

METROPOLITAN LOCAL WATER MANAGEMENT RULES

**STATEMENT OF NEED AND REASONABLENESS
FOR
MINNESOTA RULES - PARTS 8410.0010 TO 8410.0180**

**MINNESOTA BOARD OF WATER
AND SOIL RESOURCES**

March 17, 1992

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STATEMENT OF NEED AND REASONABLENESS

SECTION I - INTRODUCTION

These rules were prepared pursuant to legislative mandate provided by Chapter 601 of the Laws of 1990. The rules affect how watershed management is conducted in the seven county metropolitan area, including Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties. Chapter 601 directed the Minnesota Board of Water and Soil Resources (BWSR) to adopt rules governing five major areas relating to watershed planning and implementation, namely:

1. the content of joint powers agreements (M.S. 103B.211, Subd. 1,(b);
2. standards and procedures for removal of members of watershed management organization boards (MS 103B.227, Subd.3);
3. standards and requirements for amendments to watershed plans (MS 103B.231, Subd. 6, (b);
4. standards and criteria for making determinations of whether watershed management plans are being implemented (MS 103B.231, Subd. 10, (b); and
5. requirements and standards for annual financial reports, financial audits and activity reports (MS 103B.231, Subd. 14).

In addition to this authority and mandate, the BWSR has general rule making authority for implementing all its programs pursuant to MS 103B.101, Subd. 7.

- A. **History of Local Water Planning in the Metropolitan Area - The Metropolitan Surface Water Management Act (Act)** was passed into law in 1982. The current law is contained in Minnesota Statutes Section 103B.201 to 103B.255. The Act was passed into law as Chapter 509 of the Laws of 1982. The Act is the basis for local watershed planning and management in the seven county metropolitan area. Watershed management plans prepared pursuant to the Act are commonly referred to as "509" plans in reference to the original act.

The Act mandated that comprehensive surface water management plans be developed on a watershed basis throughout the metro area. A primary purpose of the Act was to provide for better coordinated management of surface water among local government units. Where no watershed district was in existence at the time the Act was passed, local government was given the option to form a Watershed Management Organization (WMO) using joint powers agreements to accomplish the necessary planning. There were 10 watershed districts in existence at the time the Act was passed into law. Subsequently, 36 WMOs were formed by joint powers agreements thus creating a total of 46 separate watershed planning entities. Most WMOs have since adopted a plan and are in some phase of implementing it. Upon adoption, each affected city and town must prepare and implement its own local watershed management plan in compliance with all WMO plans affecting it.

The Act was amended in 1987 to allow counties to develop groundwater management plans on a voluntary basis. The amended law is now simply referred as the Metropolitan Water Management Act (Act).

- B. **Recommendations of the Metropolitan Local Water Management Task Force -** During 1989, a task force established by the legislature studied the status and effectiveness of the local water management planning activities brought about as a result of the Act. The task force concluded that there were both successes and failures. The failures were related somewhat to lack of state oversight and guidance of the plan development and implementation process. The task force recommended that the legislature revise the Act in order to implement its recommendations. The recommendations were contained in a report entitled "Report of the Metropolitan Local Water Management Task Force to the Governor and Legislature of the State of Minnesota", dated December 15, 1989. The work of the Task Force resulted in the enactment of Chapter 601 as referenced in the introduction above.
- C. **The Rule Making Process -** The BWSR developed the proposed rules with the assistance of a 44-member advisory committee. (Two of the original members resigned from the committee during the course of the committee process.) The advisory committee was comprised of interested representatives of nine watershed management organizations (WMOs) and or cities, four watershed districts, four counties, seven soil and water conservation districts, eight state or regional agencies and nine associations or interest groups. Specifically, the membership included representatives from:

Local Government: Anoka County, Anoka Soils and Water Conservation District (SWCD), Black Dog Watershed Management Organization (WMO), Bassett Creek Watershed Management Commission, Carver SWCD, Coon Creek Watershed District (WD), Dakota County, Dakota SWCD, Hennepin Conservation District, Lower Run River WMO, Nine Mile Creek WD, Ramsey County, Ramsey SWCD, Ramsey-Washington Metro WD, Richfield-Bloomington WMO, Riley-Purgatory-Bluff Creek WD, Sand Creek WMO, Scott SWCD, Shingle Creek WMO, Six Cities WMO, Washington County, and Washington SWCD.

Associations: Association of Metro Municipalities, Citizens League, Consulting Engineers Council of Minnesota, League of Women Voters, Minnesota Association of Soil and Water Conservation Districts, Association of Metro Soil and Water Conservation Districts and Wetlands Forum.

State and Regional Agencies: Department of Agriculture, Department of Health, Department of Natural Resources, Metropolitan Council, Metropolitan Waste Control Commission, Pollution Control Agency, State Planning Agency and University of Minnesota.

The full advisory committee met a total of seven times on the following dates: November 1, 1990; December 13, 1990; February 7, 1991; March 21, 1991; June 6, 1991; July 18, 1991; and October 31, 1991. Except for the November 1, 1990 meeting, a draft of the rule was reviewed at each meeting. The rule presented represents the consensus building efforts of the committee. The committee reviewed and commented on seven separate drafts of the rules. The rule as represented by this SONAR is the eight draft of the rule and includes the committee recommended revisions to the seventh draft. At the October 15, 1991 meeting, of the members present, the advisory committee voted unanimously to recommend that the BWSR proceed to formally adopt the eighth draft of the rule.

During the review of the first two drafts of the rule, the committee members were required to state in writing what concerns they had about each section of the rule and to suggest alternative language the BWSR should consider. BWSR staff in turn would respond to each comment in writing in the

minutes of the meeting, either agreeing to the revision or stating why the suggestion was not used. The entire process resulted in over 625 pages of written comments and over 200 pages of meeting minutes. This phase of the process helped to quickly focus on the major issues and build a framework for the rule. In the later drafts of the rule, free discussion of the various issues was allowed, once the framework was established.

For a number of major issue areas subcommittees were established and met to discuss topic areas in greater detail. Subcommittees met seven times and discussed in detail the following issues: wetland protection, water quality monitoring, storm water design standards and plan implementation.

The sixth draft of the rule was presented at six public informational meetings held at three locations to solicit additional comments. Turn out was light at these meetings and no new significant issues were brought forth which the advisory committee had not brought up and discussed. About 450 copies of the sixth draft were mailed to local governmental units and other interested parties prior to the commencement of the public meetings. The public meetings were held at the following times and places:

September 3, 1991 - 7:00 p.m. - White Bear Lake City Hall
September 4, 1991 - 7:00 p.m. - Minnetonka Community Center
September 5, 1991 - 2:00 p.m. - Burnsville City Hall
September 10, 1991 - 9:00 a.m. - White Bear Lake City Hall
September 11, 1991 - 9:00 a.m. - Minnetonka Community Center
September 12, 1991 - 7:00 p.m. - Burnsville City Hall

- D. **Concept of the Rules** - About one half of the rules deal with the content of second generation watershed management plans of both watershed management organizations and of metropolitan cities and towns. The other half of the rules define the required content of joint powers agreements, annual reporting requirements of watershed management organizations and procedures for dealing with situations where plans are not being properly implemented.

The rules will have an impact on all WMOs. Generally, the rules will have the most limited effect on those WMOs that have established successful watershed management programs. The sections of the rules dealing with plan content are structured to "guide" the planning process instead of trying to prescribe the same solutions for every watershed.

Section II of this SONAR is an itemized account of each subpart of the rule wherein the rule subpart is briefly summarized, a reason for inclusion is given and a statement of justification is presented. Section III explains the potential impact or lack thereof the rule has on agriculture and small businesses. Section IV explains the potential fiscal impact the rules may have on local governments.

SECTION II - JUSTIFICATION OF EACH PART OF THE PROPOSED RULES

Section 8410.0010 - Scope

Summary of Content - This section of the rule outlines that the rules apply to the general administration of watershed management activities and to amendments to existing plans made after January 1, 1995. Plan amendment schedules and/or amendment procedures are also outlined along with BWSR's responsibilities and authorities to affect implementation in cases where a plan is not being properly implemented.

Reason for Inclusion - To provide the reader with clear direction regarding what metropolitan watershed activities are covered by these rules and when various aspects of the rule are effective.

Justification for Section 8410.0010

- Subpart 1: The proposed time lines associated with the amendment schedule and/or amendment procedures were reviewed at length with the advisory committee. Concerns related to the time line being too long were discussed along with opposing points of view that the WMO should have the ability to use the plan for a reasonable period of time prior to being required to amend the plan to conform to these new rules. In establishing the effective date of the rule with respect to plan content, the BWSR Advisory Committee considered the amendment schedules that were included in previously approved first generation plans, the length of time that has passed since the first plans were approved, and general feedback from the advisory committee. Subsequently, the committee settled on the requirement that a WMO must amend its plan consistent with the amendment schedule and procedures outlined in the plan, but not later than 10 years from the date of initial plan approval.
- Subpart 2: The general feeling of the advisory committee and the BWSR was that the BWSR should have the power to order plan implementation, but only under selected circumstances. The committee and the BWSR felt it was inappropriate to provide the BWSR with the authority to require the WMO to modify a previously approved plan. The BWSR's authority should be limited to only taking action if an approved plan was not being properly implemented.

Section 8410.0020 - Definitions

Summary of Content - Definitions for 23 key words, phrases, or abbreviations are provided as they specifically apply to Parts 8410.0010 through 8410.0180 of these rules. This document will only attempt to explain the definition of terms thought to important to the proper interpretation of the subject rules since many are self explanatory.

Reason for Inclusion - To provide a clear definition of commonly used terms within this rule.

Justification for Key Terms Contained in Section 8410.0020

- Subpart 3: Minnesota Statutes, section 103B.231, subd. 6 requires that each WMO plan contain a capital improvement program but does not define what constitutes a capital improvement. The advisory committee disclosed that there was considerable variance in what local government defined as a capital improvement. Consequently, it was agreed that maintenance of existing improvements should explicitly not be construed to be a capital improvement since only a minority of local governments include maintenance in their local definition.
- Subpart 10: Many amendments to WMO plans are minor in nature in that they are aimed at providing administrative efficiency or clarification of policies presented in the plan. The advisory committee and BWSR staff agreed that such amendments should not have to be subjected to the rather lengthy, detailed review process prescribed in Minnesota Statutes section 103B.231, Subd. 8 and 9 if ample public disclosure was made and the amendment did not

abrogate the plan's implementation program.

- Subpart 13: The purpose of the Act contained in Minnesota Statutes section 103B.201 makes reference to natural surface water storage and retention systems but doesn't provide any guidance to what waters the Act expects WMOs to address in their plans. The definition clearly defines those waters of the state that should be the focus of WMO planning efforts.
- Subpart 19: BWSR staff urged that planning goals be established on a finite basis so that measures of success could be achieved. The advisory committee recommended that WMOs be given the latitude to define what is the appropriate level of planning due to the unique characteristics of each watershed. Thus the definition of "subwatershed" is purposely vague in order to meet the objectives of each parties' perspective. The term is used in section 8410.0080, Subp. 2 and 8410.0100, Subp. 3.
- Subpart 23: The issue of what is a wetland and what is not is of particular concern with respect to watershed management. In order lessen confusion on a sometimes very technical issue, the advisory group agreed that reference to the appropriate state statute defining "wetland" will provide the needed uniformity in application of the rule and consistency with the Wetland Conservation Act of 1991. Section 8410.0100, Subp. 1, A. sets forth specific directive as to how wetlands are to be regulated.
- Subpart 24: The concept of mitigating the negative impacts of development on wetlands is becoming an important issue in watershed management. Many local governments are proposing to establish "wetland banking systems" in order to allow flexibility in achieving their watershed management goals. The phrase is loosely defined since application of the concept is in its infancy while there is a need to condone the practice as a valid watershed management tool.

Section 8410.0030 - Content of Joint Powers Agreements

Summary of Content - This section of the rule outlines the minimum information that must be included in a WMO joint powers agreement. Specific information that must be provided or addressed includes, but is not limited to; 1) legal description of the WMO's boundaries, 2) budget and work plan, 3) terms of compensation, 4) powers and duties of the WMO and its officers and members, 5) the duration of the joint powers agreement, and 6) the process that must be followed if the agreement is to be dissolved. The schedule for updating joint powers agreements in conformance with these rules is also outlined.

Reason for Inclusion - Minnesota Statutes Section 103B.211, Subd. 1(b) mandated that BWSR adopt rules prescribing minimum requirements for the content of watershed management organization joint powers agreements. M.S. Section 103B.211, Subd. 1(c) also mandates the specific voting requirements for decisions of WMOs and, therefore, it is appropriate for the rule to cross-reference said requirements.

Justification for Section 8410.0030

General: The minimum content requirements for joint powers agreements contained in the rule attempts to provide direction to WMOs concerning issues that typically need to be clarified between members of the WMO. The general concern of the BWSR and the advisory committee was that the minimum content requirements for the joint powers agreement should remain very limited to prevent the unproductive effort of addressing issues that are

not factors within a given WMO. It is the BWSR's position that the proposed rule language is consistent with these considerations. The language associated with this content of joint powers agreement section has been written to provide each WMO with latitude concerning many issues that should be addressed in the joint powers agreement. Rather than being overly prescriptive, it was the intention of the BWSR to allow the WMOs to address these issues utilizing a procedure or process they feel would be most appropriate.

- Subpart 1.G. The need for establishment of citizen and technical advisory committees received considerable deliberation. Some individuals felt it appropriate to require that such committees be established, others felt that they were not necessary. The language, as drafted, provides the WMO with latitude concerning the need for these committees and specifically requires the WMO to develop procedures that would provide for the establishment of these committees should their formation be desired.
- Subpart 1.J. Considerable discussion and deliberation went into the extent to which specific requirements for notification on the location and time of meetings should be spelled out. The language requiring that a process be developed and inserted into the joint powers agreement allowing the WMOs to specifically define the process was deemed most appropriate as most WMOs have specific ways of notifying appropriate individuals of the location and time of meetings.
- Subpart 1.L. Considerable deliberation was undertaken regarding the need for a minimum number of WMO meetings. Many members felt that a minimum requirement to have meetings scheduled at least annually was too lax, and WMOs should be required to meet more frequently. It was the BWSR's perspective to require at least an annual meeting, but rely on the "good faith" actions of the WMOs to meet as frequently as necessary to properly manage water resources.
- Subpart 2: The BWSR carefully considered various alternatives concerning the time table for updating joint powers agreements. Some members of the advisory committee wanted the time period shortened and others wanted it lengthened to accommodate various considerations. After discussion, it was the general consensus of the advisory committee that updating the joint powers agreements no later than January 1, 1993 or one year after adoption of these rules was a reasonable time for this task.
- Subpart 3 To address situations of non-performance particularly in the more rural areas, the draft rule language provides that counties may be members of joint powers agreement WMOs when the non-performance conditions described in the Minnesota Statutes Section 103B.211 Subdivision 3 are present.

Section 8410.0040 - Removal of Organization Representatives

Summary of Content - This section of the rule outlines the terms and conditions under which a WMO representative could be removed. An appeal process is also outlined with the BWSR acting as an appeal authority in such matters.

Reason for Inclusion - Minnesota Statutes Section 103B.227, Subd. 3 requires the BWSR to adopt rules prescribing standards and procedures for removing members of WMOs.

Justification for Section 8410.0040 - The intention of the proposed language is to provide a mechanism through which an individual member may be removed from the position by the appointing authority. Considerations regarding the removal respond to performance related issues as well as for the removal of an individual for virtually no reason provided they were appointed to the WMO board at the will of the appointing authority. If the appointing authority appoints an individual at will, they may also remove the individual at will. It is the intention of the BWSR to also provide an appeal procedure through which any decision of the appointing authority may be directed to the BWSR for resolution.

Concerns relating to the ability of appointing authorities to remove previously appointed managers at will, were typically based on political realities, changes in job title and/or classification, firing or layoffs, etc. Views were expressed that dictated there should be a removal mechanism for individuals serving an indefinite term at the pleasure of the appointing authority even if the member's performance was satisfactory. The classic situation of concern to many members of the advisory committee was when a city appointed its city engineer or director of public works to the WMO board, and then due to internal personnel actions of the city, the appointed individual was no longer in a position to represent or respond to the local community's wishes in the fashion so desired.

CONTENT OF WATERSHED MANAGEMENT ORGANIZATION PLANS

Section 8410.0050 - Executive Summary

Summary of Content - This section of the rule requires that each plan contain an executive summary briefly describing the general content of the plan.

Reason for Inclusion - This section is included to provide a consistent format typically found in planning documents and reports. The requirement for an executive summary is intended to give the uninformed reader a quick overview of the WMO's problems, policies and goals.

Justification for 8410.0050 - It was the intention of this section to be non-prescriptive and allow for WMOs to have significant amount of latitude concerning the content of this section of the plan. The advisory committee also expressed concerns regarding the need for this section to be non-prescriptive. Overly prescriptive language in this section was deemed to be mettlesome and inappropriate.

It was the BWSR and advisory committee's feeling that an executive summary was an important part of the document if the WMOs perspectives concerning water resource management are to be disseminated to appropriate individuals within the jurisdiction of the WMO.

Section 8410.0060 - Land and Water Resource Inventory

Summary of Content - This section of the rule indicates that each plan must contain an inventory of water resource and physical factors affecting the water resource based upon existing records and publications. The rules provide that existing data publications and maps may be included by reference if the plan summarizes the content and specifies where the publication can be obtained at a convenient location. Required land and water resource data includes information on precipitation, general geology and topographic data, water based recreation and land ownership, fish and wildlife habitat, unique features and scenic areas, and information on pollutant sources.

Reason for Inclusion - M.S. 103B.231, Subd. 6 (a) (1) requires that plans describe the existing physical environment, land use and development in conjunction with proposed development proposed in comprehensive plans. M.S. 103B.231, Subd. 6 (a) (2) further requires plans to present information on the hydrologic system, including existing public drainage systems and problems related thereto.

Concerns and Justification for Section 8410.0060

General: The overriding concern expressed by the BWSR, the advisory committee and others providing comments on the plan was that the information required as part of this inventory should be limited to the greatest practical extent. These comments were based on the concern that the expenditure of resources needed to develop an exhaustive inventory could be a non-productive water resource management expense.

Other concerns were expressed indicating that without adequate land and water resource inventory information, proper surface water management cannot be completed. Furthermore, the development of a plan to address water resource management concerns is not possible without this inventory information.

The BWSR attempted to limit the land and water resources information requirements to only those which were deemed absolutely necessary, and attempted to reduce the effort involved by allowing the adoption by reference of data, publications and maps if available locally. It was the intention of the BWSR, however, to require that each WMO have easy access to the required information so that it can be available to assist the WMO in the proper management of water resources in areas over which it has jurisdiction.

There was considerable discussion on how the surface water resource data required as part of this section of the rule would be obtained if the state agencies having this information were not cooperating with the WMO in a timely manner or providing the information in a readily useable format. It was the BWSR's perspective that if such information was not provided in a reasonable manner, this would be taken into consideration at the time the WMO plan was brought to the BWSR for approval.

- Subp. 2 Precipitation data was deemed an important piece of water resource management information. The BWSR intends to develop a standard set of precipitation information that can be made available to WMOs as they prepare their plan so this task will not need to be repeated by each WMO as their plan is updated.
- Subp. 3 Information on the general geology and topography within the WMO was deemed necessary if surface water resources are to be properly managed. Groundwater, surface water connections and information on aquifers and the geology of the region was also deemed necessary in order for the WMO to adequately address surface water issues that may have an impact on groundwater management.
- Subp. 4 The surface water resource data required as part of this plan was acknowledged by the BWSR to be somewhat extensive, however, most of the information required has been previously developed and is available by simply requesting it from various state agencies or local units of government.

Issues regarding the required inventory of functional values of the wetlands present or provisions

for a phased inventory, or the adoption of a process to identify function of values on a case by case basis were carefully considered. These inventory requirements were in deference to the new wetland management act outlined in Minnesota Statute Section 103B.3355. Future development of wetland rules associated with this statute were intended to be taken into consideration when the functional values of the wetland are addressed in the WMO plan.

- Subp. 5 It was the expressed intention of the BWSR to not require extensive groundwater information in surface water management plans. However, plans must acknowledge the inter-relationship between surface and groundwater resources and provide information concerning these resources to the extent that surface water may be managed with a concern toward proper management of groundwater resources.
- Subp. 8 Concerns regarding this section included suggestions to eliminate non-water resource related inventory information such as information on hiking trails and unique features in scenic areas. The language was adjusted based on these comments to require inclusion of such information only if it has a direct relationship to the management to surface water resources.

Section 8410.0070 - Impact on Other Units of Government

Summary of Content - This section of the rule discusses how WMOs must address the impact that the WMO plan will have on other affected units of government.

Reason for Inclusion - M.S. 103B.201 defines one of the purposes of the Act to establish uniform polices and goals. Further M.S. 103B.231, Subd. 4 requires that WMOs identify inconsistencies with other plans and to coordinate their planning activities with other units of government.

Concerns and Justification for Section 8410.0070 - The BWSR feels strongly that there is a need for the WMO to have a clear perspective on the water resource management goals and policies of other agencies having jurisdiction over the water resources within the WMO. This knowledge would allow the WMO to develop a plan that is intended to be as consistent as possible with the other agencies goals and polices. It was also the intention of the BWSR to require that WMOs clearly outline and justify any anticipated inconsistency between the goals and policies it drafts in its WMO plan and the goals and policies of the other local, regional and state review authorities. The BWSR also felt it important that this information be provided prior to the establishment of the WMO goals and policies and also prior to the final draft plan being submitted to these agencies for their review. In the interest of expediency, these rules do allow the WMO to proceed with the plan development if the goals and policies of these agencies is not furnished within 45 days of the date the WMO request such information.

Section 8410.0080 - Establishment of Goals and Policies

Summary of Content - This portion of the rule directs WMOs to establish specific goals and policies concerning, at a minimum, the following water resource based issues: water quantity, water quality, recreation, fish and wildlife, enhancement of public participation, information and education, public ditch systems, groundwater, wetlands, and erosion.

Reason for Inclusion - M.S. 103B.231, Subd. 6 requires that plans set forth in the objectives, policies and conditions that will be sought for a variety of topics including water quality, natural resource protection and water quantity.

Justification for Section 8410.0080

General: It is the intention of the BWSR that WMO plans establish goals and policies that are in some way measurable and can be quantified. Vague or non-measurable goals would typically not be in conformance with the intent of these rules. The test for goals and policies would generally relate to the ability of the WMO or review agency to determine if the water resource management goals have been met within a specified time period.

Advisory committee members expressed concern that the measurements concerned with determining if the goals and policies were met could be cost prohibitive and would take away resources that otherwise would be available to promote or implement proper surface water management practices. The BWSR attempted to reach some middle ground concerning these issues and developed corresponding rules that were non-prescriptive to allow the WMO's flexibility in establishing goals and policies and identifying the way the success or failures of these goals will be quantified.

Subp. 2 The rules provide for adherence to Minnesota Statute 103B.3365 which requires that runoff from development creating more than one acre of new impervious surface to be properly managed. If a comprehensive plan for a city is available and has been approved, on-site management practices for such parcels can be eliminated.

This section also requires the maximum allowable peak runoff rate be established for "appropriate subwatersheds". Considerable discussion and consideration ensued regarding what is the definition of an appropriate subwatershed. Generally speaking, the BWSR felt that WMOs should be given the flexibility to decide what is an appropriate subwatershed based on the policies and goals unique to the WMO. Subwatersheds could be based on jurisdictional or hydrologic boundaries. Furthermore, particularly in undeveloped watersheds, it was the BWSR's perspective that the establishment of peak allowable runoff rates from these areas could be facilitated through the development of appropriate controls when the watershed is developed.

Subp. 3 The water quality section states the relationship of land use to water quality should be considered when developing goals and policies. The direction provided here is that WMOs should recognize that if specific water quality goals are to be met, the land use within the watershed should be managed to limit non-point source pollution from the runoff generated within it. The use of buffer strips and open space around the perimeter of water bodies for which high quality water is planned, is an example of managing land use to protect water quality.

The water quality section of this part of the rule also states that goals and policies should be developed to strive for compliance with applicable water quality standards and be suitable for the intended uses of natural surface water storage and retention systems. This infers that a water body classification may likely be necessary in order to develop goals and policies. It is the BWSR's position that as part of the development of the WMO plan, the classification of water bodies within the WMO is an integral part in developing appropriate goals and policies within given areas of the watershed. The classification system for these water bodies has been left intentionally vague to allow the WMOs flexibility in this anticipated classification process.

- Subp. 5 Concerns were expressed regarding requiring enhancement of public participation, public information or public education programs. Comments were received from opposite perspectives indicating either advisory committees and public information programs should be absolutely required, or that advisory committees and public information programs were a non-productive expenditure of resources. Non-prescriptive language was adopted which allows the WMO to address the issue as they see fit.
- Subp. 6 The WMO's involvement in managing officially established county and judicial ditches within the WMO must be defined as part of this planning activity. In the past, watershed districts have typically assumed authority over county and judicial ditches at the time the watershed districts were formed. Joint powers WMOs typically have not managed public ditch systems. However, since ditch management can significantly affect water resources, it is appropriate that WMOs decide what their role is. The process and implementation of ditch management activities must be defined in the plan so that the plan's goals and policies are not inadvertently subverted.
- Subp. 7 This section of the rule provides that the WMO assess the need and degree of involvement that the WMO shall have in groundwater management if a county groundwater plan has not been commenced at the time the WMO plan is being developed. It is the intention of the BWSR to not require the development of a specific groundwater plan as part of this surface water management plan unless the WMO feels it is absolutely necessary to do so. In the seven-county metro area, Anoka County was identified as the single county which has not developed or is in the process of developing a county groundwater plan. Again, the language in this section of the rule is non-prescriptive, and allows the WMO the flexibility to assess the need and degree of involvement that it shall have in groundwater management. It was also the BWSR's intention to require that if a county groundwater plan has been developed, that the WMO plan be consistent with the goals and policies of the county groundwater plan as provided for in M.S. 103B.255 and M.S. 103B.231, Subd. 4.

Section 8410.0090 - Assessment of Problems

Summary of Content - This section of the rule describes the procedures and methods that must be followed to perform a comprehensive assessment of existing and potential water resource related problems. The assessment of existing and potential problems must, at a minimum, identify and address issues regarding lake and stream water quality problems, flooding and stormwater rate control problems, and problems related to soil erosion and/or current or projected land use practices. The assessment must also review the adequacy of various regulatory or maintenance programs to provide assurances that water resources are properly managed and protected with the WMO.

Reason for Inclusion - M.S. 103B.231, Subd. 6 requires that plans contain an assessment of existing and potential problems.

Justification for Section 8410.0090 - It is the BWSR's perspective that the assessment of problem section is one of the most important planning activities that will take place as part of this plan development. The rules require that each plan contain an assessment of existing and potential water resource related problems using whatever means are available to perform this assessment. If the problem assessment is executed properly, existing water resource related problems will be clearly identified and potential water resource related problems can be avoided. It was the BWSR's position that a fairly comprehensive listing of the topic areas to be covered by specifically listed in this rule to ensure that this important planning activity

is thoroughly completed. It was also the BWSR's perspective that if this assessment is carefully completed, the intention of the law to limit future capital expenditures will be realized.

Section 8410.0100 - Implementation Program

Summary of Content - This portion of the rule requires each plan describe an implementation program consisting of non-structural, structural, or programmatic solutions to the problems, issues and goals identified in previous sections. The implementation program must provide a comprehensive description of the regulatory controls, stormwater and drainage design performance standards, information programs, data collection programs, management programs, and structural solutions that will be followed to address the water resource management problems, issues and goals of the WMO.

Reason for Inclusion - M.S. 103B.231, Subd. 6 requires that plans set forth a management plan as well as an implementation program consistent with the management plan. This section further requires the BWSR to adopt rules to establish standards and requirements of watershed plans, including the nature of required controls and uniform erosion control, stormwater retention and wetland protection ordinances.

Justification for Section 8410.0100

General: The implementation program section of this rule is deemed to be the heart of the WMO planning activity. The over-riding concern in the drafting of this implementation program is to assure that the plans provide and identify specific and clearly define non-structural, structural, and/or programmatic solutions to the problems issues and goals identified in the plan. Furthermore, the BWSR interprets the work of the 1989 Legislative Task Force and the intent of the Act to clearly define the specific party responsible for carrying out various aspects of the implementation program so that accountability is defined and achieved.

Subpart 2.A. In regard to wetland protection, plans must anticipate future rules to be developed pursuant to the Wetland Conservation Act of 1991, and Chapter 354 of the laws of 1991. Clearly, the original Act intended that wetland protection and management be a major focus of watershed plans. Because the wetland conservation act post-dates the Act, it is imperative that the plans thoroughly consider and describe how wetlands will be regulated and managed.

Subpart 2.B. It was the BWSR's intention to allow for the adoption by reference of erosion and sediment control guidelines or best management practices that are previously published. If a WMO utilizes this approach, the responsibilities for erosion control plan review permitting and enforcement need only be defined.

Subpart 2.D. It is the intention of the BWSR to encourage local municipalities to adopt and administer the MDNR approved shoreline and flood plain ordinances. But, it is not the intention of the BWSR to formally require the adoption of such ordinances as part of this planning activity. The plan must, however, recognize that compliance with these state mandated programs is an important element of watershed management.

Subpart 2.E. The BWSR recognizes that certain land uses and land practices may have an adverse impact on water quality, and it may be difficult to enforce restrictions concerning the degradation of water quality based on certain land use practices. These rules provide direction that local

communities adopt nuisance ordinances for the purpose of providing a mechanism through which local communities can legally abate such land use activities that will not allow it to meet its water quality goals.

- Subpart 3 The rules referring to stormwater drainage and design performance standards are consistent with other sections of the rule which generally direct that these planning activities establish some type of standards that can be quantified. It is the BWSR's perspective that without measurable design and performance standards, no real in-roads into proper surface water management can be facilitated.
- Subpart 4 The information program is consistent with the requirements of the state law. M.S. 103B.227, Subp 4 specifically requires WMOs to annually publish and distribute a written summary section regarding its activities to residents. It is the intention of the rule language associated with this information program, that the required written communication be distributed to parties that have both an active and a general interest in WMO activities. The media through which this communication can be distributed has been left to the discretion of the WMO and the WMO is encouraged to utilize whatever format is most cost effective to distribute this publication.
- Subpart 5 The data collection program rules require WMOs to develop a program that can ascertain whether the water quality goals of the WMO are being achieved. The extent and associated cost of this monitoring program has been left up to the WMO. It is the BWSR's intention that the WMO will develop a program that will be responsive to its available resources and yet allow for a determination as to whether or not the water quality and quantity goals of the WMO are being met.
- Subpart 6 The BWSR feels that these plans should assess the need for various management programs. This need must be tied to the WMO's approach to toward accomplishing its goals and objectives. As part of this planning activity, it is the intention of the BWSR that WMOs assess the need and extent for various management programs. However, the rules have intentionally not required the implementation of specific management programs that are known to have some level of benefit to water quantity or quality management.

Section 8410.0110 - Impact on Local Government

Summary of Content - This portion of the rule requires that the impact of plan implementation on local units of government be evaluated. Specifically, the administrative and financial capabilities of local units of government must be considered to establish the ability of these local units of government to implement the plan to the extent outlined within the plan.

Reason for Inclusion - M.S. 103B.231, Subd. 6 requires plans to specify schedules for amending the comprehensive plans and official controls of affected local governments.

Justification for Section 8410-0110 - The impact on local government section of this rule is intended to provide a mechanism through which administrative and financial resources of counties, cities, and townships can be evaluated in respect to the cost for implementation of a WMO plan. It is the BWSR's perspective that plans should realistically evaluate these concerns since many aspects of plan implementation

are passed down to other units of government. If affected local governments are not administratively or financially capable of carrying out their responsibilities, the plan will fail. This analysis should avoid such failures from occurring.

Section 8410.0120 - Implementation Priorities

Summary of Content - This portion of the rule requires that plans prioritize plan implementation components to make the best use of available local funding, prevent future water management problems from occurring and to ensure that regional, county, state and federal grant funding is properly targeted.

Reason for Inclusion - Public funding is limited and there are competing funding needs both within and outside of water management. It is prudent to set priorities so that best use of available funds is achieved.

Justification for Section 8410.0120 - Prioritization of plan implementation components is required as part of this section of the rule. This section should also be utilized to clearly describe the extent to which water resource management activities are needed and provide some indication of the extent to which funding is available to meet these needs.

Section 8410.0130 - Implementation Components

Summary of Content - This section of the rule requires that plans specify and outline the controls, responsibilities, schedules, capital improvement programs, enforcement actions, and administrative processes to be followed during the implementation of this plan.

Reason for Inclusion - M.S. 103B.231, Subd. 6 requires plans to contain objectives, policies, management principles, alternatives, a capital improvement program and standards and schedules for amending plans and controls of local government.

Justification for Section 8410.0130 - This section of the rule requires that the implementation plan address the components identified in Subpart 1 of this rule and for each of these components, define responsibilities for implementation, provide a schedule, define a capital improvement program necessary to respond to the implementation components, address regulatory enforcement issues and the administrative processes through which the WMO and local governmental units will interact. It is the BWSR's perspective that the text associated with this section of the rule is reasonably self explanatory.

Section 8410.0140 - Plan Amendments

Summary of Content - This section of the rule outlines the process through which amendments to the plan may be initiated and executed. The general amendment procedures, including amendment procedures for minor amendments to capital improvements, the form of the amendments, and the distribution requirements for the amendments are outlined.

Reason for Inclusion - M.S. 103B.231, Subd. 6 requires plans to set out a procedure for amending the plan. This section of the law also requires the BWSR to adopt rules for plan amendments, including the

public participation process.

Justification for Section 8410.0140

- Subpart 2 This section of the rule defines the general amendment procedure for major amendments. It is the intent of this procedure to provide an opportunity for parties having an interest in water resource management to provide input and comment on any proposed plan amendments. Provision is also made to allow certain minor amendments to plans to be adopted through an expedited process to minimize unnecessary bureaucratic review.
- Subpart 3 This section was added to allow minor amendments to a plan's capital improvement program when there has been general agreement to and public disclosure of the estimated costs of proposed improvements.
- Subpart 4 The direction provided regarding the form and distribution of amendments is as shown to maintain consistency, minimize confusion and provide direction to WMOs when plan amendments are contemplated.

Section 8410.0150 - Annual Reporting Requirements

Summary of Content - This section of the rule indicates that within 120 days of the end of the WMOs fiscal year, each WMO shall submit to the BWSR a financial report, an activity report, and an audit report for the preceding fiscal year. The content requirements for the annual financial audit and activity reports are provided along with the procedures the BWSR will follow should a state audit of a given WMO be considered.

Reason for Inclusion - M.S. 103B.231, Subd. 14 requires the BWSR to adopt rules establishing the requirements of financial reports, financial audits and annual activity reports.

Justification for Section 8410.0150 - The BWSR and advisory committee spent considerable time drafting this portion of the rule. Earlier drafts of the rule provided more prescriptive language regarding the content for annual financial reports. This final language outlines the need for general types of information, but does not specifically require the report to be completed in a specific format. It is anticipated that at least major sections of the annual financial report could be copied directly from a certified public accountant or state auditor report that would typically be prepared in any given year.

The BWSR is extremely interested about the inclusion of an annual activity report into the WMO's annual report. It is the perspective of the BWSR that the requirement for the WMO to provide an assessment of the previous year's annual work plan, and a projected work plan for the coming year will provide the WMOs with the mechanism through which they can establish goals and objectives for coming years, provide themselves with an opportunity of maintaining a certain amount of accountability towards achieving those goals identified. This information will also be useful to the BWSR in evaluating the activities of WMOs throughout the Twin City Metropolitan area.

CONTENT OF LOCAL PLANS

Section 8410.0160 - General Structure

Summary of Content - This section of the rule outlines the general content requirements for local plans. It also indicates that local plans must be prepared and adopted within two years of BWSR's approval of the last WMO plan that affects the local unit of government. Further breakdown of the structure for local plans is deferred to Section 8410.0170 of the rules.

Reason for Inclusion - M.S. 103B.235 provides certain guidance for local plans to the degree specified in the WMO plan. This section is needed to provide additional guidance for local plans in the event that the WMO plan is vague in some respects.

Justification for Section 8410.0160 - It is the intention of this section of the rule to provide an overall description of the content of a local plan. Local plan preparation, approval, and adoption within two years of BWSR's approval of the last WMO plan that affects the local unit of government was thoroughly considered. Discussion ensued over the instance where a community was covered by four different WMOs, three of the four plans had been completed, but the fourth may never be completed. It was the BWSR's perspective that such instances can be resolved on a case by case basis rather than incorporating some specific prescriptive language in the rule to address the issue.

Section 8410.0170 - Structure

Summary of Content - This section of the rule outlines the specific content requirements for local plans. The content requirements parallel the content requirements for WMO plans taking into additional consideration that the local plan must be consistent with water resource management approach outlined in the WMO plan. Specifically, the following sections must be included in each local plan; purpose, water resource related agreements, executive summary, land and water resource inventory, establishment of policies and goals, assessment of problems, corrective actions, financial considerations, implementation priorities, implementation program, and amendment procedures. The submittal and review process to be followed are also described in this section of the rule.

Reason for Inclusion - M.S. 103B.231, Subd. 6, (b) requires the BWSR to adopt rules which include the requirements for implementation of WMO plans. M.S. 103B.235 requires local governments to prepare local water plans in conformance with overriding WMO plans. M.S. 103B.235, Subd. 2, (b) specifically requires the BWSR to adopt rules establishing minimum local plan standards.

Justification for Section 8410.0170 - It was the BWSR's intention that this section provide clear direction into the outline of a local water resource management plan. Local units of government preparing these local plans may adopt portions of WMO plans by reference if the sections of the WMO plan are consistent with the local plan perspectives and the WMO plan provides for such adoption by reference. The rationale for the local plan content is consistent with that of the WMO plan content.

Section 8410.0180 - Determinations of Failure to Implement

Summary of Content - This section of the rule clarifies BWSR's authority and responsibility when a plan is not being implemented for a watershed either because there is not a WMO, because the WMO has not adopted an approved plan, or because the approved plan is not being carried out. The responsibilities of the BWSR staff and Board are outlined for such cases.

Reason for Inclusion - M.S. 103B.231, Subd. 10 requires the BWSR to adopt rules establishing standards and criteria for making determinations on whether WMOs are properly implementing their plans.

Justification for Section 8410.0180 - This portion of the rule provides an opportunity for the BWSR to take action if a plan has not been prepared, has not been adopted or approved, or because a plan is not being properly implemented. It was the intention of the BWSR to develop a reasonably formal process that must be followed in order for a determination of failure to be made. It was also the BWSR's intention that the BWSR Board only become involved if a number of preliminary reviews and required meetings cannot resolve the problem in a less formal manner.

SECTION III - IMPACT ON AGRICULTURE AND SMALL BUSINESS

As part of the agency's administrative rule making procedures and responsibilities, Minnesota Statutes Chapter 14 requires that the proposed rules be evaluated for potential impacts on agricultural land and for impacts on small businesses. Sections III., A. and III., B. address this requirement.

- A. Impact on Agricultural Lands** - Minnesota Statutes Section 14.11, Subd. 2 is the statutory reference for rule impacts on agricultural land. That subdivision refers to Minnesota Statutes Sections 17.80 to 17.84, which discusses the State's agricultural land preservation and conservation policy in detail. It is the BWSR's finding that these rules are consistent with the State's policy of preservation and conservation of agricultural land.

The rules main potential impact on agricultural land is with respect to the requirements of Part 8410.0100, Subpart 1. This part of the rule requires that WMO's adopt or require affected cities and towns to adopt controls to address excess soil erosion from agricultural land. The rule does not specify what the controls must consist of or how they must be enforced. This is left up to the discretion of the WMO based upon the scope of the problem as identified in the plan development process.

It is the intention of the BWSR to provide guidance documents in the form of model ordinances based on the "Soil Loss Limits Act" (MS 103F.401 to 103F.455), applicable zoning and planning enabling laws (MS 366.10 to 366.19; MS 394.21 to MS 394.37; and MS 462.351 to 462.365) or applicable nuisance laws (MS 561.19 and MS 609.74). Due to the optional approach the rule allows, it is difficult to access any monetary impact on individual agricultural producers. However, it is likely that most corrective measures supported by local governments to date rely on the availability of public cost-share funds before mandatory compliance is effectuated. This approach is advocated by the BWSR at the present in order to lessen the cost of corrective measures. Agricultural experts generally agree that the implementation of soil conservation practices are economically beneficial to long term agricultural production regardless whether there are publicly financed economic incentives available.

- B. Impact on Small Business** - Minnesota Statutes Section 14.115 requires that agencies proposing rules which may impact small businesses consider certain methods for reducing the impact of the

rule on small businesses. Presently, land developers are generally required to comply to some degree with local erosion control ordinances and standards. The rule requires that the WMO adopt a uniform set of guidelines for erosion control. This may actually reduce erosion control costs to land developers in the long run, since their consultants and contractors will not have to deal with local controls that vary in scope. It is the opinion of the BWSR that the rules do not significantly impact small businesses and so there is no need to consider methods for reducing impacts. However, the rule does not prohibit a WMO from imposing special requirements at targeted small businesses which may impact them. This is entirely an issue that a WMO or member local units of government must consider.

SECTION IV - FISCAL NOTE

The foregoing rules will mandate that local government take certain actions, some of which may result in local government incurring costs beyond what they have historically spent on executing their obligations with respect to the Metropolitan Water Management Act. However, it is difficult to estimate such costs due to a number of factors including:

- ◆ Some watershed management plans of WMOs already have implemented planning and programming in excess of what these rules require.
- ◆ 10 of the 46 WMOs are watershed districts created pursuant to MS 103D and so are already required to file annual reports, most of which would comply with the reporting requirements specified in the rule.
- ◆ Each watershed has different water resource issues and problems, thus the solutions proposed by each WMO will vary in cost.
- ◆ Many of the plans that will need to be amended to be brought into conformance with the rule primarily because the original act was not interpreted properly when their first generation watershed plan was developed.

The probable increased costs to local government can be placed in three categories: cost to revise joint powers agreements, costs related to annual reports, and costs related to second generation plans.

- A. **Cost to Revise Joint Powers Agreements** - Chapter 601 of the Laws of 1990 required the BWSR to develop rules to guide the content of joint powers agreements (JPAs). Chapter 601 established the following voting requirements: 1) policy decisions are not allowed to require more than a majority vote, and 2) decisions on capital improvements may not require more than a two-thirds vote. Since all 36 existing joint powers agreements of the require higher voting requirements (many require unanimous vote) all will have to revise their JPAs. Most other aspects of the agreements should not require revision. Therefore it is estimated that the revision of the 36 JPAs will be about \$1000 each, or a total one-time cost of \$36,000.
- B. **Cost to File Annual Reports and Audits** - There will be no appreciable increased cost for annual reporting and auditing to the ten WMOs that were originally created as watershed districts. The 36 JPA WMOs may experience some increase in costs depending upon whether or not they currently are requiring the preparation of annual reports or audits. It is difficult to estimate the costs of annual reports, since some WMOs are very active and some may only meet once a year.

Likewise some have no budget and some do. Those that do not directly expend funds are not required to file financial reports and audits. Usually, the WMOs who have no established budget require each member to pay for any expenses incurred on an individual member basis, based upon prearranged formulas. In such cases the expenditures are accounted for in the member community's normal annual audit process. The BWSR estimates that 25 percent of the JPA WMOs (about 9 WMOs) operate this way. Therefore based upon the above considerations, the increased costs to local government will be approximately \$108,000 in accordance with the following calculations:

Unit of Government	Number	Audit	Financial Report	Annual Totals
Watershed Districts	10	\$ 0	\$ 0	\$ 0
JPA WMOs	27	\$2000	\$1500	\$ 94,500
JPA WMOs	9	\$ 0	\$1500	<u>\$ 13,500</u>
Total =				<u>\$108,000</u>

C. **Cost of Preparation of Second Generation Plans** - The rules define what "second generation" watershed management plans must contain and are effective after Jan. 1, 1995. The rules require that the plans be brought into compliance in accordance with either the schedule specified in the first generation plan or, if there was no schedule, within ten years after the BWSR approved the first generation plan. Consequently, most plans will be have to revised to be consistent with the rule between 1995 and 2000. The cost will vary between WMOs since some plans (at least 6) will only require cosmetic revisions due to the comprehensive approach that was taken with the first generation plan. According to a random survey, the cost of the first generation plans ranged from as low as \$10,000 to as high as \$120,000. Given this range, the BWSR estimates that a realistic average cost was near \$40,000 per plan. It is likely that the second generation plans should average no more than 50% to 75% of the original cost, or \$30,000 at the outside, not adjusted for inflation. For 46 plans over a five year period, the total annualized average cost should be approximately \$276,000 each year from 1995 to 2000.

A major purpose of the Metropolitan Water Management Act is to reduce the overall cost of water management through the development and implementation of the required watershed management plans. This can be accomplished only through a coordinated effort among affected local units of governments to reduce or eliminate duplication of effort, focus economic resources, prioritize capital improvements and provide for adequate planning to prevent future problems. It is the opinion of the BWSR that the costs of the required planning activity will be more than offset by the benefits.

