

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE ENVIRONMENTAL QUALITY BOARD**

Proposed Amendments to Rules Governing
the Minnesota Environmental Review
Program, Minnesota Rules, parts 4410.0200
to 4410.7070, Adding Mandatory EAW and
Exemption Categories for Recreational Trail
Projects

**REPORT OF THE
ADMINISTRATIVE LAW JUDGE**

INTRODUCTION

The rules proposed in this proceeding make certain recreational trail projects subject to a mandatory Environmental Assessment Worksheet (EAW) and make other recreational trail projects exempt from environmental review altogether. Currently, there are no mandatory categories or exemptions for recreational trails in the Environmental Review Program rules of the Environmental Quality Board (the EQB). For reasons set forth below, the Administrative Law Judge concludes that the EQB has demonstrated the need for and reasonableness of the proposed rules.

This Report is part of the rulemaking process that must occur under the Minnesota Administrative Procedure Act (APA)^[1] before an agency can adopt rules. The legislature designed the process to ensure that state agencies—here, the Environmental Quality Board (the EQB or the Board)—meet the APA requirements for adopting rules. Agencies are required to demonstrate that their proposed rules are necessary and reasonable and that any modifications they later propose do not result in rules that are substantially different from those originally proposed.

Administrative Law Judge Steve M. Mihalchick conducted public hearings on the proposed rules on the following dates at the following locations:

January 11, 2005, at 2:00 p.m. and 7:00 p.m., at the Northern Inn,
Highway 2 West, Bemidji, MN 56601. Four people attended at 2:00 p.m.;
none at 7:00 p.m.

January 12, 2005, at 2:00 p.m., at the Hermantown Public Safety Training
Facility, 5111 Maple Grove Road, Hermantown, MN 55811. Seven people
attended. The Administrative Law Judge cancelled the 7:00 p.m. session
because of inclement weather. It was later rescheduled for February 16,
2005.

January 19, 2005, at 2:00 p.m. and 7:00 p.m., Fort Snelling History Center Auditorium, Fort Snelling, MN. Two people attended at 2:00 p.m.; five at 7:00 p.m.

February 14, 2005, at 2:00 p.m. and 7:00 p.m., at South Central Technical College, 1920 Lee Boulevard, North Mankato. Two people attended at 2:00 p.m.; one at 7:00 p.m.

February 16, 2005, at 7:00 p.m. at the Hermantown Public Safety Training Facility, 5111 Maple Grove Road, Hermantown. Sixteen people attended.

February 17, at 2:00 p.m. and 7:00 p.m., at Rainy River Community College, 1501 Highway 71, International Falls. Three people attended at 2:00 p.m.; two at 7:00 p.m.

The hearings continued until all persons present had an opportunity to be heard.

Gregg Downing and Jon Larson, of the EQB's Environmental Review Program, appeared at the hearings to present the EQB's justifications for the rules and to respond to questions. Dwight Wagenius, Assistant Attorney General, appeared on behalf of the EQB at the January 19, 2005, hearing. Several employees of the Department of Natural Resources (DNR) appeared at the hearings to respond to questions about DNR's trails program and current activities. They were: Brian McCann, Dennis Thompson, Tom Balcom, Tim Browning, Matt Langan, and Tom Danger.

At the request of the EQB, the Administrative Law Judge extended the comment period to 20 days, until March 9, 2005, to allow interested persons and the Board to submit written comments. Through March 9, 2005, the Administrative Law Judge received 72 written comments from interested persons and groups.^[2] An EQB Staff Reply was also received from the EQB on March 9, 2005.^[3]

Six additional public comments were received during the five-working-day response period required by Minn. Stat. § 14.15, subd. 1, along with an EQB Staff Rebuttal.^[4] The hearing record was closed on March 16, 2005.

NOTICE

The EQB must make this Report available for review by anyone who wishes to review it for at least five working days before the EQB takes any further action to adopt final rules or to modify or withdraw the proposed rules. If the EQB makes changes in the rules, it must submit the rules, along with the complete hearing record, to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

After adopting the final version of the rules, the EQB must send the order adopting rules to the Administrative Law Judge. Provided that the agency has taken all of the required steps to adopt the rule, the Office of Administrative Hearings will request

certified copies of the rule from the Revisor of Statutes and file them with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Rulemaking Legal Standards

1. Under Minn. Stat. § 14.14, subd. 2, and Minn. R. 1400.2100, one of the determinations that must be made in a rulemaking proceeding is whether the agency has established the need for and reasonableness of the proposed rules by an affirmative presentation of facts. In support of a rule, an agency may rely on legislative facts, namely general facts concerning questions of law, policy, and discretion, or it may simply rely on interpretation of a statute, or stated policy preferences.^[5] The EQB prepared a Statement of Need and Reasonableness (SONAR)^[6] in support of its proposed rules. At the hearings, the EQB relied upon the SONAR as its affirmative presentation of need and reasonableness for the proposed amendments, supplemented by detail comments and answers by EQB staff at the public hearings and by the EQB's written post-hearing submissions.

2. The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule.^[7] Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case.^[8] A rule is generally found to be reasonable if it is rationally related to the end sought to be achieved by the governing statute.^[9] The Minnesota Supreme Court has further defined an agency's burden in adopting rules by requiring it to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."^[10]

3. An agency is legally entitled to make choices between possible approaches so long as its choice is rational. It is not the role of the Administrative Law Judge to determine which policy alternative presents the "best" approach, since this would invade the policy-making discretion of the agency. The question is, rather, whether the choice made by the agency is one that a rational person could have made.^[11]

4. In addition to need and reasonableness, the Administrative Law Judge must also assess whether the rule adoption procedures were properly followed and whether any parts of the proposed rules are improper because a rule grants undue discretion, the agency lacks statutory authority to adopt a rule, a rule is unconstitutional or otherwise illegal, a rule constitutes an undue delegation of authority to another entity, or because the proposed language of a rule does not constitute a rule.^[12]

Procedural Requirements

5. Minn. Laws 2003, Chap. 128, was enacted May 28, 2003. Minn. Laws 2003, Chap. 128, Art. 1, § 167, subd. 3, directed the EQB to adopt rules providing for threshold levels for environmental review for recreational trails by January 1, 2005. Section 167 was effective July 1, 2003.^[13]

6. The EQB prepared a draft Request for Comments that it intended to publish in the *State Register* as required by Minn. Stat. § 14.101, and provide to other persons as well. By letter of July 21, 2003, the EQB filed a request with OAH for review and approval of its Additional Notice Plan.^[14] By letter of July 24, 2003, Administrative Law Judge George A. Beck approved the Additional Notice Plan for the Request for Comments.^[15]

7. On July 28, 2003, the EQB published a Request for Comments at 28 *State Register* 81. That was within 60 days of the effective date of Minn. Laws 2003, Chap. 128, Art. 1, § 167, subd. 3, as required by Minn. Stat. § 14.101. As also required by that statute, the Request for Comments described the subject matter of the proposal, described the types of groups and individuals likely to be affected, indicated how persons could comment on the proposal, and indicated how drafts of any proposal could be obtained from the agency.^[16]

8. The Request for Comments asked that comments be submitted by October 1, 2003. However, several people requested additional time, so the EQB continued to accept comments through March 1, 2004. Twenty-eight comments were received.^[17]

9. Based on the comments, the EQB staff prepared a document entitled "Staff Proposed Options" that presented several options for various types of trail categories. The Staff Proposed Options were reviewed by the Board and staff on May 20, 2004, and then distributed to interested persons who had requested to be included on an e-mail distribution list for purposes of this rulemaking. Notice was also given in the *EQB Monitor* on June 7, 2004. Comments on the options were due by July 19, 2004. All comments received from the public in both rounds of comments are posted at the EQB's website at www.eqb.state.mn.us/docket.html?id=6977. The EQB staff considered all the comments received, then drafted the proposed rules.^[18]

10. On September 16, 2004, the EQB adopted a resolution authorizing adoption of the proposed rules.^[19]

11. As required by Minn. Stat. § 14.131, the EQB asked that the Commissioner of Finance help evaluate the fiscal impacts and benefits of the proposed rules upon local units of government. In a memorandum of October 19, 2004, the Department of Finance noted that request and provided its evaluation that the proposed rules would have little impact on local units and that most of the impact would be upon the DNR.^[20]

12. On November 1, 2004, the EQB filed the following:

- a. A copy of the proposed rules approved by the Revisor of Statutes for publication in the *State Register*,
- b. A copy of a Notice of Hearing proposed to be issued, and
- c. A copy of a draft SONAR.

The letter described the EQB's Additional Notice Plan for the Notice of Hearing. It requested approval of the Additional Notice Plan.^[21] On November 8, 2004, Judge Beck approved Additional Notice Plan for the Notice of Hearing.^[22] The matter was then assigned to Administrative Law Judge Steve M. Mihalchick.

13. The Notice of Hearing was issued November 9, 2004.^[23] It contained the elements required by Minn. R. 1400.2080, subp. 2. It set hearings for January 11, 2005, in Bemidji, January 12, 2005, in Hermantown, and January 19, 2005, at Ft. Snelling. It announced that additional days would be scheduled if necessary.

14. On November 17, 2004, the EQB sent a copy of the SONAR to the Legislative Reference Library.^[24]

15. On November 18, 2004, the EQB added the Notice of Hearing, proposed rules, and the SONAR to the EQB website database. That made them available to the public on the EQB website.^[25]

16. On November 22, 2004, the Notice of Hearing and the proposed rules were published at 29 *State Register* 571-73.^[26]

17. On November 22, and December 6, 2004, the Notice of Hearing was published in the *EQB Monitor*.^[27]

18. On November 23, 2004, the EQB mailed the Notice of Hearing and SONAR to certain legislators as required by Minn. Stat. § 14.116.^[28]

19. The EQB and Department of Administration (Admin) prepared a news release describing the proposed rules, hearing dates and locations, methods of commenting, and other information. On December 1, 2004, Admin faxed the news release to Admin's major media list, emailed it to Admin's list of daily and weekly newspapers and radio stations, sent it for posting on the State's *North Star* website, and put a link on Admin's home page to the EQB's rulemaking website.^[29]

20. On December 1, 2004, the EQB mailed the Notice of Hearing and the proposed rules to all persons and associations on the special mailing list established as described in the Additional Notice Plan.^[30]

21. On December 2, 2004, the EQB mailed the Notice of Hearing and the proposed rules to all persons and associations who had registered their names with the agency for the purpose of receiving such notice.^[31]

22. The EQB added two more hearing dates and locations: February 14, 2005, in North Mankato, and February 17, 2005, in International Falls. On January 3, 2005, the EQB issued a Notice of Additional Days of Hearing in a form that had been approved earlier by the Administrative Law Judge.^[32]

23. On January 5, 2005, the EQB mailed the Notice of Additional Days of Hearing to all persons and associations who had registered their names with the agency for the purpose of receiving such notice and to all persons and associations on the special mailing list established as described in the Additional Notice Plan.^[33]

24. On January 6, 2005, Admin sent a news release on the additional hearings to its major media list and list of daily and weekly newspapers and radio stations, and posted it on the *North Star* website and Admin's home page.^[34]

25. On January 10, 2005, the Notice of Additional Days of Hearing was published at 29 *State Register* 808.^[35]

26. On January 11, 2005, at the first hearing in Bemidji, the EQB placed the following documents into the record:

a. The Request for Comments, as published in the State Register on July 28, 2003.^[36]

b. A copy of the proposed rule as approved by the Revisor of Statutes, dated September 27, 2004.^[37]

c. The Statement of Need and Reasonableness, signed and dated November 9, 2004.^[38]

d. The Certificate of Mailing the SONAR to the legislative reference library.^[39]

e. The Notice of Hearing, as mailed.^[40]

f. The Notice of hearing, as published in the State Register on November 22, 2004.^[41]

g. A Certificate of Mailing the Notice of Hearing to the Rulemaking Mailing List and of the Accuracy of the Mailing List.^[42]

h. A Certificate of Giving Additional Notice Pursuant to the Additional Notice Plan, *EQB Monitor*, EQB Website, and Special Mailing List.^[43]

i. A Certificate of Giving Additional Notice Pursuit to the Additional Notice Plan: News Release.^[44]

j. The one public comment received by the EQB prior to the first hearing.^[45]

k. The Certificate of the EQB's authorizing resolution.^[46]

l. The Certificate of Sending the Notice of Hearing and the Statement of Need and Reasonableness to Legislators.^[47]

27. In addition to the foregoing procedural documents, the EQB placed the following documents into the record on January 11, 2005:

a. Program Evaluation Report: *State-Funded Trails for Motorized Recreation*, Office of the Legislative Auditor, January 2003.^[48]

b. DNR spreadsheets with information on recreational trail projects from 1998 to 2002.^[49]

c. Comments received in response to July 28, 2003, Request for Comments.^[50]

d. Comments received in response to May 20, 2004, request for comments on EQB Staff Proposed Options.^[51]

e. Slides accompanying the opening statement of EQB staff member Gregg Downing at each of the hearings.^[52]

28. On January 13, 2005, the EQB added the Notice of Additional Days of Hearing to the EQB website database, making it available to the public on the EQB website. The EQB also added the Notice to the *EQB MONITOR* that was later published on January 17, 2005.^[53]

29. The EQB added another hearing for February 16, 2005, at 7:00 p.m. in Hermantown to replace the January 12, 2005, evening hearing in Hermantown that had been cancelled because of weather.

30. On January 26, 2005, the EQB added the Notice of Hermantown Hearing Rescheduled to the EQB website database and added the Notice to the *EQB MONITOR* that was later published on January 31, 2005.^[54]

31. On January 27, 2005, Admin sent a news release on the rescheduled Hermantown hearing to its major media list and list of daily and weekly newspapers and radio stations, and posted it on Admin's home page.^[55]

32. On January 28, 2005, the EQB mailed the Notice of Hermantown Hearing Rescheduled to all persons and associations who had registered their names with the agency for the purpose of receiving such notice and to all persons and associations on the special mailing list established as described in the Additional Notice Plan.^[56]

33. At the hearing in Hermantown on February 16, 2005, the EQB placed the following documents into the record:

a. A Certificate of Mailing the Notice of Additional Days of Hearing to the Rulemaking Mailing List and of the Accuracy of the Mailing List and the Notice of Additional Days of Hearing.^[57]

b. The Notice of Additional Days of Hearing, as published in the State Register on January 10, 2005.^[58]

c. A Certificate of Giving Additional Notice Pursuant to the Additional Notice Plan, *EQB Monitor*, EQB Website, and Special Mailing List regarding the Notice of Additional Days of Hearing.^[59]

d. A Certificate of Giving Additional Notice Pursuit to the Additional Notice Plan: News Release regarding the Notice of Additional Days of Hearing.^[60]

e. A Certificate of Mailing the Notice of Rescheduled Hearing to the Rulemaking Mailing List and of the Accuracy of the Mailing List.^[61]

f. A Certificate of Giving Notice of Rescheduled Hearing.^[62]

g. A Certificate of Giving Notice of Rescheduled Hearing in the City of Hermantown: News Release.^[63]

34. Following the hearings, the Administrative Law Judge placed four file documents in the record:

a. The July 21, 2003, letter to the Chief Administrative Law Judge from the EQB requesting approval of an Additional Notice Plan for the EQB's Request for Comments.^[64]

b. The July 24, 2003, letter to EQB from Administrative Law Judge Beck approving the Additional Notice Plan.^[65]

c. The November 1, 2004, letter to the Chief Administrative Law Judge from the EQB submitting the Notice of Hearing, proposed rules, and draft SONAR and requesting approval of the Additional Notice Plan for the Notice of Hearing.^[66]

d. The November 8, 2004, letter to EQB from Administrative Law Judge Beck approving that Additional Notice Plan.^[67]

35. On March 15, 2005, the EQB filed a Corrected Certificate of Sending the Notice of Hearing and the Statement of Need and Reasonableness to Legislators,^[68] and an October 19, 2004, memorandum from the Department of Finance regarding its evaluation of the fiscal impact and benefits of the proposed rules upon local units of government.^[69]

36. The proposed rules will not affect farming operations. Therefore, no notice to the Commissioner of Agriculture was required under Minn. Stat. § 14.111.

37. The EQB has complied with all applicable procedural requirements necessary for the adoption of the proposed rules.

Statutory Authority

38. Minn. Stat. § 116D.04, subd. 2a(a) states:

The board shall by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets shall be prepared as well as for categories of actions for which no environmental review is required under this section.

The EQB has authority to adopt and amend the mandatory categories and exemptions for EISs and EAWs under this provision.

39. Minn. Laws 2003, Chap. 128, Art. 1, § 167, subd. 3, states:

By January 1, 2005, the environmental quality board shall adopt rules providing for threshold levels for environmental review for recreational trails.

These rules have not been adopted by January 1, 2005. However, this statute is directory and provides no penalty for failure to meet the January 1, 2005, deadline. This is in contrast to Minn. Stat. § 14.125, which requires that an agency publish notice of intent to adopt rules within 18 months of a new statute authorizing or requiring rules to be adopted or amended. It also provides that if the notice is not published within that time limit, “the authority for the rules expires,” and the agency cannot use any other law in existence as authority to adopt or amend rules. Because Minn. Laws 2003, Chap. 128, Art. 1, § 167, subd. 3, contains no such provision, the EQB’s authority to adopt the proposed rules under Minn. Stat. § 116D.04, subd. 2a(a) did not expire.

40. The EQB has demonstrated that it has the statutory authority to adopt the proposed rules.

Regulatory Analysis

41. Under Minn. Stat. § 14.131, an agency must address the following in its SONAR:

a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

b. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

c. Whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

d. 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.

e. 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, such as separate classes of governmental units, businesses, or individuals;

f. 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; and The probable costs or consequences of not adopting the proposed rule.

g. 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.

h. How the agency considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002.

i. The agency's efforts to provide additional notification under section 14.14, subdivision 1a, to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

42. In the SONAR^[70], the EQB:

a. Stated that the proposed rules would directly affect units of government, primarily the DNR, but also counties and municipalities, that would be required to prepare EAWs for projects in the proposed mandatory categories. The public that uses recreational trails would be only indirectly affected by the proposed rules, and only with respect to the schedule for implementing a trail project.

b. Described the costs that the EQB will incur in the implementation of the rules as minimal. The DNR will bear most of the costs resulting from implementation of these rules because the DNR will do most of the needed EAWs. These rule amendments should have no effect on state revenues.

c. Stated that because the required purpose of the proposed rules is to create mandatory review and exemption categories for recreational trails, there are no other alternative methods available to accomplish this objective.

d. Described in considerable detail the several alternative approaches to deriving specific mandatory review and exemption categories that it considered, most in response to the public comments it had received. These included use of land ownership as a basic factor in setting the categories, disregard of trail use as a factor in the categories, use of motorized trail use as the primary factor, use of detailed information about possible resource impacts from trail projects, and use of mandatory EIS categories for certain recreational trails.

e. Stated that the costs involved in implementing the proposed rules will occur due to the mandatory EAW category proposals. A reasonable estimate of the costs of preparing a mandatory EAW is \$10,000 to \$50,000. Historically, there have been about three DNR trail projects per year that would have exceeded the thresholds in the proposed mandatory EAW categories. Thus, the total annual cost estimate ranges from \$30,000 to \$150,000.

f. Stated that if the proposed rule amendments are not adopted, all recreational trail projects will remain subject to environmental review on a case-by-case basis. Based upon the recent experiences, and the views expressed by people submitting comments in this matter, a substantial number of these projects may have petitions filed on them seeking preparation of an EAW. However, EQB has no data on the costs of handling a project-specific trail petition because the petitions filed on trails to date have covered trail plans for a whole state forest, not specific trail projects.

g. Stated that if the U.S. Forest Service or National Park Service did seek a trail permit from the State or a local unit of government, review could be triggered under the proposed rules. If that were to happen, existing environmental review rules would act to prevent duplication of effort and to provide for joint state-federal review with one set of environmental documents.

h. Stated that because the proposed rules do not affect the procedures of environmental review, which already do provide opportunities for flexibility in conducting reviews, there was no opportunity here for new performance-based rules or providing procedural flexibility.

i. Described the EQB's efforts to provide additional notice to persons who may be affected by the proposed rules as provided in its Additional Notice Plans that were approved by the Office of Administrative Hearings.

43. The Administrative Law Judge finds that the EQB has considered and satisfied the requirements of Minn. Stat. § 14.131.

Analysis of the Proposed Rules

The General Need for the Proposed Rules

44. The legislation directing the EQB to adopt mandatory review and exemption categories for recreational trails arose out of recent controversy over

motorized recreational vehicle (MRV) use in Minnesota. There are strong feelings among many citizens about the environmental damage MRVs often cause. There are equally strong feelings among many citizens about the use and enjoyment of MRVs and the economic impact of companies that manufacture and sell MRVs in Minnesota. Consequently, in the past several legislative sessions, several significant changes have been made to laws relating to these uses.^[71]

45. When the DNR released its first trail system plans for the three regions of northern Minnesota in 2000 and 2001, Minnesotans for Responsible Recreation (MRR) petitioned for environmental review. When the DNR denied the petitions, MRR appealed. The Court of Appeals ruled the system plans for the trails did not constitute “projects” subject to environmental review, but that eight of the proposed trails themselves were “projects” and, thus, required the preparation of an EAW.^[72] This litigation brought attention to the fact that the existing Environmental Review Program rules did not have any guidance regarding which kinds of trails were subject to review. This realization was a major impetus for the 2003 legislation requiring this rulemaking.^[73]

46. Throughout the history of the Environmental Review Program, the EQB has added or amended mandatory and exemption categories as necessary to create a framework of predictability for review of these activities. Predictability of review is very important to most project proposers in the scheduling of their projects, estimating costs, seeking financing, and other aspects of project implementation. When there are no mandatory review or exemption categories, review is uncertain for all projects. Establishing reasonable categories cannot end all uncertainties for all projects, but it does greatly reduce the level of uncertainty for most. Predictability is helpful to the public as well. The present rulemaking seeks to do this for recreational trails.^[74]

47. Another of the legislative changes in 2003 was to require DNR to analyze and reclassify trails on state forest lands as to what motorized uses were allowed. That process is exempt from any review under the Environmental Review Program until it is completed or December 31, 2008, at the latest.^[75] Thus, DNR’s motorized trail designations will not be subject to the proposed rules for the next few years. Until then, the rules will affect local or regional projects, including the many grant-in-aid projects built and maintained with grants administered by the DNR.^[76]

48. The EQB has demonstrated that the proposed rules are necessary because they are mandated by law and provide needed standards for projects and persons affected by the Environmental Review Program.

Broad Issues

49. Motorized uses of trails is an issue that deeply divides that citizens of Minnesota. On one hand, many people feel that the remote lands many trails are located on should be virtually free of the noise and environmental damage caused by motorized uses, especially ATVs. On the other hand, many people feel their personal enjoyment in operating their vehicles outweighs any obligation to the environment and

other people's interests. Most people have opinions somewhere in between. The comments made in this proceeding reflect the wide divergence of views. Some people feel, for example, that the rules inadequately protect the environment because EAWs are not mandatory for all motorized uses on all trail projects. Others feel that the EQB is "singling out" motorized uses and unfairly focusing on motorized uses contrary to legislative intent that all uses be treated equally.

50. The EQB Staff Reply,^[77] stated the Legislature did not intend for exactly the same result for every type of trail use and that the Legislature directed the EQB to adopt administrative rules because the Legislature recognized that the rulemaking process was necessary to craft appropriate distinctions and standards. Where the EQB proposed rules that apply only to some types of trails, it did so because there was sufficient evidence of important differences in potential for causing environmental impacts among trail types.

51. In response to those who felt that all motorized trails should have EAWs prepared for them, the EQB agreed that Environmental Review plays an important role in environmental protection in Minnesota. However, mandatory review of all projects of a given type is rare and discretionary review on a case-by-case basis is the norm. The EQB does not believe that a sufficient case has been made to require preparation of an EAW for all motorized uses.^[78]

52. Several people commented that the EQB should have based mandatory EAW thresholds on trail characteristics such as surface, width, length, and methods of construction. Many comments at the hearings criticized using thresholds of length. One commentator reasoned that because land type varies per region, the impact on that land will vary as well. Therefore, using a mileage threshold seemed arbitrary because it disregards land topography. Other commentators agreed and urged changing the threshold to the type of construction used for trails instead. A couple of commentators suggested considering the type of wildlife as a factor. One commentator from southern Minnesota thought that the length should be longer because most recreational trails are on private property.

53. The EQB Staff Reply^[79] noted that the proposed rules base the thresholds partly upon the physical characteristics of the trail, but stated that the EQB believed that the use of a trail is also an important factor and that it is appropriate that the rules use both type of use and physical characteristics for the various thresholds. The EQB also restated that the mileage threshold is easy to apply and provides consistency for project applicants.

54. Commentators active in recreational associations were concerned that a private association would have to pay for the EAW either directly or indirectly by contributing to dedicated funding accounts within the DNR. One commentator noted that non-motorized groups do not contribute to the dedicated funds; therefore, the burden would be on motorized groups. Another commentator was concerned that placing a burden on a local unit of government would constitute an unfunded mandate. Several county commissioners expressed similar concerns. Another commentator

suggested ensuring that additional funds be made available for monitoring and maintaining new motorized trails, in addition to enforcing proper designated use.

55. The President and Vice President of the Grant Trail Riders, who enjoy riding horses on trails, proposed several changes that would make designers of trail projects consider the needs of horseback riders and the dangers to and from horses on trails from other users and from inadequate trail design.^[80] The EQB Staff Reply acknowledged that the concerns were legitimate issues, but that they should be dealt with in trail design and were not environmental issues under the EQB's definition of "environment" at Minn. R. 4410.0200, subp. 23.

56. The Administrative Law Judge has read the all the public comments and reviewed the many, many photographs that were submitted of ATVs and OHVs being used and the impacts they can cause. The comments made by the public at the hearings and in writing after the hearing were very similar to the comments gathered and considered by the EQB while it was developing these rules. A few of the comments were identical to those previously submitted to the EQB. It is clear that the EQB fully considered all the issues raised by the public during the development of the rules and after the hearing.

Minn. R. 4410.4300, subp. 1.

57. The EQB amended this subpart to include a reference to the new subpart 37. This is an editorial change that is necessary and reasonable.

Minn. R. 4410.4300, subp. 37

58. Existing Minn. R. 4410.4300 sets forth the mandatory EAW categories. EQB proposes to add a new subpart 37 that lists four types of trail projects for which an EAW will be mandatory. As originally proposed, Subp. 37 read (all new language):

Subp. 37. **Recreational trails.** If a project listed in items A to D will be built on state-owned land or funded, in whole or part, by grant-in-aid funds administered by the DNR, the DNR is the RGU. For other projects, if a governmental unit is sponsoring the project, in whole or in part, that governmental unit is the RGU. If the project is not sponsored by a unit of government, the RGU is the local governmental unit. For purposes of this subpart, "existing trail" means an established corridor in current legal use.

A. Constructing a trail at least ten miles long on forested or other naturally vegetated land for a recreational use other than snowmobiling or cross-country skiing, or constructing a trail at least 20 miles long on forested or other naturally-vegetated land exclusively for snowmobiling or cross-country skiing.

B. Designating at least 25 miles of an existing trail for a new motorized recreational use other than snowmobiling.

In applying items A and B, if a proposed trail will contain segments of newly constructed trail and segments that will follow an existing trail but be designated for a new motorized use, an EAW must be prepared if the sum of the quotients obtained by dividing the length of the new construction by ten miles and the length of the existing but newly designated trail by 25 miles, equals or exceeds one.

C. Paving ten or more miles of an existing unpaved trail, unless exempted by part 4410.4600, subpart 27, items B or F.

D. Constructing an off-highway vehicle recreation area of 80 or more acres, or expanding an off-highway vehicle recreation area by 80 or more acres, on agricultural land or forested or other naturally vegetated land, or constructing an off-highway vehicle recreation area of 640 or more acres, or expanding an off-highway vehicle recreation area by 640 or more acres, on land which either is not agricultural or naturally vegetated or has been significantly disturbed by past human activities such as metallic or non-metallic mineral mining. If a recreation area for off-highway vehicles will be constructed partially on agricultural or naturally vegetated land and partially on land that is not agricultural or naturally vegetated or has been significantly disturbed by past human activities, an EAW must be prepared if the sum of the quotients obtained by dividing the number of acres of agricultural or naturally vegetated land by 80 and the number of acres of land that is not agricultural or naturally-vegetated or has been significantly disturbed by past human activities by 640, equals or exceeds one.^[81]

59. The first sentence of Subp. 37 assigns the responsible government unit. The methodology chosen by the EQB is consistent with the general principles for RGU assignment for other types of projects. If a state agency will carry out a project, it is the RGU, otherwise, the RGU is the unit that has the greatest responsibility for supervising or approving the project as a whole or that has expertise that is relevant for the review. There can be private trail projects that require no governmental permits. They are, therefore, not “governmental actions” and not subject to Environmental Review.^[82]

60. The second sentence of Subp. 37 defines “existing trail” as used later in Subp. 37. It distinguishes legitimate trails now in existence from unplanned or unauthorized tracks or pathways through forests or other lands.^[83] Subsequent provisions allow certain upgrades to existing trails. It would be inappropriate to allow unplanned and unauthorized trails the same benefit because they have never been subjected to any planning or approval.

61. The Koochiching County Board opposed all the proposed rules. They objected to being the RGU responsible to do EAWs on new recreational trails. They were concerned about how the rules would impact Koochiching County and other counties that have great expanses of saturated peat lands. They were concerned about the lack of clarity in the definition of “existing trail.” They suggested that there should be some consideration for what they called “non-recreational trails,” ones that are

“functional trails that lead to a specific destination not meant for the general public.”^[84] As they suggested at the hearings in International Falls, such trails might be used by a person in an ATV for access, rather than for recreation, such as to get to and from a deer stand, cabin, or other location.

62. It is very reasonable to have control over a trail project, including consideration of environmental impacts, in the hands of the smallest possible unit of local government. If the rules are not adopted, all new trails and modifications of existing trails in Koochiching County will be subject to petitions for Environmental Review, even ones that would be exempt under the proposed rules. The proposed rules will add some certainty on trail projects and the County Board will ultimately be the body that decides whether new trail projects should proceed.

63. In the EQB Staff Reply, the EQB proposed to modify the definition of existing trail as follows (new text underscored):

For purposes of this subpart, “existing trail” means an established corridor in current legal use that is not a designated State Forest Road.

The EQB staff accepted the modification proposed by the DNR in its post-hearing comment.^[85] It makes it even more clear that the rules do not apply to State Forest Roads, which is where many people ride motorized vehicles, and which are subject to the DNR designation process. The definition also covers the situations raised by the Koochiching County Board—if someone wants to use a pathway to a deer stand or cabin and that use is legal, nothing in these rules changes that.

64. Subp. 37. A. is the first of four items in the mandatory EAW categories. It covers construction of new trails, or new extensions of existing trails, on forested or other naturally vegetated land. For the winter uses of snowmobiling and cross-country skiing, the threshold is 20 miles. For all other uses, the threshold is 10 miles. The difference is because the winter uses are generally considered to have lesser environmental impacts because frozen soil conditions and snow or ice cover greatly reduce the potential for physical environmental damage. The EQB chose length as the primary parameter to make the recreational trail categories analogous to the existing categories for linear-type projects, including electrical transmission lines, pipelines, and highways. Linear projects generally vary in their potential for various environmental impacts in accordance with project length. Another benefit of using length as a surrogate for impact potential is that it does not treat certain user differently than others. Finally, length is a basic parameter of trail design that is easy to determine in the early stages of design, promoting an early determination of the need for EAW preparation with accompanying planning efficiency. Thus, the EQB chose to set the mandatory EAW thresholds at some reasonable number of miles, rather than including trails of all lengths as many commenters had advocated, at least for motorized trails.^[86]

65. The EQB chose the thresholds of 10 and 20 miles mostly because those numbers fit into the regulatory scheme of Environmental Review of other projects. The threshold for highways is one mile, for pipelines it is either 0.75 or 5 miles depending

upon the nature of the product transported and other factors, and for transmission lines it is 20 miles. Recreational trails in general pose less potential for environmental impacts than most highway or pipeline projects, but more than electrical transmission line corridors where there is little activity after construction is completed, few impacts beyond the right-of-way, and less direct physical intrusion by the structures than by continuous trail surfaces. Since snowmobiles and cross-country skiing have a lesser potential for impacts, doubling the threshold to 20 miles is a reasonable choice for those types of trails.^[87]

66. In the EQB Staff Reply, the EQB proposed to modify Subp. 37. A. as follows (new text underscored):

A. Constructing a trail at least ten miles long on forested or other naturally vegetated land for a recreational use other than snowmobiling or cross-country skiing, unless exempted by part 4410.4600, subpart 14, item D, or constructing a trail at least 20 miles long on forested or other naturally-vegetated land exclusively for snowmobiling or cross-country skiing.

The change was made because the new Subp. 37. A. created a conflict with existing Minn. R. 4410.4600, subp. 14. D. Under that rule, pedestrian and bicycle trails built in the right-of-way of a highway project are exempt. The originally proposed Subp. 37. A. would have wiped out that exemption. That was not intended.^[88] So it is necessary and reasonable to restate the exemption.

67. Subp. 37. B. sets a 25 miles threshold where an RGU is proposing to allow use on an existing trail by a form of motorized recreational vehicle not previously allowed, other than snowmobiles. The EQB set the threshold at two and one-half times the 10-mile threshold for new trails because the potential for environmental damage from designating a new use is diminished by the fact that a trail already exists. (Designating new snowmobile use on an existing trail is proposed for an exemption; see below.)

68. The paragraph following Subp. 37. B. addresses the likely occurrence where a planned trail includes construction of new segments and segments of new use designations on existing trails. A formula is applied like that used for mixed residential and commercial projects under Minn. R. 4410.4300.^[89] In essence, the formula says that the percentage of the ten or 20-mile allowance used for new alignment, plus the percentage of the 25-mile allowance used for designating a new use, cannot be greater than 100 percent. If it is, an EAW is mandatory. No comments were received regarding this provision. It is necessary and reasonable.

69. Subp. 37. C. is necessary because paving an existing unpaved trail creates an impervious surface that can cause runoff and erosion problems. The EQB set the threshold for a mandatory EAW where the paving is 10 miles or more, saying that, "creating an impervious surface over that length of trail creates sufficient potential for runoff and erosion problems to warrant review." The reference to exemptions is

necessary to avoid a conflict with the exemptions created in Minn. R. 4410.4600, subp. 27.^[90]

70. In the EQB Staff Reply, the EQB proposed to modify Subp. 37. C. as follows (new text underscored):

C. Paving ten or more miles of an existing unpaved trail, unless exempted by part 4410.4600, subpart 27, items B or F. Paving an unpaved trail means to create a hard surface on the trail with a material impervious to water.

This modification was in response to a comment by Don Youngdahl seeking a definition of “paving.” To the EQB, the key feature of paving an unpaved trail is the creation of a hard, impervious surface that can cause runoff and erosion problems. Mr. Youngdahl says off-road cyclists like him find natural surface trails far more enjoyable than trails paved with anything, even gravel. He would like the rule to apply to all paving. The EQB found no documented environmental reason for doing extending the rule to paving with materials that are not impervious to water.^[91]

71. Subp. 37. D. deals with recreation areas for off-highway vehicles, which are various forms of four-wheel-drive trucks. Some are modified extensively to enhance their ability to move over very difficult terrain. The only existing OHVRA was established by the DNR on a former mine site near Gilbert. Another similar area near Virginia has been authorized, but not yet built. OHVRAs cover many acres and include an intensive network of trails, special events areas, and support areas. Because of the impact of a concentrated network of trails and the configuration of OHVRAs, the proposed rule establishes a separate mandatory EAW category for them and bases the threshold on acreage covered rather than miles of length. An 80 acre threshold is set for naturally-vegetated and agricultural areas. It is the same as the threshold used in the land use conversion mandatory category in Minn. R. 4410.4300, subp. 36. For non-naturally-vegetated lands, agricultural, or disturbed lands, a 640 acre threshold is set. A much higher threshold is appropriate. The 640 acre threshold is the size of a “section,” which is a common land measure of one square mile. It provides a 1:8 ratio to the 80 acre threshold on naturally-vegetated land, which the EQB considers an appropriate ratio. Since it is likely that recreation areas could be proposed on lands subject to both thresholds, the same arithmetic method for determining if review is mandatory as is proposed at items A and B is proposed to be used here as well.^[92]

72. The Administrative Law Judge asked that the EQB rewrite Subp. 37 D. to make it more understandable. In the EQB Staff Reply, the EQB proposed non-substantive modifications to enhance readability and comprehension. They are as follows (deleted text overstruck, new text underscored):

D. Constructing an off-highway vehicle recreation area of 80 or more acres or expanding an off-highway vehicle recreation area by 80 or more acres, on agricultural land or forested or other naturally vegetated land.

E. Constructing an off-highway vehicle recreation area of 640 or more acres or expanding an off-highway vehicle area by 640 or more acres, ~~on~~ if the land on which the construction or expansion is carried out either is not agricultural ~~or~~, is not forested or otherwise naturally vegetated, or has been significantly disturbed by past human activities such as ~~metallic or nonmetallic~~ mineral mining.

F. ~~If a~~ Some recreation areas for off-highway; vehicles ~~will~~ may be constructed partially on agricultural or forested or other naturally vegetated land and partially on land that is not agricultural, ~~or is not forested or otherwise~~ naturally vegetated, or has been significantly disturbed by past human activities. In that case, an EAW must be prepared if the sum of the quotients results obtained by dividing the number of acres of agricultural or forested or other naturally vegetated land by 80 and the number of acres of land that is not agricultural, ~~or is not forested or otherwise~~ naturally vegetated, or has been significantly disturbed by past human activities by 640, exceeds one.

The EQB also modified the introduction of Subp. 37 to include the new items: "If a project listed in Items A to D E will" ^[93]

73. During the hearings, one person questioned whether the acreage would be evaluated by property boundaries or actual usage by off-highway vehicles, and whether it would include parking for competitions. Another commentator expressed concern that what constitutes land that "has been significantly disturbed" is too vague. An association representing off-highway vehicle users submitted written comment urging that these rules apply to all recreation areas, regardless of whether the area is designated for off-highway vehicles. The proposed rule could be more detailed, but it is clear enough to be applied by RGUs issuing permits for such recreation areas.

74. Subp. 37, as modified by the EQB in the EQB Staff Reply, is necessary and reasonable.

Minn. R. 4410.4600, subp. 1.

75. EQB amended this subpart to include a reference to the new subpart 27. This is an editorial change that is necessary and reasonable.

Minn. R. 4410.4600, subp. 27

76. Existing Minn. R. 4410.4600 sets forth the projects that are exempt from Environmental Review. The EQB proposes to add a new subpart 27 that lists five types of trail projects that will be exempt. As originally proposed, Subp. 27 read (all new language):

Subp. 27. **Recreational trails.** The projects listed in items A to F are exempt. For purposes of this subpart, "existing trail" means an established corridor in current legal use.

A. Rerouting less than 1 continuous mile of a recreational trail if the reroute is necessary to avoid sensitive areas or to alleviate safety concerns. Multiple reroutes on the same trail must be treated as independent projects, except that where the cumulative length of reroutes exceeds 1 mile on any 5 mile segment those reroutes are not exempt.

B. Reconstructing, rehabilitating, or maintaining an existing trail involving no changes in designated use.

C. Constructing less than 1 continuous mile of trail for use by snowmobiles or cross-country skiers.

D. Constructing a trail for winter-only use across agricultural land or across frozen water.

E. Designating an existing trail for use by snowmobiles or cross-country skiers.

F. Constructing or rehabilitating a non-motorized trail within the Twin Cities Metropolitan Regional Park System.

77. In the EQB Staff Reply, the EQB proposed to modify the definition of existing trail as it had for Subp. 37 as follows (new text underscored):

For purposes of this subpart, "existing trail" means an established corridor in current legal use that is not a designated State Forest Road.^[94]

78. Subp. 27. A. exempts projects that correct small problems on existing trails, but only where the existing trail is close to sensitive resources or where the trail location and configuration create issues of rider safety. The EQB set a one mile threshold for this exemption because that is long enough to allow for needed trail improvements but short enough that such corrections will likely have minimal environmental impact. It is also consistent with the regulatory scheme applied to other projects subject to Environmental Review. The second sentence of Subp. 27. A. addresses many very short reroutings on a single trail. The rule uses a cumulative total of one mile of reroutings along any five miles of trail. This makes the one mile threshold meaningful in this situation.^[95]

79. In the EQB Staff Reply, the EQB proposed to modify Subp. 27. A. as follows (new text underscored):

A. Rerouting less than one continuous mile of a recreational trail if the reroute is necessary to avoid sensitive resources or to alleviate safety concerns. Multiple reroutes on the same trail must be treated as independent projects, except that where the cumulative length of currently proposed reroutes exceeds one mile on any five-mile segment of trail, as measured along the rerouted trail, those reroutes are not exempt.

These modifications were made to clarify some vagueness in the originally proposed rule as to how the five-mile segment would be measured.^[96]

80. The exemption in Subp. 27. B. for reconstructing, rehabilitating, or maintaining an existing trail is proposed because these activities will likely have a very minimal impact on the environment. There is a similar exemption for highway “resurfacing, restoration, or rehabilitation that may involve minimal amounts of right-of-way.”

81. Subp. 27. C. exempts construction of less than one mile of trail for snowmobiling and cross-country skiing. The EQB proposed this exemption because snowmobiles and cross-country skiers have minimal environmental impacts because of snow and ice cover and frozen soils. This is not true for other uses or seasons, so the exemption is limited to these uses in the winter. Similarly, Subp. 27. D. exempts any length of new construction for winter use across agricultural land or frozen water of any length. Again, this is because of the minimal potential for environmental impacts on agricultural land or ice in the winter, even for uses such as winter-only ATV trails. Again because of the likely minimal environmental impacts, Subp. 27. E. exempts adding use by snowmobiles or cross-country skiers only to an existing trail.^[97]

82. Subp. 27. F. exempts non-motorized trails constructed within the Twin Cities Regional Park system from Environmental Review because non-motorized trails have a relatively low potential for environmental impacts and already undergo an extensive and public planning process that incorporates review of environmental factors.^[98]

83. Some commenters suggested exempting trails constructed in conjunction with roadway projects. As mentioned above, Minn. R. 4410.4600, subp. 14. D., already exempts trails constructed in road rights-of-way. No additional exemption is necessary here.^[99]

84. Subp. 27, as modified by the EQB in the EQB Staff Reply, is necessary and reasonable.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The EQB gave proper notice in this matter.
2. The EQB has fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law and rule.
3. The EQB has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat §§ 14.05, subd. 1; 14.15, subd. 3; and 14.50 (i) and (ii).

4. The EQB has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 4, and 14.50 (iii).

5. The modifications made by the EQB do not create rules that are substantially different from the proposed rules in the notice of hearing and, thus, do not violate Minn. Stat. § 14.05, subd. 2.

6. A Finding or Conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the EQB from further modification of the proposed rules based upon an examination of the public comments, provided that the rule finally adopted is based upon facts as appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rules, as modified by the EQB, be adopted.

Dated: April 12, 2005.

s/Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Hearings were recorded by several court reporters, except that the January 12 and February 17, 2005, hearings were tape-recorded (4 tapes). Transcripts of all hearings were prepared.

[1] Minn. Stat. §§ 14.131 through 14.20.

[2] Public Exhibits P1-P3 and P5-P73.

[3] EQB Exhibit 28.

[4] Public Exhibits P74-P79 and EQB Exhibit 30.

[5] *Mammenga v. Department of Human Services*, 442 N.W.2d 786 (Minn. 1989); *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984).

[6] EQB Exhibit 3.

[7] *In re Hanson*, 275 N.W.2d 790 (Minn. 1978); *Hurley v. Chaffee*, 231 Minn. 362, 43 N.W.2d 281, 284 (1950).

[8] *Greenhill v. Bailey*, 519 F.2d 5, 19 (8th Cir. 1975).

[9] *Mammenga*, 442 N.W.2d at 789-90; *Broen Mem'l Home v. Minnesota Dept. of Human Services*, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).

- [10] *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d at 244.
- [11] *Federal Sec. Adm'r v. Quaker Oats Co.*, 318 U.S. 218, 233 (1943).
- [12] Minn. R. 1400.2100.
- [13] Minn. Laws 2003, Chap. 128, contained appropriations and was, therefore, generally effective the July 1 following final enactment, unless otherwise specified. Minn. Stat. § 645.02. No different effective date was specified for Section 167.
- [14] EQB Exhibit 17. This procedure is allowed by Minn. R. 1400.2060,
- [15] EQB Exhibit 18.
- [16] EQB Exhibit 1.
- [17] EQB Exhibit 14.
- [18] EQB Exhibits 3 (the SONAR) at 3 and 15.
- [19] EQB Exhibit 10.
- [20] EQB Exhibit 29.
- [21] EQB Exhibit 24.
- [22] EQB Exhibit 25.
- [23] EQB Exhibit 5.
- [24] EQB Exhibit 4.
- [25] EQB Exhibit 8A.
- [26] EQB Exhibit 6.
- [27] EQB Exhibit 8A.
- [28] EQB Exhibit 11 and 11a.
- [29] EQB Exhibit 8B.
- [30] EQB Exhibit 8A.
- [31] EQB Exhibit 7.
- [32] EQB Exhibit 17.
- [33] EQB Exhibits 17 and 19.
- [34] EQB Exhibit 20.
- [35] EQB Exhibit 18.
- [36] EQB Exhibit 1.
- [37] EQB Exhibit 2.
- [38] EQB Exhibit 3.
- [39] EQB Exhibit 4.
- [40] EQB Exhibit 5.
- [41] EQB Exhibit 6.
- [42] EQB Exhibit 7.
- [43] EQB Exhibit 8A.
- [44] EQB Exhibit 8B.
- [45] EQB Exhibit 9. And, see, Public Exhibit P.1.
- [46] EQB Exhibit 10.
- [47] EQB Exhibit 11.
- [48] EQB Exhibit 12.
- [49] EQB Exhibit 13.
- [50] EQB Exhibit 14.
- [51] EQB Exhibit 15.
- [52] EQB Exhibit 16.
- [53] EQB Exhibit 19.
- [54] EQB Exhibit 22.

- [55] EQB Exhibit 23.
- [56] EQB Exhibits 21 and 22.
- [57] EQB Exhibit 17.
- [58] EQB Exhibit 18.
- [59] EQB Exhibit 19.
- [60] EQB Exhibit 20.
- [61] EQB Exhibit 21.
- [62] EQB Exhibit 22.
- [63] EQB Exhibit 23.
- [64] EQB Exhibit 24.
- [65] EQB Exhibit 25.
- [66] EQB Exhibit 26.
- [67] EQB Exhibit 27.
- [68] EQB Exhibit 11a.
- [69] EQB Exhibit 29.
- [70] EQB Exhibit 3 at 5-11.
- [71] EQB Exhibit 3 at 4.
- [72] *Minnesotans for Responsible Recreation v. Dept. of Natural Resources*, 651 N.W.2d 533 (Minn. App. 2002).
- [73] EQB Exhibit 3 at 5.
- [74] EQB Exhibit 3 at 5.
- [75] Minn. Laws 2003, Chap. 128, Art. 1, § 167, subds. 2 and 3,
- [76] EQB Exhibit 3 at 4-5.
- [77] EQB Exhibit 28.
- [78] EQB Exhibit 28.
- [79] EQB Exhibit 28.
- [80] Exhibit P5.
- [81] EQB Exhibit 2.
- [82] EQB Exhibit 3 at 12-13.
- [83] EQB Exhibit 3 at 13.
- [84] Exhibit P24.
- [85] EQB Exhibit 28 at 1.
- [86] EQB Exhibit 3 at 13-14.
- [87] EQB Exhibit 3 at 14-15.
- [88] EQB Exhibit 28 at 1-2.
- [89] EQB Exhibit 3 at 15.
- [90] EQB Exhibit 3 at 16.
- [91] EQB Exhibit 28 at 2; Exhibit P12.
- [92] EQB Exhibit 3 at 16-17.
- [93] EQB Exhibit 28 at 2-3.
- [94] EQB Exhibit 28 at 3.
- [95] EQB Exhibit 3 at 17-18.
- [96] EQB Exhibit 28 at 3.
- [97] EQB Exhibit 3 at 18.
- [98] EQB Exhibit 3 at 18-19.
- [99] EQB Exhibit 3 at 19.