29,33,34,35,36	
	Henning	T133-R38	Sec. 2,3,4,9,10,11,13,14, 15,16,18,19,21,22,23, 24,30,31	
	Nidaros	T132-R39	Sec. 1-11,13-23,27-33	U.S. Geological Survey Water Supply Paper 2003 Perham Area
	Clitherall	T132-R40	Sec. 1,2,3,4,10-15,23,24, 25,36	
	Girard	T133-R39	Sec. All Sections	
	Everts	T133-R40	Sec. 1,2,3,4,8-17,20-28, 33,34,35,36	
	Leaf Lake	T134-R38	Sec. 4-9, 16,17,18,19	
	Otter Tail	T134-R39	Sec. All Sections	
	Amor	T134-R40	Sec. 1,7-36	
	Maine	T134-R41	Sec. 7-18,20-26	
	Friberg	T134-R42	Sec. 12	
	Bluffton	T135-R36	Sec. 36	
	Otto	T135-R38	Sec. 5,6,7,8,9,16-22,27-33	
	Rush Lake	T135-R39	Sec. 1,2,3,4,8-27,34,35,36	
	Pine Lake	T136-R38	Sec. 3-10,15-36	
	Perham	T136-R39	Sec. 1-5,8-17,19-30,32-36	
	Corliss	T137-R38	Sec. 18,19,20,28-34	
	Gorman	T137-R39	Sec. 8,9,10,11,13-30,32, 33,34,35,36	
	Compton	T134-R36	Sec. 1,2,10-15,23,24,25, 26,36	U.S. Geological Survey Water Supply Paper 1983 Wadena Area

COUNTY	TOWNSHIP	TWP.-RGE.	SECTIONS	STUDY
POPE (surface aquifer)	Hoff	T123-R40	Sec. 6,16,17,19,20, 21,28-34	U.S. Geological Survey Water Supply Paper 1899-J, Lake Emily, Pope County
	Walden	T124-R40	Sec. 3,4,5,7,8,9,10, 15-22,27,29-34	
	Lake Henry	T123-R33	Sec. 31	
	Lake Johanna	T123-R36	Sec. 1-18, 20-27,35,36	U.S. Geological Survey Water Supply Paper 1899-E, Brooten-Belgrade Area
	Gil Christ	T123-R37	Sec. 1	
	Bangor	T124-R36	Sec. 1-17,19-36	
	Chippewa Falls	T124-R37	Sec. 1,2,12,22-27,35,36	
	Grove Lake	T125-R36	Sec. 3-9,16-21,26-36	
	Glennwood	T125-R37	Sec. 1-6,8-17,20-27,35,36	
	Westport	T126-R36	Sec. 13,14,15,19-23,27-33	
	Leven	T126-R37	Sec. 14,22-29,31-36	
RAMSEY (surface aquifer)		T30-R23	Sec. 1-9,18	U.S. Geological Survey Open File Report-Anoka Sand Plains (DOW Bulletin 27)
SCOTT (well finished in bedrock)	All Townships			No irrigation study (Bedrock aquifer delineated fairly well in existing Hydrologic Atlases)
SHERBURNE (surface aquifer)		T32-R26	Sec. 1-6,10-14,24	U.S. Geological Survey Open File Report-Anoka Sand Plains (DOW Bulletin 27)
		T32-R27	Sec. 1,2,4,6	
		T32-R28	Sec. 1	
	Elk River	T33-R26	Sec. 4,7,8,9,17,18, 19,28,31-35	
	Big Lake	T33-R27	Sec. 1-23,25-36	
		T33-R28	Sec. 1-28,34,35	
	Livonia	T34-R26	Sec. 3-10,16-20,30	
	Orrock	T34-R27	Sec. All Sections	
	Becker	T34-R28	Sec. 1-4,9-15,19,22-27, 30-36	
	Clear Lake	T34-R29	Sec. 2-36	
		T34-R30	Sec. 1-5,8-16,23,24,25	
	Baldwin	T35-R26	Sec. All Sections	
	Blue Hill	T35-R27	Sec. 1-5,8-36	
	Santiago	T35-R28	Sec. 4-9,13-36	
	Palmer	T35-R29	Sec. All Sections	
	Haven	T35-R30	Sec. All Sections	
		T35-R31	Sec. 1,12,13,24,25	

COUNTY	TOWNSHIP	TWP.-RGE	SECTIONS	STUDY
STEARNS (surface aquifer)		T123-R27	Sec. 7,8,17-21,26-35	U.S. Geological Survey Water Supply Paper 1899-E
	St. Augusta	T123-R28	Sec. 1,11,12,13	
	Crow River	T123-R34	Sec. 3-11,14-36	
	Crow Lake	T123-R35	Sec. All Sections	
	St. Cloud	T124-R28	Sec. 2,11,14,23,26	
	Lake George	T124-R34	Sec. 31,32	
	North Fork	T124-R35	Sec. 5-9,16-23,25-36	
SWIFT (surface aquifer)	West Bank	T120-R41	Sec. 7,18,19,20,29,30, 31,32	U.S. Geological Survey Water Supply Paper 2039-B, Appleton Area
	Edison	T120-R42	Sec. All Sections	
	Appleton	T120-R43	Sec. 1-6,9-15,22-26,36	
	Moyer	T121-R42	Sec. 5,8,17,20,21,27-34	
	Shible	T121-R43	Sec. 21,22,26,27,31-36	
	Fair Field	T122-R42	Sec. 4,9,16,20,21,29,30,32	
TODD (surface aquifer)	Leslie	T129-R35	Sec. 1,2,10,11,15,16,19, 20,21,22,27,28	U.S. Geological Survey Water Resources Investigations 23-75, Viking Basin
	Iona	T130-R34	Sec. 31	
	Bertha	T132-R35	Sec. 5,6,7,8,17,18,19, 20,30	
	Villard	T133-R32	Sec. 2,3	
	Stowe Prairie	T133-R35	Sec. 1-11,15-22,28-32	
WASHINGTON (surface aquifer)	Forest Lake	T32-R21	Sec. 4-8	U.S. Geological Survey Open File Report-Anoka Sand Plains (DOW Bulletin 27)
WADENA (surface aquifer)	Thomastown	T134-R33	Sec. All Sections	U.S. Geological Survey Water Supply Paper 1983 Wadena Area
	Aldrich	T134-R34	Sec. All Sections	
	Wadena	T134-R35	Sec. All Sections	
	Wing River	T135-R34	Sec. 1,2,11-16,19-36	
	Leaf River	T135-R35	Sec. 22-36	
	Bullard	T135-R33	Sec. 29,30,31,32,33	Park Rapids Study Area (Data Collection comple U.S. Geological Survey will be publishing in near future)
	Lyons	T136-R33	Sec. All Sections	
	North Germany	T136-R34	Sec. 1,2,3,4,10-15,23, 24,25,26,34,35,36	
	Orton	T137-R33	Sec. All Sections	
	Meadow	T137-R34	Sec. 1-30,32-36	
	Red Eye	T137-R35	Sec. 12,13,14,23,24	
	Huntersville	T138-R33	Sec. All Sections	
	Shell River	T138-R34	Sec. All Sections	
	Blueberry	T138-R35	Sec. 1-6,8-17,20-28,36	

COUNTY	TOWNSHIP	TWP.-RGE.	SECTIONS	STUDY
WRIGHT (surface aquifer)	Otsego	T121-R23	Sec. 10,14,15,16,17, 18,21-26,36	U.S. Geological Surve Open File Report-Anok Sand Plains (DOW Bulletin 27)
		T121-R24	Sec. 8,9,10,11,18	
	Monticello	T121-R25	Sec. 3,4,5,8-16,21-29, 32,33	
		T122-R25	Sec. 19,30,31,32,33,34	
	Clearwater	T122-R26	Sec. 5,6,7,8,13-17,20, 21,24,25,28,29,32	
	Clearwater	T122-R27	Sec. 1,2,3,10,11,12,15	