

1 Board of Water and Soil Resources

2

3 Adopted Permanent Rules Relating to a Local Water Resources
4 Protection and Management Program

5

6 Rules as Adopted

7 8405.0100 PURPOSE.

8 Minnesota Statutes, sections 103B.3361 to 103B.3369,
9 authorize the board to make grants to counties for local
10 government activities that protect or manage water and related
11 land resources and to adopt rules.

12 This chapter provides for the administration of a state
13 local water resources protection and management grant program.
14 Parts 8405.0100 to 8405.0230 implement this program by
15 establishing the substantive criteria and procedural conditions
16 under which the board may award state grants for the development
17 and implementation of a comprehensive local water plan.

18 8405.0110 DEFINITIONS.


19 Subpart 1. **Scope.** The definitions in this part and in
20 Minnesota Statutes, section 103B.3363, apply to parts 8405.0100
21 to 8405.0230. If a definition in this part conflicts with a
22 definition in Minnesota Statutes, chapter 110B, 112, or 473, or
23 rules adopted under one of those chapters, the definition in
24 this part governs.

25 Subp. 2. **Board.** "Board" means the Board of Water and Soil
26 Resources.

27 Subp. 3. **Comprehensive local water plan; plan.**

28 "Comprehensive local water plan" or "plan" means a county water
29 plan authorized under Minnesota Statutes, section 110B.04, a
30 watershed management plan required under Minnesota Statutes,
31 section 473.878, a watershed district overall plan required
32 under Minnesota Statutes, section 112.46, or a county
33 groundwater plan authorized under Minnesota Statutes, section
34 473.8785.

35 Subp. 4. **Local share.** "Local share" means the



1 contribution of a local unit of government to the eligible cost
2 of a program including the value of cash expenditures, private
3 contributions, and in-kind contributions of labor, equipment,
4 material, and real property used for and expended on eligible
5 program activities. Up to 50 percent of the local share may
6 consist of federal funds including in-kind contributions. State
7 funds, including in-kind contributions, may not be used as local
8 share.

9 Subp. 5. **Local unit of government.** "Local unit of
10 government" means a statutory or home rule charter city, town,
11 county, soil and water conservation district, watershed
12 district, organization formed for the joint exercise of powers
13 under Minnesota Statutes, section 471.59, local health board, or
14 other special purpose district or authority with local
15 jurisdiction in water and related land resources management.

16 Subp. 6. **Local water planning levy.** "Local water planning
17 levy" means a property tax levy under Minnesota Statutes,
18 section 275.50, subdivision 5, paragraph (2), and implementing
19 Minnesota Statutes, section 103B.3369, subdivision 5, clause
20 (2), for the purpose of implementing a comprehensive local water
21 plan.

22 Subp. 7. **Official controls.** "Official controls" means
23 ordinances and rules that control the physical development
24 within the jurisdiction of a local unit of government, protect
25 public health and safety, or implement the general objectives of
26 the local unit of government.

27 Subp. 8. **Program.** "Program" means a water-related program.

28 Subp. 9. **Related land resources.** "Related land resources"
29 means land affected by present or projected management practices
30 that have significant effects on the quantity and quality, or
31 use of groundwater or surface water.

32 8405.0120 AVAILABLE ASSISTANCE.

33 Subpart 1. **Grants.** The board may award grants to counties
34 to develop plans authorized under Minnesota Statutes, section
35 110B.04 or 473.8785, or implement water resource protection and

1 management programs identified as priorities in a comprehensive
2 local water plan. Grants may be used to employ persons and to
3 obtain and use information necessary to develop a plan under
4 Minnesota Statutes, section 110B.04 or 473.8785, that did not
5 receive funding under Laws of Minnesota 1987, chapter 404,
6 section 30, subdivision 5, paragraph (a), or to implement a
7 comprehensive local water plan. Plan development grants must
8 not exceed a maximum of \$15,300 for a plan under Minnesota
9 Statutes, section 110B.04, or \$15,600 for a plan under Minnesota
10 Statutes, section 473.8785.

11 Plan implementation grants consist of base grants and
12 challenge grants. Base grants are noncompetitive and are
13 available to any county that has approved and locally adopted
14 comprehensive local water plans covering more than 50 percent of
15 the county land area and that implements a local water planning
16 levy. The purpose of base grants is to encourage plan
17 maintenance and implementation with an emphasis on new or
18 expanded programs. Eligible activities include supporting water
19 plan coordination and enforcement of official controls. Base
20 grants may not exceed the amount specified in Minnesota
21 Statutes, section 103B.3369, subdivision 5, clause (2).

22 Challenge grants are competitive and may be available to
23 any county that has approved and locally adopted comprehensive
24 local water plans covering more than 50 percent of the county
25 land area and that implements a local water planning levy. The
26 purpose of challenge grants is to accelerate implementation of
27 priority actions contained in approved comprehensive local water
28 plans. Eligible activities include establishment of monitoring
29 programs, development of official controls, assessments of
30 resources, and development of geographic information systems. A
31 county may submit more than one challenge grant application.

32 Subp. 2. **Local share.** Plan development and challenge
33 grants must be matched in a one-to-one ratio with a local share.

34 Subp. 3. **Priority.** Grants must be awarded, within the
35 limits of available appropriations, to those applicants having
36 the highest priority.

1 Subp. 4. **Technical assistance.** The board may provide
2 technical assistance to counties that are considering
3 application in order to ensure timely, accurate, and
4 comprehensive applications. The board shall provide technical
5 assistance, within the limits of available resources, to
6 counties that receive grants, to assist in developing or
7 implementing a comprehensive local water plan.

8 8405.0130 ELIGIBILITY CRITERIA.

9 Subpart 1. **Eligible applicants.** Only counties are
10 eligible to apply for grants. A county shall coordinate and
11 submit applications on behalf of other local units of government
12 within its jurisdiction.

13 Subp. 2. **Eligible costs.** Plan costs are eligible for
14 state grants if the expenditures are reasonable and necessary
15 for developing or implementing a comprehensive local water plan
16 as described in part 8405.0120, subpart 1.

17 Subp. 3. **Ineligible costs.** Ineligible costs include those
18 not related to the activities in subpart 2. In addition, the
19 following costs are ineligible whether or not they relate to the
20 activities in subpart 2:

21 A. expenditures or in-kind contributions incurred
22 prior to the effective date of the grant agreement that have not
23 been approved by the board as described in part 8405.0200,
24 subpart 9; and

25 B. activities that violate local, state, or federal
26 statutes, rules, or regulations.

27 8405.0140 NOTICE OF GRANT AVAILABILITY.

28 Subpart 1. **Notice.** If the board determines that funds are
29 available to award grants, the board shall publish a notice in
30 the State Register announcing that applications will be
31 accepted. The notice must include the amount of available
32 funding and contain deadlines for submittal of applications for
33 each grant, which must be no less than 60 calendar days from the
34 date of publication.

35 Subp. 2. **Notification.** The board shall notify all

1 counties that grant funds are available and the deadline for
2 applications. Any other local unit of government that wishes to
3 be notified shall contact the board by writing to the executive
4 director. When the board publishes notice in the State
5 Register, the board shall mail notice of the grant application
6 period to those local units of government who have requested to
7 be notified.

8 Subp. 3. **Grant application periods.** The board may
9 establish a grant application period at any time, but there must
10 be at least one application period for each grant each fiscal
11 year if funds are available.

12 8405.0150 GRANT APPLICATION.

13 Subpart 1. **General requirements.** A grant application must
14 be submitted by a county. A county shall coordinate and submit
15 applications on behalf of other local units of government within
16 its jurisdiction. A completed grant application must be
17 received in the board office in Saint Paul by the published
18 deadline, in a format provided by the board, and with the
19 information required by this part.

20 Subp. 2. **Plan development grant.** A county submitting an
21 application for a plan development grant must submit the
22 following information:

23 A. a resolution committing the county to develop a
24 local water plan according to chapter 9300 and Minnesota
25 Statutes, chapter 110B, or Minnesota Statutes, section 473.8785;

26 B. a resolution by the county authorizing the
27 matching funds and the signing of the grant agreement and other
28 related documents;

29 C. a budget of expenses associated with developing a
30 local water plan; and

31 D. a description and explanation of the
32 responsibilities proposed to be contracted with other local
33 units of government, if applicable.

34 Subp. 3. **Plan implementation base grant.** A county
35 submitting an application for a plan implementation base grant

1 shall submit the following information:

2 A. a resolution by the county authorizing the signing
3 of the grant agreement and other related documents;

4 B. a detailed work plan and schedule for program
5 implementation during the grant period;

6 C. a detailed budget for the grant period;

7 D. a statement describing the relationship of the
8 grant request to priority implementation items in the
9 comprehensive local water plan;

10 E. a statement describing how cooperation will be
11 secured with adjacent counties and water management
12 organizations, if applicable; and

13 F. a description and explanation of the
14 responsibilities proposed to be contracted with other local
15 units of government, if applicable.

16 Subp. 4. **Plan implementation challenge grant.** A county
17 submitting an application for a plan implementation challenge
18 grant shall submit the following information:

19 A. a resolution by the county authorizing the
20 matching funds and the signing of the grant agreement and other
21 related documents;

22 B. an executive summary of the contents of the
23 application;

24 C. a detailed work plan and schedule for program
25 implementation during the grant period;

26 D. a detailed budget for the grant period including
27 the identification of the amount requested in the grant;

28 E. a list identifying the amount, type, and source of
29 the local share;

30 F. a statement describing the relationship of the
31 grant request to priority implementation items in the
32 comprehensive local water plan;

33 G. a statement describing how cooperation will be
34 secured with adjacent counties and water management
35 organizations, if applicable;

36 H. a statement describing local support and

1 interagency coordination;

2 I. a description of how the challenge grant
3 complements the base grant;

4 J. a statement indicating if partial funding of the
5 application is acceptable. If partial funding is acceptable,
6 project components must be listed in order of funding priority
7 with a corresponding budget; and

8 K. an explanation of the responsibilities proposed to
9 be contracted with other local units of government, if
10 applicable.

11 Subp. 5. **Sequence of implementation grants.** Before a
12 county can submit an application for a plan implementation
13 grant, the county must have:

14 A. approved and locally adopted comprehensive local
15 water plans covering more than 50 percent of the county land
16 area; and

17 B. implemented a local water planning levy.

18 Although base and challenge grants may be applied for at
19 the same time, separate applications must be made.

20 8405.0160 DENIAL OF GRANT APPLICATIONS.

21 Subpart 1. **Grounds.** An application for a plan development
22 grant or a plan implementation grant must be denied by the board
23 for the following reasons:

24 A. ineligible applicant;

25 B. proposed expenditures are ineligible;

26 C. request is not consistent with priorities
27 described in the applicant's comprehensive local water plan;

28 D. late submittal; or

29 E. inadequate or incomplete application.

30 Subp. 2. **Procedure.** The board shall review each grant
31 application within 14 calendar days after the deadline for
32 application submittal. The board shall notify each denied grant
33 applicant of the denial of its application and the reasons for
34 the denial within 14 calendar days after the determination.

35 Subp. 3. **Effect of denial.** A grant applicant whose

1 application is denied may reapply in a subsequent application
2 period in order to be reconsidered for a grant.

3 8405.0170 ALLOCATION OF FUNDING.

4 Subpart 1. Overall grant fund allocation. After assessing
5 the number and specific type of applications, and within 30
6 calendar days of the close of an application period, the board
7 shall determine the amount of funding to be made available for
8 each grant. In deciding how much money to make available for
9 new grant awards, the board shall give priority to plan
10 development and base grants and consider the necessity to have
11 additional money available to complete previously approved
12 grants.

13 If the money intended for a specific type of grant is not
14 awarded during a grant period, the board may reallocate the
15 funds to one of the other type of grants or carry the money
16 forward to a subsequent grant period.

17 8405.0180 RANKING OF APPLICATIONS.

18 Subpart 1. Process of ranking. After completion of the
19 review by the board of the grant applications for eligibility,
20 and determination of available funds for the types of grants,
21 the board shall proceed to:

22 A. fund all eligible plan development and base grant
23 applications as provided in part 8405.0120, subpart 1; and

24 B. rank in order of priority all eligible challenge
25 grant applications.

26 Each eligible challenge grant application must be awarded
27 the number of priority points it is entitled to under subparts 3
28 and 4. All applications must be given a ranking depending on
29 the number of points awarded. The applications with the highest
30 ranking must be given the highest priority.

31 Subp. 2. Review team. Prior to ranking challenge grant
32 applications, the board shall establish an advisory review team
33 to evaluate the applications. The review team, chaired by a
34 member or representative appointed by the board, consists of a
35 representative of each of the following agencies or

1 organizations: Association of Metropolitan Municipalities;
2 Association of Minnesota Counties; League of Minnesota Cities;
3 Metropolitan Council; Metropolitan InterCounty Association;
4 Metropolitan Water Management Organizations; Minnesota
5 Association of Conservation District Employees; Minnesota
6 Association of County Planning and Zoning Administrators;
7 Minnesota Association of Soil and Water Conservation Districts;
8 Minnesota Association of Townships; Minnesota Association of
9 Watershed Districts; Minnesota Departments of Agriculture,
10 Health, and Natural Resources; Minnesota Extension Service;
11 Minnesota Geological Survey; Minnesota Pollution Control Agency;
12 State Planning Agency; and ~~others-as-the-board-may-determine~~
13 such other agencies, organizations, or persons providing
14 additional expertise or background beneficial to the review team.

15 Subp. 3. Priority points for challenge grant
16 applications. The following criteria must be used to determine
17 the number of priority points to be awarded in the evaluation of
18 each challenge grant application. To expedite the review
19 process, the board is responsible for providing background
20 information and summaries of the applications to the review
21 team. The review team, acting as a committee, shall award each
22 application between zero and ten points under the following
23 criteria, depending on how well the application satisfies each
24 criterion. Ten points is the highest point value. The number
25 of points under each criterion must be added together to
26 determine the application's total point value. This total
27 number must be used to determine the application's overall
28 ranking and priority. The criteria are as follows:

29 A. the extent to which the application demonstrates
30 participation of several local units of government, including
31 multicounty efforts;

32 B. the extent to which the application expresses
33 long-term commitment to effective water protection and
34 management;

35 C. the extent to which the applicant would use local
36 programs and methods to protect and manage water and related

1 land resources;

2 D. the extent to which the application complements
3 efforts of federal, state, and local units of government; and

4 E. the extent to which the application supports
5 efforts of local units of government to adopt, administer, and
6 enforce official controls to protect and manage water and
7 related land resources.

8 Subp. 4. **Other considerations.** In assigning points, the
9 review team must consider the regional variations that exist in
10 program needs and priorities.

11 8405.0190 SELECTION OF GRANTEES.

12 Subpart 1. **Ranking.** The review team shall complete its
13 ranking of all applications for challenge grants for which an
14 eligible grant application has been submitted and forward the
15 recommendation to the board within 90 calendar days of the close
16 of the application period.

17 Subp. 2. **Projects funded.** The board shall select those
18 applications that will be awarded grant funds by awarding grants
19 to the highest priority challenge grant applications within the
20 limits of available funds established in part 8405.0170.

21 Subp. 3. **Board decision.** All decisions of the board in
22 ranking applications and awarding grants must be made at a
23 regular or special board meeting.

24 Subp. 4. **Timing.** The board shall make its selection of
25 grantees within 120 calendar days of the close of the
26 application period. The board shall notify all applicants of
27 the status of their application within 14 calendar days after
28 the selection of grantees.

29 Subp. 5. **Reapplication.** A grant applicant whose
30 application is not awarded grant funds may reapply in a
31 subsequent application period to be reconsidered for a grant.

32 8405.0200 GRANT CONDITIONS.

33 Subpart 1. **Amount.** Except as provided in part 8405.0150,
34 subpart 4, item J, a grant that is made must be for the amount
35 requested by the applicant. The maximum grant must be according

1 to part 8405.0120, subpart 1.

2 Subp. 2. **Agency review.** Grants provided to develop or
3 implement programs must be reviewed by the state agency having
4 authority for the programs to assure compliance with minimum
5 state standards before a grant agreement is executed by the
6 board.

7 Subp. 3. **Performance criteria.** In addition to items
8 required by this part, performance criteria for grant
9 administration must include plan information requirements
10 contained in the approved application of the county as described
11 in part 8405.0150, subparts 2, 3, and 4.

12 Subp. 4. **Grant period.** The grant period for a plan
13 development grant must be two years. The grant period for an
14 implementation base grant must not exceed two years. The grant
15 period for an implementation challenge grant must be two years
16 and may be extended an additional year with prior board approval.

17 Subp. 5. **Grant agreement.** The county must enter into a
18 grant agreement with the board before a grant will be awarded.
19 The grant agreement must include the provisions established in
20 part 8405.0210.

21 Subp. 6. **Records.** The county, or delegated local unit of
22 government, shall maintain all records relating to the receipt
23 and expenditure of grant funds for six years from the
24 termination of the grant agreement.

25 Subp. 7. **Audit.** The county, or delegated local unit of
26 government, must agree that the books, records, documents, and
27 accounting procedures and practices of the county relevant to
28 this program may be examined at any time by the board or board's
29 designee. The county or delegated local unit of government
30 implementing a grant shall provide for an audit that meets the
31 standards of the Office of State Auditor. The audit must cover
32 the duration of a grant and be performed within one year after
33 the end of a grant period or when routinely audited, whichever
34 occurs first. Copies of the audit must be provided to the
35 county and the board.

36 Subp. 8. **Annual progress report.** The county, or delegated

1 local unit of government, shall submit an annual progress report
2 to the board by January 31st of each year the grant is in
3 effect. The report must include the following information:

4 A. a discussion of progress of the work described in
5 the approved application, and difficulties encountered meeting
6 the schedule during the year;

7 B. a discussion of the program results appropriate to
8 the work conducted during the year; and

9 C. a report of expenditures in the year and those
10 anticipated during the upcoming year.

11 Subp. 9. **Eligible costs.** Grant funds may not be used to
12 ~~reimburse the county, or delegated local unit of government,~~ for
13 costs incurred before or after the end of the grant agreement
14 period unless approved by the board as provided by the criteria
15 in part 8405.0130, subpart 3. In considering these costs, the
16 board must review each claim on a case-by-case basis. To
17 support a claim, the county may be requested to provide
18 additional information.

19 8405.0210 GRANT AGREEMENT.

20 Subpart 1. **Contents.** The board and the county shall enter
21 into a grant agreement. The grant agreement must:

22 A. establish the term and conditions of the grant;

23 B. provide that the county may contract with others,
24 including appropriate local units of government under the terms
25 and conditions specified by the county, to complete the work
26 specified in the grant agreement;

27 C. provide that the cost overruns are the sole
28 responsibility of the county;

29 D. require that a county is responsible for ensuring
30 that state funds are properly expended even if the work
31 specified in the grant agreement is performed by a local unit of
32 government acting on behalf of the county;

33 E. require that the county submit an annual progress
34 report; and

35 F. incorporate terms and conditions required by

1 federal or state statutes, rules, or regulations.

2 Subp. 2. **Amendments.** A grant agreement may be amended
3 upon agreement of the board and the county.

4 Subp. 3. **Agreement period.** A grant agreement must be for
5 a duration specified in part 8405.0200, subpart 4.

6 8405.0220 GRANT PAYMENTS.

7 Subpart 1. **Payment.** Payment of the grant amount must be
8 made in one installment by the board promptly after the
9 effective date of the grant agreement.

10 Subp. 2. **Unencumbered funds.** Any grant funds remaining
11 unspent or becoming unobligated after the end of the grant
12 agreement period must be returned to the board within two months
13 of that date.

14 8405.0230 GRANT TERMINATION.

15 Subpart 1. **Board action.** The board may cancel a grant
16 agreement for just cause. "Just cause" means that the county or
17 delegated local unit of government is not disbursing grant funds
18 in accordance with established board and state procedures or has
19 otherwise breached a term of the grant agreement. The county
20 must be given 14 calendar days' prior written notice of
21 cancellation. The county has until the date of cancellation to
22 demonstrate why the grant agreement should not be canceled. If
23 it is determined by the board that the county's default was
24 beyond its control or it was not otherwise in default, the grant
25 agreement must not be canceled. The county may cancel this
26 grant agreement with or without cause. In the event of
27 cancellation by the board or county, the county is entitled to
28 payment, determined on a pro rata basis, for work satisfactorily
29 performed and the remaining grant funds must be promptly
30 returned to the board.

31 Subp. 2. **Agency action.** At the request of any state
32 commissioner, the board shall revoke that portion of a grant
33 used to support a program not in compliance with rules of that
34 agency.