



STATE OF MINNESOTA
WATER RESOURCES BOARD

(612) 296-2840

500 Lafayette Road
Box 34
St. Paul, Minnesota 55101

In the Matter of Proposed Rules for
Implementation of the Comprehensive
Local Water Management Act

STATEMENT OF NEED
AND REASONABLENESS

The Water Resources Board (Board) proposes to adopt rules governing implementation of the Comprehensive Local Water Management Act, Minnesota Statutes chapter 110B (Supp. 1985).

This statement sets out the need for and reasonableness of the proposed rules. The statement is divided into six parts. Part I sets out the Board's authority to adopt the rules. Part II discusses the history of the Comprehensive Local Water Management Act. Part III sets out the process followed by the Board, consistent with the enabling statutes, in developing the proposed rules. Part IV constitutes the specific affirmative presentation of the need for and reasonableness of the proposed rules. Part V reflects the Board's consideration of the impacts of the proposed rules on expenditure of public monies by local public bodies, on agricultural land, and on small businesses, as required by Minn. Stat. secs. 14.11 and 14.115. Part VI is a single statement of conclusion.

I. AUTHORITY

Specific authority to promulgate rules for implementation of the Comprehensive Local Water Management Act is granted by Laws of Minnesota 1985, First Special Session, chapter 2, section 5, subdivision 2. General rulemaking authority is given to the Board by Minn. Stat. sec. 105.71, subd. 1 (1984).

II. HISTORY OF THE COMPREHENSIVE LOCAL WATER MANAGEMENT ACT

In 1979 the Minnesota Water Planning Board proposed a water management strategy for the state in a report entitled "Toward Efficient Allocation and Management: A Strategy to Preserve and Protect Water and Related Land Resources". A key element of the proposed strategy was the encouragement of local involvement in water planning:

"At the local level, the state should encourage and facilitate initiation of water management plans and projects. Encouraging the development of water management plans is viewed as an effective way for local government to 1) address water management problems systematically and comprehensively; 2) provide a focus for citizen involvement and participation in the solution of water problems; 3) speed up state agency approval of permits that might be required in plan implementation by having prior acceptance of plans at state and regional levels; and 4) facilitate the administration of state permit programs by local authorities whenever feasible." (From "Summary of the Management Strategy", pages 67-68 of the June 1979 report).

In Laws of Minnesota 1980, chapter 548, section 2, the Legislature directed the Water Planning Board to further define the role of local government in water management. The Water Planning Board issued its findings and recommendations in a January 1981 report entitled "Special Study on Local Water Management." The Water Planning Board recommended a strengthened local-state partnership in water management, with counties to be designated as the "fundamental decision-makers" on water management at the local level.

In 1985, the Legislature enacted the Comprehensive Local Water Management Act, which provides the vehicle for county government to take the lead role in water planning and management at the local level, as recommended by the Water Planning Board. Following state approval of a county comprehensive water plan, other local units of government must amend existing water and related land resources plans and official controls as necessary to bring them into conformance with the county plan.

III. RULE DEVELOPMENT PROCESS

The Water Resources Board entered into a Memorandum of Agreement with the State Planning Agency shortly after the effective date of the Comprehensive Local Water Management Act to promote cooperative efforts in implementing state-level responsibilities given by the Act, including development of rules.

On August 26, 1985 a Notice of Intent to Solicit Outside Opinion on rules for implementation of the Comprehensive Local Water Management Act was published in the State Register (10 S.R. 544).

The Water Resources Board published notice of vacancies on the local advisory committee required by Minn. Stat. sec. 110B.10, subd. 3 in the State Register on September 2, 1985 (10 S.R. 594), and mailed the notice to about 250 local units of government, organizations, and individuals. The Water Resources Board received applications from fifty interested persons. In October 1985 the Water Resources Board appointed a local advisory committee made up of six county commissioners, one county planning administrator, three soil and water conservation district supervisors, one watershed district manager, one watershed district administrator, one city administrator, the director of the Minnesota Association of Townships, a university professor, and one unaffiliated public member.

The State Planning Agency, under the terms of the Memorandum of Agreement, organized and staffed a separate interagency technical advisory committee.

The two advisory committees met several times between November 1985 and September 1986 to develop recommended draft rules for implementation of the Comprehensive Local Water Management Act.

The first draft of recommended rules was completed in June 1986, and was distributed to state agencies and local units of government during July and August of 1986 to solicit their comments. The first draft of rules was also mailed to over forty environmental, conservation, and public policy organizations for their review. The first draft of rules also was presented to county commissioners at nine separate regional meetings of the Association of Minnesota Counties during August 1986.

All the comments received during this informal review process were considered by the local advisory committee and technical advisory committee in September 1986. Many of the comments were incorporated into a second draft of recommended rules in late September 1986. The Water Resources Board approved publication of proposed rules at its October 1986 meeting.

Copies of all written comments received on the draft rules are available for review at the Water Resources Board's office.

IV. SUBSTANTIVE DISCUSSION OF PROPOSED RULES

Minn. Stat. sec. 14.23 (1984) requires an agency proposing rules for adoption to make an affirmative presentation of facts establishing the need for and reasonableness of the rules proposed. In general terms, this means that an agency must set forth the reasons for proposing rules and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists that requires administrative attention and reasonableness means that the solution proposed by the agency is a proper one.

The need for these proposed rules comes from the importance of wisely managing our essential water resources; addressing water management problems systematically and comprehensively; providing a focus for citizen involvement at the local level; involving local units of government in water management; and from the legislative mandate of Minn. Stat. sec. 110B.10, subd. 2.

Reasonableness is the opposite of arbitrariness and caprice, and means that there is a rational basis for the Board's proposed action. The purpose of the remainder of this section is to demonstrate that each provision is a reasonable approach to its defined function.

PART 9300.0010 DEFINITIONS.

Subpart 1. Applicability.

This subpart explains that the definitions apply to the remaining Parts of the proposed rule. It also refers to the definitions contained in the Comprehensive Local Water Management Act (CLWMA) to alert the reader that the proposed rule must be read in conjunction with the CLWMA.

Subp. 2. Geographic indicator.

"Geographic indicator" needs to be defined because it is a technical term. The term is used in the proposed rule in instances where required data must be identified by geographic location. Most water-related data is meaningless unless it is tied to a specific geographic location.

A "geographic indicator" also allows water data to be integrated into the Minnesota Land Management Information System, as required by Minn. Stat. sec. 110B.04, subd. 7. The definition is consistent with the State Planning Agency's data compatibility guidelines referred to in Minn. Stat. sec. 110B.04, subd. 7.

Subp. 3. Local units of government.

This definition is the same as the one contained in the CLWMA. It is repeated in the proposed rule because the statutory definition is much broader than the common use definition and needs to be emphasized for clarity.

Subp. 4. Minor watershed unit.

This term is defined because it is a technical term used in the rules that refers to specific areas delineated on the state watershed boundaries map. The term is not defined in the CLWMA.

Subp. 5. Protected waters.

This term is defined to ensure consistency of interpretation with other state agency rules, particularly the rules of the Minnesota Department of Natural Resources, which has regulatory jurisdiction over "protected waters".

Subp. 6. State board.

The proposed rule uses the term "state board" to refer to the Minnesota Water Resources Board to shorten the text.

Subp. 7. Watershed management organization.

This definition is the same as the one contained in the CLWMA. It is repeated in the proposed rule because it is not a commonly used term and needs to be emphasized for clarity.

Subp. 8. Watershed units.

The proposed rule refers the reader to the definition contained in the CLWMA. The term is used throughout the proposed rule and is defined because it refers to specific areas delineated on the state watershed boundaries map.

PART 9300.0020 PURPOSES OF PLANNING PROCESS AND SCOPE OF PLAN.

Subpart 1. Purposes.

This subpart states the purposes of preparing a comprehensive water plan. It is included to help counties understand the benefits of comprehensive water planning. The expressed purposes are consistent with the policies contained in the CLWMA.

Subp. 2. Scope.

This subpart is introductory. It provides an overview of the basic steps involved in preparing a local water plan. Specific planning procedures will be discussed as they appear in the proposed rule.

PART 9300.0030 PROCEDURES FOR WATER PLANNING.

Subpart 1. Applicability.

This paragraph introduces the substantive procedures the proposed rule requires a county to follow if it prepares a plan under the CLWMA. A majority of the comments received on the first draft of the proposed rule addressed Part 9300.0030. This Part was revised to strengthen the opportunity for public participation and intergovernmental coordination.

Subp. 2. Resolution to develop plan.

This subpart requires a county to adopt a resolution if it decides to prepare a plan pursuant to the CLWMA. Compliance with the CLWMA is voluntary; therefore, the decision to prepare a plan must be made by vote of the county board of commissioners.

Subp. 3. Notice of decision to develop plan.

This subpart requires the county board to notify specific parties of its decision to develop a plan within 30 days of its decision.

Early notice is important because it provides other local units and interested agencies an opportunity to participate in the planning process from the beginning. It is the first step in establishing a cooperative and coordinative planning process, consistent with the CLWMA.

Subp. 4. Request for local plans and official controls.

This subpart requires the county to request from all local units within the county existing water plans and official controls, and any conflicts, problems, or opportunities the local units want the county to examine and address in the comprehensive water plan.

A county needs to know what other plans exist in order to fully utilize them in preparing the comprehensive water plan. They will enable the county to describe any possible conflicts between the comprehensive water plan and other local plans. It is reasonable to require the county to request these local plans and official controls at the beginning of the planning process to facilitate coordination between the county and other local units.

Subp. 5. Public informational meeting required.

This subpart requires the county to conduct a public informational meeting within 90 days of the notice of its decision to prepare a plan. It requires publication of meeting notice in the official newspaper of the county, and notification of the parties that received notice of the county's decision to prepare a plan.

An early public informational meeting is needed to provide the public, as well as interested local units and state agencies, with an opportunity to present information to the county about water-related issues, problems, and opportunities they believe should be considered in the comprehensive water plan.

The meeting will benefit the county by making it aware of water-related issues early in the planning process.

An early public informational meeting is not required by the CLWMA, but was considered very important by the local advisory committee and by the state agencies represented on the technical advisory committee.

Subp. 6. Meetings with local units of government within the county.

This subpart requires the county to conduct meetings with other local units during plan preparation and implementation.

Meetings with other local units is required by Minn. Stat. sec. 110B.04, subd. 3 to facilitate interlocal coordination.

The League of Minnesota Cities was especially concerned about this process, and urged that the proposed rule require "periodic" meetings. This subpart is reasonable because it requires meetings, but leaves the decisions on the number and timing of meetings up to the county board.

Subp. 7. Public participation process.

This subpart requires the county to ensure that there is an opportunity for public participation during plan development and implementation.

The process will assist the county in determining what problems and opportunities are important to county residents. It will give the public an opportunity to provide information and guidance to the county board during the formative stages of plan development. It also will allow the county to consider major public concerns prior to the formal public hearing required late in the planning process by Minn. Stat. sec. 110B.08, subd. 4.

It is reasonable because it provides the county the flexibility of deciding the format, number, and timing of opportunities for public input.

Subp. 8. Record of meetings.

This subpart requires a county to maintain a record of the meetings held under subparts 5, 6, and 7.

This requirement is needed to document a county's compliance with the planning procedures. It also will be important to have a record of the meetings if conflicts remain unresolved at the conclusion of the planning process, because it will provide the Water Resources Board with information on a county's efforts to coordinate with other local units and to address issues raised by the public.

It is reasonable because it doesn't require a county to prepare an expensive verbatim record, but it does require that a county prepare meeting minutes and a list of people in attendance and who they represented.

Subp. 9. Delegation.

This subpart makes the delegation provision of Minn. Stat. sec. 110B.04, subd. 2, more specific by stating that delegation can only be made to parties willing to carry out planning responsibilities. It also makes it clear that a county remains responsible for ensuring public participation and a record of meetings when it delegates planning duties.

The Minnesota Association of Townships wanted the proposed rule to make clear that a county could not delegate planning responsibilities to local units that did not desire to become involved. The proposed rule does that. It is reasonable because the CLWMA did not intend the county to be able to delegate planning responsibilities to other local units without their consent.

PART 9300.0040 DATA CONSISTENCY WITH STATE PLANNING AGENCY GUIDELINES.

This Part requires that new data collected by a county for inclusion in a comprehensive water plan must be consistent with State Planning Agency guidelines for data compatibility. This will allow the new data to be integrated into the state's computer data base, as required by Minn. Stat. sec. 110B.04, subd. 7.

This Part makes the CLWMA more specific by requiring new data to include a geographic indicator and, where appropriate, unique well numbers and protected waters inventory identification numbers. These indicators and identifiers will allow the new data to be integrated into the state's computer data base.

This part also encourages a county to use consistent map scales, where possible. It also makes it clear that information required to be presented in map form by later Parts of the proposed rule map be combined on a single map.

This Part is reasonable because the requirements are consistent with standard methods of data identification, and information gathered from state agencies will automatically include the standard identifiers. This standardization will benefit both the state and the local units of government now and in the future.

PART 9300.0050 PHYSICAL ENVIRONMENT, LAND USE, AND DEVELOPMENT.

This Part lists the basic information required to be presented in a comprehensive water plan on a county's physical environment, land use, and development to comply with Minn. Stat. sec. 110B.04, subd. 6 (1). This Part requires information under the headings of precipitation, geology and water resources, soils, topography, land use and public utility services, and land ownership.

This basic information is needed to enable a county to understand the existing physical conditions affecting water and related land resources.

Information on normal precipitation is essential to any analysis of water availability. It also provides a benchmark for determining whether precipitation in a particular year was abnormally high or low, which is needed to assess the expected frequency of flooding or low flow conditions.

Information on geology and water resources is essential to developing a basic understanding of a county's hydrologic characteristics, including both surface and ground water.

Soils information is needed to judge suitability for various land uses and the impact different land use would have on water resources.

Land use information is needed to assess runoff rates and volumes, sources of point and nonpoint pollution, and areas particularly vulnerable to water problems.

Land ownership information is needed to assess potential opportunities and constraints in managing existing or potential water problems.

The information required by this Part is reasonable because most of it is readily available from other governmental units or agencies. Part 9300.0020, subp. 2 states that information is required only if it is available.

PART 9300.0060 EXPECTED CHANGES TO PHYSICAL ENVIRONMENT, LAND USE, AND DEVELOPMENT.

This Part requires a county to identify expected changes to the physical environment, land use, and development to comply with Minn. Stat. sec. 110B.04, subd 6 (1).

Consideration of expected changes is needed to enable a county to anticipate water-related problems before they occur and develop management strategies to avoid or minimize expected problems. It also enables a county to take advantage of opportunities that may be available to gain multiple use of existing resources or provide additional protection to priority water and related land resources.

PART 9300.0070 SURFACE WATER, GROUND WATER, AND RELATED LAND RESOURCES.

This Part lists the basic information required to be presented in a comprehensive water plan on a county's surface water, ground water, and related land resources to comply with Minn. Stat. sec. 110B.04, subd 6 (2).

Subpart 1. Applicability.

This subpart states that the level of detail of information required by this Part should be determined in conjunction with neighboring counties. This will facilitate intercounty coordination.

It also states that the information should be presented by watershed unit and ground water systems where appropriate. This is necessary because the CLWMA requires comprehensive water plans to address water problems in the context of watershed units and ground water systems. This is necessary because surface water and ground water movement is unrelated to political unit boundaries, and problems and solutions often transcend political boundaries.

Subp. 2. Water quantity information.

Quantity information for both surface and ground water is needed for a county to gain an understanding of water availability and use, and to enable a county to identify existing and potential problems relating to water quantity later in the planning process.

This basic information is fundamental to a county's understanding of its water and related land resources. It is needed to enable a county to understand the quantity, quality, distribution, availability, and existing uses of its water and related land resources. It

also is needed to enable a county to assess the implications of the information, or lack of good information, for future water and land use. It also is needed to help a county gain an understanding of the scope of state and federal regulatory programs and where management gaps may exist.

Subp. 3. Water quality information.

Quality information for both surface and ground water is needed to enable a county to understand the present condition of its water resources, limitations on its usefulness for various purposes, and to identify any water quality trends. It is also important for a county to find out where important water quality information is lacking, in order to assess future information needs.

Subp. 4. Information on special land uses and conditions that influence quality and quantity.

Information on special land uses and conditions that influence water quality and quantity is needed to assist a county in understanding the significant effects various special land uses can have on water resources.

This subpart requires information on eroding lands, irrigation, drainage, pollutant sources, and special geologic conditions.

Information on eroding lands is needed because erosion is one of the primary mechanisms by which pollutants reach water basins and watercourses. Erosion of the beds and banks of water basins and watercourses themselves also can cause serious water management problems.

Information on irrigation is needed to enable a county to assess potential ground water quantity and quality problems.

Information on public and private drainage systems is needed because artificial drainage can have profound effects on peak discharge rates and land use. In a county with intensive drainage systems, management of the systems can be one of the most difficult water problems facing the county board.

Information on pollutant sources is needed because landfills, hazardous waste sites, feedlots, wastewater discharges and other major sources of pollution can have a significant effect on the quality and potential use of a county's water resources.

Information on special geologic conditions is needed to enable a county to assess the vulnerability of its ground water systems to various sources of pollution.

Subp. 5. Information on related land resources.

Information on related land resources is needed to enable a county to understand the important interrelationships between certain land resources and a county's water resources. Poorly planned use or

development of certain land resources can have significant effects on water quality and quantity. This subpart requires information under the headings of wetlands, floodplains, shorelands, water-based recreation lands, fish and wildlife habitat, and unique features and scenic areas.

Information on wetlands is needed because of the role of wetlands in filtering water pollutants, storing floodwaters, and providing wildlife habitat and recreational opportunities. It is also important for a county to have information on its wetlands because they are regulated by both the state DNR and the federal Corps of Engineers.

Information on floodplains is needed because this is where floodwaters can cause tremendous amounts of property losses. Floodplain management is primarily carried out by local governments through floodplain zoning and regulation, and is an essential element of a comprehensive water plan.

Information on shorelands is needed because shoreland management is also a primary responsibility of local governments through shoreland zoning and regulation. Shoreland use can have significant effects on flood damage, water quality, recreational opportunities, and aesthetics.

Information on water-based recreation lands is needed to enable a county to evaluate the adequacy of these resources for present and future use.

Information on fish and wildlife habitat is needed to enable a county to understand the scope of state and federal fish and wildlife habitat plans and programs in the county, to understand the importance these resources have to the county's recreational opportunities and economy, and to assess the adequacy of these resources for present and future use.

Information on unique features and scenic areas is needed to ensure that a county gives consideration to these resources in its planning process, and recognizes the special protections they may have under other governmental programs.

The information required by Part 9300.0070 is reasonable because most of it is readily available from other governmental units or agencies. The proposed rule states that information is required only if it is available.

PART 9300.0080 EXPECTED CHANGES TO SURFACE WATER, GROUND WATER,
AND RELATED LAND RESOURCES.

This Part requires a county to identify expected changes to the surface water, ground water, and related land resources to comply with Minn. Stat. sec. 110B.04, subd. 6 (2).

Consideration of expected changes is needed to enable a county to anticipate water-related problems before they occur and develop management strategies to avoid or minimize expected problems. It also

equips a county to take advantage of opportunities that may be available to gain multiple use of existing resources or provide additional protection to priority water and related land resources.

PART 9300.0090 PROBLEMS AND OPPORTUNITIES.

This Part requires a county to identify problems and opportunities based on the water-related information it has gathered and the comments it has received from interested parties. It also requires a county to identify key issues relating to water quality, water quantity, special land uses and conditions, and related land resources.

Identification of problems and opportunities is a fundamental element of any comprehensive planning process. It is needed to guide a county in developing its goals, objectives, priorities, and plan of action later in the planning process.

It is reasonable because a county will have the information gathered under Parts 9300.0050 to 9300.0080, and the comments received at meetings held under Part 9300.0030, to use in identifying water problems and opportunities.

PART 9300.0100 ESTABLISHMENT OF COUNTY GOALS.

Parts 9300.0100 and 9300.0110 are the essence of the planning functions set out in the proposed rules.

Part 9300.0100 requires a county to state long-term goals for present and future water and land uses in its comprehensive water plan.

A statement of goals is needed to express the water and related land resources conditions that will be sought by the county.

It is reasonable to require a statement of goals because they are necessary to establish the framework for determining shorter-term objectives and a plan of action.

This part reflects the long-term implications of Minn. Stat. sec. 110B.04, subd. 6 (3).

PART 9300.0110 OBJECTIVES AND PLAN OF ACTION.

This Part requires a county to state measurable objectives and a plan of action in its comprehensive water plan to address problems and opportunities identified under Part 9300.0090.

Objectives and a plan of action are required to comply with Minn. Stat. sec. 110B.04, subd. 6 (3). They are needed to help ensure that the water planning process results in positive actions being taken to achieve the county's water management goals.

Requiring objectives and a plan of action is reasonable because they are crucial to successful implementation of a comprehensive water plan.

PART 9300.0120 PRIORITY ACTION CATEGORIES.

Subpart 1. Priorities required.

This subpart requires a county to establish priorities in its plan of action.

Subp. 2. Priority development.

This subpart requires that the priorities established reflect the urgency of problems and opportunities.

Subp. 3. Priority description.

This subpart requires a county to describe the actions to be taken by the county alone, and the actions requiring the cooperation of other local units or agencies. It also requires a county to state whether it has received commitments for needed cooperation.

Part 9300.0120 is needed to ensure that a county will assign priorities to specific elements of its plan of action. It is important to define priorities because no county will be able to take immediate action on all of its water management objectives. Action on certain water problems, such as major river flooding and groundwater contamination, may require cooperative efforts at the local, state, and federal levels and long-term approaches to alleviate the problem. Other actions, such as improving enforcement of county floodplain and zoning ordinances, can be taken quickly by the county acting independently.

Requiring a county to establish priorities in its plan of action is reasonable because it will allow county residents and other interested parties to evaluate a county's performance in implementing the plan.

PART 9300.0130 DESCRIPTION OF RECOMMENDED CHANGES IN STATE PROGRAMS.

This Part defines what must be included in a plan to describe recommended changes in state programs, policies, and requirements, if a county decides to include such recommendations. Minn. Stat. sec. 110B.04, subd. 6 (4) allows a county to describe changes it considers important to local water management.

This part requires the description of recommended changes to identify the specific program, policy, or requirement being addressed; to state the specific changes recommended; and to state the reasons the county considers the changes important.

It is reasonable because the recommendations would have no value if the state were unable to understand their intent and the reasons for them.

PART 9300.0140 LOCAL REVIEW AND POTENTIAL CONFLICTS.

Subpart 1. Applicability.

Minn. Stat. sec. 110B.08 requires local review and comment on a county's comprehensive water plan. This subpart states that Part 9300.0140 applies to the local plan review process, and the identification and resolution of conflicts between a comprehensive water plan and other local plans or official controls. See Minn. Stat. sec. 110B.04, subd. 6 (5) and (6).

Subp. 2. Identification of conflicts.

This subpart requires that conflicts between the comprehensive water plan and other local plans must be identified either during the planning process or in the formal local review process. It is consistent with Minn. Stat. sec. 110B.04, subd. 6 (5) and (6).

Subp. 3. During plan preparation.

This subpart requires other local units to notify the county developing a comprehensive water plan of any conflicts pursuant to Part 9300.0030, subp. 4, if they want the conflicts addressed during plan preparation.

Subp. 4. During plan review.

This subpart requires other local units to notify the county submitting a comprehensive water plan to them for their review of any conflicts not already identified in the county's proposed plan, if they want the conflict considered by the Water Resources Board during state review.

Subp. 5. Description of conflicts.

This subpart defines how a conflict between local plans must be described in a comprehensive water plan.

Subp. 6. Process to resolve conflicts.

This subpart requires a comprehensive water plan to describe what attempts have been made, or are underway, to resolve any conflicts between local plans.

Part 9300.0140 is needed to ensure that a comprehensive water plan adequately describes existing or potential conflicts with other local plans before it is submitted to the Water Resources Board for review. It also is needed to facilitate local resolution of conflicts during plan preparation or during the local review process.

It is reasonable because it will be advantageous to both the county and the state for as many local conflicts as possible to be resolved prior to submission of a comprehensive water plan for state review. Local issues should be resolved locally whenever possible.

PART 9300.0150 INCORPORATION OF PLANS AND RULES OF WATERSHED DISTRICTS AND INTERCOUNTY JOINT POWERS BOARDS

This Part follows Minn. Stat. sec. 110B.04, subd. 5, and makes it more specific by requiring that a county that changes the plans or rules of a watershed district or intercounty joint powers board that it incorporates into its comprehensive water plan must attach to its plan resolutions of support for the changes from all affected counties. It also defines a standard for demonstrating the necessity of the changes, which is that the plan element or rule requiring change does not adhere to the principles in Part 9300.0170, subpart 4.

This Part is needed to ensure that changes in watershed district or intercounty joint powers board plans or rules are supported by all affected counties, and to define the criteria that will be used to evaluate whether a county has adequately demonstrated the necessity for making the changes.

This Part is reasonable because it will ensure intercounty coordination on proposed changes to watershed plans or rules, and will help reduce controversies over proposed changes during the state review process.

PART 9300.0160 IMPLEMENTATION PROGRAM.

Subpart 1. Program and schedule required.

This subpart requires a county to state how and when the comprehensive water plan will be implemented.

Subp. 2. Program.

This subpart provides examples of what an implementation program could include, and requires a county to state the staff and financial resources available and needed to carry out the plan. It also requires a county that determines no actions are needed to explain why actions are not needed to address identified problems or opportunities.

Subp. 3. Agreements with local units.

This subpart requires a county to identify any components of its implementation program that will be carried out by another local unit by agreement, and to describe how and when such components will be implemented.

Subp. 4. Capital improvement program.

This subpart requires a county to describe any proposed capital improvement projects, and defines the information that must be presented to adequately describe such projects.

Part 9300.0160 is needed to add specificity to Minn. Stat. sec. 110B.04, subd. 6 (7), which requires comprehensive water plans to include an implementation program. It is necessary to require a

county to evaluate the staff and financial resources necessary to carry out its plan to ensure realistic expectations about what the plan will accomplish. It is necessary to require a county to explain why no actions are needed, if that is what the county board determines, to add accountability to the county's decisions on water management. It is necessary to require a county to identify plan components that will be implemented by other local units to ensure adequate coordination has occurred between the county and other local units. It is necessary to require a county to fully describe proposed capital improvement projects to ensure that the public, affected local units, and state agencies are adequately informed of proposed projects that could have significant financial, hydrologic, and environmental effects.

Part 9300.0160 is reasonable because the information it requires is essential to evaluating whether the implementation program is consistent with the plan's objectives and plan of action.

PART 9300.0170 STATE REVIEW.

Subpart 1. Submittal to state board.

This subpart requires a county to submit ten copies of its comprehensive water plan to the Water Resources Board for state review pursuant to Minn. Stat. sec. 110B.08, subd. 5. It also defines the "record" of the public hearing that must be submitted to be a transcript or tape recording. The county must include all comments received on the plan and a summary of changes made to the plan as a result of local review.

Subp. 2. State board consultation with agencies.

This subpart requires the Water Resources Board to transmit a copy of a comprehensive water plan upon receipt to each of the agencies listed in Minn. Stat. sec. 110B.08, subd. 5. The list includes the principal state agencies with expertise or authority in water and related land resources management. It also requires each of these agencies to review the plan for consistency with state law, and to identify within 45 days any portions of a plan it determines to be inconsistent with state law.

Subp. 3. State board determination of consistency with other plans.

This subpart establishes a standard for judging the consistency of a comprehensive water plan with the comprehensive water plans of other counties wholly or partially within affected watershed units or groundwater systems. The Water Resources Board must find a plan consistent with another plan, if it determines that the plan would not impede achievement of the goals, objectives, related actions, and implementation programs of the other plan.

Subp. 4. Principles for review.

This subpart defines the principles of sound hydrologic management of water, effective environmental protection, and efficient management that Minn. Stat. sec. 110B.04, subd. 4 (3) requires comprehensive water plans to be based upon.

The hydrologic principles emphasize the importance of: considering upstream and downstream effects of actions; preserving and using natural water retention areas; basing decisions on good information and technical analysis; recognizing important inter-relationships between surface and ground water, land use and water use, and water quality and quantity; and considering the variability of precipitation amounts. The principles of effective environmental protection recognize that: cumulative effects of actions should be considered; prevention of problems should be emphasized; overall environmental quality should be protected or enhanced; and public health and safety should be protected. The principles of efficient management were defined as follows: benefits of programs and projects should exceed the costs; programs should be funded adequately to achieve high-priority plan objectives; local water planning should be coordinated with other related local planning programs to minimize gaps and duplication of effort; comprehensive solutions to problems should be considered; and water conservation should be practiced.

The principles are reasonable because they embody concepts widely accepted by professional hydrologists and resource managers, and are stated in terms broad enough to provide counties flexibility.

Subp. 5. State board decision.

This subpart describes the procedure the Water Resources Board must follow in notifying a county of approval or disapproval of a comprehensive water plan. It is a restatement of provisions of Minn. Stat. sec. 110B.08, subd. 5, and is included merely to make the rules understandable.

Subp. 6. Resubmittal.

This subpart requires the Water Resources Board to identify those portions of a disapproved comprehensive water plan that require revision. It also states that the Water Resources Board must follow the same review procedures for revised portions of plans as it follows for originally submitted plans.

Part 9300.0170 is needed to add specificity to the general plan review procedures contained in Minn. Stat. sec. 110B.08. The requirement for ten copies of a comprehensive water plan to be submitted is to allow immediate transmittal to other agencies upon receipt. The requirement for a transcript or tape recording of the county's public hearing on its plan is needed to ensure an adequate record. Subpart 2 is needed to add certainty to the consultation process required by Minn. Stat. sec. 110B.08, subd. 5. The standard for determining plan consistency with other plans is needed to inform

counties of the test that will be used, and to add certainty to these decisions. Principles of sound hydrologic management of water, effective environmental protection, and efficient management need to be defined to provide an underlying basis for evaluating a plan's consistency with state law in cases where conflicts arise over whether a plan conforms with the intent of the law.

Part 9300.0170 is reasonable because it will help counties understand the procedure and criteria the Water Resources Board will use in reviewing plans, and will promote consistency in plan review.

PART 9300.0180 AMENDMENT OF LOCAL PLANS AND OFFICIAL CONTROLS.

Subpart 1. Notification after plan adoption.

This subpart is a restatement of Minn. Stat. sec. 110B.12, subd. 2 and is included only for the purpose of making the proposed rule complete and understandable. It requires a county that adopts an approved comprehensive water plan to notify local units within the county, and provides the local units 90 days to forward their water and related land resources plans and official controls to the county for review.

Subp. 2. County review.

This subpart requires a county board to review the local plans and official controls submitted to it pursuant to subpart 1 within 180 days.

Requiring a specific review period is needed because the CLWMA does not specify any timeframe for county action.

It is reasonable because 180 days is the same time period provided for revision of local plans and official controls in response to county recommendations for changes.

Subp. 3. Local appeal.

This subpart gives local units 60 days to appeal county board recommendations for changes to the Water Resources Board. It is a restatement of Minn. Stat. sec. 110B.12, subd. 4 and is included only for the purpose of making the proposed rule complete and understandable.

Subp. 4. Revision to local plans and official controls.

This subpart is merely a restatement of Minn. Stat. sec. 110B.12, subs. 3 and 5, and is included only for the purpose of making the proposed rule complete and understandable.

PART 9300.0190 AMENDMENT OF A COMPREHENSIVE WATER PLAN.

Subpart 1. Amendment required.

This subpart requires a comprehensive water plan to extend through the year 1995 or any later year evenly divisible by five.

Minn. Stat. sec. 110B.04, subd. 4 (5) requires a comprehensive water plan to be updated before the period covered expires.

Subp. 2. Description required.

This subpart requires a comprehensive water plan to describe the procedure the county will use for amending the plan.

Subp. 3. Procedure and criteria.

This subpart states that plan amendments must be prepared and reviewed in the same manner as an initial plan. It is consistent with Minn. Stat. sec. 110B.08, subd. 7, which requires plan amendments to be submitted to the Water Resources Board in the same manner as a comprehensive water plan.

Subparts 1 and 2 of Part 9300.0190 are merely restatements of Minn. Stat. sec. 110B.04, subds. 4 (5) and 6 (8), and are included only for the purpose of making the proposed rule complete and understandable.

Subpart 3 makes the CLWMA more specific by requiring that amendments to a comprehensive water plan must be reviewed in the same manner as an initial plan. This subpart is reasonable because it provides a county flexibility in determining the plan amendment procedure it will follow.

PART 9300.0200 INFORMAL RESOLUTION OF DISPUTES.

Subpart 1. Applicability.

This subpart states that the procedures provided in Part 9300.0200 may be used by a county or another local unit to: determine the meaning of any provision of the CLWMA or these proposed rules; resolve any conflict between comprehensive water plans or between a comprehensive water plan and a local plan or official control; or settle any other dispute relating to a comprehensive water plan. It further states that use of the informal dispute resolution procedures of Part 9300.0200 is without prejudice to any party's use of the formal dispute resolution procedures of Part 9300.0210.

Subp. 2. Request for meeting; response.

This subpart requires a local unit desiring to initiate informal resolution of a dispute to submit a written request for a meeting with the chair of the Water Resources Board. It requires the request to identify the issue involved, the local units involved, and the pertinent provisions of the plan, statute, or rule involved in the dispute. It also requires the chair to acknowledge requests for a meeting in writing, and to request written responses from other interested local units.

Subp. 3. Response and meeting.

This subpart allows the chair to either informally resolve the dispute or call a meeting with the involved local units. At a

meeting, the chair may consider any relevant evidence or argument on the issues in dispute. The chair's decision must be reduced to writing and sent to all interested local units. It is effective after 60 days, unless a petition is filed within that time for a contested case hearing under Minn. Stat. sec. 110B.25, subd. 3 and Part 9300.0210, subpart 2.

Part 9300.0200 is needed to establish procedures for the informal dispute resolution process provided under Minn. Stat. sec. 110B.25, subd. 1. It is reasonable because it provides all parties with proper notice, an opportunity to present evidence and argument on the issues, and adequate time to decide whether to petition for a contested case hearing. The informal dispute resolution process will provide an opportunity to work out local disputes with minimal expenditures of time and money.

PART 9300.0210 FORMAL RESOLUTION OF DISPUTES.

Subpart 1. Applicability.

This subpart explains that a county or other local unit may petition for a contested case hearing by satisfying the requirements of Minn. Stat. sec. 110B.25, subsds. 2 and 3, and Part 9300.0210.

Subp. 2. Petition for hearing.

This subpart requires a petition for a contested case hearing to contain information necessary to lay the groundwork for an effective hearing: the name of local unit petitioning; the name, address, and phone number of the person representing the local unit; a request for hearing; a statement of the issues; and proof of service of a copy of the petition on all other involved local units.

Subp. 3. Filing of petition.

This subpart states that a petition is considered filed upon receipt by the Water Resources Board. It also requires the Board to acknowledge receipt in writing.

Subp. 4. Request for judge.

This subpart requires the Water Resources Board to file a request for an administrative law judge under part 1400.5300 within five days of receipt of a sufficient petition to deal with contested issues expeditiously.

Subp. 5. Hearings.

This subpart states that hearings are governed by the contested case procedures of Minn. Stat. chapter 14 and by parts 1400.5100 to 1400.8400.

Subp. 6. Hearing fees.

This subpart states that the Water Resources Board shall not be considered a party to the contested case proceeding for the purpose of apportioning hearing costs.

Part 9300.0210 is needed to add specificity to the formal dispute resolution process provided under Minn. Stat. sec. 110B.25, subds. 2 and 3. It is reasonable because it will make the formal dispute resolution process easier to follow and understand. It is reasonable not to consider the Water Resources Board as a party to a formal dispute resolution proceeding because the Board will be acting in a quasi-judicial capacity.

V. CONSIDERATION OF IMPACTS ON EXPENDITURES OF PUBLIC MONIES BY LOCAL PUBLIC BODIES, AGRICULTURAL LAND, AND SMALL BUSINESSES

A. Expenditures of Public Monies by Local Public Bodies (Minn. Stat. sec. 14.11, subd. 1)

Preparation of a comprehensive water plan by a county under the CLWMA is not mandatory. Adoption of the proposed rules will not require the expenditure of public moneys by local public bodies, unless a county elects to prepare a comprehensive water plan.

B. Agricultural Land (Minn. Stat. sec. 14.11, subd. 2)

The proposed rules will not have any direct adverse effects on agricultural lands in the state.

C. Small Businesses (Minn. Stat. sec. 14.115)

The proposed rules will not have any direct effects on small businesses in the state.

VI. CONCLUSION

The staff of the Water Resources Board has in this statement made its presentation of facts establishing the need for and reasonableness of the proposed rules relating to the Comprehensive Local Water Management Act.

Date: November 7, 1986



Mel Sinn
Executive Director
Water Resources Board