



DATE: March 14, 2011  
 TO: Board of Water and Soil Resources' Members, Advisors, and Staff  
 FROM: John Jaschke, Executive Director *[Signature]*  
 SUBJECT: March 23, 2011 Board Meeting Notice

The Board of Water and Soil Resources (BWSR) will meet on Wednesday, March 23, 2011, beginning at 9:00 a.m. The meeting will be held in the lower level Board Room at 520 Lafayette Road N., St. Paul. Parking is available in the lot directly in front of the building (use hooded parking areas).

The following information pertains to agenda items:

**COMMITTEE MEETINGS**

***Grants Program & Policy Committee and RIM Reserve Management Planning Committee Combined Recommendation***

- Draft Cost-Share and RIM Reserve Rule, Statement of Need and Reasonableness and Draft Cost-Share Policy** – The Grant Program and Policy and RIM Reserve Policy and Planning Committees are forwarding their recommendation to adopt the draft rule amendments and statement of need and reasonableness and authorize staff to complete the processes necessary to adopt the rule. See attachments. **DECISION ITEM**

***Grants Program & Policy Committee***

- Red River Basin Commission (RRBC) Work Plan Presentation** – Lance Yohe, RRBC Executive Director

**FY '11 Red River Basin Commission Administrative Grant** – Since 2002 the State of Minnesota has been supporting the Red River Basin Commission (RRBC) to address land and water issues in the basin. The 2009 Legislature appropriated \$90,000 to BWSR for RRBC administration in FY '11. This appropriation was reduced \$6,000 to \$84,000 by the 2010 Legislature. The Grants Program & Policy Committee has reviewed the RRBC's 2011 Work Plan and Budget and recommends Board approval of this allocation. See attachments. **DECISION ITEM**

<i>Bemidji</i>	<i>Brainerd</i>	<i>Duluth</i>	<i>Fergus Falls</i>	<i>Marshall</i>	<i>Mankato</i>	<i>New Ulm</i>	<i>Rochester</i>
701 Minnesota Ave., Suite 234 Bemidji, MN 56601 (218) 333-8024	1601 Minnesota Drive Brainerd, MN 56401 (218) 828-2383	394 South Lake Ave., Room 403 Duluth, MN 55802 (218) 723-4752	1004 Frontier Drive Fergus Falls, MN 56537-2505 (218) 736-5445	1400 East Lyon St., Box 267 Marshall, MN 56258 (507) 537-6060	1160 Victory Drive S., Suite 5 Mankato, MN 56001-5358 (507) 389-1967	261 Highway 15 South New Ulm, MN 56073 (507) 359-6074	2300 Silver Creek Rd N.E. Rochester, MN 55906 (507) 206-2889

*Central Office / Metro Office* 520 Lafayette Road North Saint Paul, MN 55155 Phone: (651) 296-3767 Fax: (651) 297-5615

2. **Lake Protection Water Plan Challenge Grant** – The Grants Program and Policy Committee reviewed the Lake Protection Challenge Grant Program awards recommended by agency staff on March 10, 2011. Attached is the Committee's recommendation and allocation of funds to local governments. **DECISION ITEM**
3. **Voluntary Public Access and Habitat Incentive (Walk-in) Program** – The Grants Program and Policy Committee reviewed the Public Access and Habitat Incentive Walk-in Program, including proposed grants to SWCDs, on March 10, 2011. The Committee recommendations are attached. **DECISION ITEM**

#### ***RIM Reserve Management & Planning Committee***

1. **The Reinvest in Minnesota (RIM) Reserve – Wetlands Reserve Program (RIM-WRP) Partnership Program** – The RIM Reserve Management & Planning Committee recommended that the RIM-WRP Partnership be operationalized and authorizes staff to successfully implement the RIM-WRP Partnership. See attachment. **DECISION ITEM**
2. **The RIM-WRP Partnership: Payment Rates & 2011 Sign-up** – The RIM Reserve Management & Planning Committee reviewed and recommends payment rates to be used for RIM and the RIM-WRP Partnership and establishment of a continuous enrollment process to commence in April 2011. The payment rates would be effective until changed by the Board. See attachment. **DECISION ITEM**

#### **NEW BUSINESS**

1. **Aquatic Invasive Species (AIS): Connection to Local Water Management** - Aquatic Invasive Species (AIS) are a special category of water related issues that require unique applications of funding, regulation and education tools. The Department of Natural Resources (DNR) has conducted a series of stakeholder meetings and prepared a report recently presented to the legislature and is developing strategies to address a diverse and persistent list of problem species. Several local water management authorities have played a role and are being asked by their constituents to do more. The BWSR Board has the responsibility to review and approve amendments to local water management plans per M.S. Chapters 103B and 103D that may authorize funding or regulations to address AIS. Presenters will be: Steve Hirsch and Luke Skinner, DNR Ecological-Waters Division; Tera Guetter, Pelican River Watershed District; Eric Evenson and Chuck Holtman (Smith-Partners), Minnehaha Creek Watershed District. See attachment. **INFORMATION ITEM**

If you have any questions regarding the agenda, please feel free to give me a call at (651)296-0878. The Board meeting will adjourn about noon. If bad weather conditions exist in your area and you are unable to attend the meeting due to travel restrictions, please notify the Board office by noon on Tuesday if possible. I look forward to seeing you on March 23rd!

**BOARD OF WATER AND SOIL RESOURCES  
520 LAFAYETTE ROAD N.  
LOWER LEVEL CONFERENCE ROOM  
ST. PAUL, MINNESOTA 55155  
WEDNESDAY, MARCH 23, 2011**

**PRELIMINARY AGENDA**

- 9:00 AM **CALL MEETING TO ORDER**
- PLEDGE OF ALLEGIANCE**
- ADOPTION OF AGENDA**
- MINUTES OF JANUARY 26, 2011**
- PUBLIC ACCESS FORUM (10-minute agenda time, two-minute limit/person)**
- CONFLICT OF INTEREST DECLARATION**
- 9:30 AM **INTRODUCTORY REMARKS FROM MPCA COMMISSIONER PAUL AASEN**
- 10:00 AM **INTRODUCTORY REMARKS FROM MDA COMMISSIONER DAVE FREDERICKSON**
- REPORTS**
- Chair – Brian Napstad
  - Executive Director – John Jaschke
  - Dispute Resolution Committee – Paul Brutlag
  - Wetlands Committee – LuAnn Tolliver
  - Grants Program & Policy Committee – Louise Smallidge
  - Public Relations, Outreach & Strategic Planning Committee – Keith Mykleseth
  - RIM Reserve Planning Committee – Paul Brutlag
  - Drainage Work Group – Tom Loveall
  - Administrative Advisory Committee – Brian Napstad
- COMMITTEE RECOMMENDATIONS**
- Grants Program & Policy Committee and RIM Reserve Management & Planning Committee Combined Recommendation***
1. Draft Cost-Share and RIM Reserve Rule, Statement of Need and Reasonableness and Draft Cost-Share Policy – Dave Weirens and Kevin Lines - ***DECISION ITEM***

### **Grants Program & Policy Committee**

1. Red River Basin Commission (RRBC) Work Plan Presentation – Lance Yohe, RRBC Executive Director

FY '11 Red River Basin Commission Administrative Grant – John Jaschke or Wayne Zellmer – **DECISION ITEM**

2. Lake Protection Water Plan Challenge Grant – Jeff Hrubes - **DECISION ITEM**
3. Voluntary Public Access and Habitat Incentive (Walk-in) Program – Tabor Hoek - **DECISION ITEM**

### **RIM Reserve Management & Planning Committee**

1. Reinvest in Minnesota (RIM) Reserve – Wetlands Reserve Program (RIM-WRP) Partnership Program – Paul Brutlag and Kevin Lines - **DECISION ITEM**
2. RIM-WRP Partnership: Payment Rates & 2011 Sign-Up – Paul Brutlag and Kevin Lines - **DECISION ITEM**

### **NEW BUSINESS**

1. Aquatic Invasive Species (AIS): Connection to Local Water Management - Steve Hirsch and Luke Skinner, DNR Ecological-Waters Division; Tera Guetter, Pelican River Watershed District; Eric Evenson and Chuck Holtman (Smith-Partners), Minnehaha Creek Watershed District - **INFORMATION ITEM**

### **AGENCY REPORTS**

- Minnesota Department of Agriculture – Rob Sip
- Minnesota Department of Health – Linda Bruemmer
- Minnesota Department of Natural Resources – Tom Landwehr
- Minnesota Extension Service – Faye Sleeper
- Minnesota Pollution Control Agency – Rebecca Flood

### **ADVISORY COMMENTS**

- Association of Minnesota Counties – Annalee Garletz
- Minnesota Association of Conservation District Employees – Matt Solemsaas
- Minnesota Association of Soil and Water Conservation Districts – LeAnn Buck
- Minnesota Association of Townships – Sandy Hooker
- Minnesota Association of Watershed Districts – Ray Bohn
- Natural Resources Conservation Service – Tim Koehler

### **UPCOMING MEETINGS**

- Next BWSR Board Meeting – April 27, 2011 in St. Paul

Noon

**ADJOURN**

**BOARD OF WATER AND SOIL RESOURCES  
520 LAFAYETTE ROAD N.  
LOWER LEVEL CONFERENCE ROOM  
ST. PAUL, MINNESOTA 55155  
WEDNESDAY, JANUARY 26, 2011**

**BOARD MEMBERS PRESENT:**

Paul Brutlag, Bob Burandt, Christy Jo Fogarty, Quentin Fairbanks, Rebecca Flood, MPCA; Sandy Hooker, Paul Langseth, John Meyer, Keith Mykleseth, Brian Napstad, Rob Sip, MDA; Faye Sleeper, MES; Louise Smallidge, John Linc Stine and Dan Wilson, MDH; Gene Tiedemann, LuAnn Tolliver

**BOARD MEMBERS ABSENT:**

Tom Loveall  
Joe Martin  
Larry Kramka, DNR

**STAFF PRESENT:**

Mary Jo Anderson, Julie Blackburn, Don Buckhout, Bill Eisele, Travis Germundson, Dan Giralomo, Jim Haertel, Al Kean, John Jaschke, Sherri Johnson, Kevin Lines, Tom Wenzel, Steve Woods, Brad Wozney

**OTHERS PRESENT:**

Perry Forster, Riley Purgatory Bluff Creek WD  
Mark Enochs, Riley Purgatory Bluff Creek WD  
LeAnn Buck, MASWCD  
Ray Bohn, MAWD  
Steve Chaplin, TNC  
Tom Landwehr, DNR

**Chair Napstad called the meeting to order at 9:00 a.m.**

**PLEDGE OF ALLEGIANCE**

**\*\***  
11-01 **ADOPTION OF AGENDA** – Moved by Paul Brutlag, seconded by Quentin Fairbanks, to adopt the agenda as presented. Chair Napstad stated that two additional agenda items have been added to the agenda: DNR Commissioner Landwehr is scheduled to arrive at the meeting at 9:45 a.m.; and recognition of Dan Wilson. Motion passed on a voice vote.

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11-02 **MINUTES OF DECEMBER 15, 2010** – Moved by Paul Langseth, seconded by Sandy Hooker, to approve the minutes of December 15, 2010, as circulated. Motion passed on a voice vote.

**INTRODUCTION OF NEW BWSR EMPLOYEE** – Bill Eisele introduced Sherri Johnson, Office & Administrative Specialist, in the St. Paul office. Chair Napstad welcomed Sherri to the Board.

**RECOGNITION OF SERVICE** - John Jaschke and Chair Napstad recognized Dan Wilson for his service to BWSR and the citizens of Minnesota, presented him with a plaque, and wished him well in his retirement. Dan has represented the Minnesota Department of Health for many years as a Board Member and Alternate.

**REPORTS**

**Chair's Report** – Chair Napstad reported that he attended the Northern Water Planning Committee meeting on January 12th. He attended an LGU meeting regarding PRAP; more on that later in the meeting. Chair Napstad reported that the Administrative Advisory Committee (AAC) met this morning and elected to perform the executive director's annual review. Chair Napstad stressed the importance of board members' participation in this process. Chair Napstad will meet with Bill Eisele and follow the review process that is in place. Bill Eisele will send review forms to board members; Chair Napstad asked that board members complete the review forms and return them to Bill Eisele. Chair Napstad and Vice Chair Brutlag will meet with John Jaschke to perform his review. Louise Smallidge reminded the Board of the value of their comments. Chair thanked board members in advance for their cooperation in this matter.

**Executive Director's Report** – John Jaschke reviewed the information in board members' packets:

- Two memos to Chair Napstad from John Jaschke regarding technical corrections to two December 2010 Board resolutions

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- 2010 Southern Minnesota Flood Relief – Minnesota Recovers Task Force Allocation Strategy
- Watershed & County Water Plan Revision Status Maps
- Updated Board Member Listing
- Updated Board Member Map
- Updated BWSR Committee listing
- “BWSR Snapshots” Newsletter with two highlighted projects
- IRS Mileage Rate – increase from 50.0 cents per mile to 51.0 cents per mile, effective January 1, 2011
- Water Management Districts – Guidelines for Watershed Districts Creating and Implementing Water Management Districts
- BWSR FY2010-2011 Clean Water Fund highlights factsheet
- Reinvest in Minnesota (RIM) – Wetlands Reserve Program (WRP) Leveraging Project factsheet
- Minnesota Center for Environmental Advocacy (MCEA) Report and BWSR’s response letter from John Jaschke, on behalf of BWSR, stating BWSR’s opinion. John stated that this may be perceived or described as an audit; it is not an audit, it is MCEA’s analysis and opinion. BWSR is following statute as directed on nonpoint source pollution, although MCEA has a different opinion.
- Clean Water Council’s FY12-13 Proposed Clean Water Fund Activities and budget and outcomes Committee Recommendations - Keith Hanson mentioned this during his presentation at the BWSR Meeting on December 15, 2010.

John Jaschke briefly commented on BWSR’s voluntary Land Management Report prepared to buttress MMB legislatively directed report. John attended the Red River Basin Commission Land & Water International Summit Conference last week in Fargo. John reported that the Office of Grants Management provided preliminary support for waivers as requested. John reported that the Walk-in Pilot Hunting Program is underway with BWSR and DNR working jointly on this program. John reported that the Clean Water Framework and the State Water Plan are both complete as being presented. John reported that BWSR received a petition from Scott County to shift managers on the Lower Minnesota River Watershed District; that petition was withdrawn. An establishment petition was received from Wilkin County requesting establishment of the Lower Otter Tail River Watershed District.

Chair Napstad reported that the Administrative Advisory Committee discussed the establishment petition at length. BWSR will maintain and adhere to the statutory process that is in place when addressing the establishment petition received from Wilkin County requesting establishment of the Upper Red Lower Otter Tail Watershed District.

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**Dispute Resolution Committee** – Travis Germundson reported that three new appeals have been received since the last report in December. 1) #10-16: a forestry exemption decision in Carlton County; the appeal remanded back to Carlton County. 2) #11-01: an appeal in Hennepin County regarding filling a wetland; no decision made. 3) #11-02: an exemption appeal in Waseca County, no loss exemption remanded back to process. Travis provided an update on appeal #09-10 regarding a restoration banking plan in Aitkin County; the plan has been placed in abeyance. Travis reported that a recent Court of Appeals decision was made on appeal #09-29 regarding a replacement plan in St. Louis County. The Court of Appeals denied the appeal (BWSR and the LGU also denied the appeal). Chair Napstad thanked Travis for his report.

**Wetlands Committee** – LuAnn Tolliver reported that the Wetlands Committee met on January 12<sup>th</sup>, the Committee recommendations are on the agenda later today.

**Grants Program & Policy Committee** – Louise Smallidge reported that the Grants Program & Policy Committee has not met. Louise apologized for not attending the last meeting as she was out with pneumonia.

**Public Relations, Outreach & Strategic Planning Committee** – Keith Mykleseth reported that the Committee has not met; but looking to meet in March after the March 23 Board meeting.

**RIM Reserve Planning Committee** – Paul Brutlag reported that sign-up for the \$10M in state funds and \$16M in federal funds received for flooding in southern Minnesota is underway.

**Drainage Work Group** – Al Kean reported that the Drainage Work Group met on January 6, 2011. Topics discussed at the meeting: MN Drainage Law Analysis and Evaluation; overviews of upcoming drainage education and venues; and transfer of drainage systems from counties to watershed districts. Al reported that the next Drainage Work Group meeting will be after the Legislative Session, possibly in June 2011. Al reported that he and Loren Engelby, Kandiyohi County Drainage Manager, developed a brochure "Redetermination of Benefits and Damages for Drainage Systems". The brochure is on BWSR's website. Chair Napstad thanked Al for the report.

**Administrative Advisory Committee** – Brian Napstad reviewed the agenda from the meeting and reported that BWSR has not yet received updated budgeting guidance.

## COMMITTEE RECOMMENDATIONS

### *Metro Water Planning Committee*

#### **Riley Purgatory Bluff Creek Watershed District Revised Watershed Management Plan**

– Brad Wozney reported that the Metro Water Planning Committee met on January 5, 2011, after review of the information, the Committee voted unanimously to recommend approval of the Riley Purgatory Bluff Creek Watershed District Revised Watershed Management Plan. Brad reported on the highlights of the revised Plan. Brad introduced Perry Forster, President; and Mark Enochs, District Engineer. Mr. Forster acknowledged the great efforts of Brad Wozney and Jim Haertel for their assistance on the Plan.

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11-03 Moved by LuAnn Tolliver, seconded by John Meyer, to approve the Riley Purgatory Bluff Creek Watershed District Revised Watershed Management Plan. LuAnn commended the managers for their involvement; and the application of a scorecard to regularly assess District performance with the Plan implementation and short and long term goals. Chair Napstad stated that he's impressed with the public outreach on this Plan. John Jaschke reported that he attended the Metro Water Planning Committee meeting; two managers and a citizen advisory committee member made a presentation on the history and guiding principles of the District and highlights of the implementation section of the revised Plan. Citizen input and the involvement of the cities is reflected in this Plan. LuAnn stated that the implementation of the work plan now begins. Motion passed on a voice vote. Chair thanked Brad for his report and thanked Mr. Forster and Mr. Enochs for attending the meeting today.

#### **INTRODUCTORY REMARKS FROM DNR COMMISSIONER TOM LANDWEHR –**

Chair Napstad congratulated and welcomed Tom Landwehr, newly appointed DNR Commissioner. Commissioner Landwehr stated that he has a long relationship with BWSR and he appreciates the great ability BWSR has to work with landowners on behalf of conservation. He looks forward to a good working relationship with BWSR in the future and hopes to strengthen the collaborative relationship in conservation efforts, and thanked BWSR for their support. Chair Napstad reported that DNR has worked closely with BWSR over the years and he acknowledged the valued contributions from DNR representatives Larry Kramka, board member, and Wayne Edgerton as alternate. Chair Napstad also looks forward to continued efforts. John Jaschke stated that he was in the Red River Valley last week and several local governments asked John to convey thanks to Tom Landwehr for his and the Governor's attention to their issues. Commissioner Landwehr appreciates the tremendous opportunities in working with BWSR, federal, and private lands, critical components of conservation.

**COMMITTEE RECOMMENDATIONS**

***Northern Water Planning Committee***

Quentin Fairbanks reported that Northern Water Planning Committee met on January 12, 2011. The Wadena County Local Water Plan will be on an upcoming BWSR Board meeting agenda after Wadena County holds their public meeting.

**Clay County Local Water Management Plan Amendment** – Quentin Fairbanks reported that the Northern Water Planning Committee reviewed the Clay County Local Water Management Plan amendment and recommends approved. Moved by Quentin Fairbanks, seconded by Keith Mykleseth, to approve the 2010 amendment to the Clay County Local Water Management Plan. Clay County will be required to provide a complete update of its Water Management Plan prior to December 31, 2015. Motion passed on a voice vote.

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11-04

**Grant County Local Water Management Plan Amendment** – Keith Mykleseth reported that the Northern Water Planning Committee reviewed the Grant County Local Water Management Plan amendment and recommends approval. Moved by Keith Mykleseth, seconded by Quentin Fairbanks, to approve the 2011 – 2015 amendment to the Grant County Local Water Management Plan. Grant County will be required to provide for a complete update of its Water Management Plan prior to December 31, 2015. Discussion followed. Faye Sleeper requests priority concerns summarized in one page for board members; and encouraged board members to request a copy of the full plan when needed for review rather than sending this to all board members. Louise Smallidge stated that the work of the Committee is to review all the details of the water plans thus minimizing the paper information before the Board and the Committee makes the recommendation to the Board. Paul Langseth suggested a standardized format/checklist for points of information on the five year plans that are provided to board members. Chair Napstad directed John Jaschke to discuss with staff a process to generate Board background information without overload of too much information. Motion passed on a voice vote.

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11-05

John Linc Stine needs to leave the meeting; he wanted to formally commend Dan Wilson on the well sealing program and the legacy Dan leaves with us. John Linc Stine left the meeting at 10:23 a.m.

Rebecca Flood arrived at the meeting at 10:25 a.m.

**North Fork of the Crow River Watershed District Plan Update** – Gene Tiedemann reported that the Northern Water Planning Committee reviewed the ten-year update of the North Fork of the Crow River Watershed District Plan and recommends approval. Moved by Gene Tiedemann, seconded by Keith Mykleseth, to approve the North Fork of the Crow River Watershed District Plan update. Paul Langseth questioned #11 of the Findings of Fact, regarding the “district plan was approved over 20 years ago”. John Jaschke stated that

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11-06

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Statute states the plan exists until replaced. John stated that this is a distinction between a watershed district plan and a county water plan. Motion passed on a voice vote.

**Todd County Local Water Management Plan Update** – Paul Brutlag reported that the Northern Water Planning Committee reviewed the Todd County Local Water Management Plan update and recommends approval. Moved by Paul Brutlag, seconded by Quentin Fairbanks, to approve the Todd County Local Water Management Plan update 2011-2016. Todd County will be required to provide a complete update of its Water Management Plan prior to January 31, 2016. Chair Napstad will sign the corrected resolution dated January 26, 2011 rather than January 26, 2010. Motion passed on a voice vote.

Chair Napstad called for a break in the meeting at 10:32 a.m.; the meeting reconvened at 10:45 a.m.

**Wetland Committee**

**Local Government Roads Wetland Replacement Program Project Selection** – Dave Weirens presented a brief overview of the Wetlands Committee recommendation on the project selection of the local government roads Wetland Replacement Program. Moved by LuAnn Tolliver, seconded by Sandy Hooker, to approve the resolution authorizing staff to proceed with the further development of the Poppler/Harms (Carver County) and Brose (Carver County) easement agreement projects with the remaining project (Braton – Wilkin County) available as a back-up for the Local Government Road Wetland Replacement Program as recommended by the Wetland Committee. Motion passed on a voice vote.

**2011 Wetland Bank Fee Policy** – Dave Weirens presented a brief overview of the calculated wetland credit values on the 2011 Wetland Bank Fee Policy; as Statute requires BWSR to collect fees for administering the State Wetland Banking Program. Dave reported that the Wetlands Committee recommends using the calculated values for wetland bank fee determination. Green Acres values are being used for Hennepin County and Ramsey County.

Moved by LuAnn Tolliver, seconded by Paul Brutlag, to approve the Wetlands Committee recommendation that BWSR update the wetland credit values by taking the 2010 tillable land values, rural/vacant land values when the ratio of tillable acres to rural/vacant acres is less than 20%, or the average of the before and deferral green acres values, multiplied by the wetland credit value coefficient of 6.0, with a maximum increase of 75% over the values established in Board action 0-113 as indicated on the spreadsheet, "Proposed 2011 Calculated Values for Wetland Bank Fee Determination". Chair Napstad stated the policy of 20% tillable acres using rural/vacant for proxy value. LuAnn Tolliver thanked the

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Wetlands Committee and staff for input; as it made the policy better. Motion passed on a voice vote.

**NEW BUSINESS**

**Minnesota Prairie Region Conservation Plan** – Steve Chaplin, The Nature Conservancy, presented a draft Minnesota Prairie Landscape Conservation Plan 2010. Minnesota's conservation partners, including BWSR, in the Prairie Region of the state collaborated to develop and draft a 25-year strategy for accelerating conservation. This strategy was precipitated by several factors including continuing loss and degradation of prairies, grasslands, wetlands and associated habitats, an acknowledged need to better coordinate between programs and organizations, and opportunities provided by the passage of the Clean Water, Land and Legacy Amendment that will provide significant conservation funding through 2034. The plan calls for three approaches to conservation in the Prairie Region of the state and prescribes geographic and numeric targets for acres of native prairie, other grasslands, wetlands, and shallow lakes and also calls for incorporation of conservation into "working lands" so that some conservation lands contribute directly to local economies and agricultural lands have adequate conservation applied to them using the full range of conservation practices. Future development of a Memorandum of Understanding on use of the document by all the partners is envisioned. Discussion followed regarding the need to work with grazing and agricultural partners. Mr. Chaplin stated that this is a product of the working group, not to be viewed as the Nature Conservancy Plan. Chair Napstad thanked Steve for his presentation.

**Performance Review and Assistance Program (PRAP) Annual Legislative Report** – Steve Woods reported that Legislation authorizing PRAP requires BWSR to submit an annual report to the Legislative Environment and Natural Resources Policy Committees regarding the performance of local government water management agencies. This is now the fourth annual report in compliance with that requirement. PRAP is intended to provide objective assessments and constructive feedback to the local governments that make up BWSR's local government system that delivers our conservation programs across the state. The report describes the status of PRAP and summarizes results from the 2010 performance reviews conducted by BWSR staff.

Don Buckhout briefly summarized the draft PRAP Report that will be submitted to the Minnesota Legislature by February 2, 2011. Don distributed an updated map of the areas of the state that involved an in-depth review. Don stated that Level I data is on BWSR's website. Don acknowledged the good work being done statewide; BWSR commends the high performance standards of LGUs. Don reported that he will be working with the Public Relations, Outreach and Strategic Planning Committee in March. A key goal listed in BWSR's strategic plan is to help LGUs be effective in delivery of services. Don stated that the Legislature wants BWSR to hold LGUs accountable and responsible; in the future we

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may need to look at a cluster of LGUs' common goals, targets, measures and outcomes, look to make it better in the future. The last WHEREAS in the Resolution states the incorrect date, it should read January 2011 rather than January 2010.

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11-10 Moved by Paul Brutlag, seconded by Christy Jo Fogarty, to approve the Resolution, that BWSR adopts the PRAP Report to the Minnesota Legislature dated February 2011, with allowance for any minor editing modifications necessary for publication, for transmittal to the legislature and release to the general public. Discussion followed. LuAnn Tolliver suggests sending a yearly checklist to MAWD and MASWCD for distribution to motivate LGUs by seeing accomplishments. Motion passed on a voice vote. Chair Napstad thanked Don and Steve for their efforts on this Report.

**Local Government Water Roundtable** – LeAnn Buck, Executive Director of MASWCD, reported that Annalee Garletz, AMC; and Craig Johnson, LMC were unable to attend the meeting today. LeAnn reported that the Minnesota Local Government Water Roundtable is an affiliation of four of Minnesota's key local government players, the Association of Minnesota Counties (AMC), the Minnesota Association of Soil and Water Conservation Districts (MASWCD), the League of Minnesota Cities (LMC) and the Minnesota Association of Watershed Districts (MAWD). LeAnn stated that the four organizations have developed a process to learn from each other in the planning and preservation of our state's land and water resources. The four organizations have chosen to work together to improve communication and understanding of the roles and responsibilities that they share. Their shared vision is to manage land and water resources in such ways as to effectively balance the sometimes competing interests of habitat, water quality, water quantity, and resource utilization and to pursue collaborative efforts with the intent of increasing efficiencies and effectiveness among organizations that share goals, objectives, and responsibilities. BWSR staff were asked and agreed to facilitate the Roundtable. LeAnn explained that a Water Management Summit for Local Government was held in July. The Summit was a forum that provided a dialogue to address the future delivery of water management and land related practices.

Ray Bohn, Coordinator of MAWD, reviewed the five major policy areas the Local Government Roundtable (LGR) is addressing: 1) watershed and basin management; 2) comprehensive water planning and management; 3) state funding process for local water management; 4) Clean Water Council recommendations for the expenditure of the Clean Water Amendment funding; and 5) assessment of the 25 Year Water Sustainability Framework. Ray stated that there is good discussion in each advisory committee, there are more issues in common than opposition; and the process is working extremely well. Ray reported that the next meeting of the Roundtable is February 9<sup>th</sup>; to address short term and long term items, discussion on water plans, and engaging communication. LeAnn stated that watershed and basin management needs to look at incentives for consolidation

and efficiencies. LeAnn thanked counties for the operational funding that goes to SWCDs. Ray stated that one plan to avoid duplication by local units of government is being considered. One plan holder per watershed, administrative entity for the plan; coordinate all planning activities, with counties, watershed, SWCD one solid plan; will force working together, think globally, add to lots of synergy in the planning process. Simplistic approach to state funding grants, look at priorities, more efficient for BWSR. Need to maximize efforts on many issues, what is the next round of activities and how to proceed. LeAnn thanked BWSR for their advisory role in the Roundtable efforts. Discussion followed. Sandy Hooker asked if Minnesota Association of Townships were involved? LeAnn stated that the target and focus is on water and LMC recently joined the Roundtable. Ray stated that the local governments involved deal with water issues on a day-to-day basis. Chair Napstad thanked LeAnn and Ray for their presentation and wished them well in their efforts.

#### **AGENCY REPORTS**

**Minnesota Department of Agriculture (MDA)** – Rob Sip distributed MDA's "Clean Water Fund" brochure listing program allocations for board members' information. Rob reported that the new MDA Assistant Commissioner Matthew Wohlman is expected to attend the next Board meeting.

**Minnesota Department of Health (MDH)** – Dan Wilson reported that the new MDH Commissioner is Edward Ehlinger. Dan stated that Commissioner Ehlinger is an advocate for state and local partnerships, and has strong support for environmental health. MDA requested and received funding for well sealing after the 2010 flooding and is already potentially planning for spring flooding.

**Minnesota Extension Service (MES)** – Faye Sleeper, reporting on behalf of the Water Resources Center, stated that Jean Coleman presented the Water Framework on January 15. Faye stated that Deb Schwackhammer takes the lead on the Water Framework. The ten key recommendations are on the Water Resources Center website: [www.wrc.umn.edu](http://www.wrc.umn.edu) Faye stated that the framework raises the awareness of the work that is being done, and the ensuing conversations where there are disagreements, and discussions on the green chemistry issue, for example. John Jaschke will try to have this on a future Board meeting agenda.

**Minnesota Pollution Control Agency (MPCA)** – Rebecca Flood reported that newly appointed MPCA Commissioner Paul Aasen started on January 18. Rebecca stated that Commissioner Aasen has a wide and varied background on environmental protection, state, and non-profit organizations. Rebecca reported that the MPCA Board met yesterday and voted to adopt the tech amendments to the SSTS Rules. Also at the MPCA Board meeting yesterday, it was noted that the south metro Lake Pepin TMDL will be placed on public notice in May or June.

**ADVISORY COMMENTS**

**Minnesota Association of Townships (MAT)** – Sandy Hooker reported that MAT is dealing with legislative issues. The MAT will spend three weeks in March training township officers.

**UPCOMING MEETINGS**

Chair Napstad reported that BWSR does not meet in February. The next BWSR Board meeting will be held on March 23, 2011 in St. Paul.

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11-11 Moved by Quentin Fairbanks, seconded by Paul Brutlag, to adjourn the meeting at 12:40 p.m. Motion passed on a voice vote.

Respectfully submitted,

Mary Jo Anderson  
Recorder

DRAFT

## Board of Water and Soil Resources Grants Conflict of Interest Declaration



Meeting: FY'11 Red River Basin Commission Administrative Grant Date: March 23, 2011

Policy 08-01: Grants Conflict of Interest Minnesota state agencies must work to deliberately avoid both actual and perceived conflicts of interest related to grant-making at both the individual and organizational levels. When a conflict of interest concerning state grant-making exists, transparency shall be the guiding principle in addressing it.

### Grant Making Meeting Procedure

Meetings that are part of the grant making process will include an agenda item to identify and disclose actual or perceived conflicts of interest. During this agenda item, the chair of the meeting shall make a statement that defines what a conflict of interest is and a request that meeting participants disclose any actual or perceived conflicts. This statement is as follows:

Agenda Item: Conflicts of Interest Declaration.

Chair Statement: "A conflict of interest whether actual or perceived occurs when someone in a position of trust has competing professional or personal interests and these competing interests make it difficult to fulfill professional duties impartially. At this time, members are requested to identify any potential conflicts of interest they may have regarding today's business."

This form provides Board of Water and Soil Resources (BWSR) grant reviewers an opportunity to disclose any conflicts of interest, or potential for conflicts of interest that exist during a grant making process. It is the grant reviewer's obligation to be familiar with the Conflict of Interest Policy for State Grant-Making and to disclose any conflicts of interest. The grant reviewer is not required to explain the reason for the conflict of interest as this form is considered public data under Minn. Statute 13.599-Grants. **A disclosure does not automatically result in the grant application reviewer being removed from the review process.**

*Please read the descriptions of conflict of interest below and mark the appropriate box that pertains to you and your status as a reviewer of this grant.*

**Descriptions of conflicts of interest:** - A conflict of interest shall be deemed to exist when a review of the situation by the grant reviewer (or other agency personnel) determines any one of the following conditions to be present:

(a) A grant reviewer uses his/her status or position to obtain special advantage, benefit, or access to the grantee or grant applicant's time, services, facilities, equipment, supplies, badge, uniform, prestige, or influence.

(b) A grant reviewer receives or accepts money or anything else of value from a state grantee or grant applicant or has equity or a financial interest in or partial or whole ownership of an applicant organization.

(c) A grant reviewer is an employee of a grant applicant or is a family member of anyone involved in the grantee or grant applicant's agency.

(d) A grant reviewer is in a position to derive benefit by directly influencing a grant-making process to favor an organization the grant reviewer has an interest in.

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- Based on the descriptions above, I do not have a conflict of interest.
- Based on the descriptions above, I have or may have an actual or perceived conflict of interest, which I am listing below. *(The grant reviewer should list the specific grant-making evaluation, recommendation, or allocation with which they may have a conflict of interest. The grant reviewer may describe the nature of the conflict in the space below, but this information is not required since this form is considered public information.)*

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*(continue below or on an attachment if needed)*

- Based on the descriptions above, I am unable to participate in this evaluation, recommendation or allocation process because of a conflict of interest.

If at any time during the grant-making process I discover a conflict of interest, I will disclose that conflict to the meeting chair immediately.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

**All forms must be submitted to the lead staff for the meeting and filed with the meeting agenda by the BWSR Grant Coordinator upon completion.**

## Board of Water and Soil Resources Grants Conflict of Interest Declaration



Meeting: Lake Protection Water Plan Challenge Grant

Date: March 23, 2011

Policy 08-01: Grants Conflict of Interest Minnesota state agencies must work to deliberately avoid both actual and perceived conflicts of interest related to grant-making at both the individual and organizational levels. When a conflict of interest concerning state grant-making exists, transparency shall be the guiding principle in addressing it.

### Grant Making Meeting Procedure

Meetings that are part of the grant making process will include an agenda item to identify and disclose actual or perceived conflicts of interest. During this agenda item, the chair of the meeting shall make a statement that defines what a conflict of interest is and a request that meeting participants disclose any actual or perceived conflicts. This statement is as follows:

Agenda Item: Conflicts of Interest Declaration.

Chair Statement: "A conflict of interest whether actual or perceived occurs when someone in a position of trust has competing professional or personal interests and these competing interests make it difficult to fulfill professional duties impartially. At this time, members are requested to identify any potential conflicts of interest they may have regarding today's business."

This form provides Board of Water and Soil Resources (BWSR) grant reviewers an opportunity to disclose any conflicts of interest, or potential for conflicts of interest that exist during a grant making process. It is the grant reviewer's obligation to be familiar with the Conflict of Interest Policy for State Grant-Making and to disclose any conflicts of interest. The grant reviewer is not required to explain the reason for the conflict of interest as this form is considered public data under Minn. Statute 13.599-Grants. **A disclosure does not automatically result in the grant application reviewer being removed from the review process.**

*Please read the descriptions of conflict of interest below and mark the appropriate box that pertains to you and your status as a reviewer of this grant.*

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(b) A grant reviewer receives or accepts money or anything else of value from a state grantee or grant applicant or has equity or a financial interest in or partial or whole ownership of an applicant organization.

(c) A grant reviewer is an employee of a grant applicant or is a family member of anyone involved in the grantee or grant applicant's agency.

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- Based on the descriptions above, I do not have a conflict of interest.
- Based on the descriptions above, I have or may have an actual or perceived conflict of interest, which I am listing below. *(The grant reviewer should list the specific grant-making evaluation, recommendation, or allocation with which they may have a conflict of interest. The grant reviewer may describe the nature of the conflict in the space below, but this information is not required since this form is considered public information.)*

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*(continue below or on an attachment if needed)*

- Based on the descriptions above, I am unable to participate in this evaluation, recommendation or allocation process because of a conflict of interest.

If at any time during the grant-making process I discover a conflict of interest, I will disclose that conflict to the meeting chair immediately.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

**All forms must be submitted to the lead staff for the meeting and filed with the meeting agenda by the BWSR Grant Coordinator upon completion.**



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Dispute Resolution Committee Report

Meeting Date: March 23, 2011  
Agenda Category:  Committee Recommendation  New Business  Old Business  
Item Type:  Decision  Discussion  Information  
Section/Region: Land and Water Section  
Contact: Travis Germundson  
Prepared by: Travis Germundson  
Reviewed by: \_\_\_\_\_ Committee(s)  
Presented by: Paul Brutlag/Travis Germundson

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments:  Resolution  Order  Map  Other Supporting Information

Fiscal/Policy Impact

- None
- Amended Policy Requested
- New Policy Requested
- Other: \_\_\_\_\_
- General Fund Budget
- Capital Budget
- Outdoor Heritage Fund Budget
- Clean Water Fund Budget

ACTION REQUESTED

None

SUMMARY (Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)

Dispute Resolution Committee Report. The report provides a monthly update on the number of appeals filed with the BWSR.

Dispute Resolution Report  
March 11, 2011,  
By: Travis Germundson

There are presently 18 appeals pending. All of the appeals involve WCA except File 10-10. There has been 2 new appeals filed since the last report (January 26<sup>th</sup> Board Meeting).

Format note: New appeals that have been filed since last report to the Board.  
~~Appeals that have been decided since last report to the Board.~~

File 11-4 (2-13-11) This is an appeal of a restoration order in Aitkin County. The appeal regards the excavation, draining, and filling of wetlands resulting in a minimum of 91,115 square feet of impact. Additional impacts from scope and effect of the new drainage ditch and lowering of culvert have not been calculated. No decision has been made on the appeal.

File 11-3 (2-11-11) This is an appeal of a restoration order in Waseca County. The appeal regards the draining and filling of approximately 8.3 acres of a Type 2 wetland. This involves the same location and similar issues as File 11-2. The appeal has been placed in abeyance and the restoration order stayed until there is a final decision on the appeal of the exemption and no loss determinations (File 11-2).

File 11-2 (1-24-11) This is an appeal of an exemption and no-loss determination in Waseca County. The appeal regards the denial of an exemption and no-loss application. A previous denial of the same exemption and no loss application had been appealed (File 8-4). The appeal was remanded for or further technical evaluation and a hearing, and now the current denial has been appealed. The appeal has been granted and a copy of the record has been requested.

File 11-1 (1-20-11) This is an appeal of a restoration order in Hennepin County. The appeal regards the filling of approximately 1.77 acres of wetland and 0.69 acres of excavation. The appeal has been placed in abeyance and the restoration order stayed until there is a final decision on an after-the-fact wetland application.

File 10-16 (12-23-10) This is an appeal of a forestry exemption decision in Carlton County. The LGU under a local appeal reversed the staff decision and approved an after-the-fact forestry exemption for the construction of a forest logging road. The appeal has been remanded back to the Carlton County (LGU's record not adequate/expanded technical review).

File 10-15 (11-29-10) This is an appeal of a restoration order in Mille Lacs County. The appeal regards the filling of approximately 5,800 square feet of wetland for lakeshore access and to create a larger recreational area. The appeal has been placed in abeyance for submittal of technical analyses of the onsite drainage modifications.

File 10-12 (8-27-10) This is an appeal of a restoration order in St. Louis County. The appeal regards the excavation and filling of approximately 43,394 square feet of wetland and the construction of over 1,000 feet of drainage ditches. The appeal has been placed in abeyance and the restoration order stayed to allow the LGU to respond to the data practices request and for the TEP to convene and develop written findings. The appellant has recently applied for an after-the-fact wetland application to retain the open water areas on the site.

File 10-10 (6-10-10) This is an appeal filed under Minn. Stat. 103D.535 regarding an order of the managers of the Wild Rice Watershed District not to go forward with the Upper Becker Dam Enhancement Project as proposed. Appeals filed under 103D.535 require that the Board follow the Administrative Procedures Act. The Act requires that the hearing be conducted by an Administrative Laws Judge through the Office of Administrative Hearings. The appeal has been placed in abeyance pending settlement discussions. A verbal settlement agreement has been reached by the parties.

File 10-7 (2-19-10) This is an appeal of a restoration order in Stearns County. The appeal regards draining and filling impacts to approximately 18.44 acres of Type 2/3 wetland and 3.06 acres of Type 2 wetland. The appeal has been placed in abeyance and the restoration order stayed for submittal of "as built" or project information pertaining to a public drainage system.

File 10-3 (2-1-10) This is an appeal of a restoration order in Stearns County. The appeal regards the placement of agricultural drain tile and the straightening and rerouting of a county ditch that resulted in over 12 acres of wetland impacts. The appellant has granted BWSR additional time to make a decision on the appeal. No decision has been made on the appeal.

File 09-22 (10-02-09) This is an appeal of a restoration order in Carlton County. The appeal regards three separate investigation areas encompassing over 18 acres of wetland impacts from excavation, filling, and ditching. The replacement order has been stayed and the appeal has been placed in abeyance pending further technical work and for submittal of complete wetland replacement plan, exemption, or no-loss application.

File 09-13 (8-20-09) This is an appeal of an exemption decision in Otter Tail County. The appeal regard the denial of an exemption request for agricultural/drainage actives. A previous denial of the same exemption decision had been appealed (File 09-6). The appeal was remanded for further technical evaluation and a hearing, and now the current denial has been appealed. The appeal has been granted. A pre hearing conference convened on November 12, 2009. At which time parties agreed to hold off scheduling written briefs until the petition before NRCS is concluded. The appeal has been placed in abeyance by mutual agreement until there is a final decision by the Department of Agriculture National Appeals Division.

File 09-10 (7-9-09) This is an appeal of a banking plan application in Aitkin County. The appeal regards the LGU's denial of a banking plan application to restore 427.5 acres of wetlands through the use of exceptional natural resource value. The appeal has been accepted and pre-hearing conferences convened on October 13 and 30, and December 14, 2009. Settlement discussions are on hold while the appellant addresses permitting issues with the Corps of Engineers. The appeal has been placed in abeyance by mutual agreement on determining the viability of a new wetland banking plan application.

File 09-3 (2-20-09) This is an appeal of a replacement plan decision in Anoka County. The appeal regards the approval of a wetland replacement plan for 11,919 square feet of impacts associated with a residential development. The appeal has been placed in abeyance and the replacement plan decision stayed for submittal of a revised replacement plan application. The three owners are also in the process of splitting up the property.

File 08-9. (03/06/08) This is an appeal of a replacement order in Pine County. The appeal regards impacts to approximately 11.26 acres of wetland. The replacement order has been stayed and the appeal has been placed in abeyance pending disposition with the U.S. Dept of Justice.

File 06-23. (05/19/06) This is an appeal of a replacement plan decision in Kanabec County. The LGU denied the wetland replacement plan application. A previous denial of the same replacement plan application had been appealed, the appeal was remanded for a hearing, and now the current denial has been appealed. The appeal has been placed in abeyance pending the outcome of a lawsuit between the landowner and the county. The lawsuit concerns the county's possible noncompliance with the 60-day rule. The county prevailed in district court; however the decision was appealed to the Court of Appeals where the county again prevailed. An appeal to the Minnesota Supreme Court was denied review. It is likely the appeal will soon be placed on the calendar for DRC proceedings.

File 06-17. (05/27/06) This is an appeal of a replacement plan decision in the City of Montgomery in LeSueur County. The LGU denied an after-the-fact wetland replacement plan application based on a lack of sufficient reasons why the restoration could not be completed. The appeal was been remanded for further processing at the local level. The City of Montgomery has gradually been working on removing the debris and restoring the wetland in accordance with MPCA requirements.

File 05-1. (01/13/05) This is an appeal of a replacement plan decision by the Rice Creek Watershed District. The District previously made a decision that was appealed which resulted in a remand for an expanded TEP. Now there is an appeal of the decision made under remand since the decision differed from the TEP report. At issue are wetland delineation and the Comprehensive Wetland Protection and Management Plan that BWSR approved. After a hearing before the DRC, the board remanded the matter for new wetland delineation and for submission on an updated, complete replacement plan application. On 12-9-09 the District made a new wetland delineation decision. The applicant has not yet submitted an updated replacement plan application.

## Draft Summary Table

Type of Decision	Total for Calendar Year 2010	Total for Calendar Year 2011
Order in favor of appellant	2	
Order not in favor of appellant	5	
Order Modified		
Order Remanded	1	
Order Place Appeal in Abeyance	5	3
Negotiated Settlement	1	
Withdrawn/Dismissed	3	

**COMMITTEE RECOMMENDATIONS**

***Grants Program & Policy Committee and RIM Reserve Management Planning Committee Combined Recommendation***

1. Draft Cost-Share and RIM Reserve Rule, Statement of Need and Reasonableness and Draft Cost-Share Policy – Dave Weirens and Kevin Lines -

***DECISION ITEM***



# BOARD MEETING AGENDA ITEM

**AGENDA ITEM TITLE:**

**Approval of Draft Cost-Share and RIM Reserve Rule**

Meeting Date: March 23, 2011

Agenda Category:  Committee Recommendation     New Business     Old Business  
 Item Type:  Decision     Discussion     Information

Section/Region: Land and Water and Easement

Contact: Dave Weirens and Kevin Lines

Prepared by: Dave Weirens

Reviewed by: Grant Program and Policy and RIM Reserve Policy and Planning Committee(s)

Presented by: Dave Weirens and Kevin Lines

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments:  Resolution     Order     Map     Other Supporting Information

### Fiscal/Policy Impact

- None
- Amended Policy Requested
- New Policy Requested
- General Fund Budget
- Capital Budget
- Outdoor Heritage Fund Budget
- Clean Water Fund Budget
- Other: \_\_\_\_\_

### ACTION REQUESTED

Adopt the recommendation of the Grant Program and Policy and RIM Reserve Policy and Planning Committees to adopt the draft rule amendments and statement of need and reasonableness and authorize staff to complete the processes necessary to adopt the rule.

**SUMMARY** (Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)  
Minnesota statutes that govern the Cost-share Program and the RIM Reserve Programs were amended in 2009. Staff began to work on amendments after the enactment of these changes to:

1. Incorporate statutory changes that have occurred in the RIM Reserve Law (103F.505 to 103F.531);
2. Reflect statutory amendments enacted in 2009, including a directive to adopt Cost-share Program Policies (103C.501);
3. Streamline the administration to increase efficiencies for both SWCDs and BWSR;
4. Respond to evolving resource management strategies by accommodating greater use of other Best Management Practices (BMPs); and
5. Improve the clarity of the permanent rule.

In addition, for the Cost-share portion of the rule, the statute requires BWSR to adopt a policy. Many of the proposed rule changes are to move provisions from the rule to the proposed policy. Staff will be recommending adoption of a Cost-share policy when the Rule is brought for final adoption.

February 23, 2011

## MINNESOTA RULES CHAPTER 8400

### Cost Share and RIM Reserve Rule Amendments Schedule (adopting rule without public hearings)

April 29, 2009	Board Conservationist Meeting - Review Draft Workplan
May 12, 2009	Senior Management Team - Review Draft Workplan
May 20, 2009	Cost Share Work Team – First Rule Development Meeting (Will meet monthly throughout rule development process)
May 27, 2009	Board Grants Program and Policy Committee Reviews Workplan
December 16, 2009	Board Grants Program and Policy Committee Reviews Workplan and Recommends proceeding with Rulemaking
January 28, 2010	Board Authorizes proceeding with Rulemaking
June 9, 2010	Governor acknowledges receipt of the preliminary rule form and AR 557 is the assigned administrative rule tracking number
June 21, 2010	Publish Requests for Comments in the State Register
August 5, 2010	Comment Period Closes
November 5, 2010	Draft Rule and policy are posted on the BWSR website and SWCDs are requested to provide comments
February 23, 2011	RIM Reserve Management Planning Committee reviews draft Rule and SONAR, including Additional Notice Plan
March 10, 2011	Grant Program and Policy Committee reviews draft Rule and SONAR, including Additional Notice Plan
March 2011	Submit Draft Rule to Office of Revisor for Approval <ul style="list-style-type: none"><li>▪ Rule must be in Revisor’s format to be published, and have a Revisor’s certificate saying the Rules are approved for publishing</li><li>▪ Time may take from <i>several days</i> to <i>several weeks</i></li></ul>
	Letter to Minnesota Management and Budget to evaluate/consult on fiscal impact and benefit of proposed Rules on local governments

February 23, 2011

Provide Rule and SONAR to the Commissioner of Agriculture at least 30 days prior to publishing in the State Register because the Rules will affect farming operations

Send Additional Notice Plan to Office of Administrative Hearings for Approval

March 23, 2011 Board adopts final Rule and SONAR

March 24, 2011 Submit Draft Rule to Governor's Office for Approval

- Complete Proposed Rule and SONAR Form when have completed SONAR and Rule
- Send Draft Rule, SONAR, and Form
- Approval usually within *3 weeks*, after *21 days* contact Governor's Legislative Coordinator
- May not proceed with Notice of Intent to Adopt Proposed Rules until approval received from Governor's Office

April 2011 Draft Notice of Intent to Adopt Rules Without a Public Hearing, Executive Director sign Notice after approval by Governor's Office

May 2011 Submit Notice of Intent to Adopt Rules Without a Public Hearing and copy of Rule to State Register

- Submission deadlines: April 20, 27, May 4, 11, 18
- Publish dates: May 2, 9, 16, 23, 31
- Public Comment period must be at least *30 days*

Notify Legislature and Interested Persons (per Additional Notice Plan), no later than 33 days before end of comment period

- All individuals who have registered with BWSR for the purpose of receiving notice of Rule proceedings as required by Minn. Stat. 14.14, subd. 1a
- All individuals and representatives of associations that BWSR has on file as interested and affected parties
- Mail the notice, Rules, and SONAR to the chairs and ranking minority members of (1) the House Environment, Energy and Natural Resources Policy and Finance; and (2) the Senate Environment and Natural Resources Committee
- All soil and water conservation districts, all watershed districts, and all local water planners

Get a copy of proposed Rules from Revisor of Statutes

Send a copy of the SONAR to the Legislative Reference Library

Prepare Certificate of Mailing

February 23, 2011

Post Notice, Rule and SONAR on the BWSR website

June 2011

Staff review comments and decide whether to make any changes. Changes may not make Rules substantially different that proposed. Grants Program and Policy Committee to meet, as necessary, to consider Rule issues, including adoption of the final Rule

- ***Determine if the amended rule will apply to FY12 Cost Share General Services Grants.***

Submit Final Review Form to Governor's Office.

- *7 days* to complete review

Board adopts Final Rule, Board Chair signs Resolution and Order Adopting Rules (*June 22 or August 25*)

July 2011  
(*or September*)

Request official draft of Rules as adopted from Revisor of Statutes

Submit Order Adopting Rules and the Rules to Office of Administrative Hearings (OAH) (plus numerous other documents)

- Immediately before submitting Rule documents to OAH, mail Notice of Submission to OAH to all persons who requested to be notified.
- Review and approval or disapproval within 2 weeks

OAH files approved Rules with Secretary of State.

- No official time period, but Secretary of State must send a copy to the Governor's Office who may veto within *14 days* of receipt
- Secretary of State forwards Rules to the Revisor of Statutes

OAH sends approval memo and Rules file to BWSR

Revisor of Statutes prepares notice of adoption and sends to BWSR

BWSR submits notice of adoption of Rule amendments to the State Register

Notify staff and interested persons of Rule change, post information and Rule on BWSR website

August 2011  
(*or October*)

Amended Rule published in the State Register, *12 days* after submission.

**Rule becomes effective - 5 working days** following publishing

## Changes to RIM Rule and SONAR – 2/24/2011

The following changes have been made as a result of our 2/23/11 RRMPC meeting:

### RULE

1. (p. 16 of proposed rule) - deleted the word 'native' after reviewing statute cites listed and finding no native vegetation requirement.

#### 8400.3000 AUTHORITY.

Minnesota Statutes, sections 84.95, 103A.209, and 103F.501 to 103F.531, authorize the state board, in consultation with districts, private groups, and state and federal agencies, to implement a program to ~~(a) acquire permanent easements on land containing type 1, 2, 3, or 6 wetlands; (b) to retire certain marginal agricultural land from agricultural crop production or pasturing and protect environmentally sensitive areas to enhance soil and water quality, minimize damage to flood-prone areas, sequester carbon, and support native plant, fish, and wildlife habitats and to reestablish perennial native cover and restore wetlands on that land; and (c) to enhance and protect other private lands.~~ Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the state board and district boards in implementing Minnesota Statutes, sections 103F.501 to 103F.531.

2. (p. 20 of proposed rule) - deleted current language and added reference to 103G.005, subd.19a

Subp. 48. **Wetland.** "Wetland" means ~~land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, or that periodically does support, a predominance of hydrophytic vegetation.~~ wetlands as defined in Minnesota Statutes, section 103G.005, subd. 19a.

### SONAR

1. (p. 10 of SONAR document at bottom of the page) – add the following to cover the 'wetland' definition change:

The following definition was changed to be consistent with Minn. Stat. 103G.005, subd. 19a:

Subp. 48. Wetland

## CHAPTER 8400

### BOARD OF WATER AND SOIL RESOURCES

#### LAND AND WATER TREATMENT-COST-SHARE PROGRAM

8400.0050 PURPOSE.

#### DEFINITIONS EROSION CONTROL AND WATER MANAGEMENT PROGRAM

8400.XXXX AUTHORITY.

8400.0100 DEFINITIONS.

~~8400.0200 AUTHORITY.~~

#### STATE BOARD FUNCTIONS

8400.XXXX PROGRAM POLICY

8400.0300 APPROVED CONSERVATION PRACTICES.

8400.XXXX MINIMUM COST-SHARE AMOUNTS.

8400.0500 MAXIMUM COST-SHARE RATES.

8400.XXXX RECORDING CONSERVATION PRACTICES.

8400.0600 STATE BOARD ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS.

~~8400.0700 PROGRAM REPORTING AND MONITORING.~~

#### DISTRICT FUNCTIONS

~~8400.0800 APPLICATION FOR FUNDS BY DISTRICTS.~~

8400.0900 CONSERVATION DISTRICT ADMINISTRATION OF PROGRAM FUNDS.

~~8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS.~~

~~8400.1100 GROUP PROJECT.~~

~~8400.1200 COOPERATIVE AND JOINT PROJECTS OF CONSERVATION DISTRICTS.~~

~~8400.1250 TECHNICAL ASSESSMENT AND COST ESTIMATE DETERMINATION.~~

~~8400.1300 CRITERIA FOR CONSERVATION DISTRICT BOARD REVIEW.~~

~~8400.1400 CONSERVATION DISTRICT APPROVAL.~~

~~8400.1405 PROJECT DEADLINES AND PARTIAL PAYMENT.~~

~~8400.1460 RETURN OF ALLOCATED FUNDS.~~

~~8400.1500 CONSERVATION DISTRICT RECORDS.~~

~~8400.1600 EXECUTING THE COST-SHARE CONTRACT.~~

8400.1650 RECORDING CONSERVATION PRACTICES.

8400.1700 MAINTENANCE.

8400.1750 PRACTICE SITE INSPECTIONS.

8400.1800 APPEALS.

8400.1900 REPORTS TO STATE BOARD.

#### COST-SHARE RATES CONSERVATION EASEMENT PROGRAM

~~8400.2900 DISTRICT RATES.~~

8400.3000 AUTHORITY.

8400.3030 DEFINITIONS.

8400.3060 CRITERIA FOR ALLOCATION OF FUNDS.

8400.3110 DURATION OF CONSERVATION EASEMENTS.

8400.3130 LOCAL PRIORITY SETTING.

8400.3160 CRITERIA FOR ELIGIBLE LAND.

- 8400.3200 MAXIMUM ENROLLMENT.
- 8400.3210 DELEGATION OF PROGRAM TO ANOTHER DISTRICT.
- 8400.3230 APPLICATION BY LANDOWNERS.
- 8400.3260 LAND IN MORE THAN ONE DISTRICT.
- 8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW OF APPLICATIONS.
- 8400.3330 CRITERIA FOR DISTRICT BOARD REVIEW.
- 8400.3360 DISTRICT ACTION ON APPLICATIONS.
- 8400.3390 EASEMENT ACQUISITION PROCEDURES.
- 8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.
- 8400.3460 TITLE REQUIREMENTS.
- 8400.3500 EASEMENT CONVEYANCE.
- 8400.3530 EASEMENT PAYMENT RATES.
- 8400.3560 PAYMENT SCHEDULE.
- 8400.3600 RENEWAL AND EXTENSION OF CONSERVATION EASEMENTS.
- 8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION EASEMENTS.
- 8400.3630 APPROVED PRACTICES.
- 8400.3700 COST-SHARED PRACTICES.
- 8400.3730 FAILURE OF APPROVED PRACTICES.
- 8400.3800 OPERATION AND MAINTENANCE.
- 8400.3830 VIOLATIONS AND ENFORCEMENT.
- 8400.3870 SUPPLEMENTAL PAYMENTS ON FEDERAL AND STATE PROGRAMS.
- 8400.3930 RECONSIDERATION AND APPEAL.

#### **8400.0050 PURPOSE.**

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

**Statutory Authority:** *MS s 103C.501*

**History:** *20 SR 2185*

**Posted:** *October 4, 2001*

### **DEFINITIONS EROSION CONTROL AND WATER MANAGEMENT PROGRAM**

#### **8400.XXXX AUTHORITY.**

Minnesota Statutes, section 103C.501, authorizes the state board, in cooperation with the districts, to administer a program of cost-sharing with land occupiers for the installation of soil and water conservation practices. Parts 8400.0050 to 8400.1900 provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to districts, and standards and guidelines that the district boards shall use in allocating funds to land occupiers.

#### **8400.0100 DEFINITIONS.**

Subpart 1. **Scope.** For purposes of parts 8400.0050 to 8400.~~1800~~1900, the definitions in this part, in addition to those in Minnesota Statutes, chapter 103C, apply.

Subp. 1a. [Repealed, 20 SR 2185]

Subp. 2. [Repealed, 20 SR 2185]

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

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

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

Subp. 5. [Repealed, 20 SR 2185]

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

Subp. 6. [Repealed, 20 SR 2185]

Subp. 7. [Repealed, 9 SR 2439]

Subp. 7a. [Repealed, 20 SR 2185]

Subp. 8. **Comprehensive plan.** "Comprehensive plan" means a long-range plan adopted by the conservation district pursuant to Minnesota Statutes, section 103C.331, subdivision 11, and according to the most recent policy version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. ~~That publication is not subject to frequent change, is available in the State Law Library, and is incorporated by reference.~~

Subp. 8a. [Repealed, 20 SR 2185]

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

Subp. 10. **Conservation dDistrict board.** ~~"Conservation dDistrict board" means the board of supervisors of a soil and water conservation district as organized under Minnesota Statutes, chapter 103C.~~

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

Subp. 10b. **Conservation practices.** "Conservation practices" means practices applied to the land for the purpose of controlling or preventing soil erosion, sedimentation, nutrient runoff, or other water pollution to maintain the sustainable use of soil and water and other natural resources.

Subp. 11. [Repealed, 20 SR 2185]

Subp. 12. [Repealed, 20 SR 2185]

Subp. 13. [Repealed, 20 SR 2185]

Subp. 14. **Effective life.** "Effective life" means the time span for which a conservation practice effectively fulfills its intended purpose.

Subp. 14a. [Repealed, 20 SR 2185]

Subp. 14b. ~~Farm Service Agency.~~ "Farm Service Agency" means the Farm Service Agency, an agency of the United States Department of Agriculture.

Subp. 15. ~~Field Office Technical Guide.~~ "Field Office Technical Guide" means the document providing technical standards and specifications for conservation practices as provided by the Natural Resource Conservation Service and adopted by the conservation district board.

Subp. 16. ~~Group spokesperson.~~ "Group spokesperson" means a principal land occupier designated by the individuals involved in a group project who is authorized to speak for the entire group in negotiations with a conservation district for cost share assistance.

Subp. 16a. ~~High priority erosion problems.~~ "High priority erosion problems" means areas where erosion from wind or water is occurring equal to, or in excess of, 2 x T tons per acre per year or is occurring on any area that exhibits active gully erosion or is identified as high priority in the comprehensive local water plan or the conservation district's comprehensive plan.

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

Subp. 17. [Repealed, 9 SR 2439]

Subp. 18. ~~Land occupier.~~ "Land occupier" means a person, corporation, or legal entity that holds title to or is in possession of land within a conservation district as an owner, lessee, tenant, or otherwise.

Subp. 18a. ~~Landowner.~~ "Landowner" means a person, corporation, or legal entity that holds title to a parcel of land.

Subp. 18b. ~~Natural Resource Conservation Service.~~ "Natural Resource Conservation Service" means the Natural Resource Conservation Service, an agency of the United States Department of Agriculture.

Subp. 19. [Repealed, 20 SR 2185]

Subp. 19a. ~~Other recognized technical practices.~~ "Other recognized technical practices" means any conservation practice or compilation of such practices not on the approved list of conservation practices that have been approved by the state board for cost share assistance on a case-by-case basis.

Subp. 20. [Repealed, 20 SR 2185]

Subp. 20a. ~~Protected waters.~~ "Protected waters" means those waters of the state identified as public waters or wetlands under Minnesota Statutes, section 103G.005, subdivision 15, and inventoried under Minnesota Statutes, section 103G.201, and identified on a protected waters inventory map available in a county auditor's office.

Subp. 20b. ~~Registered professional engineer.~~ "Registered professional engineer" means a person who is duly registered to practice professional engineering according to Minnesota Statutes, sections 326.02 to 326.15.

Subp. 20c. [Repealed, 20 SR 2185]

Subp. 20d. ~~Sinkhole.~~ "Sinkhole" means a depression or hole in the earth's surface caused by dissolving of underlying limestone carbonate bedrock and subsequent settling or collapse of surficial soils.

Subp. 21. [Repealed, 20 SR 2185]

Subp. 22. [Repealed, 20 SR 2185]

Subp. 22a. ~~Special project.~~ "Special project" means a conservation project or program including but not limited to those projects or programs that accelerate implementation of innovative soil and water conservation activities.

Subp. 23. **State board.** "State board" means the state Board of Water and Soil Resources created in Minnesota Statutes, section 103B.101.

Subp. 24. [Repealed, 9 SR 2439]

Subp. 25. ~~T.~~ "T" means the soil loss tolerance that is the maximum average annual rate of soil loss from sheet and rill erosion or wind erosion, expressed in tons per acre per year, that is allowed yet still sustains the productive capacity of the soil to produce food and fiber over the long term.

Subp. 26. ~~2 x T.~~ "2 x T" means soil erosion at the rate of two times T.

Subp. 27. **Technical approval authority.** "Technical approval authority" means the authorization granted in accordance with the administrative guidelines for the state cost share program to a conservation district technical representative to provide comprehensive technical assistance for individual conservation practices, including associated technical sign-off as the conservation district technical representative of record.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; L 1987 c 358 s 34; 20 SR 2185*

Posted: *October 4, 2001*

#### **8400.0200 AUTHORITY.**

Minnesota Statutes, section 103C.501, authorizes the state board, in cooperation with the conservation districts, to administer a program of cost sharing with land occupiers for the installation of soil and water conservation practices. Parts 8400.0050 to 8400.1800 provide procedures and criteria to be followed by the state board in allocating cost sharing funds to conservation districts, and standards and guidelines that the conservation district boards shall use in allocating funds to land occupiers.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; L 1987 c 358 s 34; 20 SR 2185*

Posted: *October 4, 2001*

### **STATE BOARD FUNCTIONS**

#### **8400.xxxx PROGRAM POLICY.**

The State board shall adopt policies providing for administration and implementation of Parts 8400.0500 to 8400.1900.

#### **8400.0300 APPROVED CONSERVATION PRACTICES.**

Subpart 1. **Approved practices.** The state board, in consultation with the conservation districts, shall maintain a list of practices that are eligible for cost share funds, along with guidelines pertaining to the components of the practices that are eligible or ineligible for cost share funds. The list includes farmstead windbreaks and is contained in the Administrative Guidelines.

Subp. 2. **Criteria for approved conservation practices.** Practices approved by the state board eligible for cost-share funds must meet the criteria in items A to ~~D~~ C.

~~A. The primary purpose of all practices must be the control of soil erosion, sedimentation, or chemical or nutrient runoff or infiltration that impairs water quality. Farmstead windbreaks are exempt from this requirement.~~

The objectives of these approved conservation practices may include, but are not limited to, activities that:

- (1.) control nutrient runoff;
- (2.) control sedimentation;
- (3.) divert runoff to protect and improve water quality;
- (4.) reduce wind erosion;
- (5.) control gully, rill, or sheet erosion;
- (6.) protect shoreland from erosion;
- (7.) control stormwater runoff;
- (8.) protect or improve surface water and groundwater quality;
- (9.) provide energy conservation and snow protection; or
- (10.) alleviate water quantity problems due to altered hydrology.

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

~~C. No cost-share funds shall be furnished for conservation practices designed primarily only to increase land productivity.~~

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

~~Subp. 3. Objectives of approved practices. The Administrative Guidelines contains a list of approved practices. The objectives of these approved practices may include, but are not limited to, activities that:~~

- ~~A. control nutrient runoff;~~
- ~~B. stabilize critical erosive areas;~~
- ~~C. divert runoff to protect and improve water quality;~~
- ~~D. reduce wind erosion;~~
- ~~E. control gully, rill, or sheet erosion;~~
- ~~F. protect shoreland from erosion;~~
- ~~G. control stormwater runoff; or~~
- ~~H. protect or improve surface water and groundwater quality;~~

~~Approved practices must meet the criteria listed in subpart 2.~~

**Statutory Authority:** *MS s 40.036; 103C.501; L 1999 c 231 s 203*  
**History:** *9 SR 2439; 20 SR 2185; 24 SR 1240*  
**Posted:** *October 4, 2001*

**8400.0400** [Repealed, 20 SR 2185]  
Posted: *October 4, 2001*

#### 8400.0500 MAXIMUM COST-SHARE RATES.

The maximum cost-share rates established by the state board represent the maximum percent of the total cost of a conservation practice that may be funded by using state cost-share funds. ~~Where state and federal funds are cost-shared on the same project, their combined amount shall not exceed the maximum cost-share rate.~~

Statutory Authority: *MS s 40.036*

Posted: *October 4, 2001*

#### 8400.xxxx RECORDING CONSERVATION PRACTICES

The state board may determine that long-term maintenance of a conservation practice is desirable and may require that maintenance be made a covenant upon the land for the effective life of the practice. A covenant under this subdivision shall be construed in the same manner as a conservation restriction under 84.65.

#### 8400.0600 STATE BOARD ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS.

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

Subp. 2. [Repealed, 9 SR 2439]

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

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

~~B. priorities for the control of soil erosion or water quality problems as established in the Administrative Guidelines of the state board;~~

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

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

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

Subp. 4. **Grants to conservation districts.** The state board may ~~shall~~ annually allocate cost-share funds to ~~conservation~~ district boards that have fully complied with Minnesota Statutes, section 103C.501, subdivision 3; ~~all state cost-share erosion control and water management program rules; and program policies and comprehensive and annual planning guidelines as prescribed by the state board.~~ At least 70 percent of the cost-sharing funds available statewide will be allocated to ~~conservation~~ districts in the form of grants for conservation practices addressing high priority erosion, sedimentation, or water quality problems. The remaining cost-share funds may be allocated by the board to ~~conservation~~ districts for conservation practices for lower priority erosion, sedimentation, or water quality problems and for technical and administrative assistance or to carry out special projects or programs, except not more than 20 percent of the total funds may be allocated for technical and administrative services.

Subp. 5. **Other ~~state and federal~~ funds.** Other funds received by the state board may be allocated to ~~conservation~~ districts for the treatment of erosion, sedimentation, ~~or~~ water quality problems, or water quantity problems due to altered hydrology. These additional funds may be incorporated with existing cost-share erosion

control and water management program funds and their use may be governed by the program policy ~~Administrative Guidelines~~ or may be subject to other administrative policies or guidelines required to fully implement the intent for which these additional funds were appropriated.

**Statutory Authority:** *MS s 40.036; 103C.501*

**History:** *9 SR 2439; 20 SR 2185*

**Posted:** *October 4, 2001*

#### **~~8400.0700 PROGRAM REPORTING AND MONITORING.~~**

~~For the purpose of reporting and monitoring the progress of the program and use of funds, each conservation district shall submit an annual report of the year's accomplishments according to the guidelines and requirements established by the state board. The state board shall require additional special reports, including, but not limited to, summaries of practice site inspections and special projects.~~

**Statutory Authority:** *MS s 40.036; 103C.501*

**History:** *9 SR 2439; 20 SR 2185*

**Posted:** *October 4, 2001*

### **DISTRICT FUNCTIONS**

#### **~~8400.0800 APPLICATION FOR FUNDS BY DISTRICTS.~~**

~~Each district shall apply for funds as indicated in part 8400.0600.~~

**Statutory Authority:** *MS s 40.036*

**Posted:** *October 4, 2001*

#### **~~8400.0900 CONSERVATION DISTRICT ADMINISTRATION OF PROGRAM FUNDS.~~**

Subpart 1. **General.** Following receipt of grant funds from the state board, a conservation district is responsible for administration of the funds in accordance with Minnesota Statutes, chapter 103C, ~~the Administrative Guidelines, and all other applicable laws.~~ The conservation district board shall make all decisions concerning use of these funds in accordance with parts 8400.0050 to 8400.1800-1900, the Administrative Guidelines program policies, and all other applicable laws. All funds allocated to conservation districts must be used for the purposes designated by the state board.

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

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

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

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

~~D. conservation district priorities as established in the conservation district's comprehensive and annual plans and comprehensive local water plan;~~

~~E. cost-share funds available; and~~

~~F. the state board's Administrative Guidelines.~~

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

Subp. 3. **Reencumbering funds.** Prior to the end of the grant period for which the state board has granted the cost-share funds, a conservation district board may reencumber all funds resulting from canceled projects or from those projects that did not use the full amount encumbered. For unencumbered funds remaining after the grant period, the conservation district board shall follow the procedures described in part 8400.1460.

Criteria for district board review. The district board shall use the following factors to determine practice eligibility and review of applications for conservation practice funding:

A. The application must be signed by the land occupier and the landowner, if different, indicating their agreement to:

(1) grant the district's representatives access to the parcel where the conservation practice will be located;

(2) obtain all permits required in conjunction with the installation and establishment of the practice prior to starting construction of the practice; and

(3) be responsible for operation and maintenance of conservation practices applied under this program according to an operation and maintenance plan prepared by the district technical representative.

B. Costs to repair damage to conservation practices installed with state cost-share dollars are eligible if the damage was caused by reasons beyond the control of the land occupier.

C. If the practice has fully met or exceeded its designed effective life, the cost to reconstruct the practice is eligible for cost-share assistance.

D. Conservation practices where construction has begun prior to district approval are ineligible for financial assistance. The Board may waive this requirement for emergency needs.

Subp. 4. Entering into a contract. After completion of the district board, or its delegate, review of practice eligibility, the district board, or its delegate, shall either approve or deny the application. If the application is approved, the district board, or its delegate, may enter into a contract with the land occupier.

**Statutory Authority:** *MS s 40.036; 103C.501*

**History:** *9 SR 2439; 20 SR 2185*

**Posted:** *October 4, 2001*

#### **8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS.**

~~Land occupiers seeking assistance under this program shall apply to the conservation districts on forms provided by the state board and available from the conservation district office. Each application must be filled out in its entirety and must be signed by the land occupier. If the land occupier is not the landowner, the application must also bear the landowner's signature.~~

**Statutory Authority:** *MS s 40.036; 103C.501*

**History:** *9 SR 2439; 20 SR 2185*

**Posted:** *October 4, 2001*

#### **~~8400.1100 GROUP PROJECT.~~**

~~Where the cooperation of several land occupiers is required to solve an erosion or water quality problem, the conservation district may share the cost of such a group project if all of the land occupiers are eligible as individuals and the practices satisfy the criteria of the program. The land occupiers must reach agreement on division of payments and designate a group spokesperson. The spokesperson must sign the application on behalf of the group and negotiate all project details with the conservation district. Payment for the conservation district's share of the practice shall be issued to the group spokesperson who will be responsible for executing the division of payment plan prepared by the group.~~

**Statutory Authority:** *MS s 40.036; 103C.501*

**History:** *9 SR 2439; 20 SR 2185*

**Posted:** *October 4, 2001*

#### **~~8400.1200 COOPERATIVE AND JOINT PROJECTS OF CONSERVATION DISTRICTS.~~**

~~Subpart 1. **Land in more than one conservation district.** If a project involves land in more than one conservation district, application for the entire project must be made to the conservation district containing the majority of the project lands.~~

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

**Statutory Authority:** *MS s 40.036; 103C.501*

**History:** *9 SR 2439; 20 SR 2185*

**Posted:** *October 4, 2001*

#### **~~8400.1250 TECHNICAL ASSESSMENT AND COST ESTIMATE DETERMINATION.~~**

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

**Statutory Authority:** *MS s 103C.501*

**History:** *20 SR 2185*

**Posted:** *October 4, 2001*

#### **~~8400.1300 CRITERIA FOR CONSERVATION DISTRICT BOARD REVIEW.~~**

~~Criteria for conservation district board review:~~

- ~~A. The practice needed to solve the problem must be on the list of approved practices presented in the Administrative Guidelines or must have received approval from the state board.~~
- ~~B. The primary purpose of the requested practice must be to treat a high priority erosion problem or high priority water quality problem, except for farmstead windbreaks.~~
- ~~C. The requested practice must be consistent with conservation district plans and priorities.~~
- ~~D. The application must be signed by the land occupier and the landowner, if different, indicating their agreement to:~~

- ~~(1) grant the soil and water conservation district's representatives access to the parcel where the conservation practice will be located;~~
- ~~(2) obtain all permits required in conjunction with the installation and establishment of the practice prior to starting construction of the practice; and~~
- ~~(3) be responsible for operation and maintenance of practices applied under this program according to an operation and maintenance plan prepared by the conservation district technical representative.~~

~~E. Costs to repair damage to conservation practices installed with state cost share dollars are eligible if the damage was caused by reasons beyond the control of the land occupier.~~

~~F. If the practice has fully met or exceeded its designed effective life, the cost to reconstruct the practice is eligible for cost share assistance.~~

**Statutory Authority:** *MS s 40.036; 103C.501; L 1999 c 231 s 203*

**History:** *9 SR 2439; 20 SR 2185; 24 SR 1240*

**Posted:** *October 4, 2001*

#### **8400.1400 CONSERVATION DISTRICT APPROVAL.**

~~Subpart 1. General. After completion of the conservation district board review, the conservation district board shall either approve or deny the application. If it is approved, the conservation district board shall instruct the chair or acting chair to sign the application. Once it is signed, the application becomes the contract between the conservation district and land occupier and serves as the authorization to construct the practice according to the approved conservation practice plan. Practices where construction has begun prior to conservation district approval are ineligible for financial assistance. Changes in any provisions of the contract are subject to review and approval by the conservation district board pursuant to part 8400.1600, subpart 1.~~

~~If the application is denied, the conservation district board shall notify the land occupier in writing within 30 days after conservation district board action of the reason for denial.~~

~~Subp. 2. Conservation practice plans. The project plans for conservation practices must be prepared according to standards in the Field Office Technical Guide or other standards approved by the state board and must be approved by a conservation district technical representative with the appropriate level of technical approval authority. Plans prepared by a registered professional engineer must meet Field Office Technical Guide standards, meet other standards approved by the state board, or be certified as appropriate standards by the registered professional engineer. Upon completion and technical approval of the plan, one copy must be given to the land occupier and one copy retained with the project file located in the conservation district office.~~

**Statutory Authority:** *MS s 40.036; 103C.501*

**History:** *9 SR 2439; 17 SR 1279; 20 SR 2185*

**Posted:** *October 4, 2001*

#### **8400.1405 PROJECT DEADLINES AND PARTIAL PAYMENT.**

~~Subpart 1. Time limit and cancellation. Projects not started within 18 months after conservation district board approval must be canceled unless an amendment to the project contract has been approved by the conservation district board. Projects not completed by the end of the state's third fiscal year after initial conservation district board approval must be canceled unless prior written approval of the state board has been received.~~

~~Subp. 2. Partial payment. In cases where weather or other unanticipated circumstances beyond the control of the land occupier force postponement of certification of completion until the following construction season, the conservation district board may issue a partial payment for the work that has been completed. The conservation district board shall not consider issuing a partial payment unless:~~

- ~~A. the anticipated completion date complies with subpart 1;~~
- ~~B. the completed work meets the requirements of part 8400.1400, subpart 2; and~~
- ~~C. the conservation district technical representative has reviewed the work and has defined the total percent of construction that is complete.~~

~~Subp. 3. Partial payment conditions. If the conservation district issues a partial payment under subpart 2, the following conditions apply:-~~

- ~~A. payment percentages must comply with part 8400.0900, subpart 2;~~
- ~~B. the balance of the project must be paid by the conservation district board upon the satisfactory completion of the total project;~~
- ~~C. all expenses incurred to correct damage caused by the land occupier's failure to expeditiously complete the conservation practice must be borne by the land occupier;~~
- ~~D. land occupiers receiving partial payments must complete the project within a time deemed reasonable by the conservation district board; and~~
- ~~E. land occupiers not completing partially paid projects shall be considered as violating part 8400.1700 and shall be directed, unless otherwise authorized by the state board as provided elsewhere in part 8400.1700, to return the amount of financial assistance received.~~

~~Every request for partial payment will be considered by the conservation district board on its own merits.~~

~~Subp. 4. Denial. If the conservation district board denies a request for partial payment under subpart 2, the board shall notify the land occupier within 30 days of the reasons for denial of the request.~~

~~Statutory Authority: MS s 40.036; 103C.501~~

~~History: 9 SR 2439; 20 SR 2185~~

~~Posted: October 4, 2001~~

#### ~~8400.1460 RETURN OF ALLOCATED FUNDS.~~

~~Cost share funds unencumbered by the conservation district board after the grant period must be returned to the state board within 30 calendar days following the end of that grant period.~~

~~Statutory Authority: MS s 103C.501~~

~~History: 20 SR 2185~~

~~Posted: October 4, 2001~~

#### ~~8400.1500 CONSERVATION DISTRICT RECORDS.~~

~~The conservation district shall maintain a current ledger of all cost share contracts on forms provided by the state board. The ledger must specify the land occupiers with whom the conservation district has contracted, the practices involved, the status of construction, and a total of funds encumbered. The conservation district shall also document efforts to identify and contact land occupiers with high priority erosion problems.~~

~~Statutory Authority: MS s 40.036; 103C.501~~

~~History: 9 SR 2439; 20 SR 2185~~

~~Posted: October 4, 2001~~

#### ~~8400.1600 EXECUTING THE COST SHARE CONTRACT.~~

~~Subpart 1. Amending cost share contracts. Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to amend the original cost share contract. If changes to the original cost share contract are needed, an amendment must be approved by the conservation~~

~~district board. The conservation district board shall not approve amendments that increase the originally approved cost-share percentage, nor shall the conservation district board approve any amendments after the approval to issue final payment on the original contract has been made.~~

~~Subp. 2. **Construction of practice.** Construction of the practices must be monitored by the conservation district board to ensure compliance with part 8400.1400, subpart 2. Upon completion, the conservation district technical representative with appropriate technical approval authority or the registered engineer shall certify whether the practice has been satisfactorily constructed according to the approved conservation practice plans and meets the design criteria of the practice as specified in the Field Office Technical Guide or other standards certifiable by a registered professional engineer or other standards approved by the state board. No certification shall be made until all specifications have been satisfied. Exceptions for partial completion must be according to part 8400.1405, subpart 3. Upon certification of completion, the land occupier shall contact the conservation district for payment and shall present documentation of all costs incurred in the installation of the practice in the form of receipts or invoices.~~

~~Subp. 3. **In-kind services and materials.** In-kind services and materials provided by the land occupier such as, but not limited to, earth work, seedbed preparation, seeding, and permanent fencing materials may be credited toward the land occupier's share of the total cost of the practice. The conservation district board shall determine whether charges for in-kind services and materials are practical and reasonable.~~

~~Subp. 4. **Actual cost different than estimated cost.** In cases where the actual cost of the practice exceeds the estimated cost, the conservation district may only share the approved percentage of the estimated cost, except when an amendment to increase the cost estimate listed on the cost-share contract has been approved by the conservation district board. Where the actual cost is less than the estimated cost, the conservation district shall only share the approved percentage of the actual cost of the practice.~~

~~Subp. 5. **Issuing cost-share payments.** The conservation district board shall review the receipts or invoices provided by the land occupier to determine the actual cost of the practice. When the conservation district determines that all claims are practical and reasonable, it shall authorize issuance of a check for the conservation district's share of the practice. If the conservation district board determines that certain claims are not justified, it shall notify the land occupier in writing of the unjustified claims within 30 days. The conservation district board shall then authorize the issuance of a check for the conservation district's share of the justified claims.~~

**Statutory Authority:** *MS s 40.036; 103C.501*

**History:** *9 SR 2439; 20 SR 2185*

**Posted:** *October 4, 2001*

#### **8400.1650 RECORDING CONSERVATION PRACTICES.**

When a district board, or its delegate, determines that long-term maintenance of a conservation practice is desirable, the board, or its delegate, may require that maintenance be made a covenant upon the land for the effective life of the conservation practice. A covenant under this subdivision shall be construed in the same manner as a conservation restriction under 84.65. The size, location, and effective life of the soil and water conservation practices that have received cost-share payments under this program equal to or in excess of \$50,000 shall be recorded by the conservation district on the property title. The conservation district board may require the recording of practices where cost-share payments are less than \$50,000 where such action is considered appropriate by the conservation district board. Recording procedures, including the prescribed forms, are described in the administrative guidelines for the state cost-share program.

**Statutory Authority:** *MS s 103C.501*

**History:** *20 SR 2185*

**Posted:** *October 4, 2001*

#### **8400.1700 MAINTENANCE.**

Subpart 1. **Land occupier maintenance responsibilities.** The land occupier is responsible for operation and maintenance of conservation practices applied under this program to ensure that their conservation objective is met and the effective life, ~~a minimum of ten years,~~ is achieved. Should the land occupier fail to maintain the conservation practices during their effective life, the land occupier is liable to the state of Minnesota for up to one-hundred-fifty percent ~~the full amount~~ of financial assistance received to install and establish the conservation practice. The land occupier is not liable for cost-share assistance received if the failure was caused by reasons beyond the land occupier's control, or if ~~soil and water~~ conservation practices are applied at the land occupier's expense which provide equivalent protection of the soil and water resources.

Subp. 2. **Reapplication ~~or removal~~ of conservation practices.** In no case shall a ~~conservation~~ district provide cost-share assistance to a land occupier for the reapplication of conservation practices which were removed by the land occupier during their effective life or that failed due to improper maintenance. ~~The conservation district board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice and the purpose of the original practice has been achieved.~~

**Statutory Authority:** *MS s 40.036; 103C.501*  
**History:** *9 SR 2439; 20 SR 2185*  
**Posted:** *October 4, 2001*

#### **8400.1750 PRACTICE SITE INSPECTIONS.**

~~As a condition to receive grant funds from the state board, the conservation district shall ensure compliance with the maintenance provisions of part 8400.1700 and Minnesota Statutes, chapter 103C, by monitoring all cost-share contracts made with land occupiers. The conservation districts shall conduct site inspections of conservation practices installed with cost-share funds to determine if the land occupier is in compliance with the operation and maintenance requirements under part 8400.1700 and the policy, guidelines, and requirements of the state board. ~~Site inspection procedures, including the prescribed forms and frequency, are described in the Administrative Guidelines for the State Cost-Share Program.~~~~

**Statutory Authority:** *MS s 103C.501*  
**History:** *20 SR 2185*  
**Posted:** *October 4, 2001*

#### **8400.1800 APPEALS.**

Land occupiers may appeal a ~~conservation~~ district's action within 60 days of receiving notice of the action by submitting a written request to the ~~conservation~~ district board asking the board to reconsider its decision. Should the land occupier and the ~~conservation~~ district board reach an impasse, the land occupier may appeal the ~~conservation~~ district board's decision to the state board within 60 days of receiving notice of the district board's final decision. If an informal hearing is granted, the state board or its appointed mediator shall hear all testimony offered, and shall accept written testimony for ten days after the hearing. The mediator, if one is used, shall report the findings and recommendation to the state board. The state board shall make its decision on the appeal within 60 days of the hearing date or 60 days after receiving the mediator's report, upholding, reversing, or amending the decision of the ~~conservation~~ district board.

**Statutory Authority:** *MS s 40.036; 103C.501*  
**History:** *9 SR 2439; 17 SR 1279; 20 SR 2185*  
**Posted:** *October 4, 2001*

#### **8400.1900 REPORTS TO STATE BOARD.**

For the purpose of reporting and monitoring the progress of the program and use of funds, each ~~conservation~~ district shall submit an annual report of the year's accomplishments according to the guidelines and

requirements established by the state board. ~~Each district shall submit to the state board the reports identified in part 8400.0700.~~

**Statutory Authority:** *MS s 40.036*  
**Posted:** *October 4, 2001*

8400.1950 [Repealed, 20 SR 2185]

Posted: *October 4, 2001*

8400.2000 [Repealed, 20 SR 2185]

Posted: *October 4, 2001*

8400.2100 [Repealed, 20 SR 2185]

Posted: *October 4, 2001*

8400.2200 [Repealed, 20 SR 2185]

Posted: *October 4, 2001*

8400.2300 [Repealed, 20 SR 2185]

Posted: *October 4, 2001*

8400.2400 [Repealed, 20 SR 2185]

Posted: *October 4, 2001*

8400.2500 [Repealed, 20 SR 2185]

Posted: *October 4, 2001*

8400.2600 [Repealed, 20 SR 2185]

Posted: *October 4, 2001*

8400.2700 [Repealed, 20 SR 2185]

Posted: *October 4, 2001*

8400.2705 [Repealed, 20 SR 2185]

Posted: *October 4, 2001*

8400.2800 [Repealed, 20 SR 2185]

Posted: *October 4, 2001*

#### COST SHARE RATES EASEMENT PROGRAM

#### **8400.2900 DISTRICT RATES.**

Each district shall establish its cost-share rates as provided in part 8400.0900.

**Statutory Authority:** *MS s 40.036*  
**Posted:** *October 4, 2001*

#### **8400.3000 AUTHORITY.**

Minnesota Statutes, sections 84.95, 103A.209, and 103F.501 to 103F.531, authorize the state board, in consultation with districts, private groups, and state and federal agencies, to implement a program to (a) acquire ~~permanent~~ easements on land ~~containing type 1, 2, 3, or 6 wetlands;~~ (b) to retire certain marginal agricultural land from agricultural crop production ~~or pasturing and protect environmentally sensitive areas to enhance soil and water quality, minimize damage to flood-prone areas, sequester carbon, and support native plant, fish, and wildlife habitats~~ and to reestablish perennial cover ~~and restore wetlands on that land;~~ and (c) ~~to enhance and protect other private lands~~. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the state board and district boards in implementing Minnesota Statutes, sections 103F.501 to 103F.531.

**Statutory Authority:** ~~MS s 40.45;~~ 103F.531  
**History:** *13 SR 1055; 14 SR 1928; 19 SR 550*  
**Posted:** *October 4, 2001*

### **8400.3030 DEFINITIONS.**

Subpart 1. **Scope.** The definitions in this part apply to parts 8400.3000 to 8400.3930.

Subp. 2. **Agricultural crop production.** "Agricultural crop production" means an agricultural activity:

A. including but not limited to tillage, planting, or harvesting operations; and

B. devoted to the production of horticultural, row, close grown, introduced pasture, or introduced hayland crops.

Subp. 3. [Repealed, 14 SR 1928]

Subp. 3a. **Agricultural land.** "Agricultural land" means land devoted for use as pasture or hayland for domestic livestock or dairy animals, or to agricultural crop production, or to growing nursery stocks, or for use as animal feedlots, and may include contiguous land associated with these uses.

Subp. 4. **Annual plan.** "Annual plan" means a plan prepared by the district under Minnesota Statutes, section 103C.331, subdivision 11, and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is subject to periodic change. The current version is available at the district office and state board office and is incorporated by reference.

Subp. 5. **Approved practice.** "Approved practice" means a soil and water conservation practice or wildlife habitat enhancement that may be established on an easement area and is described in the easement program practice specifications.

~~Subp. 6. **Authorized farm corporation.** "Authorized farm corporation" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.~~

~~Subp. 6a. **Authorized farm partnership.** "Authorized farm partnership" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.~~

Subp. 7. [Repealed, 14 SR 1928]

Subp. 8. [Repealed, 19 SR 550]

Subp. 9. **Conservation agreement.** "Conservation agreement" means a written contract stating the terms and conditions for conveying a conservation easement by the landowner to the state.

Subp. 10. **Conservation easement.** "Conservation easement" has the meaning given for "conservation easement" in Minnesota Statutes, section 84C.01, paragraph (1).

Subp. 10a. ~~**Conservation easement handbook.** "Conservation easement handbook" means the current edition of the state board's publication containing detailed procedures and guidelines for implementing the conservation easement programs administered by the state board. This publication is subject to periodic change, is available at the state board office and at district offices, and is incorporated herein by reference.~~

Subp. 10b. **Conservation easement program.** "Conservation easement program" refers to both the RIM reserve program, as defined in subpart 42, and the permanent wetlands preserve program, as defined in subpart 36a.

Subp. 11. **Conservation plan.** "Conservation plan" means a written description and map of the approved practices that must be applied to or that already exist on the easement area.

Subp. 11a. **Cost-shared practice.** "Cost-shared practice" means an approved practice which qualifies for cost-sharing through a conservation easement program administered by the state board.

Subp. 12. [Repealed, 19 SR 550]

Subp. 13. [Repealed, 19 SR 550]

Subp. 14. **District.** "District" means a local soil and water conservation district organized under Minnesota Statutes, chapter 103C.

Subp. 15. **District board.** "District board" means the board of supervisors of a soil and water conservation district as organized under Minnesota Statutes, chapter 103C.

Subp. 16. [Repealed, 19 SR 550]

Subp. 17. **District technical representative.** "District technical representative" means a district employee or other designee assigned by the district who has expertise in the design and application of approved practices.

Subp. 17a. **Drained wetland.** "Drained wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to reduce its natural function ~~render the land suitable for agricultural crop production. The alteration must have occurred before December 23, 1985, and must be a legal alteration as determined by the commissioner of natural resources.~~

Subp. 17b. **Easement program practice specifications.** "Easement program practice specifications" means the detailed descriptions of the approved practices that are allowed on lands enrolled in the conservation easement programs. ~~This information is contained in the current edition of the conservation easement handbook, a publication of the state board that is defined in subpart 10a.~~

Subp. 18 [Repealed, 19 SR 550]

Subp. 19. ~~Family farm.~~ "Family farm" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 20. ~~Family farm corporation.~~ "Family farm corporation" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 20a. ~~Family farm partnership.~~ "Family farm partnership" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 20b. **Farmed wetland.** "Farmed wetland" means a wetland, as defined in subpart 48, that has been devoted to agricultural crop production, as defined in subpart 2, since December 23, 1985.

Subp. 21. [Repealed, 19 SR 550]

Subp. 22. [Repealed, 19 SR 550]

Subp. 23. **Food plot.** "Food plot" means an area established for the purpose of providing food for wildlife.

Subp. 24. ~~Highway windbreak.~~ "Highway windbreak" means a strip or belt of trees, shrubs, or grass barriers at least six rows deep and within 300 feet of the right-of-way of a highway.

Subp. 25. ~~Hydric soils.~~ "Hydric soils" means soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. A current list of hydric soils is available at the state board office and the district office, is subject to periodic change, and is incorporated herein by reference.

Subp. 26. ~~Hydrophytic vegetation.~~ "Hydrophytic vegetation" means macrophytic plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

Subp. 27. **Individual.** Individual" means a person or legal entity, whether or not a resident of Minnesota.

Subp. 28. ~~Inherently unproductive.~~ "Inherently unproductive" means that the soil properties of available water capacity, bulk density, and pH in the uppermost 100 centimeters (39 inches) of a soil are present so that an unfavorable rooting environment exists for agricultural crop production.

Subp. 29. **Introduced hayland.** "Introduced hayland" means an area devoted to the production of forage that has been cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the ten years prior to applying for enrollment in a conservation easement program. These areas must have been harvested by mechanical methods at least two years during the five years prior to applying for enrollment in a conservation easement program.

Subp. 30. **Introduced pasture.** "Introduced pasture" means an area devoted to the production of forage that has been cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the ten years prior to applying for enrollment in a conservation easement program. These areas must have been harvested by grazing at least two years during the five years prior to applying for enrollment in a conservation easement program.

Subp. 31. **Landowner.** "Landowner" means an individual, ~~family farm, family farm partnership, authorized farm partnership, family farm corporation, authorized farm corporation, estate, or~~

~~testamentary trust, or entity that is not prohibited from owning agricultural land under MS 500.24 and who either owns eligible land or is purchasing eligible land under a contract for deed in Minnesota.~~

Subp. 31a. **Land with crop history.** "Land with crop history" means land that has produced horticultural, row, or close grown crops or that has been enrolled at a cropland rate in a federal or state conservation program at least two of the five years prior to applying for enrollment in a conservation easement program, or land that meets the definition of introduced hayland in subpart 29, or land that meets the definition of introduced pasture in subpart 30. For the purposes of parts ~~8400.3000~~ to 8400.3930, land with crop history includes acres devoted to "set aside" or "conserving use" for the United States Department of Agriculture programs.

~~Subp. 32. **Local emergency.** "Local emergency" means an emergency declared under Minnesota Statutes, section 12.29.~~

Subp. 33. **Marginal agricultural land.** "Marginal agricultural land" for the RIM reserve program means agricultural land that is: ~~(1) composed of class IIIe, IVe, V, VI, VII, or VIII land as identified in the land capability classification system of the United States Department of Agriculture; or (2) similar to land described under clause (1) and identified under a land classification system selected by the state board that is composed of soils that are inherently unproductive, as defined in subpart 28, for agricultural crop production or likely to cause significant potential environmental impact, as defined in subpart 44.~~

~~If the state selects a land classification system as provided by clause (2), the state board will provide districts with a list of soil mapping units indicative of marginal agricultural land. Districts, upon state board approval, may change the list as necessary to reflect local soil characteristics. A current list is available at the state board office and at district offices, is subject to periodic change, and is incorporated herein by reference.~~

Subp. 33a. **Pasture.** "Pasture" means land used for grazing by domestic livestock and land which is not considered land with crop history as defined in subpart 31a.

Subp. 33b. **Pastured hillside.** "Pastured hillside" means land on a hillside that is used for pasture as defined in subpart 33a or used for introduced pasture as defined in subpart 30.

Subp. 34. [Repealed, 19 SR 550]

Subp. 35. [Repealed, 19 SR 550]

Subp. 36. **Perennial cover.** "Perennial cover" means the water area created by restoring a drained wetland or the perennial vegetation established under a conservation easement program, or the perennial vegetation or the water or wetland areas that already exist on the easement area.

Subp. 36a. **Permanent wetlands preserve program.** "Permanent wetlands preserve program" means the program established under Minnesota Statutes, section 103F.516.

Subp. 37. [Repealed, 19 SR 550]

Subp. 38. [Repealed, 19 SR 550]

Subp. 39. [Repealed, 19 SR 550]

Subp. 39a. **Public waters.** "Public waters" means waters as defined in Minnesota Statutes, section 103G.005, subdivision 15, and inventoried under Minnesota Statutes, section 103G.201. A copy of the inventory is available in the district office.

Subp. 39b. **Public waters wetlands.** "Public waters wetlands" means wetlands as defined in Minnesota Statutes, section 103G.005, subdivision 15a.

Subp. 39c. ~~**Replacement wetland.** "Replacement wetland" means a wetland that has been replaced under Minnesota Statutes, section 103G.2242.~~

Subp. 40. ~~**Restorable drained wetland.** "Restorable drained wetland" means a drained wetland as defined in subpart 17a that is practical to restore and for which the state board is able to secure the necessary land rights of adjacent landowners.~~

Subp. 41. [Repealed, 19 SR 550]

Subp. 42. **RIM reserve program.** "RIM reserve program" means the program established in Minnesota Statutes, sections 103F.515 and 103F.525.

Subp. 42a. **Riparian land.** "Riparian land" means land adjacent to public waters, drainage systems, wetlands, or locally designated priority waters identified in a comprehensive local water plan, as defined in Minnesota Statutes, section 103B.3363, subdivision 3.

Subp. 43. **Screening committee.** "Screening committee" means a group established by the district board to assist in implementing the conservation easement programs. The screening committee is chaired by a district board member, or their delegate, and is composed of representatives of private, state, and local organizations or clubs, and local, state, and federal agencies with an interest in the conservation easement programs.

Subp. 43a. **Sensitive groundwater area.** "Sensitive groundwater area" means a geographic area defined by natural features where there is a significant risk of groundwater degradation from activities conducted at or near the land surface. These areas may be identified by mapping or other appropriate methods determined by the commissioner of natural resources and the state board. Wellhead protection areas and land that is adjacent and draining to a sinkhole may be designated as a sensitive groundwater area.

Subp. 44. ~~**Significant potential environmental impact.** "Significant potential environmental impact" means that the use of agricultural land may result in surface water or groundwater quality degradation or deposition of eroded sediments on property of adjacent landowners due to the soil properties of erosion potential, permeability, runoff potential, slope stability, or depth to water table.~~

Subp. 45. **Soil and water conservation practice.** "Soil and water conservation practice" means structural or vegetative practices applied to land for the purposes of controlling soil erosion, sediment, agricultural nutrients or waste, or other water pollutants.

Subp. 46. ~~**Soil mapping unit.** "Soil mapping unit" means a unit or type of soil or combination of soils shown on a soil survey map.~~

Subp. 47. [Repealed, 14 SR 1928]

Subp. 47a. **State board.** "State board" means the Board of Water and Soil Resources.

Subp. 48. **Wetland.** "Wetland" means ~~land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, or that periodically does support, a predominance of hydrophytic vegetation~~ wetlands as defined in Minnesota Statutes, section 103G.005, subd. 1a.

**Statutory Authority:** ~~MS s 40.45;~~ 103F.531

**History:** 13 SR 1055; 14 SR 1928; 19 SR 550; L 1996 c 462 s 43

**Posted:** October 4, 2001

#### 8400.3060 CRITERIA FOR ALLOCATION OF FUNDS.

The state board must annually allocate funds available to implement the conservation easement programs based on the following criteria:

- A. ~~the number or cost of applications accepted for enrollment in the conservation easement programs administered by the state board, or conservation easements conveyed to the state board within each district;~~
- B. ~~the need for soil erosion or sediment control, protection or improvement of water quality, or improvement of fish and wildlife habitat, within a specified geographical area as determined by the state board, or as identified in the annual plan of each district or in any comprehensive local water plans prepared pursuant to Minnesota Statutes, section 103B.231, 103B.255, 103B.311, 103D.401, or 103D.405;~~
- C. ~~the cumulative degree of soil erosion or sediment control, protection or improvement of water quality, or improvement of fish and wildlife habitat likely to be accomplished by the enrollment of selected easement areas; and~~
- D. ~~the expressed interest and readiness of each district board, as well as cooperating groups and agencies, to implement the conservation easement programs.~~

~~The allocated funds may be increased, decreased, or shifted by the state board as necessary to maximize the use of available funds among districts. In selecting land for enrollment in the RIM reserve program, highest priority must be given to permanent conservation easements pursuant to Minnesota Statutes, section 103F.515, subdivision 2, paragraph (f).~~

**Statutory Authority:** ~~MS s 40.45;~~ 103F.531

**History:** 13 SR 1055; 14 SR 1928; 19 SR 550

**Posted:** October 4, 2001

8400.3100 [Repealed, 19 SR 550]

**Posted:** October 4, 2001

#### 8400.3110 DURATION OF CONSERVATION EASEMENTS.

For purposes of the RIM reserve program, a conservation easement may be permanent or of limited duration. A conservation easement acquired on restorable drained wetlands, replacement wetlands, or land for highway windbreak purposes, must be of permanent duration. A conservation easement of limited duration may be acquired on other eligible land within a district if it is for a period not less than

20 years and only if the state board has approved enrollment of limited duration conservation easements in that district.

All permanent wetlands preserve program conservation easements must be of permanent duration.

**Statutory Authority:** *MS s ~~40.45~~; 103F.531*

**History:** *14 SR 1928; 19 SR 550*

**Posted:** *October 4, 2001*

**8400.3130** [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

**Posted:** *July 2, 2009*

**8400.3160** [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

**Posted:** *July 2, 2009*

**8400.3200** [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

**Posted:** *July 2, 2009*

**8400.3210 DELEGATION OF PROGRAM TO ANOTHER DISTRICT.**

A district board may enter into an agreement with other district boards as authorized by Minnesota Statutes, section 103C.231, to delegate to another district board the responsibility for administering any conservation easement program of the state board. Where such delegation has been mutually agreed upon, each district board must so notify all landowners in their respective district and each district must so notify the state board.

**Statutory Authority:** *MS s 103F.531*

**History:** *19 SR 550*

**Posted:** *October 4, 2001*

**8400.3230** [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

**Posted:** *July 2, 2009*

**8400.3260 LAND IN MORE THAN ONE DISTRICT.**

If an application involves land in more than one district, the participating districts may jointly delegate to one of the districts the responsibility for review and prioritization of that application. If that application is accepted for enrollment, the affected districts may also jointly delegate to one of the districts the responsibility for completing all of the tasks necessary for conveyance of the conservation easement to the state board.

**Statutory Authority:** *MS s ~~40.45~~; 103F.531*  
**History:** *13 SR 1055; 19 SR 550*  
**Posted:** *October 4, 2001*

**8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW OF APPLICATIONS.**

The state board may direct districts to utilize local screening committees to prioritize applications received. Upon completion of the application period and initial eligibility determination by the responsible district staff or the district technical representative, the screening committee may confer and prioritize each eligible application. The criteria for screening committee prioritization are as follows:

A. consistency with the purpose and policy of the respective conservation easement program for which an application has been submitted by an eligible landowner;

~~B. the parcel's relationship to the priorities previously determined in part 8400.3130;~~

~~B.~~ the parcel's potential impact on reducing soil erosion and sedimentation, improving water quality, reducing flooding, and enhancing fish and wildlife habitat;

~~C.~~ potential title problems and encumbrances;

~~D.~~ compatibility with established priorities of the organizations and agencies represented on the screening committee; and

~~E.~~ highest priority must be given to permanent easements pursuant to Minnesota Statutes, section 103F.515, subdivision 2, paragraph ~~(f)~~ (e).

**Statutory Authority:** *MS s ~~40.45~~; 103F.531*  
**History:** *13 SR 1055; 19 SR 550*  
**Posted:** *October 4, 2001*

**8400.3330** [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

**Posted:** *July 2, 2009*

**8400.3360** [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

**Posted:** *July 2, 2009*

**8400.3390** [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

**Posted:** *July 2, 2009*

**8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.**

The district board shall direct its staff or the district technical representative to develop conservation agreements as prescribed by the state board and in a recordable form for all approved applications which incorporate the minimum requirements stated in Minnesota Statutes, section 103F.515, subdivisions 4 and 5. In addition, each conservation agreement must require the landowner to:

- A. pay, when due, all taxes and assessments that may be levied against the easement area;
- B. remove any existing structures as required by the district board or the state board prior to the conveyance of the conservation easement with all associated costs being the responsibility of the landowner, and not place, erect, or construct any temporary or permanent structures on the easement area;
- C. remove any existing hazardous and toxic substances or any pollutants and contaminants prior to the conveyance of the conservation easement with all associated costs being the responsibility of the landowner, and not place such substances, pollutants, or contaminants on the easement area;
- D. properly seal all abandoned wells on the easement area prior to the conveyance of the conservation easement, with all associated costs being the responsibility of the landowner; and
- E. allow the state board and its employees and agents to enter the easement area for the purposes of inspection and enforcement of the terms and conditions of the conservation easement.

**Statutory Authority:** *MS s ~~40.45~~; 103F.531*  
**History:** *13 SR 1055; 14 SR 1928; 19 SR 550*  
**Posted:** *October 4, 2001*

**8400.3430** [Repealed, 19 SR 550]

**Posted:** *October 4, 2001*

**8400.3460 TITLE REQUIREMENTS.**

The landowner must have good and marketable title that is insurable under a title insurance policy. In addition, the title must not be subject to any prior liens or encumbrances determined to be objectionable by the Attorney General. Objectionable title defects, liens, or encumbrances must be promptly removed or corrected by the landowner prior to easement conveyance.

**Statutory Authority:** *MS s ~~40.45~~; 103F.531*  
**History:** *13 SR 1055; 14 SR 1928; 19 SR 550*  
**Posted:** *October 4, 2001*

**8400.3500** [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

**Posted:** *July 2, 2009*

**8400.3530**

Subpart 1. [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Subp. 2. [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Subp. 2a. [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Subp. 3. [Repealed, 19 SR 550, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Subp. 4. [Repealed, 19 SR 550, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Posted: July 2, 2009

**8400.3560** [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Posted: July 2, 2009

#### **8400.3600 RENEWAL AND EXTENSION OF CONSERVATION EASEMENTS.**

A. When a conservation easement of limited duration expires, a new conservation agreement and conservation easement for an additional period of not less than 20 years may be acquired by agreement of the state board and the landowner under the rules in force at that time. The state board may adjust payment rates as a result of renewing a conservation agreement and conservation easement after examining the condition of the established cover, conservation practices, and land values.

B. The easement duration may be lengthened through mutual agreement of the current landowner with the state board, in consultation with the commissioners of agriculture and natural resources, if the state board determines that the changes are consistent with the purpose of the conservation easement program. When converting limited duration easements to permanent easements, the payment is the difference between the amount that would be paid per acre for the permanent easement as established for the most recent sign-up period and the amount already paid for the limited duration easement on the area.

**Statutory Authority:** *MS s ~~40-45~~; 103F.531*

**History:** *13 SR 1055; 14 SR 1928; 19 SR 550*

**Posted:** *October 4, 2001*

#### **8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION EASEMENTS.**

The state board may alter, release, or terminate a conservation easement after consultation with the commissioners of agriculture and natural resources. The board may alter, release, or terminate an easement only if the state board determines that the public interests and general welfare are better served by the alteration, release, or termination.

The state board must be provided the following information at least 30 days prior to a state board meeting, before the state board will consider a request to alter, release, or terminate a conservation easement:

A. a copy of the letter from the landowner to the district board justifying the change and identifying how the public interest and general welfare will be better served;

B. a letter from the district board recommending either approval or disapproval of the proposed change;

C. a letter from the Department of Natural Resources area wildlife manager recommending either approval or disapproval of the proposed change; and

D. other supporting documents, including:

(1) an aerial photo identifying the requested change;

(2) a soil survey map of the area;

(3) cropping history information; and

(4) other pertinent documentation that will support the request.

The state board reserves the right to require special provisions to ensure at least equal resource value as a condition of approving the request. The state board must be compensated by the landowner for all damages and loss of benefits to the conservation easement and the state board may also require reimbursement for administrative expenses and costs incurred in the alteration, release, or termination of a conservation easement.

**Statutory Authority:** *MS s ~~40.45~~; 103F.531*

**History:** *14 SR 1928; 19 SR 550*

**Posted:** *October 4, 2001*

#### **8400.3630 APPROVED PRACTICES.**

Subpart 1. **Criteria.** Approved practices must have as their primary purpose the control of soil erosion or sedimentation, protection or improvement of water quality, reduction of flooding, or enhancement of fish and wildlife habitat. Approved practices are further specified in the easement program practice specifications. Practices that do not qualify as approved practices include, but are not limited to, Christmas tree plantations and fruit orchards. Food plots are not eligible for conservation easement program cost-sharing, but are considered an approved practice and, therefore, are allowed on enrolled acres if they are included in the conservation plan.

Subp. 2. **Establishment of approved practices.** A landowner is responsible for the establishment of all approved practices on the easement area in accordance with the easement program practice specifications. Establishment of approved practices must be monitored by the district board to ensure compliance with the conservation plan and the conservation easement. Upon establishment or partial completion of an approved practice, a district technical representative shall certify whether or not the approved practice, in whole or part, has been satisfactorily performed.

**Statutory Authority:** *MS s ~~40.45~~; 103F.531*

**History:** *13 SR 1055; 14 SR 1928; 19 SR 550*

**Posted:** *October 4, 2001*

**8400.3660 [Repealed, 19 SR 550]**

Posted: October 4, 2001

## 8400.3700 COST-SHARED PRACTICES.

Subpart 1. **Approved practices eligible for cost-sharing.** The state board shall determine which approved practices are eligible for conservation easement program cost-sharing, consistent with the criteria as described in part 8400.3630, subpart 1, ~~and consistent with the payment limits in Minnesota Statutes, section 103F.515, subdivision 6, paragraph (a), clauses (1) and (2).~~

### Subp. 2. Eligible costs for cost-shared practices.

A. Upon satisfactory performance under part 8400.3630, subpart 2, the landowner shall present receipts or invoices to the district board, or their delegate, of the costs incurred in the installation of the cost-shared practice. The district board shall review the receipts or invoices to determine the costs eligible for conservation easement program payment. If the district board determines that the costs requested for reimbursement are reasonable and necessary, it shall recommend payment to the landowner by submitting certification of satisfactory performance and providing documentation of reimbursable practice costs to the state board on forms provided by the state board. If the district board determines that certain costs requested for reimbursement are not eligible or reasonable, it shall notify the landowner in writing of this determination. The landowner may request reconsideration of this determination by the district board within 30 days of receipt of the determination. If additional costs are determined to be eligible and reasonable, the district board shall then recommend payment for the approved amount. The state board reserves the right to approve whether costs requested for reimbursement are eligible and reasonable.

B. Eligible costs for approved practices are limited to those prescribed by the State Board as allowed in Minnesota Statutes, section 103F.515, subdivision 6, paragraph (a), clauses (1) and (2), and to the total state funds encumbered for the cost-shared practices designated in the conservation plan. ~~The amount of encumbered funds may be increased, within the statutory limits, after a landowner request, which has been properly executed on forms prescribed by the state board, has been approved by the state board.~~

~~C. If the actual cost of installing a cost-shared practice designated in the conservation plan is less than the statutory payment limit described in item B, the state shall only pay the actual cost of the installation.~~

Subp. 3. **Payment for in-kind services.** In-kind services provided by the landowner including, but not limited to, earthwork, seedbed preparation, and seeding, may be credited to the landowner's share of the total cost of establishing the cost-shared practice. The district board shall credit only those costs it determines to be practical and reasonable.

Subp. 4. **Funds from other sources.** Conservation easement program cost-sharing funds may be augmented by funds from other agencies, organizations, or individuals. Securing these funds is the responsibility of the landowner.

**Statutory Authority:** ~~MS s 40.45;~~ 103F.531

**History:** 13 SR 1055; 14 SR 1928; 19 SR 550

Posted: October 4, 2001

### 8400.3730 FAILURE OF APPROVED PRACTICES.

Subpart 1. **Cost-shared practices.** A landowner is not in violation of the conservation easement if the failure, in whole or part, of a cost-shared practice was caused by reasons beyond the landowner's control such as extreme weather conditions. In these instances, the district board may recommend to the state board that conservation easement program cost-sharing funds be encumbered for reestablishment of the cost-shared practice. The encumbrance must comply with the limits ~~in Minnesota Statutes, section 103F.515, subdivision 6, paragraph (a), clauses (1) and (2) prescribed by the State Board.~~ In no case may a district board authorize conservation easement program financial assistance to a landowner for the reestablishment of cost-shared practices that were removed or altered by the landowner, or that have failed due to improper maintenance during the term of the conservation easement.

Subp. 2. **All other approved practices.** A landowner is not in violation of the conservation easement if the failure of approved practices was caused by reasons beyond the landowner's control.

**Statutory Authority:** *MS s ~~40.45~~; 103F.531*  
**History:** *13 SR 1055; 14 SR 1928; 19 SR 550*  
**Posted:** *October 4, 2001*

8400.3760 [Repealed, 14 SR 1928; 19 SR 550]

**Posted:** *October 4, 2001*

### 8400.3800 OPERATION AND MAINTENANCE.

A landowner is responsible for the operation and maintenance of approved practices designated in the conservation plan.

**Statutory Authority:** *MS s ~~40.45~~; 103F.531*  
**History:** *13 SR 1055; 19 SR 550*  
**Posted:** *October 4, 2001*

### 8400.3830 VIOLATIONS AND ENFORCEMENT.

Subpart 1. **District board action.** The district board may take such measures as are necessary to ensure landowner compliance with the conservation agreement, conservation easement, and conservation plan. If the district board is unsuccessful at obtaining landowner compliance, the district board shall notify the state board of the violation and may recommend appropriate measures to be taken to correct violations.

Subp. 2. **State board action.** Upon notification by the district board of a violation of a conservation agreement, conservation easement, or conservation plan, the state board shall take action to resolve the violation.

A landowner who violates the terms of a conservation agreement, conservation easement, or conservation plan under this chapter, or induces, assists, or allows another to do so, is liable to the state for treble damages if the violation is willful or double damages if the violation is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater.

If the state board is not successful in resolving the violation, it may request the state attorney general to commence legal action to enforce the conservation agreement, conservation easement, or conservation plan.

Subp. 3. **Attorney general action.** Upon request by the state board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney fees, and any other appropriate relief to enforce Minnesota Statutes, sections 103F.501 to 103F.531 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

Conservation easements remain in effect even if maintenance violations have occurred.

**Statutory Authority:** *MS s ~~40.45~~; 103F.531*

**History:** *13 SR 1055; 14 SR 1928; 19 SR 550*

**Posted:** *October 4, 2001*

8400.3860 [Repealed, 19 SR 550]

**Posted:** *October 4, 2001*

**~~8400.3870 SUPPLEMENTAL PAYMENTS ON FEDERAL AND STATE PROGRAMS.~~**

~~The state board may supplement payments made under federal or other state land retirement programs to the extent of available appropriations other than bond proceeds. The payments must be used to establish perennial cover on land or to supplement payments for land enrolled in land retirement programs approved by the state board.~~

**Statutory Authority:** *MS s 103F.531*

**History:** *19 SR 550*

**Posted:** *October 4, 2001*

8400.3900 [Repealed, 19 SR 550]

**Posted:** *October 4, 2001*

**8400.3930 RECONSIDERATION AND APPEAL.**

Subpart 1. **Reconsideration by district board.** An affected landowner may request the district board to reconsider its:

A. recommendation or determination regarding that landowner's application for enrollment in a conservation easement program;

B. recommendation or determination to cancel that landowner's conservation agreement;

C. determination regarding that landowner's eligible and allowable costs to be reimbursed by the state board;

D. request to that landowner to correct any alleged noncompliant conditions regarding that landowner's enrolled easement area; or

E. recommendation to disapprove that landowner's request to change an enrolled easement area.

**Subp. 2. Time for reconsideration by district board.** A landowner requesting reconsideration under subpart 1 shall mail a written request to the district board within 15 days of receipt of notice of the district board's determination or recommendation of the matters specified in subpart 1. The request for reconsideration shall include the specific reasons for the request and evidence to support the landowner's claims. The district board shall notify the landowner in writing of its final recommendation and the reasons for the recommendation within 60 days of receipt of the landowner's request for reconsideration.

**Subp. 3. Appeal to state board.** An affected landowner may appeal to the state board from a final recommendation made by the district board pursuant to subpart 2. The landowner shall mail a written appeal to the state board within 15 days after receipt of the district board's final recommendation. The appeal shall include the specific reasons for the request and evidence to support the landowner's claims. The state board shall notify in writing the landowner and the district board of its final decision and the reasons for the decision within 60 days of receipt of the landowner's appeal.

Subp. 4. [Repealed, 14 SR 1928]

**Statutory Authority:** *MS s ~~40.45~~; 103F.531*  
**History:** *13 SR 1055; 14 SR 1928; 19 SR 550*  
**Posted:** *October 4, 2001*

DRAFT

**STATE OF MINN ESOTA  
BOARD OF WATER AND SOIL RESOURCES**

**In the Matter of the Proposed Adoption of Amendments to Rules Governing the Cost-share Program and the Reinvest in Minnesota Reserve Program, Minnesota Rules Chapter 8400.0050 to 8400.3930.**

**STATEMENT OF NEED AND REASONABLENESS**

**March 2011**

**PURPOSE**

The principal purpose of this rulemaking is to conform the rule to statutory amendments made to Minnesota Statutes 103C and 103F in 2009. Additional goals are to position the Cost-share and RIM Reserve Programs for increased direction via Board of Water and Soil Resources (BWSR) Board policies and to reduce the administrative burden of these programs.

**INTRODUCTION**

**Agency Background:** BWSR is the state's administrative agency for 90 soil and water conservation districts (SWCD), 46 watershed districts, 18 metropolitan watershed management organizations, and 80 county water managers. The agency's purpose, working through local government, is to protect and enhance the state's soil and water resources by implementing the state's soil and water conservation policy, comprehensive local water management, and the Wetland Conservation Act as it relates to the 41.7 million acres of private lands in Minnesota. The BWSR Board consists of 20 members, including local government representatives that deliver BWSR programs, state agencies, and citizens.

**Rulemaking Background:** BWSR administers several natural resources conservation programs through SWCDs. The proposed amendments to this rule (8400.0050 to 8400.3930) govern the Erosion Control and Water Management (commonly referred to as the State Conservation Cost-Share Program) and Reinvest in Minnesota (RIM) Reserve Programs. Both of these programs are voluntary, non-regulatory programs. This Statement of Need and Reasonableness will discuss the proposed rules changes as they relate to each of these programs.

The Cost-share Program provides state funds to SWCDs so they can provide technical and financial assistance to land occupiers to install conservation practices that reduce erosion, control sedimentation, improve and protect water quality or address water quantity problems due to altered hydrology on the lands they own or manage. Under the RIM Reserve Program, BWSR provides funds to SWCDs so they can provide technical and financial assistance to land occupiers to acquire conservation easements on certain marginal agricultural lands and wetlands.

The scope of this rulemaking is to improve the application of these programs by:

1. Incorporating statutory changes that have occurred in the RIM Reserve Law (103F.505 to 103F.531);

2. Reflecting statutory amendments enacted in 2009, including a directive to adopt Cost-share Program Policies (103C.501);
3. Streamlining the administration to increase efficiencies for both SWCDs and BWSR;
4. Respond to evolving resource management strategies by accommodating greater use of other Best Management Practices (BMPs) ; and
5. Improving the clarity of the permanent rule.

The Cost-share rules were initially promulgated in 1977, with the most recent revision occurring in 2003. The proposed revisions make the rule consistent with the amended statute.

The RIM rules were initially promulgated in 1994. The proposed revisions make the rule consistent with the amended statute.

#### **ALTERNATIVE FORMAT.**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact:

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#### **STATUTORY AUTHORITY.**

Minnesota Statutes 103C.501 authorizes the BWSR, through districts, to enter into cost-share contracts with landowners for erosion control and water management. Minnesota Statutes 103C.501, Subd. 6 authorizes the board to adopt administrative rules for the Cost-share Program.

Minnesota Statutes 103F.501 to 103F.531 authorizes BWSR to implement a program to acquire conservation easements to restore certain marginal agricultural lands and protect environmentally sensitive areas to enhance soil and water quality, minimize damage to flood prone areas, sequester carbon, and support native plant, fish, and wildlife habitats. Minnesota Statutes 103F.531 authorizes the board to adopt administrative rules for the RIM Reserve Program.

In addition, the board has general rule making authority for carrying out all its programs pursuant to Minnesota Statutes, section 103B.101, subdivision 7.

## REGULATORY ANALYSIS

### **Determination of the Classes of Persons affected by the Proposed Rules.**

No class of person is required to comply with either the Cost-share or RIM Programs, as they are not regulatory, but voluntary land and water conservation programs. The proposed rule will directly affect SWCDs who receive funds under and implement the Cost-share and RIM programs. The work of SWCDs under these programs entails significant interaction with landowners to market and implement conservation practices and/or conservation easements. In addition, landowners that choose to participate in either program will be affected. However, the changes are intended to implement statutory changes, reduce administrative costs and provide increased implementation flexibility.

These rule changes should result in result in increased efficiency and effectiveness in achieving program goals.

### **Determination of Alternative, Less Costly or Less Intrusive Methods for Achieving the Purpose of the Proposed Rules.**

There is no known alternative to the proposed rule that is less costly or less intrusive. The current and proposed rule is necessary to implement statute. An alternative to the proposed rule would be to develop a rule that details all requirements for implementing these programs. However, this would run counter to legislative direction that requires BWSR to adopt policies to implement these programs. Furthermore, a detailed rule would reduce flexibility in program implementation that is possible through BWSR Board adopted policies.

### **Probable Costs of Complying with the Proposed Rules.**

The rule as proposed will not increase the state's costs, costs borne by SWCDs, and costs borne by landowners. On the contrary, the rule is expected to reduce the costs of SWCDs and the state due to streamlined administrative processes. The rule should have no effect on landowners.

### **Probable Costs or Consequences of not Adopting the Proposed Rules.**

The consequences of not adopting the proposed rule amendments would be a rule that does not comply with statute. These inconsistencies would increase costs and negatively affect conservation opportunities due to not implementing the flexibility as required by statute.

### **Assessment of Differences between the Proposed Rules and Existing Federal Regulations.**

As stated previously, neither the Cost-share nor the RIM Programs are regulatory and have no direct connection to any federal regulatory program. However, both programs have corollary programs with those implemented by federal agencies (Environmental Quality Incentives Program and Wetland Reserve Program) and are often closely coordinated at the state and local government levels. Partnerships and coordinated implementation are key elements of the 2007 BWSR Board Strategic Plan. The proposed rule will allow increased reliance on BWSR Board adopted policy and this flexibility will help ensure these programs continue to be closely coordinated.

**Description of How the Agency Considered and Implemented the Policy to Adopt Rules that Emphasize Superior Achievement in Meeting the Agency's Regulatory Objectives and Maximum Flexibility for the Regulated Part and Agency in Meeting these Goals.**

The proposed rule amendments have two objectives: (1) consistency with statute, and (2) implement the statutory directive to adopt policies and the programmatic flexibility that these policies will bring. This flexibility will assist BWSR in meeting objectives of a continued focus on a federal, state, and local conservation partnership, an improved ability to coordinate these programs with the dedicated Constitutional Clean Water and Outdoor Heritage funds, and the ability to adjust program priorities and administrative requirements to meet future needs.

**ADDITIONAL NOTICE.**

A. The Request for Comments was published on June 21, 2010 and was distributed by email to approximately 200 individuals with SWCDs and other local governments that have been engaged in these programs.

B. The rule development process was largely a product of BWSR staff. However, at several stages in this process, agency staff consulted with SWCDs to receive input on rule issues. In addition, the draft rule and statutorily required Board Cost-share Program Policy were posted on the BWSR website on November 5, 2010. Approximately 200 individuals were notified by email of the availability of these documents and were encouraged to provide comments.

Three comments were received in response to these two efforts to inform and encourage input on the proposed rule.

C. BWSR intends to send a copy of the Notice of Intent to Adopt Rules Without a Public Hearing to:

- All individuals who have registered with BWSR for the purpose of receiving notice of rule proceedings as required by Minn. Stat. 14.14, subd. 1a;
- All SWCDs, all watershed districts, all watershed management organizations, and all county water managers;
- All individuals and representatives of associations that BWSR has on file as interested and affected parties;
- Minn. Stat. 14.116 requires a copy of the notice, the rules, and SONAR be sent to the chairs and ranking minority members of the committees with jurisdiction over the subject matter of the proposed rules. This statute also states that if the mailing of the notice is within two years of the effective date of the law granting rulemaking authority that the agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting legislators who were chief authors of the bill granting the rulemaking authority. Under this statutory directive, the following legislators will be sent the above referenced documents: the chairs and ranking minority members of (1) the House Environment, Natural Resources and Energy Policy and Finance Committee; (2) the Senate Environment and Natural Resources Committee; and (3) the chief authors of legislation amending the Cost-share and RIM statute, Representative David Dill and Senator Satveer Chaudhary.

- In addition, a copy of the notice, proposed rule, and draft SONAR will be posted on the BWSR website.

Because of the limited impact of the proposed rule amendments and the broad distribution of the Request for Comments, the broad distribution of the Notice of Intent to Adopt Without a Public Hearing, and as copies of the proposed rule are available on the BWSR website, BWSR believes a thorough effort to reach significantly affected persons has been accomplished.

#### **NOTIFICATION TO THE COMMISSIONER OF AGRICULTURE.**

Minn. Stat. 14.111 requires that before an agency adopts or repeals rules that affect farming operations, the agency must provide a copy of the proposed rule to the Commissioner of Agriculture no later than 30 days prior to publication of the proposed rule in the State Register. Both the Cost-share and RIM Programs are often implemented on agricultural lands and thereby affect agricultural operations. However, these programs are voluntary so they will have a minimal impact on agriculture.

Based on this assessment, the Commissioner of Agriculture was sent a copy of the proposed rule on **March 2011**. This notification, while required by statute, is in addition to the participation of the Department of Agriculture on the BWSR Board.

#### **CONSULT WITH MINNESOTA MANAGEMENT AND BUDGET ON LOCAL GOVERNMENT IMPACT.**

As required by Minn. Stat. 14.131, BWSR has consulted with the Commissioner of Minnesota Management and Budget to help evaluate the fiscal impact of the proposed rule. We did this on **March 2011** by sending to the Commissioner of Minnesota Management and Budget copies of the draft rule amendments and SONAR.

#### **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION.**

Minn. Stat., section 14.128 requires determining whether a local government will have to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. As stated previously, the Cost-share and RIM Programs are not regulatory and local governments will not be required to adopt or amend an ordinance or other regulation as a result of the proposed rule amendments.

#### **COST OF COMPLYING FOR SMALL BUSINESS OR CITY.**

The Cost-share and RIM Programs are implemented by SWCDs based on voluntary participation by landowners. Cities are not affected by these programs and therefore will not incur any additional costs. Similarly, small businesses will not incur additional costs under these rules. Most projects under these programs are implemented through SWCDs contracting with small businesses. These contractual relationships will not be affected by the proposed rule amendments.

#### **RULE BY RULE ANALYSIS**

(citations based on the Proposed Rule as approved by the Revisor of Statutes)

#### **Overview.**

The rule amendments largely consist of non-substantive changes that are driven by the following:

- Improving the clarity of the rule by simplifying, updating and re-organizing the language;
- Presenting rule provisions based on local or state responsibility;
- Deleting definitions no longer used in the rule;
- Deleting provisions which will be addressed via statutorily required BWSR Board adopted policy;
- and
- Updating statutory and rule references.

The requirement for the Board to adopt a program policy warrants further discussion. The process by which policies are generated begins with staff developing a proposal, usually in consultation with affected interests, which is reviewed by a Board Committee, before going to the Board for consideration. Meetings of Board Committees and the Board are public meetings and notice is provided to numerous agencies, organizations, and interested individuals, including the Minnesota Association of Soil and Water Conservation Districts. Also, three Board members are SWCD supervisors.

An important goal of the Cost-share Program Policy will be to make this program consistent with other BWSR grant programs, most significantly the Clean Water Fund programs. Increased consistency and uniformity of requirements and procedures will enable these programs to work together and reduce SWCD and BWSR administrative costs.

The Cost-share Program Policy will be considered by the Board at the same meeting as the rule. The Policy includes the following:

- Purpose
- Eligible Activities
- Technical and Administrative Components
- Cost-share Rates
- Technical Expertise
- Expenditure of Funds on Practices and Contracts
- Practice Sign-off and Payment
- Post-Construction and Follow-Up Activities
- District Reporting Requirements
- BWSR Program Monitoring, Closeout, and Penalty Procedures
- Conservation Districts Cost-share Program Policy

The 2009 amendments to the RIM statute authorize but do not require the Board to adopt a program policy. BWSR will consider adopting a RIM policy in the future based on program needs.

**8400.0050 PURPOSE.**

Revisions to this part are intended to ensure the rule is consistent with statute and to change the title of the program to "Land and Water Treatment Program" which is a more accurate statement of the purposes of the program.

**8400.XXXX AUTHORITY.**

This part is moved from its current location of 8420.0200, with a minor rule reference change, as the statement of the statutory authority of the Board to develop the cost-share program should be one of the first provisions of the rule.

**8400.0100 DEFINITIONS.**

The following definitions are deleted as they are no longer used in the rule; some of which will be considered for use in implementing the required program policy:

- Subp 2a. **Administrative Guidelines;**
- Subp. 4. **Approved practice;**
- Subp. 10a. **Conservation district technical representative;**
- Subp. 14b. **Farm Service Agency;**
- Subp. 15. **Field Office Technical Guide;**
- Subp. 16. **Group spokesperson;**
- Subp. 16a. **High priority erosion problems;**
- Subp. 16b. **High priority erosion problems;**
- Subp. 18a. **Landowner;**
- Subp. 18b. **Natural Resource Conservation Service;**
- Subp. 19a. **Other recognized technical practices;**
- Subp. 20a. **Protected waters;**
- Subp. 20b. **Registered professional engineer;**
- Subp. 20d. **Sinkhole;**
- Subp. 22a. **Special project;**
- Subp. 25. **T;**
- Subp. 26. **2 x T; and**
- Subp. 27. **Technical approval authority.**

Subp. 3. **Annual work plan.** This definition is modified to: (1) delete references to obsolete documents, (2) rely on the development of a policy as required by statute, and (3) be consistent with the RIM Reserve portion of this chapter.

Subp. 8. **Comprehensive Plan.** This definition is modified to delete references to obsolete documents and for this definition rely on the development of a policy as required by statute.

Subp. 9. **Conservation district** and Subp. 10 **Conservation district board** have been modified to be consistent with the RIM Reserve portion of this chapter (8420.3030, Subps. 14 and 15).

**8400.0200 AUTHORITY.**

This part is moved from its current location to immediately precede the definitions as the statement of the statutory authority of the Board to develop the Cost-share Program should be one of the first provisions of the rule.

**8400.XXXX PROGRAM POLICY.**

This is a new part that implements the 2009 statutory amendment in Minn. Stat. 103C.501, subd. 6 that requires the Board to adopt policies.

**8400.0300 APPROVED CONSERVATION PRACTICES.**

The title of this part is revised to be specific on the kind of practices that are allowed under this program.

Subp. 1 **Approved practices.** This subpart is deleted as the Board will address approved practices in the required policy. Including a practice list or practice categories in policy will be a flexible approach to ensuring the Cost-share program meets the needs of SWCDs and maximizes conservation opportunities with Legislatively appropriated funding.

Subp. 2 **Criteria for approved conservation practices.** The revisions to this subpart are to delete redundant language, such as item A which is already addressed in 8400.0050. The objectives of approved practices are moved from subp. 3 to item A for a more logical rule organization. In addition, new objectives are added to the approved practice categories to cover the types of projects that should be eligible for the Cost-share Program and to ensure consistency with 8400.0050.

Item B is deleted as the effective life of projects will be addressed in the Board policy. Moving this issue to policy will allow a more flexible approach to project effective life and enable different effective life terms based on the type of project. This is important as different project types have different water quality and soil erosion benefits, different costs, and different expected lifespans.

Language revisions to items C and D are for clarity and consistency within the rule.

**8400.0500 MAXIMUM COST-SHARE RATES.**

The language revisions in this part are for clarity and consistency within the rule.

**8400.XXXX RECORDING CONSERVATION PRACTICES**

This part operates in concert with 8400.1650. The revisions improve clarity and flexibility for the Board to require recording conservation practices on property titles when it is determined to be necessary to ensure maintenance of the conservation practice. As an enforceable provision it is necessary to be included in the rule.

**8400.0600 STATE BOARD ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS**

Subp. 1. **Comprehensive Plan.** This subpart is deleted as it is redundant with Minn. Stat. 103C.501, subd. 2.

Subp. 3. **Review criteria.** This subpart is deleted from rule and review criteria and will be addressed in the required program policy. As appropriated funds have been reduced by the Legislature, the advent of the Clean Water Fund, and changing conservation needs all point to an improved ability to meet locally identified needs of SWCDs through Board adopted policy.

Revisions to subparts 4 and 5 are to improve clarity and ensure consistency with statute.

**8400.0700 PROGRAM REPORTING AND MONITORING**

This part is deleted as it is, in part, redundant with part 8400.1900 and may be included in the required program policy.

**8400.0800 APPLICATION FOR FUNDS BY DISTRICTS**

This part is deleted as it is redundant with part 8400.0600.

**8400.0900 CONSERVATION DISTRICT ADMINISTRATION OF PROGRAM FUNDS**

Subp. 1. **General.** Revisions to this subpart are for clarity, to ensure consistency with the statute, and will be addressed in the required program policy.

Subp. 2. **Maximum cost-share rate percentage.** A portion of this subpart is deleted and a portion will be addressed in the required program policy. The current rate of 75 percent is not in statute, and flexibility that is possible through policy will increase the ability to coordinate funding for important conservation practices with other state and federal programs. Other factors discussed in this subpart are either obsolete or are not intended elements of future program implementation.

Subp. 3. **Criteria for conservation district board review.** This is a new subpart that largely consists of 8400.1300 which is relocated to be in a more logical sequence of SWCD responsibility under the Cost-share Program. Language changes improve clarity.

Subp. 4. **Entering into a contract.** This a new subpart that consists of language relocated from 8400.1400, sub. 1.

**8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS**

This part is deleted as it is redundant with 8400.0900, subp. 3.

**8400.1100 GROUP PROJECTS**

This part is deleted as it will be included in the required program policy.

**8400.1200 COOPERATIVE AND JOINT PROJECTS BY DISTRICTS**

This part is deleted as it will be included in the required program policy.

**8400.1250 TECHNICAL ASSESSMENT AND COST ESTIMATE DETERMINATION**

This part is deleted as it will be included in the required program policy.

**8400.1300 CRITERIA FOR CONSERVATION DISTRICT BOARD REVIEW**

This part has been largely moved to 8400.0900 to be in a more logical sequence of SWCD responsibility under the Cost-share Program. In addition, some parts are redundant with 8400.0300.

**8400.1400 CONSERVATION DISTRICT APPROVAL**

This part is deleted as portions have been relocated to 8400.0900, subp. 4 and other portions will be included in the required program policy.

**8400.1405 PROJECT DEADLINES AND PARTIAL PAYMENT**  
This part is deleted as it will be included in the required program policy.

**8400.1460 RETURN OF ALLOCATED FUNDS**  
This part is deleted as it will be included in the required program policy.

**8400.1500 CONSERVATION DISTRICTS**  
This part is deleted as it will be included in the required program policy.

**8400.1600 EXECUTING THE COST-SHARE CONTRACT**  
This part is deleted as it will be included in the required program policy.

**8400.1650 RECORDING CONSERVATION PRACTICES**  
This part operates in concert with 8400.XXXX (Recording Conservation Practices). The revisions improve clarity and flexibility for SWCDs to require recording conservation practices on property titles when it is determined to be necessary to ensure maintenance of the practice. As an enforceable provision it is necessary that this be included in the rule

**8400.1700 MAINTENANCE**  
The revisions to this part improve clarity, and consistency with Minn. Stat. 103C.501, subd. 5(b).

**8400.1750 PRACTICE SITE INSPECTIONS**  
The revisions to this part improve clarity and consistency with other provisions of this rule will be address under the required program policy.

**8400.1800 APPEALS**  
This part has been modified to be consistent with the RIM Reserve portion of this chapter

**8400.1900 REPORTS TO THE STATE BOARD**  
The revisions to this part ensure consistency with changes made to 8400.0700 and the RIM Reserve portion of this chapter.

**8400.3000 AUTHORITY**  
This subpart is revised to be consistent with Minn. Stat. 103F.505 which was amended in 2009.

**8400.3030 DEFINITIONS**  
The following definitions are deleted as they are no longer used in the rule:

- Subp. 6. Authorized farm corporation.
- Subp. 6a. Authorized farm partnership.
- Subp. 10a. Conservation Easement Handbook.
- Subp. 19. Family farm.
- Subp. 20. Family farm corporation.
- Subp. 20a. Family farm partnership.
- Subp. 24. Highway windbreak.
- Subp. 25. Hydric soils.

- Subp. 26. **Hydrophytic Vegetation.**
- Subp. 28. **Inherently unproductive.**
- Subp. 32. **Local emergency.**
- Subp. 39c. **Replacement wetland.**
- Subp. 40. **Restorable drained wetland.**
- Subp. 44. **Significant potential environmental impact.**
- Subp. 46. **Soil mapping unit.**

The following definitions are changed to be consistent with Minn. Stat. 103F.511:

- Subp. 17a. **Drained wetland.**
- Subp. 17b. **Easement program practice specifications.**
- Subp. 31. **Landowner.**
- Subp. 42. **RIM reserve program.**
- Subp. 42a. **Riparian land.**
- Subp. 43. **Screening committee.**

The changes to subp. 33. **Marginal agricultural land** is modified to delete language that allows the Board to adopt land capability systems that are different than those employed by the United States Department of Agriculture. This flexibility has not been used and will not be used in the future due to the close working relationship that exists between the Board and the United States Department of Agriculture.

Subp. 45 **Soil and water conservation practice** has been modified to acknowledge that the practices included in this definition are intended to address agricultural nutrients as well as agricultural waste.

The definition in Subp. 48 **Wetland** was changed to be consistent with Minn. Stat. 103G.005, subd. 19a. This change will ensure improved application consistent with other environmental management programs.

#### **8400.3060 CRITERIA FOR ALLOCATION OF FUNDS**

This part is revised to reflect the method BWSR is using to disburse administrative funds to districts to implement the conservation easement program. This methodology is contained in item A. BWSR Board adopted resolution 05-40 provides a dollar amount per recorded and non-expired easement in each district and is dependent on the amount of administrative funding appropriated by the Legislature.

#### **8400.3130 LOCAL PRIORITY SETTING**

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

#### **8400.3160 CRITERIA FOR ELIGIBLE LAND**

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

#### **8400.3200 MAXIMUM ENROLLMENT**

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

**8400.3230 APPLICATION BY LANDOWNERS**

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

**8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW OF APPLICATIONS**

This part has been revised to allow BWSR to utilize local district screening committees to help prioritize applications to assist in making funding decisions. The new language makes the use of screening committees optional as some program sign-ups may have continuous, non-competitive sign-up periods where ranking of applications is unnecessary. The criteria have also been modified to add reduction of flooding consistent with statute.

Item B is deleted as it refers to section 8400.3130 which was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

**8400.3330 CRITERIA FOR DISTRICT BOARD REVIEW**

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

**8400.3360 DISTRICT ACTION ON APPLICATIONS**

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

**8400.3390 EASEMENT ACQUISITION PROCEDURES**

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

**8400.3500 EASEMENT CONVEYANCE**

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

**8400.3530 EASEMENT PAYMENT RATES**

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

**8400.3560 PAYMENT SCHEDULE**

This part was repealed by Laws of Minnesota 2009, Chapter 172, Article 2, Section 32 and Laws of Minnesota 2009, Chapter 176, Article 1, Section 52.

**8400.3630 APPROVED PRACTICES**

This part has been modified to add reduction of flooding consistent with statute.

**8400.3700 COST-SHARED PRACTICES**

Subp. 1. **Approved practices eligible for cost-sharing.** This subpart is revised to be consistent with Minn. Stat. 103F.515, subd. 6. This statute was amended in 2009 to eliminate references to payment limits.

Subp. 2. **Eligible costs for cost-sharing practices.** This subpart is revised to be consistent with Minn. Stat. 103F.515, subd. 6 and to allow district boards to delegate review of receipts and invoices. In addition, the Board is authorized by Minn. Stat. 103F.531 to adopt policy to implement the RIM Reserve program, and this rule part refers the establishment of eligible costs for approved practices to a potential future Board policy.

**8400.3730 FAILURE OF APPROVED PRACTICES**

Subp. 1. **Cost-shared practices.** This subpart is revised to eliminate the reference to payment limits to be consistent with Minn. Stat. 103F.515 subd. 6, as this statute was amended in 2009. In addition, the Board is authorized by Minn. Stat. 103F.531 to adopt policy to implement the RIM Reserve program, and this rule part refers the establishment of encumbrances to a potential future Board policy.

DRAFT



# Erosion Control and Water Management Policy

## State Cost Share Program

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### 1.0 Purpose

The Erosion Control and Water Management Program, commonly known as the State Cost Share Program, was created through Minnesota Statutes, §103C.501 to provide funds to Soil and Water Conservation Districts (Districts) to share the cost of conservation practices for erosion control, sedimentation control, or water quality improvements that are designed to protect and improve soil and water resources. The purpose of this policy is to provide clear expectations for the implementation of funds appropriated to BWSR associated with the Erosion Control and Water Management Program.

District board and staff are responsible for the administration and decisions concerning the local use of these funds in accordance with: Minnesota Statutes, chapter 103C.501; Minnesota Administrative Rules, chapter 8400; BWSR policies; and all other applicable laws. BWSR will use grant agreements as contracts for assurance of deliverables and compliance. Willful disregard of relevant statutes, rules, and policies may lead to imposition of financial penalties on the grant recipient.

Funds are allocated on the following minimum criteria to districts that have fully complied with all program rules and policies:

- Extent of high priority erosion or water quality problems in the district, as indicated in the district comprehensive and annual plans.
- Priorities for the control of soil erosion or water quality problems as established by the BWSR.
- Historic success of the district in applying conservation practices.

- Ability of the district to expend the funds in a timely manner.
- Legislative appropriation.

## 2.0 Eligible Activities

The primary purpose of activities funded with Erosion Control and Water Management funds is to assist with structural or vegetative practices to correct existing problems. Specific preventative practices may also be allowed through policy or appropriation.

**2.1 Practice Standards.** All practices must be consistent with the NRCS Field Office Technical Guide (FOTG) or be professionally accepted engineering or ecological practices. Design standards for all practices must include specifications for operation and maintenance for the life of the given practice, including an inspection schedule and procedure. Practices where runoff or sediment from the contributing watershed prevents the practice from achieving the intended purpose with normal operation and maintenance are ineligible. Vegetative practices must follow the BWSR Invasive Species and Native Species policies.

**2.2 Effective Life.** All structural practices must be designed and maintained for a minimum effective life of ten years. Vegetative practices must be designed to achieve water quality improvements or erosion or sedimentation control and be maintained for a minimum effective life of fifteen years. The beginning date for a practice's effective life is the same date final payment is approved and the project is considered complete.

**2.3 Repair of Damaged Practices.** Repair of damage to a conservation practice is eligible if the practice was installed using approved standards, damage was caused by reasons beyond the control of the land occupier, and damage or failure of the practice was not due to improper maintenance or removal of the practice within the effective life.

**2.4 Ineligible Practices.** Incentive payments for ongoing maintenance, writing of conservation plans, payments to adopt land management practices such as tillage or residue management, payments to cover crop damage during construction, payments to repair septic systems, payments for easements, and/or feedlot expansions are *not allowable practices with these funds*. These activities may be eligible for other grants available through BWSR.

## 3.0 Technical and Administrative Components

Erosion Control and Water Management funds may be used for technical and administrative expenses.

**3.1 Technical and Administrative (TA) Expense.** The BWSR Board has established the maximum amount allowed for TA expenses to be twenty percent (20%) of the total grant. Remaining funds must be provided as cost share to achieve the purpose of these funds, unless otherwise indicated in specific appropriation language.

**3.2 TA Activities.** Activities eligible for TA include the following: grant administration, staff training to maintain appropriate technical approval authorities or licenses, site investigations and assessments, design and cost estimates, construction supervision, and inspections.

## 4.0 Cost Share Rates

Cost share rates represent the percent of the installation cost of a practice that may be provided to a land occupier for materials and labor necessary to install the practice. The BWSR Board establishes cost share rates through policy and implements these rates through grant agreements with Districts.

**4.1 Maximum Rates.** For the Erosion Control and Water Management Program, the BWSR Board has established the maximum cost share rate to a land occupier for installation of a practice at seventy-five percent (75%) of the installation cost, except for unused well sealing and practices installed for energy conservation and snow protection which are established at fifty percent (50%).

**4.2 Match and In-Kind.** A land occupier may provide the remainder of the installation cost through services, in-kind, or non-state or non-federal funds. The District board shall determine whether charges for in-kind services and materials are practical and reasonable. Standard rates for in-kind services should be identified in the conservation district's cost share program policy.

**4.3 Local Rates.** Prior to receiving any applications from land occupiers, conservation district boards may set different cost share rates up to the maximum identified in BWSR policy. These rates should be identified in the District's cost share program policy.

## 5.0 Technical Expertise

The District Board and staff have the responsibility to ensure that the designated technical staff have the appropriate technical expertise, skills and training for their assigned role(s). Appropriate expertise may include, but is not limited to, the following: conservation partnership Technical Approval Authority, professional licensure, reputable vendor with applicable expertise and liability coverage, or other applicable credentials, training and/or expertise.

**5.1 Staff Skills.** A description of staff skills, training, or credentials; or a description of other means the District will use to insure projects meet the requirements of this policy and are installed and maintained according to the standards and specifications of the practice(s) must be included in the District's cost-share program policy.

**5.2 BWSR Review.** BWSR reserves the right to review the licensure and credentials of all technical staff selected by the District where appropriate.

## 6.0 Expenditure of Funds on Practices and Contracts

BWSR finds that the District Board of Supervisors has the authority and responsibility to approve expenditure of funds within their own organization.

**6.1 Cost Share Contract.** A contract between the District and land occupier(s) receiving state funds is required to provide a legal standing to insure practices are installed and maintained according to approved standards and specifications. The required contract can be found on the BWSR website. Land occupier means a person, corporation, or legal entity that holds title to or is in possession of land as an owner, lessee, tenant, or otherwise. If the land occupier is not the landowner, the application must also bear the landowner's signature.

- a) **Contract Modifications.** Modifications to the contract may be made prior to execution and with prior approval from the District legal counsel and BWSR.

- b) **Contract Amendments.** Changes to an executed contract are considered an amendment to the contract and subject to review and approval by the District Board. The required amendment form can be found on the BWSR website. Prior to approving an amendment, technical staff must attest that the amendment has merit. Amendments shall not be considered or approved after the end of the contract or after approval to issue final payment on the original contract has been made. Amendments are limited to changes in practice specifications, installation dates, land occupier information, practice components, or cost share rates and amounts.
- c) **Group Projects.** Where the cooperation of several land occupiers is required for implementation of a project; and the land occupiers have agreed to the project, division of payments for the project, and signed a group project addendum to the cost-share contract; the District may enter into a contract with only the group spokesperson of the contract. A group project addendum form can be found on the BWSR website.
- d) **Projects that Cross a District Boundary.** If a project involves land in more than one District, application for the entire project must be made to the District containing the majority of the project lands.
- e) **Pooling cost-share allocation for joint projects.** District Boards may enter into an agreement to pool portions or all of their collective cost-share allocations to implement joint projects. Cooperative and joint projects may be undertaken to accomplish watershed-based resource management goals or other goals of mutual benefit as identified in the county's comprehensive local water plan or the District's comprehensive plan.

**6.2 Contract Approval.** District Boards must approve or deny the contract. The action taken must be documented in the District's meeting minutes. Approval of a contract is considered approval for expenditure of funds.

**6.3** Projects where construction has begun prior to District Boards approval are ineligible for financial assistance.

**6.4 Project Timeframe.** District Boards have the authority to adopt timely starting and completion dates. Entering into a contract with a land owner must occur within the grant period. Completion dates can be no longer than two years after approval of the District Board. Projects not completed within this timeframe must be cancelled unless prior written approval of the State board has been received.

**6.5 Canceled Projects.** Funds from canceled projects or remaining from completed projects that did not use the full amount encumbered may be re-encumbered for projects as long as District Board approval occurs prior to the end of the grant period.

**6.6 Removal of Practices.** District Boards may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice and the purpose of the original practice has been achieved.

**6.7 Delegation.** District Boards may delegate signing contracts and supporting program documents to District staff. This delegation must be identified in the District's cost share program policy.

**6.8 Recording Practices.** The size, location, and effective life of the soil and water conservation practices that have received cost-share payments under this program equal to or in excess of \$50,000 shall be recorded by the conservation district on the property title. Instructions and forms for recording practices can be found on the BWSR website.

## 7.0 Practice Sign-off and Payment

Prior to payment, technical staff must attest that the practice was properly installed and completed according to the plans and specifications, including technically-approved modifications, and that vouchers and receipts are accurate. Project costs for the purposes of determining cost share amounts include the materials and labor necessary to complete the project.

**7.1 Reimbursement.** Land occupiers must incur all expenses for project implementation and provide vouchers and invoices or copies of paid receipts to verify all expenses prior to requesting reimbursement. A payment voucher form is available on the BWSR website.

- a) **Partial Payments.** Partial payments are allowed. Prior to authorization for partial payment, technical staff must attest to the District Board that the request for partial payment has merit, the payment request is equal to or less than the percent of construction that is complete, and that the project will still be completed within the contract timeline. Land occupiers not completing partially paid projects shall be considered as violating MN Rule, part 8400.1700 and shall be directed, unless otherwise authorized by the state board as provided elsewhere in this part, to return the up to one hundred fifty percent (150%) of the amount of financial assistance received. All expenses incurred to correct damage caused by the land occupier's failure to expeditiously complete the project must be borne by the land occupier.
- b) **Service Charges.** District or Technical Service Area charges for services such as administration, field investigations, design, and monitoring to establish the practice shall not be included in calculating the project cost for purposes of determining cost-share payment amounts to the land occupier. Service charges such as tree planting or mechanical weed control are eligible to be included.
- c) **Actual Cost Different Than Estimated Cost.** In cases where the actual cost of the practice exceeds the estimated cost, the district may only share the additional amount when an amendment to the cost share contract has been approved per policy 6.1. Where the actual cost is less than the estimated cost, the conservation district shall only share the approved percentage of the actual cost of the practice.

**7.2 Project Review.** After receiving a request for final reimbursement, technical staff must review for each project; the as-built plan, vouchers, and invoices or copies of paid receipts submitted by the land occupier for completion and technical approval.

**7.3 Combining Funding Sources.** Payment amounts from combined state and federal sources shall not exceed the maximum cost share rate set by the BWSR Board in Section 4.0 of this policy. Calculation of payment amounts does not include incentive payments.

**7.4 Final Plans.** One copy of the final approved plan must be given to the land occupier and one copy retained with the project file located in the conservation district office.

## 8.0 Post-Construction and Follow-Up Activities

Identifying operation and maintenance activities specific to the installed practices is critical to ongoing performance of installed practices as well as to planning and scheduling those activities. Scheduled site inspections by qualified staff are necessary to ensuring operation and maintenance has been taking place.

**8.1 Operation and Maintenance Plan.** Qualified technical staff must prepare an operation and maintenance plan specific to the practice and the site where it is located. The operation and

maintenance plan must detail the maintenance activities that are likely to be needed for practice and contributing watershed, specify how and when to accomplish them, and identify the inspection schedule. The plan should be prepared and reviewed with the land occupier before installation of the conservation practices begins.

**8.2 Inspections.** Qualified technical staff shall ensure that the operation and maintenance plan is being followed and the practices have not been altered or removed by conducting periodic site inspections. Inspections are to:

- a) Verify that all components of the practice remain in place and are in good repair, and/or
- b) Identify repairs necessary in accordance with the operation and maintenance plan; and/or
- c) Identify further assessment or action necessary if necessary repairs are beyond the scope of the operation and maintenance plan (need cross-reference to non-compliance policy).

**8.3 Failure to Maintain Practices.** Should the land occupier fail to maintain the practices during their effective life according to the operation and maintenance plan, the land occupier is liable to the State of Minnesota for up to one hundred fifty percent (150%) of the financial assistance received to install and establish the practice as per MN Rule, part 8400.1700 as determined by the District board.

## 9.0 District Reporting Requirements

To ensure the continued success of the Erosion Control and Water Management Program, regular reporting of accomplishments and benefits is required. This reporting is accomplished through entries and documentation in eLINK. Guidance for reporting in eLINK is available on the BWSR website.

**9.1 Annual Reporting.** Districts must annually enter information on activities accomplished with the grant funding in eLINK. Reporting is required for grant fund expenditures from the prior calendar year and is to be completed by BWSR established reporting deadlines.

**9.2 Grant Closeout Reporting.** Within thirty (30) calendar days of the conclusion of each grant agreement or expenditure of all grant funds, Districts are required to provide the following to BWSR:

- a) Entry of information on all projects completed with the grant funding in eLINK;
- b) Signed Final Financial Report from eLINK;
- c) Documentation of District Board approval of the Final Financial Report; and
- d) Return any unspent funds as instructed on the Returned Check Form, found on the BWSR website.

**9.3 Unencumbered Funds.** Grant funds unencumbered by the District board after the grant period must be returned to the state board within thirty (30) calendar days following the end of that grant period.

**9.4 Records Retention.** Project files must be retained by the District pursuant to Minnesota Statutes, §138.17 and consistent with ongoing records retention schedules.

**9.5 Non-compliance with Reporting Requirements.** Any District that does not complete these requirements will not be eligible to receive funds from this program until all past reporting has been completed. Financial penalties on the grant recipient may be applied.

## 10.0 BWSR Program Monitoring, Closeout, and Penalty Procedures

**10.1 Monitoring.** BWSR will annually monitor all Districts reporting for compliance with reporting requirements of the Erosion Control and Water Management Program Policy above.

**10.2 Closeout.** BWSR will annually review a minimum of 10% of Districts and all grants that exceed \$50,000 for compliance with contractual requirements of Erosion Control and Water Management Program grant agreements. Project files eligible for compliance review may include: land occupier contact information, contracts and amendments, bills and invoices, documentation of existing problems and priorities, design plans, operation and maintenance information, inspection schedule and implementation, payment documentation, District policies and pertinent communications related to the grant or projects.

**10.3 Penalties.** Grant penalties can be applied when it has been determined the conservation district is not in compliance with relevant statutes, rules, and state policies. Noncompliance is ranked by the degree of departure from recommended administrative procedures to violations of rules, statutes, or grant agreements. Penalties may include the district requiring a land occupier to return the cost-share funds received, the district repaying the State with non-state funds, and/or the district taking a yearly reduction in cost-share grant payments(s) until the violation amount is satisfied. Minnesota Statutes, §103C.401 establishes BWSR's obligation to assure program compliance.

- a) All state base grants (State Cost Share, Easement Services, and General Services) for which funding is requested may be reduced by five percent if satisfactory comprehensive or annual plans are not received by the annual deadline, with an additional five percent reduction for each month late. No base grant funds will be allocated until a satisfactory plan is received.
- b) If the state becomes aware of cases where a conservation district knowingly participates in accepting fraudulent receipts or invoices to calculate cost-share claims, the state may deny future cost-share funds for the conservation district.

## 11.0 District Cost Share Program Policies

The following items are recommended to be identified in local cost share program policies, either on a project-by-project or annual basis:

- a) Identify or describe available staff skills, training, credentials, or other means the District will use to insure projects are installed and maintained according to standards and specifications (see policy 5.)
- b) Set District cost share rates to be less than or equal to rates set by the State Board (see policy 4.)
- c) Establish maximum flat rates for in-kind services and materials provided by land occupiers (see policy 4.)
- d) Identify practice standards to be used for design, construction, operation, and maintenance (see policy 2.)
- e) Set criteria for project selection, i.e. priority watershed or location, priority practices, recording practices, consideration of other activities in the area, etc. (see policy 6)
- f) Establish a process and local policy for addressing cost-share contract noncompliance (see policy 6).
- g) Other policies as necessary and applicable to the program.

Resolution # \_\_\_\_\_

**Cost Share and RIM Reserve:  
Adopt Draft Rule Amendments and Authorize Formal Rulemaking**

**WHEREAS**, the Board of Water and Soil Resources is authorized by Minnesota Statutes 103C.501 to adopt rules to implement the Erosion Control and Water Management Program (Cost Share), and Minnesota Statutes 103F.531 authorizes the Board to adopt rules governing the RIM Reserve Program; and

**WHEREAS**, a notice of request for comments on planned amendments to these rules governing the Erosion Control and Water Management Program (Cost Share) and the RIM Reserve Program was published in the State Register on June 21, 2010; and

**WHEREAS**, the BWSR Staff Cost Share Work Group has met beginning in March 2009 to:

- draft rule amendments,
- draft Erosion Control and Water Management Policy that accompanies the rule and is required to Minnesota Statutes 103C.501, and
- update the Statewide Program Manual that will guide program implementation by soil and water conservation districts; and

**WHEREAS**, soil and water conservation districts were notified of the proposed rule changes and new Policy on June 21, 2010 and November 2, 2010; and,

**WHEREAS**, the proposed rule includes changes necessary to:

- i) Incorporating statutory changes that have occurred in the RIM Reserve Law (103F.505 to 103F.531);
- ii) Reflecting statutory amendments enacted in 2009, including a directive to adopt Cost-share Program Policies (103C.501);
- iii) Streamlining the administration to increase efficiencies for both SWCDs and BWSR;
- iv) Respond to evolving resource management strategies by accommodating greater use of other Best Management Practices (BMPs) ; and
- v) Improving the clarity of the permanent rule.

**WHEREAS**, the Board's Grants Program and Policy Committee met on December 16, 2009, June 8, 2010, and March 10, 2011 to review the draft rule, review the draft policy, provide direction to staff, and develop a recommendation regarding adoption of the rule for the Board consideration; and

**WHEREAS**, the RIM Reserve Management Planning Committee met on February 23, 2011 to review the draft rule, provide direction to staff, and develop a recommendation regarding adoption of the rule for the Board consideration.

**NOW THEREFORE BE IT RESOLVED**, the Board of Water and Soil Resources hereby adopts the draft Erosion Control and Water Management Program (Cost Share) and the RIM Reserve Program (Minn. Rule Chapter 8400) and Statement of Need and Reasonableness and authorizes staff to:

- i) make minor grammatical, formatting, and reference changes to prepare the rule for publishing;
- ii) seek approval from the Governor's Office to proceed with adopting the rule;
- iii) submit the rule to the Revisor of Statutes for review and approval of the form of the rule; and
- iv) complete the processes necessary to adopt the rule.

\_\_\_\_\_  
Brian Napstad, Chair

\_\_\_\_\_  
Date

**COMMITTEE RECOMMENDATIONS**

***Grants Program & Policy Committee***

1. Red River Basin Commission (RRBC) Work Plan Presentation – Lance Yohe, RRBC Executive Director

FY '11 Red River Basin Commission Administrative Grant – Wayne Zellmer –  
***DECISION ITEM***

2. Lake Protection Water Plan Challenge Grant – Jeff Hrubes - ***DECISION ITEM***
3. Voluntary Public Access and Habitat Incentive (Walk-in) Program – Tabor Hoek -  
***DECISION ITEM***



# BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE:

FY '11 RED RIVER BASIN COMMISSION  
ADMINISTRATIVE GRANT

Meeting Date: March 23, 2011

Agenda Category:  Committee Recommendation  New Business  Old Business  
 Item Type:  Decision  Discussion  Information

Section/Region: Land & Water

Contact: Wayne Zellmer

Prepared by: Wayne Zellmer

Reviewed by: Grants Program & Policy Committee(s)

Presented by: Wayne Zellmer

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments:  Resolution  Order  Map  Other Supporting Information

### Fiscal/Policy Impact

- None
- Amended Policy Requested
- New Policy Requested
- Other: \_\_\_\_\_
- General Fund Budget
- Capital Budget
- Outdoor Heritage Fund Budget
- Clean Water Fund Budget

### ACTION REQUESTED

Decision

**SUMMARY** *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*  
The Commission has requested allocation of their FY '11 legislative appropriation of \$84,000. After reviewing the Commission's 2011 Workplan and Budget, the Grants Program & Policy Committee recommends approval.

## **FY '11 RED RIVER BASIN COMMISSION ADMINISTRATIVE GRANT**

### **BACKGROUND**

The Red River Basin Commission (RRBC) works across the political boundaries of Manitoba, Minnesota, North Dakota, and South Dakota in the United States and Canada to create a shared vision for action with regard to land and water issues.

The RRBC was formed in 2002 to initiate a grass roots effort to address land and water issues in a basin-wide context. The RRBC was formed as a result of a merger between The Red River Basin Board, The International Coalition, and the Red River Water Resources Council.

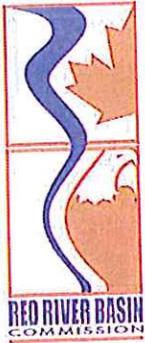
The RRBC is made up of a 41-member Board of Directors, comprised of mainly representatives of local government, including the cities, counties, rural municipalities, watershed boards, water resource districts, joint powers boards, as well as First Nations representatives, a water supply cooperative, a lake improvement association, environmental groups, and four at-large members. The Governors of North Dakota, Minnesota, and the Premier of the Province of Manitoba have also appointed members to the Board.

The RRBC has adopted a vision, a mission statement and a set of Guiding Principles, based on input provided by Basin residents, to guide its future activities. Although general in nature, these documents provided the foundation to develop reasonably specific goals and objectives for water management in the Basin. These goals and objectives, along with the mission statement and the Guiding Principles, will provide a framework for the Board to conduct business in the future.

Since its inception, the State of Minnesota has been supporting the RRBC with board member and committee participation as well as financial support.

### **RECOMMENDATION**

The 2009 Legislature appropriated \$90,000 to BWSR for RRBC administration in FY '11. This appropriation was reduced \$6,000 to \$84,000 by the 2010 Legislature. The Grants Program & Policy Committee has reviewed the RRBC's 2011 Workplan and Budget and recommends Board approval of this allocation.



# Red River Basin Commission

Manitoba • Minnesota • North Dakota • South Dakota

Moorhead Office: 119 5th St. S. • PO Box 66 • Moorhead, MN 56561-0066  
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## 2009-2010 BOARD OF DIRECTORS

### Manitoba

Jeff Browaty  
John Falk  
Kurtiss Krasnesky  
Joy MacLean  
Horn Martens  
Marvin Magnusson  
R. S. "Bud" Oliver  
Bill Paulishyn  
Sam Schollenberg  
Muriel Smith  
Steven Topping  
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Genevieve Thompson  
Ben Varnson  
Holly Walker  
Shane Walock

### South Dakota

Roger Navratil

### Tribal/First Nation

Melissa Hotain  
Allen Pemberton

### Federal Ex Officio

Judith DesHarnais  
Tony Kettler  
Jim Tokarchuk

### Federal Elected Ex Officio

Sen. Conrad - Scott Stofferahn  
Sen. Dorgan - Pam Gufferson  
Sen. Franken - Valerie Gravseth  
Sen. Klobuchar - Andy Martin  
Rep. Peterson - Wally Sparby  
Rep. Pomeroy - Joan Carlson  
M.P. Toews, P.C.

February 1, 2011

John Jaschke  
Executive Director  
Minnesota Board of Water & Soil Resources  
520 Lafayette Road  
St. Paul MN 55155

Dear John:

The Red River Basin Commission respectfully requests \$84,000, the second year's funding of the 2009 -- 2011 biennium funding for Red River Basin Commission (RRBC). The amount is the Minnesota share of funding for the RRBC base budget which is also supported by the North Dakota and Manitoba governments. Local governments in Minnesota, Manitoba and North Dakota also provide equal amounts of base funding to the Red River Basin Commission.

TOTAL FUNDS REQUESTED: \$84,000.00

Please Remit To: **Red River Basin Commission**  
**Kurtiss Krasnesky, Treasurer**  
**PO Box 66**  
**Moorhead, MN 56561-0066**

If you have any questions, please don't hesitate to contact any member of our staff at our toll-free number (866-629-4498).

Sincerely,

Lance Yohe  
Executive Director

Enc: 2011 RRBC work plan  
2011 budget

2011  
RRBC WORKPLAN

2/2/2011

2011 RRBC WORK PLAN			
RRBC ACTION	HOURS		TIMELINE
MT-Management Team: ly, jr, rg	lt-Leah	jr-Jacque 3/4	con-Consultant
ly-Lance	sp-Sara	ks-Kathy 1/2	Grant Writer-Olive
lg-Julie	js-Janeen	all-all staff	
rg-Robin	be-Brenda		
<b>ADMINISTRATION</b>			
<b>ADMINISTRATION</b>			
Board Meetings	368		Jan, Mar, Apr, June, Sept, Nov
Board Meetings in 2011-Jan, Mar, Apr, June, Sept, Nov	144		June
1 Board Tour with meeting -- June	120		Nov
1 Board Retreat with meeting--Nov			
Executive Committee Meetings	120		3rd Th -- Month @ 8:30 Phone
12 Executive Committee Meetings --3rd Thursday-1 face to face mtg.	12		Nov 2010 - Jan 2011
Executive Director Evaluation			
Human Resource Committee Meetings	12		as Needed
General	64		Jan - Dec 2010 in Jan 2011
All Staff Evaluations,	1258		
Documentation, Records	24		2011 by Nov 2010
Work Plans--Annual	250		Monday
Regular Staff Meetings	282		Friday 2x year 1-- 2 day ret.
Face to Face Staff Meetings (2)--Retreat (1)	42		monthly phone
Management Team Meetings (12)	68		as needed
Update Governing Documents			
<b>FINANCE</b>			
<b>FINANCE</b>			
Finance Committee Meetings	12		as needed
12 Finance Committee Meetings -- as needed			
General	746		ongoing
Monthly Finances	468		ongoing
Base Funding --Local, Provincial, State	144		ongoing
Base Funding -- Federal	405		ongoing
Project Funding--as needed	88		2011 Budget by Nov 2010
Annual Budget	96		2010 Audit
Annual Audit			
<b>LEADERSHIP</b>			
<b>LEADERSHIP</b>			
NRFP Goal # 1 - Watersheds (WG)	120		1 mtg year
Pembina River Basin Advisory Board (PRBAB) Meetings	120		2-4 mtgs year
PRBAB Activities	64		phone calls, mtgs, mails
Roseau River International Watershed (RRIW) Meetings	112		2-4 mtgs year
RRIW Activities	80		phone calls, mtgs, mails
South Valley Initiative (SVI) Meetings	72		2-4 mtgs year
SVI Activities	88		phone calls, mtgs, mails
MN Joint Powers Board (JPB)	80		10 mtgs year
MB North Chapters	136		3-4 mtgs year
MB South Chapter	60		as needed
Dredging Sub-Committee	40		By April 2010
Assiniboine River Project	56		ongoing
Winnipeg River Project	40		ongoing
NRFP # 2- Integration (WG)	128		1 mtg year
Plan Implementation Committee (4)	288		3-4 mtgs year
NRFP Outreach: LGU's	1767		ongoing
NRFP Outreach: First Nations/Tribes SD, MB, MN, ND	112		ongoing
NRFP Outreach: Provincial, State, Federal	120		ongoing
NRFP Data Entry	144		ongoing
Univ of Winnipeg--Natl Source Water	24		ongoing
Land & Water Investment Project	38		as needed
NRFP Goal # 3 - Data-Tools for Decision Making (WG)	124		1 mtg year
COE Watershed Study Match--Modeling Tools	30		2-4 mtgs year
DSS - IWIM/CEA			Report by July 2011

2011  
RRBC WORKPLAN

2/2/2011

	<b>NRFP Goal # 4- Education-Information (WG)</b>	100	1 mtg year
	Web Site	192	ongoing
	Board Highlights	24	6 Board mtgs
	Consent Report	16	6 Board mtgs
	State of Basin--Snapshot Updates	128	2-3 updates year
	Annual Report	100	1 year
	Other Flyers/Information/PR materials --projects and activities	120	as needed
	Press Releases	280	ongoing
	Power Point Presentations--conferences, speaking engagements, etc	160	ongoing
	River Center	48	as needed
	Communication Committee	240	10 mtgs a year
	Ripple Effect - 24	244	2 each month to all newspapers
	Water Minutes- 2x mo	106	updates and new ones as needed
	Annual Summit Conference	628	1 year
	Speaker Contacts	616	July-Dec 2011
	Sponsorship, ads, booths	761	July-Dec 2011
	Annual Summit Conference - Flyer, Brochure, Conf Booklet	444	Oct 2011 - Jan 2012
	<b>NRFP Goal # 5 - Flood Forecasting (WG)</b>	138	3-4 mtgs year
	Stream Gauging	8	as appropriate
	<b>NRFP Goal # 6 - Flood Mitigation (WG)</b>	164	6-12 mtgs year
	Mainstem Modelling Calibration IV & V	108	2011 in MB
	Mainstem Modelling Run # 2 MB	2112	2011 in MB
	Dredging Study II	104	2011 in MB
	LTFS Project	3696	Report July 2011
	Mapping Project	40	in 2011
	Basin Elevation Map	32	Jan 2011 if doable
	<b>NRFP Goal # 7 - Flood Response &amp; Recovery (WG)</b>	190	1 mtg year
	FEMA Modeling Project	28	as needed
	<b>NRFP Goal # 8 - Drainage (WG)</b>	96	1 mtg year
	Link to RRRRA Efforts	48	as needed
	<b>NRFP Goal # 9 - Water Quality (WG)</b>	120	2-6 mtgs year
	Jurisdictional Water Quality Report	112	2-6 mtgs year -develop a report
	<b>NRFP Goal # 10 - Water Supply (YG)</b>	176	4-6 mtgs year
	Drought: Jurisdiction Process & Conservation/Soft Path Report	56	4-6 mtgs year - develop a report
	<b>NRFP Goal # 11 - Conservation (WG)</b>	168	4 - 6 mtgs year
	AWEP Project	216	2-6 mtgs year
	Ag Commodity Committee	62	1 mtg year
	Next US Farm Bill	48	10 x year
	Basin Conservation Issues	50	report in 2011
	<b>NRFP Goal # 12 - Fish &amp; Wildlife (WG)</b>	124	1 mtg year
	ANS Issues and Committees	48	ongoing
	<b>NRFP Goal # 13 - Outdoor Recreation (YG)</b>	144	1 mtg year
	Rivers West Tourism Project	16	2-4 mtgs year- participation
	Facilitation		as needed
	Forum for Basin Issues	24	as needed
	Legislative Committee	0	
	Legislative Committee	120	1-2 mtgs year
<b>COMMUNICATIONS</b>	<b>COMMUNICATIONS</b>		
	Conservation Conference	160	one year
	Lake Winnipeg Conf	60	if more are planned
<b>PARTNERSHIPS</b>	<b>PARTNERSHIPS</b>		
	IRRB	56	2 x year
	IRRB-AEH	32	1-2 x year
	IRRB-Hydrology	32	1-2 x year
	Reg mtgs--NDJWRB, MNRRWMB, MBCDA,UPP Shey, Dev Lake,	216	monthly or quarterly each
	annual mtgs- MBCDA, MBANM, NDJWater, MAWD, NDAC,	208	1 mtg each year
	Rivers West, LWRC, LWBAB	24	monthly or quarterly each
	RRRA, NRCS Group & Permit/PL566 Sub-Com	80	monthly each
<b>TECHNICAL RESOUR</b>	<b>TECHNICAL RESOURCE--PROJECTS</b>	16	
	Dredging Study II--Funding and Workshop Roles	32	as needed to develop strategy
		21937	

**Red River Basin Commission  
2011 Budget**

		2010 BUDGET - US	2011 BUDGET - US	2010 BUDGET - CN	2011 BUDGET - CN
	2009 Carry Over General	\$ 227,435.55	\$ 192,708.03	\$ 229,268.21	\$ 301,759.71
	2009 Carry Over Projects	\$ 79,997.08	\$ 197,402.93	\$ 98,671.03	\$ 81,076.29
	2009 Carry Over Total	\$ 307,432.61	\$ 390,168.96	\$ 325,939.24	\$ 382,836.00
<b>Income</b>				\$ 100,000.00	\$ 100,000.00
4001	Manitoba		\$ 100,000.00		
4002	Minnesota	\$ 100,000.00	\$ 100,000.00		
4003	North Dakota	\$ 100,000.00	\$ 100,000.00		
4004	South Dakota			\$ 100,000.00	\$ 100,000.00
4005	LGU's - Manitoba				
4006	LGU's - Minnesota	\$ 90,000.00	\$ 100,000.00		
4007	LGU's - North Dakota	\$ 100,000.00	\$ 100,000.00		
4008	LGU's - South Dakota			\$ 2,000.00	\$ 2,000.00
4011	Refunds GST/PST				
4012	Interest Income				
4013	Joint Powers Bd	\$ 5,000.00		\$ 35,000.00	\$ 50,000.00
4082	Annual Summit Conference	\$ 55,000.00	\$ 40,000.00		
15000	Integration			\$ 55,000.00	
	15101 - Land & Water Investment Project				
16000	Data			\$ 40,000.00	
	4097 - Web Portal-LW				
18000	FDR/Hydrology Division				
	18403 - LTFS	\$ 500,000.00	\$ 673,308.80		
	2009 LTFS Expenses Recovered	\$ 75,821.00			
4000	Total Income without Projects or Carry Over	\$ 450,000.00	\$ 440,000.00	\$ 237,000.00	\$ 252,000.00
	Canadian Income Adjusted to US dollars	\$ 199,080.00	\$ 252,000.00	\$ 199,080.00	\$ 252,000.00
	Combined Total Without Projects	\$ 649,080.00	\$ 692,000.00		
4000	Total US Income with All Income	\$ 1,333,253.61	\$ 1,403,477.76	\$ 657,939.24	\$ 634,836.00
	Total CN with All Income Adjusted to US dollar	\$ 552,668.98	\$ 634,836.00	\$ 552,668.98	\$ 634,836.00
	Total Combined with All Income	\$ 1,885,922.57	\$ 2,038,313.76		
<b>Expense</b>					
5100	BOARD OF DIRECTORS			\$ 13,850.00	\$ 13,850.00
	Total 5000 - BOARD OF DIRECTORS	\$ 30,100.00	\$ 30,100.00		
5100	ADMINISTRATION			\$ 12,543.00	\$ 12,543.00
	Total 5100 - ADMINISTRATION	\$ 31,858.81	\$ 13,691.61		
5200	BENEFITS			\$ 15,753.52	\$ 16,763.62
	Total 5200 - BENEFITS	\$ 94,079.46	\$ 69,471.46		
5300	Office			\$ 52,050.00	\$ 62,650.00
	Total 5300 - OFFICE	\$ 69,050.00	\$ 69,034.91		
5400	FUNDING/FINANCE			\$ 28,843.00	\$ 28,843.00
	Total 5400 - FUNDING/FINANCE	\$ 65,623.30	\$ 78,444.17		
6000	LEADERSHIP			\$ 60,081.00	\$ 60,081.00
	Total 6000-6500 - LEADERSHIP	\$ 65,610.08	\$ 98,360.08		
6600	COMMUNICATIONS			\$ 71,841.00	\$ 88,841.00
	Total 6600-6700 - COMMUNICATIONS	\$ 161,189.98	\$ 146,189.98		
6800	PARTNERSHIP			\$ 9,831.00	\$ 19,831.00
	Total 6800 - PARTNERSHIP	\$ 45,010.53	\$ 48,810.53		
6900	TECHNICAL RESOURCE			\$ 2,761.00	\$ 2,761.00
	Total 6900 - TECHNICAL RESOURCE	\$ 9,636.53	\$ 9,636.53		
	SUB-TOTAL US - CN OPERATIONAL wo PROJ	\$ 572,868.65	\$ 553,749.14	\$ 297,573.52	\$ 303,073.62
	CN In US dollars			\$ 224,761.76	\$ 303,073.62
	Total US Operational wo Projects	\$ 572,868.65	\$ 553,749.14		
	Total CN Operational wo Projects	\$ 224,761.76	\$ 303,073.62		
	Total Combined Operational wo Projects	\$ 797,630.42	\$ 856,822.68		

**Red River Basin Commission  
2011 Budget**

PROJECTS					
24000 - Watersheds					
Total 24101 - Assinboine Project	\$	3,470.55	\$	3,309.17	\$ 8,005.26 \$ 9,605.28
Total 24260 - Winnipeg River Project					\$ 7,600.00 \$ 7,438.95
<b>Total 24000 - Watersheds</b>	\$	<b>3,470.55</b>	\$	<b>3,309.17</b>	\$ <b>15,605.26</b> \$ <b>16,041.21</b>
25000 - Integration					
Total 25001-1 - Bush Outreach-2008/2009	\$	8,210.21	\$	-	
Total 25001-2 - Bush Outreach-2009/2010	\$	33,344.70	\$	-	
Total 25001-2 - Bush Outreach-2009/2011	\$	41,654.91	\$	-	\$ 55,000.00 \$ -
Total 25002 - Land & Water Investment Project					\$ 55,000.00 \$ -
<b>Total 25000 - Integration</b>	\$	<b>41,554.91</b>	\$	<b>-</b>	\$ <b>55,000.00</b> \$ <b>-</b>
26000 - Data					
Total 26001 - 3-D Display	\$	12,600.00	\$	12,600.00	\$ 12,600.00 \$ 12,600.00
Total 26002 - Web Portal Project					\$ 40,000.00
<b>Total 26000 - Data</b>	\$	<b>12,600.00</b>	\$	<b>12,600.00</b>	\$ <b>52,600.00</b> \$ <b>12,600.00</b>
27000 - Comm/Education					
Total 27003 - LSLW					\$ 8,241.47 \$ 8,241.47
Total 27002 - All Upstream Conf					\$ 14,962.41 \$ 6,880.44
Total 27005 - Network Project	\$	4,362.61	\$	4,362.61	
Total 27006 - History Project- 30 Yrs	\$	2,562.48	\$	2,562.48	
Total 27007 - MB River Centre					\$ 9,711.89 \$ 9,711.89
<b>Total 27000 - Comm/Education</b>	\$	<b>6,925.09</b>	\$	<b>6,925.09</b>	\$ <b>32,915.77</b> \$ <b>24,813.60</b>
28000 - FDR/Hydrology Division					
Total 28001 - MM Run # 2	\$	3,975.75	\$	3,942.00	
Total 28201 - Cal IV	\$	12,908.20	\$	7,284.70	\$ 1,250.00 \$ 10,600.00
Total 28202 - Cal V	\$	15,000.00	\$	3,977.41	\$ 15,000.00 \$ 6,821.28
Total 28401 - Stream Gauging	\$	5,000.00	\$	1,272.20	\$ 9,500.00 \$ 9,500.00
Total 28402 - Map Project	\$	600,000.00	\$	714,697.73	\$ -
Total 28403 - LTFS Project	\$	536,883.85	\$	731,154.04	\$ 25,750.00 \$ 26,821.28
<b>Total 28000 - FDR/Hydrology Division</b>	\$	<b>536,883.85</b>	\$	<b>731,154.04</b>	\$ <b>25,750.00</b> \$ <b>26,821.28</b>
29000 - Qly/Qnty Division					
Total 29003 - Drought Cons/Soft Path	\$	15,000.00	\$	-	\$ 10,000.00 \$ -
<b>Total 29000 - Qly/Qnty Division</b>	\$	<b>15,000.00</b>	\$	<b>-</b>	\$ <b>10,000.00</b> \$ <b>-</b>
30000 - FWR/OR Division					
Total 24201 - AWEP	\$	14,375.41	\$	12,083.28	
<b>Total 29000 - Qly/Qnty Division</b>	\$	<b>14,375.41</b>	\$	<b>12,083.28</b>	\$ <b>-</b> \$ <b>-</b>
<b>Total 9200 - S' SUB-TOTAL US - CN PROJECTS</b>	\$	<b>630,709.91</b>	\$	<b>765,971.66</b>	\$ <b>191,671.03</b> \$ <b>81,076.29</b>
CN In US dollars					
Total US Projects	\$	630,709.91	\$	765,971.66	
Total CN Projects	\$	161,003.67	\$	81,076.29	
Total Combined Projects	\$	791,713.58	\$	847,047.95	
<b>BUDGET SUMMARY: ALL IN US DOLLARS</b>					
Total General Revenue wo Projects and Carryover	\$	649,060.00	\$	692,000.00	
Total General Expenses wo Projects and Carryover	\$	797,630.42	\$	856,822.66	
Difference	\$	(148,570.42)	\$	(164,822.66)	
<b>Total Revenue: General, New Projects, All Carry-Over</b>	\$	<b>1,085,922.57</b>	\$	<b>2,038,313.76</b>	\$ <b>174,516.09</b> \$ <b>-</b>
<b>Total Expenses: General, All Projects</b>	\$	<b>1,589,343.99</b>	\$	<b>1,703,870.61</b>	\$ <b>31,508.35</b> \$ <b>48,813.60</b>
<b>Total After All Income/Expenses</b> (Projected Carryover General & Projects)	\$	<b>286,578.58</b>	\$	<b>334,443.25</b>	\$ <b>-</b> \$ <b>78,322.15</b>

**Board Resolution # \_\_\_\_\_**

**FY '11 RED RIVER BASIN COMMISSION ADMINISTRATIVE GRANT**

**WHEREAS**, the Laws of Minnesota 2009, Chapter 37, Article 1, Sec. 5, and Laws of Minnesota 2010, Chapter 215, Sec. 5, Subd. 2, appropriate for a grant to the Red River Basin Commission (RRBC) for administration and management, of water quality and floodplain management programs; and,

**WHEREAS**, Minnesota Statutes Section 103B.101, subd. 9, authorizes the Board to coordinate the water and soil resources planning activities of "other local units of government" through its various authorities for approval of local plans, administration of state grants, and by other means as may be appropriate; and,

**WHEREAS**, the RRBC has submitted to the Board an approved 2011 Workplan and Budget, which is incorporated into this agreement by reference and located in the Board's office in St. Paul.

**NOW THEREFORE**, the Board hereby authorizes staff to allocate \$84,000 to the RRBC for administration and management, of water quality and floodplain management programs.

\_\_\_\_\_  
Brian Napstad, Chair  
Board of Water and Soil Resources

Date: \_\_\_\_\_



# BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Lake Protection Challenge Grant Awards

Meeting Date: March 23, 2011

Agenda Category:  Committee Recommendation     New Business     Old Business

Item Type:  Decision     Discussion     Information

Section/Region: Land and Water Section

Contact: Jeff Hrubes

Prepared by: Dave Weirens

Reviewed by: Grants Program and Policy    Committee(s)

Presented by: Jeff Hrubes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments:     Resolution     Order     Map     Other Supporting Information

### Fiscal/Policy Impact

- None
- Amended Policy Requested
- New Policy Requested
- General Fund Budget
- Capital Budget
- Outdoor Heritage Fund Budget
- Clean Water Fund Budget

Other: 2008 Clean Water Legacy Funds

### ACTION REQUESTED

Adopt the recommendation of the Grants Program and Policy Committee to authorize grants to 13 local governments to generate lake and land use reports that will be used to amend their local water management plans and serve as the basis for future grant requests.

**SUMMARY** *(Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)*  
The Board authorized the Lake Protection Challenge Grant Program on December 15, 2010. This Program is an expansion of a 3-county pilot project that developed a template for presenting and assessing lake and land use information in a format useful to citizens and decision-makers. Key Program criteria is that lakes that are listed as impaired for parameters other than mercury are not eligible and should be approximately 500 acres in size.

Applications were accepted from January 1 until February 15. Applications were received from 13 local governments requesting \$87,743 to assess 144 lakes. These applicants were contacted a second time to identify other lakes that they were interested in including in this program. This second request increased the total grant funds requested to \$99,893.

These applications were reviewed by an interagency team consisting of staff from BWSR, DNR, and the MPCA.



## Lake Protection Water Plan Challenge Grant

March 2011

**Background:** With the passage of the Clean Water Legacy Act in 2007, the Minnesota Board of Water and Soil Resources recognized an opportunity to enhance comprehensive local water management planning by integrating available water quality data and land use information to develop strategic, quantified action plans incorporated into comprehensive local water plans. In 2008, a pilot project in Cass, Crow Wing and Aitkin Counties developed a template for presenting and assessing lake and land use information in a format useful to citizens and decision-makers.

The pilot program successfully developed a template that assessed 45 lakes in the three counties and integrated the information into their water management plans and used it to successfully compete for Clean Water Land and Legacy funds. The availability of electronic datasets and efficient management of information allowed the construction of individual assessment reports to be completed for less than \$1,500 each. These reports are one way to describe a more quantifiable description of water quality protection.

Candidate lakes could not be listed on the 2010 MPCA Impaired Waters (303(d)) List for parameters other than mercury. The purpose of these grant funds is to:

- Assess available water quality data and watershed information for the purpose of identifying water quality trends;
- Develop quantifiable water quality goals and outcomes based on the available information;
- Develop individual lake reports and a summary assessment that integrates watershed and water quality information, evaluates trends and recommends quantitative water quality protection measures;
- Integrate the water quality goals and quantifiable outcomes into local water management plan updates or amendments; and
- Demonstrate methods that can be expanded in the future to additional lakes.

Agency Fund	Available Amount	Governmental Units Eligible for Funding	Required Match
BWSR Clean Water Legacy Protection Grants	\$ 104,000	Counties, SWCDs Watershed Districts, WMOs	50% local cash or in-kind cash value match

### **Grant Applicant Eligibility**

Eligible applicants include local government units (LGU) or LGU joint powers organizations working under a current state approved, locally adopted water management plan. Partner organizations such as non-profits, watershed groups, school districts or lake associations must work in conjunction with these eligible applicants.

**Eligible Costs**

- Local Match = Non-state cash or in-kind cash value.
- Grant recipients may request \$100 per lake up to a maximum of \$2,000 for reporting and grant management activities. This amount is proportional to the number of priority lakes accepted for the program. In general, it is anticipated that 20 lakes per county would be an upper limit.

<b>Selection Criteria</b>	<b>Points available</b>
Assessment of report production costs based on criteria described	20
Lake size of approximately 500 acres	20
Available water quality data for trend analysis	20
Land parcel information available	20
Lakes identified as a priority in local water management plans	20

**Other screening factors used in evaluating applications:**

- Deep lakes with cold-water fish species present or lakes with known species of concern or unique populations identified in a county biological survey or elsewhere;
- Lakes in watersheds with less than approximately 25% developed, agricultural, mining or open lands will receive priority consideration; and
- Applicants with multiple candidate lakes should list them in priority order.

**Grant recipients will be conducting the activities listed below.**

- Gather all available water quality data from local, state and federal sources.
- Review collected water quality data and identify statistically usable data (confirm sample site locations, confirm data is from a certified laboratory) and identify gaps and outliers.
- Available water quality data should be presented in narrative and graphical formats, and compared to ecoregion ranges and state water quality standards. Trend information for phosphorus, chlorophyll and transparency should be calculated and plotted when sufficient data exists. Data should be presented within the context of Carlson's Trophic Status Index using the mean value and data range.
- Land use and watershed data should be presented in a structure that includes information on the location within the Ecoregion, major basin, major watershed, minor watershed(s) and lakeshed.
- Present findings of water quality trends to comprehensive water plan task forces and lake association partners.
- Present findings of water quality trends to county commissioners, township and municipal officials from communities adjacent to candidate lakes.
- Meet at least once with lake association presidents and representatives at a water quality summit including representatives from DNR, PCA, P&Z, BWSR and other relevant agencies and organizations to discuss the lake reports, trends and to develop a quantitative and qualitative implementation strategy with specific actions for each lake to be included in the next water management plan update or amendment.

**Granting Process.**

BWSR accepted proposals January 1, 2011 to February 15, 2011 for Clean Water Legacy Grants to focus strategic water quality protection implementation actions concentrated on lake and lake watersheds. An interagency team consisting of staff from BWSR, DNR, and MPCA reviewed the applications and made funding recommendations to the BWSR board.

Applications were received by 13 local governments requested \$99,893 to assess 142 lakes, as shown below.

Local Government	Number of Lakes	Grant Amount	Local Government	Number of Lakes	Grant Amount
Aitkin SWCD	16	\$9,600	Douglas SWCD	5	\$4,250
Becker SWCD	20	\$12,500	East Otter Tail SWCD	21	\$20,150
Beltrami County	19	\$11,400	Hubbard SWCD	9	\$5,243
Cass County	21	\$12,600	Koochiching SWCD	1	\$600
Clearwater SWCD	2	\$1,300	North Fork Crow Watershed	1	\$500
Cook SWCD	5	\$4,000	Wright SWCD	2	\$4,200
Crow Wing County	20	\$13,550	<b>TOTALS:</b>	142	\$99,893

Board Resolution # 11-

**LAKE PROTECTION WATER PLAN CHALLENGE GRANTS PROGRAM  
AWARD AUTHORIZATION**

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**WHEREAS**, the Board of Water and Soil Resources (BWSR) was appropriated Clean Water Legacy Act funds in Laws of Minnesota 2007, Chapter 57, Article 1, Section 5; and,

**WHEREAS**, BWSR currently has up to \$104,000 in available in returned FY2008 Clean Water Legacy grant funds; and,

**WHEREAS**, these funds are available to support local nonpoint source protection activities related to lake and river protection and management; and,

**WHEREAS**, in 2008 BWSR funded a pilot project in Cass, Crow Wing, and Aitkin Counties that developed a template for presenting and assessing lake and land use information in a format useful to citizens and decision-makers; and,

**WHEREAS**, BWSR staff developed a Lake Protection Challenge Grant Program to expand this pilot project utilizing available returned grant funds to:

- Assess available water quality data and watershed information to identify water quality trends,
- Develop quantifiable water quality goals and outcomes based on this information,
- Develop individual lake reports and a summary assessment that integrates watershed and water quality information, evaluates trends and recommends quantitative water quality protection measures,
- Integrate the water quality goals and quantifiable outcomes into local water management plan updates or amendments, and
- Demonstrate methods that can be expanded in the future to additional lakes in other areas; and,

**WHEREAS**, applications were eligible if they meet the criteria listed below:

- A local government unit (LGU) or LGU joint powers organizations working under a current state approved locally adopted water management plan,
- Provide a 50% non-state cash or in-kind cash value match, and
- Lakes targeted are approximately 500 acres or more in size and are not impaired for pollutants other than mercury; and,

**WHEREAS**, the Board authorized the Lake Protection Challenge Grant Program on December 15, 2010; and,

**WHEREAS**, applications for this grant program were accepted from January 1, 2011 to February 15, 2011; and,

**WHEREAS**, applications were received by 13 local governments requested \$99,893 to assess 142 lakes; and,

**WHEREAS**, applications were evaluated by staff from BWSR, DNR, and MPCA using the following factors:

- Readiness to complete the project and amend their local water management plan to incorporate the results of the project,
- Lakes identified as a priority in local water management plans,
- The availability of water quality data for trend analysis,
- Land parcel information, and
- The cost per report; and,

**WHEREAS**, the Grants Program and Policy Committee reviewed the Lake Protection Challenge Grant Program awards recommended by agency staff on March 10, 2011.

**NOW THEREFORE**, the Board hereby adopts the recommendation of the Grants Program and Policy Committee and authorizes staff to allocate funds to local governments as follows:

Local Government	Number of Lakes	Grant Amount	Local Government	Number of Lakes	Grant Amount
Aitkin SWCD	16	\$9,600	Douglas SWCD	5	\$4,250
Becker SWCD	20	\$12,500	East Otter Tail SWCD	21	\$20,150
Beltrami County	19	\$11,400	Hubbard SWCD	9	\$5,243
Cass County	21	\$12,600	Koochiching SWCD	1	\$600
Clearwater SWCD	2	\$1,300	North Fork Crow Watershed	1	\$500
Cook SWCD	5	\$4,000	Wright SWCD	2	\$4,200
Crow Wing County	20	\$13,550	<b>TOTALS:</b>	142	\$99,893

Date: \_\_\_\_\_

\_\_\_\_\_  
 Brian Napstad, Chair  
 Board of Water and Soil Resources



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE:

MN Voluntary Public Access and Habitat Incentive Program: Grants to SWCDs

Meeting Date: March 23, 2011
Agenda Category: [X] Committee Recommendation [X] New Business [ ] Old Business
Item Type: [X] Decision [ ] Discussion [ ] Information
Section/Region: Land and Water Section
Contact: Dave Weirens and Tabor Hoek
Prepared by: Dave Weirens
Reviewed by: Grant Program and Policy Committee(s)
Presented by: Tabor Hoek

[ ] Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: [X] Resolution [ ] Order [ ] Map [X] Other Supporting Information

Fiscal/Policy Impact

- [ ] None [ ] General Fund Budget
[ ] Amended Policy Requested [ ] Capital Budget
[ ] New Policy Requested [ ] Outdoor Heritage Fund Budget
[ ] Clean Water Fund Budget
[X] Other: USDA Grant received by DNR

ACTION REQUESTED

Adopt the recommendation of the Grants Program and Policy Committee to authorize staff to make grants to soil and water conservation districts to cover their costs for promoting the Voluntary Public Access and Habitat Incentive (Walk-in) Program and signing up landowners.

SUMMARY (Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)
Increased access to hunting lands is a high priority for hunters. To address this issue the DNR submitted an application to the USDA-Voluntary Public Access Program as directed by Governor Pawlenty. In fall of 2010 the DNR was notified that their application was fully funded for a three year program. This program intends to enroll up to 50,000 acres of private land so that that it is available to hunters during hunting seasons.

The lands that will be targeted for this program are lands that are currently enrolled in CREP, RIM, WRP, and CRP. This focus on existing conservation lands provided an opportunity for BWSR to work with DNR on implementing this program. BWSR's roles in implementing this program will be to provide funds to SWCDs for their efforts, and to manage the agreements with landowners. BWSR will be entering into grant agreements with SWCDs that are willing to participate in this program to provide funds based on:

- (1) An assessment of workload;
(2) Acres of land currently enrolled in a state or federal conservation program; and
(3) Willingness to work in more than one county.

Total funds available for grants to SWCDs is \$80,000 in the first year of the program.

# **MN Voluntary Public Access and Habitat Incentive (Walk-in) Program**

**2011-2013**

**Overview:** Minnesota outdoor enthusiasts have been discussing opportunities to enhance hunter access to private lands for the last 10 years. Increasing access to hunting lands is second in priority to increasing wildlife habitat with hunters. On May 25, 2010 Gov. Pawlenty directed the DNR to pursue a Walk-in Access program after vetoing funding for the program. The DNR submitted a grant application to the USDA-Voluntary Public Access program available through the Farm Service Agency. This application was for a 3 year program to enroll upwards of 50,000 acres at a cost of \$2,684,876. DNR was notified in the fall of 2010 that their application was selected for full funding. As all of the work will occur on private lands with a focus on CREP, RIM, WRP and CRP, it made sense for DNR to coordinate with BWSR on delivery of the program. It is proposed that BWSR will implement the SWCD staffing and landowner agreement/payment process for the next 3 years under an interagency agreement with DNR. BWSR is working to develop processes to provide grants to SWCD's for their efforts as well as the development of landowner agreements for access rights to the property. DNR will manage the public awareness, mapping and hunter information portions of the access program.

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## **GRANT APPLICATION EXECUTIVE SUMMARY**

### **ACTIVITIES**

Through this grant, the State of Minnesota will launch a public access program to provide the public with new opportunities for hunting. This will help reduce a documented unmet demand for additional places to hunt. The program will be a pilot limited to southwestern Minnesota with post grant plans to expand throughout the agricultural portion of the state. Evaluations of enrollment success (number of acres, number of landowners) as well as landowner and hunter feedback will be sought upon completion of the pilot and will be incorporated into the program when fully implemented. The overall goal is to create and implement a new Walk-in program with 50,000 acres enrolled by the end of the grant period.

Major elements include program development, producer/landowner marketing and enrollment, signing enrolled lands, producing various user information (map book, downloadable GPS polygons, etc) to increase hunter awareness and utilization, producer/landowner payment and program evaluation. Results from this pilot program will be assessed and used to make improvements to a permanent program which provides both satisfied landowners and hunters.

### **OBJECTIVES, FUNDING, PERFORMANCE AND OTHER RESOURCES**

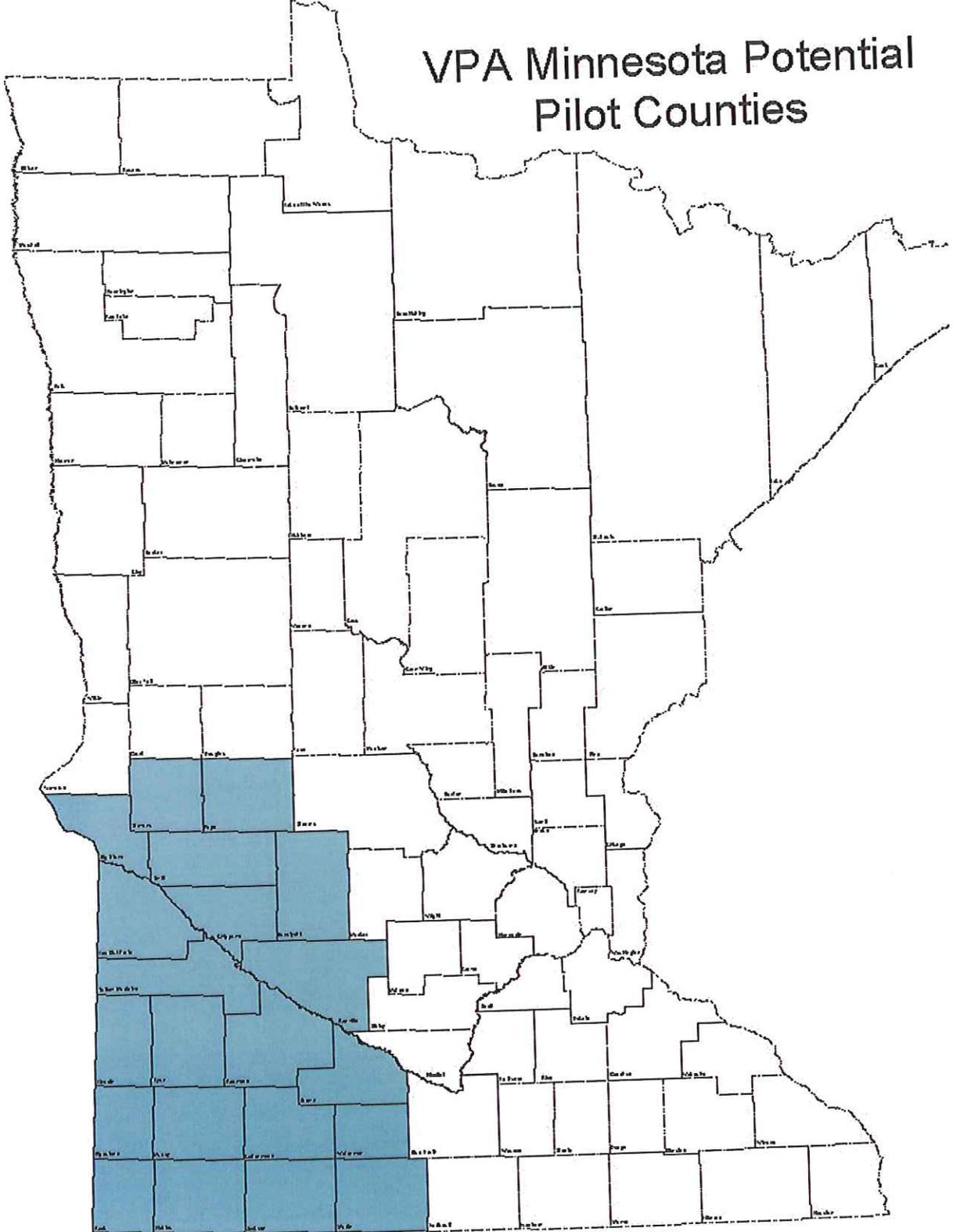
- The primary objective of this proposal is to provide new hunting opportunities on private lands currently enrolled in conservation programs for big/small game and upland/wetland birds on 50,000 acres of quality wildlife habitat in southwestern MN.
- Short term objectives include enrollment of 10,000 ac in year one, a cumulative enrollment of 25,000 ac in year two and a cumulative enrollment of 50,000 ac in year three.
- Landowners will be encouraged to participate in the public access program by offering additional payments for public access to quality wildlife habitat. This approach has proven to be successful in neighboring states (North and South Dakota) and is expected to meet with widespread acceptance among landowners in Minnesota.

- Ensure lands enrolled for public access have appropriate wildlife habitat by enrolling lands in an existing conservation program such as CREP, CRP, RIM and WRP or similar state and federally funded programs.
- Over 70,000 acres of CREP lands occur in the project area. These lands will be specifically targeted for enrollment. In addition the Board of Water and Soil Resources (BWSR) has up to \$1.0M in enhancement funds to use on lands with existing conservation easements for enhancement and restoration purposes.
- Enrollment targets: Year 1 – 10,000 ac, year 2: 25,000 cumulative ac, Year 3 – 50,000 cumulative acres. All of this will be target to a roughly 21 county area in southwest Minnesota.
- Publicize location of lands enrolled in the program through printed maps, MN/DNR web site (downloadable maps and downloadable GPS polygons), advertisements in regulations, press releases, broadcast interviews and feature articles in the Minnesota Volunteer (a DNR publication) and outdoors and agricultural publications and other appropriate methods.
- Project Managers (1.5 FTE in year 1 and 2.0 in years 2 and 3) will be hired for the length of the grant to provide overall programmatic and administrative guidance and process landowner agreements and payments to landowners. Local Soil and Water Conservation Districts that are participating in the Farm Bill Assistance Program (see attachment for information on FBAP) will be used to locally market and assist landowners with enrollment. Existing state staff will be used for contract administration, processing and paying landowner agreements. GIS work will be done by DNR GIS experts for map preparation. The Conservation Corps Minnesota (CCM) (a youth program) will be contracted to install signs identifying each enrolled parcel (see attachment for information on CCM).
- The work plan details specific deliverables. Formal agency evaluations will occur annually and informally as part of daily operations. We expect to build in flexibility to meet the needs of landowners and hunters as we build this new program. Overall, landowner and hunter satisfaction will be measured at the end of the three year period through professionally developed survey instruments. Information derived from this report will be used to improve the program in the future for both landowners and hunters. Quarterly financial and annual performance reports will be completed and submitted per RFA requirements.
- Other state resources: MN/DNR, BWSR, local SWCDs, and Pheasants Forever contribute over \$1.0M annually to the FBAP. In addition BWSR has up to \$1.0M in enhancement funds to use on lands with existing conservation easements for enhancement and restoration purposes. Finally, the BWSR partners with local SWCDs to carry-out oversight monitoring and inspection of its conservation easement. Easements are inspected for the first five consecutive years beginning in the year after the easement is recorded. Thereafter, on-site inspections are performed every three years and compliance checks are performed in the other two years.

## FUNDING REQUEST

FUNDING	Year 1	Year 2	Year 3
VPA-HIP	582,367	912,500	1,190,000
State	See text	See text	See text
Private	See text	See text	See text
TOTAL	582,376	912,500	1,190,000

# VPA Minnesota Potential Pilot Counties



Board Resolution # 11-

**WALK-IN PUBLIC ACCESS AND HABITAT INCENTIVE PROGRAM:  
GRANTS TO SWCDS**

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**WHEREAS**, the Board of Water and Soil Resources (BWSR) is authorized by Minn. Stat. 103B.101 to partner with other state agencies and to coordinate water and soil resources activities of local governments; and,

**WHEREAS**, the Department of Natural Resources (DNR) has been awarded a grant from the U.S. Department of Agriculture for a three-year pilot program to provide additional hunting opportunities on private lands and to provide additional incentives to current owners of land enrolled in conservation programs; and,

**WHEREAS**, this program is targeted for 21 counties in southwest Minnesota; and,

**WHEREAS**, DNR intends on transferring funds and entering into an agreement with BWSR to:

- (1) make grants to soil and water conservation districts (SWCD) to cover their costs for promoting and signing up landowners to this program, and
- (2) finance and serve as the administrative agent for landowners who agree to participate in the program; and,

**WHEREAS**, in the 1<sup>st</sup> year of the pilot program, BWSR staff are proposing to allocate available funds to SWCDs based on:

- (1) An assessment of workload generated with information provided by SWCDs via a request for information sent to SWCDs in February;
- (2) Acres of lands currently enrolled in a state or federal conservation program; and
- (3) Willingness to work in more than one county.

**WHEREAS**, funds will be provided to SWCDs in years 2 and 3 in amounts yet to be determined and authorized; and,

**WHEREAS**, the Grants Program and Policy Committee reviewed the Walk-in Public Access and Habitat Incentive Program, including the proposed grants to SWCDs, on March 10, 2011 and the Committee is recommending that funds be allocated to SWCDs in the project area based on the criteria specified above.

**NOW THEREFORE**, the Board hereby:

- (1) Adopts the recommendation of the Grants Program and Policy Committee;
- (2) Authorizes staff to allocate up to \$80,000 to SWCDs that are willing to participate in this program; and

(3) Authorizes staff to complete tasks necessary to implement the Walk-in Public Access and Habitat Incentive program in coordination with the DNR.

\_\_\_\_\_  
Brian Napstad, Chair  
Board of Water and Soil Resources

Date: \_\_\_\_\_

## **COMMITTEE RECOMMENDATIONS**

### ***RIM Reserve Management Planning Committee***

1. Reinvest in Minnesota (RIM) Reserve – Wetlands Reserve Program (RIM-WRP) Partnership Program – Paul Brutlag and Kevin Lines - ***DECISION ITEM***
2. RIM-WRP Partnership: Payment Rates & 2011 Sign-Up – Paul Brutlag and Kevin Lines - ***DECISION ITEM***



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: RIM-WRP Partnership and 2011 RIM-WRP Payment Rates

Meeting Date: March 23, 2011
Agenda Category: [X] Committee Recommendation [X] New Business [ ] Old Business
Item Type: [X] Decision [ ] Discussion [ ] Information
Section/Region:
Contact: Kevin Lines
Prepared by: Kevin Lines, Conservation Easement Section Manager
Reviewed by: RIM Reserve Management & Planning Committee(s)
Presented by: Kevin Lines and Paul Brutlag, RRMPC Chair

[ ] Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: [X] Resolution [ ] Order [ ] Map [ ] Other Supporting Information

Fiscal/Policy Impact

- [ ] None [ ] General Fund Budget
[ ] Amended Policy Requested [X] Capital Budget
[X] New Policy Requested [X] Outdoor Heritage Fund Budget
[ ] Other: [ ] Clean Water Fund Budget

ACTION REQUESTED

Authorize staff to develop eligibility, prioritization, sign-up and selection procedures with NRCS to continue the successful delivery of the RIM-WRP Partnership in Minnesota. Establishes payment rates for the RIM Reserve Program and the RIM Reserve - Wetlands Reserve Program (RIM-WRP) Partnership Project.

SUMMARY (Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)

The 2011 Minnesota State Legislature is expected to appropriate FY12 funds for use by the RIM Reserve program to leverage federal WRP funds in Minnesota. These funds will be used to restore previously drained wetlands and adjacent native grasslands to protect soil and water quality, increase fish and wildlife habitat, reduce flood damage and provide other public benefits.

The RIM Reserve Management Planning Committee met on Wednesday February 23rd to review the following draft resolutions, and recommends them for full board approval at the March 23, 2011 meeting. The resolution does the following:

- 1. Authorizes staff to develop eligibility, prioritization, sign-up and selection procedures with NRCS to continue the successful delivery of the RIM-WRP Partnership in Minnesota.
2. Authorizes continuous RIM-WRP enrollment opportunities to begin no sooner than April 1, 2011.
3. The payment rate for eligible croplands enrolling in the RIM Reserve Program is not to exceed 100% of the AATV and for non-cropland acres not to exceed 60% of AATV.
4. The payment rate for wetland restorations eligible for the RIM-WRP Partnership for cropland acres is not to exceed 125% of the Average Assessed Tillable Value (AATV) and for non-cropland acres not to exceed 70% of the AATV.
5. Rates are to be calculated using the most current township average tillable property value as established by the Minnesota Department of Revenue.

**Board Resolution # \_\_\_\_\_**

**Reinvest in Minnesota (RIM) Reserve – Wetlands Reserve Program  
(RIM-WRP) Partnership: Payment Rates & 2011 Sign-up**

**WHEREAS** anticipated 2011 RIM Reserve funding from the Outdoor Heritage Fund (OHF) is intended to leverage Federal Wetlands Reserve Program (WRP) funds appropriated to the Natural Resources Conservation Service (NRCS);

**WHEREAS** the RIM Reserve Conservation Easement Program is administered by BWSR in cooperation with local Soil and Water Conservation Districts (SWCDs);

**WHEREAS** SWCDs will be reimbursed for their services related to the RIM-WRP Partnership at the approved RIM service rate as established in Resolution #08-84;

**WHEREAS** the Board has authorized staff to work with Minnesota NRCS to develop RIM-WRP Partnership payment rates, eligibility, and sign-up procedures for the RIM-WRP Partnership;

**WHEREAS** the Board and NRCS staff in consultation with the University of Minnesota Applied Economics Department, have determined that the most recent Average Assessed Tillable Value (AATV) by township as established by the Minnesota Department of Revenue is the most relevant, consistent and available land value data to use as the basis for easement payment rates as posted at the Minnesota Land Economic Website: [www.landeconomics.umn.edu](http://www.landeconomics.umn.edu);

**WHEREAS** the Minnesota NRCS has adopted Geographic Area Rate Caps (GARC's) for townships which correspond to the Average Assessed Tillable Value as determined by county assessors for their WRP permanent easement rate on cropland. For non-cropland WRP has established 60% of AATV as their easement rate;

**WHEREAS** the Minnesota NRCS has adopted a 30-year WRP payment rate, specific to the RIM-WRP Partnership, of 75% AATV for cropland acres and 45% of AATV for non-cropland acres;

**WHEREAS** a subcommittee may be appointed by the chair of the BWSR to review the applications and make project selections in coordination with Minnesota NRCS;

**WHEREAS** the BWSR RIM Reserve Management Planning Committee met on Wednesday, February 23<sup>rd</sup>, 2011 and unanimously recommends the following provisions to successfully implement the RIM-WRP Partnership Program;

**NOW, THEREFORE, BE IT RESOLVED THAT**, the Minnesota Board of Water and Soil Resources authorizes staff to develop and implement the RIM-WRP Partnership as follows:

1. Continuous enrollment period to begin no sooner than April 2011 for the RIM-WRP Partnership.
2. Staff is authorized to develop eligibility, prioritization, sign-up and selection procedures for the RIM-WRP Partnership.
- 3a. The payment rate for eligible croplands enrolling in the RIM Reserve Program is not to exceed 100% of the AATV and for non-cropland acres and not to exceed 60% of AATV.
- 3b. The payment rate for wetland restorations eligible for the RIM-WRP Partnership for cropland acres is not to exceed 125% of the Average Assessed Tillable Value (AATV) and for non-cropland acres not to exceed 70% of the AATV.
- 3c. Rates are to be calculated using the most current township average tillable property value as established by the Minnesota Department of Revenue.

Dated at Saint Paul, Minnesota this 23rd day of March, 2011.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

By: \_\_\_\_\_

Brian Napstad, Chair

**Board Resolution # \_\_\_\_\_**

**Reinvest in Minnesota (RIM) Reserve - Wetlands Reserve Program (RIM-WRP)  
Partnership Program**

**WHEREAS** the RIM-WRP Partnership, the premier private lands wetland restoration program in the nation, is a local-state-federal partnership delivered locally by the Natural Resources Conservation Service (NRCS) the Soil and Water Conservation Districts (SWCDs) and the Board of Water and Soil Resources (BWSR);

**WHEREAS** the RIM-WRP Partnership is possible through the collaboration of many local, state, and federal partners including Ducks Unlimited, DU), the Minnesota Waterfowl Association (MWA), Pheasants Forever (PF), the Minnesota Department of Natural Resources (MN DNR), and the United States Fish and Wildlife Service (USFWS);

**WHEREAS** the RIM-WRP Partnership permanently protects and restores previously drained wetland and adjacent native grasslands to achieve the greatest wetland functions and values, while optimizing wildlife habitat on private lands enrolled in the Partnership;

**WHEREAS** the RIM Reserve Conservation Easement Program is administered by the BWSR in cooperation with local Soil and Water Conservation Districts (SWCDs);

**WHEREAS** the RIM Reserve Program receives appropriations from state bonding sources, the Outdoor Heritage Fund (OHF), the Clean Water Legacy (CWF), and the Minnesota Environment and Natural Resources Trust Fund;

**WHEREAS** RIM Reserve funding is intended to leverage federal WRP funds appropriated to the NRCS whenever feasible;

**WHEREAS** NRCS National Headquarters has requested Minnesota NRCS to develop a process which allows for continuous enrollment of RIM-WRP Partnership easement applications and the necessary obligation of federal WRP funds with eligible Minnesota landowners;

**WHEREAS** a Minnesota Wetlands Restoration Evaluation Worksheet will be used to score and rank applications for the RIM-WRP Partnership;

**WHEREAS** the RIM-WRP Partnership will establish scoring periods in which eligible RIM-WRP applications that have been scored  $\geq 80$  will be approved for selection for immediate funding by NRCS-WRP;

**WHEREAS** the Board authorized staff to work with Minnesota NRCS to develop RIM-WRP Partnership eligibility and sign-up procedures for the RIM-WRP Partnership;

**WHEREAS** other applications will be considered during the current scoring period prior to the NRCS obligation deadline;

**WHEREAS** a subcommittee may be appointed by the chair of the BWSR to review the applications and make project selections in coordination with Minnesota NRCS;

**WHEREAS** the Board of Water and Soil Resources RIM Reserve Management Planning Committee met on Wednesday, February 23<sup>rd</sup>, 2011 and unanimously recommends operationalizing the RIM-WRP Partnership Program;

**NOW, THEREFORE, BE IT RESOLVED THAT**, the Minnesota Board of Water and Soil Resources authorizes staff to successfully implement the RIM-WRP Partnership in recognition of and consistent with the findings noted above.

Dated at Saint Paul, Minnesota this 23<sup>rd</sup> day of March, 2011.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

By: \_\_\_\_\_

Brian Napstad, Chair

## **NEW BUSINESS**

1. Aquatic Invasive Species (AIS): Connection to Local Water Management - Steve Hirsch and Luke Skinner, DNR Ecological-Waters Division; Tera Guetter, Pelican River Watershed District; Eric Evenson and Chuck Holtman (Smith-Partners), Minnehaha Creek Watershed District - ***INFORMATION ITEM***



BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE:

Aquatic Invasive Species (AIS):
Connection to Local Water Management

Meeting Date: March 23, 2011
Agenda Category: [ ] Committee Recommendation [X] New Business [ ] Old Business
Item Type: [ ] Decision [ ] Discussion [X] Information
Section/Region:
Contact: John Jaschke
Prepared by: John Jaschke
Reviewed by: John Jaschke Committee(s)
Presented by: John Jaschke

[X] Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: [ ] Resolution [ ] Order [ ] Map [X] Other Supporting Information

Fiscal/Policy Impact

- [X] None [ ] General Fund Budget
[ ] Amended Policy Requested [ ] Capital Budget
[ ] New Policy Requested [ ] Outdoor Heritage Fund Budget
[ ] Other: [ ] Clean Water Fund Budget

ACTION REQUESTED

Information Item

SUMMARY (Consider: history, reason for consideration now, alternatives evaluated, basis for recommendation)
The BWSR Board has the responsibility to review and approve amendments to local water management plans per M.S. Chapters 103B and 103D that may authorize funding or regulations to address AIS.
Presenters will be: Steve Hirsch and Luke Skinner, DNR Ecological-Waters Division; Tera Guetter, Pelican River Watershed District; Eric Evenson and Chuck Holtman (Smith-Partners), Minnehaha Creek Watershed District.

The DNR report is at:
http://files.dnr.state.mn.us/aboutdnr/reports/legislative/aquatic\_invasive\_species\_prevention\_legislative\_report\_2010.pdf

The following is a summary of eight areas of stakeholder group recommendations:

- Increase enforcement of AIS laws at the state and local levels;
• Increase penalties for violations of state invasive species laws;
• Improve the DNR's watercraft inspection process for AIS;
• Increase public awareness of AIS;
• Aid AIS actions at water accesses;
• Require lake service provider licensing and training;
• Focus on high-use infested waters & prioritize; and
• Increase funding for AIS efforts.



February 2, 2011

Ms. Lori Swanson  
Minnesota Attorney General  
1400 Bremer Tower  
445 Minnesota Street  
St. Paul, MN 55101

Re: Minnehaha Creek Watershed District  
Request for Opinion: Regulation to Manage Aquatic Invasive Species

Louis N. Smith  
Charles B. Holtman  
Michael J. Welch

Of Counsel  
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Dear Attorney General Swanson:

We serve as legal counsel to the Minnehaha Creek Watershed District (District), a special purpose local unit of government established pursuant to Minnesota Statutes chapters 103B and 103D (*see* <http://www.minnehahacreek.org>). I write on behalf of the District's Board of Managers to request an opinion on an issue arising under the watershed laws, Minnesota Statutes chapters 103B and 103D.

#### Facts

Pursuant to its authority under chapters 103B and 103D, and the mandate of Minnesota Statutes sections 103D.341 and 103D.345, the District has adopted rules and established a regulatory program to limit flooding and impacts to surface waters in the watershed. The District carries out its regulatory program in conjunction with the authorities exercised by cities, towns and counties within the watershed, under the structure established by Minnesota Statutes section 103B.211, subdivision 1(a)(3). More broadly, the District assesses water resource concerns; prepares plans; and implements projects and programs, including its regulatory program, to address these concerns and fulfill the responsibilities assigned to it by Minnesota Statutes section 103B.231.

For some time the District has cooperated with other local and state governmental units to control or reduce the impacts from aquatic invasive species (AIS) such as curly-leaf pondweed and Eurasian watermilfoil. In July 2010, zebra mussels, an AIS of great concern, were discovered in Lake

Minnetonka, which lies wholly within the District's boundaries. The District had been monitoring the lake and its other surface waters for some time to determine whether the mussels were present. The failure of existing systems to stop zebra mussels from entering Lake Minnetonka and the growing and diversifying threat to other surface waters in the watershed have prompted the District to consider a more concerted approach to AIS. The elements of this approach will take shape through coordination with the District's cities and advisors representing water resource agencies and other technical stakeholders.

This approach may include a regulatory effort to address the threat of zebra mussels' rapid colonization of Lake Minnetonka and spread of the mussels and other AIS among other surface waters within the watershed. One concept would prohibit placing a watercraft or equipment (e.g., boat lift, dock) in an AIS-free watershed lake or creek without a District permit certifying that the boat or equipment is free of AIS. The District would not seek to license boats or other equipment in a manner foreclosed by the court of appeals in In re 1994 and 1995 Shoreline Improvement Contractor Licenses of Landview Landscaping, Inc., 546 N.W.2d 747 (Minn. Ct. App. 1996).

The District effort will build on its growing understanding and institutional expertise concerning AIS and the extent to which water quality and the beneficial uses of water resources depend on the integrity of the ecological setting. The District intends to coordinate rulemaking and any subsequent regulatory program with the invasive-species programs of the Minnesota Department of Natural Resources under Minnesota Statutes chapter 84D and its implementing rules.

## Legal Background

### *Statutory Purposes and Powers*

Purposes of metropolitan-area watershed districts are established by both the statewide Watershed Law (chapter 103D) and the Metropolitan Surface Water Management Act (chapter 103B). Chapter 103B charges the District to "protect and enhance fish and wildlife habitat and water recreational facilities" and "secure the other benefits associated with the proper management of surface

and ground water.”<sup>1</sup> The District also is directed to “minimize public capital expenditures needed to correct ... water quality problems.”<sup>2</sup> Chapter 103B builds on purposes established under Chapter 103D, which establishes watershed districts statewide to, among other purposes, “conserve the natural resources of the state ... by using sound scientific principles for ... the provident use of the natural resources.”<sup>3</sup> Districts also are charged “to protect or enhance the water quality in watercourses or water basins.”<sup>4</sup>

The powers granted to watershed districts to pursue these purposes include the power of regulation. Section 103D.341 specifically states that districts “must adopt rules to accomplish the purposes of [chapter 103D].” This broad command is supplemented by the authority to “regulate, conserve and control the use of water within the watershed district.”<sup>5</sup>

The District rule would rest on findings as to water quality, habitat and recreational impacts of AIS and impact of AIS such as zebra mussels on the functions and maintenance costs of private and public facilities (boats, shoreline structures, water outfalls). With these findings, a regulatory program to limit the spread of AIS would utilize District regulatory authority to accomplish District purposes.

#### *Defining Watershed Goals in Watershed Plans*

The foundation of watershed district programs within the metropolitan area is the watershed management plan prepared and revised at least decennially under Minnesota Statutes section 103B.231. The plan must “present information on the hydrologic system and its components ... and existing and potential problems related thereto.”<sup>6</sup> It must “state objectives and policies, including management principles, alternatives and modifications, water quality, and protection of natural characteristics.”<sup>7</sup> Implementing rules of the Minnesota Board of Water and Soil Resources require plans to describe “how water resource

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<sup>1</sup> Minn. Stat. § 103B.201(7), (8).

<sup>2</sup> Minn. Stat. § 103B.201(2).

<sup>3</sup> Minn. Stat. § 103D.201, subd. 1.

<sup>4</sup> *Id.* at subd. 2(13).

<sup>5</sup> Minn. Stat. § 103D.335, subd. 10.

<sup>6</sup> Minn. Stat. § 103B.231, subd. 6(a)(2).

<sup>7</sup> *Id.* at subd. 6(a)(3).

based recreational activities and wildlife interests will be protected or improved” through plan implementation.<sup>8</sup>

The District plan, adopted in 2007, underscores the importance of ecological integrity.<sup>9</sup> The plan identifies invasive and exotic species as substantial threats to ecological integrity.<sup>10</sup> It articulates the following goals served by AIS control:

- Maintain, support and enhance the ecological integrity of upland and aquatic resources in the watershed and the ability of flora and fauna in the watershed to proliferate;
- Increase the ecological integrity of the environmental resources within the watershed;
- Conserve, maintain and improve the aesthetic, physical, chemical and biological properties of surface waters and groundwater within the District;
- Protect the ecological integrity of surface waters and the riparian environment;
- Achieve no net loss in the quantity, quality, and biological diversity of existing wetlands in the watershed;
- Cooperate with other agencies to minimize the spread of harmful exotic species.<sup>11</sup>

The District is mandated to “adopt rules to accomplish the purposes of [the watershed law] and to implement the powers of the [District] managers.”<sup>12</sup> Unlike the authority to levy for and spend funds on projects, which requires a foundation in an adopted watershed management plan,<sup>13</sup> the plan is not a prerequisite for the District’s adoption of rules to accomplish its statutory purposes. However, the goals, policies and strategies detailed in the District plan are the foundation on which an AIS regulatory program will be built.

Accordingly, the District would intend to amend its watershed management plan under the procedures of section 103B.231 to include new understanding on the

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<sup>8</sup> Minn. R. 8410.0080, subp. 4.

<sup>9</sup> *See, e.g.*, sections 1.7.1, 4.8.

<sup>10</sup> *Id.*

<sup>11</sup> Plan, sec. 5, goals 2, 2.1, 3, 6.3, 11.1, 14.3

<sup>12</sup> Minn. Stat. §103D.341, subd. 1.

<sup>13</sup> Minn. Stat. §103B.241, subd. 1.

significance of AIS spread within the watershed and the role that a regulatory program, such as described above, can play in addressing the problem. The process of amending the District plan, including the involvement of technical and citizens' advisory bodies, other agencies and the public, will help the District examine the role of regulation and adopt a rule that will best achieve AIS management goals.

#### Question Presented

In light of the above, the District requests your opinion on the following question:

*On the basis of findings as to the effects of zebra mussels and other described AIS on water quality, riparian and aquatic habitat, recreational use of surface waters, and maintenance of public and private facilities, does the District have the authority to regulate surface water use through a permitting program that limits placing a boat or structure in a surface water within the watershed until it is determined to be free of AIS?*

AIS represent an urgent threat to the resources of the Minnehaha Creek watershed. Your timely response to this inquiry would help the District do its part to address one of our state's most pressing environmental issues.

We appreciate your counsel in these matters. Please do not hesitate to let me know if you require additional information.

Sincerely,



Louis N. Smith

c: MCWD Board of Managers  
L. Eric Evenson, Administrator, MCWD  
John Jaschke, Executive Director, BWSR  
Luke Skinner, Supervisor, Invasive Species Program, MnDNR

## **Red River Basin Commission: Aquatic Nuisance Species Issues for Consideration**

The following is a short summary of potential issues arising from aquatic nuisance species (ANS) infestations. IF additional information is required, please contact the document's author.

### **ANS**

- Is a real and devastating problem
  - Ignoring it will not make it go away
- Problem needs to be considered on a wide scale and regional basis
- Many are small – plants or creatures which look harmless
- Accumulative affects from many individuals is a problem

The problem must be viewed in its entirety and impacts to our current status – what we are now enjoying.

### **IMPACTS FROM ANS**

- Environmental changes
  - Degradation of habitats occurs
    - Used by fish and waterfowl
    - Used by man as drinking water
  - The quality and quantity of habits correlates to the type and number of species present
  - Less carrying capacity for native or desirable fish species
- Economic changes
  - Angler use declines
    - Less monies flowing through the local community
  - Recreation industry declines
    - Less monies spent at resorts and stores
  - Shoreline property values decline
    - Less tax base for the community
- Non-traditional
  - Power generation – clogged cooling towers
  - Water intakes – clogged pipes and equipment wear
  - Water projects – retention, transfer, or use
- Once established, the problem does not go away

ANS is affecting us by changing the world for the worst and costing us (you and me) more money.

## **ANS MOVEMENT**

- Incorrectly thought to be limited to anglers and fishing activities
- Aquatic recreation – waterfowl hunting, boating, or other aquatic recreation
- Construction equipment which has been in water or is moving water in confined spaces
- Others - water gardens, pet trade, commercial ventures, food markets, etc.
- ANS is small and hardy – some species travel well and are hardy
- A single infestation radiates out like the spokes off of a wagon wheel
- People – travel to have recreation, have monies to purchase items they want, and they want more

The movement is done as un-intentional or unwitting efforts. Not knowing the outcome of a simple act can cause problems for the long term.

## **THOSE AFFECTED**

- Recreators from loss of aquatic resources – less fish or ducks
  - Natural resource agencies diverting monies and man-power from management to preservation/restoration of once common species
- Construction projects
  - More Threatened and Endangered species listed
  - More regulations and restrictions to projects
  - Less projects approved
- Consumers that use water and electricity from higher O/M.

We are all being impacted by ANS. We all must be aware of how ANS impacts us and others. It more than just the other guy or group taking a hit.

## **REMEDIES**

- Proactive approach
  - Reacting to the problem is too late
  - Finding a problem is having an established population
- Traditional fish and wildlife management will not work
  - Habitats have declined
  - Fish and wildlife populations remain low until habitats are restored

### *REMEDIES; continued*

- Regulations
  - You are not going to catch all of them and not everyone obeys the regulations
- Education
  - Knowing you are making a problem is likely to cause you not to do that
  - Is very cost effective – cheaper to prevent than control

Not having the problem is the best alternative to having the problem.

## PREVENTION

- Requires natural resource agencies be engaged and active in education
  - Proactive in prevention rather than reactive to finding a problem
- Requires non-traditional groups (water projects, water boards, water users, etc) partner with natural resource agencies
- Commitment comes with a price
  - Sufficient monies to properly do the work
  - Sufficient man-power to conduct the education
  - Knowing how to involve the audience
  - Educate in an effective manner – targeted market outreach
  - Educate where the users are at
- Resource agencies must allow for this education
  - Traditional views must give way to a new and proactive approach
  - Develop realistic strategies that can be achieved
  - Accept that the problems must be dealt with
- Education is an on-going process
  - Repeated information in various formats
  - Once started must continue
    - Restarting an education program that has been suspended is going back to the beginning
    - Building on accomplishment is simpler than starting over

Prevention is the only way to keep ANS out. Prevention requires problem awareness. Awareness by all impacted by the problem. Prevention requires an actual commitment to doing the work effectively

From Richard Hecock, Ph.D, Senior Advisor; Pelican River Watershed

## **Call to Action to Deal More Effectively with Aquatic Invasive Species (AIS)**

Aquatic Invasive Species (AIS), including Zebra mussels, Eurasian water milfoil, Curlyleaf pondweed, and Spiny waterfleas are spreading rapidly in Minnesota rivers and lakes.

The primary mechanism for spreading AIS in Minnesota is the movement of boats from lake to lake.

AIS will have disastrous consequences for Minnesota waters, including fundamentally altering ecosystems, destroying game-fishing, damaging equipment/facilities, endangering swimmers, reducing property values, increasing water treatment and drainage system costs.

Insufficient funds have been devoted to slowing the spread, and treating the consequences of AIS infestations. The State of Minnesota has relied mostly on local organizations and governments to deal with these problems.

Existing statutes, regulations, and management strategies do not lend themselves to effective prevention, containments, or treatment of AIS infestations.

The DNR and the Minnesota Legislature currently is considering what needs to be done to address Minnesota's growing AIS problems.

***Minnesota's Legislature and its Executive Branch must take forceful actions to counter the problems associated with AIS by...***

***1. offering greater authority...***

- *to do thorough inspections of boats and trailers that move from one lake to another*
- *to restrict boats that have been in AIS infested waters from moving to other waters without being decontaminated.*
- *to encourage state and local law-enforcement to more rigorously enforce AIS regulations*
- *to conduct inspections at private accesses to public waters*

***2. providing more state funds...***

- *to provide more research on the spread and treatment of AIS*
- *to provide for more enforcement of existing and new regulations regarding the transfer of AIS from one water body to another*
- *to establish inspection/decontamination stations, including those at private accesses*
- *to assist communities in addressing the effects of AIS infestations*

***3. adopting incentives to increase rigor of inspections and enforcement...***

- *higher fines for violators*
- *fine revenue to local communities*