

**State of Minnesota**  
**In Court of Appeals**

CITY OF WOODBURY,

*Petitioner/Relator,*

vs.

MINNESOTA BOARD OF WATER & SOIL RESOURCES,

*Respondent,*

WASHINGTON COUNTY, VALLEY BRANCH WATERSHED DISTRICT,  
SOUTH WASHINGTON WATERSHED DISTRICT,

*Respondents.*

**REPLY BRIEF OF RELATOR CITY OF WOODBURY**

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## INTRODUCTION

Relator City of Woodbury (“Woodbury”) hereby submits this Reply Brief in support of its appeal of the May 27, 2009 decision by the Minnesota Board of Water & Soil Resources (“BWSR”) approving two petitions submitted by Washington County to enlarge the South Washington Watershed District (“SWWD”) and the Valley Branch Watershed District (“VBWD”).

## LEGAL ARGUMENT

### **I. BWSR and Washington County’s interpretation of the watershed district enlargement statute, that petitions must be accepted or rejected as submitted, will lead to absurd results.**

Respondents argue that the watershed district enlargement statutes should be interpreted such that BWSR must accept or reject a petition as submitted, suggesting that the language of the statute mandates this interpretation, and that such an interpretation serves a purpose of providing local government and citizen input to the water law decisions. (BWSR Br. at 11-12.) Contrary to Respondents’ argument, the enlargement statute is ambiguous at best as to whether BWSR has the ability to modify the proposed boundaries as petitioned. For example, the establishment statute provides that a petition must describe the proposed watershed district property in “general terms” and provide a map with the proposed boundaries. Minn. Stat. § 103D.205, subd. 2 (2008). Likewise, the boundary change statute requires only “a description, in general terms, of the property affected by the proposed boundary change” and “by illustration in a map, the proposed boundary change.” Minn. Stat. § 103D.251, subd. 4 (2008). Although the petitions need only

describe the proposed boundaries in “general terms,” the order of BWSR on such petitions is required to conclusively set forth: “the boundaries of the watershed district.” *See* Minn. Stat. § 103D.225, subd. 3(4) & § 103D.251, subd. 7(b)(2) (2008). Thus it appears BWSR has authority to modify the boundaries when it orders where the boundaries are to be set. For the reasons in its principle brief and the reasons set forth herein, Woodbury respectfully requests that the Court clarify any ambiguity in the statutes in favor of granting BWSR the authority to modify proposed boundaries.

Respondents’ interpretation of the statutes makes little sense and will lead to absurd results such as occurred in this case. BWSR is charged with having expertise in the area of water law. It is bound to render decisions based upon “sound scientific principles for the protection of the public health and welfare and the provident use of the natural resources....” Minn. Stat. § 103D.201, subd. 1 (2008). To force BWSR to render a take-it-or-leave-it decision essentially ties its hands, and does not allow BWSR to utilize its sound judgment, scientific knowledge, or expertise to formulate the state’s watershed law. Instead, local government, or even a handful of citizens, will be charged with formulating appropriate boundaries for watershed districts in virtually every case, despite lack of knowledge and expertise by such entities and individuals.

Under Respondent’s proposed approach, rather than formulating optimal watershed districts, an accept-or-reject approach will lead BWSR to decide only one issue- does the proffered petition provide some minimal benefit as compared to the status quo? If the answer is ‘yes,’ then it appears that Respondents contend BWSR should accept the

petition, and some minor incremental benefit will be affected, whereas major benefit, sound decisions, and optimal results will have been avoided.

In this case, just such a result has occurred. BWSR approved the petition as submitted merely to eliminate the LSCWMO, but another absurd result has occurred because the petitioners formulated the new boundary of the SWWD to cross a major hydrological divide. Such absurd results are more likely to occur if local petitioners are given the power to formulate their petitions, with BWSR's authority being limited to an acceptance or rejection. Fortunately in this case, local citizens in the Woodbury area have already formulated and submitted a new petition seeking to revise the boundary between the expanded VBWD and SWWD to follow the major hydrological boundary. However, BWSR and the affected municipalities and citizens may not be so lucky in the next case, and could be trapped with absurd results unless BWSR's authority is properly interpreted to allow it to revise the boundaries as petitioned. The affected parties should not be left to wade through a lengthy and wasteful trial-and-error process of multiple petitions before a reasonable result is achieved.

Instead, the statutes should be interpreted such that BWSR has the authority to determine what the optimal result would be, and so modify the petition using its expertise and "sound scientific principles." BWSR cannot be left with an accept-or-reject process whereby BWSR is left at the mercy of petitioners to formulate appropriate watershed district boundaries.

Respondents duly note that all of the affected parties, including Woodbury, supported the dissolution of the LSCWMO. Although this is true, the fact that Woodbury and

others supported the dissolution of the LSCWMO does not mean that the petitions as submitted to apportion the land of the dissolved LSCWMO were appropriate. No substantial evidence supported the apportionment of the land as submitted, nor did BWSR's decision explain why apportionment of the land as petitioned was appropriate. Washington County admits that it did not submit extensive information to BWSR regarding the new boundary line placement. (Resp. Wash. Co. Brief at 19.) In fact very little information was presented about the purported propriety of the new boundary, likely because the new boundary was glaringly inappropriate. The petitions and BWSR's decision focused on the desire to eliminate the LSCWMO, while glazing over the boundary issue. BWSR was unfortunately forced to choose between the lesser of two evils, and such an approach should not be condoned or upheld.

BWSR should not be forced to simply hope that its petitioners formulate rational, scientifically sound, and well grounded petitions. Instead, BWSR should be given the authority to utilize its expertise in an appropriate fashion. Because BWSR's decision in this matter was clearly rendered under an assumption that it did not have such authority, its decision should be reversed and remanded for further consideration.

**II. If BWSR and Washington County are correct, that petitions must be accepted or rejected as submitted, then BWSR should have rejected the petitions because they failed to conform to the sound scientific principles and policies of the Minnesota water law, thereby rendering BWSR's decision arbitrary, capricious, and unsupported by substantial evidence.**

Respondents assert that the petitions in this case were properly granted, and properly served the purposes and policies of the Minnesota Water Law. To the contrary, the petitions

did not conform to sound scientific principles, are unsupported by substantial evidence, and if BWSR is limited to accept-or-reject, then BWSR should have been rejected the petitions.

The sole rationale propounded by BWSR to support its approval of the petitions was that the LSCWMO was a disfavored organization, and that the expanded SWWD and VBWD would “accomplish more in the area of watershed management” than the LSCWMO would. Elimination of a disfavored joint water management organization is not a proper purpose enumerated within Minn. Stat. § 103D.201, nor does BWSR explain exactly what it expects the expanded SWWD and VBWD will “accomplish” that LSCWMO did not. BWSR’s decision is unfounded, and arbitrarily based upon speculation. Its findings of fact and conclusions of law ring hollow, and despite the fact that its decision is ten pages in length, it contains no meaningful findings of fact or conclusions of law as to what the expanded watershed districts will accomplish in their newly added area, nor what statutory purposes under Minn. Stat. § 103D.201, subd. 2 will be served.

BWSR was well aware of the strong opposition to the petitions by Woodbury, yet it rendered a decision and approved the petitions without any discussion of Woodbury’s contrary position, nor any meaningful, substantial evidence supporting its decision. BWSR had a duty to reject the unsubstantiated petitions. If indeed BWSR is limited to accept or reject a petition as submitted, then BWSR had a duty to reject Washington County’s petitions, as the proposed boundaries were unsupported by substantial evidence and were in direct contravention of the sound policies and principles of the Watershed Law. BWSR had a duty to reject the petitions with a directive to the petitioners to formulate a scientifically sound petition, rather than BWSR blindly accepting an unsound petition to

further an arbitrary goal of eliminating the LSCWMO. To hold otherwise would inappropriately encourage petitioners to submit petitions for improper political purposes, thereby undercutting the purposes of the Watershed Law.

**III. Woodbury's substantial rights have been prejudiced by BWSR's decision, thus Woodbury has proper standing to challenge BWSR's Order.**

Respondents assert that Woodbury's appeal is improper because it has not set forth any potential prejudice to its "substantial rights." The prejudice to the substantial rights of Woodbury is obvious in this case, and hardly bears mentioning, but Woodbury will nonetheless reply to these contentions of Respondents.

Woodbury lies within three watershed districts, including SWWD and VBWD. A majority of Woodbury falls within SWWD. Historically, SWWD has dealt only with the Mississippi River watershed. As a result of BWSR's decision, a significant portion of SWWD's attention, talent, and resources will be diverted to learning and managing watershed issues relating to the newly added areas within the St. Croix River watershed. SWWD will be forced to learn and master an entirely new set of rules and regulations relating to the St. Croix River. SWWD's time, ability, funding, and resources will be diverted to this new area. As a result, the quality of service to the preexisting remainder of the SWWD may drop precipitously. Without doubt, this constitutes prejudice to the substantial rights of the large portion of Woodbury located within SWWD. As such, Woodbury has suffered and will continue to suffer prejudice to its substantial rights, and therefore has standing to challenge BWSR's decision on appeal.

The same is true with respect to BWSR's decision to increase the number of managers of SWWD. The population of Woodbury constitutes a significant portion of the constituency of SWWD. BWSR's decision increased the number of managers of SWWD from five to seven. Washington County apparently intends to appoint those two new managers from within the constituents in the sections of land newly added to SWWD. These newly added areas are more sparsely populated than Woodbury. As a result, the two newly added managers (now constituting almost 30% of the managers of SWWD), will represent the interests of a small minority of the persons within the SWWD, and representation of the interests of Woodbury has been highly diluted and reduced. This result constitutes prejudice to the substantial rights of Woodbury, and confers standing upon Woodbury to challenge the decision of BWSR to increase the number of managers of SWWD.

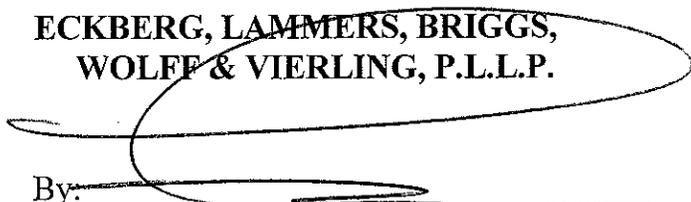
### CONCLUSION

Washington County's petitions to enlarge the SWWD and VBWD were flawed from the start due to the fact that they contained a 'poison pill' whereby BWSR's decision was limited to a take-it-or-leave-it basis. The petitions were further rendered improper by the fact that SWWD was proposed to be enlarged across a major hydrological boundary, in dereliction of the scientific principles and purposes by which a watershed district is bound. The City of Woodbury respectfully suggests that BWSR should have rejected the petitions outright, and its decision to approve the petitions as submitted should be reversed, with a directive to BWSR to reject the petitions.

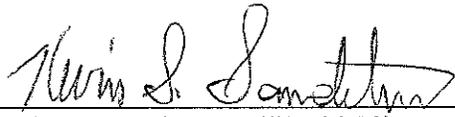
Likewise, BWSR's decision to increase the number of managers of SWWD was arbitrary, capricious, and unsupported by substantial evidence. The purported rationale for the increase was to provide better representation to the newly added land, however, the existing managers of the SWWD are appointed at large and already represent the entire watershed district, rather than a particular precinct or ward. The increase in the number of managers was needless, resulted in substantial prejudice to Woodbury and other existing cities within the SWWD, and should be reversed.

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**FORMAT CERTIFICATION**

The undersigned hereby certifies pursuant to Minn. R. Civ. App. P. 132.01, subd. 3(c), that the word count of the foregoing brief of Relator City of Woodbury, including footnotes, but exclusive of pages containing the Table of Contents and the Table of Authorities, is **2,004 words**. The Brief complies with the typeface requirements of the rules and was prepared, and the word count was made, using Microsoft Word.

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