

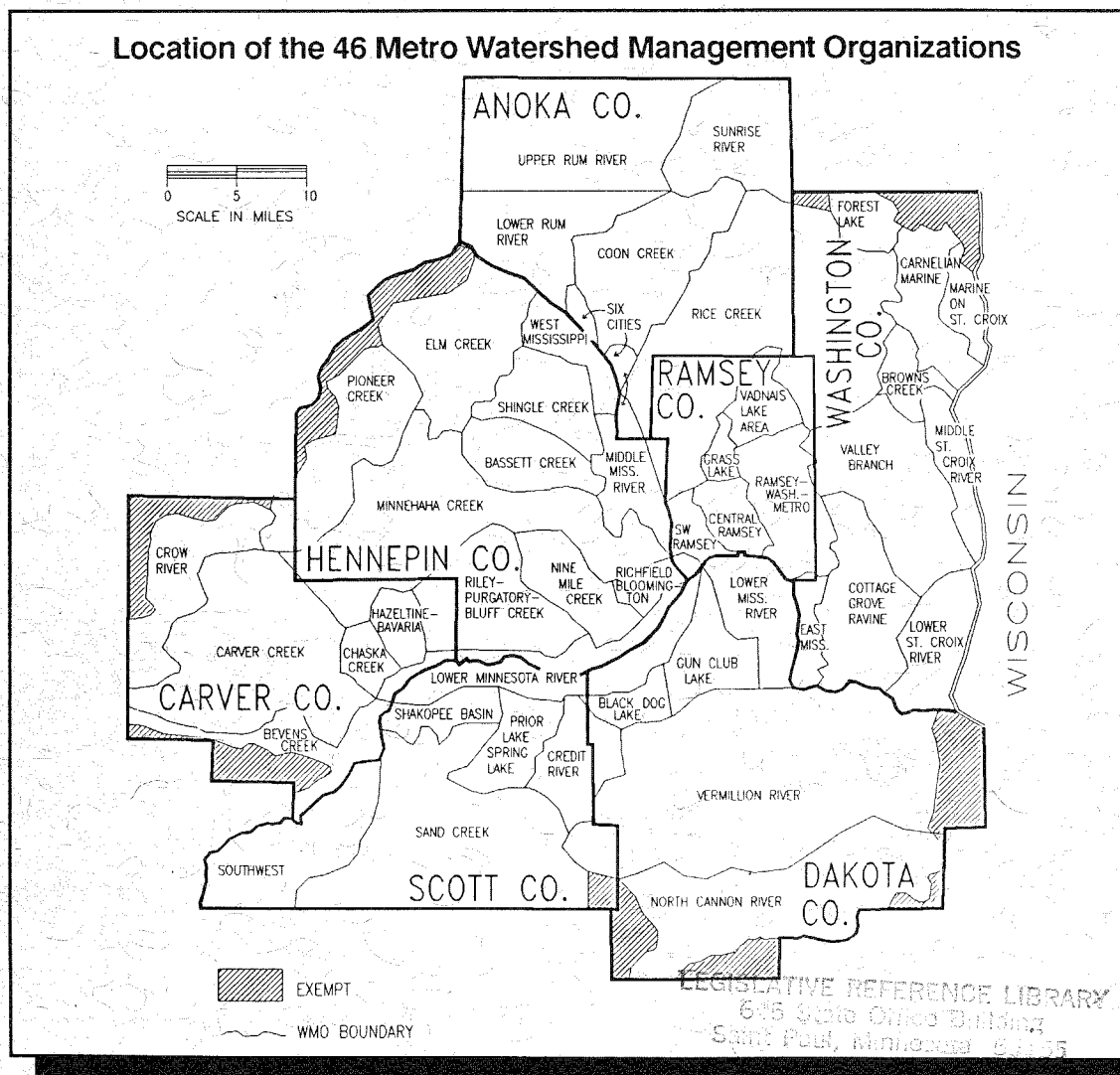


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Report of the Metropolitan Local Water Management Task Force to The Governor and Legislature of the State of Minnesota

December 15, 1989



Chairman's Message

My colleagues and I commend the legislature for having the foresight to establish the Metropolitan Local Water Management Task Force. I had the distinct honor of being elected by the members to chair the Task Force. I believe that I speak for the each member when I say that the effort was worthwhile.

The mission of the Task Force was to evaluate the effectiveness of local water management in the metro area and to make recommendations where it could be improved. I am happy to report that our mission was achieved - and we did it on time! As you know, water management breeds controversy. However, because of the diligent work by the Task Force and staff, success was achieved with little strife in spite of divergent opinions on some of the issues.

Our lakes, streams and groundwater are Minnesota's trademark. The proper planning and management of these resources is a job bigger than any one agency can handle. The 1982 legislature recognized this when the original "509" legislation was passed and mandated that local government be intensively involved in metro water management.

Nonpoint pollution threatens to impact all our surface and groundwater. Only local government can effectively control this type of pollution through ordinances and policies implemented via local water plans. It is the duty of the state to provide the guidance and tools needed to do the job properly and comprehensively, while still recognizing local uniqueness. No place is this more critical than in the seven county metro area, where half of our 4 million residents live on 3.3 percent of Minnesota's land area.

We found that the "509" planning process is working well in some areas and not so well in other areas. By properly defining oversight responsibility and promulgating rules to guide plan content, most of the weaknesses in the process will be corrected. The recommendations contained in the report will go a long way in improving water management in the metro area. We hope that the legislature adopts this report as its own and carries out the recommendations which require revision of statute.

Feel free to contact me or the staff of the Board of Water and Soil Resources at the phone numbers listed inside if you have any questions regarding the content of this report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don Ogaard".

Don Ogaard, Chairman
Metropolitan Local Water Management Task Force

Metropolitan Local Water Management Task Force Report

December 15, 1989

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I. Executive Summary

The Metropolitan Local Water Management Task Force was established by Article 9 of the 1989 Groundwater Protection Act. The mission of the 22 member Task Force was to evaluate the status and effectiveness of local water planning and management efforts in the seven county metro area. Emphasis was placed on the assessment of the Metropolitan Water Management Act or "509" (Minnesota Statutes Sections 473.875 to 473.883). Also assessed was the management of public ditches in urbanized watersheds.

A total of 10 meetings were held from July 20 to December 15, 1989. Testimony was heard from the State Planning Agency, the Department of Natural Resources, the Pollution Control Agency, the Association of Metropolitan Municipalities, the Board of Water and Soil Resources, the Metropolitan Council, two joint powers watershed management organizations, two metro watershed districts and the Association of Soil and Water Conservation Districts.

Two surveys were conducted to gather data from local governments. One was a written survey conducted by the Association of Metro Municipalities of their 67 members. The second was a phone survey of the 46 metropolitan watershed management organizations (WMOs*) conducted by BWSR staff. * **"WMO" means joint powers watershed management organizations and watershed districts.**

The deliberations of the Task Force centered around this testimony, results of the two surveys, and written input from the League of Women Voters and the Minnesota Association of Watershed Districts. The following major conclusions and recommendations resulted from the process.

Major Conclusions

- 1 The Metropolitan Surface Water Management Act has only partially met the expectations of what the Act was intended to accomplish. Many communities involved in the process feel that a major benefit of the "509" process has been that it forced them to meet on common ground for the first time to begin to work out some long-standing problems.
- 2 The majority (41 out of 46) of the established watershed management organizations have developed plans pursuant to the law.
- 3 There is concern over implementation due to variations in plan content. Uniform minimum standards for plan content would make implementation of local plans easier and better define "509" expectations for all who are involved in the process.
- 4 The present law provides for little, if any, oversight of the implementation process at the local level. Further, the law is silent as to whether the WMOs should be long-term management entities. The law must be revised to provide better oversight and accountability.
- 5 Public ditch management and financing in urbanizing watersheds has been a problem. There is a need to clarify how ditches can be managed under the ad valorem levy concept allowed under "509."

Major Recommendations

The legislation that created the Task Force directed it to evaluate eight specific issues. Due to the inter-relationships of many aspects of these issues, the issues have been consolidated in this executive summary into five general areas; 1) Plan Content and Implementation, 2) Oversight, 3) Metro Ditch Management, 4) Structure of WMOs, and 5) Financing. For a full accounting of all of the Task Force's recommendations, refer to section III. **Findings and Recommendations**, starting on page 6.

Below is a summary and consolidation of the major recommendations of the Task Force.

1) Plan Content and Implementation

- The BWSR should promulgate rules to establish performance standards for the content of second generation "509 Plans" before July 1, 1991. The rules may differentiate between rural and urban plans.
- The BWSR rules should require that WMOs have a public participation process during plan development and plan implementation. The process should be described in the plan.
- The BWSR should develop a model Environmental Management Ordinance for use by local governments in implementing local water plans.

2) Oversight

- Revise the law to require all WMOs to submit an annual report to the BWSR, in accordance with BWSR rule, which addresses: the number and type of permits issued, complaints received, violations, projects constructed, new officers installed, variances granted, review of local unit compliance with model ordinance requirements and the financial condition of the WMO.
- The BWSR should develop rules that require WMO annual financial reports to clearly show administrative, project and other costs. The reports should include an audit prepared by a CPA.
- The BWSR rule should give the BWSR the authority to order state financial and performance audits if it deems that such audits are advisable and to charge costs back to the local unit.
- Authorize the BWSR to accept and act upon appeals (in a manner similar to Section 112.801) from persons aggrieved by a WMO's or WD's alleged failure to comply with the provisions of its approved plan in making a decision.
- Revise the law to expand the requirements for the BWSR's annual report to the Legislative Commission on Minnesota Resources (M.S. 110B.28) to include a status report on metro water planning and management. The report should also be submitted to the Legislative Commission on Water.

3) Metro Ditch Management

- Require the BWSR to adopt rules that require all metro ditch authorities to conduct an overall evaluation of the condition of each public ditch and develop a report before July 1, 1992 that describes the general condition of the ditch following the criteria under Minnesota Statutes, Section 106A.015
- Revise the law to clarify the authority and procedure for making the transition from 106A to "509". The transition process should recognize existing drainage rights and existing ditch fund balances.

4) Structure of WMOs

- Require the BWSR to develop rules for the content of WMO joint powers agreements. The rules should address removal of JPA WMO members for just cause.
- Require the appointing authority to publish notice of vacancies on WMO and WD boards.
- Require all WMOs to notify the BWSR of all vacancies and appointments made within 30 days of such occurrence. Further, the appointing authority should appoint a replacement within 90 days of said vacancy.
- Require all metro fringe areas exempt from "509" planning to undertake planning.

5) Financing

- Counties should have clear authority to approve bonding for capital improvement projects when the county is requested to issue bonds for a WMO, city or town. Bonding should be allowed for capital projects in addition to those undertaken pursuant to the Metropolitan Water Management Act.
- Amend the law to make it clear that WMOs, counties, cities and towns may levy up to the maximum amount allowed each year for the purposes of planning, implementation and financing capital projects.
- Amend the law to authorize ad valorem levies for capital projects on a "subwatershed"* basis. (* Subwatershed means any watershed area less than the entire WMO.)
- Amend the law to require metro watershed districts to comply with the "truth in taxation" provisions of state law, instead of the budget hearing process required in Chapter 112.
- WMO, county, city and town ad valorem levies for water planning, plan implementation, and financing of capital projects (including debt service on bonds) should be exempt from any overall levy limitations.

II. Introduction

A. The Task Force

The Metropolitan Local Water Management Task Force was established by Article 9 of the 1989 Groundwater Protection Act.

The law provided for the appointment of 22 Task Force members. The membership included six legislators, three members of the Board of Water and Soil Resources (BWSR) and one citizen at large. The remainder of the membership included one (1) member representing each of the following agencies and associations: the Association of Metropolitan Municipalities, the Minnesota Association of Watershed Districts, the Association of Soil and Water Conservation Districts, Watershed Management Organizations, the Association of Minnesota Counties, the Metro Inter-County Association, the Consulting Engineers Council, the Reinvest in Minnesota Coalition, the State Planning Agency, the Department of Natural Resources, the Pollution Control Agency and the Metropolitan Council. BWSR and DNR staff provided the necessary support services for the effort.

The following are lists of the members and staff involved:

Task Force Members

Don Ogaard, Chairman	Board of Water and Soil Resources	218-784-4156
Howard Peterson	Board of Water and Soil Resources	
Natalie Haas Steffen	Board of Water and Soil Resources	
Senator Greg Dahl	Minnesota Senate	
Senator Steven Novak	Minnesota Senate	
Senator Fritz Knaak	Minnesota Senate	
Rep. Len Price	Minnesota House of Representatives	
Rep. Alice Johnson	Minnesota House of Representatives	
Rep. Teresa Lynch	Minnesota House of Representatives	
Connie Levi	Citizen Member	
Gerald Butcher	Association of Metropolitan Municipalities	
Paul Williams	Association of Watershed Districts	
Dr. William Downing	Association of Soil and Water Conservation Districts	
John Gretz	Watershed Management Organizations	
Margaret Langfeld	Association of Minnesota Counties	
Earl Gnan	Metro Inter-County Association	
Leonard Kremer	Consulting Engineers Council	
Don Dinndorf	Reinvest in Minnesota Coalition	
Marilyn Lundberg	State Planning Agency	
John Stine	Department of Natural Resources	
Tim Scherkenbach	Pollution Control Agency	
Steve Keefe	Metropolitan Council	

Staff Support

Mel Sinn	Board of Water and Soil Resources	612-297-2622
Bruce Sandstrom	Board of Water and Soil Resources	612-297-4958
Joseph Richter	Department of Natural Resources	612-296-7523
Bill Clapp	Minnesota Attorney General's Office	612-296-0686

B. The Mission

The mission of the Task Force was to investigate the overall effectiveness of local water management activities in the seven county metropolitan area. Eight (8) specific charges were laid out in Article 9 of the 1989 Groundwater Protection Act. Below is a complete listing of the eight charges as they appear in Article 9.

1. *How to accomplish constructive public participation in and local coordination of local water management;*
2. *How to avoid excessive public costs associated with the planning and implementation of capital improvement projects;*
3. *Whether adequate oversight exists of local water management activities to assure adherence to state law and approved watershed management plans;*
4. *The procedures to be used in urbanizing areas to maintain, repair, improve, construct, and abandon public drainage systems;*
5. *The appropriate methods for financing capital improvement projects;*
6. *Whether local water management levies and bonds should be exempt from levy limits and caps on net indebtedness;*
7. *Whether the metropolitan water management act has met its original expectations; and*
8. *What changes are needed in state law or the structure of local watershed management organizations to achieve greater consistency and stability in metropolitan watershed management organizations.*

III. Findings & Recommendations

A total of 10 meetings were held from July 20 to December 15, 1989. Testimony was presented by the State Planning Agency, the Department of Natural Resources, the Pollution Control Agency, the Association of Metropolitan Municipalities, the Board of Water and Soil Resources, the Metropolitan Council, two joint powers watershed management organizations, two metro watershed districts and the Association of Soil and Water Conservation Districts.

Two surveys were also conducted to gather data from local governments on some of the issues of concern. One was a written survey conducted by Mr. Gerald Butcher from the Association of Metro Municipalities of their 67 members. The second was a phone survey of the 46 metropolitan watershed management organizations conducted by BWSR staff.

The deliberations of the Task Force centered around this testimony, the results of the two surveys, and written input from the League of Women Voters, the Minnesota Association of Watershed Districts and other interested persons. A brief summary of this testimony and comment is contained in section "IV. - Summary of Testimony", starting on page 17.

The remainder of this section contains the findings and recommended actions of the Task Force for each of the eight legislative issues outlined in the previous section.

ISSUE 1

How to accomplish constructive public participation in and local coordination of local water management.

Findings for Issue 1:

Metropolitan residents in general are not well-informed about local water management authorities and responsibilities. Most assume that their town, city, or county is doing what is required in the way of dealing with "drainage" matters. Most are perplexed and angered when they are required to pay a special assessment for a water project. The majority are not aware of the watershed planning process, or the programs of soil and water conservation districts.

Attempts by watershed districts to appoint and maintain active citizen advisory committees, as required by law, have generally not been successful. People usually are concerned about being heard only when proposed projects would affect their property. Rarely does an individual become actively involved at the local level in matters dealing with water management.

It would be advantageous for more information on local water management activities to routinely reach the general public.

Coordination among local governments in water planning has improved substantially as a result of the water planning mandate in the Metropolitan Water Management Act. In nearly all of the 36 metro joint powers watershed management organizations (JPWMOs), the affected cities and towns have been meeting and discussing water management issues. In the seven years the law has been in effect, all except a few JPWMOs have developed watershed plans.

In the 10 metro watershed districts (WDs), the planning mandate has improved the level of communications between the WDs and affected cities and towns. The law allows cities and towns to assume sole permitting authority for local regulation of activities affecting water resources, if they are willing to accept the responsibility of implementing WD policies. This provision has made it necessary for WDs and local units to meet and discuss how regulations will be handled, as well as other aspects of watershed plan implementation.

Interlocal coordination in WMO plan implementation is now the primary issue. The BWSR should be charged with specific responsibilities for facilitating coordination among WMOs.

Tied to the issues of public participation and interlocal coordination is the question of WMO governance. JPWMO members are appointed by the member cities and towns. The cities and towns generally select members of their governing bodies or staff persons to serve as their JPWMO representatives. In a few instances, they have appointed citizens to represent them. WD members are appointed by affected counties from lists of nominees submitted by cities and towns. Existing law prohibits public officers of county, state, or federal government from serving as WD managers. Currently there is no requirement for publication of notices of vacancies on WMOs boards.

Published notice of vacancies would open up the appointment process and facilitate public participation. Clear procedure for removing WMO members would increase their accountability.

Recommendations for Issue 1:

- #1** *Amend the law to require WMOs to publish a newsletter each year and distribute it to residents, which lists their officers, phone numbers, and explains their programs.*

Request the BWSR to facilitate the formation of an association of metro WMOs and investigate the feasibility of the metro WMO association becoming affiliated with a similar national association.

Require the appointing authority to publish notice of vacancies on WMO boards.

- #2** *Maintain the current appointment process for WD managers and the requirement for geographic representation, but amend the law to allow counties to appoint from outside the lists of nominees submitted by cities and towns, and allow counties to remove WD managers for just cause. Amend the law to request WDs to have technical advisory committees with representatives of affected cities, counties, and SWCDs.*

- #3 *Amend the law to require the BWSR to adopt rules on JPWMO joint powers agreements that provide for removal of JPWMO members for just cause.*
- #4 *Amend the law to require the BWSR to adopt rules for second generation WMO plans. The rules should require that WMOs have a public participation process during plan development and plan implementation. The process should be described in the WMO plan.*
- #5 *Amend the law to require that WMOs coordinate with contiguous counties involved in Chapter 110B planning and with contiguous WMOs.*

ISSUE 2

How to avoid excessive public costs associated with the planning and implementation of capital improvement projects.

Findings for Issue 2:

The Task Force did not investigate the financial aspects of any particular metro capital improvement projects. Members did relate their own experiences with projects that they felt were not implemented in the most cost-effective manner. Concerns were expressed about the administrative, engineering, and construction costs of certain projects.

Members suggested several ideas on how to better ensure that project costs are minimized. The ideas included requiring more information to be released to the public on project proposals, mandating use of "requests for proposals" for professional services on large projects, and making greater use of the ad valorem approach for financing of projects in an urban area to minimize administrative costs.

Metro WMOs should be required to follow certain good management practices when planning and implementing major capital improvements, and be subject to closer state review.

Recommendations for Issue 2:

- #6 *Administrative funding for WMOs should remain as is.*
- #7 *BWSR rules should require WMO annual financial reports to clearly show administrative, project, and other costs.*
- #8 *BWSR rules should require capital improvement programs (CIPs) which are identified in WMO plans and amendments thereto to identify alternatives (structural and nonstructural) which might be available to lessen capital expenditures.*

#9 *Amend the law to require WMOs who retain consultants (attorneys, engineers, accountants, etc.) to annually solicit requests for proposals (RFPs) for these services.*

#10 *Require strengthened reporting requirements to BWSR including specific requirements.*

BWSR rules should require CPA audits as a required minimum for all WMO's in accordance with BWSR standards.

BWSR rules should give BWSR the authority to order state financial and performance audits if it deems that such audits are advisable and charge costs back to the local unit.

ISSUE 3

Whether adequate oversight exists of local water management activities to assure adherence to state law and approved watershed management plans.

Findings for Issue 3:

Under existing law, no agency is charged with the responsibility of monitoring the water management activities of local units of government on a routine basis. There is some oversight responsibility in cases where an agency administers grant monies. No state grants, however, were made available to WMOs to prepare watershed plans.

Citizens who are not satisfied with a decision of a JPWMO have few options other than appealing to district court. Citizens in WDs have the option of appealing to the BWSR.

Legal challenges can be a frustrating, costly and oftentimes ineffective method of holding local resource management decision makers accountable.

The BWSR only has the authority to approve all or part of a metro WMO plan. If the BWSR approves only part of a plan, there is no direct consequence to the WMO. Further, the BWSR has no jurisdiction over the performance of the watershed organizations or local units in implementing the plans. The BWSR does not re-enter the process until a WMO proposes to amend its plan.

A mechanism needs to be established to provide for monitoring and reporting of plan implementation to the BWSR and the Legislature.

Recommendations for Issue 3:

#11 *Amend the law to require the BWSR to adopt rules that require all WMOs to submit an annual report to the BWSR that addresses: the number and type of permits issued, complaints received, violations, projects constructed, new officers installed,*

variances granted, review of local unit compliance with model ordinance requirements, and the financial condition of the WMO.

#12 Authorize the BWSR to accept and act upon appeals (in a manner similar to section 112.801) from persons aggrieved by a WMO's alleged failure to comply with the provisions of its approved plan in making a decision.

#13 Require WMOs to notify the BWSR of all vacancies and appointments made within 30 days of such occurrence. Further, the appointing authority shall appoint a replacement within 90 days of said vacancy.

#14 The law should be revised to expand the requirements for BWSR's annual report to the Legislative Commission on Minnesota Resources (M.S. 110B.28) to include a status report on metro water planning and management, and require the BWSR's annual report also to be submitted to the Legislative Commission on Water.

ISSUE 4

The procedures to be used in urbanizing areas to maintain, repair, improve, construct, and abandon public drainage systems.

Findings for Issue 4:

A significant number of public drainage systems installed under the authority of the state drainage code, Chapter 106A, exist within the metro area. Many of these systems are located in urban and urbanizing areas. In some cases the systems have been functionally abandoned by the local drainage authority, although never legally abandoned in accordance with 106A. In some cases efforts have been made to maintain the systems by following the maintenance and repair provisions of 106A. This can be cumbersome and inefficient in urbanized areas, due to the procedural mechanisms required under 106A. In some cases, the cost of collecting small special assessments for ditch repairs in an urban area with a large number of single family lots can exceed the assessment collected. In other cases special legislation has been enacted to provide certain WDs with the authority to make ad valorem levies to establish natural waterway and drainage system maintenance funds. In still other cases, the systems have had repair work performed in ways not sanctioned by law.

The Metropolitan Water Management Act authorizes JPWMOs to accept jurisdiction of county drainage systems, and may provide a practical alternative to managing public drainage systems in the metro area. If an existing system is identified in the capital improvement program of an approved WMO plan, it appears it may be managed under the authorities and procedures of the Metropolitan Water Management Act, rather than 106A. This alternative for managing and financing metro drainage systems would solve the most significant problems associated with attempting to follow 106A in urban settings.

The law should be amended to clearly give WMOs the ability to manage public drainage systems under the Metropolitan Water Management Act. WMOs should retain the flexibility to decide on a ditch by ditch basis which management option would be in the best interests of affected landowners. Counties should retain their current authority to decide whether to transfer jurisdiction of existing drainage systems to WMOs, but WMOs should be encouraged to accept responsibility for these systems to facilitate coordinated surface water management.

Recommendations for Issue 4:

- #15 Amend the law to require the BWSR to adopt rules that require all metro ditch authorities to conduct an overall evaluation of the condition of each public ditch and make a report to the BWSR before July 1, 1992 which describes the general condition of each ditch following the criteria under Minnesota Statutes, section 106A.015.*
- #16 Amend the law to clearly give WMOs the authority to manage existing public drainage systems under their jurisdiction under the Metropolitan Water Management Act, and to clarify the procedure for making the transition from 106A to "509". The transition process should recognize existing drainage rights and existing ditch fund balances.*

ISSUE 5

The appropriate method for financing capital improvement projects.

Findings for Issue 5:

Traditionally, most water management projects have been financed by special assessments on benefitted property, or with assistance from the state or federal government. Local drainage ditches and storm sewers that benefitted a relatively small area of land were generally paid for through special assessments. Major flood control projects involving river channelization or reservoir construction often received state or federal assistance.

In recent years alternative financing mechanisms have appeared. The Metropolitan Water Management Act provided authority to finance water management projects using ad valorem levies over contributing watershed areas. A similar mechanism has been in the WD law for many years, but has been used by only a few metro WDs having large tax bases. The concept of the stormwater utility fee is also fairly new and has been implemented by only a few cities. Under the utility fee approach, a formula is applied to each parcel to compute how much surface runoff it generates. The city's stormwater planning and implementation budget is then prorated among all parcels according to their runoff contribution. The resulting fee is placed on the landowner's municipal water bill.

Towns and cities in the rural portions of the metro area having relatively small tax bases have been reluctant to increase levies for water management purposes.

Local governments should retain the flexibility to choose the financing approach that works best for particular projects. Additional sources of funding for water management grant programs in the metro area should be considered.

Recommendations for Issue 5:

- #17 Counties should have clear authority to approve bonding for capital improvement projects when they are requested to issue bonds for a WMO, city or town. Bonding should be allowed for capital projects in addition to those undertaken pursuant to the Metropolitan Water Management Act.*
- #18 Amend the law to make it clear that WMOs, counties, cities and towns may levy up to the maximum amount allowed each year and accumulate funds for the purposes of planning, implementation and financing capital projects.*
- #19 Amend the law to authorize ad valorem levies for capital projects on a "subwatershed"* basis. (* Subwatershed means any watershed area less than the entire WMO.)*
- #20 Amend the law to require metro watershed districts to comply with the "truth in taxation" provisions of state law, instead of the budget hearing process required in Chapter 112.*

ISSUE 6

Whether local water management levies and bonds should be exempt from levy limits and caps on net indebtedness.

Findings for Issue 6:

The implementation of local water planning looks 10 to 20 years into the future. Not enough attention has been paid to maintenance of public drainage systems and stormwater systems. Many years of neglect and lack of planning has taken its toll on our metro water facilities. Additionally, the past philosophy of our society has been to not recognize our natural and man-made water retention and conveyance facilities as part of our infrastructure.

Natural and man-made water retention and conveyance facilities should be recognized, maintained, and managed in the same manner as our highways, streets, sanitary sewers, drinking water systems, and bridges.

There is much catching up to be done to remedy past practices which have impaired our surface and groundwater quality and exacerbated flooding problems. Most of this type of work takes many years before the impact can be felt.

Public expenditures to carry out the long term goals of water planning should be viewed as investments towards the future and be exempted from overall levy limits.

Recommendation for Issue 6:

#21 WMO, county, city and town ad valorem levies for water planning, plan implementation, and financing of capital projects (including debt service on bonds) should be exempt from any overall levy limitations.

ISSUE 7

Whether the metropolitan water management act has met its original expectations.

Findings for Issue 7:

Expectations of what the Metropolitan Water Management Act was intended to accomplish vary among interested parties. Some believe the Act was intended to do more than address the problems of flooding, erosion, and water pollution. They argue that plans should also address management and protection of the natural values associated with sensitive and critical slopes, soils, wetlands, and wildlife habitat. Others argue that the Act was solely intended to address the preservation and use of natural water storage and retention systems, and that benefits to recreation and wildlife would simply come about as by-products of that primary goal. Connie Levi, a Task Force member and one of the original authors of the Metropolitan Water Planning Act, stated that the law was intended to be a broad-based water resource management tool to conserve natural resource values in addition to dealing with water quantity issues in a cost effective manner. Further, the implementation of it would be through local ordinances. Unfortunately, in many plans reviewed to date, the resource issues are not comprehensively addressed and the mode of implementation is left up to the local units of government without significant direction from the watershed organizations.

Watershed plan content guidelines were developed by a 25-member committee shortly after the passage of "509". The guidelines provided some direction to WMOs, but failed to define a bottom line for plan content or minimum standards for implementation. Further, the guidelines are not binding. Consequently, the determination of whether a plan complies with the law is very subjective.

Agency rules governing the water planning process and the content of watershed and local plans were never promulgated by the former Water Resources Board, the agency which originally had the approval authority over "509" plans. The Board of Water and Soil Resources (BWSR) was formed in 1987 through the merger of the Water Resources Board, the Soil and Water Conservation Board, and the Southern Minnesota Rivers Basin Council. It has been the position of the BWSR to not pursue development of plan content rules since it was felt to be inappropriate to change the rules "midstream" in the planning process. Further, the original "509" law never provided any positions for any agency to provide adequate support to the "509" planning process.

A good example of the lack of standards concerns wetland protection. Wetlands are clearly one of the primary "natural water storage and retention systems" referred to in the Metropolitan Water Management Act. The planning guidelines encouraged watershed organizations to inventory wetlands down to one acre, and to compile data on significant wetland characteristics and values. Wetland inventories actually performed, however, vary significantly among watershed plans. More importantly, wetland management strategies also vary significantly. A city in two watershed organizations may have one requiring regulation of all wetlands down to .5 acres in size, while the other only calls for regulation of Types 3, 4, and 5 wetlands down to 2.5 acres, which are already protected by DNR rules. Plans vary significantly in their treatment of other topics including: requirements for local controls, water quality management strategies, implementation elements, and oversight of local plan execution.

The Metropolitan Water Management Act has partially met its expectations. It has increased interlocal communication and cooperation, and improved local water management in many areas. It has not resulted in a comprehensive, effective, or uniform approach to watershed management across the metro area. The Act's implementation requirements should be spelled out, and rules should be adopted to add specificity to the Act's general requirements and ensure greater consistency among plans.

Recommendation for Issue 7:

#22 The BWSR should be required to promulgate rules establishing performance standards for the content of second generation WMO plans before July 1, 1991. The rules may differentiate between rural and urban plans.

ISSUE 8

What changes are needed in state law or the structure of local watershed management organizations to achieve greater consistency and stability in metropolitan watershed management organizations.

Findings for Issue 8:

A phone survey of the 46 metro watershed organizations conducted by BWSR staff revealed that a significant number of WMOs were very unsure about their role as water management entities into the future. The Task Force firmly believes that

the WMO's need to maintain strong, on-going roles as water management entities. There is a need for greater public recognition of what WMOs are and why they exist. JPWMOs need a separate identity from city government.

The survey showed that nearly one-half of the 46 organizations had no strategies for ensuring implementation of local plans. Further, 8 of the 46 organizations intended on meeting only one or less times a year. Two of this group intended on not meeting at all once their watershed plan was approved. BWSR staff reported that at least four organizations are currently inactive and do not yet have approved plans.

Testimony was provided that summarized the deficiencies related to the consistency and stability of metro watershed organizations as follows:

- vacancies on WMO boards should be noticed in the paper and citizens be given the opportunity to seek appointment.
- agencies have inadequate oversight of "509" implementation.
- there is lack of consistency among plans (one city containing land in several WMOs may be subject to several different sets of criteria for wetland regulation, erosion control, etc.).
- the role of SWCDs in metro water planning should be clarified.
- rules should be promulgated to provide for minimum criteria of the structure and makeup of joint powers agreements.
- accountability of WMO members needs to be improved.
- visibility of WMOs needs to be enhanced.
- there are fringe areas of the metro area which are exempt from local water planning that are now "islands" surrounded by 110B plans and "509" plans.
- if a JPWMO dissolves, no other governmental entity is charged with the responsibility of ensuring implementation of the watershed plan.

Many of these concerns have already been addressed in part under Issues 1 - 7. For example:

- | | |
|----------------|----------------------------------------------------------------|
| Issue 1 | - public information, local coordination and open appointments |
| Issue 2 | - reporting requirements |
| Issue 3 | - state oversight |
| Issue 4 | - urban ditch management |
| Issue 5 | - funding of capital projects |
| Issue 6 | - exemption from local levy limits |
| Issue 7 | - rules to govern WMO plan content |

The rapid pace of development in the metro area and the need for ongoing, effective oversight of watershed plan implementation requires the maintenance of active and capable watershed management organizations.

Recommendations for Issue 8:

- #23** *Amend the law to require all metro fringe areas currently exempt from Metropolitan Water Management Act planning requirements to prepare and implement water plans under either "509" or 110B, whichever is deemed appropriate by the BWSR.*

- #24 Amend the law to require the BWSR to develop rules establishing minimum local plan standards, and a model Environmental Management Ordinance for use by local governments in implementing local water plans.*
- #25 The BWSR's rules should require that WMO plans specify the nature of the official controls required to be adopted by local governments, including metro-wide uniform erosion control, stormwater retention and wetland protection ordinances.*
- #26 Amend the law to clearly spell out the sequence of responsibility for plan implementation and who bears ultimate responsibility. The law should state that if the WMO does not oversee implementation of its plan as determined by the BWSR, the county or counties containing the watershed unit shall oversee implementation of the plan. If the county does not act to implement the plan, does not delegate this responsibility, or does not petition for the creation of a watershed district, then the watershed unit should lose its eligibility for any state water program, permit, or delegation authority.*
- #27 The BWSR should be required to adopt rules governing its determinations of whether metro water plan implementation is satisfactory.*
- #28 The BWSR should be required to develop rules for the content of JPWMO joint powers agreements. The BWSR's rules should specify minimum requirements for WMO joint powers agreements that include the provision that decisions cannot require more than a majority vote, except a decision on a capital improvement, which may require no more than a two-thirds vote.*
- #29 Amend the law to require the BWSR to review all WMO plans and its own metro water plan content rules at least once every five years.*
- #30 Amend the law to clarify the purposes of the Metropolitan Water Management Act as follows: "The purposes of the water management programs required by sections 473.875 to 473.883 are to: (a) protect, preserve and use natural surface and groundwater storage and retention systems, (b) minimize public capital expenditures needed to correct flooding and water quality problems, (c) identify and plan for means to effectively protect and improve surface and groundwater quality, (d) establish more uniform local policies and official controls for surface and groundwater management, (e) prevent erosion of soil into surface water systems, (f) promote groundwater recharge, (g) protect and enhance fish and wildlife habitat, and (h) secure other benefits associated with proper management of surface and groundwater."*
- #31 The State of Minnesota should ensure an adequate funding mechanism and staff to provide necessary assistance to WMOs for plan completion, update and implementation.*

IV. Summary of Testimony

The following is a brief overview of the formal testimony and written input considered by the Task Force:

Vadnais Lakes Area Watershed Management Organization (VLAWMO)

A presentation was given by Mr. James Johnson, VLAWMO president. The VLAWMO involves six cities and was founded in 1983. Four meetings were required to draft a joint powers agreement. Mr. Johnson emphasized that the VLAWMO board was actively involved with the planning process in order to maintain control over the plan. He further stated that the involvement of local and state agencies in the planning process was essential. The administrative budget for the VLAWMO was \$5,000.00 last year and was provided by the member municipalities according to the formula: 20% by population, 40% by valuation, and 40% by area. Projects are paid for by the cities that they serve. All members of the VLAWMO serve without compensation.

M. Johnson reported that the member municipalities are now completing their local water plans. He also stated that "509" has worked in the VLAWMO, and that interlocal communication between the cities has improved a great deal.

Credit River Watershed Management Organization (CRWMO)

A presentation was given by James Robinette, CRWMO president. It is a primarily rural WMO consisting of four cities and three townships. They have completed their plan, but have not yet received state approval. Robinette stated that the Metropolitan Water Management Act is great because it causes people and municipalities to get together to discuss their joint problems. He said that the primary problems in starting the WMO were local animosities and the question of funding the planning process. The limited statutory authorities of townships limited their ability to obtain funds. The cities provided the money to get the planning process started.

Robinette reported that the lack of early direction on WMO plan content was one of the biggest battles in the planning process. Another problem was dealing with farmers in the CRWMO who won't accept conservation regulations. He also stated that there were flaws with the "509" law: it doesn't mandate a deadline for the completion of the local plans; townships need a better way to get money; better guidance on the plan requirements is needed; and staff is needed for the state agencies to allow the review of plans in a timely manner. Robinette also felt that there still exists a "vast area of disagreement" among different people about how far a WMO plan must go.

Ramsey Washington Metro Watershed District (RWMWD)

A presentation was heard from the district's president, Roger Lake. The RWMWD was preceded by a joint powers effort, but the member municipalities could not agree on the terms for funding a major creek stabilization project. The municipal representatives were hampered by the need for municipal approval of every agreement made at meetings. The organization was superceded by the watershed district in 1975. Since 1978 the RWMWD has completed three major capital improvement projects, many smaller capital improvement projects, and five water studies. The RWMWD also manages county ditches, and regulates land development. The RWMWD now funds its projects using ad valorem levies under 509.

The relationships between the member municipalities and the RWMWD are quite good, according to Roger, but the future may pose challenges as the cities assume more water-related permitting responsibility.

The RWMWD citizen advisory committee has been useful. Public involvement has been solicited through field trips and project open houses. State oversight of WDs has been most effective when the state agencies and the WDs work together on common projects. The employment of one full-time administrator and three other individuals has been essential to the success of the RWMWD.

Nine Mile Creek Watershed District (NMCWD)

A presentation was given by Ms. Aileen Kulak, NMCWD president. The NMCWD was founded in 1959. Initial city reactions ranged from opposition to apathy. The NMCWD left land use decisions to the cities and confined its activities to water management. It established preservation of the Creek in its natural state as its primary goal. To fulfill its goals, ordinances were established by the NMCWD, and occasionally the NMCWD was forced to sue in order to enforce its ordinances. The District has bought land along the creek, designed recreational facilities, initiated greenbelt programs, redesigned storm sewer systems, and created or preserved marshes and lakes. The working relationship between the NMCWD and the member municipalities is very good, according to Aileen.

Since the NMCWD was founded, 65 % of the watershed has been developed, yet there have been no major flooding problems. The costs of recreational features of projects are split fifty-fifty between the WD and the member municipality. The NMCWD pays for 100 % of the water management costs of projects, and 25 % of land purchasing costs. Rather than bond, the NMCWD collects a special 1/3 mill levy to create a construction fund for their "basic water management projects".

Metropolitan Council

Staff member Marcel Jouseau provided the Met Council's (MC) presentation. He stated that the MC is committed to the concept of local watershed management. The MC reviews "509" plans for their consistency with the four metropolitan system plans. The MC is designated as the metropolitan water quality planning agency, and

the EPA expects the watershed and local plans to be an integral part of the solution to metropolitan water quality problems. "509" has provided many positive benefits:

1. Forum for locals to get together to avoid future problems;
2. Greater public participation in water management;
3. Direct water quality improvements;
4. Improved state-MC coordination on water quality issues; and
5. Refined plan content for watershed districts in the Metro Area.

Mr. Jouseau reported that there have been some problems with "509" planning and review. The MC has seen only 29 WMO plans to date. He said the plans are of mixed quality due to lack of expertise and direction. After a lengthy review process, the WMOs can be required to amend their plans by the BWSR. Mr. Jouseau believed that all the reviewers should have the authority to require changes. The portions of the WMO plans that have generally been weak are: the hydrologic system inventories; the plan implementation strategies; ordinance requirements and capital improvement programs; and the standards, criteria and implementation schedules for local water plans. Water quality is clearly a purpose of the law, yet water quality elements are weak. Further improvements in water quality in Minnesota must come from control of nonpoint pollution, but this can be done effectively only at the local level. Jouseau encouraged the Task Force to look closely at the issue of the need to establish a mechanism to effectively make "trade-offs" between spending money on sewage treatment improvements versus nonpoint pollution control efforts.

During the Task Force deliberations Council Chair Steve Keefe described a proposal for water quality management that integrates planning for surface water quality and wastewater management. The Task Force did not vote on this proposal because it was outside the charge of the Task Force.

Minnesota Department of Natural Resources (MDNR)

Metro Regional Hydrologist John Stine delivered MDNR's formal position to the Task Force. He stated that WMOs have not developed strategies for managing and protecting sensitive and critical resources areas. He believed that some municipalities are so concerned with protecting their authority, that the joint powers approach is often ineffective at addressing important resource issues.

Mr. Stine recommended that BWSR adopt rules to ensure that WMO and local plans are effective and consistent. Model ordinances should be developed to guide the WMOs. He also suggested that JPWMOs should be evaluated and, if necessary, upgraded to Chapter 112 authority to better ensure watershed management plan implementation. He recommended that ineffective ditch systems be abandoned, that public values and interests need to be more fully considered before ditch work is performed, and that costs need to be more equitably distributed. He also suggested that landowners whose land drains into a ditch, pay for the benefits they receive.

Minnesota Pollution Control Agency (MPCA)

Mr. Curt Sparks presented MPCA comments on metro local water management. He commented that the WMO Plans developed by consultants tend to become

generic. Many WMOs propose to use wetlands as sedimentation and detention basins. This can destroy the wetlands' values and should be discouraged. Curt believed many WMO plans fail to meet the requirements of the law by not adequately addressing water quality issues. A review process allowing early input from the agencies could have helped prevent these problems. Rules could be applied to the five-year updates of the WMO plans. He suggested that WMOs submit annual reports to the BWSR as a method of oversight. Water quality depends on land use and local units of government must wisely regulate land use to protect our water quality.

State Planning Agency (SPA)

Ms. Marilyn Lundberg presented the SPA comments on metro local water management. She reported on the role of SPA and the Environmental Quality Board (EQB) in water policy. The EQB has recommended that: grant monies be made available to help WMOs amend their plans, if plan content rules are promulgated; state provision of water-related financial or technical assistance should be linked to local water plans; and that rules should be promulgated for WMO plans. Marilyn said WMO plans should be comprehensive and reflect the concerns of the local units of government. The WMO plans should be considered in the formulation of the state's water management strategies. The main goals of EQB in the area of local water management are 1) increased coordination, 2) strengthened local role, and 3) enhanced local/state partnership in water management.

Association of Soil and Water Conservation Districts (MASWCD)

Dwain Otte presented the Association of SWCD's view of metro area local water management. SWCD's have prepared many of the 509 plans and have reviewed all of the 509 plans. The SWCD's have stressed that many resources have to be managed to improve water quality. The only practical and cost-effective way of managing these resources is through local control. The MASWCD encouraged the Task Force to fully address the "...central issues of funding and dedicated program delivery".

Association of Metropolitan Municipalities (AMM)

Gerald Butcher presented the AMM comments on metro area local water management. He emphasized that the 67 communities in the AMM represented 85 percent of the population in the metro area. These communities have been participating in watershed districts and joint powers watershed management organizations since the creation of these bodies. Many municipalities developed water related ordinances and plans long before the state required communities to adopt them. He stated that the passing of "509" resulted in many communities completing water management plans that had already been started.

Mr. Butcher also presented the results of a survey that was given to the members of the AMM. The communities acknowledged that WD's have done a good job managing watersheds. They also expressed the belief that statewide requirements

and guidelines for water plans are needed, and that too many agencies review the water plans. The municipalities suggested that ad valorem taxes be levied only on the properties that are drained by a ditch, and that WMO's be given the same taxing authorities as WD's. Some communities have expressed reluctance to write local water plans because of a lack of funds.

Minnesota Board of Water and Soil Resources (BWSR)

Executive Director Jim Birkholz presented BWSR comments on metro area local water management. He stated that "509" has been a plus and that many gains have been made in local water management. A handout was provided that summarized the present status of the "509" planning process and the BWSR's position statement. Mr. Birkholz emphasized that any changes made by the Task Force would pertain to second generation WMO comprehensive water plans. The BWSR's position statement highlighted BWSR's views on the problems and opportunities of the existing planning process, the goals for local water management, and the changes and initiatives that the BWSR recommends. Among the prominent positions stated, the BWSR feels that rules need to be promulgated to better define the plan content of second generation plans. Another BWSR position is that a better oversight process needs to be established to ensure that the plans will be implemented. Jim suggested that a this oversight may be better done at the county level and channeled back to the BWSR and ultimately the legislature for action. Jim suggested that a logical entity to oversee an audit-type of process of WMO's would be the local SWCD.

League of Women Voters

Correspondence from several local chapters of the League of Women Voters was circulated to members of the Task Force. A number of concerns was outlined. The general theme throughout was that league members were not satisfied with the way local water management was being implemented. They cited several specific examples where wetlands were destroyed or damaged because of failure of local government to be responsive to natural resource concerns. In one case, it appeared that both state and local regulations were not enforced adequately. Concern was also expressed about lack of adequate public involvement and a perceived tendency for some joint powers WMOs to maintain the status quo, thus avoiding good pro-active local water management programs.

Minnesota Association of Watershed Districts (MAWD)

Correspondence was received from the MAWD concerning certain Task Force issues. MAWD has observed that: 1) planning has proceeded at an extremely slow rate in some watersheds, perhaps due to a lack of penalties in the law for failing to meet deadlines; 2) some WMOs do not intend to become or remain active water management organizations; 3) joint powers WMOs should be required to submit annual reports to the BWSR; and 4) counties should follow an open appointment process in selecting watershed district managers, and not be confined to appointing only persons nominated by cities or towns.

Addendum to Report

OTHER FINDINGS AND RECOMMENDATIONS

The integration of surface water management and especially nonpoint source pollution abatement (urban and agricultural runoff) with planning for and implementation of point source pollution management (wastewater) to meet water quality standards is essential. In the Metropolitan Area, this need is particularly urgent, as the issue has come to the forefront, particularly as a result of federal litigation against the State of Minnesota, the Metropolitan Council and Metropolitan Waste Control Commission.

The Metropolitan Local Water Management Task Force heard presentations by the Metropolitan Council on this issue. The issue was not contained within the eight specific issues in the charge to the Task Force; however, the Task Force finds that the integration of nonpoint source and point source pollution management is essential for effective and efficient water quality management. Such integration may require changes to the existing institutional arrangements for surface water management in the Metropolitan Area.

Recommendation

The Metropolitan Local Water Management Task Force recommends that the Legislature consider the management structure necessary to integrate surface water management, especially nonpoint source management, with planning for and implementing wastewater management to achieve effective and efficient water quality management in the Metropolitan Area.

[Note: At the last meeting of the Task Force the Metropolitan Council submitted this proposal for consideration. The Task Force decided to attach it as an addendum to the report.]

Appendix A

Minority Report

MEMORANDUM

DATE: December 7, 1989
TO: Metropolitan Local Water Management Task Force
FROM: William L. Downing
SUBJECT: A minority opinion, regarding the method used to select water management organization board members.

This is in response to Issue #1: How to accomplish constructive public participation in and local coordination of local water management?

Present WMO board selection and advisory committee:

Watershed District (WD) WMO managers appointed by County Board(s) from nominations by units of government. Citizens' Advisory Committee required but not always appointed or active.

Joint Powers (JP) WMO boards variously appointed by the units of government involved in the agreement. No Citizens' Advisory Committee required.

The Task Force is suggesting:

Require the appointing authority to publish notice of vacancies on WMO boards, and notify the BWSR of all vacancies...

Maintain the current appointment process for watershed district managers, but require geographic representation; allow counties to appoint from outside the lists of nominees submitted by cities and towns; and allow counties to remove WD managers for just cause. Require WDs to have technical advisory committees with representatives of affected cities, counties, and SWCDs.

Require the BWSR to adopt rules on JFWMO joint powers agreements that provide for removal of JFWMO members for just cause, and provide for the creation of JFWMO advisory committees.

It is apparent that as we refine further, we get farther and farther away from the citizens. If we want "constructive public participation and local coordination", what better way than to elect the board members directly?

My proposal: The WMO board be elected directly by the public from nominating districts within the watershed.

With elected boards, decisions will flow directly from the citizens to the protection of the water resources, without intervention of cities and their departments, counties and their departments, and state agencies and their departments. Putting the people in charge of their local watersheds, through their elected representatives, is democracy at its best. This system has been shown to work very well in the election of Soil and Water Conservation Districts, and can work as well here. To say that the mapping problems make this too cumbersome, is to forget how far our computer mapping advances have brought us. If we want this system, we can find a way to bring it about.

Appendix B

Status of "509" Plan Review

STATUS OF METROPOLITAN WATER MANAGEMENT ACT PLANNING (509)

December 15, 1989

WATERSHED MANAGEMENT ORGANIZATIONS (WMOs)

Planning Underway	Local Review In Progress	Met. Council Review in Progress	Agency Review In Progress	MBWSR Review In Progress	Plans Approved By BWSR
Carver Creek	Bevens Creek	Lower St. Croix	Central Ramsey**	Richfield-Bloomington*	Ramsey-Wash. Metro (9-12-86)
Chaska Creek	Carnelian-Marine	Marine on St. Croix	Southwest Ramsey**	East Mississippi*	Vadnais Lake (4-07-87)
Hazeltine-Bavaria	Cottage Grove Ravine	Nine Mile Creek	Lower Rum River**	Rice Creek*	Grass Lake (8-19-87)
Middle Miss. River	Lower Minn. River	Riley-Purg.-Bluff Crk	Credit River	Sand Creek	Valley Branch (9-08-87)
Upper Rum River	Minnehaha Creek		Prior L. - Spring L.	Forest Lake*	Pioneer Creek (2-24-88)
	North Cannon River		Middle St. Croix	Sunrise River*	Elm Creek (5-25-88)
	Crow River			Shingle Creek*	Coon Creek (7-27-88)
	Southwest Scott			West Mississippi*	Six Cities (7-27-88)
				Browns Creek*	Lower Mississippi R. (7-26-89)
				Shakopee Basin	Bassett Creek (7-26-89)
					Gun Club Lake (8-23-89)
					Vermillion River (8-23-89)
					Black Dog (11-22-89)

* ----- BWSR has taken formal position and is waiting for plan revisions.

** ----- Plan has not been submitted to all state agencies for review.

A:STATUSOF.509
BWSR

Appendix C

Article 9

of the

1989 Groundwater Protection Act

ARTICLE 9
WATERSHED DISTRICTS

Section 1. METROPOLITAN LOCAL WATER MANAGEMENT TASK FORCE.

Subdivision 1. ESTABLISHMENT AND PURPOSE. (a) A metropolitan local water management task force is established to study and prepare a report on the following issues:

(1) how to accomplish constructive public participation in and local coordination of local water management;

(2) how to avoid excessive public costs associated with the planning and implementation of capital improvement projects;

(3) whether adequate oversight exists of local water management activities to assure adherence to state law and approved watershed management plans;

(4) the procedures to be used in urbanizing areas to maintain, repair, improve, construct, and abandon public drainage systems;

(5) the appropriate methods for financing capital improvement projects;

(6) whether local water management levies and bonds should be exempt from levy limits and caps on net indebtedness;

(7) whether the metropolitan water management act has met its original expectations; and

(8) what changes are needed in state law or the structure of local watershed management organizations to achieve greater consistency and stability in metropolitan watershed management organizations.

(b) The task force shall elect a chair at its first meeting.

(c) The task force shall be given legal and technical staff support by the board of water and soil resources. The board of water and soil resources shall provide administrative support.

Subd. 2. MEMBERSHIP. The task force shall consist of:

(1) three members of the senate appointed by the majority leader;

(2) three members of the house of representatives appointed by the speaker;

(3) the chair and two additional members of the board of water and soil resources appointed by the chair;

(4) the state planning commissioner or the commissioner's designee;

(5) the commissioner of the department of natural resources or the commissioner's designee;

(6) the commissioner of the pollution control agency or the commissioner's designee;

(7) the chair of the metropolitan council or the chair's designee;

(8) a member of the association of metropolitan municipalities appointed by the chair of the board of water and soil resources;

(9) a member of the Minnesota association of watershed districts appointed by the chair of the board of water and soil resources;

(10) a member of the association of Minnesota soil and water conservation districts appointed by the chair of the board of water and soil resources;

(11) a member representing watershed management organizations appointed by the chair of the board of water and soil resources;

(12) a member of the association of Minnesota counties appointed by the chair of the board of water and soil resources;

(13) a member of the metropolitan inter-county association appointed by the chair of the board of water and soil resources;

(14) a member representing consulting engineers appointed by the chair of the board of water and soil resources;

(15) a member representing the reinvest in Minnesota coalition appointed by the chair of the board of water and soil resources; and

(16) a resident of the state interested in metropolitan water management issues appointed by the chair of the board of water and soil resources.

Subd. 3. REPORT. The task force shall prepare a report and submit it to the governor and the legislature by December 15, 1989.

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