

## Memorandum

To: Bassett Creek Watershed Management Commission  
From: Barr Engineering Co.  
Subject: Item 5G. BWSR Requests for Comments on Amendments to Metro Water Management Rules  
BCWMC March 21, 2013 Meeting Agenda  
Date: March 13, 2013  
Project: 23270051.34 2013

## 5G. BWSR Requests for Comments on Amendments to Metro Water Management Rules

### Recommendations:

1. For discussion; the Commission should decide if formal comments to BWSR are warranted.

### Background

The Minnesota Board of Water and Soil Resources (BWSR) seeks comments on their proposed amendments to the rules governing metropolitan area local water management (8410 Rules). The 8410 Rules include (but are not limited to) requirements covering the content of joint powers agreements for watershed management organizations, the content of watershed management plans and local (municipal) water management plans, the process for developing watershed management and local water management plans, and annual reporting and evaluation of watershed management organizations.

BWSR convened a rule advisory committee that met several times in 2011 – 2012 to assist BWSR in developing the proposed rule amendments. The advisory committee was made up of interagency partners, representatives from metropolitan area counties, watershed districts, joint powers agreement watershed management organizations, soil and water conservation districts and other partner organizations. Barr staff (Karen Chandler) served on the committee.

The public comment period began March 4 and continues through April 22, 2013 until 4:30 p.m. (see the attached Request for Comments from BWSR). The earliest the amended rule could be promulgated would be early November 2013. BWSR would begin applying the amended rule to plan reviews one year after their promulgation. It is our understanding that the BCWMC's next generation plan would come under the jurisdiction of the amended 8410 Rules.

### 1. Summary of Proposed Amendments

The Commission Engineer reviewed the proposed rule amendment. Following is a summary of a number of the changes, along with the impacts of the changes on the BCWMC. If the Commission believes any of these proposed changes and impacts are significant and should be revised, the Commission should

consider submitting formal comments to BWSR. The proposed rule amendment and other related materials can be found on the BWSR website: <http://www.bwsr.state.mn.us/planning/metro/index.html>.

## A. Process for Developing Watershed Management Plans

As anticipated, the proposed rule amendment includes the following new requirements regarding the planning process:

- The establishment of “an advisory committee, committees, or other means of public and technical participation acceptable to” BWSR, with emphasis on participation in issue identification and prioritization (see 8410.0050, Subp. 2 and Subp. 7).

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*Impact on the BCWMC: the Commission’s next generation planning process was developed with this requirement in mind; BWSR staff have reviewed and approved of the Commission’s proposed stakeholder involvement process.*

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- Notification and involvement of “plan review agencies” (i.e., the Metropolitan Council, the Department of Agriculture, the Department of Health, the Department of Natural Resources, the Pollution Control Agency, and BWSR) in the planning process. This includes notifying the plan review agencies that the planning process is starting and requesting information from the agencies regarding their priority issues, relevant water management goals, and water resource information. The watershed management organization must take into consideration the plan review agencies’ goals as part of the planning process (see 8410.0050, Subp. 3).

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*Impact on the BCWMC: the Commission has already met this requirement; notification and request letters were mailed to plan review agencies, local units of government, the Department of Transportation, and the Minneapolis Park and Recreation Board in June 2012.*

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- Notification and involvement of local units of government (i.e., member cities, Hennepin County, Hennepin Conservation District) and known stakeholders including the Department of Transportation. This includes notifying them that the planning process is starting and requesting information regarding local water-related issues, water management goals, official controls and programs. The watershed management organization must take into consideration the local water management goals as part of the planning process (see 8410.0050, Subp. 4).

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*Impact on the BCWMC: the Commission has already met this requirement; notification and request letters were mailed to plan review agencies, local units of government, the Department of Transportation, and the Minneapolis Park and Recreation Board in June 2012.*

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- Hold an initial planning (“kickoff”) meeting to receive, review and discuss input. Notice of the meeting must be provided to the plan review authorities, known stakeholders (including the Department of Transportation), and the general public (see 8410.0050, Subp. 5).

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*Impact on the BCWMC: the Commission’s next generation planning process was developed with this requirement in mind; the Commission will meet this requirement through its small group meetings and the large group “summit” meeting in June.*

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## B. Assessment of Issues and Identification of Priority Issues

The proposed amendment emphasizes the assessment and prioritization of issues in the beginning of the planning process, prior to development of the plan document. The assessment must include the input received from the stakeholders, and data and trend analyses. The plan must also include a summary of the watershed management organization's success implementing the previous plan (see 8410.0050, Subp. 7).

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*Impact on the BCWMC: the Commission's next generation planning process was developed with the issue identification and prioritization requirements in mind; in addition, the planning process includes a "self-assessment of past accomplishments" step (Step 7 in "Plan Steps and Commission Actions" document).*

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## C. Establishment of Goals

The proposed amendment requires that watershed management plans establish "measurable" goals, and that plans include a procedure for evaluating progress for each measurable goal. Measurable goals must be established to address priority issues, and for water quantity, water quality, public drainage systems (ditches), groundwater, and wetlands see (see 8410.0080).

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*Impact on the BCWMC: it may be a challenge to set measurable goals in every area and to develop the process for evaluating progress.*

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## D. Implementation Actions

The proposed amendment requires that watershed management plans (see 8410.0090):

- Include a table briefly describing the implementation actions, schedule, estimated cost and funding source for each action, and annual budget totals

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*Impact on the BCWMC: this table should be similar to Tables 12-2 and 12-4 in the BCWMC 2004 Watershed Management Plan, and should be a natural outcome of the Commission's next generation planning process.*

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- Define the responsibilities of the watershed management organization, the local units of government and others with respect to carrying out the implementation actions

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*Impact on the BCWMC: this information would be similar to that included in Section 12 (Administration and Implementation Program) in the BCWMC 2004 Watershed Management Plan, and would be updated as needed based on the outcome of the Commission's next generation planning process.*

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- Define the processes for evaluating local plan implementation, and addressing a local unit of government's failure to implement their plan

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*Impact on the BCWMC: the BCWMC's current role with respect to local plans is to review and approve local plans; there is no follow-up after that. This new requirement would require the BCWMC to go further and actually assess whether or not a member city is implementing their plan (e.g., did they update their ordinances and standards in conformance with the BCWMC*

*plan?). It would require more hands-on work by the BCWMC to document and follow-up with the member cities regarding implementation of their plans.*

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- Include a process for establishing an advisory committee (or committees) or some other means of public and technical participation acceptable to BWSR; the purpose of the committee(s) or other process is to make recommendations on the plan, plan amendment, and plan implementation.

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*Impact on the BCWMC: this requirement is similar to current requirements, except the revised rule requires BWSR “acceptance” of the public and technical participation process. The BCWMC’s current technical participation process (Technical Advisory Committee) should be accepted by BWSR. However, the challenge during the next generation planning process will be to establish an acceptable public participation process.*

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- Must include the following implementation programs, unless the plan justifies that a program is not needed:
  - Capital improvement program
  - Operation and maintenance program
  - Information and education program
  - Data collection program
  - Regulatory program

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*Impact on the BCWMC: the BCWMC 2004 Watershed Management Plan already includes these implement program elements; the next generation plan is expected to include these same program elements.*

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The proposed amendment allows watershed management plans to also be considered TMDL implementation plans, if developed in coordination with the Pollution Control Agency and provided to the Pollution Control Agency for review and approval (see 8410.0090, Subp. 8).

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*Impact on the BCWMC: this is not likely to apply to the BCWMC next generation plan, as no new TMDLs will be developed until after 2018, when the MPCA will return to the Bassett Creek watershed.*

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The proposed amendment allows the watershed management organization to establish environmental trading programs (see 8410.0090, Subp. 9).

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*Impact on the BCWMC: The BCWMC and TAC have discussed the possibility of establishing a water quality trading/banking program on several occasions. The most recent discussion was at the April 5, 2012 TAC meeting. In the April 11, 2012 memo from the TAC to the Commission, the TAC recommended not pursuing water quality banking or trading at this time. However, the Commission did not discuss this item at that meeting and did not take it up at a later meeting; hence, the Commission has not come to a final decision on this item. This issue could be taken up during the next generation planning process.*

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## **E. Amendments**

The proposed rule revision still includes two amendment procedures – amendments and minor amendments. However, almost all amendments not objected to by a county would follow the minor plan amendment process. The revised minor plan amendment process requires at least 30 days for plan review authorities to review and comment on the proposed amendment before BWSR must decide if the proposed amendment is minor or not (see 8410.0100).

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*Impact on the BCWMC: this requirement would generally improve the amendment procedure, since all amendments would likely fall under the minor amendment process.*

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## **F. Annual Reporting and Evaluation Requirements**

The proposed rule amendment requires submittal of the annual activity report to BWSR within 120 days of the end of the calendar year (not fiscal year), and submittal of the annual audit to BWSR within 180 days of the end of the fiscal year. The rule amendment also includes minimum website requirements.

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*Impact on the BCWMC: this would require submittal of the BCWMC annual report to BWSR by April 30, and submittal of the annual audit to BWSR by July 31. The BCWMC website should already meet most of the requirements in the proposed rule amendment.*

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## **G. Local Water Plans**

One of the biggest changes in the proposed rule amendment requires adoption of a local water plan one to two years before the local comprehensive plan is due. This will result in local water plan revisions occurring only once every 10 years, and they will be in alignment with the local comprehensive plan schedule (see 8410.0130, Subp. 6).

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*Impact on the BCWMC: this has the largest impact on the BCWMC member cities, as they would no longer be required to update/revise their local water plans within two years of approval of a new watershed management plan. BCWMC would be required to review the local water plans of its nine member cities at the same time as the other watershed management organizations.*

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The proposed rule amendment also requires an assessment of water resource-related problems, and requires that the assessment be similar to the process required for watershed management plans (see 8410.0130, Subp. 3.D).

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*Impact on the BCWMC: the rule does not clearly state what is meant by a “similar process” but, according to BWSR staff, it means that local water plans must, at a minimum, identify priority issues after assessing the information and input they choose to collect. The process could range from review of existing city information to the use of focus or advisory groups, depending on the city.*

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## Minnesota Board of Water and Soil Resources

### REQUEST FOR COMMENTS on Possible Amendment to Rules Governing Metropolitan Area Local Water Management, *Minnesota Rules* Chapter 8410

**Subject of Rule.** The Minnesota Board of Water and Soil Resources requests comments on its possible amendment to the rule chapter governing local water management in the seven county metropolitan area. The rules are required by statute to establish standards and requirements for watershed management plans in the metropolitan area. The Board is considering rule amendments that would update the 20 year old rules. There have been many changes in water management during the past two decades that necessitate rule amendments, including development of new best management practices (BMPs), storm water treatment systems, targeting systems using GIS and LIDAR, more data, increased data trend analyses, Clean Water Funding, identification of impaired waters and preparation of plans to address impaired waters. Rule amendments would move away from an overly prescriptive, one-size-fits-all approach to a more result-oriented framework. Future water management plans would consist of periodically updated inventories and goals, and frequently updated implementation and capital improvement sections.

**Persons Affected.** The amendment to the rules would likely affect watershed management organizations, counties, cities, towns, state agencies, environmental advocacy groups and individuals affected by water resources in the seven county metropolitan area.

**Statutory Authority.** *Minnesota Statutes*, sections 103B.201 through 103B.255, requires the Board to adopt rules to govern local water management in the seven county metropolitan area.

**Public Comment.** Interested persons or groups may submit comments or information on these possible rule amendments in writing to the contact person identified below until 4:30 p.m. on Monday, April 22, 2013. The Board will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments. The Board has an advisory committee to evaluate comments on the possible rule amendments.

**Rules Drafts.** A rule advisory committee met several times over a couple of years resulting in draft rule amendments. The draft rule amendments were reviewed with many stakeholders. On the agency website at <http://www.bwsr.state.mn.us/planning/metro/index.html> on the right sidebar are links to the draft rule amendments, a strikeout/underline version of the current rule including the draft rule amendments, the current rule, a summary of proposed changes, and other information.

**Agency Contact Person.** Direct your written comments, questions, and requests for more information on these possible rule amendments to: Jim Haertel, Metro Region Supervisor, Board of Water and Soil Resources, 520 Lafayette Road North, Saint Paul, MN 55155; **telephone:** (651) 297-2906, **fax:** (651) 297-5615, **e-mail:** [jim.haertel@state.mn.us](mailto:jim.haertel@state.mn.us). Persons with hearing loss or speech disabilities may call us through Minnesota Relay at 1-800-627-3529.

**Alternative Format.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

**NOTE:** Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: February 25, 2013

John Jaschke, Executive Director  
Board of Water and Soil Resources