

Brown's Creek Watershed District					
2017 rulemaking - comments & responses					
Approved 1-10-2018					
Comment #	Rule Provision	Name	Organization	Comment	Response
1	General/SONAR	Mark Lambert	Individual	A) <u>SONAR requirements are not satisfied.</u> I understand that BCWD is not required to perform a SONAR yet has elected under the statute to do so. In this case Minn. Stat. § 14.131 (which governs SONAR requirements) seems applicable and therefore the SONAR must satisfy the following requirements before the proposed rules can be adopted. Specifically:	As the commenter acknowledges, the BCWD rulemaking is not subject to the Administrative Procedure Act (Minnesota Statutes chapter 14). By its terms, the APA applies only to agencies "having a statewide jurisdiction." Minn. Stat. § 14.02, subd. 2. Nonetheless, the BCWD Board of Managers considered whether to direct staff to prepare additional materials to support the rules along the lines of the APA provisions highlighted in the commenter's letter. The managers, however, found that the supporting materials provided address the most critical issues and provide the most relevant information needed to support the rules as revised in this rulemaking. The BCWD Board of Managers did direct staff to refer to the document produced in support of and to explain the rules as a memorandum from BCWD, rather than a statement of need and reasonableness, to help avoid confusion.
2	General/SONAR	Mark Lambert	Individual	(A-1) A description of the classes of persons who will likely be affected by the proposed rule, including both the classes that will bear the costs of the proposed rule and the classes that will benefit from the proposed rule.	
3	General/SONAR	Mark Lambert	Individual	(A-2) The probable costs to the agency and to any other agency due to the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.	
4	General/SONAR	Mark Lambert	Individual	(A-3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule (emphasis added).	
5	General/SONAR	Mark Lambert	Individual	(A-4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule (emphasis added)	
6	General/SONAR	Mark Lambert	Individual	(A-5) <u>The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties,</u> such as separate classes of governmental units, businesses, or individuals (emphasis added).	
7	General/SONAR	Mark Lambert	Individual	(A-6) The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals	
8	General/SONAR	Mark Lambert	Individual	(A-7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.	
9	General/SONAR	Mark Lambert	Individual	(A-8) An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.	

10	General/SONAR	Mark Lambert	Individual	<p>BCWD appears to be using an expedited process, but the SONAR contains no discussion of a "less costly" or "alternative or less intrusive method." It appears that the SONAR simply stated that these will be the new rules without following the above analysis as required by statute. The only support cited for requiring these changes, other than the self-concluding comments in the SONAR, are attached in a Technical Memo and specifically relate only to Linear Projects Volume Control. BCWD staff should use the balancing test required by statute to determine if the proposed rules are truly the only option to accomplish the stated goals.</p>	
11	General/SONAR	Mark Lambert	Individual	<p>B) <u>Insufficient general public notice of major rule changes, Minn. Stat. § 14.131</u> requires that the SONAR describe the agency's efforts to provide additional notification as described under section 14.14, subdivision 1a, to persons or classes of persons who may be affected by the proposed rules, alternatively the agency must explain why these efforts were not made. There is no discussion in the SONAR about additional outreach efforts taken to advise the hundreds of property owners who will be impacted by these proposed rule changes. BCWD staff should consider a newspaper announcement and press releases about these rule changes with additional outreach to the business community in advance of the public hearing to be sure all stakeholders know that the BCWD is proposing significant changes to the redevelopment rules.</p>	
12	General/SONAR	Mark Lambert	Individual	<p>C) <u>The proposed rules do not match the BCWD Stormwater Plan as required by statute.</u> Both the 2017-2026 Watershed Management Plan and the SONAR specifically state that one of the stormwater goals is to "ensure no-net increase in run-off rate from new development and redevelopment." The proposed redevelopment rule in the SONAR requires a significant <u>reduction</u> in run-off rates from any redevelopment (as defined therein). The proposed redevelopment rule is not consistent with the overall, comprehensive watershed plan because the rule would require net- decreases in the run-off rate from all redevelopments. This does not comport with the watershed plan as required by statute.</p>	<p>It is not clear how the commenter draws a limitation on specific rule requirements from state law pertaining to watershed plans and rules. State law directly relevant to watershed rulemaking requires that the rules "accomplish the purposes of [Chapter 103D] and [] implement the powers of the managers." That said, imposing the rate-control requirement on individual project site in the Stormwater Management Rule against a baseline of "presettlement" conditions is not inconsistent with the plan goal of ensuring no net increase in runoff rates from the watershed generally. Further, the redevelopment requirements are applied on a scaled basis, such that the rate control standard only applies to the extent proposed work disturbs existing site conditions, and redevelopment projects creating less than 10,000 square feet of aggregate impervious surface do not trigger the stormwater rule at all. In addition, the BCWD engineer has provided substantial record findings regarding degradation and impairment of water resources in Brown's Creek watershed caused in part by excess rates of runoff. These findings support a regulatory mechanism that seeks to avoid further degradation and impairment, and establishes baseline conditions that allow BCWD to invest in capital projects to counteract past land-use decisions that have caused such degradation and impairment. The engineer also provided analysis at the December 13 public hearing on the rules showing the consistency of BCWD's rate-control requirement with that adopted and implemented by other watershed organizations in Washington County and the Twin Cities. Finally, at the hearing on the rules, the BCWD engineer reviewed numerous policies in the 2017-2026 Watershed Management Plan that support the rate-control and other stormwater-management standards and requirements in the rule. In light of the engineer's review, the Board of Managers affirmed its determination that the rate-control criterion in the rules effectively and appropriately implement BCWD policies.</p>

13	Rule 2.0: Stormwater Management Rule, Applicability, 2.2.c	Mark Lambert	Individual	<p>D) <u>Proposed redevelopment rules are unduly onerous and not practical.</u> The magnitude of the rule change is enormous. Instead of the previous rule of five acres or more, any ground disturbance of 10,000 square feet or more now triggers BCWD management rules. Under the proposed rules even the simple replacement of the asphalt in a parking lot will require significant involvement by the BCWD. Even more, there is no recognition for any pre-existing conditions or constraints. Once a project has more than 10,000 feet of ground disturbance, the site must be brought into complete compliance with the most onerous standard of "pre-settlement conditions." Parking lots over 10,000 feet will need to be stripped, reconstructed, and rebuilt in entirety to redirect grades and storm water into catch basins. Ponds or underground tanks will need to be constructed, <u>regardless of whether there is room on the site or whether there is even a nearby storm pipe or outflow to direct the captured water.</u> The result, <u>this on-site sediment treatment will be for nothing if the only option is to dump the ponded and treated water back onto the street to again reenter storm drains as dirty storm water.</u></p>	<p>BCWD declines to comment on the accuracy of the commenter's conclusions regarding the application of the revised BCWD rules to hypothetical redevelopment projects. As underscored by comparisons provided by the BCWD engineer at the December 13 hearing, the proposed BCWD stormwater-management requirements are comparable to other watershed organizations' in the Twin Cities. A number of the organizations apply requirements to redevelopment projects (including projects disturbing as little as 5,000 square feet of surface area), and generally property owners have been able to comply with such requirements at a cost reasonably borne by the proposed land-use. At the hearing, the BCWD engineer also provided analysis of two actual past redevelopment projects in the watershed to underscore the feasibility of compliance with the proposed BCWD stormwater standards. The managers relied on this and prior research and analysis (detailed in the memo supporting the rules) as well as BCWD's significant practical experience in implementing its rules to date in developing the proposed revisions and affirmed at the December 13 its determination that the stormwater-management framework judiciously balances water-resources protections against the burden of compliance on property owners.</p>
14	Rule 2.0: Stormwater Management Rule, Applicability, 2.2.c	Mark Lambert	Individual	<p>The above consequences of the proposed rules can be demonstrated with my redevelopment property located at 2289 Croixwood Blvd., Stillwater. Civil engineers estimate that approximately 22% of the entire site would be needed for ponding storm water if the new rules are adopted as written. Please think about the consequences of these proposed rules. <u>Does the BCWD really intend to take away 22% of every property owners' lands when they come to redevelop their properties? Are these rules really necessary or are there other, less burdensome methods that may be used to achieve same or similar results?</u></p>	<p>Please see response to comment 13.</p>
15	Rule 2.0: Stormwater Management Rule, Standards, 2.4.1	Mark Lambert	Individual	<p>D. <u>Pre-development conditions standard should be used for redevelopment rules.</u> By requiring storm pond construction to be built to pre-settlement conditions versus pre-development conditions, much larger storm ponds are required. Larson Engineering surveyed 20 metro watershed districts and found that <u>every single one of them</u> uses the pre-development conditions ponding standard instead of the much more difficult and extensive pre-settlement conditions currently proposed by the new BCWD rules. The SONAR includes no discussion regarding whether BCWD even considered pre-development conditions as an alternative method to pre-settlement conditions. Nor does the SONAR include any reasons why pre-development conditions would have been rejected in favor of the pre-settlement conditions standard. This is in violation of the statute requirement as outlined in paragraph A(3) and (4).</p>	<p>Please see response to comment 12.</p>

16	General	Mark Lambert	Individual	<p>D. The proposed rules lack voluntary compliance options. While Goal A2 of Table 5 of the Stormwater Runoff Management Policies, Goals, and Implementation Activities of the Watershed Plan suggests: "Utilize the District's cost-share program to assist in citizen installation of water quality improvement projects and water quality," there is nothing in the proposed rules about voluntary planning opportunities or voluntary alternatives in the event that redevelopment rules govern a given project. The proposed rules are also silent as to any "cost-sharing." Under the stated goals of the watershed plan, the BCWD should work with redevelopment projects to achieve practical and economically feasible solutions to on-site (or off-site) storm water management instead of mandating onerous, unduly burdensome, and likely ineffective rules.</p>	<p>While BCWD continues to pursue opportunities through its cost-share program to support watershed property owners who undertake water resource-protection projects, the Public Purposes Doctrine of the state constitution (Art. X, sec. 1) and BCWD policy preclude the organization from providing cost-share assistance to property owners to meet regulatory requirements.</p>
17	Rule 2.0: Stormwater Management Rule, Maintenance, 2.6	Mark Lambert	Individual	<p>G. Perpetual Jurisdiction of the BCWD Staff and Unending Cost Reimbursements to BCWD/EOR. The maintenance section of the new proposed rule 2.6 requires a schedule for inspection and maintenance in "perpetuity of the facility with documentation retained onsite and available to the District with reasonable notice." This section is unclear. Can the landowner self-inspect and/or self-report? Is a landowner paid BCWD engineer inspection required every year? Every five years? Will the cost of perpetual inspections be required to be prepaid as part of the financial assurances? What are the long-term future costs of these requirements? Again, under the SONAR requirements listed above in paragraph A(S), the probable costs must be cited. The SONAR does not do so.</p>	<p>The facility-maintenance requirements in the stormwater rule are clarified, but not expanded. BCWD has long required perpetual maintenance of stormwater facilities, and has and will continue to rely on property owners to conduct their own inspection and maintenance work. BCWD will only enforce its rights under a maintenance declaration when the property owner fails to properly inspect and maintain facilities required under a BCWD permit. Costs of enforcement of maintenance requirements are not a factor in setting the financial assurance required for a particular permit, and financial assurances provided to secure permit performance are returned to the permittee, property owner or surety, as appropriate, when the permitted work is completed and all obligations under the permit to BCWD have been fulfilled. BCWD does not retain financial assurances for purposes of enforcing maintenance declarations, which are by their terms separate enforceable contracts.</p>
18	Rule 4.0: Lake, Stream, and Wetland Buffer Requirements, Maintenance, 4.2	Mark Lambert	Individual	<p>H. 75' lake buffer lacks reasonable notice to lake owners. The buffer zone on "recreational lakes" in the watershed is changed from 50' to 75' without any mention in the SONAR as to why. The affected lake owners (presumably Bass East, Bass West, Benz, Goggins, Kismet, Long, Lynch, Masterman, North School, Section, South School, Pat, Plaisted and Woodpil basins) should receive notice about this change (assuming they are all recreation lakes).</p>	<p>As explained in the memo supporting the rules, there is no real change in buffer zones required by BCWD under Rule 4.0, except as applicable to Long Lake -- the only waterbody classified as "Recreational Development Lake" by the Department of Natural Resources. Please see section VI of the memo for further explanatory information.</p>
19	Rule 10.0: Variances	Mark Lambert	Individual	<p>There needs to be practical alternatives allowed under the rules if a property owner cannot meet the proposed onsite requirements. Strict enforcement of redevelopment ponding requirements as currently proposed could deprive property owners any reasonable economic use of their property.</p>	<p>Please response to comment 20.</p>

20	SONAR/ Rule 10.0 Variances	Mark Lambert	Individual	<p>I. <u>Harshest Variance Standard Readopted.</u>The SONAR notes that "Rule 10.0: Variances" explicitly retains the much higher "undue hardship standard" which was repealed and replaced by the Minnesota Legislature with the "practical difficulties standard." The SONAR notes that "no statute dictates the standard used by watershed districts" as a justification to continue with this outdated standard. <u>While perhaps not outright illegal to retain the higher and more difficult standard, in light of the great burden imposed by the much lower redevelopment standard and other regulatory adjustments, it is unduly burdensome, both financially and intrusively, that the higher standard should be enforced.</u> The SONAR gives no legitimate justification for refusing to comply with the current standard now used by City and County land use and zoning programs.</p>	<p>Unlike cities and counties, watershed districts are not subject to a framework imposed by state law in making variance determinations. Therefore, though the Minnesota Supreme Court found that "undue hardship" can only be found when no reasonable use of a property is available without granting the variance, that strict standard does not bind BCWD. The BCWD Board of Managers remain committed to utilizing an approach that balances risk to resources from shortfall in compliance against burden on the applicant. The managers considered adopting the "practical difficulties" standard that now applies to city and county area variances, but with advice of counsel considered the statutory variance factors under each test and found that the undue-burden variance factors better guide watershed-rule variance decisions than the factors in statute for practical-difficulties decisions. At the December 13 hearing, the Board of Managers again considered whether to review and consideration adoption of the practical-difficulties standard for review of variance requests and determined that doing so would not outweigh the benefits of retaining the board's established framework for granting variances.</p>
21	SONAR / Definitions / Rule 1.0 Procedural Requirements	Mark Lambert	Individual	<p>J. <u>Technical concerns/ hyperlink revisions now effective immediately.</u> I cannot speak to whether the technical changes in the SONAR are reasonable or unduly burdensome; however there is an administrative issue by removing the design guidance materials from the definitions section to a hyperlink that provides access. The problem is that the revisions could be effectively changed instantaneously each time there is a website update. An update or more recent edition might occur while a storm water plan is designed and submitted for approval. How are any changes to the hyperlinked revisions going to impact plans currently in the review process?</p>	<p>In response to this comment and for purposes of clarity, BCWD moved the design and construction guidance references to the required exhibits section of the rule (please see new subsection 2.7.1). The move of the references to the exhibit section underscores that when submitted to support a permit application, designs and plans must be consistent with the best practices provided in the referenced state-of-the-art practices and techniques materials. Such materials can save property owners time and the cost of having to research best practices themselves, and while it is unlikely that a change to the referenced standards would have a significant impact on designs or plans for a specific project, BCWD does not require applicants to update plans and designs to conform to updates made to the reference materials after submission of a complete application.</p>
22	General / SONAR	Mark Lambert	Individual	<p>K. <u>Rule Appeal Process.</u> Neither the SONAR nor the proposed rules elaborate a process for appeal. The proposed rule changes should clearly articulate how they may be challenged in district court presuming they are ultimately adopted.</p>	<p>The process and requirements for appealing the BCWD rules is established by state law. BCWD cannot provide the commenter with legal advice.</p>
23	Page 8, Definitions - Reconstruction	Beth D. Neuendorf, PE	MNDOT	<p>Are pipe, culvert and catch basin in kind replacements exempt from reconstruction?</p>	<p>In response to this comment, BCWD has added the following clarifications to the definition of reconstruction: "The following do not constitute "reconstruction" for purposes of these rules: impervious surface mill, reclamation or overlay; paving of an existing rural section gravel road; catch basin or pipe repair/replacement that maintains existing hydraulic capacity."</p>
24	Page 15, Stormwater Management Rule, Applicability, 2.2.c	Beth D. Neuendorf, PE	MNDOT	<p>Could a reference be added to show the location of the groundwater dependent natural resources?</p>	<p>BCWD has not created a comprehensive map of groundwater dependent natural resources in the watershed. (A map of the groundwater-dependent natural resources that BCWD has already identified can be found in the BCWDs 2017-2026 Watershed Management Plan.)</p>
25	Page 15, Stormwater Management Rule, Applicability, 2.2.c	Beth D. Neuendorf, PE	MNDOT	<p>Can linear projects be exempt from infiltrating (providing volume control) in Type D soils if our only location for infiltrating is in Type D soils? Our experience trying to infiltrate in anything less than Type C soils has not be good. Are there also exemptions for the typical non-starters including, high groundwater and contaminated soils?</p>	<p>BCWD has provided for a specific volume-control requirement consistent with its established standard for linear projects on soils classified as HSG type D - that is, the requirement is not changing. BCWD has found that linear projects have been able to comply with this standard. (Note that the standard is newly applied under the proposed revision to projects exceeding 5,000 square feet of new or reconstructed impervious surface within the surface-water contributing area to a groundwater-dependent natural resource instead of the previous application trigger of 5,000 square feet of disturbance.) The BCWD is not proposing standard exemptions but can address site-specific constraints through the variance process.</p>

26	Page 15, Stormwater Management Rule, Standards, 2.4.b	Beth D. Neuendorf, PE	MNDOT	Providing no increase in stormwater flow volume from all points where discharge leaves the site compared to the pre-settlement condition will not be possible for all points where stormwater leaves the site on linear projects. Our right of way is narrow, there are numerous points where stormwater leaves the site on rural highway sections and soils are not always conducive to infiltration which is the main means of volume control for linear projects. This will also mean that we are required to provide more volume control than is specified in the proposed 2.2.c.i and ii section of the rules.	Based on review of recent linear projects in the contributing area to groundwater dependent natural resources, permit applicants have been able to meet or exceeded the volume control standard at all points where discharge leaves the site. The BCWD can address site-specific constraints through the variance process.
27	Page 15, Stormwater Management Rule, Standards, 2.4.c	Beth D. Neuendorf, PE	MNDOT	This part discusses no increase in annual phosphorus loading to an onsite receiving waterbody or wetland. The SONAR (top of page 7) says that this applies to properties (R/W) that wholly contain the waterbodies or wetlands that you need to treat stormwater runoff to the BCWD water-quality standard before discharging to. Can the language regarding wholly containing the resource on the property be added to section 2.4.c?	The comment is a bit difficult to follow, but BCWD does not find that a change in the rule language is warranted. The addition to the standard in 4.2.1(c) is designed to ensure that stormwater runoff to onsite resources is treated to the standard, even when that water resource is entirely contained on the applicant's property. It's not clear that this provision would apply often or even ever to linear projects, given the unique (narrow) site shapes do not lend themselves to entirely containing a water resource. As such, the change to the rule is unlikely to produce new or additional stormwater-management burdens on linear projects.
28	General	Eric Johnson	OPH	Generally, if all these new rules go into effect, how will we all know they are working? What is the measurement standard? Perhaps this could be included?	It is important to recognize that the rules are not new, but rather revisions of well-established and statutorily required regulatory provisions. The rules are intended to ensure new development and redevelopment activity does not degrade downstream resources. Monitoring data collected throughout the watershed are evaluated annually to assess the health of the resources. Long-term trends will demonstrate whether or not the combination of the BCWD regulatory program, capital improvement projects and education and outreach efforts are protecting and improving the health of water resources in the Brown's Creek watershed.
29	SONAR	Eric Johnson	OPH	In the SONAR, I note my name is listed in the TAC, I believe I was at one meeting and really don't recall discussing these in any real detail; By listing the TAC it implies that all parties were good with ALL these changes....maybe drop this listing for the TAC or clarify its purpose.	The listing of the Technical Advisory Committee members' names is merely meant to recognize their contributions to the rulemaking process, and does not constitute or suggest an endorsement of the rule revisions by any individual member or the group as a whole.
30	Definitions, "Best Management Practices (BMPs)", Page 3	Eric Johnson	OPH	So the BCWD is throwing away a State standard?	The design and construction guidance materials are moved to the exhibits section of Rule 2.0.
31	Definitions, "Feasible", Page 3	Eric Johnson	OPH	What is the measurement standard for this	The definition provides a framework for determination of when a particular technical achievement is "feasible." Ultimately the determination of such narrative standards, though, is made by the BCWD Board of Managers with analytical support from BCWD staff.
32	Definitions, "Impervious surface", Page 4	Eric Johnson	OPH	How is a Pool impervious, do you mean pool deck?	The BCWD engineer's technical judgment is that both a pool deck and the surface of a pool itself are impervious surfaces.
33	Definitions, "Land altering activity", Page 4	Eric Johnson	OPH	But wind action is? Perhaps cite the standard that farming should follow	The referenced text does not make a qualitative determination as to whether farming activities cause erosion, but rather notes that - for reasons discussed in the memo supporting the rules and in prior statements of need and reasonableness produced for BCWD rulemakings - routine farming activities are not regulated by BCWD.
34	Definitions, "Reconstruction", Page 8	Eric Johnson	OPH	Good that Mill and overlay is exempt	Comment noted.
35	Definitions, "Reconstruction", Page 8	Eric Johnson	OPH	This definition suggest that if a Building is damaged or reconstructed to more than 50% of its value, the entire site would need new stormwater compliance provisions implemented? What does a reconstruct of a building to its initial condition have to do with replacing an entire parking lot or adding ponding?	In response to the comment, BCWD staff reanalyzed the use of the term "reconstruction" in the rules and determined that reference to a percentage of redevelopment was not necessary. The reference has been removed from the definition for purposes of presentation of the revisions for adoption by the BCWD Board of Managers.

36	Definitions, "Steep slope", Page 8	Eric Johnson	OPH	Following what model or rules?	The comment is a bit difficult to follow or understand, but "steep slope" will be calculated as provided in the definition, and the BCWD engineer will make a recommendation to the managers based on analysis of site-specific conditions in circumstances where a discernable break in steep slope is not readily calculable. The recommendation will be based on site-specific technical analysis.
37	Rule 1.0: PROCEDURAL REQUIREMENTS, 1.3 Action by Board Managers	Eric Johnson	OPH	BCWD will be required to follow MN STAT 15.99 on process, this should be referenced here instead.	No reference to the timeframe for BCWD permitting decisions in state law is necessary. Minnesota Statutes section 15.99 applies and the BCWD regulatory program will be operated in accordance with the law whether the section is referenced in the rules or not
38	Rule 1.0: PROCEDURAL REQUIREMENTS, 1.4 Conformity with Local Requirements	Eric Johnson	OPH	This process might violate MN STAT 15.99.	Given that the referenced requirement is a precondition for completion of an application, compliance with review-and-decision timeline requirements in state law will continue to be a straightforward matter.
39	Rule 2.0: Stormwater. 2.2.a Applicability	Eric Johnson	OPH	This paragraph does not read clearly and needs to be revised for clarity, it is hard to know what is being asked or defined.	BCWD recommends review of the 'changes-accepted' version of this subsection, which actually has been revised in manner that substantially simplifies its operation.
40	Rule 2.0: Stormwater. 2.2.C Applicability	Eric Johnson	OPH	This creates very small lost for which some rules cannot be implemented upon, thus you might be looking at a inverse condemnation action, please revisit	BCWD staff struggled to understand the text and spirit of this comment, but BCWD legal counsel has raised no concerns that the applicability subsection of the stormwater rule raises inverse condemnation concerns. BCWD staff will follow up with the commenter in an effort to gain an understanding of the comment.
41	Rule 2.0: Stormwater. 2.2.d Applicability	Eric Johnson	OPH	10,000 square feet is very small	BCWD has compared its regulatory thresholds to those of other watershed organizations in the Twin Cities and Washington County and found them to be comparable.
42	Rule 2.0: Stormwater. 2.2.C (g) Applicability	Eric Johnson	OPH	the BCWD will want to be a bit careful with how it engages these elements - what is a groundwater dependednt resource ... and where is that located? What about MIDS	The process for determining the location and extent of groundwater-dependent natural resources is established by the rules. The memorandum supporting the rules explains how the Minimal Impact Design Standards were analyzed in the development of the rule revisions and how they influenced BCWD's decisionmaking with regard to the stormwater rule in particular.
43	Rule 2.0: Stormwater. 2.4.3 BMP DESIGN AND CONSTRUCTION	Eric Johnson	OPH	Where is the reference to MIDS standards?	Please see the response to comment 42.
44	Rule 2.0: Stormwater. 2.5.2 Site Design Practice Infeasibility	Eric Johnson	OPH	Isnt this what MIDS is supposed to help with?	Again, the comment is difficult to parse. But the framework for addressing stormwater-management requirements at sites at which infiltration is impractical or ineffective is addressed extensively in the rule text and memorandum supporting the rules.
45	Rule 2.0: Stormwater. 2.5.4 Acquisition of Property or Contract Rights	Eric Johnson	OPH	This land right would seem critical to downstream capacity, why not leave this in?	The acquisition of necessary land rights when an applicant is complying with BCWD stormwater-management requirements through a regional (offsite) facility or facilities is addressed in section 2.9.
46	Rule 2.0: Stormwater. 2.5.3 Basin in Contributing area to ground water dependent natural resource	Eric Johnson	OPH	By who?	Determinations of infeasibility will be made by the Board of Managers based on data and analysis provided by the permit applicant and on analysis of both by the BCWD engineer and staff.

47	Rule 2.0: Stormwater. 2.5.4 Maintenance	Eric Johnson	OPH	This entire paragraph is excessive, if the BCWD issues a permit, it can place a condition on it that it shall be required to perform to a given standard, but beyond that - the BCWD must be the party responsible to identify a future deficit and demand correction, not continued demonstration of performance. Access to any site is reasonable for the BCWD and is permitted under statute already	BCWD reasons that the paragraph referenced is not excessive, but rather states clearly for the benefit of the regulated community that ongoing maintenance of facilities constructed to comply with BCWD rules is a sensible and supported requirement to ensure to the greatest degree possible that they continue to function as designed.
48	Rule 2.0: Stormwater. 2.7.12 Soil-type analysis	Eric Johnson	OPH	when will this be applicable?	Analysis of soil conditions to show that HSG type D soils are present will be applicable when the applicant asserts that its stormwater-management design is submitted based on data showing that the property in question has significant portions of HSG type D soils.
49	Rule 2.0: Stormwater. 2.7.15 Thermal impact analysis	Eric Johnson	OPH	when will this be applicable?	Thermal impact analysis will be required when the BCWD engineer, based on extensive research and analysis of conditions in Brown's Creek watershed, has reason to assert that impacts to temperature-sensitive resources (such as Brown's Creek) are reasonably possible.
50	Rule 2.0: Stormwater. 2.8.1 Exceptions	Eric Johnson	OPH	Delete the underlined Single Family Homes Sites. This reads as if they are exempt	The referenced text does provide an exemption for single-family homes (when they are constructed consistent with a BCWD-approved and properly constructed stormwater-management system).
51	Rule 2.0: Stormwater. 2.9 Regional Treatment	Eric Johnson	OPH	I am not sure if these new rules are contrary to any contractual obligations made between the City and BCWD, if so, there should be language inserted that the contracted language shall prevail.	The agreement between BCWD and the City of Oak Park Heights is a contractual arrangement that is not affected by the rules changes. The city has already consented to the implementation of the volume standard in the BCWD Rules in the portion of Oak Park Heights that is subject to the Trout Stream Mitigation Project agreement. The TSMP facility provides capacity for the 1.5-year event volume control of the BCWD Rules from 2000. Specific agreements are supplementary to the rules, and need not be referenced in the rules.
52	Rule 3.0: Erosion Control, 3.2.2.f	Eric Johnson	OPH	following what standard?	BCWD has removed the reference to case-by-case analysis by the engineer from 3.2.2(f), leaving determination of the specific temporary sedimentation basins needed for a particular project to be determined by application of subsection 3.2.4 of the rule.
53	Rule 3.0: Erosion Control, 3.2.4, Temp sediment basins	Eric Johnson	OPH	These temp basins should be permitted to be as minimal in size as reasonably necessary... what does MIDS say?	The language provided in this section is consistent with the Minnesota Construction Stormwater General Permit requirements for temporary sediment basin sizing. MIDS does not provide guidance on sizing of temporary, construction phase best management practices for sediment control.
54	Rule 3.0: Erosion Control, 3.4, Agricultural Practices	Eric Johnson	OPH	good to see AG be bound by similar rules - I presume?	Routine agricultural activities are exempt from compliance with the BCWD Erosion and Sediment Control Rule. Please see the memorandum supporting the rules.
55	Rule 11.0: Enforcement, 11.2 Administrative Compliance Order	Eric Johnson	OPH	Isn't this already in place in practice? delete this...	The BCWD Board of Managers has elected to include the option of delegating administrative compliance order authority to the administrator. Given the lack of a basis for the assertion that the provision should be deleted, the managers have no reason to do so.
56	Rule 11.0: Enforcement, 11.3 Administrative Order	Eric Johnson	OPH	This should be MAY... not will. There could be a moral hazard by the BCWD contracting staff to actively seek violations - some which may not be meritorious, yet they will be reimbursed by the defendant?	BCWD documents and provides supporting justification for any costs assessed to a property owner or permittee in an enforcement action.