

Minnesota Water Resources Board

500 Lafayette Road
First Floor
St. Paul, Minnesota
55146

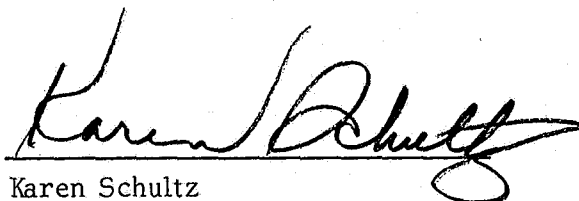
STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

AFFIDAVIT

Karen Schultz being first duly sworn on oath,
deposes and says:

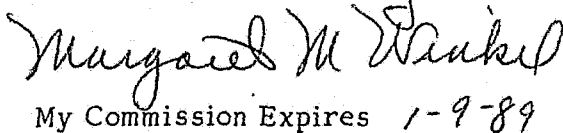
THAT SHE IS the Secretary for the Minnesota
Water Resources Board; that she has compared the attached copy of
an Order relating to the North Fork CrowRiver Watershed District

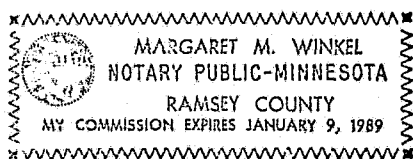
dated at Saint Paul, Minnesota, on the 10th day of May 1985
with the original thereof on file in her official custody; and
THAT SAID COPY is a true and correct copy of said original and the
whole thereof.

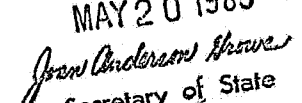

Karen Schultz

STATE OF Minnesota
COUNTY OF Ramsey

Subscribed and sworn to before me
this 20 day of May 1985


My Commission Expires 1-9-89



STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 20 1985

Secretary of State

#36055

Minnesota Water Resources Board
500 Lafayette Road
First Floor
St. Paul, Minnesota 55146

In the Matter of the Petition for the
Establishment of the North Fork Crow
River Above Middle Fork Watershed
District (Kandiyohi, Meeker, Pope, and
Stearns Counties)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER

On January 10, 1984 a nominating petition for the establishment of the Rice-Koronis Watershed District signed by the City of Paynesville and 56 individuals was filed with the Water Resources Board (Board) pursuant to Minn. Stat. ch. 112 (1982). A public hearing on the petition was held in the City of Paynesville on July 9, 10, and 11, 1984. The report of the Administrative Law Judge, Allan Klein, was received on August 28, 1984. On September 14, 1984 a second nominating petition was filed with the Board for the establishment of the North Fork Crow River Above Middle Fork Watershed District signed by 99 individuals from Stearns and Pope Counties. The territory of the proposed North Fork Crow River Above Middle Fork Watershed District included all of the territory of the proposed Rice-Koronis Watershed District, plus all of the North Fork Crow River watershed lying upstream from the City of Paynesville.

At its meeting on September 24, 1984 the Board decided not to take immediate action on the Rice-Koronis petition in order to consider the sufficiency of the second petition. On November 9, 1984 the Board found the second petition sufficient and directed that a public hearing be scheduled. On December 7, 1984 the Board ordered a hearing to be held on January 16, 1985 in Brooten, Minnesota.

Having considered the entire record of the proceedings, including the exceptions to and oral argument on the Administrative Law Judge's reports, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Findings 1 through 56 of the attached August 27, 1984 report of Administrative Law Judge, Allan Klein, on the Petition for the Establishment of the Rice-Koronis Watershed District are adopted by the Board with the following exceptions:

- a. Strike Finding 52, and insert the following:

"The leaders of the Lake Koronis Association and their advisors knew that the watershed area above the outlet of Lake Koronis totalled approximately 323 square miles. The proposed Rice-Koronis Watershed District includes about 72 square miles above the outlet and about 15 square miles below the outlet. Several reasons were stated for the petitioners' decision to propose a partial watershed district, including avoidance of upstream landowner opposition, the perception that lake clean-up efforts would not benefit upstream landowners, the belief that citizen support for lake clean-up efforts was concentrated in the lakes area, and their judgment that a partial watershed district was adequate to accomplish the Association's objectives."

- b. Strike the last two sentences of Finding 55, and insert the following:

"The low-flow diversion recommended in the 1982 Hickok Report would affect properties within this watershed area. The area is impacted by sporadic flooding."

2. Findings 1 through 30 of the attached March 13, 1985 report of Administrative Law Judge, Allan Klein, on the Petition for the Establishment of the North Fork Crow River Above Middle Fork Watershed District are adopted by the Board with the exception of the first three sentences of Finding 25.
3. The confluence of the North Fork Crow River and the Middle Fork Crow River in section 32 of Manannah Township (Township 121 North, Range 31 West) hydrologically defines the watershed of the Upper North Fork Crow River.
4. Proper maintenance of the Lake Koronis outlet channel is needed to avoid increasing the potential for high lake level problems and downstream flooding. Any outlet dam or outlet channel maintenance work would affect properties downstream from Lake Koronis.
6. The various political subdivisions having territory in the watershed of the North Fork Crow River above its confluence with the Middle Fork Crow River have not entered into any agreement to carry out coordinated management of water and related resources within the watershed.

CONCLUSIONS OF LAW

1. Due, timely, and proper notice of hearing was given and all other relevant requirements of law have been fulfilled. The Board has proper

jurisdiction in the proceedings to establish the proposed Rice-Koronis and North Fork Crow River Above Middle Fork Watershed Districts.

2. The evidence shows a broad range of water-related concerns throughout the watershed of the North Fork Crow River above its confluence with the Middle Fork Crow River and the need for coordinated water resources planning and management in the watershed.
3. A watershed district can coordinate water management in the North Fork Crow River above Middle Fork watershed across the many local governmental units affected through planning, regulation, and project implementation.
4. The establishment of the proposed North Fork Crow River Above Middle Fork Watershed will serve the public welfare, public interest, and the purpose of the Minnesota Watershed Act.

IT IS THEREFORE ORDERED THAT

1. The proposed North Fork Crow River Above Middle Fork Watershed District is hereby established and given the corporate name of "North Fork Crow River Watershed District." The District shall have all the powers, duties, and purposes provided by law.
2. The proceedings for establishment of the proposed Rice-Koronis Watershed District are hereby dismissed.
3. The territory of the North Fork Crow River Watershed District includes all of the tracts of land described below, including all bodies of water therein. The described lands may contain all or parts of quarter-quarter tracts, government lots, and lots within platted areas. The territory of the North Fork Crow River Watershed District is described as follows:

A. Pope County

5th Principal Meridian

1. Township 125 North, Range 36 West (Grove Lake)

E 1/2 of SE 1/4	Section	10
SW 1/4 of SE 1/4	"	10
SW 1/4	"	11
SW 1/4 of SE 1/4	"	11
NW 1/4 of NE 1/4	"	13
S 1/2 of NE 1/4	"	13
W 1/2	"	13
SE 1/4	"	13
All of Section	"	14
E 1/2	"	15
NE 1/4 of NW 1/4	"	15
S 1/2 of NW 1/4	"	15
SW 1/4	"	15
S 1/2 of NE 1/4	"	16
SE 1/4 of NW 1/4	"	16
S 1/2	"	16
S 1/2	"	17
S 1/2 of SE 1/4	"	18
N 1/2 of NE 1/4	"	19
E 1/2	"	20
NW 1/4	"	20
All of Sections	Sections	21 through 28, inclusive
E 1/2	Section	29
SE 1/4 of SW 1/4	"	29
SE 1/4 of NE 1/4	"	31
NE 1/4 of SE 1/4	"	31
All of Sections	Sections	32 through 36, inclusive.

2. Township 124 North, Range 36 West (Bangor)

All of Sections	Sections	1 through 4, inclusive
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2. Township 124 North, Range 36 West (Bangor) (Cont.)

E 1/2	Section	5
E 1/2 of NW 1/4	"	5
NW 1/4 of NW 1/4	"	5
NE 1/4	Section	8
E 1/2 of NW 1/4	"	8
E 1/2 of SE 1/4	"	8
NW 1/4 of SE 1/4	"	8
All of Sections	Sections	9 through 14, inclusive
E 1/2	Section	15
NW 1/4	"	15
N 1/2 of SW 1/4	"	15
SE 1/4 of SW 1/4	"	15
NE 1/4	"	16
N 1/2 of NW 1/4	"	16
NE 1/4	"	22
E 1/2 of NW 1/4	"	22
E 1/2 of SE 1/4	"	22
All of Sections	Sections	23 through 26, inclusive
E 1/2 of NE 1/4	Section	27
SW 1/4 of NE 1/4	"	27
E 1/2 of SE 1/4	"	27
NW 1/4 of SE 1/4	"	27
E 1/2 of NE 1/4	"	34
NW 1/4 of NE 1/4	"	34
E 1/2 of SE 1/4	"	34
SW 1/4 of SE 1/4	"	34
All of Sections	Sections	35 and 36.

3. Township 123 North, Range 36 West (Lake Johanna)

All of Sections	Sections	1 and 2
E 1/2	Section	3
E 1/2 of NE 1/4	"	10
NE 1/4 of SE 1/4	"	10
N 1/2 of NE 1/4	"	11
SW 1/4 of NE 1/4	"	11
NW 1/4	"	11
N 1/2 of SW 1/4	"	11

3. Township 123 North, Range 36 West (Lake Johanna) (Cont.)

E 1/2	Section	12
E 1/2 of NW 1/4	"	12
NW 1/4 of NW 1/4	"	12
E 1/2 of NE 1/4	Section	13
NW 1/4 of NE 1/4	"	13
NE 1/4 of NE 1/4	"	25.

B. Stearns County

5th Principal Meridian

1. Township 125 North, Range 35 West (Raymond)

SW 1/4	Section	2
W 1/2 of SE 1/4	"	2
SW 1/4 of NE 1/4	"	2
SE 1/4 of NW 1/4	"	2
S 1/2 of SE 1/4	"	3
SE 1/4 of SW 1/4	"	3
SE 1/4	"	9
E 1/2 of NE 1/4	"	9
SW 1/4 of NE 1/4	"	9
S 1/2	"	10
NE 1/4	"	10
E 1/2 of NW 1/4	"	10
SW 1/4 of NW 1/4	"	10
W 1/2	"	11
W 1/2 of SE 1/4	"	11
SE 1/4 of NW 1/4	"	13
E 1/2 of SW 1/4	"	13
SW 1/4 of SW 1/4	"	13
SE 1/4	"	13
W 1/2	"	14
W 1/2 of E 1/2	"	14
SE 1/4 of SE 1/4	"	14
All of Section	"	15
E 1/2	"	16
SE 1/4 of SW 1/4	"	16
S 1/2 of S 1/2	"	17
S 1/2	"	18
S 1/2 of NW 1/4	"	18
All of Sections	Sections	19 through 36, inclusive.

2. Township 125 North, Range 34 West (Getty)

SW 1/4	Section	18
W 1/2	"	19
W 1/2 of SE 1/4	"	19
SE 1/4 of SE 1/4	"	19
W 1/2 of W 1/2	"	28
SE 1/4 of NW 1/4	"	28
NE 1/4 of SW 1/4	"	28
E 1/2	"	29
E 1/2 of SW 1/4	"	29
SW 1/4 of SW 1/4	"	29
W 1/2	"	30
NE 1/4	"	30
W 1/2 of SE 1/4	"	30
All of Sections	Sections	31 and 32
W 1/2 of NW 1/4	Section	33.

3. Township 124 North, Range 35 West (North Fork)

All of Sections	Sections 1 through 36, inclusive.
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4. Township 124 North, Range 34 West (Lake George)

W 1/2 of SW 1/4	Section	4
W 1/2	"	5
SE 1/4	"	5
W 1/2 of NE 1/4	"	5
All of Sections	Sections	6, 7, and 8
S 1/2	Section	9
NW 1/4	"	9
SW 1/4 of NE 1/4	"	9
E 1/2	"	10
SW 1/4	"	10
S 1/2 of NW 1/4	"	10
SW 1/4	"	11
SW 1/4 of NW 1/4	"	11
SW 1/4 of SE 1/4	"	11
W 1/2 of W 1/2	"	13
SE 1/4 of SW 1/4	"	13
All of Sections	Sections	14 through 23, inclusive

4. Township 124 North, Range 34 West (Lake George) (Cont.)

W 1/2	Section	24
W 1/2 of E 1/2	"	24
W 1/2	"	25
W 1/2 of SE 1/4	"	25
SW 1/4 of NE 1/4	"	25
All of Sections	Sections	26 through 35, inclusive
W 1/2	Section	36
S 1/2 of SE 1/4	"	36.

5. Township 124 North, Range 33 West (Spring Hill)

SW 1/4	Section	31.
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6. Township 123 North, Range 35 West (Crow Lake)

All of Sections	Sections	1 through 11, inclusive
W 1/2	Section	12
W 1/2 of E 1/2	"	12
E 1/2 of NE 1/4	"	12
NE 1/4 of SE 1/4	"	12
N 1/2 of N 1/2	"	14
NW 1/4	"	15
N 1/2 of NE 1/4	"	15
W 1/2	"	16
NE 1/4	"	16
NW 1/4 of SE 1/4	"	16
All of Sections	Sections	17 and 18
E 1/2	Section	19
SW 1/4	"	19
E 1/2 of NW 1/4	"	19
NW 1/4	"	20
N 1/2 of NE 1/4	"	20
SW 1/4 of NE 1/4	"	20
N 1/2 of SW 1/4	"	20
SW 1/4 of SW 1/4	"	20
N 1/2 of NW 1/4	"	21
NW 1/4 of NW 1/4	"	29
N 1/2 of NE 1/4	"	30
NW 1/4 of NW 1/4	"	30.

7. Township 123 North, Range 34 West (Crow River)

All of Sections	Sections	1 through 6, inclusive
N 1/2	Section	7
N 1/2	"	8
NE 1/4	"	9
N 1/2 of NW 1/4	"	9
SW 1/4 of NW 1/4	"	9
All of Sections	Sections	10 through 14, inclusive
E 1/2	Section	15
E 1/2 of W 1/2	"	15
NW 1/4 of NW 1/4	"	15
SW 1/4 of SW 1/4	"	15
E 1/2	"	22
NE 1/4 of NW 1/4	"	22
SE 1/4 of SW 1/4	"	22
All of Sections	Sections	23 through 26, inclusive
NE 1/4	Section	27
NE 1/4 of NW 1/4	"	27
N 1/2 of SE 1/4	"	27
All of Sections	Sections	35 and 36.

8. Township 123 North, Range 33 West (Lake Henry)

W 1/2	Section	6
All of Section	"	7
W 1/2 of NE 1/4	"	8
W 1/2	"	8
S 1/2 of S 1/2	"	9
E 1/2 of SE 1/4	"	13
SW 1/4 of SE 1/4	"	13
W 1/2 of W 1/2	"	15
All of Section	"	16
S 1/2	"	17
NW 1/4	"	17
S 1/2 of NE 1/4	"	17

8. Township 123 North, Range 33 West (Lake Henry) (Cont.)

All of Sections	Sections	18 through 21, inclusive
E 1/2	Section	24
E 1/2 of W 1/2	"	24
SW 1/4 of SW 1/4	"	24
All of Section	"	25
S 1/2	"	26
S 1/2 of N 1/2	"	26
S 1/2	"	27
E 1/2 of NE 1/4	"	27
W 1/2 of NW 1/4	"	27
SE 1/4 of NW 1/4	"	27
All of Sections	Sections	28 through 36, inclusive.

9. Township 123 North, Range 32 West (Zion)

S 1/2 of SW 1/4	Section	18
NW 1/4 of SW 1/4	"	18
W 1/2	"	19
S 1/2 of SE 1/4	"	19
NW 1/4 of SE 1/4	"	19
SW 1/4 of NE 1/4	"	19
W 1/2 of W 1/2	"	29
SE 1/4 of NW 1/4	"	29
All of Sections	Sections	30 and 31
W 1/2 of W 1/2	Section	32
E 1/2 of SW 1/4	"	32
SE 1/4 of NW 1/4	"	32
W 1/2 of SW 1/4	"	36
SE 1/4 of SW 1/4	"	36.

10. Township 122 North, Range 32 West (Paynesville)

S 1/2	Section	1
NW 1/4	"	1
W 1/2 of NE 1/4	"	1
SE 1/4 of NE 1/4	"	1
S 1/2 of SW 1/4	"	3
W 1/2 of NW 1/4	"	5
NW 1/4 of SW 1/4	"	5

10. Township 122 North, Range 32 West (Paynesville) (Cont.)

All of Sections	Sections	6 and 7
S 1/2	Section	8
SW 1/4 of NW 1/4	"	8
S 1/2	"	9
SE 1/4 of NE 1/4	"	9
W 1/2	"	10
SW 1/4 of SE 1/4	"	10
S 1/2 of SE 1/4	"	11
All of Sections	Sections	12 through 36, inclusive.

11. Township 122 North, Range 31 West (Eden Lake)

SW 1/4 of SW 1/4	Section	4
S 1/2	"	5
S 1/2 of N 1/2	"	5
Gov't. Lots 6 through 17, inclusive	"	6
SE 1/4	"	6
S 1/2 of NE 1/4	"	6
All of Sections	Sections	7 and 8
S 1/2	"	9
S 1/2 of N 1/2	"	9
NW 1/4 of NW 1/4	"	9
N 1/2	"	16
N 1/2 of SW 1/4	"	16
SW 1/4 of SW 1/4	"	16
All of Sections	Sections	17 through 20, inclusive
W 1/2 of W 1/2	Section	21
SE 1/4 of SW 1/4		21
W 1/2 of NW 1/4	"	28
NE 1/4 of NW 1/4	"	28
N 1/2	"	29

11. Township 122 North, Range 31 West (Eden Lake) (Cont.)

Gov't. Lots 1 through 16, inclusive	Section	30
NE 1/4	"	30
Gov't. Lots 1 through 16, inclusive	"	31
W 1/2 of NE 1/4	"	31.

C. Kandiyohi County

5th Principal Meridian

1. Township 122 North, Range 34 West (Burbank)

All of Sections	Sections	1, 2, 11, and 12
N 1/2	Section	13
E 1/2 of SW 1/4	"	13
SE 1/4	"	13
NE 1/4	"	14
E 1/2 of NW 1/4	"	14
NW 1/4 of NW 1/4	"	14
E 1/2 of SW 1/4	"	14
N 1/2 of SE 1/4	"	14
SW 1/4 of SE 1/4	"	14.

2. Township 122 North, Range 33 West (Roseville)

All of Sections	Sections	1 through 18, inclusive
NE 1/4	Section	19
N 1/2	"	20
N 1/2 of SW 1/4	"	20
E 1/2	"	21
N 1/2 of NW 1/4	"	21
SW 1/4 of NW 1/4	"	21
All of Sections	Sections	22 through 27, inclusive
E 1/2	Section	28
SE 1/4 of NW 1/4	"	28
E 1/2 of SW 1/4	"	28
NE 1/4	"	33
NE 1/4 of NW 1/4	"	33
NE 1/4 of SE 1/4	"	33
All of Sections	Sections	34, 35, and 36.

3. Township 121 North, Range 33 West (Irving)

All of Sections	Sections	1 and 2
N 1/2	Section	3
E 1/2 of E 1/2	"	11
NW 1/4 of NE 1/4	"	11
All of Section	"	12
N 1/2	"	13
N 1/2 of SW 1/4	"	13
SE 1/4 of SW 1/4	"	13
SE 1/4	"	13
N 1/2 of NE 1/4	"	14
SE 1/4 of NE 1/4	"	14
E 1/2	"	24
E 1/2 of NW 1/4	"	24
NW 1/4 of NE 1/4	"	25.

D. Meeker County

5th Principal Meridian

1. Township 121 North, Range 32 West (Union Grove)

All of Sections	Sections	1 through 18, inclusive
N 1/2	Section	19
SE 1/4	"	19
N 1/2 of N 1/2	"	20
SW 1/4 of NW 1/4	"	20
W 1/2 of SW 1/4	"	20
N 1/2 of NW 1/4	"	21
E 1/2 of NE 1/4	"	22
NW 1/4 of NE 1/4	"	22
NE 1/4 of NW 1/4	"	22
All of Sections	Sections	23 and 24
N 1/2	Section	25
N 1/2 of S 1/2	"	25
N 1/2	"	26.

2. Township 121 North, Range 31 West (Manannah)

SW 1/4 of SW 1/4	Section	5
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2. Township 121 North, Range 31 West (Manannah) (Cont.)

Gov't. Lots 1 through 16, inclusive	Section	6
NW 1/4 of SE 1/4	"	6
S 1/2 of SE 1/4	"	6
E 1/2 of NE 1/4	"	7
NW 1/4 of NE 1/4	"	7
Gov't. Lots 1 through 16, inclusive	"	7
NW 1/4 of NW 1/4	"	8
Gov't. Lots 1 through 16, inclusive	"	18
NE 1/4 of SE 1/4	"	18
W 1/2 of SE 1/4	"	18
NW 1/4 of NE 1/4	"	19
S 1/2 of NE 1/4	"	19
Gov't. Lots 1 through 16, inclusive	"	19
SE 1/4	"	19
E 1/2	"	30
Gov't. Lots 1 through 12, inclusive	"	30
Gov't. Lot 16	"	30
N 1/2 of NE 1/4	"	31
NW 1/4 of NW 1/4	"	32

4. The legal boundary of the North Fork Crow River Watershed District is defined as the perimeter of the whole land area described in the preceding paragraph and shown on the attached Legal Boundary Map. The District includes approximately 315 square miles.
5. The board of managers of the North Fork Crow River Watershed District shall consist of five managers as requested by the petitioners. They shall be residents of the District and none shall be a public officer of the county, state, or federal government.

6. The distribution of the power to appoint managers to the District, upon the expiration of the one-year terms of the initial managers, shall be as follows:

Stearns County	- Two Managers
Pope County	- One Manager
Kandiyohi County	- One Manager
Meeker County	- One Manager

7. After the initial managers have served their one-year terms, the first county-appointed managers shall be appointed to staggered terms as follows:

(1) One Manager For a One-Year Term	- Stearns County
(2) One Manager For a Two-Year Term	- Stearns County
(3) One Manager for a Two-Year Term	- Pope County
(4) One Manager For a Three-Year Term	- Kandiyohi County
(5) One Manager For a Three-Year Term	- Meeker County

8. Following the expiration of the managers' terms in the preceding paragraph, all succeeding appointments shall be for three-year terms.

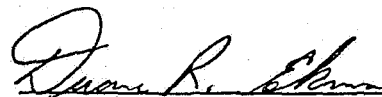
9. The following nominees are named as the initial managers of the North Fork Crow River Watershed District. Their terms of office shall be for one year and effective the date of this Order:

<u>Name</u>	<u>Address</u>	<u>County</u>
1. Sharon Beseke	Broton, 56316	Pope
2. Peter Jacobson	Hawick, 56246	Kandiyohi
3. Lloyd Peterson	R.R. 2, Paynesville, 56362	Stearns
4. William Scheierl	R.R. 2, Paynesville, 56362	Meeker
5. Casimir Weller	Route 3, Belgrade, 56312	Stearns

10. The principal place of business of the North Fork Crow River Watershed District shall be located in the City of Paynesville, Minnesota, 56362.

Dated at Saint Paul, Minnesota, 55146, this 10th day of May 1985.

MINNESOTA WATER RESOURCES BOARD



Duane R. Ekman
Chairman

Minnesota Water Resources Board
500 Lafayette Road
First Floor
St. Paul, Minnesota 55146

In the Matter of the Petition for the
Establishment of the North Fork Crow
River Above Middle Fork Watershed
District (Kandiyohi, Meeker, Pope, and
Stearns Counties)

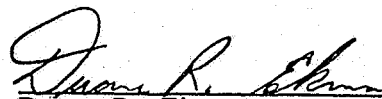
MEMORANDUM

The Board's decision to include in the District the 15 square miles of watershed below Lake Koronis, as requested by the petitioners, was based on the need for this portion of Meeker County to have a voice on the District's board of managers, and the Board's conclusion that the confluence of the North Fork and the Middle Fork is the logical point to use to define the District's boundary. The area includes the outlet channel of Lake Koronis and must be considered in the development of the District's Overall Plan. The area also includes the route of the low-flow diversion channel recommended by the 1982 Hickok Report, which the District may further investigate as a possible means of improving the water quality of Lake Koronis. The area needs to be directly involved in the planning and decision-making of the District. If the area had been excluded from the District, Meeker County would have contained only about 5% of the area of the District and it would have been difficult to justify giving them a representative on the board of managers.

It should be noted that establishment of a watershed district under the Minnesota Watershed Act does not hinge on a showing of serious water problems, although most establishment petitions do come about in response to water problems that are difficult for the affected parties to solve.

The Watershed Act can be used as a preventive tool by people not experiencing significant water problems, but recognizing the value of their water resources and the wisdom of avoiding costly problems through comprehensive water planning and management.

MINNESOTA WATER RESOURCES BOARD

A handwritten signature in dark ink, appearing to read "Duane R. Ekman", is written over a horizontal line.

Duane R. Ekman
Chairman

WRB-84-003-AK

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA WATER RESOURCES BOARD

In the Matter of the Petition for
the Establishment of the Rice-Koronis
Watershed District (Counties of Stearns,
Meeker and Kandiyohi).

FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION AND
MEMORANDUM

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on July 9, 10 and 11, in Paynesville. A majority of the members of the Minnesota Water Resources Board were present, including Chairman Duane Ekman, and members Georgia Holmes, Marlin Rieppel and Peggy Lynch.

Appearing on behalf of the Petitioners herein were Edward J. Laubach, Jr. and Stanley J. Weinberger, Jr. of the law firm of Hall, Byers, Hanson, Steil & Weinberger, P.A., P.O. Box 966, 201 Hall Building, 921 First Street North, St. Cloud, Minnesota 56302. Appearing on behalf of Intervening Objectors Michael Garvey, et al., was DePaul Willette of the law firm of Willette, Kraft, Walser, Nelson & Hettig, P.O. Box 148, Olivia, Minnesota 56277. Appearing on behalf of the County of Meeker was William H. Doland, Meeker County Attorney, Meeker County Courthouse, Litchfield, Minnesota 55355. Appearing on behalf of the Board was Special Assistant Attorney General Peter Ackerberg, 515 Transportation Building, John Ireland Boulevard, St. Paul, Minnesota 55155. Also present and participating in the hearing was Board Executive Director Melvin A. Sinn. The record closed on July 26, 1984.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with the Board, Room 206, 555 Wabasha Street, St. Paul, Minnesota 55102.

STATEMENT OF ISSUES

Should a watershed district, proposed to be named the Rice-Koronis Watershed District, be established? If so, what ought its boundaries to be?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Jurisdiction and Procedural History

1. On January 10, 1984, a Nominating Petition for the establishment of the Rice-Koronis Watershed District was received by the Board. The Petition was signed by the City of Paynesville (pursuant to a City Council Resolution passed on December 14, 1983), as well as by 56 individuals.

2. Only 48 of the 56 individual signers of the Petition were proper signatories to the Petition. Six of the signers were resident freeholders within the corporate limits of the City of Paynesville. One of the 56 is not a resident freeholder. Another of the 56 was not a resident freeholder at the time that the Petition was submitted, but became a freeholder on May 18, 1984, which was prior to the start of the hearing. Tr. 1-22-24; 3-94-96 and 99. (See Memorandum).

3. At the time that the original Petitions were circulated, additional Petitions and signatures were obtained, but were not submitted to the Board. They were offered into evidence on the last day of the hearing. These additional Petitions contain signatures of six resident freeholders residing outside of the city limits of the City of Paynesville, but within the bounds of the proposed district. Petitioners' Ex. 22 and 23; Tr. 3-149-152. (See Memorandum.)

4. The City of Paynesville is the only city within the boundaries of the proposed district. Petitioners' Ex. 11; Tr. 1-160-161; 2-3-5; Tr. 2-73-74. (See Memorandum.)

5. The Petition was not signed by any of the counties within the proposed district. On December 20, 1983, the Stearns County Board of Commissioners passed a Resolution endorsing the concept of the proposed district, but did not sign the Petition. By letter dated December 9, 1983, the Meeker County Board of Commissioners indicated that it would not sign the Nominating Petition. See, also, Finding 53, below; Board Ex. 1.

6. On January 9, 1984, the Secretary of the Koronis Lake Association forwarded copies of the Petition to the County Auditors of Stearns, Meeker and Kandiyohi Counties, and to the Commissioner of Natural Resources and to the Director of the Division of Waters of the Department of Natural Resources. Board Ex. 1.

7. On March 5, 1984, the Board issued its Notice of and Order for Hearing, setting the hearing in this matter for April 6, 1984 in Paynesville. A copy of this Notice was mailed to a large number of persons on March 14, 1984, including the County Auditors for each of the three counties noted above, the County Commissioners of each of the three counties, the County Attorneys of each of the three counties, various city mayors and town clerks, legislators, and various state agencies, including the Department of Natural Resources, the Pollution Control Agency, the State Soil and Water Conservation Board, and the Director of the Division of Waters. Board Ex. 2.

8. On March 14 and March 21, the Notice was published in The New London-Spicer Times in Kandiyohi County, in The Eden Valley Journal in Meeker County, and in The Paynesville Press in Stearns County. Board Ex. 3.

9. On April 6, 1984, the Board received a response from the Director of the Division of Waters to the Nominating Petition. Board Ex. 4.

10. On April 4, 1984, the undersigned Administrative Law Judge entered his Order continuing the hearing as a result of a Prehearing Conference which was held on April 3, 1984.

11. On June 8, 1984, the Board issued a second Notice of and Order for Hearing, setting a new hearing date of July 9. This was mailed on June 18, to the same mailing list as was previously sent the earlier Notice of and Order for Hearing. Board Ex. 7.

12. On June 20 and June 27, the Revised Notice of and Order for Hearing was published in the same three newspapers as the prior one. Board Ex. 6.

Background

13. The North Fork of the Crow River begins in Pope County, and flows in a generally southeasterly direction through Stearns County and Kandiyohi County. In Kandiyohi County, the river flows into Rice Lake and then out of Rice Lake into Lake Koronis. A small portion of Lake Koronis is in Meeker County, and it is from this portion that the North Fork leaves Lake Koronis and flows in a southeasterly direction through Meeker County. Downstream of Lake Koronis, the North Fork is joined by the Middle Fork of the Crow River. This combined body is referred to as the North Fork of the Crow River, and continues downstream in an easterly direction for many miles to its junction with the South Fork of the Crow River in Wright County. The combined North Fork and the South Fork form the Crow River, which flows northeasterly to the Mississippi River near Dayton, forming part of the boundary between Hennepin and Wright Counties. Board Exs. 4 and 8.

14. The size of the watershed of the North Fork of the Crow upstream from the outlet of Lake Koronis is 323 square miles. Tr. 2-178.

15. Below the outlet of Lake Koronis to the point where the North Fork is joined by the Middle Fork is a drainage area of approximately 15 square miles. Adding those two together, the size of the watershed of the North Fork from its northwestern end to the point where it meets the Middle Fork is approximately 338 square miles.

16. Extensive data is available describing the sub-watersheds that make up the overall North Fork-to-Lake Koronis outlet drainage area. However, for purposes of brevity, that data will not be set forth here. Rather, summary data will be used. See, Petitioners' Ex. 17, Tables 6 and 7 at pages 18 and 19.

17. Land use in the Lake Koronis Watershed is as follows:

Cultivated	55%
Pasture/Open	34%
Forest	4%
Water	3%
Marsh	2%
Urban Residential	1%
Urban Non-Residential/Mix	1%

Thus, 89% of the land in the watershed above the outlet of the lake is either cultivated or pasture/open.

18. Lake Koronis has an area of 3,014 acres. Its greatest depth is 132 feet. The ratio of watershed area to lake area is greater than 60:1. Petitioners' Ex. 17, p. 6.

19. Rice Lake has an area of 1,639 acres and its maximum depth is at least 40 feet. Its ratio of watershed area to lake area is nearly 100:1. Petitioners' Ex. 14, pp. 2, 5 and 10.

20. There are approximately 270 homes bordering Rice Lake, and 498 homes bordering Lake Koronis. Many of the homes on both lakes are seasonal. Tr. 2-114.

Problems

21. Substantial economic benefits are conferred upon by City of Paynesville as a result of the use of Lake Koronis (and to a lesser extent Rice Lake) by nonresidents, whether they be seasonal homeowners or tourists. These benefits include not only tax base, but purchases of goods and services by persons who come to the City as a result of the lakes. The present mayor of the City of Paynesville, a former mayor and president of the Chamber of Commerce, and an experienced banker presented evidence of the economic contribution which the lakes make to the business activity of the City. Tr. 1-186, 265, and 282.

22. Both Rice Lake and Lake Koronis are producing excessive weed growth, excessive algae, reduced fishing quality, swimmer's itch and other problems associated with poor water quality. Testimony and exhibits supporting this fact exist throughout the record of this proceeding, and it will not be belabored further here. Evidence to the contrary is sparse, and is outweighed by evidence in support of the proposition.

23. The primary problem with both lakes is algae and weed control. Both have advanced to the stage where swimmers avoid using the lakes and boaters have difficulties.

24. High water on Lake Kornois has caused flooding problems for some homeowners. Flooding has inundated a number of homes, septic systems, and docks. It has rendered useless various boat launching devices, and caused some persons (and resort owners) to not even install their docks until well into the season. Public Ex. 6-8 and 18-20.

25. Flooding on Lake Kornois does not occur every year. It does occur during periods of heavy rainfall such as occurred in late June of both 1983 and 1984. Public Ex. 23.

26. Another problem which received less attention than water quality is soil erosion and resulting siltation which effects the lakes. Public Ex. 10-14, illustrate substantial erosion near Rice Lake. Deep spots in the lake have filled in with silt. Tr. 1-186; 1-244-249.

27. There are also sporadic flooding problems downstream from the outlet of Lake Koronis. Again, they appear to be the result of spring runoff or heavy rains when the ground is saturated. Also, part of the perceived flooding downstream must be understood in terms of the fact that approximately 60 years ago, the river south of Lake Koronis was dredged. During periods of excessive rain when the ground is saturated, the river does go out of the banks of the dredged channel, but the area which it floods is floodplain which would have been flooded at least as frequently (if not more frequently) had the channel not been dredged. But the extraordinarily severe rainstorm of June, 1983, did result in broader flooding, damaging bridges and culverts to the extent that Meeker County was granted \$132,000 in disaster relief. Tr. 2-89-92; 2-103; 2-119-120; 3-120.

The Association and Past Attempts at Solutions

28. The Koronis Lake Association was the primary force behind the Nominating Petition, with the assistance of the Rice Lake Association. The Koronis Lake Association was formed in 1971 by a group of property owners concerned with water quality on the lake improving the lake's recreational usage.

29. The Association considers all landowners around the lake to be members, and all are eligible to attend the Association's annual meeting. However, only approximately 60% of these "members" pay dues. Tr. 1-64.

30. In June of 1977, a consulting engineer retained by the City of Paynesville prepared a wastewater treatment facilities plan which recommended a centralized sewage system to serve the residences around the lake. Petitioners' Ex. 9.

31. In July of 1977, the Association participated in a public hearing on the proposed facilities plan. At that hearing, the Association opposed the proposed centralized sewage system, arguing that more data was needed to determine whether or not the system would (1) be cost effective, and (2) make any practical impact upon the water quality of the lake. The Association pointed out that the plan made no attempt to estimate the relative magnitude of nutrient sources to the lake. The Association admitted that there were some substandard sewage treatment systems (septic tanks, leeching fields, and other types) around the lake, but stated there was inadequate data to determine the magnitude of their contribution to the water quality problems of the lake. The Association recommended that further studies be done to determine the magnitudes of the various nutrient sources to the lake, and the effectiveness of existing individual subsurface disposal systems around the lake. Petitioners' Ex. 9. The proposal for a centralized sewer system was never implemented.

32. Shortly thereafter, the Association commissioned a study to determine the magnitude of the various nutrient sources to the lake, analyze which nutrient could be limited in order to improve the lake's water quality, and predict the lake's response to various reductions in nutrient loadings. Work on the study began in the fall of 1977, and the study was issued in August of 1979. It is known as the "Barten Report", after its author, John M. Barten.

33. The Barten Report concluded that Lake Koronis had become eutrophic, and in fact, its eutrophication had progressed to an advanced stage. In order to return the lake to a mesotrophic state, it would be necessary to reduce the loading of phosphorus to the lake by a factor of approximately 60%. The sources of the phosphorus coming into the lake were estimated to be as follows:

Watershed Runoff	78%
Paynesville Sewage Lagoons	11%
Groundwater Seepage	8%
Rainwater and Dry Fallout	<u>3%</u>
	100%

34. In 1980, following receipt of the Barten Report, the Association approached Stuart Steelman, the Administrative Assistant to the Clearwater River Watershed District. The Association asked Steelman his advice on how to proceed. Steelman was told then that they needed a grant-eligible body to sponsor a feasibility study. Steelman recommended the formation of a joint powers board. He recommended against attempting to form a full watershed district. Tr. 3-5-7.

35. In February of 1981, the Association appeared before the Meeker County Board to discuss the possibility of a joint powers board. The County Commissioners voted unanimously to agree to the development of a joint powers board. County Ex. 1.

36. Following receipt of the Barten Report, the Association forwarded the Report to the Minnesota Pollution Control Agency ("MPCA") and solicited that agency's assistance in funding solutions to the water quality problem. In August of 1980, the MPCA responded to the Association's request by enumerating a number of areas in which the Barten Report was deficient when compared with requirements of the U.S. Environmental Protection Agency funding rules under the Clean Lakes program. The MPCA recommended that the Association retain a consultant to supply the deficient information. In addition, the MPCA urged that a grant-eligible governmental body be identified to act as the local sponsor of lake restoration activities. Such a body could be either a watershed district, a lake improvement district, or an existing local unit (or units) of government. Petitioners' Ex. 1.

37. Following receipt of the MPCA's response to the Barten Report, the Association attempted to form a joint powers board among local units of government having some responsibility for the area around Rice Lake and Lake Koronis. The Association invited the following entities to a meeting set for June 5, 1981, in Paynesville: Meeker County Commissioners, Stearns County Commissioners, Eden Valley City Council, Paynesville City Council, Union Grove Township Board, Eden Lake Township Board, and Paynesville Township Board. Petitioners' Ex. 2.

38. The June 5, 1981 meeting did take place, with all of the invited governmental bodies represented by one or more persons. There were a number of questions about how a joint powers board would operate, and no decision was reached at the meeting. Instead, it was agreed that another meeting would be held after some of the questions could be answered.

39. On August 29, 1981, a second meeting was held to discuss the formation of a joint powers board. Of the seven governmental bodies invited, five or six sent a representative. At this meeting, a draft of a joint powers agreement was distributed to the representatives, and they were asked to take it to their respective bodies for signature.

40. On September 2, 1981, the Association sent out a notice to the governmental bodies who had been requested to sign the joint powers agreement, announcing a meeting for September 12. Attached to the notice was a proposed resolution which could be adopted by a governmental body desiring to join into the joint powers board. The resolution, if passed by an appropriate governmental body, would authorize the execution of the joint powers agreement and the designation of a representative to serve on the Board. At the September 12, 1981 meeting, only two of the seven governmental bodies were represented. None came with a signed agreement. From this attendance, the Association determined that a joint powers board could not be organized, and the Association determined to proceed with a feasibility study (as recommended by the MPCA) on its own.

41. The Association contracted with E.A. Hickock and Associates, an engineering consulting firm, to prepare a feasibility report which would meet U.S. EPA requirements for a Clean Lakes grant.

42. Between the fall of 1981 and the spring of 1982, Hickock and Associates worked on their report, which was completed in July of 1982. The report responds to the items noted by the MPCA upon review of the Barten Report. The Hickock Report was not based on any additional lake samples (other than a narrow investigation concerning weeds), but rather assumed the validity of the data presented in the Barten Report. The only substantial change to the data from the Barten Report was a reduction in the contribution of phosphorus from the City of Paynesville's sewage ponds. The reason for this change is that subsequent to the Barten Report, the City of Paynesville began using spray irrigation to dispose of some of its sewage effluent, thereby reducing the amount being discharged into the North Fork of the Crow River.

43. The Hickock Report attempted to identify and analyze a variety of lake restoration and pollution control alternatives. 21 alternative projects were identified, but these were narrowed down to five "best" alternative based upon site-specific requirements, technical feasibility, and resultant water quality improvements which could be expected to be achieved by the projects.

44. The Hickock Report estimated, and it is hereby found, that in a typical year, the phosphorus entering Lake Koronis would come from the following sources in the following percentages:

<u>Source</u>	<u>Contribution to Lake Phosphorus</u>
North Fork Crow River	80%
Lake Koronis Local Drainage	13%
Precipitation	3%
<u>Groundwater Seepage</u>	<u>4%</u>
	100%

45. At roughly the same time that the Hickock Report was in preparation, the Rice Lake Association contracted with Dr. Keith Knutson to prepare a study of Rice Lake. It will be recalled that the North Fork of the Crow River flows into Rice Lake upstream of Lake Koronis. Rice Lake receives the brunt of the river's phosphorus loading, and has a higher phosphorus content than does Lake Koronis. In fact, at one point when Knutson was sampling water on Rice Lake, he detected a toxic concentration of hydrogen sulfide on the upper levels of the lake, and a total lack of oxygen in the lower part of the lake. This resulted in a fish kill, which, according to the Department of Natural Resources, was likely caused by the water quality in the lake. Tr. 2-101-102.

46. In Rice Lake, the phosphorus loading from the North Fork of the Crow River constituted 88% of the phosphorus in the lake. Petitioners' Ex. 14, p. 8.

47. The Hickock Report concluded that the recommended alternative for restoring the water quality of Lake Koronis would be a diversion channel to carry a portion of the flow of the North Fork of the Crow River around Lake Koronis. This channel would run from the inlet of Lake Koronis around the eastern edge of the lake, and empty into the North Fork of the Crow River south of the outlet of Lake Koronis, in Section 14 of Union Grove Township. The project would not improve the water quality of Rice Lake.

48. The Association determined that the opposition of landowners downstream of the outlet of Lake Koronis would be an obstacle to proceeding with this diversion channel. In September of 1982, the Association's leaders met with some of the downstream landowners to discuss the proposed diversion channel. The landowners expressed concern about the impact to the project on farming (such as whether it would increase flooding). They also questioned its feasibility. They raised a number of specific concerns and suggested some alternatives to the proposed channel. Tr. 1-148 and Petitioners' Ex. 6.

49. In the fall of 1982, the Association also submitted the Hickock Report to the MPCA and the DNR. Both responded with a recommendation that a grant-eligible body be formed to sponsor any further work. Tr. 1-51-52.

The Proposed District and Boundaries

50. In August of 1983, the Association again approached Stuart Steelman, the Administrative Assistant of the Clearwater River Watershed District. After reviewing the Hickock Report, and hearing of the Association's failure at forming a joint powers board, Steelman recommended to the Association that they attempt to form a watershed district in order to implement further lake restoration work. Steelman recommended a watershed district because the sponsor of the project would need to have the power of eminent domain in order to condemn land if land for the diversion channel could not be obtained by negotiation.

51. In September of 1983, a meeting was held involving the Association, DNR, MPCA, Steelman and others. There was discussion about the pros and cons of various types of grant-eligible public bodies, but finally the Association determined to pursue the formation of a partial watershed district. Tr. 1-53-54; 3-10.

52. A partial watershed district, rather than a full watershed district, was chosen because it was deemed more expedient and quick to establish a partial district. The leaders of the Association and their advisors recognized that the full watershed of Lake Koronis extended far to the northwest of the City of Paynesville, and included an area of 323 square miles. Of those 323 square miles, 72 square miles were finally included in the proposed district, and 251 were excluded. By excluding the upstream area, the Association was attempting to eliminate opposition which they expected to come from upstream landowners who would not want to be included within the watershed district because they did not want to pay the costs associated with it. The Association recognized that the benefits of a district would, at least in the initial phases, be directed to persons on and around Lake Koronis and Rice Lake, and would not extend into the upper part of the full watershed. As one member of the Association's Board put it: "A farmer up by Brooten could care less about the water quality of Koronis and Rice Lake." Tr. 1-94; 1-170; 1-192; 3-13.

53. Following this decision to form a partial watershed district, the Association prepared the Nominating Petition, and approached various governmental bodies with a request that they sign it. In December of 1983, the County Boards of Stearns, Meeker, Kandiyohi Counties were all approached. The Stearns County Board did not sign the Petition, but passed a Resolution endorsing it. The Meeker County Board determined not to sign the Petition. The Kandiyohi County Board deferred discussion of the request, and it never took any formal action one way or the other. Tr. 3-145, 1-145, 1-188-189; WRB Ex. 1.

54. The Paynesville City Council was also approached, and it did sign the Petition. WRB Ex. 1.

55. In addition to a part of the watershed above Lake Koronis, the proposed district also includes approximately 15 square miles to the southeast of Lake Koronis, to the point where the Middle Fork joins the North Fork east of the Village of Manannah. The primary reason for including this area within the boundaries of the proposed district is that it includes most of the land that would be crossed by the diversion channel. Secondly, it is an area that is impacted by sporadic flooding. Tr. 2-171-172.

56. This area southeast of Lake Koronis does not contribute any waters to Lake Koronis or Rice Lake. It does not contribute any nutrients which cause water quality problems in either of those lakes. It does not contribute any significant portion of the waters which cause occasional flooding problems in the area. The vast majority of the landowners in the area do not want to be included in the proposed district. Tr. 2-168; 2-88-98; 2-101-106.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Nominating Petition, having been signed by a majority of the cities within the proposed district, is a valid Petition for the establishment of a watershed district pursuant to Minn. Stat. § 112.37, subd. 1 (1982). (See Memorandum).

2. The Petition, as originally filed with the Board, did not contain the signatures of at least 50 resident freeholders of the proposed district, exclusive of the resident freeholders within the corporate limits of any city on whose behalf the authorized official had signed the Petition. Minn. Stat. § 112.37, subd. 5 (1982) does not permit additional Petitions to be filed after the start of the hearing in order to cure a defect in the number of signatures.

3. It is not necessary for a Petition to contain both the requisite number of freeholder signatures and the signature of a majority of the cities within the proposed district in order to be valid. Either one is sufficient. In this case, because it was signed by a majority of the cities within the proposed district, the Petition is valid.

4. Due, timely and proper notice of the hearing was given. All other relevant requirements of law or rule have been fulfilled. The Board and the Administrative Law Judge do have jurisdiction to determine the issues herein.

5. The establishment of a watershed district would be for the public welfare and public interest within the meaning of Minn. Stat. § 112.39, subd. 3 (1982).

6. The establishment of a watershed district would subserve the purpose of Minn. Stat. § 112.34, subd. 1 (1982). It would not only meet the test of Minn. Stat. § 112.36, subd. 2(13) concerning water quality, but it has the potential of meeting the tests of subds. 2(1), (2), (3), (6), (7), (8), (9) and (10).

7. The Board has the power and authority, upon the filing of a Nominating Petition, to fix the boundaries of a watershed district. Such boundaries may include the whole or any part of any watershed or watersheds within the discretion of the Board. However, if the boundaries of a proposed district are to be substantially enlarged over those contained in the Notice and Order for Hearing as published, due process requires that an additional hearing be held upon proper notice of the enlarged district.

Based upon the foregoing, the Administrative Law Judge makes the following:

RECOMMENDATION

That the Board dismiss the Petition for the creation of the Rice-Koronis Watershed District with the boundaries proposed.

Dated this 27th day of August, 1984.

Allan W. Klein

ALLAN W. KLEIN
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the administrative law judge by first class mail.

Court Reported: Janet R. Shaddix & Associates.

MEMORANDUM

I.

The Petitioners have demonstrated the need for a watershed district. The recommendation to dismiss the Petition is based solely upon the proposed boundaries, and it is reached with some difficulty.

At the outset, it should be stressed that it is the Board which has the responsibility and the authority to make the policy decision of what lands ought to be included in the proposed district. The statutes give very little guidance to the Board concerning boundaries, and it is, essentially, a policy decision which is properly to be made by the Board. Since the statute requires that a Recommendation be made, one has been made. But it is based upon a policy decision that is properly for the Board to decide.

The recommendation is based upon two separate areas of lands. The first is the area northwest of the proposed boundary, which includes the vast bulk of the watershed of the North Fork of the Crow River above the outlet of Lake Koronis. This area was not proposed for inclusion in the watershed district. The second area is the area to the south and east of the outlet of Lake Koronis, which was proposed for inclusion.

Concerning the area to the north and west, it is this area which contributes most of the nutrients to Rice Lake and Lake Koronis. It is those nutrients which are the real target of the Petitioners herein. In the case of Rice Lake, the North Fork contributes 88% of the nutrient load. In the case of Lake Koronis, it contributes 80% of the nutrients. While a small portion of this contributing land is included within the boundaries, the bulk of it is not.

Excluding the upper watershed is expedient, at least in the short-term. It removes the motivation for upstream landowners to oppose the creation of the district and improvements which may be proposed by it. Excluding those

lands, however, severely limits the options available to the district in dealing with the source of its problem. As a practical matter, the district is limited to solutions which do not involve activities in the part of the watershed above its proposed boundaries. That is shortsighted and may, in the long run, prove to be an insurmountable obstacle to achievement of the Petitioners' goals.

The statute does not contemplate single-project watershed districts. Rather, it contemplates an on-going, comprehensive approach to all water problems in a given geographic area. While it is not necessary that a district consider or actually accomplish solving all of the problems, a single-project district is not what the act contemplates. The northern boundary of the proposed district appears to have been drawn with the recommended diversion channel solution firmly in mind. Since the upper part of the watershed need not be included in the District if that project is all that is to be accomplished, and since it is more expedient to exclude it, the decision was made to form a partial watershed district.

The Minnesota Supreme Court has not definitely addressed the question of boundaries drawn for purposes of expediency. However, in dicta, the Court has stated:

Undoubtedly, when the legislature stated that water resources are to be managed in accordance with scientific principles, it did not intend to confine the Board to a consideration of scientific data only. Rather, the statutory language serves to underscore the legislature's desire to have resource-related decisions grounded in scientific or technological rather than political or other considerations. This desire conforms to the fact that natural resource problems do not observe artificial political boundaries and do not respond to traditional political solutions.

City of North St. Paul v. Minn. Water Resources Board, 260 N.W.2d 584 (Minn. 1977). Emphasis Added.

The exclusion of the northern part of the District is the reason for the recommendation that the Petition be dismissed.

The inclusion of the southeastern part of the proposed District (the area below the outlet of Lake Koronis) is more problematical. It's inclusion was a secondary basis for the dismissal recommendation. The primary purpose for including the area was to facilitate the construction of the diversion channel. It is a policy question for the Board to determine whether or not it is appropriate to include an area solely to facilitate benefits to a different area. Again, the statutes give little guidance, other than a very indirect suggestion in the provision dealing with withdrawal of territory from an existing district. Minn. Stat. § 112.85, subd. 2 (1983 Supp.) does give the Board some specific standards to follow in determining whether or not an area may be withdrawn from an existing district. That statute provides that if the Board finds (1) that the area proposed to be withdrawn has not and will not receive any benefit from the operation of the District, and (2) that the

District can perform the functions for which it was established without the inclusion of the said territory, and (3) that said territory is not, in fact, a part of the watershed, then the Board may release the territory from the District.

Such a determination, however, would come at a point where much more information is available than at the present time. If the Board were to grant the Petition herein, and include the southeastern portion, the managers of the newly created district would prepare an overall plan for the operation of the District. From that plan, it could be determined whether the southeastern portion met the tests for withdrawal. At this point, there is no overall plan and it is unknown to what extent the proposed district will benefit the southeastern area. It is clear that the majority of the landowners in that area are opposed to its inclusion within the proposed district. However, their opposition is based upon the assumption that the proposed district will concentrate its activities on improving Lake Koronis and Rice Lake, and be of no benefit to them. The proponents of the Petition, however, argue that they will address the flooding problems of the southeastern area. Flooding in that area, however, is sporadic and only becomes a substantial problem in periods of unusual rainfall or runoff. The landowners in the area are not concerned enough about it to support the Petition.

It is concluded that including the southeast area proposed by the Petitioners is appropriate only if the Board decides that, as a matter of policy, the construction of a proposed project is an adequate basis for including lands within a district. There are no other demonstrated water problems which would support the inclusion of the southern part of the proposed District.

II.

The nominating Petition was deemed to be valid because it was signed by the only city within the boundaries of the proposed District. It was suggested that Manannah was a city. It is not. Therefore, Paynesville is the only city within the boundaries of the proposed District.

Petitioners urged that the Petition also be found valid because of the additional signatures offered at the end of the hearing. This argument has been rejected because of the precise wording of Minn. Stat. § 112.37, subd. 5. That statute allows the correction of defects in petitions prior to the close of the hearing so long as the Petition contains the requisite number of signatures. It also provides that all Petitions filed prior to the hearing shall be considered by the Board as part of the original Petition. Both of these provisions lead to the conclusion that petitions may not be added to after the start of the hearing in order to correct a defect in the number of signatories.

The County Auditors in each of the respective counties certified that all persons who had signed the original Petitions were resident freeholders residing in their respective counties. The auditors did not certify whether or not the signatories were resident freeholders within the corporate limits of any city which had signed the Petition. Moreover, Minn. Stat. § 112.37, subd. 2 provides that the auditors' certifications shall be prima facie

evidence of ownership. They are, therefore, subject to rebuttal. Adequate evidence was provided to rebut the prima facie presumption created by the auditors' certifications.

Although there were an insufficient number of valid signatures by resident freeholders, there were a sufficient number of valid signatures of cities, and therefore, the Petition is valid.

A.W.K.



WRB-85-002-AK

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA WATER RESOURCES BOARD

In the Matter of the Petition
for the Establishment of the
"North Fork Crow River Above
Middle Fork Watershed District"

FINDINGS OF FACT,
CONCLUSIONS, RECOMMENDATION
AND MEMORANDUM

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on January 16, 1985, in Brooten. A majority of the members of the Minnesota Water Resources Board were present, including Chairman Duane Ekman, and Board Members Georgia Holmes, Marlin Rieppel and Ronald Stevens.

Appearing on behalf of the Petitioners herein was Kurt A. Deter of the law firm of Rinke, Noonan, Grote & Smoley, Ltd., Suite 700, Norwest Center, Box 1800, St. Cloud, Minnesota 56302. Appearing on behalf of the Petitioners for the Rice-Koronis Watershed District was Edward J. Laubach, Jr. of the law firm of Hall, Byers, Hanson, Steil & Weinberger, P.A., P.O. Box 966, 201 Hall Building, 921 First Street North, St. Cloud, Minnesota 56302. Appearing on behalf of Intervening Objectors Michael Gravey, et. al. was DePaul Willette of the law firm of Willette, Kraft, Walser, Nelson & Hettig, Box 148, Olivia, Minnesota 56277. Appearing on behalf of the Board were Special Assistant Attorneys General LeRoy C. Paddock and Dwight S. Wagenius, 1935 West County Road B-2, Roseville, Minnesota 55113. Also present and participating in the hearing was Board Executive Director Melvin A. Sinn. The record closed on February 7, 1985.

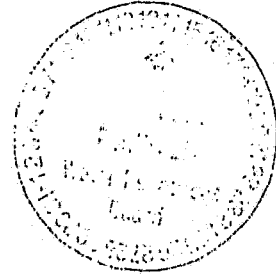
Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with the Board at its new address, First Floor, 500 Lafayette Road, St. Paul, Minnesota 55146.

STATEMENT OF ISSUES

Should a watershed district, proposed to be named the North Fork Crow River Above Middle Fork Watershed District, be established? If so, what ought its boundaries to be?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT



Procedural Matters

1. On September 14, 1984, a Nominating Petition for the establishment of the North Fork Crow River Above Middle Fork Watershed District was received by the Board. The Petition was signed by 99 individuals. WRB Ex. 1.
2. On September 14, 1984, Petitioners served copies of the Petition on the Stearns County Auditor, the Kandiyohi County Auditor, the Meeker County Auditor, the Pope County Auditor, the Commissioner of Natural Resources, the Director of the Division of Waters, and the parties to the prior Board proceeding relating to the proposed establishment of the Rice-Koronis Watershed District. WRB Ex. 1.
3. On September 24, 1984, a certificate of resident freehold status concerning 19 of the signatories was received by the Board from the Pope County Auditor. WRB Ex. 2.
4. On October 10, 1984, a certificate of resident freehold status of 77 of the signatories was received by the Board from the Stearns County Auditor. WRB Ex. 3.
5. On December 7, 1984, the Board issued its Notice of and Order for Hearing in this matter, setting the hearing for January 16, 1985 in Brooten.
6. On December 10, 1984, the Board served copies of the Notice of and Order for Hearing on the Petitioners, the County Auditors, County Attorneys, and County Commissioners of Kandiyohi County, Meeker County, Stearns County, and Pope County. Copies were also served upon the Petitioners in the Rice-Koronis Watershed proceeding, as well as the parties to that proceeding. Copies were also served upon the Soil Conservation Service and Soil and Water Conservation Districts in each of the counties involved, as well as the clerks of various townships and cities involved. Copies were also served on the Legislators who represent areas contained within the proposed district, as well as various state and federal agencies. Copies were also served on various press and radio representatives. Finally, copies were sent to various persons who had participated in the earlier proceedings. WRB Ex. 4.
7. On December 19 and again on December 26, 1984, the Notice of and Order for Hearing, along with a map of the proposed District, was published in the Eden Valley Journal in Meeker County. On December 19 and December 26, 1984, the same information was published in the Paynesville Press in Stearns County. On December 19 and December 26, 1984, the same information was published in the New London-Spicer Times in Kandiyohi County. On December 20, 1984 and January 3, 1985, the same information was published in the Bonanza Valley Voice in Stearns County. On December 20 and December 27, 1984, the same information was published in The Pope County Tribune. WRB Ex. 5 and WRB Late Filed Exhibit.
8. On January 15, 1985, the Board received the report of the Director of the Division of Waters on the Nominating Petition. WRB Ex. 6.

9. On November 9, 1984, at a meeting of the Board held in St. Paul attended by representatives of Petitioners in this proceeding and the parties to the earlier Rice-Koronis proceeding, the Board decided to postpone action on the Rice-Koronis proceeding pending consideration of this Petition. It was agreed that the entire record of the Rice-Koronis proceeding would be introduced into the record of this proceeding. At the hearing, the entire record of the earlier proceeding was offered and received into the record of this proceeding as WRB Ex. 11 without objection. Tr. 18.

10. On November 14, 1984, the Board received a letter from Petitioners agreeing that the list of 14 nominees from the Rice-Koronis Watershed District petition could be submitted as possible nominees for this District. WRB Ex. 7.

11. On January 14, 1985, Petitioners submitted a list of additional nominees to be added to the list submitted with the Petition. WRB Ex. 10.

12. Petitions to Intervene were duly filed by the Petitioners for the establishment of the Rice-Koronis Watershed District, represented by Mr. Laubach, as well as by Michael Garvey, et. al. represented by Mr. Willette. WRB Ex. 8 and 9. There was no objection to the Petitions, and they were granted. Tr. 15.

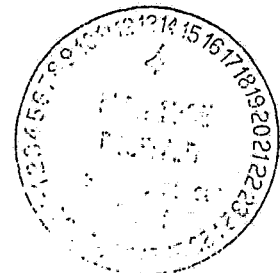
Description of the Proposed District

13. The proposed district runs roughly in a northwesterly to southeasterly direction. Its southeastern end is at the junction of the Middle Fork and North Fork of the Crow River, just east of the Village of Manannah. At the other end, the northwest corner of the proposed district is just east of the City of Glenwood.

14. The proposed district encompasses lands in four different counties. The distribution of lands, by county, is set forth below:

<u>County</u>	<u>Area Within District</u>	<u>Percentage of District</u>
Pope	46.6 sq. mi.	14%
Stearns	212.0	62
Kandiyhoi	43.6	13
Meeker	35.5	11
TOTAL	337.7	100

15. The North Fork of the Crow River begins in Pope County, at the outlet of Grove Lake. It flows in a generally southeasterly direction through Pope, Stearns and Kandiyhoi Counties. It then reenters Stearns County, where it flows into Rice Lake. It then flows out of Rice Lake into Lake Koronis. A small portion of Lake Koronis is in Meeker County, and it is from this portion of the Lake that the North Fork leaves Lake Koronis and flows in a southeasterly direction through Meeker County. Downstream of Lake Koronis, just to the east of the Village of Manannah, it is joined by the Middle Fork of the Crow River. This combined body is referred to as the North Fork of the



Crow River as it continues downstream in an easterly direction for many miles to its junction with the South Fork of the Crow River, in Wright County. The combined North Fork and South Fork form the Crow River, which flows northeasterly to the Mississippi River near Dayton.

16. The size of the watershed of the North Fork of the Crow River upstream from the outlet of Lake Koronis is 323 square miles. Below the outlet of Lake Koronis to the point where the North Fork is joined by the Middle Fork, the drainage area of the North Fork is approximately 15 square miles. Adding these two together, the size of the watershed of the North Fork from its northwestern end to the point where it meets the Middle Fork is approximately 338 square miles.

17. Land use in the proposed district above the outlet of Lake Koronis (excluding that portion in Meeker County) is as follows:

Cultivated	55%
Pasture/Open	34%
Forest	4%
Water	3%
Marsh	2%
Urban Residential	1%
Urban Non-residential/Mixed	1%

Thus, 89% of the land in the Watershed above the outlet of Lake Koronis is either cultivated or pasture/open.

18. Soil types in the proposed district are varied, but it can be said that at least in the center of the district, as the River flows southeasterly through Stearns County, the River provides a dramatic divide between loamy soils north of the River and sandier soils to the south. This generalization ceases to have any validity south of Lake Koronis, where the soils on either side of the River are loamy. It is the loamy soils that are most attractive for drainage, tiling and ditching. Virtually all of the persons in Pope and Stearns Counties who spoke of ditching were speaking of lands to the north of the River, while those who spoke of irrigating were speaking of lands to the south of the River. This differentiation can be seen from the location of ditches on New Petitioner's Ex. 15 and Old Objector's Ex. 5. ("New" Exhibits are those from the Brooten hearing. "Old" Exhibits are those from the Paynesville hearing.)

19. Lake Koronis has an area of 3,014 acres. Rice Lake has an area of 1,639 acres. Grove Lake has an area of 363 acres. Tamarak Lake has an area of 360 acres. Lake George has an area of 301 acres. These are the largest water bodies within the proposed district.

20. Lake Koronis is well developed with homes, both seasonal and year-around. Rice Lake is somewhat less developed. Grove Lake has a very few homes around it, and Tamarak Lake has none.



Problems

21. In an earlier report, Findings were made concerning water quality problems in both Lake Koronis and Rice Lake. Findings were also made concerning flooding problems in Lake Koronis as well as soil erosion and resulting siltation which impacted the lakes. Report, Findings 21 - 26. Those Findings are hereby readopted.

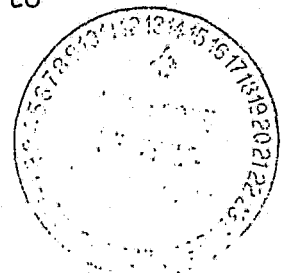
22. Additional data provided at the Brooten hearing centered mainly around various problems resulting from poorly maintained drainage ditches and natural waterways. These problems included flooding of agricultural land, flooding of roads, flooding of basements, erosion and depostion of silt, structural damage to a dam, water quality in wells, water quality of lakes, poorly functioning or nonfunctioning drainage tiles, and reduced fishing opportunities.

23. The flooding issue has reached the point where the Federal Emergency Management Agency has funded a study by the U.S. Army Corps of Engineers which may lead to the establishment of a floodplain management program and the availability of flood insurance. New Petitioner's Ex. 1, p. 6.

24. There are a variety of reasons for these problems. They include existing governmental units being unable to give high enough priority to water issues, beaver activities, disagreements between landowners, problems with septic systems, and the recognition that to merely solve one person's problem may just create a problem for his downstream neighbors if there is no governmental body which is willing or able to put together an overall plan to prevent this from occurring.

25. Tiling improves the water quality of runoff waters. However, tiles cannot serve this function if receiving ditches are not functioning. More importantly from the standpoint of the agricultural landowner, full ditches prevent tiling from doing its primary job, which is to drain excess surface and near-surface waters to improve agricultural productivity. A number of drainage ditches within the boundaries of the proposed district have a reduced carrying capacity as a result of siltation, tree and brush obstructions, and uncontrolled beaver activity. The problems resulting from such ditches are exacerbated if an upstream landowner adds tiling or otherwise puts additional waters into the obstructed ditch. The Stearns County Ditch Inspector candidly admitted that the condition of ditches in Stearns County was, for the most part, "terrible". Tr. 72. Problems with ditches have consumed an increasing proportion of his office's work (he is also the County Surveyor), and the County Commissioner from Stearns County who represents much of the area proposed for inclusion in the watershed district, stated that there has been an increase in drainage issues brought before the County Board. Tr. 70.

26. The fact that the River flows through a number of different counties increases the difficulty of overall planning and coordination. The River itself is being impacted by siltation and reduced carrying capacity, and it is carrying both silt and nutrients into Rice Lake and Lake Koronis. The existence of a number of counties and the absence of any one governmental agency with jurisdiction over the entire problem makes it difficult to implement solutions to the problems.



Boundaries

27. Starting at the northwestern end, the proposed boundary is erroneous in the Alice Lake - Eckert Lake area. The proposed boundary includes both of those lakes, as well as land to the west of them. These areas drain to the north, rather than southeast. They are not part of the hydrologic watershed of the North Fork. The boundary ought to be redrawn to exclude Eckert Lake and the land to the north and west of it. There is a road immediately south of the southern tip of Eckert Lake which is the boundary between Sections 19 and 18 of Grover Lake Township. The road jogs to the north towards the center of Eckert Lake, and then turns east in Section 18. At the boundary line between Sections 17 and 18, the road turns north again and proceeds in a north-northeasterly direction until it meets the boundary line between Section 17 of Grove Lake Township and Section 18 of Glenwood Township. There are no culverts under that road. The boundary of the proposed district ought to be redrawn along that road so that the areas to the north and west of it are not included in the proposed district. Tr. 187 - 201.

28. George Lake is located in Sections 23, 24, 25, 26 and 36 of Lake George Township in Stearns County. It has two outlets. One of them is near the center of Section 36, and flows east to a tributary of the Sauk River. The other is at the south tip of the lake southwest of the center of Section 36, and flows in a southwesterly direction to a tributary to the North Fork of the Crow River. As noted by the Department of Natural Resources report (New WRB Ex. 6), when water in George Lake is high, there is a substantial discharge through both outlets. But when the water in George Lake is at lower levels, there is discharge to the North Fork, but no discharge to the Sauk. Under such circumstances, it is found to be appropriate to include George Lake and its immediate watershed as part of the watershed of the North Fork of the Crow River. It appears that this is what Petitioners attempted to do in proposing their boundaries, and thus no change is needed in connection with George Lake.

29. Inclusion of the Paynesville sewage treatment ponds was a difficult question in the first proceeding, and it remains a difficult question in this proceeding. They are located on land which flows to the Sauk River, rather than the North Fork of the Crow River. However, the City is increasing the use of spray irrigation of effluent rather than discharging it directly into the North Fork of the Crow River. Tiling on the irrigated lands, however, does drain into the North Fork. In addition, some effluent is pumped into the North Fork after treatment. Old WRB Ex. 6 and Old Tr. I at pp. 131 - 132. While the current status of the discharge of the pond's effluent is not clear, it is reasonable to include the lagoon area within the boundaries of the proposed district, as Petitioners have done.

30. Findings 55 and 56 of the prior report deal with the area south of Lake Koronis. They are hereby readopted. Very little additional information was offered during the Brooten proceeding concerning those areas. See, New Tr. 166 - 168, 182 - 186, 46 - 47 and associated slides.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:



CONCLUSIONS

1. The Nominating Petition, having been signed by at least 50 resident freeholders of the proposed district, is valid. Petitioners have complied with all other requirements of Minn. Stat. Ch. 112 necessary to vest the Board with jurisdiction in this matter.

2. Due, timely and proper notice of the hearing was given. All other relevant requirements of law or rule have been fulfilled. The Board and the Administrative Law Judge have jurisdiction to determine the issues herein.

3. The establishment of a watershed district as proposed herein would be for the public welfare and public interest within the meaning of Minn. Stat. § 112.39, subd. 3 (1984).

4. The establishment of a watershed district as proposed herein would subserve the purpose of Minn. Stat. § 112.34, subd. 1 (1984). It has the potential for subserving the purposes set forth in Minn. Stat. § 112.36, subd. 2(1), (2), (5), (7), (8), (9), (10) and (13).

5. The Board has the power and authority to establish a watershed district and define and fix the boundaries thereof. It may draw boundaries which include the whole or any part of any watershed or watersheds within the discretion of the Board.

Based upon the foregoing, the Administrative Law Judge makes the following:

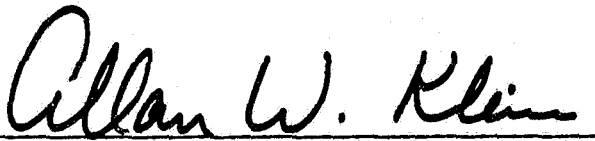
RECOMMENDATIONS

1. That the Board grant the Petition for the creation of the North Fork Crow River Above Middle Fork Watershed District. That the boundaries be those proposed in the Nominating Petition with the following exceptions:

a. That the areas north and east of Eckert Lake, as more fully described in the Findings, be excluded from the proposed district.

b. That the areas downstream from the outlet of Lake Koronis be excluded from the proposed district.

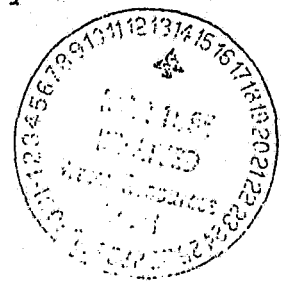
Dated this 13th day of March, 1985.


ALLAN W. KLEIN
Administrative Law Judge

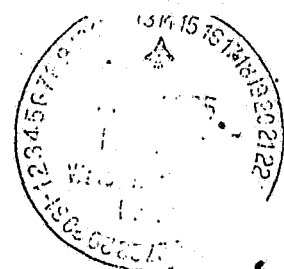
NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Court Reported by Janet R. Shaddix & Associates



MEMORANDUM



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The question of the whether or not the area downstream from the outlet of Lake Koronis ought to be included in any proposed district was problematical in the earlier proceeding, and there is little new evidence in the record of this hearing to help answer the question. There is a fundamental difference, however, between this proceeding and the earlier one. The goals of the earlier Petitioners were much more limited than the goals of the current Petitioners. The demonstrated problems were far more limited in the earlier proceeding than they were in this proceeding. It is clear from the Brooten hearing that there are problems within the newly proposed district other than just those associated with Lake Koronis and Rice Lake. But the evidence of those problems related, almost exclusively, to lands upstream from the lakes.

In the earlier proceeding, the Board was faced with a policy decision of whether a watershed district should be created when its proposed boundaries did not include the areas that were contributing a large part of its problems. That question could be characterized as: "How far upstream should you go?"

The question of whether or not to include the area southeast of Lake Koronis could be characterized as: "How far downstream should you go?" Obviously, the area downstream of the outlet of Lake Koronis is not contributing to the problems of either Lake Koronis or the larger upstream area now proposed for inclusion in this proceeding. The vast majority of landowners in the downstream area do not believe that they have a problem, at least not one that can be aided by the proposed district.

A downstream line has to be drawn somewhere. Drawing it at the point where the North Fork is joined by the Middle Fork has a logical basis. But if there are no problems in the lowest part of the area, and if the vast majority of persons there do not want to be included in the proposed district, should the area be included merely to achieve logical consistency? The report of the Director of the Division of Waters urged the Board to consider adding the watershed of the Middle Fork of the Crow River to the area proposed in the current Petition. There are a number of points further downstream where the line could be drawn with equal logic.

There is no question but that the Board has the authority to draw the boundaries, and include all or a part of any given watershed or watersheds. It is also clear that the Board must make its decisions (including the boundary decision) on the basis of the evidence before it, not on the basis of public opinion, regardless of the size of the group that either favors or opposes inclusion in a proposed district.

There is evidence which would support the inclusion of this downstream area, and there is evidence that would support its exclusion. On balance, however, there is far more evidence about problems to be addressed by this proposed district which exist in Lake Koronis and upstream of Lake Koronis than there is evidence about problems downstream. The most logical point to draw the line, based on all of the evidence, is at the outlet of Lake Koronis. It is for that reason that the recommendation is made to exclude the area downstream.

A.K.

**SEE
OVERSIZED
DOCUMENT!!**