



DATE: December 10, 2024

TO: Board of Water and Soil Resources' Members, Advisors, and Staff

FROM: John Jaschke, Executive Director 

SUBJECT: BWSR Board Meeting Notice – December 19, 2024

The Board of Water and Soil Resources (BWSR) will meet on Thursday, December 19, 2024, beginning at 9:00 a.m. The meeting will be held in the lower-level Board Room, at 520 Lafayette Road North, St. Paul and by Microsoft Teams. Individuals interested in attending the meeting through Teams should do so by either 1) logging into Teams by [clicking here to join the meeting](#) or 2) join by audio only conference call by calling telephone number: 651-395-7448 and entering the conference ID: 575 117 842#.

The following information pertains to agenda items:

COMMITTEE RECOMMENDATIONS

Grants Program and Policy Committee

1. **CWF FY 25 competitive grant application recommendations** – On June 26, 2024 the Board adopted Board Order #24-33 which authorized staff to conduct a request for proposals from eligible local governments for Clean Water Fund projects in the following program categories: Projects and Practices, Drinking Water, and Accelerated Implementation. Applications for the FY2025 Clean Water Fund Competitive Grants were accepted from June 28 through August 22, 2024. Local governments submitted 66 applications requesting \$20,682,760 in Clean Water Funds. BWSR staff conducted multiple processes to review and score applications and involved staff from other agencies to develop the proposed recommendations for grant awards per the attached board order. **DECISION ITEM**

Administrative Advisory Committee

1. **Rescind the Local Water Plan Extension and Amendment Policy** – The Local Water Plan Extension and Amendment Policy has been found to be unnecessary due to prior Legislative Session revisions, specifically 2024, to Minnesota Statutes Chapters 103B, 103C, and 103D. The Administrative Advisory Committee met on November 21, 2024, and unanimously recommends approval of rescinding the Local Water Plan Extension and Amendment Policy by the full Board. **DECISION ITEM**
2. **Rescind the Local Water Plan Status and Grant Eligibility Policy** – The Local Water Plan Status and Grant Eligibility Policy has been found to be unnecessary due to prior Legislative Session revisions, specifically most recently in 2024, to Minnesota Statutes Chapters 103B, 103C, and 103D and the policy is duplicative with the agency requirements completed in accordance with Minnesota Statutes §103B.102, Subd. 3 and 4 (Local Water Management; Accountability and Oversight). The Administrative Advisory Committee met on November 21, 2024, and unanimously recommends approval of rescinding the Local Water Plan Status and Grant Eligibility Policy by the full Board. **DECISION ITEM**

3. **Board Order Delegating Certain Authorities to the Executive Director** – Previously, the Board has delegated various authorities to the Executive Director in numerous Board Orders, Resolutions and Policies spread out over many years. The variety of these delegations in a range of formats may create difficulty in tracking delegated authorities, causing confusion for interested parties and reducing overall agency efficiency. It is in the interest of the Board, staff, Local Governmental Units (LGUs), partners and the public for the Board to consolidate and clarify the authorities delegated to the Executive Director. The Board’s Senior Management Team reviewed this Board Order on October 1, 2024, and October 22, 2024, and recommended approval of this item. The Board's Administrative Advisory Committee reviewed this Board Order on November 21, 2024, and also recommended approval of this item to the Board. **DECISION ITEM**

Buffers, Soils and Drainage Committee

1. **Buffer Administrative Penalty Order (APO) Plan update** – In 2024, the Legislature made changes to Minnesota Statutes § 103B.101, subd. 12, and 12a, on the authority to issue penalty orders. The changes increased the monetary penalties from up to \$500 to \$10,000 for noncompliance. The amendment to statute also clarifies that all or part of the penalty may be forgiven. The Administrative Penalty Order (APO) Plan for Buffer Law implementation, previously approved via Board Resolution No. 17-60, is amended to provide revised procedures for issuance of APOs for counties, watershed districts, and BWSR under the Buffer Law. The penalty range in the plan was adjusted to account for the increase in monetary penalties along with other minor wording changes.

The Board has the statutory authority to amend the Buffer APO plan and publish in the State Register. This will require counties and watershed districts that elected jurisdiction to amend their ordinances and rules to be consistent. The Buffers, Soils & Drainage Committee met on October 22, 2024 and recommend to the full Board that the APO Plan as amended be approved per the attached APO Plan and Board Order.

DECISION ITEM

If you have any questions regarding the agenda, please feel free to call me at 651-539-2587. We look forward to seeing you on December 19th.

**BOARD OF WATER AND SOIL RESOURCES
520 LAFAYETTE ROAD NORTH
ST. PAUL, MN 55155
THURSDAY, DECEMBER 19, 2024**

PRELIMINARY AGENDA

9:00 AM CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

ADOPTION OF AGENDA

MINUTES OF OCTOBER 23, 2024 BOARD MEETING

PUBLIC ACCESS FORUM (10-minute agenda time, two-minute limit/person)

INTRODUCTION OF NEW STAFF

- Cameron Gaspord, Outcomes Analyst

CONFLICT OF INTEREST DECLARATION

A conflict of interest, whether actual, potential, or perceived, occurs when someone in a position of trust has competing professional or personal interests, and these competing interests make it difficult to fulfill professional duties impartially. At this time, members are requested to declare conflicts of interest they may have regarding today's business. Any member who declares an actual conflict of interest must not vote on that agenda item. All actual, potential, and perceived conflicts of interest will be announced to the board by members or staff before any vote.

REPORTS

- Chair & Administrative Advisory Committee – Todd Holman
- Executive Director – John Jaschke
- Audit & Oversight Committee – Joe Collins
- Dispute Resolution and Compliance Report – Travis Germundson/Rich Sve
- Grants Program & Policy Committee – Mark Zabel
- RIM Reserve Committee – Jayne Hager Dee
- Water Management & Strategic Planning Committee – Joe Collins
- Wetland Conservation Committee – Jill Crafton
- Buffers, Soils & Drainage Committee – LeRoy Ose
- Drainage Work Group – Neil Peterson/Tom Gile

AGENCY REPORTS

- Minnesota Department of Agriculture – Thom Petersen
- Minnesota Department of Health – Steve Robertson
- Minnesota Department of Natural Resources – Sarah Strommen
- Minnesota Extension – Joel Larson
- Minnesota Pollution Control Agency – Katrina Kessler

ADVISORY COMMENTS

- Association of Minnesota Counties – Brian Martinson
- Minnesota Association of Conservation District Employees – Mike Schultz
- Minnesota Association of Soil & Water Conservation Districts – LeAnn Buck
- Minnesota Association of Townships – Eunice Biel
- Minnesota Watersheds – Jan Voit
- Natural Resources Conservation Service – Troy Daniell

COMMITTEE RECOMMENDATIONS

Grants Program and Policy Committee

1. CWF FY 25 competitive grant application recommendations – Marcey Westrick – ***DECISION ITEM***

Administrative Advisory Committee

1. Local Water Plan Extension and Amendment Policy – Rescindment – Ryan Hughes – ***DECISION ITEM***
2. Local Water Plan Status and Grant Eligibility Policy – Rescindment – Ryan Hughes – ***DECISION ITEM***
3. Board Order Delegating Certain Authorities to the Executive Director – Craig Engwall – ***DECISION ITEM***

Buffers, Soils and Drainage Committee

1. Buffer Administrative Penalty Order (APO) Plan update – LeRoy Ose and Tom Gile – ***DECISION ITEM***

UPCOMING MEETINGS

- Northern Region Committee is scheduled on January 6th at 9:30 a.m. in Bemidji and by MS Teams.
- Grants Program and Policy Committee is scheduled for January 13th in St. Paul and by MS Teams.
- BWSR Board meeting is scheduled for January 22nd at 9:00 a.m. in St. Paul and by MS Teams.

ADJOURN

**BOARD OF WATER AND SOIL RESOURCES
520 LAFAYETTE ROAD NORTH
LOWER-LEVEL BOARD ROOM
ST. PAUL, MN 55155
WEDNESDAY, OCTOBER 23, 2024**

BOARD MEMBERS PRESENT:

Joe Collins, Jill Crafton, Jayne Hager Dee, Mike Runk, Neil Peterson, Rich Sve, Lori Cox, Ted Winter, LeRoy Ose, Kelly Kirkpatrick, Eunice Biel, Ron Staples, Mark Zabel, Katrina Kessler, Tom Schulz, MPCA; Joel Larson, University of Minnesota Extension; Jeff Berg, MDA; Steve Robertson, MDH; Sarah Strommen, DNR

BOARD MEMBERS ABSENT:

Todd Holman

STAFF PRESENT:

John Jaschke, Rachel Mueller, Tom Gile, Gabrielle Holman, Denise Lauerman, Karlie Swenson, John Shea, Marcey Westrick, Michelle Jordan

OTHERS PRESENT:

Jan Voit, Minnesota Watersheds; LeAnn Buck, MASWCD; Troy Daniell, NRCS, Jon Janke, Coon Creed WD; Erik Bye, Coon Creek WD; Adam Birr, MN Corn; Amanda Bilek, MN Corn; Alex Trunnell, MN Corn; Nate Gotlieb, MN Corn; Lucas Sjostrom, Graham Berg-Moberg, Dustin Anderson

Acting Chair Rich Sve called the meeting to order at 9:01 AM

PLEDGE OF ALLEGIANCE

24-49 **ADOPTION OF AGENDA** - Moved by Joe Collins, seconded by Ted Winter, to adopt the agenda as presented. ***Motion passed on a roll call vote.***

24-50 **MINUTES OF SEPTEMBER 25, 2024 BOARD MEETING** – Moved by Jayne Hager Dee, seconded by Joe Collins, to approve the minutes of September 25, 2024, as circulated. ***Motion passed on a roll call vote.***

PUBLIC ACCESS FORUM

REPORTS

Chair & Administrative Advisory Committee – No report was provided.

Executive Director’s Report - John Jaschke reported there will be an Administrative Advisory meeting scheduled before the December board meeting. Minnesota hosted the National Association of State Conservation Agencies (NASCA) in Duluth. Stated he attend the Minnesota Water Resources conference last week. State agency partners are working on updating the Climate Action Framework. Stated there are annual Local Government meetings coming up, if board members are interested in attending, they can let Rachel and John know. John introduced new board member Tom Schulz from Wadena SWCD.

John reviewed the Snapshot articles included in the day of packet.

John stated there are no conflict-of-interest items on the agenda today, members can still state a potential conflict if needed.

Audit and Oversight Committee – Joe Collins reported the committee has not met.

Dispute Resolution and Compliance Report – No report was provided. John Jaschke stated there have been no new appeals.

Grants Program & Policy Committee – Mark Zabel reported they have not met.

RIM Reserve Committee – Jayne Hager Dee reported there is one item on the agenda for today.

Water Management & Strategic Planning Committee – Joe Collins reported they have not met.

Wetland Conservation Committee – Jill Crafton reported they will be meeting in November.

Buffers, Soils & Drainage Committee – LeRoy Ose reported they met last night and reviewed the APO plan. They will bring it to the December board meeting.

Drainage Work Group (DWG) – Tom Gile reported they did not meet in September. There was a staff subcommittee that met to discuss work that’s being done on the 103E notice streamlining effort that the work group is undertaking. They reviewed the outlet adequacy subtopics from last year’s technical report. They also reviewed a draft memo for a potential repeal of subdivision 103E.067, which is a ditch buffer strip reporting that’s required under the drainage law.

Stated there will be a memo coming to the Board regarding 103B.101, subdivision 13. It's the authorizing statute under BWSR for the Drainage Stakeholder Group to function and acknowledges the drainage manual. The next meeting is November 21st.

AGENCY REPORTS

Minnesota Department of Agriculture – Jeff Berg reported Agriculture Fertilizer Research and Education Council (AFREC) RFPs are open. A Delta Air Lines flight departed for the first time on September 25, 2024, for New York using fuel blended with winter camelina, a Minnesota and North Dakota grown cover crop.

Lori Cox asked if there is a designated environmental person on AFREC. Jeff stated there are environmental representatives with AFREC.

Minnesota Department of Health – Steve Robertson reported as of October 16th public water systems across the country are required to complete lead service line inventory for their systems. EPA has issued their final lead and copper line improvement rule. Stated he attended the Water Resources conference where the Department of Health had a paper presented on lithium in drinking water.

Jill Crafton asked if the State Revolving Funds go to lead mitigation. Jeff stated it does.

Minnesota Department of Natural Resources – Sarah Strommen reported it's a dry fall and there are burning restrictions. Seedlings sales opened on October 15th. The Governor's Deer Hunting Opener will take place at the Osprey Wilds Environmental Learning Center in Sandstone.

Lori Cox asked if the seedlings are open to the public and where to find them. Sarah stated the DNR website has information. John Jaschke stated to go through the local Soil and Water Conservation Districts to order trees.

Minnesota Extension – Joel Larson reported they had their annual Water Resources conference last week and broke an attendance record. Stated they have two Extension Educator positions that will be starting in the next couple months. The Soil Management Summit is taking place January 29th and 30th in Mankato and registration is open.

Minnesota Pollution Control Agency – Katrina Kessler reported they received a Climate Pollution Reduction Grant and held a webinar on October 10th to introduce people to the work. Stated they have formed work groups to assist with each of the focus areas in the Climate Action Framework Update. The General Feedlot permit was on public notice, and they are going through the comments received. Stated one of the portions of the Climate Smart Food System is looking at ways to decarbonize industrial agricultural operations. Stated they are working on budget and policy proposals. Katrina helped judge a three-minute thesis competition at the University of Minnesota College of Engineering.

Lori Cox stated in Katrina's discussion about projections and modeling they've had actuals and asked if there is a desire to be matching up where there are problem areas. Katrina stated the work that's being done on the Climate Action Framework, as well as the Greenhouse Gas Emissions Inventory includes both modelled and monitored.

ADVISORY COMMENTS

Association of Minnesota Counties – No report was provided.

Minnesota Association of Conservation District Employees – No report was provided.

Minnesota Association of Soil & Water Conservation Districts – No report was provided.

Minnesota Association of Townships – Eunice Biel reported November training will be taking place where they'll be concentrating on the year end processes. Their annual conference will be December 13-14 in St. Cloud. They are preparing for voting and making sure everything is secure.

Minnesota Watersheds – Jan Voit reported they are preparing for their annual conference that will be held in Nisswa December 3-6. Stated she has been continuing to meet with Justin Hanson monthly. She has also been working with Julie Westerlund on regional training for their watershed boards.

Jill Crafton thanked Julie Westerlund for her work with the watersheds.

Natural Resources Conservation Service – Troy Daniell reported BWSR hosted the NASCA meeting in Duluth. The USDA closed out their books and issued \$150M to customers throughout the state under the Conservation Stewardship Program (CSP) and the Environmental Quality Incentives Program (EQIP). Stated they are working on hiring more staff. They will have a couple new Regional Conservation Partnership Program (RCPP) proposals that they'll be working on this coming year.

Mark Zabel asked if there is a timeline for the soil health RCPP. Troy is thinking they'll have it going in the spring with soil health practices implemented next summer.

Acting Chair Sve called a recess at 10:14 a.m. and called the meeting back to order at 10:21 a.m.

COMMITTEE RECOMMENDATIONS

RIM Reserve Committee

Faribault Co. Easement Alteration Request - RIM Easements #22-49-01-01, 22-18-01-01, and 22-59-01-01 – Karli Swenson presented Faribault Co. Easement Alteration Request - RIM Easements #22-49-01-01, 22-18-01-01, and 22-59-01-01.

BWSR acquired the 3 easements under consideration in 2001 as part of the CREP program, collectively totaling 56.4 acres in Faribault County. Easement 22-49-01-01 is 26.5 acres currently owned by the Betty Clark Trust and easements 22-59-01-01 and 22-18-01-01 are currently owned by the Virginia Johnson Living Trust and are 4.5 acres and 25.4 acres respectively. The easements encompass a portion of a larger drained wetland basin with shared ownership, as well as two smaller wet areas adjacent to the township road, one on each landowner's property.

Due to funding and other constraints at the time the easements were acquired, no active hydrologic restoration of the wetlands on these easements occurred. Restoration of the wetlands consisted only of crop cessation and seeding the basins to native grasses and forbs, providing some habitat benefit, but leaving much restoration potential untapped.

To fully restore the wetland, modifications to the existing CD #45 county tile which currently drains the larger wetland would be required. Faribault County has identified this wetland restoration as a priority and part of a larger effort to increase much-needed water storage to reduce runoff and sedimentation to the Blue Earth River. The restoration would in turn provide additional wildlife habitat benefits to the RIM easements by returning this basin to pre-drainage conditions and expanding the associated upland buffer.

In order to accomplish a full restoration of this wetland, additional lands would need to be acquired adjacent to the existing RIM easements.

The landowners, being in favor of the project, had initially proposed a 1:1 land swap, requesting release of 1 acre of land for each acre added to the RIM easements. Based on BWSR's easement alteration policy requirements, easement staff were not in favor of a 1:1 land swap scenario. After negotiations, the landowners agreed to propose a 1.5:1 replacement ratio, whereby BWSR would release a total of 12.5 acres from the easements and in turn add a total of 18.8 acres of current cropland to the easements for the wetland restoration and surrounding upland habitat.

This proposal would release 8 acres from Easement 22-49-01-01 and replace by adding 12 acres of cropland to the same easement on land owned by the Betty Clark Trust. The proposal would also release 4.5 acres from easement 22-59-01-01 and replace by adding 6.8 acres to Easement 22-18-01-01 on the land owned by Virginia Johnson.

The Easement Alteration Policy states that the replacement ratios may be adjusted only if the conservation benefits of the replacement area significantly outweigh those of the release area. In this case, BWSR staff, the DNR area wildlife supervisor, and the SWCD all believe that the benefits provided by the wetland restoration would outweigh the benefits currently provided by the two smaller blocks of easement proposed for release adjacent to the public road.

According to Faribault SWCD, the benefits of the proposed easement alteration include:

1. Expands the existing 63.4-acre contiguous RIM complex by 18.8 acres. This will bolster critical upland nesting and staging habitat for waterfowl species.
2. Allows for the restoration of hydric features currently drained by the CD #45 tile. As part of the wetland restoration, the CD #45 tile will be re-routed around the wetland and an outlet structure installed to maintain 23 acres of standing water, promoting hydrophytic vegetation establishment.
3. Creates water storage in the Blue Earth River Basin and ultimately the Minnesota River Basin. Recent flooding concerns make it apparent that there is a critical need for water storage practices for the attenuation of flooding in downstream areas. The wetland restoration would have a storage volume of 11 acre-feet with a maximum capacity storage volume of 133 acre-feet. This will reduce downstream peak flows and runoff volume to the Blue Earth River.
4. Captures sediment and nutrients from the contributing watershed. Watershed modelling indicates that the restored wetland will annually reduce sediment by 32 tons, total phosphorus by 49 pounds, and total nitrogen by 2,620 pounds.

It should also be noted that Faribault SWCD was awarded a Water Quality and Storage Grant from BWSR in 2024 to assist with wetland restoration along CD #26 and CD #45, as part of the larger Blue Earth River water storage project, which includes this wetland restoration. This is further evidence of agency support of this project.

Recommendation

Easement staff recommend approval of this easement alteration request due to the substantial public and wildlife habitat benefits that would result by restoration of the previously unrestored wetland within the RIM easements.

**
24-51 Moved by Jayne Hager Dee, seconded by Jill Crafton, to approve the Faribault Co. Easement Alteration Request - RIM Easements #22-49-01-01, 22-18-01-01, and 22-59-01-01. ***Motion passed on a roll call vote.***

Central Region Committee

Coon Creek Watershed Management Plan – Michelle Jordan presented Coon Creek Watershed Management Plan.

Background

In 1959, the Coon Creek Watershed District (CCWD) was formed for the maintenance and repair of the public drainage system. The CCWD covers approximately 107 square miles in central Anoka County, in the Twin Cities Metropolitan Area. Included in the CCWD are the Cities of Andover, Blaine, Columbus, Coon Rapids, Fridley, Ham Lake, and Spring Lake Park. The CCWD is bound by the Mississippi River and the Lower Rum River Watershed Management Organization (WMO) to the west, the Upper Rum River WMO and Sunrise River WMO to the north, and the Rice Creek Watershed District to the south and east. Among the CCWD's water resources are 10 natural or created lakes, over 180 miles of open channel, and over 15,000 acres of wetlands. The mission of the CCWD is to manage surface and groundwater systems and contributing land to provide for and balance the competing uses of development, drainage, flood prevention, and the protection and restoration of water quality and habitat for the benefit of our communities now and in the future.

Plan Process and Highlights

On May 3, 2022 CCWD sent notification of initiation of the planning process for the 2024-2033 Watershed Management Plan (Plan) to the plan review agencies and other parties as required by MR 8410, and solicited each agency's priority issues, summaries of relevant water management goals, and water resource information. Initial meetings were held with the Citizen Advisory Committee on June 8, 2022 and the Technical Advisory Committee on June 9, 2022, and a public input survey was conducted. An initial planning meeting was hosted by the Board of Managers on January 23, 2023.

The District identified groundwater and surface water interactions, and water quality impairments as its two highest priority issues, and the Plan sets watershed-wide and resource-specific goals to address these issues. The three watershed-wide goals are to: foster a watershed with moderate geomorphic, hydrologic, and biotic integrity relative to its natural potential condition; improve the stability of the drainage network in the watershed; and foster a watershed that exhibits physical, chemical, and biological conditions that suggest that soil, riparian, and aquatic systems, while still at risk, exhibit signs of being marginally recovered or in supporting beneficial uses. The five resource-specific goals are:

Groundwater: To cooperatively manage surficial groundwater underlying the Coon Creek Watershed and promote long-term maintenance or restoration of groundwater-dependent ecosystems.

Public Drainage: To provide sustainable drainage in a fiscally responsible manner for administration, protection, utilization, and enjoyment of the waters and related resources of the watershed consistent with the Comprehensive Watershed Management Plan.

Water Quality: To protect and improve the physical, chemical, and biological quality of the water resource consistent with State and Federal water quality standards.

Water Quantity: To restore and preserve desirable watershed conditions that will prevent or minimize flooding and minimum flows.

Wetlands: To pursue the no net loss of the quantity, quality, and biological integrity of the District wetlands.

Jill Crafton stated she was impressed with the plan.

Lori Cox asked if they have any flexibility on their ten-year plans if anything needs to be updated sooner. Michelle stated there is flexibility and plans can be updated. Tim Kelly stated there are funds in reserve for emergency needs.

Steve Robertson stated they are going to abstain from voting until they get more clarity on groundwater issues.

**
24-52 Moved by Joe Collins, seconded by Jill Crafton, to approve the Coon Creek Watershed Management Plan. ***Motion passed on a roll call vote.***

NEW BUSINESS

2025 Proposed BWSR Board Meeting Schedule – John Jaschke presented 2025 Proposed BWSR Board Meeting Schedule.

Meeting dates are being proposed for board meetings in 2025. Most meetings are the fourth Wednesday of the month, unless otherwise noted. The proposed calendar has meetings held in the same months as the 2024 calendar.

**
24-53 Moved by Jayne Hager Dee, seconded by Tom Schulz, to approve the 2025 Proposed BWSR Board Meeting Schedule. ***Motion passed on a roll call vote.***

Minnesota Corn Growers Association – Adam Birr and Amanda Bilek presented Minnesota Corn Growers Association.

With nearly 7,000 members, Minnesota Corn Growers Association (MCGA) is one of the largest grassroots farm organizations in the United States. Working in close partnership with the Minnesota Corn Research & Promotion Council, MCGA identifies and promotes opportunities for Minnesota's 24,000 corn farmers while building connections with the non-farming public and have invested in third-party research that focuses on water quality and soil health, targeted consumer outreach, developing new uses for corn and working to add value to every bushel of corn grown in Minnesota. Minnesota Corn Growers Association works closely with Minnesota Corn Research & Promotion Council under the collective name Minnesota Corn.

Minnesota Corn's sustainability journey began decades ago with investments in research at the University of Minnesota focused on nutrient management, soil conservation, and more. In addition to peer-reviewed research, we've also tapped farmer ingenuity with our innovation grant program. To connect research results to corn farmers, Minnesota Corn has invested in outreach partnering with entities like the University of Minnesota Extension and the Minnesota Agricultural Water Resources Center to share lessons learned from research and field scale monitoring. Lastly, we've advocated for state and federal resources to help farmers adopt the latest conservation practices.

Mark Zabel asked about the freeze thaw nitrous oxide release and asked if that included looking at fertilizer type. Adam stated they are looking at the different types of fertilizer and timing.

Joel Larson stated he appreciates the partnerships.

Rich Sve and John Jaschke thanked them for their presentation.

UPCOMING MEETINGS

- Grants Program and Policy Committee is scheduled for November 18th at 8:30 a.m. location TBD.
- BWSR Board meeting is scheduled for December 19th at 9:00 a.m. in St. Paul and by MS Teams.

Acting Chair Sve adjourned the meeting at 11:41 AM

Respectfully submitted,

Rich Sve
Acting Chair

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Dispute Resolution/Compliance Report

Meeting Date: December 19, 2024

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Keywords for Electronic Searchability: Wetland Conservation Act Appeals/Buffer Compliance

Section/Region: Central

Contact: Travis Germundson

Prepared by: Travis Germundson

Reviewed by: _____ Committee(s)
Rich Sve DRC Chair and Travis Germundson

Presented by: _____

Time requested: 5 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

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

ACTION REQUESTED

None

LINKS TO ADDITIONAL INFORMATION

See attached report.

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

The report provides a monthly update on the number of appeals filed with the Board of Water and Soil Resources and summary on buffer compliance/enforcement actions statewide.

Dispute Resolution and Compliance Report

December 2, 2024

By: Travis Germundson

There have been **no** new appeals filed since the last report and there is only **one** appeal pending.

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

~~Appeals that have been decided since last report to the Board.~~

File 24-8 (9-13-24). This is an appeal of a WCA Restoration Order for a property located in Beltrami County. The appeal regards the placement of fill material in wetland to create berms. The petition claims that drainage was in place prior to 1991 and the area is considered an artificial wetland. *The appeal was placed in abeyance and the Restoration Order stayed to allow time for completion of a wetland assessment and plan to comply with EPA's requirements of restoration and conditions of the WCA Restoration Order.*

~~File 24-7 (9-10-24). This is an appeal of a notice of decision in Becker County. The appeal regards the denial of a replacement plan application for failure to meet sequencing requirements. The petition claims that the county engineer used the wrong speed rating for the construction of a driveway which effects the location of the proposed driveway. The appeal was remanded back to Becker Soil and Water Conservation District to develop an adequate record that considers the written Technical Evaluation Panel Report. The LGU issued a new decision on October 16, 2024 approving the replacement plan application finalizing the appeal before BWSR.~~

Summary Table for Appeals

Type of Decision	Total for Calendar Year 2023	Total for Calendar Year 2024
Order in favor of appellant		
Order not in favor of appellant	9	5
Order Modified	1	1
Order Remanded	2	1
Order Place Appeal in Abeyance	1	1
Negotiated Settlement	1	
Withdrawn/Dismissed	3	

Buffer Compliance Status Update: BWSR has received Notifications of Noncompliance (NONs) on 64 parcels from the 12 counties BWSR is responsible for enforcement. Currently there are six Corrective Action Notices (CANs) and two Administrative Penalty Orders (APO) issued by BWSR that are still active. Of the actions being tracked over 55 of those have been resolved.

Statewide 37 counties are fully compliant, and 50 counties have enforcement cases in progress. Of those counties (with enforcement cases in progress) there are currently 327 CANs and 61 APOs actively in place. Of the actions being tracked over 2,862 of those have been resolved.

**Disclaimer: These numbers are generated monthly from BWSR's Access database. The information is obtained through notifications from LGUs on actions taken to bring about compliance and may not reflect the current status of compliance numbers.*

COMMITTEE RECOMMENDATIONS

Grants Program and Policy Committee

1. CWF FY 25 Competitive Grant Application Recommendations – Marcey Westrick – ***DECISION
ITEM***

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: CWF FY 25 competitive grant application recommendations

Meeting Date: December 19, 2024

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Keywords for Electronic Searchability: Clean water fund, competitive, grant, award, FY 2025

Section/Region: Regional Operations/Central

Contact: Annie Felix

Prepared by: Annie Felix

Reviewed by: Grants Program and Policy Committee(s)

Presented by: Marcey Westrick

Time requested: 15 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input checked="" type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Approval of the FY 2025 Clean Water Fund Competitive Grant Program Awards (Projects and Practices grant, Drinking Water sub-grant, and Accelerated Implementation grant allocations).

LINKS TO ADDITIONAL INFORMATION

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

On June 26, 2024 the Board adopted Board Order #24-33 which authorized staff to conduct a request for proposals from eligible local governments for Clean Water Fund projects in the following program categories: Projects and Practices, Drinking Water, and Accelerated Implementation. Applications for the FY2025 Clean Water Fund Competitive Grants were accepted from June 28 through August 22, 2024. Local governments submitted 66 applications requesting \$20,682,760 in Clean Water Funds. BWSR staff conducted multiple processes to review and score applications and involved staff from other agencies to develop the proposed recommendations for grant awards per the attached board order.



DRAFT BOARD ORDER

Fiscal Year 2025 Clean Water Fund Competitive Grant Program Awards

PURPOSE

Authorize the Fiscal Year 2025 Clean Water Fund Competitive Grant Program Awards.

FINDINGS OF FACT / RECITALS

1. The Laws of Minnesota 2023, Chapter 40, Article 2, Section 6 (b) appropriated \$8,500,000 for the fiscal year 2025 Clean Water Fund Projects and Practices Competitive Grants Program with up to 20 percent available for land-treatment projects and practices that benefit drinking water.
2. The Laws of Minnesota 2021 First Special Session, Chapter 1, Article 2, Section 6 (c) appropriated \$9,682,000 for accelerated implementation, of which approximately \$3,195,943 is currently unallocated; and (t) the board may shift grant, cost-share, or easement funds in this section and may adjust the technical and administrative assistance portion of the funds to leverage federal or other nonstate funds or to address oversight responsibilities or high-priority needs identified in local water management plans.
3. On June 26, 2024, the Board authorized staff to distribute and promote a request for proposals (RFP) for Clean Water Fund Competitive Grants (Board order #24-33).
4. The request for proposals for a total of \$9,610,943 was noticed on June 28, 2024 with a submittal deadline of August 22, 2024.
5. Applications were scored and ranked by the interagency committees on October 21, 2024.
6. On November 12, 2024, BWSR's senior management team reviewed staff's recommendation for allocations and recommended approval to the Grants Program and Policy Committee.
7. The Grants Program and Policy Committee, at their November 18, 2024 meeting, reviewed the proposed shift and allocations and recommended approval to the Board.

ORDER

The Board hereby:

- a) Approves the allocation of funds to each applicant in the amounts listed in the attached allocation tables.
- b) Authorizes staff to shift funds consistent with #2 above.
- c) Authorizes staff to approve work plans and enter into grant agreements for these funds consistent with the appropriations and the RFP.
- d) Authorizes staff to fund additional applications fully or partially in rank order and may separately or in combination: i. reallocate funds returned from previous years' Clean Water Fund Competitive grant programs, ii. reallocate funds that become available if funded projects are withdrawn or do not receive

work plan approval by March 20, 2025, unless extended for cause, or iii. reallocate funds that are modified due to a reduction in the state funding needed to accomplish the project.

- e) Establishes that the grants awarded pursuant to this order will be consistent with the FY 2025 Clean Water Fund request for proposals.

Dated at St. Paul, Minnesota, this December 19, 2024.

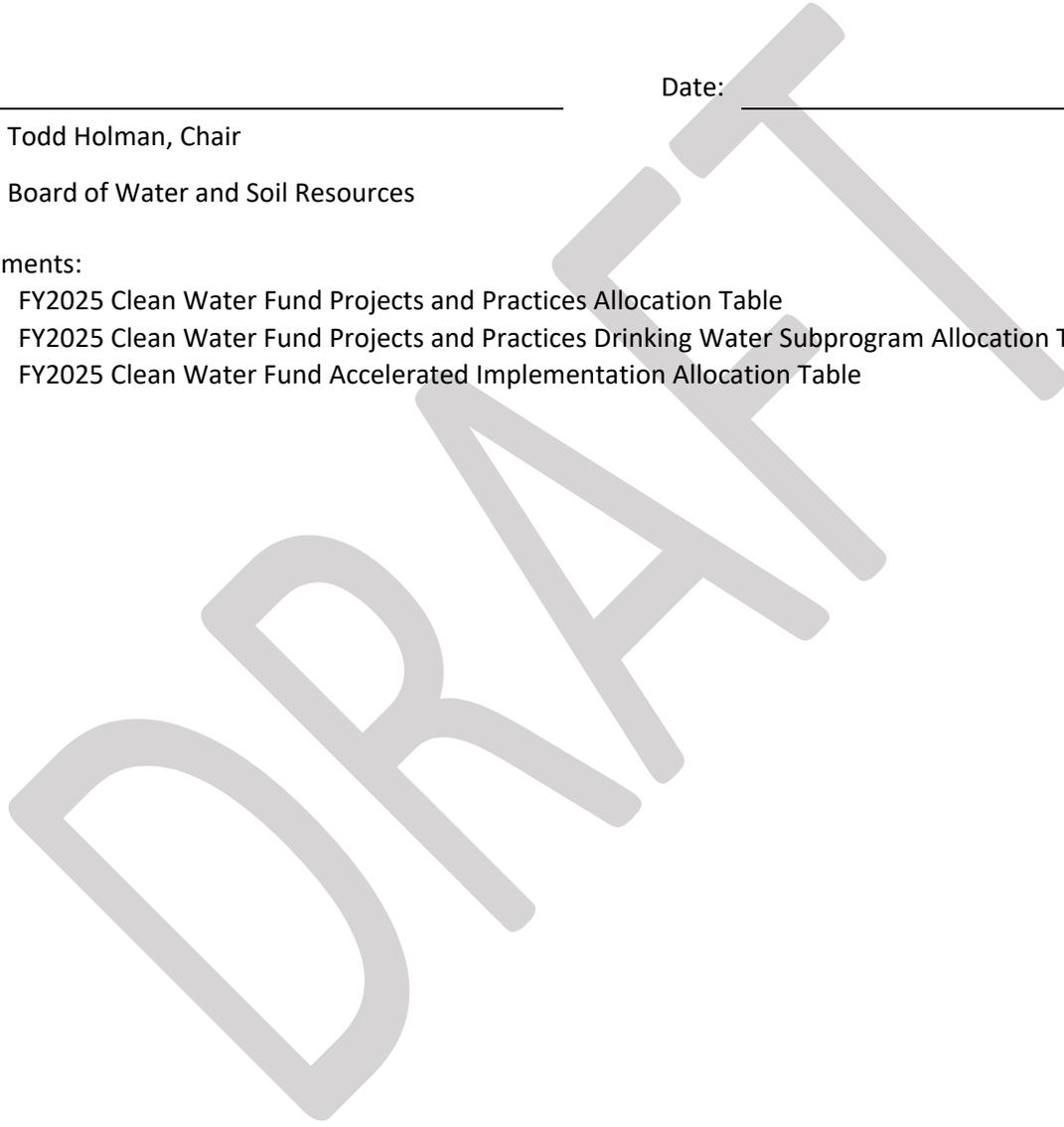
MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Todd Holman, Chair
Board of Water and Soil Resources

Date: _____

Attachments:

- FY2025 Clean Water Fund Projects and Practices Allocation Table
- FY2025 Clean Water Fund Projects and Practices Drinking Water Subprogram Allocation Table
- FY2025 Clean Water Fund Accelerated Implementation Allocation Table



FY2025 Clean Water Fund Projects and Practices Allocation Table

1	C25-0221	Ditch 20 Wetland Restoration Benefitting Typo & Martin Lakes	Anoka CD	\$ 221,375
2	C25-0158	Swamp Iron Enhanced Sand Filter Implementation	Prior Lake-Spring Lake WD	\$ 443,975
3	C25-0190	Bridgewater Regional Stormwater Filter	Coon Creek WD	\$ 625,000
4	C25-0195	Alimagnet Lake Internal Phosphorus Load Reduction Project	Vermillion River Watershed JPO	\$ 70,000
5	C25-0169	Tier One Priority: Big Swan Lake Phosphorous Reduction	Todd SWCD	\$ 625,000
6	C25-0173	South Branch Wild Rice River Grade Stabilizations - Phase 1	Wild Rice WD	\$ 700,000
7	C25-0172	Red Lake County SWCD Non-structural Land Management Project	Red Lake SWCD	\$ 269,288
8	C25-0226	Plymouth Creek Restoration Project: Dunkirk Ln to 38th Ave. N.	Bassett Creek WMC	\$ 400,000
9	C25-0215	Wetland for the Improvement of St. James Creek	Watonwan SWCD	\$ 347,072
10	C25-0238	Buffalo Watershed Lakes and Mainstem Region Improvement	Becker SWCD	\$ 800,000
11	C25-0214	Clearwater SWCD Soil Health Expansion	Clearwater SWCD	\$ 100,000
12	C25-0168	Wild Rice River Private Channel Outlet Stabilization	Norman SWCD	\$ 373,000
13	C25-0216	Square Lake Park Bioretention Basins	Washington County	\$ 80,000
14	C25-0242	Redwood Falls WSCBs - Redwood County	Redwood SWCD	\$ 335,279
15	C25-0188	Heath Iron Enhanced Sand Filter	Comfort Lake-Forest Lake WD	\$ 1,499,000
TOTAL				\$ 6,888,989

FY2025 Clean Water Fund Project and Practices Drinking Water Subprogram Allocation Table

1	C25-0212	Fairmont Drinking Water and Watershed Restoration Phase 2	Martin SWCD	\$ 260,000
2	C25-0186	Verdi Drinking Water Supply Management Area Soil Health Grant 2025	Lincoln SWCD	\$ 282,835
3	C25-0175	2025 Dakota County Well Seal Program	Dakota County	\$ 200,000
4	C25-0178	City of Le Sueur Minnesota Valley Canning Company Well #1 Sealing Project	Le Sueur County	\$ 181,363
5	C25-0191	Enhanced Street Sweeping in SLP for Drinking Water Protection	Spring Lake Park, City of	\$ 290,000
6	C25-0192	2025 Ramsey County Well Sealing Program	Ramsey County	\$ 65,000
7	C25-0236	Phase II: Protecting groundwater quality in Anoka County through targeted well sealing	Anoka CD	\$ 70,000
TOTAL				\$ 1,349,198

DRAFT

FY2025 Clean Water Fund Accelerated Implementation Allocation Table

1	C25-0205	Water Quality Modeling of Lower Mississippi River WMO Priority Watersheds	Lower Mississippi River WMO	\$ 98,000
2	C25-0219	Reeds Lake Sub-watershed Assessment and Ravine Stabilization	Waseca SWCD	\$ 76,500
3	C25-0174	City of Vadnais Heights Greenhaven Drive Green Streets Stormwater BMP Feasibility Study	Vadnais Heights, City of	\$ 250,000
4	C25-0180	FY2025 Phosphorus Source Assessment and Management Plan for a farm on Rush Lake	Chisago SWCD	\$ 36,000
5	C25-0232	Big Eagle Lake Alum Feasibility and Planning Project	Sherburne SWCD	\$ 46,890
6	C25-0202	Upland Best Management Practice Inventory Assessment and Project Recruitment Within the Sub-watersheds of Otter and Campbell Lakes	McLeod SWCD	\$ 121,446
7	C25-0209	Le Sueur County Lakes Subwatershed Assessments	Le Sueur County	\$ 207,075
8	C25-0170	Unnamed Creek (761) Subwatershed Stream Erosion Study	Le Sueur County	\$ 154,000
9	C25-0181	FY2025 Internal Loading Management Evaluation and Planning for Chisago County Lakes	Chisago SWCD	\$ 80,000
10	C25-0176	Joint Chloride Management Plan	Shingle Creek WMC	\$ 47,455
11	C25-0189	Sunrise River Headwaters Project Targeting & Development	Comfort Lake-Forest Lake WD	\$ 118,000
12	C25-0211	Poplar River Sediment Loading Feasibility Study	Cook SWCD	\$ 88,020
TOTAL				\$ 1,323,386

COMMITTEE RECOMMENDATIONS

Administrative Advisory Committee

1. Local Water Plan Extension and Amendment Policy – Rescindment – Ryan Hughes – ***DECISION ITEM***
2. Local Water Plan Status and Grant Eligibility Policy – Rescindment – Ryan Hughes – ***DECISION ITEM***
3. Board Order Delegating Certain Authorities to the Executive Director – Craig Engwall – ***DECISION ITEM***

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Local Water Plan Extension and Amendment Policy – Rescindment

Meeting Date: December 19, 2024

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information Non-Public Data

Keywords for Electronic Searchability: Local Water Plan Extension and Amendment Policy, Policy, Extension

Section/Region: Regional Operations

Contact: Ryan Hughes

Prepared by: Ryan Hughes

Reviewed by: Administrative Advisory Committee(s)

Presented by: Ryan Hughes

Time requested: 5 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|--|---|
| <input type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input checked="" type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Rescind the Board’s Local Water Plan Extension and Amendment Policy.

LINKS TO ADDITIONAL INFORMATION

[Local Water Plan Extension and Amendment Policy | MN Board of Water, Soil Resources](#)

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

The Board previously adopted a Local Water Plan Extension and Amendment Policy on December 18, 2019 (Board Order #19-69) to provide administrative flexibility for partners to transition to the One Watershed, One Plan program and allow for effective participation and use of the Minnesota Pollution Control Agency’s Watershed Restoration and Protection Strategies (WRAPS).

The Local Water Plan Extension and Amendment Policy has been found to be unnecessary due to prior Legislative Session revisions, specifically 2024, to Minnesota Statutes Chapters 103B, 103C, and 103D and the agency has authority for plan extension approvals through Minnesota Statutes §103B.3367 and authority for plan amendment approvals through the applicable Minnesota Statute Chapters 103B, 103C, 103D and Board Orders.

BOARD ORDER

Local Water Plan Extension and Amendment Policy - Rescindment

PURPOSE

Rescind the Board's Local Water Plan Extension and Amendment Policy.

FINDINGS OF FACT / RECITALS

1. Minnesota Statutes 103B.3367 authorizes the Board to grant extensions with or without conditions of the revision date of a comprehensive local water management plan or comprehensive watershed management plan.
2. The Board previously adopted a Local Water Plan Extension and Amendment Policy on December 18, 2019 (Board Order #19-69) to;
 - a. facilitate the transition to the One Watershed, One Plan program by ensuring active participation by counties, soil and water conservation districts, and watershed districts in plan development;
 - b. allow for effective participation and use of the Minnesota Pollution Control Agency's Watershed Restoration and Protection Strategies (WRAPS); and
 - c. provide flexibility on acting on extensions and amendments through case-by-case determinations.
3. The Local Water Plan Extension and Amendment Policy has been found to be unnecessary due to prior Legislative Session revisions to Minnesota Statutes Chapters 103B, 103C, and 103D.
4. The Local Water Plan Extension and Amendment Policy has been found to be unnecessary as the agency utilizes Minnesota Statutes §103B.3367 to authorize comprehensive local water management plan or comprehensive watershed management plan extensions.
5. The Local Water Plan Extension and Amendment Policy has been found to be unnecessary as the agency utilizes the applicable Minnesota Statute Chapters 103B, 103C, 103D and Board Orders to authorize comprehensive local water management plan or comprehensive watershed management plan amendments.
6. The Board's Senior Management Team reviewed the staff recommendation to rescind the Local Water Plan Extension and Amendment Policy on October 1, 2024, and October 22, 2024, and recommended approval of this item.
7. The Board's Administrative Advisory Committee reviewed this Board Order on November 21, 2024 and recommended approval of this item to the Board.

ORDER

The Board hereby:

- a) Rescinds the Local Water Plan Extension and Amendment Policy adopted via Board Order #19-69.

Dated at St. Paul, Minnesota, this December 19, 2024.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Todd Holman, Chair
Board of Water and Soil Resources

Date: _____

Local Water Plan Extension and Amendment Policy

BWSR Policy | Version 4.0 | Effective December 18, 2019

Policy Statement

The purpose of this policy is to provide direction to local water planning authorities regarding Minnesota Statutes §103B.3367 Water Plan Extensions.

Reason for the Policy

The goals of this policy are to:

1. facilitate the transition to One Watershed, One Plan by ensuring active participation by counties, soil and water conservation districts, and watershed districts in plan development;
2. allow for effective participation and use of the Minnesota Pollution Control Agency's Watershed Restoration and Protection Strategies (WRAPS); and
3. provide flexibility on acting on extensions and amendments through case-by-case determinations.

Applicability

This policy applies to counties, soil and water conservation districts, watershed districts, and watershed management organizations (organizations) that are operating under a local water plan. For purposes of this policy, "local water plan" means a:

- county water plan authorized under Minnesota Statutes §103B.311,
- watershed management plan required under §103B.231,
- watershed management plan required under §103D.401 or §103D.405,
- county groundwater plan authorized under §103B.255,
- soil and water conservation district "comprehensive plan" under §103C.331, Subd. 11, or
- comprehensive watershed management plan under §103B.801.

Extensions of local water plans will be supported in one or more of the following circumstances:

1. In order for an organization to participate in and more effectively utilize the Minnesota Pollution Control Agency's watershed-based development of WRAPS.
2. In order to synchronize water management efforts between partners for the purposes of developing and completing comprehensive watershed management plans through the One Watershed, One Plan Program. Formal acknowledgement of intent to develop a comprehensive watershed management plan under §103B.801 in the form of a passed motion or resolution by the board of the water planning authority is required in this circumstance.
3. Amendments required by BWSR Board Order approving the county water plan.

Extension requests associated with WRAPS or transition to comprehensive watershed management planning consistent with Minnesota Statutes §103B.801 will be considered only when a motion or resolution committing to transitioning to comprehensive watershed management planning has been passed or adopted by the board and/or a comprehensive watershed management plan has been adopted for a portion of the organization's area. All other purposes for requesting an extension will be considered on a case-by-case basis.

Amendments of local water plans will be supported in one or more of the following circumstances:

1. As required by a BWSR Board order in association with an extension request.
2. All other amendments will be considered on a case-by-case basis in consideration of the authorizing local water plan statute.

Extension Procedure

All extension requests will be reviewed on a case-by-case basis, based on the extent of implementation occurring, the availability of relevant new data or information, or commitment to transitioning to comprehensive watershed management planning. Extensions that substantially delay implementation of the requirements of local water plans will not be allowed.

Individual Approval Process: Local government units may initiate a request for an extension to a local water plan, or to the deadline to complete an amendment as required by BWSR Board Order, by submitting a petition to BWSR. Individual requests will be processed through the Board Conservationist, Regional Manager, and Executive Director.

Batch Approval Process: BWSR may process extensions for local government units through a batch Board Order. Batch requests will be processed through the Board Conservationist, Regional Manager, Water Management & Strategic Planning Committee, and BWSR Board.

Exception: Soil and Water Conservation District (SWCD) comprehensive plans will be processed through the Board Conservationist and approved by the Regional Manager.

The Executive Director may condition the extension approval with a requirement for a subsequent amendment to address new data and information that may substantially change implementation of the local water plan. Extension requests will be processed within 60 days. Appeals of decisions on individual extension requests will be processed through the Regional Committee and full Board. A local government unit may appeal a decision made via a batch extension approval process, which will be processed through the Water Management and Strategic Planning Committee and full Board.

Where the SWCD has adopted the county plan by resolution and the county plan has been extended, the SWCD may continue to adopt the county water plan, as extended, by resolution.

Amendment Procedure

Amendments to local water plans must follow the requirements of the authorizing local water plan statute and will be processed through the Board Conservationist, Regional BWSR Committee, and full BWSR Board; except amendments to local water plans as required by BWSR Board order or condition of approval from the Executive Director, in association with an extension request, must follow the requirements of the authorizing statute (for public notice). These amendments will be processed through the Board Conservationist and Regional Manager with final approval delegated to the Executive Director.

Decisions will be made based on the extent of implementation occurring, the availability of relevant new data or information, or commitment to transitioning to comprehensive watershed management planning.

Amendment requests noted in the exceptions above will be processed within 60 days. Appeals of decisions will be processed through Regional Committees and the full Board.

CONTACT

Melissa King

Agency Tribal Liaison

651-350-8845 (tel:651-350-8845)

melissa.king@state.mn.us

(mailto:melissa.king@state.mn.us)

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE:	Local Water Plan Status and Grant Eligibility Policy – Rescindment		
Meeting Date:	<u>December 19, 2024</u>		
Agenda Category:	<input checked="" type="checkbox"/> Committee Recommendation	<input type="checkbox"/> New Business	<input type="checkbox"/> Old Business
Item Type:	<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Discussion	<input type="checkbox"/> Information <input type="checkbox"/> Non-Public Data
Keywords for Electronic Searchability:	<u>Local Water Plan Status and Grant Eligibility Policy, Policy, Plan Status</u>		
Section/Region:	<u>Regional Operations</u>		
Contact:	<u>Ryan Hughes</u>		
Prepared by:	<u>Ryan Hughes</u>		
Reviewed by:	<u>Administrative Advisory</u>	<u>Committee(s)</u>	
Presented by:	<u>Ryan Hughes</u>		
Time requested:	<u>5 minutes</u>		

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|--|---|
| <input type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input checked="" type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Rescind the Board’s Local Water Plan Status and Grant Eligibility Policy.

LINKS TO ADDITIONAL INFORMATION

[Local Water Plan Status and Grant Eligibility Policy | MN Board of Water, Soil Resources](#)

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

The Local Water Plan Status and Grant Eligibility Policy has been found to be unnecessary due to prior Legislative Session revisions, specifically most recently in 2024, to Minnesota Statutes Chapters 103B, 103C, and 103D and the agency utilizes external and internal procedures developed and implemented consistent with Board Orders, Minnesota Statutes, Legislative appropriations, and Office of Grants Management policies that address the requirements of the Local Water Plan Status and Grant Eligibility Policy. The policy is duplicative with the agency requirements completed in accordance with Minnesota Statutes §103B.102, Subd. 3 and 4 (Local Water Management; Accountability and Oversight) that provide for the evaluation, reporting, and corrective actions for each local water management entity under Minnesota Statutes Chapters 103B, 103C, 103D, or 103G and chapter 114D.

BOARD ORDER

Local Water Plan Status and Grant Eligibility Policy - Rescindment

PURPOSE

Rescind the Board’s Local Water Plan Status and Grant Eligibility Policy.

FINDINGS OF FACT / RECITALS

1. The Board previously adopted a Local Water Plan Status and Grant Eligibility Policy (Board Order #18-29) which documented the Board’s direction for grantees and potential grantees on how the status of their local water plan impacts BWSR decision on grants and grant payments.
2. Minnesota Statutes §103B.102, Subd. 3 and 4 (Local Water Management; Accountability and Oversight) provide for the evaluation, reporting, and corrective actions for each local water management entity under Minnesota Statutes Chapters 103B, 103C, 103D, or 103G and chapter 114D.
3. The Local Water Plan Status and Grant Eligibility Policy has been found to be unnecessary due to prior Legislative Session revisions to Minnesota Statutes Chapters 103B, 103C, and 103D.
4. The Local Water Plan Status and Grant Eligibility Policy has been found to be unnecessary as the agency utilizes external and internal procedures developed and implemented consistent with Board Orders, Minnesota Statutes, Legislative appropriations, and Office of Grants Management policies.
5. The Board’s Senior Management Team reviewed the staff recommendation to rescind the Local Water Plan Status and Grant Eligibility Policy (Board Order #18-29) on October 1, 2024, and October 22, 2024, and recommended approval of this item.
6. The Board's Administrative Advisory Committee reviewed this Board Order on November 21, 2024, and recommended approval of this item to the Board.

ORDER

The Board hereby:

- a) Rescinds the Local Water Plan Status and Grant Eligibility Policy (Board Order #18-29).

Dated at St. Paul, Minnesota, this December 19, 2024.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Todd Holman, Chair
Board of Water and Soil Resources

Date: _____

Local Water Plan Status and Grant Eligibility Policy

page)

From the Board of Water and Soil Resources, State of Minnesota

Version: 1.00

Effective Date: 6/27/2018

Approval: Board Decision #18-29

Policy Statement

It is the policy of the State of Minnesota to consider a grant applicant's past performance before awarding subsequent grants to them (see Office of Grant Management Policy 08-13). The Board of Water and Soil Resources recognizes the importance of local water planning to performance in grant implementation.

This policy applies to competitive and noncompetitive or formula grants and the status of the local water plan only. Decisions regarding grant awards and other aspects of performance will be determined through individual grant program policies or BWSR Board actions. Decisions regarding legislatively named and single and sole source grants and the status of water plans will be on a case-by-case basis. As per BWSR grant agreements, BWSR reserves the right to assure program compliance.

Reason for this Policy

The purpose of this policy is to provide clear direction for grantees and potential grantees on how the status of their local water plan impacts BWSR decision on grants and grant payments.

Requirements

1.0 Local Water Plan Status Criteria

For the purposes of this policy: if a local water plan meets the following applicable criteria, or the BWSR Board order or BWSR action approving the local water plan states a different period of time than the criteria below, or the plan has been properly extended through the BWSR Local Water Plan Extension and Amendment Policy if applicable, and the plan was adopted by the local unit of government (LGU) after BWSR approval, the plan will be considered current.

- The metro watershed management organizations or watershed district plan (Minnesota statutes §103B.231) is less than 10 years beyond the BWSR plan approval date;
- The non-metro watershed district plan (§103D.401 or §103D.405) is less than 11 years 3 months beyond the BWSR approval date;
- The county water plan (§103B.311) is less than 10 years beyond the BWSR approval date;
- The soil and water conservation district comprehensive plan (§103C.331, Subd. 11) or county water plan adopted by reference is less than 10 years beyond the BWSR approval date; or
- The comprehensive watershed management plan under §103B.801 (One Watershed, One Plan) is less than 10 years beyond the BWSR plan approval date; or

- The seven-county metropolitan area municipality’s local water plan (Minnesota statutes §103B.235) has been approved by the WMO and adopted by the municipality.

2.0 Local Water Plan Status and Grant Execution

2.1 Competitive Grants. Application for competitive grants is allowed if the local water plan is not current; however, the plan must be current at the time the Board approves the award. If the plan is not current at the time of BWSR Board action, the application will be deemed ineligible. Joint powers organizations must be working under a State approved and locally adopted plan to be eligible. Competitive One Watershed, One Plan Program planning grants are exempt from this requirement.

2.2 Noncompetitive or Formula Grants. If a local water plan is not current at the time of BWSR Board action on noncompetitive grants, the grant will not be executed until the plan becomes current. If the plan remains not current within six months of the Board action, BWSR reserves the right to cancel the award taking into consideration the Participation Requirements in the One Watershed, One Plan Operating Procedures and the One Watershed, One Plan Transition Plan. The requirement for a current plan is not applicable to the Disaster Recovery and Assistance Program or Soil and Water Conservation District Joint Powers Organization Technical Service Areas funding.

2.3 When a local unit of government has multiple local water plans. If a local government unit has more than one local water plan covering different areas of their jurisdiction, eligibility is determined by:

2.3.1 For competitive grants the project location must be identified. If the project is in the area of a non-current plan as in 2.1 above, the application will be deemed ineligible.

2.3.2 Noncompetitive or formula grants will follow 2.2 above, except for Watershed-based funding grants in 2.3.3 below. See also the BWSR Local Water Plan Amendment and Extension Policy.

2.3.3 Watershed-based Funding Grants. For these grants, eligibility will be determined through the Watershed-based Funding Policy.

3.0 Grant Payments and Amendments

Local water plan status will not impact processing of payments on, or decisions on amendments to, executed grant agreements, unless issues of noncompliance are found.

Related Information

- BWSR Grants Administration Manual sections:
 - Grant Noncompliance Policy
 - Processing a BWSR Grant
- BWSR Plan Extension and Amendment Policy

History

Version	Description	Date
1.00	This is the first version of this policy.	6/27/2018

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Board Order Delegating Certain Authorities to the Executive Director

Meeting Date: December 19, 2024

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Keywords for Electronic Searchability: Delegation, Delegates, Authority, Executive Director

Section/Region: Executive/Central

Contact: Craig Engwall

Prepared by: Craig Engwall

Reviewed by: Administrative Advisory Committee(s)

Presented by: Craig Engwall

Time requested: 15 minutes

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input checked="" type="checkbox"/> Other:
<u>Consolidate existing delegations</u> | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Consolidate and Clarify Authorities Delegated to the Executive Director.

LINKS TO ADDITIONAL INFORMATION

Attached draft board order and copies of previous orders, resolutions and policies delegating authority.

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

Previously, the Board has delegated various authorities to the Executive Director in numerous Board Orders, Resolutions and Policies spread out over many years. The variety of these delegations in a range of formats may create difficulty in tracking delegated authorities, causing confusion for interested parties and reducing overall agency efficiency. It is in the interest of the Board, staff, Local Governmental Units (LGUs), partners and the public for the Board to consolidate and clarify the authorities delegated to the Executive Director. The Board’s Senior Management Team reviewed this Board Order on October 1, 2024, and October 22, 2024, and recommended approval of this item. The Board's Administrative Advisory Committee reviewed this Board Order on November 21, 2024, and also recommended approval of this item to the Board.

BOARD ORDER

Delegating Certain Authorities to the Executive Director

PURPOSE

Consolidate and Clarify Authorities Delegated to the Executive Director.

FINDINGS OF FACT / RECITALS

1. Pursuant to Minn. Stat. §103B.101, subd. 4, the Board may prescribe the powers and duties of its officers and employees and may authorize its employees and members of the Board to act on behalf of the Board.
2. Previously, the Board issued the following Orders delegating various authorities to the Executive Director:
 - a. Board Decision #21-31, Amending and Adopting the Delegation of Routine Administrative Water Management Decisions Policy (Prior related Board Decision: #19-68);
 - b. Board Decision #21-23, Authorizing Performance Review and Assistance Program (PRAP) assistance services and delegating approval of payment to the Executive Director (Prior related Board Decisions: #18-71, #18-41, and #15-37);
 - c. Board Decision #20-11, Authorizing Temporary Delegation of Authority to the Executive Director for COVID-19 Preparedness and Response;
 - d. Board Resolution #17-97, Authorizing Approval of Technical Training Acceleration (TTA) Grants to Soil and Water Conservation Districts (SWCDs) and Technical Service Areas (TSAs) and delegating authority to the Executive Director to approve individual grant recipients; and
 - e. Board Resolution #14-72, Authorizing the Executive Director to Sign Approvals of Supervisor Districts for SWCDs.
3. The range of delegations made in numerous Board Orders, Resolutions and Policies spread out over many years may create difficulty in tracking delegated authorities, causing confusion for interested parties and reducing overall agency efficiency.
4. It is in the interest of the Board, staff, Local Governmental Units (LGUs), partners and the public for the Board to consolidate and clarify the authorities delegated to the Executive Director.
5. The Board's Senior Management Team reviewed this Board Order on October 1, 2024, and October 22, 2024, and recommended approval of this item.
6. The Board's Administrative Advisory Committee reviewed this Board Order on November 21, 2024, and recommended approval of this item to the Board.

ORDER

The Board hereby:

A. Re: Delegation of Routine Administrative Water Management Decisions

1. Rescinds Board Decision #21-31 and the Delegation of Routine Administrative Water Management Decision Policy dated August 26, 2021.
2. Delegates decision-making authority to the Executive Director for the following actions:

- *Watershed Districts (103D)*
 - a. Non-controversial boundary changes (103D.251). To be considered a non-controversial boundary change and in addition to the requirements for petition signatures of 103D.251, Subd. 5, the petition must include a written statement of concurrence from the governing body of each city, town, county and watershed district having jurisdiction over the territory proposed to be added or transferred. Upon filing of a sufficient petition, Board staff will give notice of the filing of the petition (103D.105, Subd. 2). If BWSR does not receive a written request for a hearing within 30 days of the last publication of the notice of filing, the Executive Director may make a decision on the petition. If a request is received, the Executive Director will schedule a hearing (103D.251, Subd. 6).
 - b. Hearing orders for any of the following:
 - I. establishment (103D.221)
 - II. boundary change (103D.251)
 - III. withdrawal of territory (103D.255)
 - IV. enlargement (103D.261)
 - V. consolidation (103D.265)
 - VI. termination (103D.271)
 - VII. redistribution of managers (103D.301, Subd. 3)
 - VIII. increasing managers (103D.305)
- *Metro Watershed Districts (103B)*
 - a. Boundary changes (103B.215). Upon filing of a sufficient petition (103B.215, Subd. 2), BWSR shall give notice of the filing of the petition (103B.215, Subd. 3). If a timely written request for a hearing is not received (103B.215, Subd. 3), the Executive Director may make a decision on the petition within 30 days after the last publication of the notice without a hearing. If a hearing is requested, the Executive Director will schedule a hearing to be presided over by a Committee of the Board (Central Region Committee or another Committee as directed by the Board chair) and the decision on the petition will be made by the Board (103B.215, Subd. 4).
- *Soil and Water Conservation Districts (103C)*
 - a. Change of name (103C.215)

B. Re: Delegation of PRAP Payment Approval

1. Delegates decision-making authority to the Executive Director for the following actions:
2. Approval of PRAP Assistance grants or contracts up to \$10,000 per contract for single entity requests and \$20,000 for projects that involve multiple entities or partnerships.
3. Determination of the percentage to be cost shared by grantees for all PRAP Assistance awards.
4. Reaffirms Board Decision #21-23, except that any delegation to the Executive Director in this Order supersedes any previous delegation to the Executive Director in Board Decision #21-23.

C. Re: Temporary Delegation of Authority to the Executive Director for COVID-19 Preparedness and Response

1. Rescinds Board Decision #20-11.

D. Re: Delegation of Approval Authority for TTA Grants to SWCDs and TSAs

1. Delegates decision-making authority to the Executive Director for the approval of individual grant recipients.
2. Reaffirms Board Resolution #17-97 except that any delegation to the Executive Director in this Order supersedes any previous delegation to the Executive Director in Board Resolution #17-97.

E. Re: Delegation of Approval Authority for SWCDs

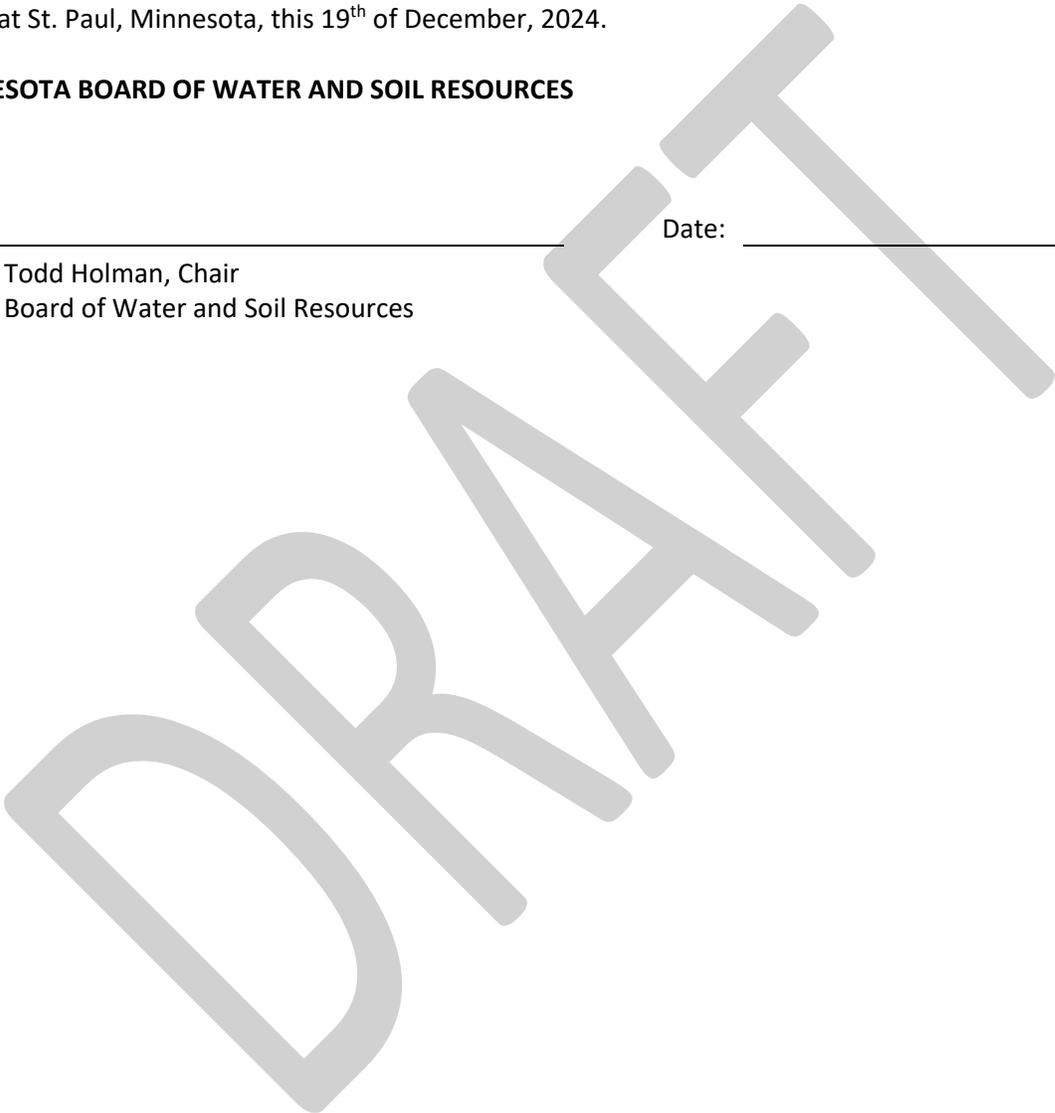
1. Rescinds Resolution #14-72.
2. Delegates decision-making authority to the Executive Director for the approval of Supervisor Districts for SWCDs when:
 - a. The Districts are drawn consistent with Minn. Stat. sec. 103C.311, subd. 2; and
 - b. There is no disagreement brought forth by the SWCD, County Board or the governing body of a Municipality.

Dated at St. Paul, Minnesota, this 19th of December, 2024.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Todd Holman, Chair
Board of Water and Soil Resources

Date: _____





BOARD ORDER

Delegation of Routine Administrative Water Management Decision Policy

PURPOSE

Amend and Adopt the Delegation of Routine Administrative Water Management Decision Policy (Policy).

RECITALS /FINDINGS OF FACT

1. In June 26, 2019, the Board's Administrative Advisory Committee requested staff to assess which routine process items could be delegated to staff, such as amendment hearings, simple boundary changes, certain county water plan extensions, and SWCD office relocation.
2. Staff reviewed the board's statutory decision-making requirements and identified a series of administrative decisions for watershed districts, watershed management organizations, and soil and water conservation districts that could be delegated to the Executive Director and drafted a policy to allow specific decisions to be delegated.
3. The proposed policy allowing routine, administrative, and noncontroversial decisions to be delegated to the Executive Director was reviewed by the Board's Senior Management Team on October 8, 2019 and recommended to the Board's Water Management and Strategic Planning Committee.
4. The Board's Water Management and Strategic Planning Committee reviewed the Policy on November 22, 2019 and recommended approval to the Board.
5. The Board adopted the Delegation of Routine Administrative Water Management Decisions Policy on December 18, 2019.
6. In August 2021, staff identified two additions to be included in the Policy and proposed the revisions to the Administrative Advisory Committee. On August 25, 2021, the Administrative Advisory Committee reviewed the proposed revisions and recommended approval to the Board.

ORDER

The Board hereby:

1. Amends and adopts the revised Delegation of Routine Administrative Water Management Decision Policy dated August 26, 2021.

Dated at Austin, Minnesota, this August 26, 2021.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES


Gerald Van Amburg, Chair
Board of Water and Soil Resources

Date: August 26, 2021

Delegation of Routine Administrative Water Management Decision Policy

From the Office of Board of Water and Soil Resources, State of Minnesota

Version: 2.0
Effective Date: 08-26-2021
Approval: Board Order #21-31

Policy Statement

The purpose of this policy is to allow specific administrative decisions regarding watershed districts (103D and 103B), and soil and water conservation districts to be delegated to the Executive Director. This policy will be known as the Delegation of Routine Administrative Water Management Decision Policy.

Reason for the policy

The goal is to increase efficiencies in the decision making process at BWSR by allowing the Executive Director to make decisions on routine actions.

Applicability

This policy applies to watershed districts and soil and water conservation districts. Delegation of decisions to the Executive Director will be supported for the following actions:

- 1) Watershed district (103D)
 - a) Non-controversial boundary changes (103d.251). To be considered a non-controversial boundary change and in addition to the requirements for petition signatures of 103D.251, Subd. 5, the petition must include a written statement of concurrence from the governing body of each city, town, county and watershed district having jurisdiction over the territory proposed to be added or transferred. Upon filing of a sufficient petition, Board staff will give notice of the filing of the petition (103D.105, Subd. 2). If BWSR does not receive a written request for a hearing within 30 days of the last publication of the notice of filing, the Executive Director may make a decision on the petition. If a request is received, then the Executive Director will schedule a hearing (103D.251, Subd. 6).
 - b) Hearing orders (approval to file notice and delegates the members to oversee the hearing) for any of the following:

- i) establishment (103D.221)
- ii) boundary change (103D.251)
- iii) withdrawal of territory (103D.255)
- iv) enlargement (103D.261)
- v) consolidation (103D.265)
- vi) termination (103D.271)
- vii) redistribution of managers (103D.301, Subd. 3)
- viii) increasing managers (103D.305)
- ix) amendment of watershed management plan and revised watershed management plan (103D.411)

c) Project establishment order (103D.605, Subd. 5). After the completion of items in Subd. 1-4, and the watershed district managers have found that the project will be conducive to public health, promote the general welfare, and is in compliance with the watershed management plan and the provisions of this chapter, the Executive Director may make a decision to establish the project. This provision remains applicable until such time that the statute interpretation is made certain.

2) Metro watershed districts (103B).

a) Boundary changes (103B.215). Upon filing of a sufficient petition (103B.215, Subd. 2), BWSR shall give notice of the filing of the petition (103B.215, Subd. 3) If a timely written request for a hearing is not received (103B.215, Subd. 3), the Executive Director may make a decision on the petition within 30 days after the last publication of the notice without a hearing. If a hearing is requested, the Executive Director will schedule a hearing to be presided over by a Committee of the Board (Central Region Committee or another Committee as directed by the Board chair) and the decision on the petition will be made by the Board (103B.215, Subd. 4).

3) Soil and water conservation districts (103C)

- a) Change of name (103C.215)
- b) Change of location (103C.221)

Procedure

Local government units initiate a request for any of the actions listed above by submitting a petition (watershed districts) or resolution (SWCDs) to BWSR. Requests will be processed through the Board Conservationist, Regional Manager and Executive Director. The Executive Director may defer the decision to the BWSR Board.

History

Version	Description	Date
1.0	Delegation Policy, first adoption	12/18/2019

Version	Description	Date
2.0	Delegation Policy, revision. Board Order #21-31	8/26/2021



BOARD ORDER

Delegation of Routine Administrative Water Management Decisions Policy

PURPOSE

Adopt the Delegation of Routine Administrative Water Management Decisions Policy.

RECITALS /FINDINGS OF FACT

1. On June 26, 2019, the Board's Administrative Advisory Committee directed staff to assess which routine process items could be delegated to staff, such as plan amendment hearings, simple boundary changes, certain county water plan extensions, and SWCD office relocation.
2. Staff reviewed the board's statutory decision-making requirements and identified a series of administrative decisions for watershed districts, watershed management organizations, and soil and water conservation districts that could be delegated to the Executive Director and drafted a policy to allow specific decisions to be delegated.
3. The proposed policy allowing routine, administrative, and noncontroversial decisions to be delegated to the Executive Director was reviewed by the Board's Senior Management Team on October 8, 2019 and recommended to the Board's Water Management and Strategic Planning Committee.
4. The Board's Water Management and Strategic Planning Committee reviewed the Executive Director Delegation Policy on November 22, 2019 and recommended approval to the Board.

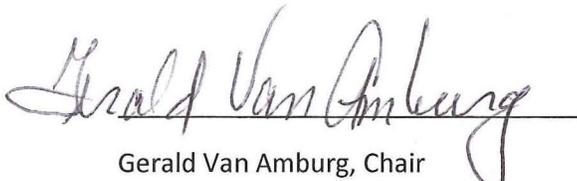
ORDER

The Board hereby:

1. Adopts the Delegation of Routine Administrative Water Management Decisions Policy dated December 18, 2019.

Dated at St. Paul, Minnesota, this December 18, 2019.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES


Gerald Van Amburg, Chair
Board of Water and Soil Resources

Date: 12-18-2019

BOARD ORDER

Performance Review and Assistance Program (PRAP) Assistance Service Grants

PURPOSE

Authorize PRAP Assistance services and delegate approval of payment to the Executive Director.

FINDINGS OF FACT / RECITALS

1. The Board of Water and Soil Resources (Board) regularly monitors and evaluates the performance and activities of local water management entities and provides assistance in improving performance under the authorities and requirements of Minnesota Statutes §103B.102.
2. In December 2018, the Board through Resolution #18-71 “approved the allocation of designated or available funds to eligible local water management entities and reconfirmed the delegation of authority to the Executive Director to approve individual PRAP Assistance grants up to \$10,000 requires that program awards are reported to the Board at least once per year.”
3. The Board continues to receive requests for PRAP assistance services to address operational or service delivery needs identified through a PRAP assessment or specialized assistance request noting an increase in requests from multiple entities or partnerships.
4. The Board has authorities under Minnesota Statutes §103B.3369 and 103B.101 to award grants and contracts to accomplish water and related land resources management.
5. The Grants Program and Policy Committee, at their August 11, 2021 meeting, reviewed this request and recommended the Board approve this order.

ORDER

The Board hereby:

1. Approves the allocation of designated or available funds, consistent with the appropriation of the designated or available funds, to eligible local government water management entities for fulfilling the provisions of Minnesota Statutes §103B.102.
2. Confirms the delegation of authority to the Executive Director to approve PRAP Assistance grants or contracts up to \$10,000 per contract for single entity requests and \$20,000 for projects that involve multiple entities or partnerships and requires that program awards are reported to the Board at least once per year.
3. Establishes that all PRAP Assistance awards be cost shared by the grantee at a percentage determined by the Executive Director.
4. Authorizes staff to enter into grant agreements or contracts for these purposes.
5. Establishes that this order replaces previous Board resolution #18-71.

Dated at Austin, Minnesota, this August 26, 2021.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES


Gerald Van Amburg, Chair
Board of Water and Soil Resources

Date: August 26, 2021



BOARD ORDER

Performance Review and Assistance Program (PRAP) Assistance Service

PURPOSE

Authorize PRAP Assistance services and delegate approval of payment to the Executive Director.

FINDINGS OF FACT / RECITALS

1. The Board of Water and Soil Resources (Board) regularly monitors and evaluates the performance and activities of local water management entities and provides assistance in improving performance under the authorities and requirements of Minnesota Statutes §103B.102.
2. In June 2018, the Board through Resolution #18-41 which “reconfirmed the delegation of authority to the Executive Director to approve individual PRAP Assistance grants up to \$10,000, and requires that program awards are reported to the Board at least once per year.”
3. The Board continues to receive requests for PRAP assistance services to address operational or service delivery needs identified through a PRAP assessment or specialized assistance request.
4. The Board has authorities under Minnesota Statutes §103B.3369 and 103B.101 to award grants and contracts to accomplish water and related land resources management.
5. The Grants Program and Policy Committee, at their November 26, 2018 meeting, reviewed this request and recommended the Board approve this order.

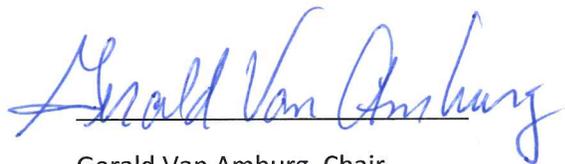
ORDER

The Board hereby:

1. Approves the allocation of designated or available funds, consistent with the appropriation of the designated or available funds, to eligible local government water management entities for fulfilling the provisions of Minnesota Statutes §103B.102.
2. Reconfirms the delegation of authority to the Executive Director to approve PRAP Assistance grants or contracts up to \$10,000 per contract with a maximum of \$50,000 per year and requires that program awards are reported to the Board at least once per year.
3. Establishes that all PRAP Assistance awards be cost shared by the grantee at a percentage determined by the Executive Director.
4. Authorizes staff to enter into grant agreements or contracts for these purposes.
5. Establishes that this order replaces previous Board resolution #18-41.

Dated at St. Paul, Minnesota, this December 19, 2018.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

A handwritten signature in blue ink that reads "Gerald Van Amburg". The signature is written in a cursive style and is positioned above a horizontal line.

Gerald Van Amburg, Chair
Board of Water and Soil Resources

Date: 12-19-2018



BOARD ORDER

Performance Review and Assistance Program (PRAP) Assistance Grants

PURPOSE

Authorize PRAP Assistance Grants and delegate approval of these grants to the Executive Director.

FINDINGS OF FACT / RECITALS

1. The Board of Water and Soil Resources (Board) regularly monitors and evaluates the performance and activities of local water management entities and provides assistance in improving performance under the authorities and requirements of Minnesota Statutes §103B.102.
2. In 2015, the Board through resolution #15-37, authorized "the Executive Director to expend up to \$10,000 per grant or contract for specialized assistance to local government water management entities to address operational or service delivery needs identified through a PRAP assessment or specialized assistance request."
3. The Board continues to receive requests for PRAP Assistance Grants to address operational or service delivery needs identified through a PRAP assessment or specialized assistance request.
4. The Board has authorities under Minnesota Statutes §103B.3369 to award grants to local units of government with jurisdiction in water and related land resources management.
5. The Laws of Minnesota 2017, Chapter 93, Sect 4(n), appropriated funds eligible for this purpose.
6. The Audit and Oversight Committee, at their June 26, 2018 meeting, reviewed this request and recommended the Board approve this order.

ORDER

The Board hereby:

1. Approves the allocation of returned state cost-share funds to eligible local government water management entities.
2. Reconfirms the delegation of authority to the Executive Director to approve individual PRAP Assistance grants up to \$10,000 per contract and requires that program awards are reported to the Board at least once per year.
3. Establishes that all PRAP Assistance Grants awarded be cost shared by the grantee at a percentage determined by the Executive Director.
4. Authorizes staff to enter into grant agreements for these purposes.
5. Establishes that this order replaces previous Board resolution #15-37.

Dated at St. Paul, Minnesota, this June 27, 2018.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Gerald Van Amburg

Gerald Van Amburg, Chair
Board of Water and Soil Resources

Date: 6-27-2018



Board Resolution # 15-37

**Minnesota Board of Water and Soil Resources
Board Authorization of Delegation for PRAP Assistance Grants to LGUs**

WHEREAS the Board of Water and Soil Resources (BWSR) is mandated under Minnesota Statutes Chap 103B.102 to regularly review the performance of local government water management entities in the state and provide assistance for "underperforming entities," and

WHEREAS BWSR routinely monitors the performance of Minnesota's local government water and land management entities, and during the course of those reviews has identified the need for specialized assistance to improve their operational performance, and

WHEREAS BWSR receives other requests for specialized assistance to address particularly difficult operational or performance problems that cannot be addressed by routine BWSR staff support, and

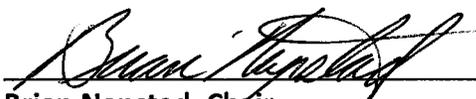
WHEREAS the legislature has specifically authorized use of cost share rollover funds for local government assistance to address specialized assistance needs, and

WHEREAS the BWSR board has previously authorized the PRAP Assistance Grants as a delegated authority to the Executive Director,

NOW THEREFORE BE IT RESOLVED THAT the BWSR Board authorizes the Executive Director to expend up to \$10,000 per grant or contract for specialized assistance to local government water management entities to address operational or service delivery needs identified through a PRAP assessment or specialized assistance request, and

BE IT FURTHER RESOLVED THAT the BWSR Board requires that all such funds awarded be cost shared by the grantee at a percentage dependent on the size of the grant and determined by the Executive Director, and

BE IT FURTHER RESOLVED THAT the aggregate amount of expenditures for the PRAP program and awards are consistent with any appropriation conditions set by the legislature and are reported to the Board at least once per year.



Brian Napstad, Chair

Date: 6/24/15

Minnesota Board of Water and Soil Resources

BOARD ORDER**COVID-19 Preparedness and Response – Temporary Delegation of Authority to the Executive Director****PURPOSE**

Authorization for Temporary Delegation of Authority to the Executive Director for COVID-19 Preparedness and Response.

FINDINGS OF FACT / RECITALS

1. On March 13 2020 Governor Walz issued **Emergency Executive Order 20-01** - [Document number: 203221](#) - Declaring a Peacetime Emergency and Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19; and
2. On March 17 2020 Governor Walz issued **Emergency Executive Order 20-07** - [Document number 203253](#) - Providing for State workforce needs during the COVID-19 peacetime emergency; and
3. Governor Walz has issued other Emergency Executive Orders and may issue further Emergency Executive Orders to address the COVID-19 peacetime emergency; and
4. State and agency Continuity of Operations Plans (COOPs) prescribe necessary and prudent administrative actions to address emergency situations to assure state government services are managed in the public interest; and
5. It is in the public interest to accomplish timely but not always foreseeable decisions when operating under a state of emergency; and
6. The Board recognizes a potential need to streamline processing of agency business in a timely manner to address decisions related to or impacted by the COVID-19 peacetime emergency; and
7. The Board has concluded that it may be necessary and is thus prudent to temporarily delegate broad approval of decisions during the COVID-19 peacetime emergency to the Executive Director when timely Board meetings are not practical or possible; and
8. The Executive Director conferred with the Board Chair on March 16 and March 20 2020 to assess and plan for how best to deliver agency services affected by the COVID-19 peacetime emergency; and
9. M.S. [103B.101, Subd. 4](#), authorizes its employees to act on behalf of the Board; and
10. The [Board bylaws](#), adopted Oct 24 2018, include a provision for the Executive Director to sign documents as designated by the Board; and
11. The Executive Director or Board Chair may temporarily designate an Assistant Director or other staff to temporarily serve as Acting Executive Director if the Executive Director is unavailable to carry out the duties of the position; and

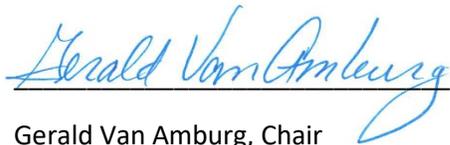
ORDER

The Board hereby:

1. Delegates all decisions necessary when timely Board meetings are not practical or possible to the Executive Director while the State of Minnesota is operating within the COVID-19 peacetime state of emergency; and
2. Authorizes the Executive Director, for purposes of implementing agency business, to approve and sign all documents that would otherwise require Board action beginning March 25 2020 for a period of time until the State of Minnesota is no longer operating in a state of emergency or as otherwise directed by the Governor, enacted legislation, or subsequent Board Order; and
3. Directs that the Executive Director shall strive to provide information and input opportunities for Board Members prior to decisions and shall consult with the Chair, if available, via email or phone prior to making decisions under this temporary delegation order; and
4. Directs that the Executive Director shall strive to provide timely communication to Board Members of decisions made pursuant to this order.

Dated at St. Paul, Minnesota, this March 25, 2020.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES



Gerald Van Amburg, Chair
Board of Water and Soil Resources

Date: March 25, 2020

Board Resolution # ¹⁷⁻97

BOARD AUTHORIZATION OF DELEGATION FOR TECHNICAL TRAINING ACCELERATION GRANTS TO SOIL AND WATER CONSERVATION DISTRICTS AND TECHNICAL SERVICE AREAS

WHEREAS the Board of Water and Soil Resources (Board) has mutually committed, along with the Natural Resources Conservation Service (NRCS), the Minnesota Association of Soil and Water Conservation Districts, and the Minnesota Association of Conservation District Employees to provide resources for technical training and certification of local staff; and

WHEREAS the Board has entered into a Contribution Agreement 63-6322-15-500 with the NRCS to develop, coordinate and implement the Technical Training and Certification Strategy; and

WHEREAS the Board receives requests for specialized assistance to address technical training needs that cannot be addressed by routine Board staff support; and

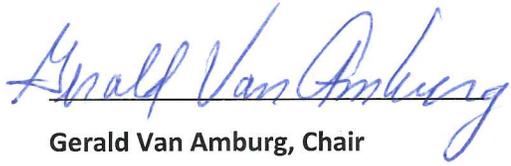
WHEREAS, the legislature appropriated funds to the Board under the Laws of Minnesota 2017, 1st Special Session, H. F. 707 4th Engrossment, Article 2, Sec. 7, for accelerated implementation including training and certification; and,

WHEREAS, the Board's Senior Management Team met on November 14, 2017 and reviewed the proposed application process and allocation for the technical training assistance grants to local governments and recommended approval to the Grants Program and Policy Committee; and

WHEREAS, the Board's Grants Program and Policy Committee met on November 28, 2017 and reviewed the proposed application process and allocation for the technical training assistance grants to local governments and recommended approval to the Board.

NOW THEREFORE BE IT RESOLVED THAT the Board hereby:

1. Authorizes staff to finalize, distribute, and promote an Application for the Technical Training Assistance Grants Program (see attachment); and,
2. Approves and authorizes grants to Soil and Water Conservation Districts and Technical Services Areas to provide specialized assistance and address needs identified through the Area Technical Training Teams or specialized assistance requests; and,
3. Authorize staff to enter into grant agreements; and,
4. Approves the allocation of total grant funds up to \$60,000, with no single grant greater than \$10,000; and,
5. Delegates approval to the Executive Director to approve individual grant recipients; and,
6. These grants will follow the Clean Water Fund Policy except no match is required and the eligible activity is to provide training; and,
7. Grants will be distributed on a reimbursement basis.


Gerald Van Amburg, Chair

Date: 12/20/2017

Minnesota Board of Water and Soil Resources

Attachments: 2018 Pilot Technical Training Acceleration Grant Application



Resolution No. 14 - 72

Soil and Water Conservation District Supervisor Districts, Minnesota Statutes Section 103C.311, Subd. 2.

The Executive Director of the Board of Water and Soil Resources is authorized and directed to sign approvals of supervisor districts for soil and water conservation districts when all of the following conditions exist.

1. The supervisor districts are drawn consistent with the requirements of Minnesota Statutes section 103C.311, subdivision 2.
2. There is no disagreement brought forth by the soil and water conservation district, the county Board or by the governing body of a municipality.

October 22, 2014

A handwritten signature in blue ink, which appears to read "Brian Napstad". The signature is written in a cursive style and is positioned above a horizontal line.

Brian Napstad, Chair

COMMITTEE RECOMMENDATIONS

Buffers, Soils and Drainage Committee

1. Buffer Administrative Penalty Order (APO) Plan update – LeRoy Ose and Tom Gile – ***DECISION ITEM***

BOARD MEETING AGENDA ITEM

AGENDA ITEM TITLE: Buffer Administrative Penalty Order (APO) Plan update

Meeting Date: December 19, 2024

Agenda Category: Committee Recommendation New Business Old Business

Item Type: Decision Discussion Information

Keywords for Electronic Searchability: Buffer APO Plan

Section/Region: Resource Conservation/Central

Contact: Tom Gile/Travis Germundson

Prepared by: Travis Germundson

Reviewed by: Buffers, Soils & Drainage Committee Committee(s)

Presented by: LeRoy Ose/Tom Gile

Time requested: 20 mins

Audio/Visual Equipment Needed for Agenda Item Presentation

Attachments: Resolution Order Map Other Supporting Information

Fiscal/Policy Impact

- | | |
|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> General Fund Budget |
| <input type="checkbox"/> Amended Policy Requested | <input type="checkbox"/> Capital Budget |
| <input type="checkbox"/> New Policy Requested | <input type="checkbox"/> Outdoor Heritage Fund Budget |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Clean Water Fund Budget |

ACTION REQUESTED

Approve the Board Order that rescinds Resolution No. 17-60, adopts the amended APO Plan, and directs staff to publish the amended plan in the State Register. The order also authorizes staff to work with counties and watershed districts on amending their ordinances and rules to be consistent with the amended plan.

LINKS TO ADDITIONAL INFORMATION

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

In 2024, the Legislature made changes to Minnesota Statutes § 103B.101, subd. 12, and 12a, on the authority to issue penalty orders. The changes increased the monetary penalties from up to \$500 to \$10,000 for noncompliance. The amendment to statute also clarifies that all or part of the penalty may be forgiven. The Administrative Penalty Order (APO) Plan for Buffer Law implementation, previously approved via Board Resolution No. 17-60, is amended to provide revised procedures for issuance of APOs for counties, watershed districts, and

BWSR under the Buffer Law. The penalty range in the plan was adjusted to account for the increase in monetary penalties along with other minor wording changes.

The Board has the statutory authority to amend the Buffer APO plan and publish in the State Register. This will require counties and watershed districts that elected jurisdiction to amend their ordinances and rules to be consistent. The Buffers, Soils & Drainage Committee met on October 22, 2024 and recommend to the full Board that the APO Plan as amended be approved per the attached APO Plan and Board Order.

BOARD ORDER

Buffer Administrative Penalty Order (APO) Plan update

PURPOSE

Update the BWSR and County/Watershed District APO plans to conform with legislative changes.

FINDINGS OF FACT / RECITALS

1. Minnesota Statutes § 103F.48 establishes a riparian protection and water quality practices program commonly referred to as the Buffer Law.
2. The Buffer Law may be enforced through Minnesota Statutes § 103B.101 (administrative penalty orders) that was amended in the 2024 legislative session.
3. The 2024 statutory amendments require changes to the APO Plan for Buffer Law Implementation that was adopted via Board Resolution 17-60.
4. Minnesota Statutes § 103F.48, subd. 7(c) provides that a county or watershed district must adopt a plan consistent with the plan adopted by BWSR before exercising administrative penalty authority.
5. Staff have consulted with the Attorney General's Office on the proposed changes to the APO Plan for Buffer Law Implementation.
6. Minnesota Statute specifies that the plan and any subsequent amendments is effective 30 days after being published in the State Register.
7. The Buffers Soils and Drainage Committee, at their October 22, 2024 meeting, reviewed the proposed APO Plan for Buffer Law Implementation and recommended approval to the Board.

ORDER

The Board hereby:

- A. Rescinds Resolution #17-60.
- B. Adopts the APO Plan for Buffer Law Implementation dated October 22, 2024 and attached to this Order.
- C. Directs staff to publish the attached APO plan in the State Register.
- D. The Board hereby acknowledges that the APO plan is effective 30 days after being published in the State Register.
- E. Authorizes staff to work with Counties and Watershed Districts to amend their Ordinances, Rules, or Official Controls to be consistent with this revised APO Plan.

Dated at St. Paul, Minnesota, this December 19, 2024.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Todd Holman, Chair
Board of Water and Soil Resources

Date: _____

See attached Administrative Penalty Order (APO) Plan for Buffer Law Implementation
Dated October 23, 2024

Administrative Penalty Order (APO) Plan for Buffer Law Implementation

Amended December 19, 2024

This amended plan was adopted by the Board of Water and Soil Resources (BWSR) pursuant to Minn. Stat. § 103B.101, subd. 12 and 12(a) and (b) and Minn. Stat. § 103F.48, subd. 7(c) to provide revised procedures for the issuance of APOs for counties and watershed districts and BWSR to reflect changes to Minnesota Law that occurred during the 2024 legislative session (Minnesota Laws 2024, Chapter 116, Article 4, sections 1 and 2). Users of the document are encouraged to obtain legal advice from an attorney regarding their specific application of the Buffer Law.

This document is organized as follows:

- A. Part A contains procedures for counties and watershed districts that elect to use Administrative Penalty Orders to enforce the riparian protection and water quality practices requirements of Minn. Stat. § 103F.48;
- B. Part A is best used in conjunction with Procedure 9: BWSR’s Review of Local Buffer Enforcement Rules, Ordinances and Official Controls when evaluating a county or watershed district buffer enforcement mechanism for consistency with this Administrative Penalty Order Plan and Minn. Stat. § 103F.48, subd. 1(j); and
- C. Part B shall be used when BWSR is the enforcement authority for the riparian protection and water quality practices requirements of Minn. Stat. § 103F.48.

Background

In 2015 the Minnesota Legislature passed the “Riparian Protection and Water Quality Practices” law codified in Minn. Stat. § 103F.48, which states: It is the policy of the state to establish riparian buffers and water quality practices to:

- 1) protect state water resources from erosion and runoff pollution;
- 2) stabilize soils, shores, and banks; and
- 3) Protect or provide riparian corridors.

Subdivision 3 of the law requires the fee title landowner¹ with property adjacent to a water body identified and mapped on the Buffer Protection Map to maintain a buffer to protect the State’s water resources as specified in the law. Minnesota Statutes § 103F.48 also authorizes counties, watershed districts, and BWSR to require that landowner’s violations of the riparian protection and water quality practices provided in Minn. Stat. § 103F.48 be

¹ In certain circumstances, the landowner includes the landowner’s agent or operator, see Minn. Stat. § 103F.48, subd. 7(g) and subd. 9.

corrected and to assess administrative penalties to landowners who fail to comply. The APO authority is an enforcement tool to gain compliance with the riparian protection and water quality practices requirements to achieve the purposes of the law. BWSR may forgive all or part of a penalty if it determines that sufficient steps have been taken to fully resolve the noncompliance.

Minnesota Statutes § 103B.101, Subd. 12 provides authorization to BWSR and Subdivision 12a to counties and watershed districts the ability to assess monetary penalties of up to \$10,000 for noncompliance. BWSR is directed in § 103B.101, subdivision 12(b) to “adopt a plan containing procedures for the issuance of APOs by local governments and BWSR” which must be published in the State Register. The BWSR APO Plan, and any subsequent amendments, become effective 30 days after publishing. The procedures that BWSR will use when it is the enforcement authority are contained in Part B of this Plan.

This Plan provides procedures for counties, watershed districts, or BWSR to effectively use APO authority to ensure that the landowner of property adjacent to a waterbody shown on the Buffer Protection Map complies with the riparian protection and water quality practices requirements of Minn. Stat. § 103F.48. The primary goal is to protect water quality through compliance rather than to exact penalties. Thus, the responsible party or parties will have the opportunity to come into compliance before any penalties are assessed.

In addition, BWSR has developed additional documents to support implementation of the riparian protection and water quality practices requirements by BWSR, local governments and landowners. Local governments and landowners should comply with these documents, as appropriate, and encouraged to review the guidance when considering actions to comply with these requirements. These documents are available on BWSR’s website.

Enforcement responsibilities of Soil and Water Conservation Districts, Counties, Watershed Districts and BWSR

Soil and water conservation districts (SWCD) are required under Minn. Stat. § 103F.48, subdivision 6 to track landowners progress toward compliance under subdivision 7 and must notify the county or watershed district with jurisdiction and BWSR if it determines a landowner is not in compliance with the riparian protection and water quality practices requirements.

Counties and watershed districts are not required to enforce the riparian protection and water quality practices requirements of Minn. Stat. § 103F.48 but may elect to exercise their jurisdiction as provided in subdivision 7 by notifying BWSR and identifying the ordinance, rule, or other official control it intends to use to carry out its compliance and enforcement authority. This may include the issuance of APOs and an associated penalty if the county or watershed district had adopted an APO plan consistent with the BWSR APO Plan. In areas where the county or watershed district has not elected to have jurisdiction, BWSR is required under § 103F.48, subdivision 7(c) to carry out enforcement responsibilities.

Counties and watershed districts with jurisdiction are authorized under Minn. Stat. § 103B.101, subdivision 12a, to require that violations of the riparian protection and water quality practices requirements be corrected and to assess administrative penalties. In addition, Minn. Stat. § 103F.48, subdivision 7, authorizes counties and watershed districts to enforce the riparian protection and water quality practices requirements by ordinance, rule, or by adopting an APO plan consistent with the Plan adopted by BWSR. A model county and watershed district APO Plan is provided in part A.

BWSR is required under Minn. Stat. § 103F.48, subdivision 1(j), to determine whether a county or watershed district that has elected jurisdiction has adopted a rule, ordinance, or other official control providing adequate procedures for APO issuance, enforcement and appeals for §§ 103F.48 and 103B.101, subd. 12a. In addition, BWSR has the responsibility to adopt an amended APO Plan to reflect the changes in Minnesota Laws that

occurred during the 2024 legislative session that amended Minn. Stat. § 103B.101 Subd. 12 and 12a and to ensure that a county or watershed district APO plan is consistent with the Plan adopted by BWSR under Minn. Stat. § 103F.48, subdivision 7(c). Minn. Stat. § 103F.48, subdivision 9, establishes an appeal process that landowners or their agents or operators may use to appeal APOs issued by counties or watershed districts. Appeals of APOs issued by BWSR shall follow procedures established in Minn. Stat. § 116.072 Subd. 6 for an expedited administrative hearing or Subd. 7 for a district court hearing.

Part A. Model County and Watershed District APO Plan

A. Enforcement Procedures

A county or watershed district that elects to exercise its jurisdiction to enforce the requirements of Minn. Stat. § 103F.48 must adopt a rule, ordinance, or other official control that provides adequate procedures for the issuance of administrative penalty orders, enforcement, and appeals, under Minn. Stat. § 103F.48, subd. 7. It is required under Minn. Stat. § 103B.101, subdivision 12a (b) that a county or watershed district considering exercising APO authority adopt the methods of determining compliance consistent with those provided in BWSR's APO Plan for a county or watershed district (Part A). A county or watershed district must define buffer width and measurement requirements and alternative practices and related provisions consistent with Minn. Stat. § 103F.48, subd. 3. BWSR has the authority to adopt orders under Minn. Stat. § 103B.101 and county enforcement authority is pursuant to Minn. Stat. Chapter 394, and watershed district enforcement authority is pursuant to Minn. Stat. Chapter 103D, which is in addition to any other official control or authority available to BWSR, counties and watershed districts.

B. Administrative Penalty Order (APO) Provisions

A county or watershed district that chooses to use the APO authority granted in Minn. Stat. § 103B.101, subd. 12a and Minn. Stat. § 103F.48, subd. 7 must adopt a plan consistent with the plan adopted by BWSR (see Minn. Stat. § 103F.48, subd. 7(c)). Part A provides procedures to a county or watershed district that elects to use APOs to enforce the riparian protection and water quality practices requirements of Minn. Stat. § 103F.48 and can help to determine whether its APO plan is consistent with BWSR's Plan.

1. Corrective Action Notice

Upon receipt of an SWCD notification of noncompliance, the county or watershed district sends the landowner a corrective action notice that:

- (a) Includes a list of corrective actions needed to come into compliance with the requirements of Minn. Stat. § 103F.48;
- (b) Provides a timeline for the landowner to comply with the notice; and
- (c) Includes a statement that a landowner's failure to respond to this notice will result in the assessment of financial penalties.

The county or watershed district may send the landowner a combined corrective action notice and APO as provided in item 2 so long as the combined notice/APO includes all the required elements of both.

The county or watershed district may exercise its judgment by also naming a tenant or other person with control over that part of the property subject to riparian protection and water quality practices requirements, as a responsible party. The county or watershed district may deliver or transmit the corrective action notice by any means reasonably determined to reach the landowner, and it is recommended to document receipt. However, a

failure to document receipt will not preclude the county or watershed district from demonstrating receipt or knowledge of the corrective action notice in an enforcement proceeding. The county or watershed district must send a copy of the notice to the SWCD and BWSR.

At any time, the landowner may provide documentation of compliance to the county or watershed district. In addition, the landowner may supply information in support of a request to modify a corrective action or the timeline for compliance. Based on any such submittal or at its discretion, the county or watershed district, in writing, may modify the corrective action notice or timeline for compliance, and will deliver or transmit the modified corrective action notice and timeline in accordance with this section. Any modification to the notice or timeline for compliance should be in writing to ensure that the county or watershed district has a copy for its enforcement file. The county or watershed district should determine if the noncompliance has been fully corrected and issue its determination, in writing (as recommended above), to the landowner.

The SWCD may issue a validation of compliance if requested by the landowner and following consultation with the county or watershed district. On county or watershed district receipt of the validation, the corrective action notice will be deemed withdrawn for this item, and the subject property will not be subject to enforcement.

A corrective action notice is not considered a final decision and is not subject to appeal under Minn. Stat. § 103F.48, subd. 9.

OPTION: Counties and watershed districts may establish a local process to appeal a corrective action notice. The time period for compliance and the initiation of a penalty should be put on hold while any appeal is pending for up to 60 days.

2. APO. The county or watershed district may issue an APO of up to \$10,000 for noncompliance as provided for in Minn. Stat. § 103B.101, subdivision 12a(a), 12a(b), and 12a(c) against a landowner that does not comply with a corrective action notice. The APO should be sent with the corrective action notice, alternatively, a combined corrective action notice and APO may be sent so long as the combined notice/APO includes all the elements of both. The penalty will continue to accrue until the violation is corrected as provided in the corrective action notice and APO. The penalty schedules shown below in (a) and (b) will be used by BWSR to evaluate county and watershed district APO plan consistency with the Plan adopted by BWSR according to Minn. State. § 103F.48, subd. 7

(a) Initial Violation. The penalty range for a landowner on the same parcel that has not previously been the subject of an APO issued by the county or watershed district should be based on the following schedule:

- i. \$0 for 11 months after issuance of the corrective action notice;
- ii. \$200 - \$500 per parcel per month for six (6) months (180 days) following the time period in i; and
- iii. \$500 - \$1,000 per parcel per month following the time period in ii.

Counties and watershed districts are recommended to choose a specific penalty amount within the range shown in ii and iii to ensure consistency with the BWSR APO Plan.

Counties and watershed districts may modify the corrective actions and timeline for compliance, in accordance with section B.1, to extend the compliance timeline for a modification that imposes a substantial new action or that would significantly accelerate the completion date for an action.

(b) Repeat violation. The penalty range for a landowner on the same parcel that has previously been the subject of an APO issued by the county or watershed district to that same landowner shall be based on the following schedule:

- i. \$50 - \$200 per parcel per day for 180 days after issuance of the corrective action notice; and
- ii. \$200- \$ 500 per parcel per day after 180 days following the time period in i.

Counties and watershed districts are recommended to choose a specific penalty amount within the range shown in i and ii to ensure consistency with the BWSR APO Plan.

Counties and watershed districts may modify the corrective actions and timeline for compliance, in accordance with section B.1, to extend the compliance timeline for a modification that imposes a substantial new action or significantly accelerates the completion date for an action.

(c) Order. The APO should include:

- i. The facts constituting a violation of the riparian protection and water quality practices requirements;
- ii. The statute and/or ordinance or rule that has been violated;
- iii. Prior efforts to work with the landowner to resolve the violation;
- iv. The amount of the penalty to be imposed;
- v. The date the penalty will begin to be assessed;
- vi. The date that payment of the penalty is due;
- vii. The date by which all or part of the penalty may be forgiven if the landowner complies with the corrective action notice; and
- viii. The landowner or his/her agent or operators' right to appeal the APO.

All or part of the penalty may be forgiven based on the correction of the noncompliance by the landowner by the date specified in the APO. If part or all of the penalty is forgiven, the county or watershed district is recommended to document the reasons and the amount of the penalty that has been forgiven.

A copy of the issued APO must be sent to the SWCD and BWSR.

According to Minn. Stat. § 103F.48, subd. 9 an APO that is not appealed to the executive director of BWSR within 30 days of receipt by the landowner or his/her agent or operator is final.

(d) Administrative Penalty Order Procedures

i. Statute of limitations. According to Minn. Stat. § 541.07, subd. 2 (2), the county or watershed district has two years in which to commence an administrative penalty order action after the violation is discovered. The goal is to complete the action as soon as reasonably practical, recognizing that situations for which data must be gathered, field investigations must be completed and/or modeling must be performed will require adequate time to complete the work and communicate with the landowner involved.

ii. Compliance verification. Once a landowner has submitted written evidence of correction of the violation, compliance must be verified. The county or watershed district should:

- Review and evaluate all information related to the APO to determine if the violation has been corrected;
- Verify compliance by a site visit, re-inspection, examination of documentation, or other means as may be reasonable under the facts of the case; and
- Document compliance verification.

The county or watershed district may consult with the SWCD when conducting a compliance verification.

iii. Right to appeal. Minn. Stat. § 103F.48, subdivision 9, establishes the rights and procedures for a landowner or his/her agent or operator to appeal an APO issued for a violation of the riparian protection and water quality practices requirements. A landowner or his/her agent or operator may appeal, in writing, the terms and conditions of an APO issued by a county or watershed district within 30 days of receipt of the APO. The appealing party must provide a copy of the APO that is being appealed, the basis for the appeal and any supporting evidence. The appeal may be submitted personally, by U.S. mail, or electronically, to the Executive Director of BWSR. At the discretion of the Executive Director, APOs for the same or similar violations on a parcel may be combined and addressed as a single appeal. The Executive Director will review the appeal and supporting evidence and issue a decision within 60 days of receipt of the appeal. The Executive Director's decision is appealable to the Minnesota Court of Appeals pursuant to Minn. Stat. §§ 14.63 to 14.69. The penalty shall not accrue while the appeal is pending.

iv. Penalty due. Unless the landowner or his/her agent or operator appeals the APO within 30 days of receipt of the APO, the penalty is due and payable to the county or watershed district as specified in the APO. If the landowner or his/her agent or operator submits written evidence within 30 days of the date specified in the APO, which may include a validation of compliance issued by the SWCD, that the violation was corrected, and the county or watershed district verifies compliance, then the penalty will be payable based on the date the landowner or his/her agent, or operator submitted the written evidence of compliance.

However, if the county or watershed district determines the violation was not fully corrected, the landowner or his/her agent or operator has 20 additional days to pay the penalty after receipt of a letter of determination from the county or watershed district that the violation has not been fully corrected, or the time period specified in the APO as issued, whichever is later. The penalty will continue to accrue until the violation is corrected as provided in the corrective action notice and APO.

v. Referral for collection of penalty. All penalties assessed under an APO must be paid by the landowner within the specified time and made payable to the county or watershed district. Any penalty not received in the specified time may be collected by any lawful means by the county or watershed district.

vi. Reporting and documentation. Effective compliance reporting and documentation will ensure that proper enforcement action is taken, and that a record is maintained of these actions. When the county or watershed district identifies a violation of the riparian protection and water quality practices requirements, staff should follow record keeping procedures to assess and document the following to the extent known or available:

- Cause of the violation;

- Magnitude and duration of the violation;
- Whether the violation presents an actual or imminent risk to public health and safety, or to the environment or the natural resources of the state;
- Past violations;
- Efforts by the SWCD, county, watershed district or BWSR to assist the landowner to become compliant, including written and oral communications with the landowner; and
- Past and present corrective action efforts by the landowner.

Part B: BWSR Administrative Penalty Order Plan

I. Buffer Requirements

1. Buffer width

Except as provided under section I.5, a landowner must maintain a buffer area on a water shown on the buffer protection map as follows:

- A. For waters shown on the buffer protection map requiring a fifty (50) foot average width and a thirty (30) foot minimum width buffer as measured according to subsection 2, except as provided in section I.5.
- B. For waters shown on the buffer protection map requiring a sixteen and a half (16.5) foot minimum width buffer as measured according to subsection 2 except as provided in subsection I.5.

2. Buffer Measurement

- A. The measurement of the required buffer on land adjacent to a water requiring a fifty (50) foot average width and a thirty (30) foot minimum width buffer must be from the top or crown of the bank. Where there is no defined bank, measurement must be from the edge of the normal water level.
- B. The measurement of the required buffer on land adjacent to a water requiring a sixteen and a half (16.5) foot minimum width buffer must be in the same manner as for measuring the perennial vegetation buffer strips under Minn. Stat. § 103E.021.

3. Use of Buffer Area

A buffer may not be used for cultivation farming but may be grazed, mowed, hayed or otherwise harvested, provided permanent growth of perennial vegetation is maintained, except as provided in subsection 4.G and section I.5.

4. Exemptions

- A. The requirement of section I.1 does not apply to land that is:
 - i. Enrolled in the federal Conservation Reserve Program;
 - ii. Used as a public or private water access or recreational use area including stairways, landings, picnic areas, access paths, beaches and watercraft access areas, and permitted water-oriented structures as provided in the shoreland model standards and criteria adopted pursuant to Minn. Stat. § 103F.211 or as provided in an approved local government shoreland ordinance;

- iii. Covered by a road, trail, building or other structures; or
- iv. Regulated by a national pollutant discharge elimination system/state disposal system (NPDES/SDS) municipal separate storm sewer system, construction or industrial permit under Minnesota Rules, chapter 7090, and the adjacent waterbody is provided riparian protection;
- v. Part of a water-inundation cropping system; or
- vi. In a temporary nonvegetated condition due to drainage tile installation and maintenance, alfalfa or other perennial crop or plant seeding, or a construction or conservation project authorized by a federal, state or local government unit.

B. The landowner claiming the applicability of an exemption to their parcel is responsible for identifying the exemption and maintaining evidence of eligibility to demonstrate qualification for the exemption.

5. Alternative practices

The landowner or his/her agent or operator of land that is used for cultivation farming may demonstrate compliance with section I.1 by establishing and maintaining an alternative riparian water quality practice(s), or combination of structural, vegetative, and management practice(s), based on the Natural Resources Conservation Service Field Office Technical Guide, common alternative practices adopted and published by BWSR, other practices approved by BWSR, or practices based on local conditions approved by the local SWCD that are consistent with the Field Office Technical Guide which provide water quality protection comparable to the water quality protection provided by a required buffer as defined in subsections I.1 to I.3.

II. Compliance Determinations

Compliance on each parcel will be determined based on the establishment and maintenance of buffers and/or alternative practices.

Compliance status will be determined by BWSR:

- A. On a parcel basis as identified by a unique locally defined property identification number or description; and
- B. The compliance status of each bank, or edge of an applicable water body on an individual parcel will be determined independently.

1. Notification of Noncompliance

When BWSR observes potential noncompliance or receives a third-party complaint from a private individual or entity, or another public agency, it will consult with the SWCD to determine the appropriate course of action to confirm compliance status. This may include communication with the landowner or his/her agents or operators, communication with the shoreland management authority, inspection, or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of this coordination, the SWCD may issue a Notification of Noncompliance to BWSR. BWSR compliance or enforcement actions under Minnesota Statutes § 103F.48 and section III will be based on an SWCD issued Notice of Noncompliance.

At any time, the landowner or his/her agents or operators may provide documentation of compliance to the SWCD. The SWCD should evaluate the documentation or review the buffer and/or alternative practices to determine if the parcel is in compliance and issue its determination in writing to the landowner or his/her agents or operators and BWSR. The SWCD may issue a Validation of Compliance if applicable and requested by the landowner or his/her agents or operators.

III. Enforcement and Penalty Procedures

1. Corrective Action Notice

Upon receipt of an SWCD notification of noncompliance, BWSR will send the landowner or his/her agents or operators a corrective action notice that will:

- (a) Include a list of corrective actions needed to come into compliance with the requirements of Minn. Stat. § 103F.48;
- (b) Provide a timeline for complying with this notice; and
- (c) Include a statement that failure to respond to this notice will result in the assessment of financial penalties.

The landowner may be sent a combined corrective action notice and APO as provided in item 2 so long as the combined notice/APO includes all the elements of both.

BWSR may deliver or transmit the corrective action notice by any means reasonably determined to reach the landowner or agents or operators, which will document receipt. However, a failure to document receipt will not preclude BWSR from demonstrating receipt or knowledge of the corrective action notice in an enforcement proceeding under section III. BWSR will also send a copy of the notice to the SWCD.

At any time, the landowner or his/her agents or operators may provide documentation of compliance to BWSR. In addition, the landowner or his/her agent or operator may supply information in support of a request to modify a corrective action or the timeline for compliance. Based on any such submittal or at its discretion, BWSR, in writing, may modify the corrective action notice or timeline for compliance, and will deliver or transmit the modified corrective action notice and timeline in accordance with this section. BWSR should determine if the noncompliance has been fully corrected and issue its determination as provided in section III. 3B, in writing, to the landowner or his/her agent or operator.

The SWCD may issue a validation of compliance if requested by the landowner or his/her agent or operator and following consultation with BWSR. On BWSR receipt of the validation the corrective action notice will be deemed withdrawn for the purpose of section 2.0, and the subject property will not be subject to enforcement under that section.

A corrective action notice is not considered a final decision and is not subject to appeal under Minn. Stat. § 103F.48, subd. 9.

2. BWSR's Use of Administrative Penalty Orders.

A. Enforcement by BWSR

BWSR's authority to enforce the riparian protection and water quality practices requirements of Minn. Stat. § 103F.48 by APO is pursuant to Minn. Stat. § 103B.101, subdivision 12.

B. BWSR's enforcement team

Prior to issuance of an APO, BWSR staff may establish an enforcement team to review the specific facts and develop an APO.

C. Amount of penalty

BWSR staff may issue an APO of up to \$10,000 per violation, as provided for in Minn. Stat. § 103B.101, subd. 12 against a landowner or his/her agent or operator that does not comply with a corrective action notice. The APO should be sent with the corrective action notice, alternatively, a combined corrective action notice and APO may be sent so long as the combined notice/APO includes all the elements of both.

(1) Initial Violation. The penalty for a landowner or his/her agent or operator on the same parcel that has not previously been the subject of an APO issued by BWSR shall be based on the following schedule:

- (a) \$0 for 11 months after issuance of the corrective action notice;
- (b) \$500 per parcel per month for six (6) months (180 days) following the time period in (a); and
- (c) \$1,000 per parcel per month following time period in (b.)

BWSR may modify the corrective actions and timeline for compliance, in accordance with section III.1, to extend the compliance timeline for a modification that imposes a substantial new action or significantly accelerates the completion date for an action.

(2) Repeat violation. The penalty for a landowner or his/her agent or operator on the same parcel that has previously been the subject of an APO issued by BWSR for that same landowner shall be based on the following schedule:

- (a) \$100 per parcel per day for 180 days after issuance of the corrective action notice; and
- (b) \$500 per parcel per day after 180 days following the time period in (a).

BWSR may modify the corrective actions and timeline for compliance, in accordance with section III.1, to extend the compliance timeline for a modification that imposes a substantial new action or significantly accelerates the completion date for an action.

D. Order. The APO should include:

- i. The facts constituting a violation of the riparian protection and water quality practices requirements;
- ii. The statute and/or Board Buffer program document that has been violated;
- iii. Prior efforts to work with the landowner or his/her agent or operator to resolve the violation;
- iv. The amount of the penalty to be imposed;
- v. The date the penalty will begin to be assessed;
- vi. The date that payment will be due;
- vii. The date by which all or part of the penalty may be forgiven if the landowner or his/her agent or operator has/have complied with the corrective action notice; and
- viii. The landowner or his/her agent or operator's right to appeal the order.

Pursuant to § 103F.48, subd. 7(d) and § 103B.101 Subd 12. (d) all or part of the penalty may be forgiven based on the correction of the noncompliance by the date specified in the APO by the landowner or his/her agents or operators. If part or all of the penalty is forgiven, the reasons and the amount of the penalty that has been forgiven will be documented in the enforcement file.

A copy of the APO should be sent to the SWCD.

Pursuant to Minn. Stat. § 116.072, Subds. 6 and 7, if a request for review is not made within 30 days of receipt of an APO by the landowner or his/her agent or operator, the order is final.

3. Administrative Penalty Order Procedures

A. Statute of limitations. According to Minn. Stat. § 541.07, subd. (2), BWSR has two years in which to commence an APO action after the violation is discovered. The goal is to complete the action as soon as reasonably practical, recognizing that situations for which data must be gathered, field investigations must be completed and/or modeling must be performed will require adequate time to complete the work and communicate with the person(s) involved.

B. Compliance verification. Once a landowner or his/her agents or operators has/have submitted written evidence of correction of the violation, compliance must be verified. BWSR should:

- Review and evaluate all information related to the APO to determine if the violation has been corrected;
- Verify compliance by site visit, re-inspection, examination of documentation, or other means as may be reasonable under the facts of the case; and
- Document compliance verification.

BWSR may consult with the SWCD when conducting a compliance verification.

C. Right to appeal. Minn. Stat. § 116.072, subds. 6 and 7, establish the right and procedures for appeal of an APO issued by BWSR for a violation of the riparian protection and water quality practices requirements. Pursuant to subdivision 6, a landowner or his/her agent or operator may request an expedited hearing through the state Office of Administrative Hearings utilizing the procedures of Minn. Rule, parts 1400.8510 to 1400.8612 to review the BWSR order. Pursuant to subdivision 7, within 30 days after the receipt of an order from BWSR or within 20 days of receipt of notice that BWSR has determined that a violation has not been corrected or appropriate steps have not been taken, the person subject to an order under this section may file

a petition in district court for review of the order in lieu of requesting an administrative hearing under subdivision 6. In addition to review under subdivision 6 or 7, Minn. Stat. § 116.072, subd. 8 authorizes BWSR to enter into mediation concerning an order issued under this section if BWSR and the person to whom the order is issued both agree to mediation. The final decision issued by BWSR following receipt of the administrative law judge report is appealable to the Minnesota Court of Appeals pursuant to Minn. Stat. §§ 14.63 to 14.69. The penalty shall not accrue while the appeal is pending.

D. Penalty due. Unless the landowner or his/her agents or operators appeals the APO within 30 days of receipt of the APO, the penalty is due and payable to BWSR as specified in the APO. If the landowner or his/her agents or operators submits written evidence within 30 days of the date specified in the APO, which may include a validation of compliance issued by the SWCD, that the violation was corrected, and BWSR verifies compliance, then the penalty will be payable based on the date the landowner submitted the written evidence of compliance. However, if BWSR determines the violation was not fully corrected, the landowner or his/her agents or operators has 20 additional days to pay the penalty after receipt of the letter of determination from BWSR that the violation has not been fully corrected, or the time period specified in the APO as issued, whichever is later. The penalty will continue to accrue until the violation is corrected as provided in the corrective action notice and APO.

E. Forgivability.

Pursuant to § 103F.48, subd. 7(d) and §103B.101 Subd 12. (d) all or part of the penalty may be forgiven based on the correction of the noncompliance by the date specified in the APO by the landowner or his/her agents or operators. If part or all of the penalty is forgiven, the reasons and the amount of the penalty that has been forgiven will be documented in the enforcement file.

F. Referral for collection of penalty. All penalties assessed under an APO must be paid by the landowner or his/her agent or operator within the specified time and made payable to BWSR. Penalties that have not been paid by the landowner or his/her agent or operator within 12 months of the date specified in the APO will be referred to the Minnesota Department of Revenue for collection. Any penalty or interest not received in the specified time may be collected by any lawful means.

G. Reporting and documentation. Effective compliance reporting and documentation is strongly recommended to ensure that proper enforcement action is taken, and that a record is maintained of these actions in the appropriate enforcement file. When BWSR identifies a violation of the riparian protection and water quality practices requirements, BWSR staff should follow record keeping procedures to assess and document the following to the extent known or available:

- Cause of the violation;
- Magnitude and duration of the violation;
- Whether the violation presents an actual or imminent risk to public health and safety, or the natural resources of the state;
- Past violations;
- Efforts by the SWCD, county, watershed district or BWSR to assist the landowner or agent or operator to become compliant, including written and oral communications with the landowner or agent or operator; and
- Past and present corrective action efforts by the landowner or agent or operator.

Definitions

1. "**BWSR**" means the Board of Water and Soil Resources.
2. "**Buffer**" means an area consisting of perennial vegetation, excluding invasive plants and noxious weeds.
3. "**Buffer protection map**" means the buffer map established and maintained by the commissioner of the Minnesota Department of Natural Resources published in 2017, and as subsequently amended, that is available on the Department of Natural Resources website.
4. "**Commissioner**" means the commissioner of the Minnesota Department of Natural Resources.
5. "**Cultivation farming**" means practices that disturb root or soil structure or that impair the viability of perennial vegetation.
6. "**Landowner**" means the fee title landowner or agent or operator.
7. "**Normal water level**" means the level evidenced by the long-term presence of surface water as indicated directly by hydrophytic plants or hydric soils or indirectly determined via hydrological models or analysis.
8. "**Public waters**" has the meaning given in Minn. Stat. § 103G.005, subdivision 15. The term public waters as used in this ordinance applies to waters that are on the public waters inventory as provided in Minn. Stat. § 103G.201.