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March 9, 2007

TO: EQB Members

FROM: John Wells
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RE: **ANNOTATED AGENDA FOR
March 15, 2007 Board Meeting**

General

This month's meeting will take place at the Pollution Control Agency, 520 Lafayette Road. The meeting will begin at 9:00 a.m. Staff will be available for briefing and questions at 8:00 a.m.

Attention: *Denotes an agenda item that may require Board action.

- I. *Adoption of Consent Agenda**
 - Adoption of the Proposed Agenda for **March 15, 2007** meeting
 - Adoption of the Proposed Minutes for **January 18, 2007** meeting
- II. Chair's Report**
- III. Executive Director's Report**
- IV. Legal Counsel Report**
- V. Clean Water Cabinet Report**

Background

The Governor's Office has clarified the relationship between the cabinet and the board. The cabinet is now considered a committee of the board. Cabinet chair, Brad Moore, will brief the board on cabinet discussions each month, as appropriate.

VI. *Approval of Work Plan for the Subcommittee on Future EQB Directions

Materials Enclosed

A Preliminary Work Plan Framework for the Subcommittee on Future EQB Directions, February 22, 2007

Issue Before the Board

Approval of the subcommittee work plan is requested.

Background

The Board gave the subcommittee the charge to “*develop and implement an action plan to define and secure the future role of the Minnesota Environmental Quality Board.*” The attached work plan is the subcommittee’s proposal for how to implement the charge.

At its February 22 meeting, the subcommittee concluded that its emphasis should be on how to strategically focus EQB. The goal is to find ways to address the key original purposes of the law while serving each Administration’s needs. This will require a refocusing of the Board on what it is best suited to do and changes in law and administrative practice, as needed, for it to function effectively.

The subcommittee will evaluate how best to provide this focus by reviewing:

- *Assessment of EQB Authorities*, dated February 2007, and confirming, amending or rejecting each assessment of authority need, responsibility and workability
- Roles of other organizations that may overlap those of the EQB or offer potential synergy
- Reports of EQB and others that illustrate or examine the need for or viability of a state environmental policy and coordinating function
- Advice received from outreach activities

The subcommittee discussed the idea of the *lens* through which it and Board will evaluate the EQB’s role. It would like to tap the full board in developing ideas for what the lens should look like. The goal is to define a focused list of core functions that the EQB is uniquely qualified and positioned to provide.

Significant Issues

No significant issues are seen at this time. The subcommittee intends to report to the board on its progress at each board meeting, and could suggest mid-course corrections, if necessary, should issues arise.

VII. *Presentation of Water Sustainability 2030 report: *Use of Minnesota's Renewable Water Resources: Moving Toward Sustainability*

**Presenters: John Wells and Princessa VanBuren, EQB Staff
(651-201-2475 and 651-201-2478)**

Materials Enclosed

Revised draft report: *Use of Minnesota's Renewable Water Resources: Moving Toward Sustainability*

Issue before the Board

Board approval is requested.

Background

Minnesota Statutes, section 103A.43, directs the Environmental Quality Board and Department of Natural Resources to coordinate a biennial state assessment of the availability of water to meet the state's long range needs. That is the focus of the report.

The purpose is to better understand surface and ground water availability and the demands Minnesotans place on water. The goal is to help state and local officials manage water resources for the long term future and better plan for development; in other words, to help decision makers develop and implement policy to manage water on a sustainable basis. The project sought to do this by:

- Bringing attention to what we know and don't know about renewable water resources
- Highlighting the need for evaluation of water resources to help local and state governments make better-educated decisions about future development and water demand

Board staff began the work after approval by the Governor's Office and Board chair. Throughout the project, staff brought together key experts in Minnesota involved in the quantification of water supply and demand. The assessment was conducted over two years, using the best scientific knowledge available. The final report has been drafted to present what was done, to share the assumptions made, to clarify what Minnesota currently does and does not know about water availability, and to invite discussion about future needs.

The assessment found that in 2005, only one county – Ramsey County– appeared to use more than 100 percent of its renewable water resource, reporting in at 135 percent. In the seven county metropolitan area, the percent of renewable resources ranged from 10 in Carver County to Ramsey County's 135. In Greater Minnesota, the range was from less than 1 percent in seven counties to 46 percent in Wright County. Three counties ranged between 50 and 75 percent and another three between 25 and 50 percent.

By 2030, the percent use of seven-county metropolitan area renewable resources ranged from 23 in Carver County to 177 in Ramsey County, while in Greater Minnesota the range was from less

than 1 percent in six counties to 81 percent in Wright County. Four counties ranged between 75 and 100 percent, one county between 50 and 75 percent, and another four between 25 and 50 percent.

Changes made since presentation of the preliminary report in January

At the time of the January board meeting, EQB staff was actively seeking input from project partners, including DNR Division of Waters, DNR Division of Ecological Services, US Geological Survey, Minnesota Geological Survey, Metropolitan Council, and the University of Minnesota. Feedback from the partners has been positive, providing us with recommendations suggesting a variety of ways to improve the report and refine the analysis in future years. Input from the partners was shared with EQB's principal partner (DNR Waters) and staff incorporated the suggestions that were consistent with the project outline adopted by EQB and DNR in September 2006.

An attachment to the annotated agenda summarizes the major changes made to the report since the January 2007 board meeting.

The overall message of the report remains unchanged. For the first time, Minnesota has an assessment that takes stock of how the state is doing in allocating its water resources at the county level. The findings are that:

- Counties – many sooner than later – and their partners need to take a special look at their water resources and carefully plan for future growth and allocation of water;
- There is much we still don't know about Minnesota's water resources and these unknowns point to priorities for future research and funding.

Significant Issues

The allocation of water resources affects people and ecosystems all across the state and, consequently, a report addressing Minnesota's supplies and the demands we place on them will draw the attention of a wide audience. Special care has been taken with project partners to ensure that the report carefully and accurately describes the issues, assumptions and uncertainties involved.

This study provides a good model for the kind of focus and partnerships that EQB might develop in future work, and should inform the current activities of the *Subcommittee on Future EQB Directions*.

VII. Update on Environmental Review Program **Presenter: Gregg Downing, EQB staff** **(651-201-2476)**

Materials Enclosed

Comments received in response to the Supplemental Request for Comments:

1. Letter from John Domke, Vice-President, SKB Environmental, January 17, 2007
2. Letter from Janette K. Brimmer, Legal Director, Minnesota Center for Environmental Advocacy, January 29, 2007
3. Letter from Jay T. Squires, Ratwik, Roszak & Maloney, PA, on behalf of the MN Assn. of Counties, January 30, 2007
4. Letter from David M. Aafedt, Winthrop & Weinstine, on behalf of the Builders Assn. of the Twin Cities, January 31, 2007

Issue Before the Board

No action is requested on this item. Staff will update the Board on Phase 2 rulemaking activities and the Technical Representatives Committee follow up to the Board retreat regarding the Environmental Review program. The staff will address the topics indicated in the captions below:

Supplemental Request for Comments

On December 11, 2006, the EQB published a Supplemental Request for Comments in order to receive public input on several rule amendment ideas that were not included in the original Request for Comments published on August 14, 2006. Public comments were received through January 31, 2007. The ideas presented in the Supplemental Request included: adding guidance throughout the rules on how to analyze cumulative effects in review documents; correcting an erroneous reference in the exemption categories; and clarifying that it is permissible to simultaneously issue public notice for an EAW and a draft permit for the same project.

Four comment letters were received, as listed in the Materials Enclosed section above, and are included in the packet. Commenters addressed the cumulative effects topic and the “dual notice” topic. The following is a synopsis of the comments received about cumulative effects:

- Accept Supreme Ct’s interpretation of 4410.1700 criterion; do not alter this by rule amendments (AMC)
- Any rule amendments or additions to rules re cumulative effects must provide clear standards understandable to all RGUs that can be readily applied in varied contexts; must not graft a too-complex cumulative effects analysis onto EAW (AMC)
- Cumulative effects analysis in EAWs must be more abbreviated than for EISs (AMC)
- There is no need to revise rules re cumulative effects or impacts; Supreme Ct. decision and Appeals Ct decision in MCEA vs. St. Paul Park provide all the guidance we need; any guidance that deviates from those decisions will increase uncertainty (BATC)
- Guidance not a suitable substitute for rule amendments (MCEA)
- Develop guidance similar to CEQ’s (in addition to rules) (MCEA)

Regarding the “dual noticing” issue, comments from the Center for Environmental Advocacy indicated that the Center opposes this amendment, while those from SKB Environmental indicated that the company supports it.

Cumulative Impacts/Effects

Staff have been working with Mr. Roche to develop a proposal or options to present to the Board regarding the treatment of cumulative impacts (or effects) throughout the rules. We have

considered the two memoranda Mr. Roche has prepared for the Board summarizing state and federal court cases, the public comments received, and ideas gleaned from the environmental review processes of the federal government and other states, most notably California. Staff hopes to have a presentation ready for the next Board meeting.

EAW & EIS Categories for Projects in Shorelands

The DNR is continuing to develop a revised proposal for a system of mandatory categories in response to the public comments received on the initial DNR/EQB proposal. It is expected that the revised proposal will go a long way toward correcting the perception that the original proposal was too complicated. We understand that the DNR hopes to be able to present the revised proposal to the EQB before the next Board meeting.

Phase 2 Rulemaking Schedule

Until the cumulative impacts and shoreland categories are ready to present to the Board a complete schedule for the Phase 2 rulemaking cannot be made. However, estimates of the schedule from that point onward can be made, based on previous rulemakings:

Amendment ideas finalized	possibly April
Rule draft and SONAR completed/ rulemaking authorized	3 months later
Public hearings held	3 months later
<u>ALJ's report/Board considers final adoption</u>	<u>2-3 months later</u>
Total time elapsed	8-9 months

Beyond Phase 2; Follow-up to EQB Retreat

As directed at the January retreat, the Technical Representatives Committee has been working on the question of Environmental review reform that goes beyond the rule amendments of Phases 1 & 2. Three meetings of the whole Committee have been held and in addition, smaller working groups have met several times. The group is working primarily by reviewing the various reform effort reports and ideas put forth since 1990.

At the March Tech Rep meeting a proposed outline for a report was discussed, and staff from several agencies have volunteered to work on a report based on such an outline. It is hoped that the report can be presented to the Board at its next meeting.