

This Natural Resources Organization Study has been accomplished during the last six weeks by Laurence F. Koll, former Special Assistant for Environmental Affairs to Governor Harold LeVander, with the assistance of David F. Durenberger, former Executive Secretary to Governor Harold LeVander, and with the advice of many people who are expert in the field. The purpose was to draw on the recent experience at the State Executive level concerning the organizational effectiveness of government to respond to the natural resource needs of Minnesota.

## I. Preface

The desirability of this study for the Minnesota Department of Administration and the Minnesota State Legislature has been brought about by two factors: first, the establishment of new agencies dealing with natural resources, reorganization of others, and increased activities of still others at the federal and regional (inter-state) levels require Minnesota to re-examine its relationships and communications with these agencies in order to see if its best interests are being served. At the federal level, the Environmental Quality Council has been created and the Environmental Protection Agency has been established. The President of the United States has proposed the establishment of a new cabinet-level Department of Natural Resources. Senator Henry Jackson of Washington has introduced legislation prescribing a national land use policy.

At the regional level, such organizations as the Great Lakes Basin Commission, the Missouri River Inter-Agency Committee, and the Souri-Red-Rainy River Basin Commission, all make water policy decisions affecting Minnesota independently of each other. Several inter-state organizations, like the Minnesota-Wisconsin Boundary Waters Commission, exist. Moreover, there is an increasing trend to seek regional approaches to water and natural resources planning and management. The enactment of an Upper Mississippi River Basin Commission is under consideration. A Mississippi National Recreation area has been proposed. Senator Edwin Muskie of Maine has even introduced a bill providing for a regional organization to determine power plant sites. In view of the many federal and regional fingers in the state natural resources pie, Minnesota may well ask itself how it will continue to best fulfill its lawful responsibilities to its citizens with respect to the planning, management and protection of its great natural

resources.

Second, several recent reports have analyzed the internal operations of state natural resources planning and management functions and have offered suggestions concerning reorganization. Among these are the joint report of the House Sub-Committees on Water Resources and Pollution and on Minnesota River Flooding and Drainage; the Citizens League Report on Environmental Decision-making in Minnesota; and The Water Resources Research Center's Bulletin 27 on Water and Related Land Resources State Administration. In addition, a number of private citizens' environmental organizations, as well as individual state agencies, have prepared natural resource reorganization recommendations for legislative consideration.

This study does not attempt to be an in-depth review of all of the above reports and recommendations. It does specifically examine the role of the three major state agencies with primary natural resource missions -- the Water Resources Board, Soil and Water Conservation Commission, and the Pollution Control Agency, as they relate to the Department of Natural Resources. It also suggests an additional natural resource entity in state government -- a Natural Resources Council -- to enable existing state agencies to more efficiently achieve objectives consistent with the natural resource policy of the state. The study also calls for an annual Minnesota Environmental Congress so that the people might better know what is being done and what still must be done in the future to rectify our environmental mistakes.

## II. REORGANIZATION OF THE DEPARTMENT OF NATURAL RESOURCES (DNR)

We recommend the inclusion of the Water Resources Board (WRB) and the Soil and Water Conservation Commission (SWCC) within the DNR in the manner and for the reasons prescribed below.

### THE WATER RESOURCES BOARD (WRB)

The Water Resources Board was established in 1955 upon the recommendation of the Legislative Interim Commission on Water Conservation, Drainage and Flood Control. It consists of five citizen members who are appointed by the Governor and paid on a per diem basis. Staff support is furnished by one administrative secretary and one stenographer. The legislature specifically defined responsibilities for the Board in two areas: (1) the resolution of governmental agency conflicts over state water policy, and (2) the establishment of watershed districts.

With respect to resolution of water policy conflict, such issues cannot be considered by the Board unless brought before it by petition of the parties to the disagreement. Moreover, upon consideration of the issue, the Board can only make an advisory recommendation to the parties, not a binding determination.

With respect to the establishment of watershed districts, the Board will hold hearings upon petition therefor, set the boundaries and appoint the first Board of Managers. (Subsequent Boards of Managers are appointed by the County Commissioners within the district.)

In both these areas of responsibility, voluntary petition is the basis for assumption of jurisdiction by the WRB. Yet the Board has had only four hearings concerning resolution of state water policy conflict while establishing 28 watershed districts over the same period of time. It is

obvious that as a practical matter, the Board's primary function relates to the establishment of watershed districts.

What are the needs of the Water Resources Board concerning its watershed district functions? They appear to be threefold: first, there is a need to better relate regional water policy (intra-state) within a watershed district to the statewide water and land-related resources policy. At the present time, the watershed district plan is prepared by the District Board of Managers solely upon the basis of district considerations. It is true that the DNR Commissioner and the Director of the Division of Waters, Soils and Minerals receive copies of the proposed plan for comment and recommendations. It is also true that a public hearing is held before the Board by its order prescribes the final plan for the district, and statewide policy considerations may be brought forward at that time. However, there is nothing which requires the Board to give weight to such statewide policy considerations in its order establishing the district plan. Moreover, the sole, full-time, statewide link for all watershed districts is the Administrative Secretary to the WRB, and according to one source, he "has the capability of participating only on a token basis in the statewide water and related land resources planning activities of the water resources coordinating committee, State Planning Agency." (Bulletin 27, p. 175).

Second, there is a need to increase assistance from the state to the district. The Administrative Secretary to the Board has done an excellent job. But the fact remains that the size of the WRB staff was the same size in 1957 when it had to service two watershed districts as it is at the present when there are 28. The quality of advice and assistance given by the WRB staff to the districts may be the same, but surely the ability to give this help as often as in the past is diminished.

Third, the procedures for review of plans and projects within a watershed district by the WRB should be strengthened. A watershed district, with its powers of levying taxes and of eminent domain, constitutes a powerful entity with the potential to substantially affect some aspects of state natural resources policy. Periodic review is essential to maintain consistency between state policy and district performance.

As a corollary to these needs, the coordination - assistance - review functions, which are administrative in nature, should be separated from the watershed district establishment and plan - approval functions presently performed by the Board, which are quasi-judicial and quasi-legislative in nature. The Water Resources Board ought not to be placed in a position requiring it to make a quasi-judicial determination on matters involving its own administrative competence.

Recommendation: The quasi-judicial and quasi-legislative functions of the WRB should be separated from the administrative functions. The Board members of the Water Resources Board should continue to exercise their present quasi-judicial and quasi-legislative functions, including the establishment of watershed districts, independently of control by the DNR. A new Bureau of Watershed Resources should be established under the supervision and control of the Commissioner of DNR and should assume the administrative functions of coordination, assistance and review with respect to watershed districts. The present position of Administrative Secretary to the WRB could be redesignated as head of the Watershed Resources Bureau, DNR. This position should be appointed by the Commissioner of DNR. It is our observation that the present administrative secretary is well qualified for that position. The DNR Commissioner would have responsibility for staffing the new division with adequate manpower. Possibly this could be done, on an interim basis, through

a transfer of some personnel time from other divisions.

Implementation of this recommendation would have the following advantages:

- (1) The independence of the present board members of the WRB in setting up watershed districts would be retained;
- (2) The present level of local control and local participation by the Watershed District Board of Managers would be retained;
- (3) Coordination between watershed planning and implementation with overall state natural resources policy would be improved.
- (4) The watershed program would be strengthened by the ability of the DNR Commissioner to expedite inter-division assistance from other divisions within DNR and thereby provide more effective administrative service to the districts.
- (5) The DNR would be strengthened by the ability to have direct, intra-departmental communications with local citizens throughout the state (the District Board of Managers and their Advisory Committees) with respect to water and natural resources policy.

#### THE SOIL AND WATER CONSERVATION COMMISSION (SWCC)

The State Soil and Water Conservation Commission consists of five "bona-fide farmers" appointed by the Governor for five-year terms and four ex-officio members; the Commissioner of Natural Resources, the Commissioner of Agriculture, the Director of the Agricultural Extension Service of the University of Minnesota, and the Dean of the Institute of Agriculture of the University of Minnesota. In addition, there are two advisory members: the President of the State Association of Soil and Water Conservation Districts and the State Conservationist of the United States Soil Conservation Service.

The Commission was created pursuant to the Soil Conservation Districts Law in 1937. Since that time, it has established 91 soil and water conservation districts in Minnesota in every county but Ramsey. The Commission has the responsibility to assist the districts, inform them of the programs of other districts, coordinate district programs, and obtain federal and state assistance for those programs.

The Commission also has other duties. With respect to P. L. 566 (The Federal Small Watershed Act), the Commission approves watershed applications for the Governor, establishing priorities and administers state watershed planning funds allocated therefor. It oversees district participation with the U. S. Soil Conservation Service and local groups in the multi-county resource conservation and development RC&D programs. It has been the sponsor for type-four river basin water and related land studies. The Commission has often been improperly regarded as concerned solely with drainage and soil erosion problems. In fact, the activities of the Commission and their districts since their inception have covered all aspects of water and related land management problems, including pollution control and wildlife habitat preservation.

What are the needs of the Soil and Water Conservation Commission with respect to its district organizations? The answer to that question is similar to the one given for the Water Resources Board. First, there is a need to strengthen coordination of planning and activities at the district level with that of statewide natural resources policy. Because of its small staff, the SWCC cannot effectively participate in the Water Resources Coordinating Committee statewide planning activities (Bulletin 27, p. 145).

Secondly, there is a need to strengthen assistance from the state level to the districts. A staff of three professionals on the SWCC must service the 91 districts -- an impossible task, even though the present staff



has done an outstanding job with the available tools.. Finally, there is a need to better utilize available state agency expertise in the SWCC district programs. The U. S. Soil Conservation Service provides excellent technical assistance to the districts, but its own resources are limited. Resources are available in the DNR, however, for such programs as lakeshore zoning, floodplain acquisition, land use classification, protection of wetlands, wildlife habitat -- all of which would be useful to the districts.

Recommendation: The Soil and Water Conservation Commission and its functions should be transferred, as intact as possible, to the Department of Natural Resources. The membership should remain substantially as it is, except that the Director of the Pollution Control Agency should also be made an ex-officio member. The Commission would retain a policy-making role concerning SWCC activities, although the DNR Commissioner would have final approval with respect to major policy actions.

Implementation of this recommendation would have the following advantages:

(1) The district, which is a superior mechanism for participation by local citizens in natural resource planning and management, would retain its operational integrity.

(2) The SWCC membership would be retained as a policy-making body.

(3) SWCC districts would have the staff support of DNR divisions in areas of common endeavors.

(4) Coordination at the state level between SWCC programs and policies and those of the DNR would be improved.

(5) Coordination between the SWCC and WRB would be improved at the state level if both organizations were in the same department..

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(6) Coordination between SWCC pollution control programs and those of the Pollution Control Agency would be improved if the PCA director were made a member of the SWCC.

(7) The DNR would be strengthened by having a group of citizens throughout the state - the district boards of supervisors - who could contribute their knowledge to the DNR Commissioner for use in formulating DNR policy.

#### SWCC - WRB MERGER

During the course of this study, the question was raised concerning the possibility of merging the SWCC and WRB into one special purpose district. Both organizations have similar powers. Since 1969, the SWCC has been able to plan and implement projects with the County Commissioners -- thereby in effect adding the county's powers of taxation and eminent domain to such joint projects. The Water Resources Board has always had the powers to levy and to take by eminent domain. Moreover, except for the smaller SWCC district boundaries, both organizations perform similar functions in many respects. Thus, it appears that a merger of the SWCC and WRB could be possible. If this were done, however, it should be done in a manner which would best utilize the planning and projects already done by both organizations.

Recommendation: We recommend that the Commissioner of the Department of Natural Resources examine the working relationships between the SWCC and WRB, and make a complete report to the 1973 legislature concerning all of the aspects of the possibility of merging the SWCC and the WRB -- or merging any functions presently performed by both organizations..

## POLLUTION CONTROL AGENCY

During the course of this study, the question was raised concerning the possibility of placing the PCA within the DNR. The PCA was established by the 1967 legislature. Since that time, it has grown in capability with each session and its exercise of its regulation-making power has drawn national attention. We see no advantage to be gained by either the PCA or the DNR in placing the PCA within the DNR at this time.

## III. ESTABLISHMENT OF A NATURAL RESOURCES COUNCIL

As long ago as 1955, the Minnesota Legislature, through its Legislative Interim Commission on Water Conservation, Drainage and Flood Control, recognized the need for a single executive agency to resolve water and related land policy conflicts between various governmental agencies that may arise from the divergent statutory charges to these agencies. The analysis in the Report of that Interim Commission concerning the organizational problems in 1955 might be written, without substantial change, in 1971:

"Responsibility for supervision, direction and study at the state level must be made clear and specific. Absence of basic data and planning at this time can be attributed mainly to diffused, ill-defined authority. What little has been done, except in the field of drainage, which has been unfortunately insulated from considerations of resource conservation, has been unmethodical. Administrative obligation has been assumed from legislative statement of general purpose on one hand and specific tasks on the other. Policy is unwritten, Decision is made on each application without reference to standards or precedent and achieves legal enforceability only through vague presumption of administrative reasonableness which may be unfounded in fact." (P. 17)

"Experience establishes the truth of the observation that the point of view of a government department can be destructive of public interest and private right, when the official frame of mind becomes set in zealous furtherance of self-ordained policy. This can be true even though there is complete good faith. Placing state activities in

relation to each other is one of the difficult, constant and proper tasks of the legislature.

"This report shows the fundamental inter-relationship between water use and control, water pollution, land utilization, soil conservation and protection of wildlife; all of these are fields where state supervision is necessary and demanding of coordination that can be accomplished only at the state level. There should be a policy-determining board at the state level with the authority and responsibility to that end." (Emphasis added.) (P. 19)

" . . . it is clear that as the law is now written, overlapping of functions of agencies created to achieve different results is inevitable and the rule rather than the exception." (P. 20)

On the basis of this report, the legislature established the Water Resources Board. Yet, as stated earlier, the Water Resources Board has heard only four water policy conflict matters. Clearly, the Water Resources Board has not fulfilled the expectations of the legislature which established it. Nor has this result been entirely unpredictable; the Water Resources Board has done the best it could with the tools given it by the legislature.

Nevertheless, if the need for coordination of natural resources policy existed in 1955, it is even greater today. The legislature has established such powerful new agencies as the State Planning Agency, the Pollution Control Agency, and the Metropolitan Council all within the past five years. Federal, regional, state and local governmental units with environmental decision-making capabilities abound. As a result, implementation of legislatively-defined environmental policy has become more difficult. The State's Chief Executive may find it harder to define the nature and extent of his authority and power concerning environmental matters. The entire decision-making structure has become blurred to the eye of all but the most astute. Who gathers the opinions and coordinates the information to make environmental decisions? Who advises the decision-makers, and who

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makes recommendations concerning them? For that matter, who does make the decisions?

During Governor Harold LeVander's tenure, he took several actions to better structure the advisory and coordinative functions as they related to the Governor. He utilized the expertise on the Water Resources Coordinating Committee, State Planning Agency. The Committee had no statutory authorization, but its members were key, high-ranking personnel from several agencies concerned with state water policy. It was an excellent source of technical expertise at the staff level. At the agency-head level, Governor LeVander established, by Executive Order, an Environmental Cabinet consisting of seven department heads and his Special Assistant for Environmental Affairs. The regular cabinet meetings were presided over by the Governor, and information exchanged and advice sought with respect to major environmental matters, especially those with multi-agency implications. The key to the success of the cabinet system was that the Governor presided over the meetings. Department heads are all busy men but will attend a meeting at the Governor's request to advise the Governor. If anyone other than the Governor were the Chairman, there would be more absences and delegation of responsibility of attending the meeting by the department heads -- with the resulting dilution of the group's effectiveness.

Finally, the Governor created the position of Special Assistant for Environmental Affairs on his staff. The Special Assistant had responsibilities both in the areas of coordinating state environmental planning and action but also making recommendations on environmental matters to the Governor. As interim measures, the Governor's actions constituted a significant improvement in the decision-making process for state government. It is on the basis of this experience that we offer the following for consideration.

Recommendation: We recommend the creation of a full-time, three-man Natural Resources Council appointed by the Governor, with the consent of the Senate, and situated within the executive office of the Governor. It should consist of a chairman and two members who would have combined qualifications in the following areas: natural resource management, natural resource planning and governmental organization. Salaries should be set at a level which would attract men of high competence.

The Council should consist of three men because the magnitude of the job is too great for one or two men. Having only two men might result in divided approaches with no means of resolution. It may be difficult to find one man who has all of the desired qualifications. Moreover, three men would provide a tempering influence on each other, and discussions among the members would be more likely to result in a proper resolution of divergent points of view.

The Council should be full-time. As stated, the magnitude of the job requires total attention. Moreover, the members should have no other position which would in any way conflict with or detract from their responsibilities as Council members.

Most importantly, the Council must be in the executive office of the Governor. This is based on our experience that the involvement of the Governor in any state activity is essential to guarantee accomplishment. State agencies answer the Governor's requests and respond to his direction. The Governor's prestige insures the attention, if not the acquiescence, of the federal and regional agencies. Without the stature of the Governor's office, delays and lack of cooperation on the part of other governmental units would be far more likely for any Natural Resources Council endeavor.

What functions would the Council have?

First, it should be clear that the perimeters of Council authority would be within the perimeters of gubernatorial authority. Within those limits, the functions of the Council would be coordinative and recommendatory. It would coordinate state agency natural resources planning and management for the Governor. It would make recommendations to the Governor wherever action of the Governor is required by law or is otherwise appropriate with respect to environmental issues.

How would the Council fulfill its coordinative function? It would achieve this in an administrative manner. It would have no authority to interfere in the internal operations of any state agency or department. It would establish liaison with all governmental organizations which have decision-making capability to affect Minnesota's environment . . . including federal, regional (inter and intra-state), special purpose, county and local governmental units. It would establish liaison with all non-governmental organizations which have technical expertise available to assist state government in its planning or management of natural resources. These would necessarily be working relationships. Council members would meet regularly with representatives of these organizations, participate in discussions of natural resource policy and keep advised with respect to plans and activities of these organizations and governmental units.

As a basic coordinative duty, the Natural Resources Council would convene an annual Statewide Environmental Quality Congress. Each year, invitations would be issued to all organizations with which a liaison had been established, and to other entities whose activities have an effect on Minnesota's environment. The Congress would include not only state agencies

but representatives of federal and regional agencies as well. Members of citizen organizations who are active in environmental matters should be issued invitations. It would include industry representatives, especially from companies who have been a focal point of environmental concern -- NSP, for example. It would include experts from the academic field, such as the University of Minnesota Water Resources Research Center, the Geological Survey, and the Science and Technology Council. Invitations should also be sent to private enterprises, such as the Freshwater Biological Research Foundation. The purpose of the Congress would be to have each member report to the Natural Resources Council, and to the other members of the Congress, what progress that member has made to better Minnesota's environment during the preceding year. This would include advancement in research and education, as well as development. These reports would then be compiled by the Council and would serve as a basis for an annual "State of the Environment" report to the people by the Governor. The Congress would be in session for approximately one week and could establish interim committees to work on special projects (under the guidance of the Natural Resources Council). In this way, the people of Minnesota could be part of a coordinated environmental effort, establish communication with governmental agencies concerning environmental problems and focus public attention on these problems or their solutions.

Another coordinative duty which the Natural Resources Council should perform is that of organizing governmental "task forces" to deal with specific problems which have multi-agency implications. One example of this type of problem which occurred last year was the report of possible high levels of mercury content in Minnesota's fish. If this problem occurred after the establishment of the Natural Resources Council, it might be dealt with in



the following manner: Upon receipt of the initial report, the Council would request representatives of the following agencies to meet: DNR, Department of Agriculture, Pollution Control Agency, and State Board of Health. Representatives of the U. S. Food and Drug Administration and Environmental Protection Agency would also be invited to participate. At the meeting, chaired by a member of the Council, the opinions of all agencies would be solicited. If additional analysis of fish would be deemed necessary, procedures would be agreed upon as to source, number and manner of analyzing the fish, and each agency's role therein. Upon conclusion of the analysis, a final report would be made to the Council and the members of the task force. Based on the results of the report, the agencies would describe what additional action would be necessary and in what way such action could be carried out consistent with the responsibilities of each of the other agencies who are members of the task force. Thus, the operational integrity of each agency is maintained, but a cooperative effort is made by all agencies to solve the problem.

How would the Council fulfill its recommendatory function? Its recommendations would be made to the Governor whenever action or comment by the Governor is required by law or is otherwise appropriate.

For example, many times a federal agency in charge of administering federally funded programs will request the Governor to designate a state agency to receive the funds and administer the program on a statewide basis. The Natural Resources Council would advise the Governor which state agency would be appropriate to be so designated.

Another example, which would combine the coordinative and the recommendatory functions, would be the second major airport proposal. Under

the Airport and Airways Development Act of 1966, the Governor must sign an environmental impact statement before the U. S. Department of Transportation will release federal funds for the construction of the project. The Natural Resources Council could call a "task force" of interested state and local agencies, invite federal agencies to participate, obtain reports and opinions from all, attempt to resolve disagreements among the agencies or to clearly define areas of disagreement which remain, analyze the issues involved and make a recommendation to the Governor concerning his responsibility under the Airport and Airways Development Act.

Other types of issues in which the Council would serve the Governor include those where the Governor's political support is necessary for achievement of a proposal . . . for example, the Voyageur's National Park proposal, or the Blue Earth Dam proposal.

Thus, through judicious use of its coordinative and recommendatory functions, the Natural Resources Council would become a trusted adviser to the Governor on environmental matters and a respected mediator to state agencies. It would be the focal point for environmental planning and activity in the state. It would help define the statutory duties of state agencies and oversee the carrying out of these duties without disturbing the operational integrity of the agency. In short, it would provide the administrative coordination of natural resources efforts in Minnesota, the need for which was recognized by the legislature in 1955 and which exists to an even greater extent today.

#### IV. CONCLUSION

Because of time limitations, this report is not intended to be a sweeping departure from present structure. Nor can we claim that this is the ultimate, the ideal governmental organization structure to achieve Minnesota's environmental goals. It is intended to reflect our experience tempered by the present realities of time, tradition, political implications and inter-agency relationships. In short, these recommendations are the best steps forward which can be taken under all the present circumstances with respect to planning, management and protection of Minnesota's environment by its government and citizens.