

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: November 7, 1990

TO: JIM BURKHOLZ
Executive Director
Board of Water and Soil Resources

FROM: MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-6839

SUBJECT: In the Matter of the Adopted Rule Relating to a Local Water Resources Protection and Management Program

The above-referenced rule has been approved as to its legality by the Attorney General on November 6, 1990.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:sc

cc: Carl Conney
William Brown, Chief Judge
MaryAnn Hruby

MJC

RULE REVIEW CHECKLIST

File No. 1750
DATE RECEIVED 10-22-90
REVIEW DATE 10-31-90
DUE DATE 11-6-90
(DIS)APPROVED 11-6-90 mjc
WITHDRAWN

Docket No. 05009 0986
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 10-24-90
REVISOR (DIS)APPROVED
FILED W/SEC. OF STATE 11/7/90
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
November 13, 1989 Date published in State Register
Comments

~~Petition for Adoption of a Rule~~

✓ Board's Authorizing Resolution
July 25, 1990 Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
103B.3361 to ~~103B~~ Statutory Authority 103B.3369
NA Small Business Statement
✓ Expenditure of public money statement
8-13-90 Signature

✓ Statement of Need and Reasonableness (if applicable)
N/A Small Business Statement
NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
Aug 17, 1990 Dated 30/25 days before adoption
Notice attached indicates it is attached indicates she mailed it
Copy of rule or summary attached

✓ Publication in State Register
August 27, 1990 Date 30/25 days before adoption

≠ NO 180-day deadline from:
≠ didn't make it Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ end of comment period (§ 14.26) (rules without hearing)
effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
~~Sept 26, 1990~~ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
October 16, 1990 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Carl Conney Name of SAAG representing agency

~~Notice of Submission to Attorney General~~ (if applicable)

~~Affidavit of Mailing Notice to Attorney General~~ (if applicable)

Board of Water and Soil Resources

Adopted Permanent Rules Relating to a Local Water Resources Protection and Management Program

Rules as Adopted

8405.0100 PURPOSE.

Minnesota Statutes, sections 103B.3361 to 103B.3369, authorize the board to make grants to counties for local government activities that protect or manage water and related land resources and to adopt rules.

This chapter provides for the administration of a state local water resources protection and management grant program. Parts 8405.0100 to 8405.0230 implement this program by establishing the substantive criteria and procedural conditions under which the board may award state grants for the development and implementation of a comprehensive local water plan.

8405.0110 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and in Minnesota Statutes, section 103B.3363, apply to parts 8405.0100 to 8405.0230. If a definition in this part conflicts with a definition in Minnesota Statutes, chapter 110B, 112, or 473, or rules adopted under one of those chapters, the definition in this part governs.

Subp. 2. **Board.** "Board" means the Board of Water and Soil Resources.

Subp. 3. **Comprehensive local water plan; plan.** "Comprehensive local water plan" or "plan" means a county water plan authorized under Minnesota Statutes, section 110B.04, a watershed management plan required under Minnesota Statutes, section 473.878, a watershed district overall plan required under Minnesota Statutes, section 112.46, or a county groundwater plan authorized under Minnesota Statutes, section 473.8785.

Subp. 4. **Local share.** "Local share" means the

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contribution of a local unit of government to the eligible cost of a program including the value of cash expenditures, private contributions, and in-kind contributions of labor, equipment, material, and real property used for and expended on eligible program activities. Up to 50 percent of the local share may consist of federal funds including in-kind contributions. State funds, including in-kind contributions, may not be used as local share.

Subp. 5. **Local unit of government.** "Local unit of government" means a statutory or home rule charter city, town, county, soil and water conservation district, watershed district, organization formed for the joint exercise of powers under Minnesota Statutes, section 471.59, local health board, or other special purpose district or authority with local jurisdiction in water and related land resources management.

Subp. 6. **Local water planning levy.** "Local water planning levy" means a property tax levy under Minnesota Statutes, section 275.50, subdivision 5, paragraph (2), and implementing Minnesota Statutes, section 103B.3369, subdivision 5, clause (2), for the purpose of implementing a comprehensive local water plan.

Subp. 7. **Official controls.** "Official controls" means ordinances and rules that control the physical development within the jurisdiction of a local unit of government, protect public health and safety, or implement the general objectives of the local unit of government.

Subp. 8. **Program.** "Program" means a water-related program.

Subp. 9. **Related land resources.** "Related land resources" means land affected by present or projected management practices that have significant effects on the quantity and quality, or use of groundwater or surface water.

8405.0120 AVAILABLE ASSISTANCE.

Subpart 1. **Grants.** The board may award grants to counties to develop plans authorized under Minnesota Statutes, section 110B.04 or 473.8785, or implement water resource protection and

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management programs identified as priorities in a comprehensive local water plan. Grants may be used to employ persons and to obtain and use information necessary to develop a plan under Minnesota Statutes, section 110B.04 or 473.8785, that did not receive funding under Laws of Minnesota 1987, chapter 404, section 30, subdivision 5, paragraph (a), or to implement a comprehensive local water plan. Plan development grants must not exceed a maximum of $15,300 for a plan under Minnesota Statutes, section 110B.04, or $15,600 for a plan under Minnesota Statutes, section 473.8785.

Plan implementation grants consist of base grants and challenge grants. Base grants are noncompetitive and are available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. The purpose of base grants is to encourage plan maintenance and implementation with an emphasis on new or expanded programs. Eligible activities include supporting water plan coordination and enforcement of official controls. Base grants may not exceed the amount specified in Minnesota Statutes, section 103B.3369, subdivision 5, clause (2).

Challenge grants are competitive and may be available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. The purpose of challenge grants is to accelerate implementation of priority actions contained in approved comprehensive local water plans. Eligible activities include establishment of monitoring programs, development of official controls, assessments of resources, and development of geographic information systems. A county may submit more than one challenge grant application.

Subp. 2. **Local share.** Plan development and challenge grants must be matched in a one-to-one ratio with a local share.

Subp. 3. **Priority.** Grants must be awarded, within the limits of available appropriations, to those applicants having the highest priority.

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Subp. 4. **Technical assistance.** The board may provide technical assistance to counties that are considering application in order to ensure timely, accurate, and comprehensive applications. The board shall provide technical assistance, within the limits of available resources, to counties that receive grants, to assist in developing or implementing a comprehensive local water plan.

8405.0130 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Only counties are eligible to apply for grants. A county shall coordinate and submit applications on behalf of other local units of government within its jurisdiction.

Subp. 2. **Eligible costs.** Plan costs are eligible for state grants if the expenditures are reasonable and necessary for developing or implementing a comprehensive local water plan as described in part 8405.0120, subpart 1.

Subp. 3. **Ineligible costs.** Ineligible costs include those not related to the activities in subpart 2. In addition, the following costs are ineligible whether or not they relate to the activities in subpart 2:

A. expenditures or in-kind contributions incurred prior to the effective date of the grant agreement that have not been approved by the board as described in part 8405.0200, subpart 9; and

B. activities that violate local, state, or federal statutes, rules, or regulations.

8405.0140 NOTICE OF GRANT AVAILABILITY.

Subpart 1. **Notice.** If the board determines that funds are available to award grants, the board shall publish a notice in the State Register announcing that applications will be accepted. The notice must include the amount of available funding and contain deadlines for submittal of applications for each grant, which must be no less than 60 calendar days from the date of publication.

Subp. 2. **Notification.** The board shall notify all

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counties that grant funds are available and the deadline for applications. Any other local unit of government that wishes to be notified shall contact the board by writing to the executive director. When the board publishes notice in the State Register, the board shall mail notice of the grant application period to those local units of government who have requested to be notified.

Subp. 3. **Grant application periods.** The board may establish a grant application period at any time, but there must be at least one application period for each grant each fiscal year if funds are available.

8405.0150 GRANT APPLICATION.

Subpart 1. **General requirements.** A grant application must be submitted by a county. A county shall coordinate and submit applications on behalf of other local units of government within its jurisdiction. A completed grant application must be received in the board office in Saint Paul by the published deadline, in a format provided by the board, and with the information required by this part.

Subp. 2. **Plan development grant.** A county submitting an application for a plan development grant must submit the following information:

A. a resolution committing the county to develop a local water plan according to chapter 9300 and Minnesota Statutes, chapter 110B, or Minnesota Statutes, section 473.8785;

B. a resolution by the county authorizing the matching funds and the signing of the grant agreement and other related documents;

C. a budget of expenses associated with developing a local water plan; and

D. a description and explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 3. **Plan implementation base grant.** A county submitting an application for a plan implementation base grant

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shall submit the following information:

A. a resolution by the county authorizing the signing of the grant agreement and other related documents;

B. a detailed work plan and schedule for program implementation during the grant period;

C. a detailed budget for the grant period;

D. a statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan;

E. a statement describing how cooperation will be secured with adjacent counties and water management organizations, if applicable; and

F. a description and explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 4. **Plan implementation challenge grant.** A county submitting an application for a plan implementation challenge grant shall submit the following information:

A. a resolution by the county authorizing the matching funds and the signing of the grant agreement and other related documents;

B. an executive summary of the contents of the application;

C. a detailed work plan and schedule for program implementation during the grant period;

D. a detailed budget for the grant period including the identification of the amount requested in the grant;

E. a list identifying the amount, type, and source of the local share;

F. a statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan;

G. a statement describing how cooperation will be secured with adjacent counties and water management organizations, if applicable;

H. a statement describing local support and

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interagency coordination;

I. a description of how the challenge grant complements the base grant;

J. a statement indicating if partial funding of the application is acceptable. If partial funding is acceptable, project components must be listed in order of funding priority with a corresponding budget; and

K. an explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 5. **Sequence of implementation grants.** Before a county can submit an application for a plan implementation grant, the county must have:

A. approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area; and

B. implemented a local water planning levy.

Although base and challenge grants may be applied for at the same time, separate applications must be made.

8405.0160 DENIAL OF GRANT APPLICATIONS.

Subpart 1. **Grounds.** An application for a plan development grant or a plan implementation grant must be denied by the board for the following reasons:

A. ineligible applicant;

B. proposed expenditures are ineligible;

C. request is not consistent with priorities described in the applicant's comprehensive local water plan;

D. late submittal; or

E. inadequate or incomplete application.

Subp. 2. **Procedure.** The board shall review each grant application within 14 calendar days after the deadline for application submittal. The board shall notify each denied grant applicant of the denial of its application and the reasons for the denial within 14 calendar days after the determination.

Subp. 3. **Effect of denial.** A grant applicant whose

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application is denied may reapply in a subsequent application period in order to be reconsidered for a grant.

8405.0170 ALLOCATION OF FUNDING.

Subpart 1. **Overall grant fund allocation.** After assessing the number and specific type of applications, and within 30 calendar days of the close of an application period, the board shall determine the amount of funding to be made available for each grant. In deciding how much money to make available for new grant awards, the board shall give priority to plan development and base grants and consider the necessity to have additional money available to complete previously approved grants.

If the money intended for a specific type of grant is not awarded during a grant period, the board may reallocate the funds to one of the other type of grants or carry the money forward to a subsequent grant period.

8405.0180 RANKING OF APPLICATIONS.

Subpart 1. **Process of ranking.** After completion of the review by the board of the grant applications for eligibility, and determination of available funds for the types of grants, the board shall proceed to:

A. fund all eligible plan development and base grant applications as provided in part 8405.0120, subpart 1; and

B. rank in order of priority all eligible challenge grant applications.

Each eligible challenge grant application must be awarded the number of priority points it is entitled to under subparts 3 and 4. All applications must be given a ranking depending on the number of points awarded. The applications with the highest ranking must be given the highest priority.

Subp. 2. **Review team.** Prior to ranking challenge grant applications, the board shall establish an advisory review team to evaluate the applications. The review team, chaired by a member or representative appointed by the board, consists of a representative of each of the following agencies or

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organizations: Association of Metropolitan Municipalities; Association of Minnesota Counties; League of Minnesota Cities; Metropolitan Council; Metropolitan InterCounty Association; Metropolitan Water Management Organizations; Minnesota Association of Conservation District Employees; Minnesota Association of County Planning and Zoning Administrators; Minnesota Association of Soil and Water Conservation Districts; Minnesota Association of Townships; Minnesota Association of Watershed Districts; Minnesota Departments of Agriculture, Health, and Natural Resources; Minnesota Extension Service; Minnesota Geological Survey; Minnesota Pollution Control Agency; State Planning Agency; and ~~others as the board may determine~~ such other agencies, organizations, or persons providing additional expertise or background beneficial to the review team.

Subp. 3. **Priority points for challenge grant applications.** The following criteria must be used to determine the number of priority points to be awarded in the evaluation of each challenge grant application. To expedite the review process, the board is responsible for providing background information and summaries of the applications to the review team. The review team, acting as a committee, shall award each application between zero and ten points under the following criteria, depending on how well the application satisfies each criterion. Ten points is the highest point value. The number of points under each criterion must be added together to determine the application's total point value. This total number must be used to determine the application's overall ranking and priority. The criteria are as follows:

A. the extent to which the application demonstrates participation of several local units of government, including multicounty efforts;

B. the extent to which the application expresses long-term commitment to effective water protection and management;

C. the extent to which the applicant would use local programs and methods to protect and manage water and related

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land resources;

D. the extent to which the application complements efforts of federal, state, and local units of government; and

E. the extent to which the application supports efforts of local units of government to adopt, administer, and enforce official controls to protect and manage water and related land resources.

Subp. 4. **Other considerations.** In assigning points, the review team must consider the regional variations that exist in program needs and priorities.

8405.0190 SELECTION OF GRANTEES.

Subpart 1. **Ranking.** The review team shall complete its ranking of all applications for challenge grants for which an eligible grant application has been submitted and forward the recommendation to the board within 90 calendar days of the close of the application period.

Subp. 2. **Projects funded.** The board shall select those applications that will be awarded grant funds by awarding grants to the highest priority challenge grant applications within the limits of available funds established in part 8405.0170.

Subp. 3. **Board decision.** All decisions of the board in ranking applications and awarding grants must be made at a regular or special board meeting.

Subp. 4. **Timing.** The board shall make its selection of grantees within 120 calendar days of the close of the application period. The board shall notify all applicants of the status of their application within 14 calendar days after the selection of grantees.

Subp. 5. **Reapplication.** A grant applicant whose application is not awarded grant funds may reapply in a subsequent application period to be reconsidered for a grant.

8405.0200 GRANT CONDITIONS.

Subpart 1. **Amount.** Except as provided in part 8405.0150, subpart 4, item J, a grant that is made must be for the amount requested by the applicant. The maximum grant must be according

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to part 8405.0120, subpart 1.

Subp. 2. **Agency review.** Grants provided to develop or implement programs must be reviewed by the state agency having authority for the programs to assure compliance with minimum state standards before a grant agreement is executed by the board.

Subp. 3. **Performance criteria.** In addition to items required by this part, performance criteria for grant administration must include plan information requirements contained in the approved application of the county as described in part 8405.0150, subparts 2, 3, and 4.

Subp. 4. **Grant period.** The grant period for a plan development grant must be two years. The grant period for an implementation base grant must not exceed two years. The grant period for an implementation challenge grant must be two years and may be extended an additional year with prior board approval.

Subp. 5. **Grant agreement.** The county must enter into a grant agreement with the board before a grant will be awarded. The grant agreement must include the provisions established in part 8405.0210.

Subp. 6. **Records.** The county, or delegated local unit of government, shall maintain all records relating to the receipt and expenditure of grant funds for six years from the termination of the grant agreement.

Subp. 7. **Audit.** The county, or delegated local unit of government, must agree that the books, records, documents, and accounting procedures and practices of the county relevant to this program may be examined at any time by the board or board's designee. The county or delegated local unit of government implementing a grant shall provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of a grant and be performed within one year after the end of a grant period or when routinely audited, whichever occurs first. Copies of the audit must be provided to the county and the board.

Subp. 8. **Annual progress report.** The county, or delegated

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local unit of government, shall submit an annual progress report to the board by January 31st of each year the grant is in effect. The report must include the following information:

A. a discussion of progress of the work described in the approved application, and difficulties encountered meeting the schedule during the year;

B. a discussion of the program results appropriate to the work conducted during the year; and

C. a report of expenditures in the year and those anticipated during the upcoming year.

Subp. 9. **Eligible costs.** Grant funds may not be used ~~to reimburse the county, or delegated local unit of government,~~ for costs incurred before or after the end of the grant agreement period unless approved by the board as provided by the criteria in part 8405.0130, subpart 3. In considering these costs, the board must review each claim on a case-by-case basis. To support a claim, the county may be requested to provide additional information.

8405.0210 GRANT AGREEMENT.

Subpart 1. **Contents.** The board and the county shall enter into a grant agreement. The grant agreement must:

A. establish the term and conditions of the grant;

B. provide that the county may contract with others, including appropriate local units of government under the terms and conditions specified by the county, to complete the work specified in the grant agreement;

C. provide that the cost overruns are the sole responsibility of the county;

D. require that a county is responsible for ensuring that state funds are properly expended even if the work specified in the grant agreement is performed by a local unit of government acting on behalf of the county;

E. require that the county submit an annual progress report; and

F. incorporate terms and conditions required by

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federal or state statutes, rules, or regulations.

Subp. 2. **Amendments.** A grant agreement may be amended upon agreement of the board and the county.

Subp. 3. **Agreement period.** A grant agreement must be for a duration specified in part 8405.0200, subpart 4.

8405.0220 GRANT PAYMENTS.

Subpart 1. **Payment.** Payment of the grant amount must be made in one installment by the board promptly after the effective date of the grant agreement.

Subp. 2. **Unencumbered funds.** Any grant funds remaining unspent or becoming unobligated after the end of the grant agreement period must be returned to the board within two months of that date.

8405.0230 GRANT TERMINATION.

Subpart 1. **Board action.** The board may cancel a grant agreement for just cause. "Just cause" means that the county or delegated local unit of government is not disbursing grant funds in accordance with established board and state procedures or has otherwise breached a term of the grant agreement. The county must be given 14 calendar days' prior written notice of cancellation. The county has until the date of cancellation to demonstrate why the grant agreement should not be canceled. If it is determined by the board that the county's default was beyond its control or it was not otherwise in default, the grant agreement must not be canceled. The county may cancel this grant agreement with or without cause. In the event of cancellation by the board or county, the county is entitled to payment, determined on a pro rata basis, for work satisfactorily performed and the remaining grant funds must be promptly returned to the board.

Subp. 2. **Agency action.** At the request of any state commissioner, the board shall revoke that portion of a grant used to support a program not in compliance with rules of that agency.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

November 19 90

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 07 1990

Joan Anderson Growe
Secretary of State

3:40 P.M.

M

Minnesota Board of Water & Soil Resources

Southbridge Office Building
155 South Wabasha St., Suite 104
St. Paul, Minnesota 55107

(612) 296-3767
Fax (612) 297-5615

November 5, 1990

To : Martha Casserly, Special Assistant Attorney General

From : Greg Larson, Board of Water and Soil Resources

RE : Proposed Rule Governing Grants to Counties for Local Water Resources Protection and Management

In response to your comments to Carl Conney concerning the above-referenced rule, I have enclosed the following material:

1. Copies of letters sent to the LCRAR and the required others pursuant to Minnesota Statutes, section 14.12 and,

2. A Supplemental Findings of Fact, Conclusions, and Order Adopting Rule Without a Public Hearing. I believe this Order addresses the concerns you expressed to Carl.

I advised the Revisor's office of the need for a modified rule. It is my understanding that a rule modified as stated in the Facts and Conclusions will be sent directly to you either today or early tomorrow.

Carl told me of the deadline of 4:00 PM, November 6th. Since I believe this will be met, we find it unnecessary to temporarily withdraw the rule.

Do not hesitate to contact me if you have questions or comments.

CC: Carl Conney
Jim Birkholz

Regional Offices

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1106 Paul Bunyan Drive, NE
Bemidji, MN 56601
218-755-3963

Northeast Region
394 South Lake Avenue
Room 402
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218-723-4752

West Central Region
503 Washington Street
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218-828-2604

South Central Region
Box 756
New Ulm, MN 56073
507-354-2196

Southeast Region
Friedell Bldg., Room 100
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Rochester, MN 55904
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Southwest Region
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July 9, 1990

Maryanne Hruby, Director
Legislative Commission to
Review Agency Rules
55 State Office Building
St.Paul, Mn. 55155-1201

Subject: Update to previous "14.12" letter

Dear Ms. Hruby:

As required by Chapter 14.12, we are notifying the commission of the reason why a letter of intent to adopt "Rules relating to the Local Water Resources Protection and Management Program" will not be published within 180 days after legislative authorization. As I indicated in a letter dated November 9, 1989 (attached),we anticipated having that rule in effect by mid July. We were on schedule to meet that goal. However, action by the 1990 Legislature (Chapter 604 art 3 s 1) necessitated revisions. The earlier draft rule has been revised and forwarded to the revisors office. We expect to publish the proposed rule in the State Register in August. We intend to adopt that rule without a public hearing. The tentative effective date of mid December coincides with tax levy deadlines referenced in the Chapter 604. In summary, we do not believe this delay will hamper implementation of this program.

If additional information is needed, do not hesitate to contact me.

Sincerely,

Jim Birkholz
Executive Director

CC: Governors Office
Senate Environment and
Natural Resources Committee
House Environment and
Natural Resources Committee
Legislative Water Commission

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Greg

Minnesota Board of Water & Soil Resources

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November 9, 1989

Maryanne Hruby, Director
Legislative Commission to
Review Agency Rules
55 State Office Building
St.Paul, Mn. 55155-1201

Subject: Chapter 14.12 letter

Dear Ms. Hruby:

As required by Chapter 14.12, we are notifying your commission of the reasons why certain rules under our direction will not be promulgated within 180 days. As indicated in your letter dated October 18, there are two rules in question.

M.S. 103B.3369 "Rules relating to the Local Water Resources Protection and Management Program." Although initially hampered by problems in hiring a program coordinator, the rulemaking process is now underway. A Notice of Intent To Solicit Outside Opinion has been submitted to the State Register. A rules advisory committee has been established with the first meeting scheduled for mid December. We intend to publish a Notice of Intent To Adopt Rules by March 1,1990 and anticipate having the Rule in effect by mid July. This coincides with our biennial budget where the majority of the appropriation for the local water resources program was specified for fiscal year 1991. In addition, we were authorized to make fiscal year 1990 grants for this program without rules (Chapter 326, Article 10, subd.4(b). In summary, we do not believe the delay will affect implementation of this program.

M.S. 103I.335 "Criteria for sealing improperly abandoned wells"
We do not believe the language of the act, which uses criteria rather than rules, requires us to promulgate rules. It is, however, our intention to develop these criteria in a manner similar to rulemaking. We will establish a rules advisory committee with membership including all parties specified in M.S. 103I.331. In addition, we will publish a Notice Of Intent To Solicit Outside Opinion and the proposed criteria in the State Register. We intend to have the program implemented by July 1,1990. This also coincides with our biennial budget where the majority of funding for

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this program was provided in fiscal year 1991.

I trust this response is satisfactory. If not, please contact me.

Sincerely,

Jim Birkholz
Executive Director

CC: Governors Office
Senate Environment
and Natural Resources
Committee
House Environment and
Natural Resources
Committee
Legislative Water Commission

LCRAR

RECEIVED

OCT 2 4 1989

BOARD OF WATER
& SOIL RESOURCES

Legislative Commission to

Review Administrative Rules

Senator Gene Waldorf
Chair

Representative Peter Rodosovich
Vice-Chair

Maryanne V. Hruby
Director

October 18, 1989

Jim Birkholz, Executive Director
Board of Water and Soil Resources
155 S. Wabasha St., Suite 104
St. Paul, MN 55107

Dear Mr. Birkholz:

The LCRAR is investigating agency exercise of 1989 legislative grants of mandatory rulemaking authority and agency compliance with the publication and reporting requirements in Minnesota Statutes, section 14.12.

Section 14.12 requires agencies to publish a Notice of Intent to Adopt Rules within 180 days of the effective date of the law granting the rulemaking authority. If an agency fails to meet this deadline, it must notify the LCRAR and others of the reason for not timely publishing proposed rules.

LCRAR staff has identified the following mandatory rulemaking grants received by your agency in 1989. Indicated is the Minnesota Statutes citation, a description of the rulemaking grant, and the date staff has identified as the section 14.12 due date, that is, 180 days after the effective date of the law granting the rulemaking authority.

M.S.103B.3369	**Requires the board to adopt rules relating to the local water resources protection and management program**	**1/1/90**
M.S. 103I.335	**Criteria for accepting applications to seal wells for property owners**	**1/1/90**

Therefore, we remind you of the requirements in section 14.12.

If you have any questions about this matter, please contact LCRAR staff.

Respectfully,

Gene Waldorf
State Senator

55 State Office Building • St. Paul, Minnesota 55155-1201 • 612/296-1143

STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES

In the Matter of the Proposed Adoption of the Rule of the Board of Water and Soil Resources Governing Grants to Counties for Local Water Resources Protection and Management	SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT A PUBLIC HEARING

This order supplements my FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT A PUBLIC HEARING, dated October 16, 1990.

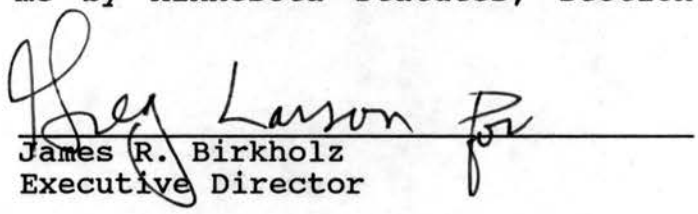
The rule is being resubmitted to the Attorney General on November 5, 1990 with the following amendments:

1. Rule 8405.0180 Subp. 2 (page 9, line 12) "others as the board may determine" is too arbitrary; the rule is amended by deleting "others as the board may determine" and inserting "such other agencies, organizations or persons providing additional expertise or background beneficial to the review team."

2. Rule 8405.0200, Subp. 9 (page 12, line 12) "unless approved by the board" is too arbitrary; the rule is amended by inserting - after "board" - "as provided by the criteria in part 8405.0130, subpart 3."

None of the amendments are substantial as they do not affect new classes of persons, introduce new subject matter, nor make any substantive change so as to invite reaction.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the Local Water Resources Protection and Management Program as modified by this Order is adopted this 5th day of November, 1990, pursuant to the authority vested in me by Minnesota Statutes, section 103B.3369.



James R. Birkholz
Executive Director

Minnesota Board of Water & Soil Resources

Southbridge Office Building
155 South Wabasha St., Suite 104
St. Paul, Minnesota 55107

(612) 296-3767
Fax (612) 297-5615

October 22, 1990

To : Office of the Attorney General
Public Finance Division

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

RE : Review of the proposed rule of the Board of Water and Soil Resources Governing Grants to Counties for Local Water Resources Protection and Management

The Board of Water and Soil Resources adopted the above referenced rule pursuant to Minnesota Statutes, sections 14.22 to 14.28. Enclosed with this memorandum are the documents required to be submitted to the Attorney General for final review.

If you have questions, please contact me at 296-3767.

CC: Carl Conney

Regional Offices

Northwest Region
1106 Paul Bunyan Drive, NE
Bemidji, MN 56601
218-755-3963

Northeast Region
394 South Lake Avenue
Room 402
Duluth, MN 55802
218-723-4752

West Central Region
503 Washington Street
Brainerd, MN 56401
218-828-2604

South Central Region
Box 756
New Ulm, MN 56073
507-354-2196

Southeast Region
Friedell Bldg., Room 100
1200 S. Broadway
Rochester, MN 55904
507-285-7458

Southwest Region
Box 111
1400 E. Lyon Street
Marshall, MN 56258
507-537-7260

East Central Region
Southbridge Office Building
155 South Wabasha Ave., Suite 104
St. Paul, MN 55107
612-296-3767

An Equal
Opportunity Employer

Department of Trade and Economic Development

Minnesota Job Skills Partnership Board

Notice of Annual Meeting

The annual meeting of the Minnesota Job Skills Partnership Board will be held on Monday, November 20, 1989, at 1:00 p.m. in Room 300 South State Office Building, St. Paul.

The Minnesota Job Skills Partnership Board solicits grant proposals from educational and other non-profit organizations for training programs designed for specific businesses. Please contact the Partnership office at 612/296-0388 for details regarding grant applications.

Following are application deadline dates and Board meeting dates for 1990:

Deadline Dates for New Grant Applications	MJSP Board Meeting Dates
• January 19, 1990	• February 20, 1990
• April 13, 1990	• May 15, 1990
• July 20, 1990	• August 21, 1990
• October 19, 1990	• November 20, 1990 (annual meeting)

Department of Transportation

Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under *Minnesota Statutes* § 169.825. Order No. 75451

Whereas, the Commissioner of Transportation has made his Order No. 72156, dated April 8, 1987, which order has been amended by Orders Nos. 73139, 74653, 74846, 75024, 75110, 75193, and 75314 designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under *Minnesota Statutes* § 169.825, and

Whereas, the Commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under *Minnesota Statutes* § 169.825.

IT IS HEREBY ORDERED that Commissioner of Transportation Order No. 72156 is further amended this date by adding the following designated streets and highway routes, or segment of routes, as follows:

COUNTY ROADS

WATONWAN COUNTY

• C.S.A.H. 2 FROM THE WEST JCT. T.H. 60 TO EAST JCT. T.H. 60 IN THE CITY OF BUTTERFIELD, MINNESOTA (12 MONTH).

Dated: 3 November 1989

Leonard W. Levine
Commissioner

Board of Water and Soil Resources

Meeting Notice

The Board of Water and Soil Resources will hold their November 22, 1989 regularly scheduled monthly meeting at the Holiday Inn-East, St. Paul, Minnesota.

Board of Water and Soil Resources

Outside Information or Opinions Sought Regarding Proposed Rule Governing Local Water Resources Protection and Management Program

NOTICE IS HEREBY GIVEN that the Board of Water and Soil Resources is seeking information or opinions from sources outside

the agency in preparing to propose the adoption of the rule governing grants to counties to implement comprehensive local water plans. The adoption of the rule is authorized by *Minnesota Statutes, Laws of 1989*, Chapter 326, which requires the agency to adopt a rule which specifies the process and priorities for awarding grants to counties for implementing comprehensive local water plans.

The Board requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Greg Larson, Board of Water and Soil Resources, 155 South Wabasha Street, Suite 104, St. Paul, MN 55107. Oral statements will be received during regular business hours over the telephone at 296-3767 and in person at the above address.

All statements of information and opinions shall be accepted until November 30. Any written material received by the Board of Water and Soil Resources shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 13 November 1989

Jim Birkholz, Executive Director
Board of Water and Soil Resources

State Contracts and Advertised Bids

Pursuant to the provisions of Minn. Stat. §14.10, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of $15,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Awards of contracts and advertised bids for commodities and printing, as well as awards of professional, technical and consulting contracts, appear in the midweek STATE REGISTER Contracts Supplement, published every Thursday. Call (612) 296-0931 for subscription information. Thank you.

Department of Administration: Materials Management Division

Contracts and Requisitions Open for Bid

Call 296-2600 for information on a specific bid, or to request a specific bid.

Commodity: Laboratory casework
Contact: John Bauer 296-2621
Bid due date at 2pm: November 21
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: 07300 65134 1

Commodity: Mobile radios
Contact: Pam Anderson 296-1053
Bid due date at 2pm: November 21
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: 07500 63375

Commodity: Truck w/van body
Contact: Mary Jo Bruski 296-3772
Bid due date at 2pm: November 21
Agency: DHS-Regional Treatment Center
Deliver to: Brainerd
Requisition #: 55304 08368 1

Commodity: Light fixtures
Contact: Joan Breisler 296-9071
Bid due date at 2pm: November 20
Agency: Military Affairs Department
Deliver to: Little Falls
Requisition #: 01000 06079

Commodity: Compartment/steam cooker
Contact: Joan Breisler 296-9071
Bid due date at 2pm: November 20
Agency: Correctional Facility
Deliver to: Faribault
Requisition #: 02310 17370

Commodity: Nicotine air samplers
Contact: Joseph Gibbs 296-3750
Bid due date at 2pm: November 22
Agency: Health Department
Deliver to: Minneapolis
Requisition #: 12500 42513

CERTIFICATE OF THE
BOARD OF WATER AND SOIL RESOURCES
AUTHORIZING RESOLUTION

I, Donald Ogaard, do hereby certify that I am a member and the Chair, of the Board of Water and Soil Resources, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Water and Soil Resources duly and properly called and held on the 25th day of July 1990, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that Jim Birkholz, Executive Director of the Board of Water and Soil Resources, is hereby granted the authority and directed to sign and to give the Notice of the Board's Intent to adopt a rule without a public hearing governing grants to counties for local water resources protection and management to all persons who have registered their names with the board for that purpose and publish the Notice and rule in the State Register, and to perform any and all acts incidental thereto."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 25th day of July 1990.

Donald Ogaard, Chair
Board of Water and Soil Resources

Attest by one other Board Member

Office of the Revisor of Statutes
Administrative Rules

Paul M. Marinac
Assistant Deputy Revisor
296-0948

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

October 9, 1990

RECEIVED
OCT 12 1990
BOARD
& SOIL RESOURCES

Greg Larson
Board of Water and Soil Resources
155 South Wabasha, Suite 104
St. Paul, MN 55107

RE: File No. 1733

Dear Greg:

Enclosed are four copies of your rule with the modifications you requested.

Please submit the rules to the Attorney General or the Office of Administrative Hearings, as appropriate.

If you have any questions or need further modifications, please call me.

Very truly yours,

Paul M. Marinac

Paul M. Marinac

Rules as Proposed

7502.0600 PERSONS WHO MAY INTERPRET BLOOD OR URINE TESTS.

~~Any~~ A person who meets the educational and occupational standards ~~set forth~~ in items A and B may interpret blood or urine tests:

A. educational qualifications: a bachelor's or higher degree in chemistry, biochemistry, biology, biological sciences, pharmacology, criminalistics, forensic science, toxicology, or medical technology;

B. occupational qualifications: ~~full-time~~ employment or self-employment as a criminalist, crime laboratory analyst, forensic scientist, toxicologist, pathologist, chemist, biochemist, medical technologist, medical laboratory technician, or medical laboratory assistant.

Board of Water and Soil Resources

Proposed Permanent Rules Relating to a Local Water Resources Protection and Management Program

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Board of Water and Soil Resources intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, sections 103B.3361 to 103B.3369.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Greg Larson, Head, Water and Land Management Section
Board of Water and Soil Resources St. Paul, Mn. 55107
155 S. Wabasha Street Suite 104 (612) 296-3767

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Greg Larson upon request.

The Statement of Need and Reasonableness also indicates that since this is a voluntary program involving grants to counties, this rule will not have a negative impact on small business.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Greg Larson.

Dated: 13 August 1990

James R. Birkholz
Executive Director

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Fiscal Impact of the Rule of the State Board of Water and Soil Resources Governing Grants to Counties for Local Water Resources Protection and Management

As required by *Minnesota Statutes*, section 14.11, this statement advises local public bodies of the fiscal impact of the adoption of the proposed rule relating to a local water resources protection and management program. Under this proposed rule, an eligible county may apply for grants to develop and implement a comprehensive local water plan. Plan development grants cannot exceed a maximum of $15,300 for a plan under *Minnesota Statutes*, section 110B.04, or $15,600 for a plan under *Minnesota Statutes*, section 473.8785. Plan development grants must be matched in a one-to-one ratio with a local share. The rule defines local share as "the contribution of a local unit of government to the eligible cost of a program including the value of cash expenditures, private contributions, and in-kind contributions of labor, equipment, material, and real property used for and expended on eligible program activities. Up to 50 percent of the local share may consist of federal funds. State funds may not be used as local share." The board estimates counties will provide $46,200 of local share during 1991. This does not include local share provided by counties who commenced planning prior to the adoption of the proposed rule.

Plan implementation grants consist of base grants and challenge grants. Base grants are noncompetitive and are available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. Individual base grants and the local water planning levy is determined by a formula under *Minnesota Statutes*, section 103B.3369 utilizing equalized taxable net tax capacity and local plan implementation cost. An individual county is not required to match a base grant. The total of county water planning levies on a statewide basis constitutes the match to base grants. Specific base grants and the amount of the local water planning levy for 1991 have been provided to county auditors and local water planning officials under separate cover. Challenge grants are competitive and may be available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. Challenge grants must be matched in a one-to-one ratio with a local share.

The board has $2,370,000 available in fiscal year 1991 for plan development and implementation grants. An amount of $46,200 is estimated for plan development grants to three counties. An amount of $1,600,000 is estimated for base grants to an additional 52 counties. The balance, $723,800, is estimated for challenge grants. The board further estimates that counties will provide $723,800 of local share to match challenge grants. Considering plan development and challenge grants, county matching funds for fiscal year 1991 total $777,000. Until legislative funding and the extent of plan implementation is known, estimates for fiscal year 1992 cannot be made.

Rules as Proposed (all new material)

8405.0100 PURPOSE.

Minnesota Statutes, sections 103B.3361 to 103B.3369, authorize the board to make grants to counties for local government activities that protect or manage water and related land resources and to adopt rules.

This chapter provides for the administration of a state local water resources protection and management grant program. Parts 8405.0100 to 8405.0230 implement this program by establishing the substantive criteria and procedural conditions under which the board may award state grants for the development and implementation of a comprehensive local water plan.

8405.0110 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and in *Minnesota Statutes*, section 103B.3363, apply to parts 8405.0100 to 8405.0230. If a definition in this part conflicts with a definition in *Minnesota Statutes*, chapter 110B, 112, or 473, or rules adopted under one of those chapters, the definition in this part governs.

Subp. 2. **Board.** "Board" means the Board of Water and Soil Resources.

Subp. 3. **Comprehensive local water plan; plan.** "Comprehensive local water plan" or "plan" means a county water plan authorized under *Minnesota Statutes*, section 110B.04, a watershed management plan required under *Minnesota Statutes*, section 473.878, a watershed district overall plan required under *Minnesota Statutes*, section 112.46, or a county groundwater plan authorized under *Minnesota Statutes*, section 473.8785.

Subp. 4. **Local share.** "Local share" means the contribution of a local unit of government to the eligible cost of a program including the value of cash expenditures, private contributions, and in-kind contributions of labor, equipment, material, and real property used for and expended on eligible program activities. Up to 50 percent of the local share may consist of federal funds. State funds may not be used as local share.

Subp. 5. **Local unit of government.** "Local unit of government" means a statutory or home rule charter city, town, county, soil and water conservation district, watershed district, organization formed for the joint exercise of powers under *Minnesota Statutes*, section 471.59, local health board, or other special purpose district or authority with local jurisdiction in water and related land resources management.

Subp. 6. **Local water planning levy.** "Local water planning levy" means a property tax levy under *Minnesota Statutes*, section

275.50, subdivision 5, paragraph (2), and implementing *Minnesota Statutes*, section 103B.3369, subdivision 5, clause (2), for the purpose of implementing a comprehensive local water plan.

Subp. 7. **Official controls.** "Official controls" means ordinances and rules that control the physical development within the jurisdiction of a local unit of government, protect public health and safety, or implement the general objectives of the local unit of government.

Subp. 8. **Program.** "Program" means a water-related program.

Subp. 9. **Related land resources.** "Related land resources" means land affected by present or projected management practices that have significant effects on the quantity and quality, or use of groundwater or surface water.

8405.0120 AVAILABLE ASSISTANCE.

Subpart 1. **Grants.** The board may award grants to counties to develop plans authorized under *Minnesota Statutes*, section 110B.04 or 473.8785, or implement water resource protection and management programs identified as priorities in a comprehensive local water plan. Grants may be used to employ persons and to obtain and use information necessary to develop a plan under *Minnesota Statutes*, section 110B.04 or 473.8785, that did not receive funding under Laws of Minnesota 1987, chapter 404, section 30, subdivision 5, paragraph (a), or to implement a comprehensive local water plan. Plan development grants must not exceed a maximum of $15,300 for a plan under *Minnesota Statutes*, section 110B.04, or $15,600 for a plan under *Minnesota Statutes*, section 473.8785.

Plan implementation grants consist of base grants and challenge grants. Base grants are noncompetitive and are available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. The purpose of base grants is to encourage plan maintenance and implementation with an emphasis on new or expanded programs. Eligible activities include supporting water plan coordination and enforcement of official controls. Base grants may not exceed the amount specified in *Minnesota Statutes*, section 103B.3369, subdivision 5, clause (2).

Challenge grants are competitive and may be available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. The purpose of challenge grants is to accelerate implementation of priority actions contained in approved comprehensive local water plans. Eligible activities include establishment of monitoring programs, development of official controls, assessments of resources, and development of geographic information systems. A county may submit more than one challenge grant application.

Subp. 2. **Local share.** Plan development and challenge grants must be matched in a one-to-one ratio with a local share.

Subp. 3. **Priority.** Grants must be awarded, within the limits of available appropriations, to those applicants having the highest priority.

Subp. 4. **Technical assistance.** The board may provide technical assistance to counties that are considering application in order to ensure timely, accurate, and comprehensive applications. The board shall provide technical assistance, within the limits of available resources, to counties that receive grants, to assist in developing or implementing a comprehensive local water plan.

8405.0130 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Only counties are eligible to apply for grants. A county shall coordinate and submit applications on behalf of other local units of government within its jurisdiction.

Subp. 2. **Eligible costs.** Plan costs are eligible for state grants if the expenditures are reasonable and necessary for developing or implementing a comprehensive local water plan as described in part 8405.0120, subpart 1.

Subp. 3. **Ineligible costs.** Ineligible costs include those not related to the activities in subpart 2. In addition, the following costs are ineligible whether or not they relate to the activities in subpart 2:

A. expenditures or in-kind contributions incurred prior to the effective date of the grant agreement; and

B. activities that violate local, state, or federal statutes, rules, or regulations.

8405.0140 NOTICE OF GRANT AVAILABILITY.

Subpart 1. **Notice.** If the board determines that funds are available to award grants, the board shall publish a notice in the *State Register* announcing that applications will be accepted. The notice must include the amount of available funding and contain deadlines for submittal of applications for each grant, which must be no less than 60 calendar days from the date of publication.

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 2. **Notification.** The board shall notify all counties that grant funds are available and the deadline for applications. Any other local unit of government that wishes to be notified shall contact the board by writing to the executive director. When the board publishes notice in the State Register, the board shall mail notice of the grant application period to those local units of government who have requested to be notified.

Subp. 3. **Grant application periods.** The board may establish a grant application period at any time, but there must be at least one application period for each grant each fiscal year if funds are available.

8405.0150 GRANT APPLICATION.

Subpart 1. **General requirements.** A grant application must be submitted by a county. A county shall coordinate and submit applications on behalf of other local units of government within its jurisdiction. A completed grant application must be received in the board office in Saint Paul by the published deadline, in a format provided by the board, and with the information required by this part.

Subp. 2. **Plan development grant.** A county submitting an application for a plan development grant must submit the following information:

A. a resolution committing the county to develop a local water plan according to chapter 9300 and *Minnesota Statutes*, chapter 110B, or *Minnesota Statutes*, section 473.8785;

B. a resolution by the county authorizing the matching funds and the signing of the grant agreement and other related documents;

C. a budget of expenses associated with developing a local water plan; and

D. a description and explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 3. **Plan implementation base grant.** A county submitting an application for a plan implementation base grant shall submit the following information:

A. a resolution by the county authorizing the signing of the grant agreement and other related documents;

B. a detailed work plan and schedule for program implementation during the grant period;

C. a detailed budget for the grant period;

D. a statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan;

E. a statement describing how cooperation will be secured with adjacent counties and water management organizations, if applicable; and

F. a description and explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 4. **Plan implementation challenge grant.** A county submitting an application for a plan implementation challenge grant shall submit the following information:

A. a resolution by the county authorizing the matching funds and the signing of the grant agreement and other related documents;

B. an executive summary of the contents of the application;

C. a detailed work plan and schedule for program implementation during the grant period;

D. a detailed budget for the grant period including the identification of the amount requested in the grant;

E. a list identifying the amount, type, and source of the local share;

F. a statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan;

G. a statement describing how cooperation will be secured with adjacent counties and water management organizations, if applicable;

H. a statement describing local support and interagency coordination;

I. a description of how the challenge grant complements the base grant;

J. a statement indicating if partial funding of the application is acceptable. If partial funding is acceptable, project components must be listed in order of funding priority with a corresponding budget; and

K. an explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 5. **Sequence of implementation grants.** Before a county can submit an application for a plan implementation grant, the county must have:

A. approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area; and

B. implemented a local water planning levy.

Although base and challenge grants may be applied for at the same time, separate applications must be made.

8405.0160 DENIAL OF GRANT APPLICATIONS.

Subpart 1. **Grounds.** An application for a plan development grant or a plan implementation grant must be denied by the board for the following reasons:

A. ineligible applicant;

B. proposed expenditures are ineligible;

C. request is not consistent with priorities described in the applicant's comprehensive local water plan;

D. late submittal; or

E. inadequate or incomplete application.

Subp. 2. **Procedure.** The board shall review each grant application within 14 calendar days after the deadline for application submittal. The board shall notify each denied grant applicant of the denial of its application and the reasons for the denial within 14 calendar days after the determination.

Subp. 3. **Effect of denial.** A grant applicant whose application is denied may reapply in a subsequent application period in order to be reconsidered for a grant.

8405.0170 ALLOCATION OF FUNDING.

Subpart 1. **Overall grant fund allocation.** After assessing the number and specific type of applications, and within 30 calendar days of the close of an application period, the board shall determine the amount of funding to be made available for each grant. In deciding how much money to make available for new grant awards, the board shall give priority to plan development and base grants and consider the necessity to have additional money available to complete previously approved grants.

If the money intended for a specific type of grant is not awarded during a grant period, the board may reallocate the funds to one of the other type of grants or carry the money forward to a subsequent grant period.

8405.0180 RANKING OF APPLICATIONS.

Subpart 1. **Process of ranking.** After completion of the review by the board of the grant applications for eligibility, and determination of available funds for the types of grants, the board shall proceed to:

A. fund all eligible plan development and base grant applications as provided in part 8405.0120, subpart 1; and

B. rank in order of priority all eligible challenge grant applications.

Each eligible challenge grant application must be awarded the number of priority points it is entitled to under subparts 3 and 4. All applications must be given a ranking depending on the number of points awarded. The applications with the highest ranking must be given the highest priority.

Subp. 2. **Review team.** Prior to ranking challenge grant applications, the board shall establish an advisory review team to evaluate the applications. The review team, chaired by a member or representative appointed by the board, consists of a representative of each of the following agencies or organizations: Association of Metropolitan Municipalities; Association of Minnesota Counties; League of Minnesota Cities; Metropolitan Council; Metropolitan InterCounty Association; Metropolitan Water Management Organizations; Minnesota Association of Conservation District Employees; Minnesota Association of County Planning and Zoning Administrators; Minnesota Association of Soil and Water Conservation Districts; Minnesota Association of Townships; Minnesota Association of Watershed Districts; Minnesota Departments of Agriculture, Health, and Natural Resources; Minnesota Extension Service; Minnesota Geological Survey; Minnesota Pollution Control Agency; State Planning Agency; and others as the board may determine.

Subp. 3. **Priority points for challenge grant applications.** The following criteria must be used to determine the number of priority points to be awarded in the evaluation of each challenge grant application. To expedite the review process, the board is responsible for providing background information and summaries of the applications to the review team. The review team, acting as a committee,

KEY: 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." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

shall award each application between zero and ten points under the following criteria, depending on how well the application satisfies each criterion. Ten points is the highest point value. The number of points under each criterion must be added together to determine the application's total point value. This total number must be used to determine the application's overall ranking and priority. The criteria are as follows:

A. the extent to which the application demonstrates participation of several local units of government, including multicounty efforts;

B. the extent to which the application expresses long-term commitment to effective water protection and management;

C. the extent to which the applicant would use local programs and methods to protect and manage water and related land resources;

D. the extent to which the application complements efforts of federal, state, and local units of government; and

E. the extent to which the application supports efforts of local units of government to adopt, administer, and enforce official controls to protect and manage water and related land resources.

Subp. 4. **Other considerations.** In assigning points, the review team must consider the regional variations that exist in program needs and priorities.

8405.0190 SELECTION OF GRANTEES.

Subpart 1. **Ranking.** The review team shall complete its ranking of all applications for challenge grants for which an eligible grant application has been submitted and forward the recommendation to the board within 90 calendar days of the close of the application period.

Subp. 2. **Projects funded.** The board shall select those applications that will be awarded grant funds by awarding grants to the highest priority challenge grant applications within the limits of available funds established in part 8405.0170.

Subp. 3. **Board decision.** All decisions of the board in ranking applications and awarding grants must be made at a regular or special board meeting.

Subp. 4. **Timing.** The board shall make its selection of grantees within 120 calendar days of the close of the application period. The board shall notify all applicants of the status of their application within 14 calendar days after the selection of grantees.

Subp. 5. **Reapplication.** A grant applicant whose application is not awarded grant funds may reapply in a subsequent application period to be reconsidered for a grant.

8405.0200 GRANT CONDITIONS.

Subpart 1. **Amount.** Except as provided in part 8405.0150, subpart 4, item J, a grant that is made must be for the amount requested by the applicant. The maximum grant must be according to part 8405.0120, subpart 1.

Subp. 2. **Agency review.** Grants provided to develop or implement programs must be reviewed by the state agency having authority for the programs to assure compliance with minimum state standards before a grant agreement is executed by the board.

Subp. 3. **Performance criteria.** In addition to items required by this part, performance criteria for grant administration must include plan information requirements contained in the approved application of the county as described in part 8405.0150, subparts 2, 3, and 4.

Subp. 4. **Grant period.** The grant period for a plan development grant must be two years. The grant period for an implementation base grant must not exceed two years. The grant period for an implementation challenge grant must be two years and may be extended an additional year with prior board approval.

Subp. 5. **Grant agreement.** The county must enter into a grant agreement with the board before a grant will be awarded. The grant agreement must include the provisions established in part 8405.0210.

Subp. 6. **Records.** The county, or delegated local unit of government, shall maintain all records relating to the receipt and expenditure of grant funds for six years from the termination of the grant agreement.

Subp. 7. **Audit.** The county, or delegated local unit of government, must agree that the books, records, documents, and accounting procedures and practices of the county relevant to this program may be examined at any time by the board or board's designee. The county or delegated local unit of government implementing a grant shall provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of a grant and be performed within one year after the end of a grant period or when routinely audited, whichever occurs first. Copies of the audit must be provided to the county and the board.

Subp. 8. **Annual progress report.** The county, or delegated local unit of government, shall submit an annual progress report to the board by January 31st of each year the grant is in effect. The report must include the following information:

A. a discussion of progress of the work described in the approved application, and difficulties encountered meeting the schedule during the year;

B. a discussion of the program results appropriate to the work conducted during the year; and

C. a report of expenditures in the year and those anticipated during the upcoming year.

Subp. 9. **Eligible costs.** Grant funds may not be used to reimburse the county, or delegated local unit of government, for costs incurred before or after the end of the grant agreement period.

8405.0210 GRANT AGREEMENT.

Subpart 1. **Contents.** The board and the county shall enter into a grant agreement. The grant agreement must:

A. establish the term and conditions of the grant;

B. provide that the county may contract with others, including appropriate local units of government under the terms and conditions specified by the county, to complete the work specified in the grant agreement;

C. provide that the cost overruns are the sole responsibility of the county;

D. require that a county is responsible for ensuring that state funds are properly expended even if the work specified in the grant agreement is performed by a local unit of government acting on behalf of the county;

E. require that the county submit an annual progress report; and

F. incorporate terms and conditions required by federal or state statutes, rules, or regulations.

Subp. 2. **Amendments.** A grant agreement may be amended upon agreement of the board and the county.

Subp. 3. **Agreement period.** A grant agreement must be for a duration specified in part 8405.0200, subpart 4.

8405.0220 GRANT PAYMENTS.

Subpart 1. **Payment.** Payment of the grant amount must be made in one installment by the board promptly after the effective date of the grant agreement.

Subp. 2. **Unencumbered funds.** Any grant funds remaining unspent or becoming unobligated after the end of the grant agreement period must be returned to the board within two months of that date.

8405.0230 GRANT TERMINATION.

Subpart 1. **Board action.** The board may cancel a grant agreement for just cause. "Just cause" means that the county or delegated local unit of government is not disbursing grant funds in accordance with established board and state procedures or has otherwise breached a term of the grant agreement. The county must be given 14 calendar days' prior written notice of cancellation. The county has until the date of cancellation to demonstrate why the grant agreement should not be canceled. If it is determined by the board that the county's default was beyond its control or it was not otherwise in default, the grant agreement must not be canceled. The county may cancel this grant agreement with or without cause. In the event of cancellation by the board or county, the county is entitled to payment, determined on a pro rata basis, for work satisfactorily performed and the remaining grant funds must be promptly returned to the board.

Subp. 2. **Agency action.** At the request of any state commissioner, the board shall revoke that portion of a grant used to support a program not in compliance with rules of that agency.

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

BOARD OF WATER AND SOIL RESOURCES
155 SOUTH WABASHA STREET
SUITE 104
ST. PAUL, MINNESOTA 55107

In the Matter of the Proposed Adoption of the Rule of the Board of Water and Soil Resources Relating to a Local Water Resources Protection and Management Program	AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

KAREN SCHULTZ, being sworn, says:

That on the 17th day of August 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, she mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1.a. and 14.22 or 14.30, that their names be placed on the Minnesota Board of Water and Soil Resources rulemaking mailing list.

Karen Schultz
Secretary

MARY JO ANDERSON
NOTARY PUBLIC—MINNESOTA
WASHINGTON COUNTY
My commission expires 11-29-93

Subscribed and sworn to before me
this 17th day of August 1990

Mary Jo Anderson

BOARD OF WATER AND SOIL RESOURCES
155 SOUTH WABASHA STREET
SUITE 104
ST. PAUL, MINNESOTA 55107

In the Matter of the Proposed Adoption of the Rule of the Board of Water and Soil Resources Relating to a Local Water Resources Protection and Management Program

CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

GREG LARSON, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Statutes, section 14.14, subd. 1a, and 14.22 or 14.30, that their names be placed on the Minnesota Board of Water and Soil Resources rulemaking mailing list, is accurate, complete, and current as of this 17th day of August 1990.

Greg Larson

Greg Larson
Head, Water and Land Management Section

MARY JO ANDERSON
NOTARY PUBLIC — MINNESOTA
WASHINGTON COUNTY
My commission expires 11-29-93

Subscribed and sworn to before me
this 17th day of August 1990

Mary Jo Anderson

Board of Water and Soil Resources

BOARD OF WATER AND SOIL RESOURCES

Sent to "listed" persons on 8/17/90

In the Matter of the Proposed Adoption of the Rule of the State Board of Water and Soil Resources Governing Grants to Counties for Local Water Resources Protection and Management.

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the State Board of Water and Soil Resources intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, sections 103B.3361 to 103B.3369.

(2) All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted to:

Greg Larson, Head, Water and Land Management Section
Board of Water and Soil Resources
155 S. Wabasha Street Suite 104
St. Paul, Mn. 55107
(612) 296-3767

(8) The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

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contribution of a local unit of government to the eligible cost of a program including the value of cash expenditures, private contributions, and in-kind contributions of labor, equipment, material, and real property used for and expended on eligible program activities. Up to 50 percent of the local share may consist of federal funds. State funds may not be used as local share.

Subp. 5. **Local unit of government.** "Local unit of government" means a statutory or home rule charter city, town, county, soil and water conservation district, watershed district, organization formed for the joint exercise of powers under Minnesota Statutes, section 471.59, local health board, or other special purpose district or authority with local jurisdiction in water and related land resources management.

Subp. 6. **Local water planning levy.** "Local water planning levy" means a property tax levy under Minnesota Statutes, section 275.50, subdivision 5, paragraph (2), and implementing Minnesota Statutes, section 103B.3369, subdivision 5, clause (2), for the purpose of implementing a comprehensive local water plan.

Subp. 7. **Official controls.** "Official controls" means ordinances and rules that control the physical development within the jurisdiction of a local unit of government, protect public health and safety, or implement the general objectives of the local unit of government.

Subp. 8. **Program.** "Program" means a water-related program.

Subp. 9. **Related land resources.** "Related land resources" means land affected by present or projected management practices that have significant effects on the quantity and quality, or use of groundwater or surface water.

8405.0120 AVAILABLE ASSISTANCE.

Subpart 1. **Grants.** The board may award grants to counties to develop plans authorized under Minnesota Statutes, section 110B.04 or 473.8785, or implement water resource protection and management programs identified as priorities in a comprehensive

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local water plan. Grants may be used to employ persons and to obtain and use information necessary to develop a plan under Minnesota Statutes, section 110B.04 or 473.8785, that did not receive funding under Laws of Minnesota 1987, chapter 404, section 30, subdivision 5, paragraph (a), or to implement a comprehensive local water plan. Plan development grants must not exceed a maximum of $15,300 for a plan under Minnesota Statutes, section 110B.04, or $15,600 for a plan under Minnesota Statutes, section 473.8785.

Plan implementation grants consist of base grants and challenge grants. Base grants are noncompetitive and are available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. The purpose of base grants is to encourage plan maintenance and implementation with an emphasis on new or expanded programs. Eligible activities include supporting water plan coordination and enforcement of official controls. Base grants may not exceed the amount specified in Minnesota Statutes, section 103B.3369, subdivision 5, clause (2).

Challenge grants are competitive and may be available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. The purpose of challenge grants is to accelerate implementation of priority actions contained in approved comprehensive local water plans. Eligible activities include establishment of monitoring programs, development of official controls, assessments of resources, and development of geographic information systems. A county may submit more than one challenge grant application.

Subp. 2. **Local share.** Plan development and challenge grants must be matched in a one-to-one ratio with a local share.

Subp. 3. **Priority.** Grants must be awarded, within the limits of available appropriations, to those applicants having the highest priority.

Subp. 4. **Technical assistance.** The board may provide

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technical assistance to counties that are considering application in order to ensure timely, accurate, and comprehensive applications. The board shall provide technical assistance, within the limits of available resources, to counties that receive grants, to assist in developing or implementing a comprehensive local water plan.

8405.0130 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Only counties are eligible to apply for grants. A county shall coordinate and submit applications on behalf of other local units of government within its jurisdiction.

Subp. 2. **Eligible costs.** Plan costs are eligible for state grants if the expenditures are reasonable and necessary for developing or implementing a comprehensive local water plan as described in part 8405.0120, subpart 1.

Subp. 3. **Ineligible costs.** Ineligible costs include those not related to the activities in subpart 2. In addition, the following costs are ineligible whether or not they relate to the activities in subpart 2:

A. expenditures or in-kind contributions incurred prior to the effective date of the grant agreement; and

B. activities that violate local, state, or federal statutes, rules, or regulations.

8405.0140 NOTICE OF GRANT AVAILABILITY.

Subpart 1. **Notice.** If the board determines that funds are available to award grants, the board shall publish a notice in the State Register announcing that applications will be accepted. The notice must include the amount of available funding and contain deadlines for submittal of applications for each grant, which must be no less than 60 calendar days from the date of publication.

Subp. 2. **Notification.** The board shall notify all counties that grant funds are available and the deadline for applications. Any other local unit of government that wishes to be notified shall contact the board by writing to the executive

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director. When the board publishes notice in the State Register, the board shall mail notice of the grant application period to those local units of government who have requested to be notified.

Subp. 3. **Grant application periods.** The board may establish a grant application period at any time, but there must be at least one application period for each grant each fiscal year if funds are available.

8405.0150 GRANT APPLICATION.

Subpart 1. **General requirements.** A grant application must be submitted by a county. A county shall coordinate and submit applications on behalf of other local units of government within its jurisdiction. A completed grant application must be received in the board office in Saint Paul by the published deadline, in a format provided by the board, and with the information required by this part.

Subp. 2. **Plan development grant.** A county submitting an application for a plan development grant must submit the following information:

A. a resolution committing the county to develop a local water plan according to chapter 9300 and Minnesota Statutes, chapter 110B, or Minnesota Statutes, section 473.8785;

B. a resolution by the county authorizing the matching funds and the signing of the grant agreement and other related documents;

C. a budget of expenses associated with developing a local water plan; and

D. a description and explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 3. **Plan implementation base grant.** A county submitting an application for a plan implementation base grant shall submit the following information:

A. a resolution by the county authorizing the signing of the grant agreement and other related documents;

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B. a detailed work plan and schedule for program implementation during the grant period;

C. a detailed budget for the grant period;

D. a statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan;

E. a statement describing how cooperation will be secured with adjacent counties and water management organizations, if applicable; and

F. a description and explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 4. **Plan implementation challenge grant.** A county submitting an application for a plan implementation challenge grant shall submit the following information:

A. a resolution by the county authorizing the matching funds and the signing of the grant agreement and other related documents;

B. an executive summary of the contents of the application;

C. a detailed work plan and schedule for program implementation during the grant period;

D. a detailed budget for the grant period including the identification of the amount requested in the grant;

E. a list identifying the amount, type, and source of the local share;

F. a statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan;

G. a statement describing how cooperation will be secured with adjacent counties and water management organizations, if applicable;

H. a statement describing local support and interagency coordination;

I. a description of how the challenge grant complements the base grant;

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J. a statement indicating if partial funding of the application is acceptable. If partial funding is acceptable, project components must be listed in order of funding priority with a corresponding budget; and

K. an explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 5. **Sequence of implementation grants.** Before a county can submit an application for a plan implementation grant, the county must have:

A. approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area; and

B. implemented a local water planning levy.

Although base and challenge grants may be applied for at the same time, separate applications must be made.

8405.0160 DENIAL OF GRANT APPLICATIONS.

Subpart 1. **Grounds.** An application for a plan development grant or a plan implementation grant must be denied by the board for the following reasons:

A. ineligible applicant;

B. proposed expenditures are ineligible;

C. request is not consistent with priorities described in the applicant's comprehensive local water plan;

D. late submittal; or

E. inadequate or incomplete application.

Subp. 2. **Procedure.** The board shall review each grant application within 14 calendar days after the deadline for application submittal. The board shall notify each denied grant applicant of the denial of its application and the reasons for the denial within 14 calendar days after the determination.

Subp. 3. **Effect of denial.** A grant applicant whose application is denied may reapply in a subsequent application period in order to be reconsidered for a grant.

8405.0170 ALLOCATION OF FUNDING.

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Subpart 1. **Overall grant fund allocation.** After assessing the number and specific type of applications, and within 30 calendar days of the close of an application period, the board shall determine the amount of funding to be made available for each grant. In deciding how much money to make available for new grant awards, the board shall give priority to plan development and base grants and consider the necessity to have additional money available to complete previously approved grants.

If the money intended for a specific type of grant is not awarded during a grant period, the board may reallocate the funds to one of the other type of grants or carry the money forward to a subsequent grant period.

8405.0180 RANKING OF APPLICATIONS.

Subpart 1. **Process of ranking.** After completion of the review by the board of the grant applications for eligibility, and determination of available funds for the types of grants, the board shall proceed to:

A. fund all eligible plan development and base grant applications as provided in part 8405.0120, subpart 1; and

B. rank in order of priority all eligible challenge grant applications.

Each eligible challenge grant application must be awarded the number of priority points it is entitled to under subparts 3 and 4. All applications must be given a ranking depending on the number of points awarded. The applications with the highest ranking must be given the highest priority.

Subp. 2. **Review team.** Prior to ranking challenge grant applications, the board shall establish an advisory review team to evaluate the applications. The review team, chaired by a member or representative appointed by the board, consists of a representative of each of the following agencies or organizations: Association of Metropolitan Municipalities; Association of Minnesota Counties; League of Minnesota Cities; Metropolitan Council; Metropolitan InterCounty Association;

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Metropolitan Water Management Organizations; Minnesota Association of Conservation District Employees; Minnesota Association of County Planning and Zoning Administrators; Minnesota Association of Soil and Water Conservation Districts; Minnesota Association of Townships; Minnesota Association of Watershed Districts; Minnesota Departments of Agriculture, Health, and Natural Resources; Minnesota Extension Service; Minnesota Geological Survey; Minnesota Pollution Control Agency; State Planning Agency; and others as the board may determine.

Subp. 3. **Priority points for challenge grant applications.** The following criteria must be used to determine the number of priority points to be awarded in the evaluation of each challenge grant application. To expedite the review process, the board is responsible for providing background information and summaries of the applications to the review team. The review team, acting as a committee, shall award each application between zero and ten points under the following criteria, depending on how well the application satisfies each criterion. Ten points is the highest point value. The number of points under each criterion must be added together to determine the application's total point value. This total number must be used to determine the application's overall ranking and priority. The criteria are as follows:

A. the extent to which the application demonstrates participation of several local units of government, including multicounty efforts;

B. the extent to which the application expresses long-term commitment to effective water protection and management;

C. the extent to which the applicant would use local programs and methods to protect and manage water and related land resources;

D. the extent to which the application complements efforts of federal, state, and local units of government; and

E. the extent to which the application supports efforts of local units of government to adopt, administer, and

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enforce official controls to protect and manage water and related land resources.

Subp. 4. **Other considerations.** In assigning points, the review team must consider the regional variations that exist in program needs and priorities.

8405.0190 SELECTION OF GRANTEES.

Subpart 1. **Ranking.** The review team shall complete its ranking of all applications for challenge grants for which an eligible grant application has been submitted and forward the recommendation to the board within 90 calendar days of the close of the application period.

Subp. 2. **Projects funded.** The board shall select those applications that will be awarded grant funds by awarding grants to the highest priority challenge grant applications within the limits of available funds established in part 8405.0170.

Subp. 3. **Board decision.** All decisions of the board in ranking applications and awarding grants must be made at a regular or special board meeting.

Subp. 4. **Timing.** The board shall make its selection of grantees within 120 calendar days of the close of the application period. The board shall notify all applicants of the status of their application within 14 calendar days after the selection of grantees.

Subp. 5. **Reapplication.** A grant applicant whose application is not awarded grant funds may reapply in a subsequent application period to be reconsidered for a grant.

8405.0200 GRANT CONDITIONS.

Subpart 1. **Amount.** Except as provided in part 8405.0150, subpart 4, item J, a grant that is made must be for the amount requested by the applicant. The maximum grant must be according to part 8405.0120, subpart 1.

Subp. 2. **Agency review.** Grants provided to develop or implement programs must be reviewed by the state agency having authority for the programs to assure compliance with minimum state standards before a grant agreement is executed by the

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board.

Subp. 3. **Performance criteria.** In addition to items required by this part, performance criteria for grant administration must include plan information requirements contained in the approved application of the county as described in part 8405.0150, subparts 2, 3, and 4.

Subp. 4. **Grant period.** The grant period for a plan development grant must be two years. The grant period for an implementation base grant must not exceed two years. The grant period for an implementation challenge grant must be two years and may be extended an additional year with prior board approval.

Subp. 5. **Grant agreement.** The county must enter into a grant agreement with the board before a grant will be awarded. The grant agreement must include the provisions established in part 8405.0210.

Subp. 6. **Records.** The county, or delegated local unit of government, shall maintain all records relating to the receipt and expenditure of grant funds for six years from the termination of the grant agreement.

Subp. 7. **Audit.** The county, or delegated local unit of government, must agree that the books, records, documents, and accounting procedures and practices of the county relevant to this program may be examined at any time by the board or board's designee. The county or delegated local unit of government implementing a grant shall provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of a grant and be performed within one year after the end of a grant period or when routinely audited, whichever occurs first. Copies of the audit must be provided to the county and the board.

Subp. 8. **Annual progress report.** The county, or delegated local unit of government, shall submit an annual progress report to the board by January 31st of each year the grant is in effect. The report must include the following information:

A. a discussion of progress of the work described in the approved application, and difficulties encountered meeting

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the schedule during the year;

B. a discussion of the program results appropriate to the work conducted during the year; and

C. a report of expenditures in the year and those anticipated during the upcoming year.

Subp. 9. **Eligible costs.** Grant funds may not be used to reimburse the county, or delegated local unit of government, for costs incurred before or after the end of the grant agreement period.

8405.0210 GRANT AGREEMENT.

Subpart 1. **Contents.** The board and the county shall enter into a grant agreement. The grant agreement must:

A. establish the term and conditions of the grant;

B. provide that the county may contract with others, including appropriate local units of government under the terms and conditions specified by the county, to complete the work specified in the grant agreement;

C. provide that the cost overruns are the sole responsibility of the county;

D. require that a county is responsible for ensuring that state funds are properly expended even if the work specified in the grant agreement is performed by a local unit of government acting on behalf of the county;

E. require that the county submit an annual progress report; and

F. incorporate terms and conditions required by federal or state statutes, rules, or regulations.

Subp. 2. **Amendments.** A grant agreement may be amended upon agreement of the board and the county.

Subp. 3. **Agreement period.** A grant agreement must be for a duration specified in part 8405.0200, subpart 4.

8405.0220 GRANT PAYMENTS.

Subpart 1. **Payment.** Payment of the grant amount must be made in one installment by the board promptly after the effective date of the grant agreement.

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Subp. 2. **Unencumbered funds.** Any grant funds remaining unspent or becoming unobligated after the end of the grant agreement period must be returned to the board within two months of that date.

8405.0230 GRANT TERMINATION.

Subpart 1. **Board action.** The board may cancel a grant agreement for just cause. "Just cause" means that the county or delegated local unit of government is not disbursing grant funds in accordance with established board and state procedures or has otherwise breached a term of the grant agreement. The county must be given 14 calendar days' prior written notice of cancellation. The county has until the date of cancellation to demonstrate why the grant agreement should not be canceled. If it is determined by the board that the county's default was beyond its control or it was not otherwise in default, the grant agreement must not be canceled. The county may cancel this grant agreement with or without cause. In the event of cancellation by the board or county, the county is entitled to payment, determined on a pro rata basis, for work satisfactorily performed and the remaining grant funds must be promptly returned to the board.

Subp. 2. **Agency action.** At the request of any state commissioner, the board shall revoke that portion of a grant used to support a program not in compliance with rules of that agency.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to a Local Water Resources Protection and Management Program

AGENCY: Board of Water and Soil Resources

MINNESOTA RULES: Chapter 8405

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

Board of Water and Soil Resources

Proposed Permanent Rules Relating to a Local Water Resources Protection and Management Program

Rules as Proposed (all new material)

8405.0100 PURPOSE.

Minnesota Statutes, sections 103B.3361 to 103B.3369, authorize the board to make grants to counties for local government activities that protect or manage water and related land resources and to adopt rules.

This chapter provides for the administration of a state local water resources protection and management grant program. Parts 8405.0100 to 8405.0230 implement this program by establishing the substantive criteria and procedural conditions under which the board may award state grants for the development and implementation of a comprehensive local water plan.

8405.0110 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and in Minnesota Statutes, section 103B.3363, apply to parts 8405.0100 to 8405.0230. If a definition in this part conflicts with a definition in Minnesota Statutes, chapter 110B, 112, or 473, or rules adopted under one of those chapters, the definition in this part governs.

Subp. 2. **Board.** "Board" means the Board of Water and Soil Resources.

Subp. 3. **Comprehensive local water plan; plan.** "Comprehensive local water plan" or "plan" means a county water plan authorized under Minnesota Statutes, section 110B.04, a watershed management plan required under Minnesota Statutes, section 473.878, a watershed district overall plan required under Minnesota Statutes, section 112.46, or a county groundwater plan authorized under Minnesota Statutes, section 473.8785.

Subp. 4. **Local share.** "Local share" means the

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contribution of a local unit of government to the eligible cost of a program including the value of cash expenditures, private contributions, and in-kind contributions of labor, equipment, material, and real property used for and expended on eligible program activities. Up to 50 percent of the local share may consist of federal funds. State funds may not be used as local share.

Subp. 5. **Local unit of government.** "Local unit of government" means a statutory or home rule charter city, town, county, soil and water conservation district, watershed district, organization formed for the joint exercise of powers under Minnesota Statutes, section 471.59, local health board, or other special purpose district or authority with local jurisdiction in water and related land resources management.

Subp. 6. **Local water planning levy.** "Local water planning levy" means a property tax levy under Minnesota Statutes, section 275.50, subdivision 5, paragraph (2), and implementing Minnesota Statutes, section 103B.3369, subdivision 5, clause (2), for the purpose of implementing a comprehensive local water plan.

Subp. 7. **Official controls.** "Official controls" means ordinances and rules that control the physical development within the jurisdiction of a local unit of government, protect public health and safety, or implement the general objectives of the local unit of government.

Subp. 8. **Program.** "Program" means a water-related program.

Subp. 9. **Related land resources.** "Related land resources" means land affected by present or projected management practices that have significant effects on the quantity and quality, or use of groundwater or surface water.

8405.0120 AVAILABLE ASSISTANCE.

Subpart 1. **Grants.** The board may award grants to counties to develop plans authorized under Minnesota Statutes, section 110B.04 or 473.8785, or implement water resource protection and management programs identified as priorities in a comprehensive

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local water plan. Grants may be used to employ persons and to obtain and use information necessary to develop a plan under Minnesota Statutes, section 110B.04 or 473.8785, that did not receive funding under Laws of Minnesota 1987, chapter 404, section 30, subdivision 5, paragraph (a), or to implement a comprehensive local water plan. Plan development grants must not exceed a maximum of $15,300 for a plan under Minnesota Statutes, section 110B.04, or $15,600 for a plan under Minnesota Statutes, section 473.8785.

Plan implementation grants consist of base grants and challenge grants. Base grants are noncompetitive and are available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. The purpose of base grants is to encourage plan maintenance and implementation with an emphasis on new or expanded programs. Eligible activities include supporting water plan coordination and enforcement of official controls. Base grants may not exceed the amount specified in Minnesota Statutes, section 103B.3369, subdivision 5, clause (2).

Challenge grants are competitive and may be available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. The purpose of challenge grants is to accelerate implementation of priority actions contained in approved comprehensive local water plans. Eligible activities include establishment of monitoring programs, development of official controls, assessments of resources, and development of geographic information systems. A county may submit more than one challenge grant application.

Subp. 2. **Local share.** Plan development and challenge grants must be matched in a one-to-one ratio with a local share.

Subp. 3. **Priority.** Grants must be awarded, within the limits of available appropriations, to those applicants having the highest priority.

Subp. 4. **Technical assistance.** The board may provide

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technical assistance to counties that are considering application in order to ensure timely, accurate, and comprehensive applications. The board shall provide technical assistance, within the limits of available resources, to counties that receive grants, to assist in developing or implementing a comprehensive local water plan.

8405.0130 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Only counties are eligible to apply for grants. A county shall coordinate and submit applications on behalf of other local units of government within its jurisdiction.

Subp. 2. **Eligible costs.** Plan costs are eligible for state grants if the expenditures are reasonable and necessary for developing or implementing a comprehensive local water plan as described in part 8405.0120, subpart 1.

Subp. 3. **Ineligible costs.** Ineligible costs include those not related to the activities in subpart 2. In addition, the following costs are ineligible whether or not they relate to the activities in subpart 2:

A. expenditures or in-kind contributions incurred prior to the effective date of the grant agreement; and

B. activities that violate local, state, or federal statutes, rules, or regulations.

8405.0140 NOTICE OF GRANT AVAILABILITY.

Subpart 1. **Notice.** If the board determines that funds are available to award grants, the board shall publish a notice in the State Register announcing that applications will be accepted. The notice must include the amount of available funding and contain deadlines for submittal of applications for each grant, which must be no less than 60 calendar days from the date of publication.

Subp. 2. **Notification.** The board shall notify all counties that grant funds are available and the deadline for applications. Any other local unit of government that wishes to be notified shall contact the board by writing to the executive

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director. When the board publishes notice in the State Register, the board shall mail notice of the grant application period to those local units of government who have requested to be notified.

Subp. 3. **Grant application periods.** The board may establish a grant application period at any time, but there must be at least one application period for each grant each fiscal year if funds are available.

8405.0150 GRANT APPLICATION.

Subpart 1. **General requirements.** A grant application must be submitted by a county. A county shall coordinate and submit applications on behalf of other local units of government within its jurisdiction. A completed grant application must be received in the board office in Saint Paul by the published deadline, in a format provided by the board, and with the information required by this part.

Subp. 2. **Plan development grant.** A county submitting an application for a plan development grant must submit the following information:

A. a resolution committing the county to develop a local water plan according to chapter 9300 and Minnesota Statutes, chapter 110B, or Minnesota Statutes, section 473.8785;

B. a resolution by the county authorizing the matching funds and the signing of the grant agreement and other related documents;

C. a budget of expenses associated with developing a local water plan; and

D. a description and explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 3. **Plan implementation base grant.** A county submitting an application for a plan implementation base grant shall submit the following information:

A. a resolution by the county authorizing the signing of the grant agreement and other related documents;

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by Revisor _____

B. a detailed work plan and schedule for program implementation during the grant period;

C. a detailed budget for the grant period;

D. a statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan;

E. a statement describing how cooperation will be secured with adjacent counties and water management organizations, if applicable; and

F. a description and explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 4. **Plan implementation challenge grant.** A county submitting an application for a plan implementation challenge grant shall submit the following information:

A. a resolution by the county authorizing the matching funds and the signing of the grant agreement and other related documents;

B. an executive summary of the contents of the application;

C. a detailed work plan and schedule for program implementation during the grant period;

D. a detailed budget for the grant period including the identification of the amount requested in the grant;

E. a list identifying the amount, type, and source of the local share;

F. a statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan;

G. a statement describing how cooperation will be secured with adjacent counties and water management organizations, if applicable;

H. a statement describing local support and interagency coordination;

I. a description of how the challenge grant complements the base grant;

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by Revisor _____

J. a statement indicating if partial funding of the application is acceptable. If partial funding is acceptable, project components must be listed in order of funding priority with a corresponding budget; and

K. an explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 5. **Sequence of implementation grants.** Before a county can submit an application for a plan implementation grant, the county must have:

A. approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area; and

B. implemented a local water planning levy.

Although base and challenge grants may be applied for at the same time, separate applications must be made.

8405.0160 DENIAL OF GRANT APPLICATIONS.

Subpart 1. **Grounds.** An application for a plan development grant or a plan implementation grant must be denied by the board for the following reasons:

A. ineligible applicant;

B. proposed expenditures are ineligible;

C. request is not consistent with priorities described in the applicant's comprehensive local water plan;

D. late submittal; or

E. inadequate or incomplete application.

Subp. 2. **Procedure.** The board shall review each grant application within 14 calendar days after the deadline for application submittal. The board shall notify each denied grant applicant of the denial of its application and the reasons for the denial within 14 calendar days after the determination.

Subp. 3. **Effect of denial.** A grant applicant whose application is denied may reapply in a subsequent application period in order to be reconsidered for a grant.

8405.0170 ALLOCATION OF FUNDING.

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Subpart 1. **Overall grant fund allocation.** After assessing the number and specific type of applications, and within 30 calendar days of the close of an application period, the board shall determine the amount of funding to be made available for each grant. In deciding how much money to make available for new grant awards, the board shall give priority to plan development and base grants and consider the necessity to have additional money available to complete previously approved grants.

If the money intended for a specific type of grant is not awarded during a grant period, the board may reallocate the funds to one of the other type of grants or carry the money forward to a subsequent grant period.

8405.0180 RANKING OF APPLICATIONS.

Subpart 1. **Process of ranking.** After completion of the review by the board of the grant applications for eligibility, and determination of available funds for the types of grants, the board shall proceed to:

A. fund all eligible plan development and base grant applications as provided in part 8405.0120, subpart 1; and

B. rank in order of priority all eligible challenge grant applications.

Each eligible challenge grant application must be awarded the number of priority points it is entitled to under subparts 3 and 4. All applications must be given a ranking depending on the number of points awarded. The applications with the highest ranking must be given the highest priority.

Subp. 2. **Review team.** Prior to ranking challenge grant applications, the board shall establish an advisory review team to evaluate the applications. The review team, chaired by a member or representative appointed by the board, consists of a representative of each of the following agencies or organizations: Association of Metropolitan Municipalities; Association of Minnesota Counties; League of Minnesota Cities; Metropolitan Council; Metropolitan InterCounty Association;

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Metropolitan Water Management Organizations; Minnesota Association of Conservation District Employees; Minnesota Association of County Planning and Zoning Administrators; Minnesota Association of Soil and Water Conservation Districts; Minnesota Association of Townships; Minnesota Association of Watershed Districts; Minnesota Departments of Agriculture, Health, and Natural Resources; Minnesota Extension Service; Minnesota Geological Survey; Minnesota Pollution Control Agency; State Planning Agency; and others as the board may determine.

Subp. 3. **Priority points for challenge grant applications.** The following criteria must be used to determine the number of priority points to be awarded in the evaluation of each challenge grant application. To expedite the review process, the board is responsible for providing background information and summaries of the applications to the review team. The review team, acting as a committee, shall award each application between zero and ten points under the following criteria, depending on how well the application satisfies each criterion. Ten points is the highest point value. The number of points under each criterion must be added together to determine the application's total point value. This total number must be used to determine the application's overall ranking and priority. The criteria are as follows:

A. the extent to which the application demonstrates participation of several local units of government, including multicounty efforts;

B. the extent to which the application expresses long-term commitment to effective water protection and management;

C. the extent to which the applicant would use local programs and methods to protect and manage water and related land resources;

D. the extent to which the application complements efforts of federal, state, and local units of government; and

E. the extent to which the application supports efforts of local units of government to adopt, administer, and

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enforce official controls to protect and manage water and related land resources.

Subp. 4. **Other considerations.** In assigning points, the review team must consider the regional variations that exist in program needs and priorities.

8405.0190 SELECTION OF GRANTEES.

Subpart 1. **Ranking.** The review team shall complete its ranking of all applications for challenge grants for which an eligible grant application has been submitted and forward the recommendation to the board within 90 calendar days of the close of the application period.

Subp. 2. **Projects funded.** The board shall select those applications that will be awarded grant funds by awarding grants to the highest priority challenge grant applications within the limits of available funds established in part 8405.0170.

Subp. 3. **Board decision.** All decisions of the board in ranking applications and awarding grants must be made at a regular or special board meeting.

Subp. 4. **Timing.** The board shall make its selection of grantees within 120 calendar days of the close of the application period. The board shall notify all applicants of the status of their application within 14 calendar days after the selection of grantees.

Subp. 5. **Reapplication.** A grant applicant whose application is not awarded grant funds may reapply in a subsequent application period to be reconsidered for a grant.

8405.0200 GRANT CONDITIONS.

Subpart 1. **Amount.** Except as provided in part 8405.0150, subpart 4, item J, a grant that is made must be for the amount requested by the applicant. The maximum grant must be according to part 8405.0120, subpart 1.

Subp. 2. **Agency review.** Grants provided to develop or implement programs must be reviewed by the state agency having authority for the programs to assure compliance with minimum state standards before a grant agreement is executed by the

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by Revisor _____

board.

Subp. 3. **Performance criteria.** In addition to items required by this part, performance criteria for grant administration must include plan information requirements contained in the approved application of the county as described in part 8405.0150, subparts 2, 3, and 4.

Subp. 4. **Grant period.** The grant period for a plan development grant must be two years. The grant period for an implementation base grant must not exceed two years. The grant period for an implementation challenge grant must be two years and may be extended an additional year with prior board approval.

Subp. 5. **Grant agreement.** The county must enter into a grant agreement with the board before a grant will be awarded. The grant agreement must include the provisions established in part 8405.0210.

Subp. 6. **Records.** The county, or delegated local unit of government, shall maintain all records relating to the receipt and expenditure of grant funds for six years from the termination of the grant agreement.

Subp. 7. **Audit.** The county, or delegated local unit of government, must agree that the books, records, documents, and accounting procedures and practices of the county relevant to this program may be examined at any time by the board or board's designee. The county or delegated local unit of government implementing a grant shall provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of a grant and be performed within one year after the end of a grant period or when routinely audited, whichever occurs first. Copies of the audit must be provided to the county and the board.

Subp. 8. **Annual progress report.** The county, or delegated local unit of government, shall submit an annual progress report to the board by January 31st of each year the grant is in effect. The report must include the following information:

A. a discussion of progress of the work described in the approved application, and difficulties encountered meeting

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the schedule during the year;

B. a discussion of the program results appropriate to the work conducted during the year; and

C. a report of expenditures in the year and those anticipated during the upcoming year.

Subp. 9. **Eligible costs.** Grant funds may not be used to reimburse the county, or delegated local unit of government, for costs incurred before or after the end of the grant agreement period.

8405.0210 GRANT AGREEMENT.

Subpart 1. **Contents.** The board and the county shall enter into a grant agreement. The grant agreement must:

A. establish the term and conditions of the grant;

B. provide that the county may contract with others, including appropriate local units of government under the terms and conditions specified by the county, to complete the work specified in the grant agreement;

C. provide that the cost overruns are the sole responsibility of the county;

D. require that a county is responsible for ensuring that state funds are properly expended even if the work specified in the grant agreement is performed by a local unit of government acting on behalf of the county;

E. require that the county submit an annual progress report; and

F. incorporate terms and conditions required by federal or state statutes, rules, or regulations.

Subp. 2. **Amendments.** A grant agreement may be amended upon agreement of the board and the county.

Subp. 3. **Agreement period.** A grant agreement must be for a duration specified in part 8405.0200, subpart 4.

8405.0220 GRANT PAYMENTS.

Subpart 1. **Payment.** Payment of the grant amount must be made in one installment by the board promptly after the effective date of the grant agreement.

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Subp. 2. **Unencumbered funds.** Any grant funds remaining unspent or becoming unobligated after the end of the grant agreement period must be returned to the board within two months of that date.

8405.0230 GRANT TERMINATION.

Subpart 1. **Board action.** The board may cancel a grant agreement for just cause. "Just cause" means that the county or delegated local unit of government is not disbursing grant funds in accordance with established board and state procedures or has otherwise breached a term of the grant agreement. The county must be given 14 calendar days' prior written notice of cancellation. The county has until the date of cancellation to demonstrate why the grant agreement should not be canceled. If it is determined by the board that the county's default was beyond its control or it was not otherwise in default, the grant agreement must not be canceled. The county may cancel this grant agreement with or without cause. In the event of cancellation by the board or county, the county is entitled to payment, determined on a pro rata basis, for work satisfactorily performed and the remaining grant funds must be promptly returned to the board.

Subp. 2. **Agency action.** At the request of any state commissioner, the board shall revoke that portion of a grant used to support a program not in compliance with rules of that agency.

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by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to a Local Water Resources Protection and Management Program

AGENCY: Board of Water and Soil Resources

MINNESOTA RULES: Chapter 8405

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

CERTIFICATE OF THE BOARD OF WATER AND SOIL RESOURCES

RESOLUTION ADOPTING THE RULE

I, Donald Ogaard, do hereby certify that I am a member and the Chairman of the Board of Water and Soil Resources, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Water and Soil Resources, duly and properly called and held on the 26th day of September 1990, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that the rule governing grants to counties for local water resources protection and management is approved and adopted pursuant to authority vested in the Board of Water and Soil Resources by Minnesota Statutes, Chapter 103B.3361.
>
> James R. Birkholz, Executive Director of the Board of Water and Soil Resources, is authorized to sign the findings of fact, conclusions, and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the attorney general and to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 26th day of September 1990.

Donald Ogaard
Chairman of the Board

John A. Williamson
Attest by one other Board Member

WEST POLK SOIL AND WATER
CONSERVATION DISTRICT

107 East Second Street
Crookston, Minnesota 56716
Telephone: (218) 281-6361
(218) 281-1445

MINNESOTA
SOIL AND WATER CONSERVATION DISTRICTS

RECEIVED
SEP 27 1990

September 25, 1990

Board of Water and Soil Resources
155 S. Wabasha Street
South Bridge Office Building
St. Paul, MN 55107

West Polk Soil and Water Conservation District
107 East 2nd Street
Crookston, MN 56716

On behalf of Polk County, we would like to request the Board of Water and Soil Resources to consider Comprehensive Local Water Plan implementation expenses that are presently being incurred for payback or an in-kind match in the challenge grant proposals.

Some of these projects were initiated prior to the challenge grant application period to take advantage of federal funding that was available. Four counties in Northwest Minnesota initiated a groundwater study this summer to take advantage of federal funding that was available. With the current grant rules, counties like this would be penalized for their aggressive leadership in protecting their water resources.

Sincerely,

Greg J. Anderson
District Manager

GJA/ld

Greg

THE INTERNATIONAL COALITION

FOR LAND/WATER STEWARDSHIP IN THE RED RIVER BASIN

119 SOUTH FIFTH STREET
P.O. BOX 127, MOORHEAD, MINNESOTA 56560
218-233-0292

September 24, 1990

RECEIVED
SEP 26 1990

Greg Larson
Water and Land Management Section
Minnesota Board of Water Resources
155 South Wabasha Street, Ste. 104
St. Paul, MN 55107

Dear Greg:

On behalf of the 15 counties in the "Northwest Minnesota CLWP Project" area the International Coalition supports the rules relating to "Local Water Resources Protection and Management Program" provided they are amended to allow counties the opportunity to receive compensation on monies already spent for water plan implementation.

Counties in northwestern Minnesota had state approved local water plans well before most other counties did. These counties were encouraged to develop work programs and begin implementing their water plans. As a result, several counties began implementing their water plans and all 15 counties in the northwest Minnesota CLWP planning area are contributing funds to support a water quality expert to assist them with water quality education.

These counties acted in good faith by beginning to implement their water plans with the expectation that implementation grant programs would be in effect much earlier. Unfortunately, because of delays in the developing the rules, counties taking the lead in plan implementation did not have the opportunity to access funds for programs eligible for implementation grant monies. By providing these counties with the opportunity for compensation, the state will be treating equitably. counties that have taken the lead in local water planning and those now starting the process.

Best regards,

Lance Yohe
Lance Yohe
President, The International Coalition

RED LAKE COUNTY SOIL AND WATER
CONSERVATION DISTRICT

Route I, Box 31B
Red Lake Falls, Minnesota 56750
Telephone (218) 253-2593



MINNESOTA
SOIL AND WATER CONSERVATION DISTRICTS

RECEIVED
SEP 26 1990

September 24, 1990

TO: Greg Larson

FROM: Irene Hill, Water Plan Coordinator I. Hill

RE: Comments to proposed LWRPMP Rules

Rules should be made more flexible to make funds available for the coordinator to cover expenses incurred prior to signing of the grant agreement by the State Department of Finance. These expenses would be those associated with developing the work plan. This also would include task force meetings necessary for directing the work plan.

September 21, 1990

RECEIVED
SEP 24 1990

Greg Larson, Head, Water and Land Management Section
Board of Water and Soil Resources
155 S. Wabasha Street, Suite 104
St. Paul, MN 55107

RE: Proposed LWRPMP Rules.

Sir:

Marshall County and other Counties in Northwest Minnesota have already taken an active role in implementation of our Local Water Plans and incurred costs that were understood to be costs that would be eligible under base grant funding (Barb Luikkonen, Water Quality Agent, was hired to provide education support for the 15 County Joint Powers Group). However, the rules as written say costs incurred prior to the effective date of the grant agreement are ineligible for reimbursement.

Counties should be able to use base grant funds for implementation activity costs that were incurred after local adoption and State approval were received on their Local Water Plans. We feel that a change to the proposed rules to facilitate reimbursement for these expenditures would be in the best interest of all parties to encourage continued aggressive implementation of water activities.

Donald G. Matz
Marshall County Water Planning Coordinator

GOODHUE COUNTY



RECEIVED
SEP 19 1990

OFFICE OF LAND USE MANAGEMENT

MYRNA M. HALBACH, P.E.
Solid Waste Administrator

JOANNE A. WOOD
Assistant Zoning Administrator

CHARLES R. DORNACK
Planning and Building Administrator

September 18, 1990

Mr. James Birkholz, Executive Director
Minnesota Board of Water and Soil Resources
Southbridge Office Building
155 South Wabasha Street, Suite 104
St. Paul, MN 55107

RE: Possible Changes to Proposal LWRPMP Rules

Dear Mr. Birkholz:

I am writing to you about the suggestions raised in your September 4, 1990, memorandum. In your memorandum, a change is suggested for the proposed local water resources protection and management rule regarding county expenditures or in-kind contributions prior to receiving or signing grant agreements and contracts. I strongly disagree with your suggestion particularly as it relates to challenge grants.

I believe it is poor fiscal management to allow expenses or in-kind contributions to be incurred before it is known that money will be allotted and to what level funding will be available. What happens if the funds are not available or the county does not receive the grant? Part of the priority system is a commitment to water planning and implementation. I believe the commitment is best shown by funding your program while applying for grants.

I am available to discuss this further.

Sincerely,

Myrna M. Halbach

Myrna M. Halbach, P.E.
Solid Waste Administrator

MMH/laa

cc: Greg Larson

Minnesota Board of Water & Soil Resources

Southbridge Office Building
155 South Wabasha St., Suite 104
St. Paul, Minnesota 55107

(612) 296-3767
Fax (612) 297-5615

Regional Offices

Northwest Region
1106 Paul Bunyan Drive, NE
Bemidji, MN 56601
218-755-3963

Northeast Region
394 South Lake Avenue
Room 402
Duluth, MN 55802
218-723-4752

West Central Region
503 Washington Street
Brainerd, MN 56401
218-828-2604

South Central Region
Box 756
New Ulm, MN 56073
507-354-2196

Southeast Region
Friedell Bldg., Room 100
1200 S. Broadway
Rochester, MN 55904
507-285-7458

Southwest Region
Box 111
1400 E. Lyon Street
Marshall, MN 56258
507-537-7260

East Central Region
Southbridge Office Building
155 South Wabasha Ave., Suite 104
St. Paul, MN 55107
612-296-3767

September 4, 1990

To : Task Force Chairpersons and Local Water Plan Coordinators

From : Jim Birkholz, Executive Director

RE : Possible changes to proposed LWRPMP Rules

The LWRPMP (local water resources protection and management program) rule as proposed does not allow a county to claim expenditures or in-kind contributions incurred before the effective date of the grant agreement. The reason for this language was based on past practice: The State Department of Finance has never generally allowed obligations to be made without their prior consent. Their consent- and authorization to obligate funds- is given when they sign grant agreements and contracts. The language in the proposed rule is also consistent with other BWSR rules governing grant programs.

This policy has, nevertheless, concerned our local government clientele for many years. We have unsuccesfully sought flexibility in this regard for our clientele on several occasions. It was not until very recently, however, that the Department of Finance allowed the BWSR the discretion to consider certain prior incurred expenses as eligible for LWRPMP grants. This change came too late to effect the wording in the proposed rule as it was published on August 27th. We have enclosed possible changes to the language of the proposed rule. The proposed rule as it was published in the State Register on August 27th is also enclosed for your information. These changes would allow the BWSR to consider -as eligible- plan development or implementation costs incurred by a county or its delegee prior to the effective date of the grant agreement. It should be noted that the BWSR must review claims on a case-by-case basis. This is reasonable since it was not the intent of the Department of Finance exception to provide an open ended policy.

We certainly recognize and commend the aggressive implementation of your local water plans. Further, we know many counties made financial committments assuming receipt of implementation grants in July, 1990. The legislative action which changed the timing of the grants was very positive but nontheless did alter the anticipated timetable for distributing LWRPMP grants. With these thoughts in mind, the suggested changes should provide additional flexibility to implement your local water

An Equal Opportunity Employer

plan. As we compile the rulemaking record, it would be very helpful if you would provide written comments regarding this suggestion or any other part of the proposed rule. We would be happy to meet with you if necessary to discuss the proposed rule.

CC: Project Managers
BWSR staff

Board of Water and Soil Resources

Proposed Permanent Rules Relating to a Local Water Resources Protection and Management Program

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Board of Water and Soil Resources intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, sections 103B.3361 to 103B.3369.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Greg Larson, Head, Water and Land Management Section
Board of Water and Soil Resources St. Paul, Mn. 55107
155 S. Wabasha Street Suite 104 (612) 296-3767

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Greg Larson upon request.

The Statement of Need and Reasonableness also indicates that since this is a voluntary program involving grants to counties, this rule will not have a negative impact on small business.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Greg Larson.

Dated: 13 August 1990

James R. Birkholz
Executive Director

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Fiscal Impact of the Rule of the State Board of Water and Soil Resources Governing Grants to Counties for Local Water Resources Protection and Management

As required by *Minnesota Statutes*, section 14.11, this statement advises local public bodies of the fiscal impact of the adoption of the proposed rule relating to a local water resources protection and management program. Under this proposed rule, an eligible county may apply for grants to develop and implement a comprehensive local water plan. Plan development grants cannot exceed a maximum of $15,300 for a plan under *Minnesota Statutes*, section 110B.04, or $15,600 for a plan under *Minnesota Statutes*, section 473.8785. Plan development grants must be matched in a one-to-one ratio with a local share. The rule defines local share as "the contribution of a local unit of government to the eligible cost of a program including the value of cash expenditures, private contributions, and in-kind contributions of labor, equipment, material, and real property used for and expended on eligible program activities. Up to 50 percent of the local share may consist of federal funds. State funds may not be used as local share." The board estimates counties will provide $46,200 of local share during 1991. This does not include local share provided by counties who commenced planning prior to the adoption of the proposed rule.

Plan implementation grants consist of base grants and challenge grants. Base grants are noncompetitive and are available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. Individual base grants and the local water planning levy is determined by a formula under *Minnesota Statutes*, section 103B.3369 utilizing equalized taxable net tax capacity and local plan implementation cost. An individual county is not required to match a base grant. The total of county water planning levies on a statewide basis constitutes the match to base grants. Specific base grants and the amount of the local water planning levy for 1991 have been provided to county auditors and local water planning officials under separate cover. Challenge grants are competitive and may be available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. Challenge grants must be matched in a one-to-one ratio with a local share.

The board has $2,370,000 available in fiscal year 1991 for plan development and implementation grants. An amount of $46,200 is estimated for plan development grants to three counties. An amount of $1,600,000 is estimated for base grants to an additional 52 counties. The balance, $723,800, is estimated for challenge grants. The board further estimates that counties will provide $723,800 of local share to match challenge grants. Considering plan development and challenge grants, county matching funds for fiscal year 1991 total $777,000. Until legislative funding and the extent of plan implementation is known, estimates for fiscal year 1992 cannot be made.

Rules as Proposed (all new material)

8405.0100 PURPOSE.

Minnesota Statutes, sections 103B.3361 to 103B.3369, authorize the board to make grants to counties for local government activities that protect or manage water and related land resources and to adopt rules.

This chapter provides for the administration of a state local water resources protection and management grant program. Parts 8405.0100 to 8405.0230 implement this program by establishing the substantive criteria and procedural conditions under which the board may award state grants for the development and implementation of a comprehensive local water plan.

8405.0110 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and in *Minnesota Statutes*, section 103B.3363, apply to parts 8405.0100 to 8405.0230. If a definition in this part conflicts with a definition in *Minnesota Statutes*, chapter 110B, 112, or 473, or rules adopted under one of those chapters, the definition in this part governs.

Subp. 2. **Board.** "Board" means the Board of Water and Soil Resources.

Subp. 3. **Comprehensive local water plan; plan.** "Comprehensive local water plan" or "plan" means a county water plan authorized under *Minnesota Statutes*, section 110B.04, a watershed management plan required under *Minnesota Statutes*, section 473.878, a watershed district overall plan required under *Minnesota Statutes*, section 112.46, or a county groundwater plan authorized under *Minnesota Statutes*, section 473.8785.

Subp. 4. **Local share.** "Local share" means the contribution of a local unit of government to the eligible cost of a program including the value of cash expenditures, private contributions, and in-kind contributions of labor, equipment, material, and real property used for and expended on eligible program activities. Up to 50 percent of the local share may consist of federal funds. State funds may not be used as local share.

Subp. 5. **Local unit of government.** "Local unit of government" means a statutory or home rule charter city, town, county, soil and water conservation district, watershed district, organization formed for the joint exercise of powers under *Minnesota Statutes*, section 471.59, local health board, or other special purpose district or authority with local jurisdiction in water and related land resources management.

Subp. 6. **Local water planning levy.** "Local water planning levy" means a property tax levy under *Minnesota Statutes*, section

275.50, subdivision 5, paragraph (2), and implementing *Minnesota Statutes*, section 103B.3369, subdivision 5, clause (2), for the purpose of implementing a comprehensive local water plan.

Subp. 7. **Official controls.** "Official controls" means ordinances and rules that control the physical development within the jurisdiction of a local unit of government, protect public health and safety, or implement the general objectives of the local unit of government.

Subp. 8. **Program.** "Program" means a water-related program.

Subp. 9. **Related land resources.** "Related land resources" means land affected by present or projected management practices that have significant effects on the quantity and quality, or use of groundwater or surface water.

8405.0120 AVAILABLE ASSISTANCE.

Subpart 1. **Grants.** The board may award grants to counties to develop plans authorized under *Minnesota Statutes*, section 110B.04 or 473.8785, or implement water resource protection and management programs identified as priorities in a comprehensive local water plan. Grants may be used to employ persons and to obtain and use information necessary to develop a plan under *Minnesota Statutes*, section 110B.04 or 473.8785, that did not receive funding under Laws of Minnesota 1987, chapter 404, section 30, subdivision 5, paragraph (a), or to implement a comprehensive local water plan. Plan development grants must not exceed a maximum of $15,300 for a plan under *Minnesota Statutes*, section 110B.04, or $15,600 for a plan under *Minnesota Statutes*, section 473.8785.

Plan implementation grants consist of base grants and challenge grants. Base grants are noncompetitive and are available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. The purpose of base grants is to encourage plan maintenance and implementation with an emphasis on new or expanded programs. Eligible activities include supporting water plan coordination and enforcement of official controls. Base grants may not exceed the amount specified in *Minnesota Statutes*, section 103B.3369, subdivision 5, clause (2).

Challenge grants are competitive and may be available to any county that has approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area and that implements a local water planning levy. The purpose of challenge grants is to accelerate implementation of priority actions contained in approved comprehensive local water plans. Eligible activities include establishment of monitoring programs, development of official controls, assessments of resources, and development of geographic information systems. A county may submit more than one challenge grant application.

Subp. 2. **Local share.** Plan development and challenge grants must be matched in a one-to-one ratio with a local share.

Subp. 3. **Priority.** Grants must be awarded, within the limits of available appropriations, to those applicants having the highest priority.

Subp. 4. **Technical assistance.** The board may provide technical assistance to counties that are considering application in order to ensure timely, accurate, and comprehensive applications. The board shall provide technical assistance, within the limits of available resources, to counties that receive grants, to assist in developing or implementing a comprehensive local water plan.

8405.0130 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Only counties are eligible to apply for grants. A county shall coordinate and submit applications on behalf of other local units of government within its jurisdiction.

Subp. 2. **Eligible costs.** Plan costs are eligible for state grants if the expenditures are reasonable and necessary for developing or implementing a comprehensive local water plan as described in part 8405.0120, subpart 1.

Subp. 3. **Ineligible costs.** Ineligible costs include those not related to the activities in subpart 2. In addition, the following costs are ineligible whether or not they relate to the activities in subpart 2:

I. → A. expenditures or in-kind contributions incurred prior to the effective date of the grant agreement; and

B. activities that violate local, state, or federal statutes, rules, or regulations.

8405.0140 NOTICE OF GRANT AVAILABILITY.

Subpart 1. **Notice.** If the board determines that funds are available to award grants, the board shall publish a notice in the *State Register* announcing that applications will be accepted. The notice must include the amount of available funding and contain deadlines for submittal of applications for each grant, which must be no less than 60 calendar days from the date of publication.

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Subp. 2. **Notification.** The board shall notify all counties that grant funds are available and the deadline for applications. Any other local unit of government that wishes to be notified shall contact the board by writing to the executive director. When the board publishes notice in the State Register, the board shall mail notice of the grant application period to those local units of government who have requested to be notified.

Subp. 3. **Grant application periods.** The board may establish a grant application period at any time, but there must be at least one application period for each grant each fiscal year if funds are available.

8405.0150 GRANT APPLICATION.

Subpart 1. **General requirements.** A grant application must be submitted by a county. A county shall coordinate and submit applications on behalf of other local units of government within its jurisdiction. A completed grant application must be received in the board office in Saint Paul by the published deadline, in a format provided by the board, and with the information required by this part.

Subp. 2. **Plan development grant.** A county submitting an application for a plan development grant must submit the following information:

A. a resolution committing the county to develop a local water plan according to chapter 9300 and *Minnesota Statutes*, chapter 110B, or *Minnesota Statutes*, section 473.8785;

B. a resolution by the county authorizing the matching funds and the signing of the grant agreement and other related documents;

C. a budget of expenses associated with developing a local water plan; and

D. a description and explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 3. **Plan implementation base grant.** A county submitting an application for a plan implementation base grant shall submit the following information:

A. a resolution by the county authorizing the signing of the grant agreement and other related documents;

B. a detailed work plan and schedule for program implementation during the grant period;

C. a detailed budget for the grant period;

D. a statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan;

E. a statement describing how cooperation will be secured with adjacent counties and water management organizations, if applicable; and

F. a description and explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 4. **Plan implementation challenge grant.** A county submitting an application for a plan implementation challenge grant shall submit the following information:

A. a resolution by the county authorizing the matching funds and the signing of the grant agreement and other related documents;

B. an executive summary of the contents of the application;

C. a detailed work plan and schedule for program implementation during the grant period;

D. a detailed budget for the grant period including the identification of the amount requested in the grant;

E. a list identifying the amount, type, and source of the local share;

F. a statement describing the relationship of the grant request to priority implementation items in the comprehensive local water plan;

G. a statement describing how cooperation will be secured with adjacent counties and water management organizations, if applicable;

H. a statement describing local support and interagency coordination;

I. a description of how the challenge grant complements the base grant;

J. a statement indicating if partial funding of the application is acceptable. If partial funding is acceptable, project components must be listed in order of funding priority with a corresponding budget; and

K. an explanation of the responsibilities proposed to be contracted with other local units of government, if applicable.

Subp. 5. **Sequence of implementation grants.** Before a county can submit an application for a plan implementation grant, the county must have:

A. approved and locally adopted comprehensive local water plans covering more than 50 percent of the county land area; and

B. implemented a local water planning levy.

Although base and challenge grants may be applied for at the same time, separate applications must be made.

8405.0160 DENIAL OF GRANT APPLICATIONS.

Subpart 1. **Grounds.** An application for a plan development grant or a plan implementation grant must be denied by the board for the following reasons:

A. ineligible applicant;

B. proposed expenditures are ineligible;

C. request is not consistent with priorities described in the applicant's comprehensive local water plan;

D. late submittal; or

E. inadequate or incomplete application.

Subp. 2. **Procedure.** The board shall review each grant application within 14 calendar days after the deadline for application submittal. The board shall notify each denied grant applicant of the denial of its application and the reasons for the denial within 14 calendar days after the determination.

Subp. 3. **Effect of denial.** A grant applicant whose application is denied may reapply in a subsequent application period in order to be reconsidered for a grant.

8405.0170 ALLOCATION OF FUNDING.

Subpart 1. **Overall grant fund allocation.** After assessing the number and specific type of applications, and within 30 calendar days of the close of an application period, the board shall determine the amount of funding to be made available for each grant. In deciding how much money to make available for new grant awards, the board shall give priority to plan development and base grants and consider the necessity to have additional money available to complete previously approved grants.

If the money intended for a specific type of grant is not awarded during a grant period, the board may reallocate the funds to one of the other type of grants or carry the money forward to a subsequent grant period.

8405.0180 RANKING OF APPLICATIONS.

Subpart 1. **Process of ranking.** After completion of the review by the board of the grant applications for eligibility, and determination of available funds for the types of grants, the board shall proceed to:

A. fund all eligible plan development and base grant applications as provided in part 8405.0120, subpart 1; and

B. rank in order of priority all eligible challenge grant applications.

Each eligible challenge grant application must be awarded the number of priority points it is entitled to under subparts 3 and 4. All applications must be given a ranking depending on the number of points awarded. The applications with the highest ranking must be given the highest priority.

Subp. 2. **Review team.** Prior to ranking challenge grant applications, the board shall establish an advisory review team to evaluate the applications. The review team, chaired by a member or representative appointed by the board, consists of a representative of each of the following agencies or organizations: Association of Metropolitan Municipalities; Association of Minnesota Counties; League of Minnesota Cities; Metropolitan Council; Metropolitan InterCounty Association; Metropolitan Water Management Organizations; Minnesota Association of Conservation District Employees; Minnesota Association of County Planning and Zoning Administrators; Minnesota Association of Soil and Water Conservation Districts; Minnesota Association of Townships; Minnesota Association of Watershed Districts; Minnesota Departments of Agriculture, Health, and Natural Resources; Minnesota Extension Service; Minnesota Geological Survey; Minnesota Pollution Control Agency; State Planning Agency; and others as the board may determine.

Subp. 3. **Priority points for challenge grant applications.** The following criteria must be used to determine the number of priority points to be awarded in the evaluation of each challenge grant application. To expedite the review process, the board is responsible for providing background information and summaries of the applications to the review team. The review team, acting as a committee,

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shall award each application between zero and ten points under the following criteria, depending on how well the application satisfies each criterion. Ten points is the highest point value. The number of points under each criterion must be added together to determine the application's total point value. This total number must be used to determine the application's overall ranking and priority. The criteria are as follows:

A. the extent to which the application demonstrates participation of several local units of government, including multicounty efforts;

B. the extent to which the application expresses long-term commitment to effective water protection and management;

C. the extent to which the applicant would use local programs and methods to protect and manage water and related land resources;

D. the extent to which the application complements efforts of federal, state, and local units of government; and

E. the extent to which the application supports efforts of local units of government to adopt, administer, and enforce official controls to protect and manage water and related land resources.

Subp. 4. **Other considerations.** In assigning points, the review team must consider the regional variations that exist in program needs and priorities.

8405.0190 SELECTION OF GRANTEES.

Subpart 1. **Ranking.** The review team shall complete its ranking of all applications for challenge grants for which an eligible grant application has been submitted and forward the recommendation to the board within 90 calendar days of the close of the application period.

Subp. 2. **Projects funded.** The board shall select those applications that will be awarded grant funds by awarding grants to the highest priority challenge grant applications within the limits of available funds established in part 8405.0170.

Subp. 3. **Board decision.** All decisions of the board in ranking applications and awarding grants must be made at a regular or special board meeting.

Subp. 4. **Timing.** The board shall make its selection of grantees within 120 calendar days of the close of the application period. The board shall notify all applicants of the status of their application within 14 calendar days after the selection of grantees.

Subp. 5. **Reapplication.** A grant applicant whose application is not awarded grant funds may reapply in a subsequent application period to be reconsidered for a grant.

8405.0200 GRANT CONDITIONS.

Subpart 1. **Amount.** Except as provided in part 8405.0150, subpart 4, item J, a grant that is made must be for the amount requested by the applicant. The maximum grant must be according to part 8405.0120, subpart 1.

Subp. 2. **Agency review.** Grants provided to develop or implement programs must be reviewed by the state agency having authority for the programs to assure compliance with minimum state standards before a grant agreement is executed by the board.

Subp. 3. **Performance criteria.** In addition to items required by this part, performance criteria for grant administration must include plan information requirements contained in the approved application of the county as described in part 8405.0150, subparts 2, 3, and 4.

Subp. 4. **Grant period.** The grant period for a plan development grant must be two years. The grant period for an implementation base grant must not exceed two years. The grant period for an implementation challenge grant must be two years and may be extended an additional year with prior board approval.

Subp. 5. **Grant agreement.** The county must enter into a grant agreement with the board before a grant will be awarded. The grant agreement must include the provisions established in part 8405.0210.

Subp. 6. **Records.** The county, or delegated local unit of government, shall maintain all records relating to the receipt and expenditure of grant funds for six years from the termination of the grant agreement.

Subp. 7. **Audit.** The county, or delegated local unit of government, must agree that the books, records, documents, and accounting procedures and practices of the county relevant to this program may be examined at any time by the board or board's designee. The county or delegated local unit of government implementing a grant shall provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of a grant and be performed within one year after the end of a grant period or when routinely audited, whichever occurs first. Copies of the audit must be provided to the county and the board.

Subp. 8. **Annual progress report.** The county, or delegated local unit of government, shall submit an annual progress report to the board by January 31st of each year the grant is in effect. The report must include the following information:

A. a discussion of progress of the work described in the approved application, and difficulties encountered meeting the schedule during the year;

B. a discussion of the program results appropriate to the work conducted during the year; and

C. a report of expenditures in the year and those anticipated during the upcoming year.

Subp. 9. **Eligible costs.** Grant funds may not be used to reimburse the county, or delegated local unit of government, for costs incurred before or after the end of the grant agreement period.

8405.0210 GRANT AGREEMENT.

Subpart 1. **Contents.** The board and the county shall enter into a grant agreement. The grant agreement must:

A. establish the term and conditions of the grant;

B. provide that the county may contract with others, including appropriate local units of government under the terms and conditions specified by the county, to complete the work specified in the grant agreement;

C. provide that the cost overruns are the sole responsibility of the county;

D. require that a county is responsible for ensuring that state funds are properly expended even if the work specified in the grant agreement is performed by a local unit of government acting on behalf of the county;

E. require that the county submit an annual progress report; and

F. incorporate terms and conditions required by federal or state statutes, rules, or regulations.

Subp. 2. **Amendments.** A grant agreement may be amended upon agreement of the board and the county.

Subp. 3. **Agreement period.** A grant agreement must be for a duration specified in part 8405.0200, subpart 4.

8405.0220 GRANT PAYMENTS.

Subpart 1. **Payment.** Payment of the grant amount must be made in one installment by the board promptly after the effective date of the grant agreement.

Subp. 2. **Unencumbered funds.** Any grant funds remaining unspent or becoming unobligated after the end of the grant agreement period must be returned to the board within two months of that date.

8405.0230 GRANT TERMINATION.

Subpart 1. **Board action.** The board may cancel a grant agreement for just cause. "Just cause" means that the county or delegated local unit of government is not disbursing grant funds in accordance with established board and state procedures or has otherwise breached a term of the grant agreement. The county must be given 14 calendar days' prior written notice of cancellation. The county has until the date of cancellation to demonstrate why the grant agreement should not be canceled. If it is determined by the board that the county's default was beyond its control or it was not otherwise in default, the grant agreement must not be canceled. The county may cancel this grant agreement with or without cause. In the event of cancellation by the board or county, the county is entitled to payment, determined on a pro rata basis, for work satisfactorily performed and the remaining grant funds must be promptly returned to the board.

Subp. 2. **Agency action.** At the request of any state commissioner, the board shall revoke that portion of a grant used to support a program not in compliance with rules of that agency.

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August 30, 1990

Suggested changes to the LWRPM program rule as published on 8/27/90

I. Page 503: part 8405.0130, subpart 3 A.

A. expenditures or in-kind contributions incurred prior to the effective date of the grant agreement that have not been approved by the board as described in part 8405.0200, subpart 9; and

II. Page 507: part 8405.0200, subpart 9.

Eligible costs. Grant funds may not be used ~~to reimburse the county, or delegated local unit of government,~~ for costs incurred before or after the end of the grant agreement period unless approved by the board. In considering these costs, the board must review each claim on a case-by-case basis. To support a claim, the county may be requested to provide additional information.

Strikeout = language to be deleted
Underline = language to be added

Wilkin County, Minnesota

ENVIRONMENTAL RESOURCES MANAGEMENT OFFICE
P.O. BOX 110
BRECKENRIDGE, MINNESOTA 56520
(218) 643-5815

September 13, 1990

RECEIVED
SEP 17 1990

Jim Birkholz
Executive Director
Minnesota Board of Water and Soil Resources
Southbridge Office Building
155 South Wabasha Street, Suite 104
St Paul, MN 55107

Dear Mr. Birkholz,

Wilkin County Board of Commissioners, at its September 13th meeting, authorized me to write you regarding the proposed permanent rules for the Local Water Resources Protection and Management Program.

We would like to see the base grants paid as soon as possible. We have actions in our plan that we want to start implementing. We hired an environmental officer with the expectation of commencing work.

We do not want to see further delays. We think you have proposed a reasonable solution. Therefore, we support your changed wording in the rules which allows the BWSR board to review and pay claims for funds spent prior to encumbering.

Sincerely,

Robert F. Friederichs

Robert Friederichs
Chairman
Wilkin County Board of Commissioners

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In the Matter of the Adoption of the Rule of the Board of Water Resources Governing Grants to Counties for Local Water Resources Protection and Management

DECLARATION OF COUNSEL

I, Carl M. Conney, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rule-making record, and that, based on my examination, the Administrative Procedures Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is ~~W252~~ 0001-0986.

Carl M. Conney

Carl M. Conney
Special Assistant
Attorney General

Dated: 10-22-90