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## MINNESOTA WATERSHED DISTRICTS - STRUCTURE, POWERS, AND DUTIES

This memorandum discusses the structure, powers, and duties of watershed districts in Minnesota. The law governing watershed districts in Minnesota is codified as Minnesota Statutes Chapter 103D (attached as Appendix A). Attached as Appendix B is a copy of the Minnesota watershed manager's handbook obtained from the web site of the Minnesota Association of Watershed Districts, Inc. The handbook discusses watershed districts, the powers and duties of watershed managers, watershed district projects, the legal obligations of watershed districts, the fiscal management of watershed districts, insurance needs of watershed districts, watershed district personnel, water-related acronyms, and the holding of watershed board meetings.

Minnesota watershed districts are special purpose local units of government whose boundaries follow those of a natural watershed. The name of the primary lake or stream in the watershed is usually the name of the watershed district. The handbook notes that because water is difficult to manage on the basis of political boundaries such as county or city lines, the Minnesota Legislature in 1955 authorized the creation of watershed districts. The handbook notes that because these districts are based on the natural hydrologic boundaries of a watershed, they allow for more practical and efficient water management.

Watershed districts are formed when citizens, county boards, or cities petition the Minnesota Board of Water and Soil Resources to form a district. The board is the state administrative agency for watershed districts. There are 42 watershed districts in Minnesota.

The handbook notes that over the years, watershed district responsibilities have increased significantly from their original objectives of managing surface water and flooding conditions. Watershed districts now deal with a wide variety of water-related concerns, including wetlands, ground water management, and water quality.

Minnesota Statutes Section 103D.201 states that the general purpose of watershed districts is to conserve the natural resources of the state by land use planning, flood control, and other conservation projects by using sound scientific principles for the protection of the public health and welfare and the provident use of the natural

resources of the state. This section provides that a watershed district may be established to control or alleviate damage from flood waters; to improve stream channels for drainage, navigation, and any other public purpose; to reclaim or fill wet and overflowed lands; to provide a water supply for irrigation; to regulate the flow of streams and conserve the stream's water; to divert or change all or part of watercourses; to provide or conserve water supply for domestic, industrial, recreational, agricultural, or other public use; to provide for sanitation and public health, and regulate the use of streams, ditches, or watercourses to dispose of waste; to repair, improve, relocate, modify, consolidate, and abandon all or part of drainage systems within a watershed district; to control or alleviate soil erosion and siltation of watercourses or water basins; to regulate improvements by riparian property owners of the beds, banks, and shores of lakes, streams, and wetlands for preservation and beneficial public use; to provide for hydroelectric power generation; to protect or enhance the water quality in watercourses or water basins; and to provide for the protection of ground water and regulate its use to preserve it for beneficial purposes.

Minnesota Statutes Section 103D.205 outlines the requirements for petitions to establish a watershed district. An establishment petition must be filed with the Board of Water and Soil Resources. The establishment petition must contain the name of the proposed watershed district; a description of the property to be included in the watershed district; the necessity for the watershed district and the contemplated improvements within the watershed district; the reasons why the watershed district and the contemplated improvements would be conducive to public health and public welfare, or would accomplish any of the purposes outlined in Section 103D.201; show by illustration on a map the proposed watershed district; disclose the number of managers proposed for the watershed district; and contain a list of the nominees for manager positions containing at least twice the proposed number of managers.

Sections 103D.221 through 103D.231 govern establishment hearings, Sections 103D.251

through 103D.265 govern the consolidation and changes in watershed district boundaries, Section 103D.271 contains the procedure for termination of watershed districts, Sections 103D.301 through 103D.355 govern watershed district managers, and Sections 103D.401 through 103D.551 govern watershed management plans.

Concerning the powers and duties of a watershed district, Minnesota Statutes Section 103D.335 provides that watershed districts have the power to sue and be sued; to incur debts, liabilities, and obligations; to exercise the power of eminent domain; to provide for assessments and to issue certificates, warrants, and bonds; and to perform all acts expressly authorized and all other acts necessary and proper for the district to carry out and exercise the power expressly vested in it. In addition, watershed districts may acquire and dispose of property, hire staff and consultants, and regulate development. The statute also authorizes watershed districts to exercise joint powers; cooperate with other entities; enter lands to make surveys and investigations to accomplish the purposes of the watershed district; provide for sanitation and public health and regulate the use of streams, ditches, and watercourses to dispose of waste and to prevent pollution; and borrow funds.

Minnesota Statutes Section 103D.401 governs watershed management plans. Watershed management plans must include updates and supplements of the existing hydrological and other statistical data of the watershed district; specific projects to be completed; criteria for storm water management from impervious surfaces pursuant to Section 103D.365; contain a statement of the extent that the purposes for which the watershed district was established have been accomplished; contain a description of problems requiring future action by the watershed district; contain a summary of completed studies on active or planned projects including financial data; and contain an analysis of the effectiveness of the watershed district's rules and permits in achieving its water management objectives in the watershed district. The handbook notes that the Board of Water and Soil Resources encourages districts to expand their plans to include an inventory of pertinent information on the district that describes the watershed's setting and hydrological characteristics; a description and assessment of existing and potential water and water-related problems; a description and assessment of possible solutions to high priority problems; a statement of the goals and specific objectives for water management within the

district; and a list of district policy statements that define the district's role in managing water and water-related resources and that establish district performance standards for sound water management.

Concerning the fiscal management of watershed districts, districts are authorized to establish organizational expense funds, administrative funds, survey and data acquisition funds, projects of common benefit involving municipalities funds, emergency projects of common benefit funds, planning and implementation funds, maintenance of capital improvement funds, preliminary work funds, construction funds, repair and maintenance funds, emergency projects for the benefits of property funds, and bond funds:

1. An organizational expenses levy may be levied once upon creation or expansion of the watershed district. The levy is an ad valorem tax and is the lesser of 0.01596 percent of taxable market value of real property within the district or \$60,000.
2. The administrative levy consists of an ad valorem tax levy which is the lesser of 0.02418 percent of taxable market value of real property within the district or \$125,000.
3. A survey and data acquisition levy may be collected once every five years, may not exceed 0.02418 percent of taxable market value of real property within the district, and the fund balance may not exceed \$50,000.
4. The projects of common benefit involving municipalities fund is financed by an annual levy not to exceed 0.00798 percent of market value of real property within the district for a period not to exceed 15 consecutive years. This tax is designed to finance the cost attributable to the basic water management features of projects initiated by petition of a municipality of the watershed district.
5. The emergency projects of common benefit fund is financed by an ad valorem tax levy upon all taxable property within the watershed if the cost is not more than 25 percent of the most recent administrative ad valorem levy of the watershed district.
6. The construction fund is designed to establish an account for each watershed district project for the receipt and disbursement of funds for costs associated with the project. This fund consists

of the proceeds of the sale of county bonds and construction loans from any agency of the federal government, special assessments to be levied to supply funds for the construction of the projects, and expenses incidental to and connected with the construction.

7. The repair and maintenance fund is designed to provide money for maintaining projects of a watershed district in a condition so that they will accomplish

the purposes for which they were constructed. The fund is financed from property assessments based upon the benefit the project provides to the affected property.

Watershed districts also have authority to issue bonds to purchase property and to improve and develop the property.

ATTACH:2

## CHAPTER 103D

### WATERSHED DISTRICTS

	GENERAL PROVISIONS		
103D.001	Citation.	103D.537	Appeals of rules, permit decisions, and orders not involving projects.
103D.011	Definitions.	103D.539	Informal resolution of disputes.
	BOARD OF WATER AND SOIL RESOURCES	103D.541	Appeal of court order.
103D.101	Board of water and soil resources.	103D.545	Enforcement.
103D.105	Board hearings.	103D.551	Enforcement of rules and orders.
103D.111	Appeal of board orders.		PROCEDURE FOR MANAGERS' ESTABLISHMENT OF PROJECTS
	ESTABLISHMENT OF DISTRICTS	103D.601	Establishment of project by majority of managers.
103D.201	Watershed district purposes.		PROCEDURE FOR BASIC WATER MANAGEMENT PROJECTS AND GOVERNMENT PROJECTS
103D.205	Establishment petition.	103D.605	Project constructed with government aid or as part of plan.
103D.211	Auditor's certification of petitioners.	103D.611	Construction by government agencies.
103D.215	Director's report.		EMERGENCY PROJECTS
103D.221	Establishment hearing notice.	103D.615	Emergency projects.
103D.225	Establishment hearing.		DRAINAGE SYSTEMS AND PROJECTS
103D.231	Dismissal of establishment proceedings.	103D.621	Drainage improvements.
	CONSOLIDATION AND BOUNDARY CHANGES	103D.625	Drainage systems within watershed district.
103D.251	Watershed district boundary changes.		PROJECT REPAIRS AND IMPROVEMENTS
103D.255	Withdrawal of territory.	103D.631	Maintenance of projects.
103D.261	Proceedings to enlarge a watershed district.	103D.635	Repairs and improvements exceeding normal maintenance.
103D.265	Consolidation of districts.	103D.641	Work without bid.
	TERMINATION		GENERAL PROCEDURE TO ESTABLISH PROJECTS
103D.271	Procedure for termination of watershed district.	103D.701	Project initiation.
	MANAGERS	103D.705	Project petition.
103D.301	Distribution of manager positions.	103D.711	Engineer's report.
103D.305	Increasing number of managers.	103D.715	Appraisers.
103D.311	Appointment of managers.	103D.721	Determination of benefits and damages by managers.
103D.315	Managers.	103D.725	Benefited property, determination.
103D.321	Principal place of business	103D.729	Water management district.
103D.325	Employees.	103D.730	Storm water facilities.
103D.331	Advisory committee.	103D.731	Appraisers' report, examination.
103D.335	District and managers' powers.	103D.735	Hearing on petition and reports.
103D.337	Technical advisory committees.	103D.741	Hearing notice.
103D.341	Rules.	103D.745	Final hearing.
103D.345	Permits.		CONSTRUCTION OR IMPLEMENTATION OF PROJECTS
103D.351	Annual report.	103D.801	Procedure when contract is not let.
103D.355	Annual audit.	103D.805	Filing order of managers establishing project.
	WATERSHED MANAGEMENT PLAN	103D.811	Bids for construction.
103D.401	Watershed management plan.	103D.815	Control of contracts.
103D.405	Revised watershed management plan.	103D.821	Damage to highway or bridge by passage of equipment.
103D.411	Amendment of watershed management plan and revised watershed management plan.		FUNDING OF WATERSHED DISTRICT AND PROJECTS
	GENERAL PROVISIONS	103D.901	Assessments, levies.
103D.501	Construction and administration.	103D.905	Funds of watershed district.
103D.505	Reference to other drainage laws.	103D.911	Budget.
103D.511	Certain condemnation provisions do not apply.	103D.915	Tax levy.
103D.515	Preexisting and improved water rights.	103D.921	District court to create preliminary fund.
103D.521	Rights assured due process of law.	103D.925	Warrants.
103D.525	Proceedings after faulty notices are given.		
103D.531	Continuance of hearings.		
103D.535	Appellate procedures and review.		

#### GENERAL PROVISIONS

##### 103D.001 CITATION.

This chapter may be cited as "the watershed law."

**History:** 1990 c 391 art 4 s 1

##### 103D.011 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

- Subd. 2. **Affected.** "Affected" means the jurisdiction or property of an entity that receives benefits, is assessed costs, or is part of a watershed district.
- Subd. 3. **Appraisers.** "Appraisers" means the persons appointed by the managers to determine and report benefits and damages arising from a proposed project.
- Subd. 4. **Auditor.** "Auditor" means the county auditor of a county affected by a watershed district.
- Subd. 5. **Board.** "Board" means the board of water and soil resources.
- Subd. 6. **City.** "City" means a statutory or home rule charter city.
- Subd. 7. **Commissioner.** "Commissioner" means the commissioner of natural resources.
- Subd. 8. **Court administrator.** "Court administrator" means the court administrator of the district court of the county where a judicial proceeding concerning a watershed district is pending.
- Subd. 9. **Director.** "Director" means the director of the division of waters of the department of natural resources.
- Subd. 10. **Engineer.** "Engineer" means the engineer designated by the managers to act as engineer.
- Subd. 11. **Establishment petition.** "Establishment petition" means a petition to establish a watershed district and may consist of one or more separate petitions.
- Subd. 12. **Hearing.** "Hearing" means a hearing conducted by the managers or the board of water and soil resources.
- Subd. 13. **Interested party.** "Interested party" means a person or political subdivision with an interest in the pending subject matter. Interested party includes the director or any agency of government.
- Subd. 14. **Notice by mail.** "Notice by mail" means a notice mailed and addressed to each person entitled to receive the notice if the address is known to the auditor or court administrator or can be obtained at the office of the county treasurer of the affected county.
- Subd. 15. **Managers.** "Managers" means the board of managers of a watershed district.
- Subd. 16. **Metropolitan area.** "Metropolitan area" has the meaning given in section 473.121, subdivision 2.
- Subd. 17. **Municipality.** "Municipality" means a statutory or home rule charter city.
- Subd. 18. **Person.** "Person" means an individual, firm, partnership, association, or corporation, but does not include a political subdivision.
- Subd. 19. **Petition.** "Petition" means a petition to begin a project and may consist of one or more separate petitions.
- Subd. 20. **Political subdivision.** "Political subdivision" means a county, town, school district, or a political division or subdivision of the state. Political subdivision does not mean a watershed district unless the context clearly indicates watershed districts are to be included.
- Subd. 21. **Project.** "Project" means planning and development, construction, maintenance, repair, or improvement of a watershed district for a purpose for which the watershed district is established.
- Subd. 22. **Publication.** "Publication" means publication once a week for two successive weeks as provided in section 645.11.
- Subd. 23. **Public health.** "Public health" means an act or thing that tends to improve the general sanitary conditions of the watershed district.
- Subd. 24. **Public welfare, general welfare, public benefit.** "Public welfare," "general welfare," and "public benefit" mean an act or thing that tends to improve, benefit, or contribute to the safety or well-being of the general public, or benefit the inhabitants of the watershed district.
- Subd. 25. **Resident owner.** "Resident owner" means a resident of the state who is the owner of property or the purchaser of property under a contract for deed.

**History:** 1990 c 391 art 4 s 2

## BOARD OF WATER AND SOIL RESOURCES

### 103D.101 BOARD OF WATER AND SOIL RESOURCES.

Subdivision 1. **District establishment authority.** The board has the authority after the filing of an establishment petition to:

- (1) establish a watershed district;
- (2) define the boundaries of the watershed district; and
- (3) appoint the first board of managers of a watershed district.

Subd. 2. **Investigations.** To implement this chapter and to hold hearings, the chair and members of the board may subpoena witnesses, administer oaths, and compel the production of books, records, and other evidence.

Subd. 3. **Examination of witnesses.** (a) The right to examine and cross-examine witnesses in board hearings is in the same manner as in civil actions.

(b) All persons must be sworn in before testifying.

(c) Witnesses must receive the same fees and mileage as in civil actions.

Subd. 4. **Records.** The board must keep a record of all proceedings before it and maintain the record on file. Copies of the record may be obtained on terms and conditions prescribed by the board.

Subd. 5. **Rules of practice.** The board may adopt rules of practice for its proceedings and hearings that are consistent with this chapter and other provisions of law.

**History:** 1990 c 391 art 4 s 3; 1995 c 199 s 1

### 103D.105 BOARD HEARINGS.

Subdivision 1. **Procedure.** (a) A rulemaking hearing must be conducted under chapter 14.

(b) A hearing in a proceeding to establish or terminate a watershed district must be conducted.

Notwithstanding chapter 14, other hearings under this chapter shall be conducted by the board under this section. The board may refer the hearing to one or more members of the board or an administrative law judge to hear evidence and make findings of fact and report them to the board.

Subd. 2. **Procedure for noncontroversial plans or petitions.** (a) If the board finds that a watershed management plan or petition that would be given a hearing under subdivision 1, paragraph (c), is noncontroversial, the board may proceed under this subdivision.

(b) The board must give notice that the watershed management plan or petition has been filed. The notice must be made:

- (1) by publication in a legal newspaper in each county affected by the watershed district;
- (2) by mail to the auditor of each county affected by the watershed management plan or petition; and
- (3) by mail to the chief executive officer of each city affected.

(c) The notice must:

- (1) describe the actions proposed by the plan or petition;
- (2) invite written comments on the plan or petition for consideration by the board;
- (3) state that a person who objects to the actions proposed in the plan or petition may submit a written request for hearing to the board within 30 days of the last publication of the notice of filing of the plan or petition; and

(4) state that if a timely request for hearing is not received, the board may make a decision on the plan or petition at a future meeting of the board.

(d) If one or more timely requests for hearing are received, the board must hold a hearing on the plan or petition.

**History:** 1990 c 391 art 4 s 4; 1991 c 214 s 3

### 103D.111 APPEAL OF BOARD ORDERS.

Subdivision 1. **Review of establishment and termination decisions.** In a proceeding to establish or terminate a watershed district where the board elected not to refer the proceed-

ing to the office of administrative hearings, a local unit of government or 25 or more residents within the area affected by the proceeding may, prior to judicial appeal of the board's decision, demand a contested case hearing to be conducted by the office of administrative hearings. In the report of the administrative law judge, the fees of the office of administrative hearings and transcript fees may be apportioned among the parties and the board. Apportionment must be based on the degree to which the parties and the board prevailed, or caused unnecessary delay or expense. Following receipt of the report of the administrative law judge, the board shall make a final decision in accordance with chapter 14.

**Subd. 2. Appeals of final board decisions.** A party that is aggrieved by the final decision made by the board may appeal the decision to the court of appeals in the manner provided by sections 14.63 to 14.69.

**History:** 1990 c 391 art 4 s 5; 1991 c 214 s 4

## ESTABLISHMENT OF DISTRICTS

### 103D.201 WATERSHED DISTRICT PURPOSES.

**Subdivision 1. General purposes.** To conserve the natural resources of the state by land use planning, flood control, and other conservation projects by using sound scientific principles for the protection of the public health and welfare and the provident use of the natural resources, the establishment of watershed districts is authorized under this chapter.

**Subd. 2. Specific purposes.** A watershed district may be established for any of the following purposes:

- (1) to control or alleviate damage from flood waters;
- (2) to improve stream channels for drainage, navigation, and any other public purpose;
- (3) to reclaim or fill wet and overflowed land;
- (4) to provide a water supply for irrigation;
- (5) to regulate the flow of streams and conserve the streams' water;
- (6) to divert or change all or part of watercourses;
- (7) to provide or conserve water supply for domestic, industrial, recreational, agricultural, or other public use;
- (8) to provide for sanitation and public health, and regulate the use of streams, ditches, or watercourses to dispose of waste;
- (9) to repair, improve, relocate, modify, consolidate, and abandon all or part of drainage systems within a watershed district;
- (10) to control or alleviate soil erosion and siltation of watercourses or water basins;
- (11) to regulate improvements by riparian property owners of the beds, banks, and shores of lakes, streams, and wetlands for preservation and beneficial public use;
- (12) to provide for hydroelectric power generation;
- (13) to protect or enhance the water quality in watercourses or water basins; and
- (14) to provide for the protection of groundwater and regulate its use to preserve it for beneficial purposes.

**History:** 1990 c 391 art 4 s 6

### 103D.205 ESTABLISHMENT PETITION.

**Subdivision 1. Filing.** To establish a watershed district, an establishment petition must be filed with the board.

**Subd. 2. Requirements.** (a) The establishment petition must state:

- (1) the name of the proposed watershed district;
- (2) in general terms, a description of the property to be included in the watershed district;
- (3) the necessity for the watershed district and the contemplated improvements within the watershed district;

(4) the reasons why the watershed district and the contemplated improvements would contribute to public health and public welfare, or would accomplish any of the purposes in section 03D.201;

(5) by illustration in a map, the proposed watershed district;

(6) the number of managers proposed for the watershed district; and

(7) a list of the nominees for manager positions containing at least twice the proposed number of managers.

(b) The number of managers proposed for a watershed district may not be less than three or more than nine. A manager must not be a public officer of the county, state, or federal government, except that a soil and water conservation supervisor may be a manager.

**Subd. 3. Signatures.** The establishment petition must be signed by one or more of the following groups:

(1) one-half or more of the counties within the proposed watershed district;

(2) counties having 50 percent or more of the area within the proposed watershed district;

(3) a majority of the cities within the proposed watershed district; or

(4) 50 or more resident owners residing in the proposed watershed district, excluding resident owners within the corporate limits of a city if the city has signed the petition.

**Subd. 4. Filing establishment petitions.** The petitioners must file a copy of the establishment petition with the auditors of the counties affected by the proposed watershed district, the commissioner, and the director. The original establishment petition, with a signed statement of delivery or receipt for each of the establishment petitions submitted to the auditors of affected counties, the commissioners, and the directors, must be filed with the board.

**Subd. 5. Similar and duplicate establishment petitions.** Similar and duplicate establishment petitions for the same proposed watershed district may be filed and regarded as one establishment petition. All establishment petitions filed before the establishment hearing must be considered by the board as part of the original petition.

**Subd. 6. Defective establishment petition.** An establishment petition that has the requisite number of petitioner signatures may not be dismissed because of defects in the establishment petition. The board must allow petitioners to amend a defective establishment petition at any time before the end of the establishment hearing.

**Subd. 7. Withdrawal of petitioners.** After an establishment petition has been filed, a petitioner may not withdraw from the establishment petition unless the withdrawing petitioner obtains the written consent of all other petitioners and files the written consent with the board.

**History:** 1990 c 391 art 4 s 7; 1995 c 199 s 2,3

#### 03D.211 AUDITOR'S CERTIFICATION OF PETITIONERS.

An auditor that receives a copy of an establishment petition must determine if the petitioners are resident owners from the tax records. The tax records are prima facie evidence of ownership. The auditor must certify the number of petitioners that are resident owners and file the certification with the board.

**History:** 1990 c 391 art 4 s 8

#### 03D.215 DIRECTOR'S REPORT.

(a) After receiving a copy of the establishment petition, the director must notify the board that an establishment petition has been received and prepare a preliminary watershed map of and a preliminary report about the watershed district.

(b) The preliminary watershed map must show the natural watershed boundaries within the proposed watershed district.

(c) The preliminary report must be based on the establishment petition and other available data and must recommend whether the watershed district should be established.

(d) The director must submit the preliminary report and the preliminary watershed map to the board within 30 days after the date the establishment petition was received by the director, unless the time is extended by the board.

*History: 1990 c 391 art 4 s 9*

#### **103D.221 ESTABLISHMENT HEARING NOTICE.**

**Subdivision 1. Order for hearing.** (a) After receiving an establishment petition, the board must determine whether the establishment petition has the requisite number of petitioner signatures.

(b) If the establishment petition does not have the requisite number of petitioners, the board must dismiss the establishment petition and return it to the petitioners with an explanation of why the petition was dismissed.

(c) If the board determines that an establishment petition has the requisite number of petitioner signatures, the board must, by order, set a time and location for a hearing on the establishment petition within 35 days after its determination. The hearing must be held within the limits of the proposed watershed district for an establishment hearing unless the board determines a suitable place is not located within the proposed watershed district and selects a place within the limits of a county affected by the proposed watershed district.

**Subd. 2. Notice.** (a) The board must give notice of the establishment hearing by publication in a legal newspaper that is published in counties affected by the proposed watershed district. The last publication must occur at least ten days before the establishment hearing.

(b) The board must give notice of the establishment hearing by mail to the auditors of counties and to the chief executive officials of municipalities affected by the proposed watershed district.

(c) The notice must include:

(1) a statement that an establishment petition has been filed with the board and auditors of counties affected by the proposed watershed district;

(2) a general description of the need for the proposed district, and the purpose of the proposed watershed district's contemplated improvements, if any;

(3) a general description of the property to be included in the proposed watershed district;

(4) the date, time, and location of hearing; and

(5) a statement that all persons affected or interested in the establishment of the proposed watershed district may attend and give statements at the establishment hearing.

*History: 1990 c 391 art 4 s 10; 1995 c 199 s 4*

#### **103D.225 ESTABLISHMENT HEARING.**

**Subdivision 1. Testimony and continuance.** (a) The board must allow all persons interested in or affected by the proposed watershed district to be given an opportunity to make oral and written statements at the establishment hearing.

(b) The board may continue the establishment hearing.

**Subd. 2. Establishment determination.** If the board determines after the establishment hearing that the establishment of the proposed watershed district would benefit the public welfare and public interest, and would advance the purpose of this chapter, the board must, by order, establish the watershed district.

**Subd. 3. Establishment order requirements.** The order of the board establishing a watershed district must include:

(1) the findings of the board supporting its determination to establish the watershed district;

(2) the official name of the watershed district;

(3) the location of the principal place of business of the watershed district;

(4) the boundaries of the watershed district; and

(5) the names of the managers for the first board of managers selected under subdivision

subd. 5. Selection of first board of managers. (a) The board shall select an initial board of managers of a proposed watershed district from the list of nominees in the establishment petition except as provided in paragraph (b). The number of managers may not be less than three nor more than nine, except that a proposed watershed district entirely within the metropolitan area may not have fewer than five managers. A manager may not be a public officer of the county, state, or federal government, except that a soil and water conservation supervisor may be a manager. The term of the first board of managers is for one year and until their successors can be appointed and qualified.

(b) For a proposed watershed district entirely within the metropolitan area, the board must select managers from a list of persons nominated by one or more of the cities and towns affected by the proposed watershed district. The list must contain at least three nominees for each manager position. The board must select managers to fairly represent the various hydrologic areas within the proposed watershed district according to their residence within an area. If the cities or towns fail to nominate managers under this paragraph, the board shall select managers under paragraph (a).

(c) In the order establishing a watershed district, the board must prescribe the terms of office for the first board of managers appointed by the county boards as provided in paragraphs (d) to (f).

(d) If the first board of managers has three members, the term of office for the managers is one for a term of one year, one for a term of two years, and one for a term of three years.

(e) If the first board of managers has five members, the term of office for the managers is one for a term of one year, two for a term of two years, and two for a term of three years.

(f) If the first board of managers does not have three or five members, the managers must be appointed so that as nearly as possible one-third serve terms of one year, one-third serve terms of two years, and one-third serve terms of three years.

**Subd. 5. Filing establishment order.** The board must file a certified copy of the findings and order establishing a watershed district with the secretary of state and, at the same time:

(1) mail a copy of the findings and order to the auditor of each county affected by the watershed district, the commissioner, and the director; and

(2) have each manager personally served with a copy of the order.

**Subd. 6. Effect of establishment.** After the establishment order is filed with the secretary of state, the watershed district is a political subdivision of the state with the power, authority, and duties prescribed in this chapter.

**Subd. 7. Existence of watershed district.** A watershed district established under this chapter exists from the time the order establishing the watershed district is filed with the secretary of state until the watershed district is terminated.

**History:** 1990 c 391 art 4 s 11

### 103D.231 DISMISSAL OF ESTABLISHMENT PROCEEDINGS.

If the board determines that establishment of a proposed watershed district in an establishment petition would not benefit the public welfare and public interest, or would not serve the purpose of this chapter, the board must, by order, dismiss the establishment proceedings. A copy of the order dismissing the establishment proceeding must be mailed immediately to the auditors of counties affected by the proposed watershed district, the commissioner, and the director.

**History:** 1990 c 391 art 4 s 12

## CONSOLIDATION AND BOUNDARY CHANGES

### 103D.251 WATERSHED DISTRICT BOUNDARY CHANGES.

Subdivision 1. **Boundary requirement.** The boundaries of a watershed district as established or changed must define contiguous areas. The boundaries may include all or part of one or more watersheds or counties.

Subd. 2. **Procedure.** The boundaries of a watershed district may be changed as provided in this section, and for a watershed district entirely within the metropolitan area the boundary may also be changed as provided in sections 103B.215 and 103B.225.

Subd. 3. **Initiation.** A proceeding to change the boundary of a watershed district must be initiated by a petition to the board requesting the boundary change.

Subd. 4. **Petition.** A petition for a watershed district boundary change must state:

- (1) the names of watershed districts affected by the proposed boundary changes;
- (2) a description, in general terms, of the property affected by the proposed boundary change;
- (3) reasons why the proposed boundary change would benefit the affected watershed districts;
- (4) by illustration in a map, the proposed boundary change, including watershed districts affected by the proposed boundary change; and
- (5) a request for the board to establish the proposed boundary change.

Subd. 5. **Petition signatures.** (a) A petition for a watershed boundary change must be signed by:

- (1) at least one-half of the counties within the proposed watershed district if the boundary change were adopted;
  - (2) counties having at least 50 percent of the area within the proposed watershed district if the boundary change were adopted;
  - (3) a majority of the cities within the proposed watershed district if the boundary change were adopted;
  - (4) at least 50 resident owners in the proposed watershed district if the boundary change were adopted, excluding resident owners within the corporate limits of a city, if the city has signed the petition; or
  - (5) the managers of a watershed district affected by the proposed boundary change.
- (b) The managers must pass a resolution authorizing the boundary change before the managers sign a petition for a boundary change.

Subd. 6. **Hearing.** The board must set a time and location for a hearing and give notice of the hearing in the same manner as an establishment hearing. If a petition for a boundary change involves a common boundary of two or more watershed districts, the board must determine the watershed district where the hearing will be held.

Subd. 7. **Establishment of boundary change.** (a) After the hearing on the petition for a boundary change, the board must establish the proposed boundary change, by order, if the board determines that establishment of the proposed boundary change would benefit the public welfare and public interest and the proposed boundary change would advance the purpose of this chapter.

(b) In the order establishing the boundary change, the board must include:

- (1) the findings of the board supporting its determination to establish the boundary change; and
  - (2) the boundaries of watershed districts affected by the boundary change.
- (c) The board must file a certified copy of the findings and order establishing the boundary change with the secretary of state and, at the same time, mail a copy of the order to the auditors of counties affected by the change, the commissioner, the director, and the managers of watershed districts affected by the change.
- (d) The boundary change is effective the day the certified order establishing the boundary change is filed with the secretary of state.

Subd. 8. **Dismissal of proceedings.** If the board determines that a watershed district boundary change would not benefit the public welfare and public interest or would not serve the purposes of this chapter, the board must, by order, dismiss proceedings to change a watershed district boundary. A copy of the order dismissing the boundary change proceedings must be mailed to auditors of counties affected by the proposed boundary change, the commissioner, the director, and the boards of managers of watershed districts affected by the proposed boundary change.

**History:** 1990 c 391 art 4 s 13

**103D.255 WITHDRAWAL OF TERRITORY.**

Subdivision 1. **Petition.** (a) Proceedings to withdraw territory from an existing watershed district must be initiated by a petition filed with the board.

(b) The required signatures on a petition for withdrawal are the same as prescribed for an establishment petition, but the percentages must be calculated only with reference to the territory that is proposed to be withdrawn from the watershed district.

(c) The petition must state that:

(1) the territory described has not received or will not receive any benefits from the operation of the watershed districts;

(2) the watershed district can perform the functions for which it was established without the inclusion of the territory; and

(3) the territory is not, in fact, a part of the watershed.

(d) The petition must request the release of the described territory from the watershed district.

(e) The petition must be served on the board and any affected watershed district, and the board shall proceed as prescribed for an establishment petition. The requirements for notices and public hearings are as prescribed for the establishment petition.

Subd. 2. **Board's order of withdrawal.** (a) After the hearing the board may issue an order releasing the territory, or a part of the territory, as described in the petition, if the board determines that:

(1) the territory described in the petition has not received and will not receive any benefit from the operation of the watershed district;

(2) the watershed district can perform the functions for which it was established without the inclusion of the territory; and

(3) the territory is not, in fact, a part of the watershed.

(b) Property may not be released that has been determined subject to benefits or damages for a project previously constructed.

(c) Property released remains liable for the proportionate share of any indebtedness existing at the time of the order. Levies on the property released continue in force until fully paid.

(d) If the board determines that the order prescribing the distribution of managers should be amended following the withdrawal of any territory, the board may direct redistribution of managers in the order authorizing the withdrawal.

**History:** 1990 c 391 art 4 s 14; 1995 c 199 s 5

**103D.261 PROCEEDINGS TO ENLARGE A WATERSHED DISTRICT.**

Subdivision 1. **Petition.** (a) Proceedings to enlarge an existing watershed district must be initiated by a petition filed with the board. The required signatures on a petition to enlarge are the same as for an establishment petition, but the percentages must be calculated only with reference to the territory that is proposed to be added to the watershed district. The petition must:

(1) state that the area to be added is contiguous to the existing watershed district;

(2) state that the area can be feasibly administered by the managers of the existing watershed district;

(3) state reasons why adding the area to the existing watershed district would be conducive to the public health and welfare;

(4) include a map of the affected area;

(5) state the name of the proposed enlarged watershed district, if other than that of the existing watershed district; and

(6) state a request for the addition of the proposed territory.

(b) The petition must be served on the board and affected watershed districts, and the board must proceed as prescribed for an establishment petition.

(c) The requirement of notice and public hearings is as prescribed for the establishment petition.

Subd. 2. **Board order.** (a) After the hearing, if the board determines that the enlargement of the watershed district as asked for in the petition would be for the public welfare and public interest and the purpose of this chapter would be served, the board shall, by making findings and an order, enlarge the watershed district and file a certified copy of the findings and order with the secretary of state.

(b) The name of the watershed district may be changed by order of the board if requested in the petition to enlarge the watershed district.

Subd. 3. **Distribution of managers in enlarged watershed district.** If the enlarged watershed district affects more than one county, the distribution of the managers among the counties affected shall be as directed by the board in the order enlarging the watershed district.

**History:** 1990 c 391 art 4 s 15; 1995 c 199 s 6

### 103D.265 CONSOLIDATION OF DISTRICTS.

Subdivision 1. **Petition.** (a) Proceedings for the consolidation of two or more watershed districts must be initiated by a petition filed with the board.

(b) The petition must be signed by each watershed district affected and state:

(1) the names of the watershed districts to be consolidated;

(2) that the watershed districts are adjoining;

(3) that the consolidated watershed districts can be feasibly administered as one watershed district;

(4) the proposed name of the consolidated watershed district;

(5) the reasons why it would be conducive to the public health, convenience and welfare to consolidate the watershed districts; and

(6) a request for the consolidation.

(c) The petition must be served and the board shall proceed as prescribed for an establishment petition. The requirement of notice and public hearings are as prescribed for the establishment petition.

Subd. 2. **Board's order and findings.** (a) After the hearing, if the board determines that consolidation of the watershed districts as asked in the petition would serve the public welfare, public interest, and the purpose of this chapter, the board shall, by its findings and order, consolidate the watershed districts.

(b) The board shall file a certified copy of the findings and order with the secretary of state.

(c) The name of the watershed district may be changed by order of the board.

Subd. 3. **New managers.** (a) The term of office of the managers of the consolidated watershed districts ends on the date of the order of consolidation. Distribution of the managers of the consolidated watershed district shall be as directed by the board in the order of consolidation.

(b) Five managers of the consolidated watershed district must be appointed from the managers of the consolidated watershed districts. Their first term shall be for one year. After the first year, the managers must be appointed as provided in this chapter.

Subd. 4. **Watershed district assets and liabilities.** (a) The real and personal property assets of the watershed districts involved and all legally valid and enforceable claims and contract obligations of the watershed districts pass to the new watershed district.

(b) Levies on the property of the watershed districts consolidated continue in force until fully paid.

(c) Property in the watershed districts remains liable for its proportionate share of indebtedness existing at the time of the order.

Subd. 5. **New plan.** The watershed management plans of the watershed districts that were consolidated become the watershed management plan of the consolidated watershed district.

**History:** 1990 c 391 art 4 s 16

## TERMINATION

### 103D.271 PROCEDURE FOR TERMINATION OF WATERSHED DISTRICT

Subdivision 1. **Procedure.** A watershed district may be terminated under this section and a watershed district entirely within the metropolitan area may also be terminated under sections 103B.221 and 103B.225.

Subd. 2. **Initiation.** Proceedings for the termination of a watershed district may only be initiated by filing a termination petition with the board.

Subd. 3. **Frequency of termination petition.** The board may not accept a termination petition within five years from the date of a watershed district's establishment. The board may not make determinations or accept termination petitions for watershed districts more than once in five years.

Subd. 4. **Termination petition.** (a) The termination petition must be signed by at least 25 percent of the resident owners residing in the watershed district. The termination petition must state that the existence of the watershed district does not benefit the public welfare and public interest and the watershed district is not needed to accomplish the purposes of this chapter.

(b) The petitioners must file a copy of the termination petition with the auditors of the counties affected by the watershed district. The original termination petition with a statement signed for delivery or receipt of each of the termination petitions submitted to the auditors of counties affected by the watershed district must be filed with the board.

Subd. 5. **Auditor's determination of resident owners.** An auditor who receives a termination petition must determine from the tax records whether the petitioners are resident owners within the watershed district. The auditor must certify the number of petitioners that are resident owners and file the certification with the board.

Subd. 6. **Petitioners' bond.** Before the board gives notice of a termination hearing, the petitioners must file a bond with the board. The bond must be in an amount determined by the board and is subject to the board's approval. The bond must state that the petitioners will pay all costs and expenses of the termination proceedings if the termination petition proceedings are dismissed or denied.

Subd. 7. **Termination hearing order.** When the board determines a termination petition has been filed that meets the requirements of subdivisions 4 and 5 and the petitioners' bond has been filed, the board must, by order, set a time by 35 days after its determination and a location within the watershed district for a termination hearing.

Subd. 8. **Hearing notice.** (a) The board must give notice of the termination hearing by publication in a legal newspaper that is published in counties affected by the watershed district. The last publication must occur at least ten days before the termination hearing.

(b) The board must give notice of the termination hearing by mail to the auditors of counties and to the chief executive officials of municipalities affected by the watershed district.

(c) The notice must include:

(1) a statement that a termination petition has been filed with the board and auditors of the counties affected by the watershed district;

(2) a general description of why the watershed district is to be terminated;

(3) a general description of the property within the watershed district;

(4) the date, time, and location of the hearing; and

(5) a statement that all persons affected by or interested in the watershed district may attend and give statements at the termination hearing.

Subd. 9. **Termination hearing.** The board must allow all persons affected by or interested in the watershed district to make oral and written statements at the termination hearing. The board may continue the termination hearing.

Subd. 10. **Termination order.** (a) If, after the termination hearing, the board determines that the existence of the watershed district does not benefit the public welfare and public interest and the watershed district is not needed to accomplish the purpose of this chapter, the board must issue a termination order.

(b) The termination order must include findings that support termination of the watershed district and a statement that the watershed district is terminated.

(c) The board must file a certified copy of the termination order with the secretary of state.

(d) A watershed district ceases to be a political subdivision and ceases to exist when a termination order for the watershed district is filed with the secretary of state.

**History:** 1990 c 391 art 4 s 17; 1995 c 199 s 7,8

## MANAGERS

### 103D.301 DISTRIBUTION OF MANAGER POSITIONS.

Subdivision 1. **More than one affected county.** If more than one county is affected by a watershed district, the board must provide that managers are distributed by residence among the counties affected by the watershed district.

Subd. 2. **More than five affected counties.** If more than five counties are affected by a watershed district, the board may provide for the orderly distribution of the managers by identifying the manager areas within the watershed district and selecting the county board of commissioners for each manager's area to appoint a manager.

Subd. 3. **Redistribution.** (a) After ten years from the establishment of the watershed district, the county board of commissioners of a county affected by the watershed district may petition the board to redistribute the managers. After holding a public hearing on redistributing the managers, the board may redistribute the managers among the counties affected by the watershed district if the redistribution is in accordance with the policy and purposes of this chapter.

(b) A petition for the redistribution of managers may not be filed with the board more often than once in ten years.

(c) If more than one county is affected by a watershed district, the board must distribute the one-, two-, and three-year terms among counties affected by the watershed district.

**History:** 1990 c 391 art 4 s 18

### 103D.305 INCREASING NUMBER OF MANAGERS.

Subdivision 1. **Initiation.** A proceeding to increase the number of managers of a watershed district must be initiated by filing a petition with the board.

Subd. 2. **Petition signatures.** The petition to increase the number of managers must request the increase and be signed by one or more of the following groups:

- (1) one-half or more of the counties within the watershed district;
- (2) counties with 50 percent or more of the area within the watershed district;
- (3) a majority or greater number of the cities within the watershed district;
- (4) 50 or more resident owners residing in the watershed district, excluding resident owners within the corporate limits of a city if the city has signed the petition; or
- (5) the managers of the watershed district.

Subd. 3. **Hearing order.** When the board receives a petition to increase the number of managers of a watershed district, the board must order a hearing on the petition.

Subd. 4. **Hearing notice.** (a) The board must give notice of the hearing to increase the number of managers by publication in a legal newspaper published in counties affected by the watershed district. The last publication must occur at least ten days before the hearing.

(b) The board must give notice of the hearing by mail to the auditors of counties and to the chief executive officials of municipalities affected by the watershed district.

(c) The notice must include:

(1) a statement that a petition to increase the number of managers of the watershed district has been filed with the board;

(2) a general description of the purpose of the watershed district;

- (3) a general description of the property in the watershed district;
- (4) the date, time, and location of the hearing; and
- (5) a statement that all persons affected or interested in the watershed district may attend and give statements at the hearing.

Subd. 5. **Hearing.** (a) If the board determines at the hearing that an increase in the number of managers would benefit the public welfare, public interest, and the purpose of this chapter, the board must increase the number of managers.

(b) If the watershed district affects more than one county, the board, by order, must direct the distribution of the managers among the affected counties.

**History:** 1990 c 391 art 4 s 19; 1995 c 100 s 9

### 103D.311 APPOINTMENT OF MANAGERS.

Subdivision 1. **Manager qualifications.** A person may not be appointed as a manager who:

- (1) is not a voting resident of the watershed district; and
- (2) is a public officer of the county, state, or federal government, except that a soil and water conservation supervisor may be a manager.

Subd. 2. **Appointment.** (a) At least 30 days before the terms of office of the first managers named by the board expire, the county commissioners of each county responsible for appointing a manager to the watershed district must meet and appoint successors.

(b) The county commissioners must meet at least 30 days before the term of office of any manager expires and appoint a successor.

(c) A vacancy occurring in an office of a manager must be filled by the appointing county board.

(d) Appointing county boards shall provide public notice before making appointments. Published notice must be given at least once by publication in a newspaper of general circulation in the watershed district at least 15 days before an appointment or reappointment is made. The notice must state that persons interested in being appointed to serve as a watershed district manager may submit their names to the county board for consideration.

Subd. 3. **Nominees for city initiated and metropolitan watershed districts.** (a) If the establishment petition that initiated the watershed district originated from a majority of the cities within the watershed district, the county commissioners must appoint the managers from a list of persons nominated by one or more of the townships and municipalities located within the watershed district. If the district is wholly within the metropolitan area, the county commissioners shall appoint the managers from a list of persons nominated jointly or severally by the towns and municipalities within the district. The list must contain at least three nominees for each manager's position to be filled. The list must be submitted to the county boards affected by the watershed district at least 60 days before the manager's term of office expires. The county commissioners may appoint any managers from towns and municipalities that fail to submit a list of nominees.

(b) If the list is not submitted 60 days before the managers' terms of office expire, the county commissioners must appoint the managers from eligible persons residing in the watershed district.

(c) Managers of a watershed district entirely within the metropolitan area must be appointed to fairly represent the various hydrologic areas within the watershed district by residence of the manager appointed.

Subd. 4. **Record of appointed managers.** A record of all appointments made under this section must be filed with the county auditor of each county affected by the watershed district, the secretary of the board of managers, and the board of water and soil resources.

**History:** 1990 c 391 art 4 s 20; 1990 c 601 s 3; 1992 c 466 s 1,2; 1995 c 199 s 10

### 103D.315 MANAGERS.

Subdivision 1. **Oath.** Each manager must take and sign the oath defined in the Minnesota Constitution, article V, section 6. The signed oath must be filed with the board.

Subd. 2. **Bond.** (a) Each manager must file a bond with the board before assuming the manager's duties. The bond may be:

(1) a personal bond for each manager;

(2) a schedule or position bond or undertaking by the managers of the watershed district; or

(3) a single corporate surety fidelity, schedule or position bond or undertaking covering all managers and employees of the watershed district, including officers and employees required by law to furnish an individual bond or undertaking.

(b) The amount of the bond for managers is \$1,000, unless increased by the board. The amount of the bond for officers and employees of the watershed district is the amount set by law or by the person or board authorized to set the amounts.

(c) The bond must be conditioned substantially as provided in section 574.13.

(d) The premium for the bond must be paid by the watershed district.

Subd. 3. **Officers.** After filing the bond, the managers must elect different managers as president, secretary, and treasurer. The managers must fill vacancies occurring in the officers' positions. The managers must provide the necessary books, records, furniture, and equipment for the officers to perform their official duties.

Subd. 4. **Seal.** The managers must adopt a seal for the watershed district.

Subd. 5. **Records.** The managers must keep efficient records of all proceedings, minutes, certificates, contracts, bonds of the board's employees, and all other business transacted or action taken by the managers. The records must be open to inspection by the property owners within the watershed district and all other interested parties at all reasonable times.

Subd. 6. **Terms of office.** The term of office for a manager is three years except for the first board of managers appointed by the state board and the first board appointed by the county board. A manager's term continues until a successor is appointed and qualified.

Subd. 7. **Vacancies.** The provisions of section 351.02 regarding vacancies apply to members of the board of managers.

Subd. 8. **Compensation.** The compensation of managers for meetings and for performance of other necessary duties may not exceed \$55 a day. Managers are entitled to reimbursement for traveling and other necessary expenses incurred in the performance of official duties.

Subd. 9. **First meeting of managers.** (a) Within ten days after the first board of managers has received notice by personal service of their selection, the managers must meet at the watershed district's principal place of business.

(b) At the first meeting, the managers must take the oath under subdivision 1, provide a bond under subdivision 2, elect officers under subdivision 3, and appoint an advisory committee under section 103D.331.

Subd. 10. **Meetings.** The managers shall meet annually and at other necessary times to transact the business of the watershed district. A meeting may be called at any time at the request of any manager. When a manager requests a meeting, the secretary of the watershed district must mail a notice of the meeting to each member at least eight days before the meeting.

Subd. 11. **Administration bylaws.** The managers shall adopt bylaws for the administration of the business and affairs of the watershed district. Bylaws adopted under this subdivision are not subject to section 103D.341.

**History:** 1990 c 391 art 4 s 21; 1995 c 199 s 11-13

#### **103D.321 PRINCIPAL PLACE OF BUSINESS**

Subdivision 1. **Unavailable public facilities.** If public facilities are not available for a watershed district's principal place of business within the watershed district, the board shall determine and designate the nearest suitable public facility as the watershed district's principal place of business.

Subd. 2. **Change of principal place of business.** (a) The managers may initiate a change of the principal place of business to a different location within the watershed district

by passing a resolution stating the proposed change of location. After passing the resolution, the managers must set a time and location for a hearing on the change of the principal place of business.

(b) The managers must give notice of the hearing by publication in a legal newspaper, published in the counties affected by the watershed district, with the last publication occurring at least ten days before the hearing. Notice of the hearing must be mailed to the auditors of counties affected by the watershed district ten days before the hearing. After the hearing, the managers may, by order, change the place of business.

(c) The change of the principal place of business of the watershed district is effective when a certified copy of the managers' order is filed with the secretary of state and the board.

**History:** 1990 c 391 art 4 s 22; 1995 c 199 s 14

### 103D.325 EMPLOYEES.

Subdivision 1. **Employment authority.** The managers may employ a chief engineer, professional assistants, and other employees, and provide for their qualifications, duties, and compensation.

Subd. 2. **Bond.** The managers may require an officer or employee of the watershed district to give a bond for the faithful performance of duties in an amount prescribed by the manager. The cost of the bond must be paid from the funds of the watershed district.

Subd. 3. **Chief engineer.** The chief engineer is superintendent of all the works and improvements undertaken by the district. The chief engineer must make a full engineer's report to the managers each year, and more often if necessary. A copy of the engineer's report and all recommendations by the chief engineer must be transmitted to the managers and the director.

**History:** 1990 c 391 art 4 s 23

### 103D.331 ADVISORY COMMITTEE.

Subdivision 1. **Purpose.** The managers must annually appoint an advisory committee to advise and assist the managers on all matters affecting the interests of the watershed district and make recommendations to the managers on all contemplated projects and improvements in the watershed district.

Subd. 1a. **Duties.** For purposes of carrying out its duties under this section the advisory committee shall:

- (1) elect a chair from its membership;
- (2) elect a recorder from its membership;
- (3) establish a meeting schedule, which at a minimum meets annually;
- (4) consider issues pertinent to the functions and purposes of the watershed district;
- (5) review and comment on reports, minutes, activities, and proposed projects of the managers; and
- (6) report to the managers the general content of advisory committee meetings and resulting recommendations.

Subd. 2. **Members.** (a) The advisory committee consists of at least five members. If practicable, the advisory committee members selected should include a representative from each soil and water conservation district, a representative of each county, a member of a sporting organization, and a member of a farm organization. Other advisory committee members may be appointed at the discretion of the managers. The members must be residents of the watershed district, except representatives from soil and water conservation districts and counties, and serve at the pleasure of the managers.

(b) In addition, the managers may appoint other interested and technical persons who may or may not reside within the watershed district to serve at the pleasure of the managers.

Subd. 3. **Expense reimbursement.** The managers may reimburse members of the advisory committee for actual traveling and other necessary expenses incurred in the performance of duties in the amount as provided for state employees.

**History:** 1990 c 391 art 4 s 24; 1995 c 199 s 15

**103D.335 DISTRICT AND MANAGERS' POWERS.**

Subdivision 1. **General powers of watershed district.** A watershed district has the power, to the extent necessary for lawful conservation purposes:

- (1) to sue and be sued;
- (2) to incur debts, liabilities, and obligations;
- (3) to exercise the power of eminent domain;
- (4) to provide for assessments and to issue certificates, warrants, and bonds; and
- (5) to perform all acts expressly authorized, and all other acts necessary and proper for the watershed district to carry out and exercise the powers expressly vested in it.

Subd. 2. **Joint powers.** Section 471.59 relating to joint power authority applies to watershed districts organized under this chapter.

Subd. 3. **Acquisition and disposition of property from state and federal agencies.** Section 471.64 relating to acquisition and disposition of property from the United States and state agencies applies to watershed districts organized under this chapter.

Subd. 4. **General managers' powers.** (a) The managers may use the powers in subdivisions 5 to 23 to implement this chapter.

(b) The exercise of the managers' powers is subject to review by the board as provided in this chapter.

Subd. 5. **Data acquisition.** The managers may:

- (1) make necessary surveys or use other reliable surveys and data and develop projects and programs to acquire data to accomplish the purposes for which the watershed district is organized; and
- (2) establish and maintain devices for acquiring and recording hydrological and water quality data.

Subd. 6. **Projects not requiring a petition.** The managers may initiate, undertake, and implement projects not required to be instituted by a petition under section 103D.701.

Subd. 7. **Cooperate with other entities.** The managers may cooperate or contract with any state or subdivision of a state or federal agency, private corporation, political subdivision, or cooperative association.

Subd. 8. **Ditch and watercourse work.** The managers may construct, clean, repair, alter, abandon, consolidate, reclaim, or change the course or terminus of any public ditch, drain, sewer, river, watercourse, natural or artificial, within the watershed district.

Subd. 9. **Water control works.** The managers may acquire, operate, construct, and maintain dams, dikes, reservoirs, water supply systems, and appurtenant works.

Subd. 10. **Water use and conservation.** The managers may regulate, conserve, and control the use of water within the watershed district.

Subd. 11. **Acquisition of property.** The managers may acquire by gift, purchase, taking under the procedures of this chapter, or by the right of eminent domain, necessary real and personal property. The watershed district may acquire property outside the watershed district where necessary for a water supply system.

Subd. 12. **Acquisition of insurance.** The managers may contract for or purchase insurance the managers find necessary for the protection of the watershed district.

Subd. 13. **Construction or implementation contracts.** The managers may enter into contracts of construction or implementation authorized by this chapter.

Subd. 14. **Entry on lands.** The managers may enter lands inside or outside the watershed district to make surveys and investigations to accomplish the purposes of the watershed district. The watershed district is liable for actual damages resulting from entry.

Subd. 15. **Take over drainage system.** The managers may take over when directed by a drainage authority all joint county or county drainage systems within the watershed district, together with the right to repair, maintain, and improve them.

Subd. 16. **Sanitation and pollution prevention.** The managers may provide for sanitation and public health and regulate the use of streams, ditches, or watercourses to dispose of waste and prevent pollution.

Subd. 17. **Borrowing funds.** The managers may borrow funds from an agency of the federal government, a state agency, a county where the watershed district is located in whole or in part, or a financial institution authorized under chapter 47 to do business in this state. A county board may lend the amount requested by a watershed district. A watershed district may not have more than a total of \$200,000 in loans from counties and financial institutions under this subdivision outstanding at any time.

Subd. 18. **Floodplain maps.** The managers may prepare a floodplain map of the lands of the watershed district that are in the floodplain of lakes and watercourses. The map must be made available to the counties and local municipalities for inclusion in floodplain ordinances. It must conform to rules of the commissioner setting standards for designation of floodplain areas.

Subd. 19. **Open space and greenbelts.** The managers may prepare an open space and greenbelt map of the lands of the watershed district that should be preserved and included in the open space and greenbelt land areas of the watershed district. The map must be made available to the counties and local municipalities for inclusion in floodplain and shoreland ordinances. The managers may control the use and development of land in the floodplain and the greenbelt and open space areas of the watershed district. The managers may adopt, amend, or repeal rules to control encroachments, the changing of land contours, the placement of fill and structures, and the placement of encumbrances or obstructions, and may require a landowner to remove fill, structures, encumbrances, or other obstructions and restore the previously existing land contours and vegetation. The managers may by rule provide a procedure for the watershed district to do the work required and assess its cost against the affected property as a special assessment. The rules apply only in the absence of county or municipal ordinances regulating the items set forth in this subdivision. The rules must be adopted in accordance with section 103D.341. Except as provided in section 103D.345, subdivision 3, rules adopted under this subdivision apply to the state.

Subd. 20. **State association membership.** The managers may appropriate necessary funds to provide for membership in a state association of watershed districts whose purpose is to improve watershed governmental operations.

Subd. 21. **Contracts.** The managers may make contracts or other arrangements with the federal government, persons, railroads or other corporations, political subdivisions, and the state or other states, with drainage authorities, flood control, soil conservation, or other improvement districts in this state or other states, for cooperation or assistance in constructing, maintaining, and operating the projects of the watershed district, or for the control of its waters, or for making surveys and investigations or reports on them.

Subd. 22. **Projects in other states.** The managers may purchase, lease, or acquire land or other property in adjoining states to secure outlets, to construct and maintain dikes or dams or other structures for the purposes of this chapter.

Subd. 23. **Metropolitan watershed districts.** (a) A watershed district located wholly within the metropolitan area has the duties and powers in section 103B.211.

(b) Notwithstanding any contrary provision of this section, a watershed district located entirely within the metropolitan area may regulate the use and development of land only under the conditions specified in section 103B.211, subdivision 1.

Subd. 24. **Exemption from political subdivision permit fees.** A watershed district is exempt from fees charged by political subdivisions for permits required for activities conducted under subdivisions 8 to 10.

Subd. 25. **Water resource management activities.** The managers may conduct studies and monitoring of water resources within the watershed district and implement water resource management programs.

**History:** 1990 c 391 art 4 s 25; 1992 c 466 s 3; 1995 c 199 s 16–20; 1995 c 220 s

**103D.337 TECHNICAL ADVISORY COMMITTEES.**

For a district wholly within the metropolitan area, the board of managers shall establish a technical advisory committee consisting of representatives of affected statutory and home rule charter cities, counties, and soil and water conservation districts.

*History: 1990 c 601 s 4*

**103D.341 RULES.**

**Subdivision 1. Requirement.** The managers must adopt rules to accomplish the purposes of this chapter and to implement the powers of the managers.

**Subd. 2. Procedure.** (a) Rules of the watershed district must be adopted or amended by a majority vote of the managers, after public notice and hearing. Rules must be signed by the secretary of the board of managers and recorded in the board of managers' official minute book.

(b) Prior to adoption, the proposed rule or amendment to the rule must be submitted to the board for review and comment. The board's review shall be considered advisory. The board shall have 45 days from receipt of the proposed rule or amendment to the rule to provide its comments in writing to the watershed district.

(c) For each county affected by the watershed district, the managers must publish a notice of hearings and adopted rules in one or more legal newspapers published in the county and generally circulated in the watershed district. The managers must file adopted rules with the county recorder of each county affected by the watershed district and the board.

(d) The managers must mail a copy of the rules to the governing body of each municipality affected by the watershed district.

**Subd. 3. Notification for rule that affects city.** A rule or resolution that affects land or water within the boundaries of a city is not effective within the city's boundaries until the governing body of the city is notified.

*History: 1990 c 391 art 4 s 26; 1995 c 199 s 21*

**103D.345 PERMITS.**

**Subdivision 1. Application fee.** A person applying for a permit required by the managers under a rule controlling the use and development of land in the floodplain, greenbelt, and open space areas of the watershed district must accompany the application with a permit application fee to defray the cost of recording and processing the application. The managers may set the fee not to exceed \$10.

**Subd. 2. Field inspection fee.** The managers may charge, in addition, a field inspection fee of at least \$35. The inspection fee must be used to cover actual costs related to a field inspection. Inspection costs include investigation of the area affected by the proposed activity, analysis of the proposed activity, services of a consultant, and any required subsequent monitoring of the proposed activity. Costs of monitoring an activity authorized by permit may be charged and collected as necessary after issuance of the permit.

**Subd. 3. Government agencies exempt.** The fees in subdivisions 1 and 2 may not be charged to the federal government, the state, or a political subdivision.

**Subd. 4. Bond.** The managers may require an applicant for a permit to file a bond with the managers in an amount set by the managers and conditioned on performance by the applicant of authorized activities in conformance with the terms of the permit.

**Subd. 5. Applicability of permit requirements to state.** A rule adopted by the managers that requires a permit for an activity applies to the department of transportation.

*History: 1990 c 391 art 4 s 27; 1996 c 407 s 42*

**103D.351 ANNUAL REPORT.**

(a) The managers must prepare a yearly report of the financial conditions of the watershed district, the status of all projects, the business transacted by the watershed district, other matters affecting the interests of the watershed district, and a discussion of the managers' plans for the succeeding year.

(b) Copies of the report must be transmitted to the board of water and soil resources, the commissioner, and the director within a reasonable time.

**History:** 1990 c 391 art 4 s 28; 1995 c 199 s 22

#### 103D.355 ANNUAL AUDIT.

Subdivision 1. **Requirement.** The managers must have an annual audit completed of the books and accounts of the watershed district. The annual audit may be made by a public accountant or by the state auditor. The annual audit must be made by a certified public accountant or the state auditor at least once every five years, or when cumulative district revenues or expenditures exceed an amount established by the board in consultation with the state auditor.

Subd. 2. **Audit by state auditor.** (a) If the annual audit is to be made by the state auditor, the audit must be initiated by a petition of the resident owners of the watershed district or resolution of the managers of the watershed district. The petition must request an annual audit pursuant to the authority granted municipalities under sections 6.54 and 6.55.

(b) If the audit is made by the state auditor, the watershed district receiving the examination must pay the state the total cost and expenses of the examination, including the salaries paid to the examiners while actually engaged in making the examination. The general fund must be credited with all collections made for examinations under this subdivision.

Subd. 3. **Reports for state auditor.** The managers must make and submit reports demanded by the state auditor.

**History:** 1990 c 391 art 4 s 29; 1992 c 466 s 4

### WATERSHED MANAGEMENT PLAN

#### 103D.401 WATERSHED MANAGEMENT PLAN.

Subdivision 1. **Contents.** (a) The managers must adopt a watershed management plan for any or all of the purposes for which a watershed district may be established. The watershed management plan must give a narrative description of existing water and water-related problems within the watershed district, possible solutions to the problems, and the general objectives of the watershed district. The watershed management plan must also conform closely with watershed management plan guidelines as adopted and amended from time to time by the board of water and soil resources.

(b) The watershed management plan may include a separate section on proposed projects. If the watershed district is within the metropolitan area, the separate section of proposed projects or petitions for projects to be undertaken according to the watershed management plan is a comprehensive plan of the watershed district for purposes of review by the metropolitan council under section 473.165.

Subd. 2. **Review.** The managers must send a copy of the proposed watershed management plan to the county auditor of each county affected by the watershed district, the board, the commissioner, the director, the governing body of each municipality affected by the watershed district, and soil and water conservation districts affected by the watershed district. For a watershed district within the metropolitan area, a copy of the proposed watershed management plan must also be submitted to the metropolitan council.

Subd. 3. **Director's and metropolitan council's recommendations.** After receiving the watershed management plan, the director and the metropolitan council must review and make recommendations on the watershed management plan. By 60 days after receiving the plan, the director and the metropolitan council must send their recommendations on the watershed management plan to the board and a copy to the managers of the watershed district, the county auditor of each county affected by the watershed district, the governing bodies of all municipalities affected by the watershed district, and soil and water conservation districts affected by the watershed district. The board may extend the period for review and transmittal of the recommendations.

Subd. 4. **Hearing notice.** (a) The board must give notice and hold a watershed management plan hearing on the proposed watershed management plan by 45 days after receiving the director's and metropolitan council's recommendations.

(b) The board must give notice of the watershed management plan hearing by publication in a legal newspaper that is published in counties affected by the watershed district. The last publication must occur at least ten days before the watershed management plan hearing.

(c) The board must give notice of the watershed management plan hearing by mail to the auditors of counties and to the chief executive officials of municipalities affected by the watershed district.

(d) The notice must include:

(1) a statement that a copy of the proposed watershed management plan has been filed with the board, the metropolitan council, where applicable, the auditors of counties affected by the proposed watershed district, the commissioner, the director, the governing body of each municipality affected by the watershed district, and the soil and water conservation districts affected by the watershed district;

(2) a general description of the purpose of the watershed district;

(3) a general description of the property included in the watershed district;

(4) a general description of the proposed watershed management plan;

(5) the date, time, and location of the hearing; and

(6) a statement that all persons affected or interested in the watershed district may attend and give statements at the watershed management plan hearing.

**Subd. 5. Board approval.** After the watershed management plan hearing, the board must, by order, prescribe and approve a watershed management plan for the watershed district. The board must send a copy of the order and approved watershed management plan to the managers, the county board of each county affected by the watershed district, the commissioner, the director, the metropolitan council, where applicable, the governing body of each municipality affected by the watershed district, and soil and water conservation districts affected by the watershed district. The watershed management plan approved by the board is the watershed management plan for the watershed district.

**History:** 1990 c 391 art 4 s 30; 1995 c 199 s 23,24

#### 103D.405 REVISED WATERSHED MANAGEMENT PLAN.

**Subdivision 1. Requirements.** (a) The managers and the board must revise the watershed management plan for the watershed district at least once every ten years after the original watershed management plan is approved. The revised watershed management plan of the district must conform closely with adopted watershed management plan guidelines of the board of water and soil resources.

(b) The managers must include the following items in the revised watershed management plan:

(1) updates and supplements of the existing hydrological and other statistical data of the watershed district;

(2) specific projects and programs to be considered for implementation;

(3) a statement of the extent that the purposes for which the watershed district had been established have been accomplished;

(4) a description of problems requiring future action by the watershed district;

(5) a summary of completed studies on active or planned projects, including financial data; and

(6) an analysis of the effectiveness of the watershed district's rules and permits in achieving its water management objectives in the watershed district.

(c) A revised watershed management plan must be transmitted, reviewed, recommended, and approved as provided in subdivisions 2 to 4 and 6.

**Subd. 2. Required ten-year revision.** (a) After ten years and six months from the date that the board approved a watershed management plan or the last revised watershed management plan, the managers must consider the requirements under subdivision 1 and adopt a revised watershed management plan outline and send a copy of the outline to the board.

(b) By 60 days after receiving a revised watershed management plan outline, the board must review it, adopt recommendations regarding the revised watershed management plan outline, and send the recommendations to the managers.

(c) By 120 days after receiving the board's recommendations regarding the revised watershed management plan outline, the managers must complete the revised watershed management plan.

Subd. 3. **Review.** The managers must send a copy of the revised watershed management plan to the board, the county board and county auditor of each county affected by the watershed district, the director, the governing body of each municipality affected by the watershed district, soil and water conservation districts affected by the watershed district, and the metropolitan council, if the watershed district is within the metropolitan area.

Subd. 4. **Director's and metropolitan council's recommendations.** The director and the metropolitan council, if applicable, must review and make recommendations on the revised watershed management plan. By 60 days after receiving the revised watershed management plan unless the time is extended by the board, the director and the council must send the recommendations on the revised watershed management plan to the board, and a copy of the recommendations to the managers, the county auditor of each county affected by the watershed district, the governing body of each municipality affected by the watershed district, and soil and water conservation districts affected by the watershed district.

Subd. 5. **Notice.** (a) The board must give notice and hold a revised watershed management plan hearing on the proposed revised watershed management plan by 45 days after receiving the director's and metropolitan council's recommendation.

(b) The board must give notice of the revised watershed management plan hearing by publication in a legal newspaper published in counties affected by the watershed district. The last publication must occur at least ten days before the revised watershed management plan hearing.

(c) The board must give notice of the revised watershed management plan hearing by mail to the auditors of counties and to the chief executive officials of municipalities affected by the watershed district.

(d) The notice must include:

(1) a statement that a copy of the proposed revised watershed management plan has been filed with the board, the metropolitan council, where applicable, the auditors of counties affected by the proposed watershed district, the commissioner, the director, the governing body of each municipality affected by the watershed district, and the soil and water conservation districts affected by the watershed district;

(2) a general description of the purpose of the watershed district;

(3) a general description of the property included in the watershed district;

(4) a general description of the proposed revised watershed management plan;

(5) the date, time, and location of the hearing; and

(6) a statement that all persons affected or interested in the watershed district may attend and give statements at the revised watershed management plan hearing.

Subd. 6. **Board order.** After the revised watershed management plan hearing, the board must prescribe a revised watershed management plan for the watershed district. The board must send a copy of the order and approved revised watershed management plan to the managers, the county board of each county affected by the watershed district, the commissioner, the director, the metropolitan council, where applicable, and soil and water conservation districts affected by the watershed district. The revised watershed management plan approved by the board is the revised watershed management plan for the watershed district.

**History:** 1990 c 391 art 4 s 31; 1995 c 199 s 25

### 103D.411 AMENDMENT OF WATERSHED MANAGEMENT PLAN AND REVISED WATERSHED MANAGEMENT PLAN.

The managers may initiate an amendment of a watershed management plan or revised watershed management plan by submitting a petition with the proposed amendment to the board. The board must give notice and hold a hearing on the amendment in the same manner as for the watershed management plan. After the hearing, the board may, by order, approve or prescribe changes in the amendment. The amendment becomes part of the watershed management plan after approval by the board. The board must send the order and approved

amendment to the entities that receive an approved watershed management plan under section 103D.401, subdivision 5.

**History:** 1990 c 391 art 4 s 32

## GENERAL PROVISIONS

### 103D.501 CONSTRUCTION AND ADMINISTRATION.

This chapter shall be construed and administered so as to make effective the purposes of section 103D.201, subdivision 1.

**History:** 1990 c 391 art 4 s 33

### 103D.505 REFERENCE TO OTHER DRAINAGE LAWS.

If this chapter refers to particular sections of the drainage laws of this state, the sections and provisions shall, if consistent with this chapter, be treated and construed as having the same effect, so far as the provisions of this chapter are concerned, as though set forth in this chapter. Amendments of those laws passed after August 1, 1990, are applicable to this chapter.

**History:** 1990 c 391 art 4 s 34

### 103D.511 CERTAIN CONDEMNATION PROVISIONS DO NOT APPLY.

Section 117.155 relating to payment of damages in a condemnation proceeding does not apply to a project financed by special assessment.

**History:** 1990 c 391 art 4 s 35

### 103D.515 PREEXISTING AND IMPROVED WATER RIGHTS.

Subdivision 1. **Preexisting water rights recognized.** The rights of private or corporate landowners to use the waters of the watershed district for any purpose continue as the rights existed at the time of the organization of the watershed district.

Subd. 2. **Watershed district possesses improved rights.** All preexisting rights must be recognized by the managers, but if projects constructed by the watershed district make possible a greater, better, or more convenient use of or benefit from the waters of the watershed district for any purpose, the right to the greater use or benefit is the property of the watershed district.

Subd. 3. **Compensation for improved rights.** The watershed district may lease or assign the rights in return for reasonable compensation, as provided in this section.

Subd. 4. **Approval of rights transfer.** Leases, assignments, permits, or contracts for the use of water shall be entered into only after the managers have reported to the board the terms and conditions of the lease, permit, or contract relative to the use of any watershed district property. The board shall give notice of the contract to all parties interested, by mail, and shall have notice of the application published. The notice must state the purpose of the application and the time and place of hearing on it. At the time of hearing the board shall hear all interested persons for or against the proposed contract and make an order accordingly on conditions and restrictions necessary to protect the interest of the watershed district and of the public.

**History:** 1990 c 391 art 4 s 36; 1995 c 199 s 26

### 103D.521 RIGHTS ASSURED DUE PROCESS OF LAW.

A person may not be deprived or divested under this chapter of a previously established beneficial use or right without due process of law.

**History:** 1990 c 391 art 4 s 37

### 103D.525 PROCEEDINGS AFTER FAULTY NOTICES ARE GIVEN.

Subdivision 1. **Jurisdiction retained.** If a notice is required for a hearing or proceeding before the board, managers, or district court, and the board, managers, or court find that prop-

er notice was not given, the board, managers, or court do not lose jurisdiction and the proceedings are not invalid.

**Subd. 2. Proper notice to be given.** If the notice was defective, the board, managers, or court shall order proper notice to be given. The board, managers, or court shall continue the hearing until notice is properly given and then proceed as though notice had been properly given in the first instance.

**Subd. 3. Defective published notice.** If the original notice was faulty only with reference to publication as to certain tracts, only the persons interested in those particular tracts need be notified by a later notice. If the publication of a notice in a county was defective or not made in time, notice need be given only within the county where notice was defective.

**History:** 1990 c 391 art 4 s 38

### 103D.531 CONTINUANCE OF HEARINGS.

If an order has been made and notice given for a hearing in a proceeding under this chapter, and the board, managers, or court fail to appear at the time and place specified, the board or the managers, or the court administrator of the district court shall continue the hearing to another date as necessary and notify the board, managers, or the court of the continuance and the date of hearing. The matter shall be continued to that date without affecting the jurisdiction of the board, the managers, or the court.

**History:** 1990 c 391 art 4 s 39; 1995 c 199 s 27

### 103D.535 APPELLATE PROCEDURES AND REVIEW.

**Subdivision 1. What can be appealed.** (a) Any party alone or jointly may appeal to the district court or to the board an order of the managers made in a proceeding relating to a project and entered in the watershed district's record that determines:

- (1) the amount of benefits determined;
- (2) the amount of damages allowed;
- (3) the allowance of fees or expenses in any proceedings;
- (4) a matter in the proceeding that affects a substantial right; or
- (5) an order of the managers authorizing or refusing to establish a project in whole or in part.

(b) Actions of the managers that do not relate to projects, including actions related to permits and actions to enforce watershed district rules, are not reviewable under this section.

(c) Projects initiated and financed by watershed districts, wholly within the metropolitan area, under a state-approved and locally adopted surface water management plan under section 103B.201 are not reviewable under this section.

**Subd. 2. Amounts awarded on appeal are substituted.** On appeal, the amount awarded by the jury or the board as finally determined shall stand for and in the place of the amount from which the appeal was taken.

**Subd. 3. Appeals from managers' orders.** (a) If an appeal is taken from an order authorizing a project, a trial of an appeal of benefits or damages from the proceedings must be stayed until the appeal is decided. If the order authorizing the project is affirmed, a trial of an appeal of benefits or damages may commence.

(b) If the appeal is from an order refusing to authorize a project and the court or the board later orders the project, the secretary of the watershed district shall give notice by publication of the filing of the order. The notice is sufficient if it refers to the proposed project by general description and recites the substance of the order and the date of filing in the court.

**Subd. 4. Appeals can involve property other than appellant's own.** (a) A person or political subdivision appealing the amount of benefits or damages may include and have considered and determined benefits or damages affecting property other than that person's or political subdivision's own property.

(b) Notice of the appeal must be served on:

- (1) the owner or occupant of the property not owned by the appellant or on the attorney who represented the other owner in the proceedings;

(2) the auditor of the county where the property is located; and

(3) on the court administrator of the district court of the county where the principal place of business of the watershed district is located, or on the board.

**Subd. 5. Notice of appeal.** (a) Before the appeal is heard by the court or board, the appellant must file a notice of appeal with the court administrator of the district court or the secretary of the board. The appeal must:

(1) be filed within 30 days of the date of the final order;

(2) state the grounds upon which the appeal is taken; and

(3) be accompanied by an appeal bond of at least \$250 to the watershed district where the property is located.

(b) The bond must be approved by the court administrator of the district court or the board where the appeal is filed. The bond must be conditioned that the appellant will:

(1) make the appeal;

(2) pay all costs and disbursements that may be adjudged against the appellant; and

(3) comply with the order of the court or of the board where the appeal is filed.

**Subd. 6. Time and place of trial.** (a) The appeal must be tried by a jury, or by the board at a time and place set by the court or board. If the appeal is tried by a jury, the appeal must be tried and determined at the next term of the district court held within the county where the notice of appeal was filed, or in other counties where the appeal is heard, beginning after the filing of the appeal.

(b) An appeal takes precedence over all other civil matters.

(c) If there is more than one appeal to the board involving the same project, or if there is more than one appeal triable in one county, the court or the board may consolidate the appeals and try them together, but the rights of the appellants must be determined separately. Consolidation of the appeals may be made on the court's or board's own motion or on the motion of a party in interest.

**Subd. 7. Benefits outside county of district's office.** If there is an appeal relating to damages or benefits to property in a county other than the county where the principal place of business of the watershed district is located, on request of the appellant, the trial must be held at the next term of the district court of the county where the benefited or damaged property is located. The court administrator of the district court where the appeal is filed shall make a transcript of the papers and documents on file in the court administrator's office in the proceeding as they pertain to the matter for which the appeal is taken. The court administrator shall certify the transcript and file it in the office of the court administrator of the district court in the county where the appeal will be tried. After the final determination of the appeal, the court administrator of the district court where the action is tried shall certify and return the verdict to the district court of the county where the proceedings were initiated.

**Subd. 8. Appeal to board.** If the appeal is to the board, the board shall file its decision with the board's secretary. If the appeal is taken to the board from the order of the managers, the decision of the board may be reviewed by certiorari proceedings in the district court of a county where the proposed project lies in whole or in part.

**Subd. 9. Court referral of questions to board.** If an appeal is from the order of the managers and made to the district court, and the court determines that there are involved facts, circumstances, or matters especially within the knowledge, functions, or duties of the board, the court may refer to the board as referee questions of fact within the scope of the board's knowledge, functions, and duties. The board shall make its findings of fact upon the questions and report them back to the court.

**Subd. 10. Trial record.** The board shall make a record of all matters tried by the board on appeal or referred to it by the district court for findings of fact under this section. The record must meet the requirements of a record of the trial of a matter in district court.

**Subd. 11. Board must follow administrative procedure.** Proceedings before the board must conform to sections 14.57 to 14.62.

**History:** 1990 c 391 art 4 s 40; 1992 c 466 s 5; 1995 c 199 s 28-30

### 103D.537 APPEALS OF RULES, PERMIT DECISIONS, AND ORDERS NOT INVOLVING PROJECTS.

(a) Except as provided in section 103D.535, an interested party may appeal a permit decision or order made by the managers by a declaratory judgment action brought under chapter 555. An interested party may appeal a rule made by the managers by a declaratory judgment action brought under chapter 555 or by appeal to the board. The decision on appeal must be based on the record made in the proceeding before the managers. An appeal of a permit decision or order must be filed within 30 days of the managers' decision.

(b) By January 1, 1997, the board shall adopt rules governing appeals to the board under paragraph (a). A decision of the board on appeal is subject to judicial review under sections 14.63 to 14.69.

**History:** 1992 c 466 s 6; 1995 c 199 s 31

### 103D.539 INFORMAL RESOLUTION OF DISPUTES.

An interested party may request a meeting with the dispute resolution committee of the board of water and soil resources to informally resolve a dispute before initiating a declaratory judgment action or an appeal under sections 103D.535 and 103D.537.

**History:** 1995 c 199 s 32

### 103D.541 APPEAL OF COURT ORDER.

Subdivision 1. **Appeal authorized.** A party may appeal a court order as in other civil cases if aggrieved by a final order or judgment given on appeal to the district court or by the original order of the court made in proceedings heard and tried before the court.

Subd. 2. **Appeal of proceeding before managers.** In a proceeding before the managers for the repair, improvement, maintenance, consolidation, or abandonment of a project of the watershed district, the right of appeal is the same as in other civil cases.

**History:** 1990 c 391 art 4 s 41

### 103D.545 ENFORCEMENT.

Subdivision 1. **Misdemeanor.** A violation of a provision of this chapter, a rule, order, or stipulation agreement made or a permit issued by the managers under this chapter is a misdemeanor.

Subd. 2. **Methods of enforcement.** A provision of this chapter, a rule, order, or stipulation agreement made or a permit issued by the managers under this chapter may be enforced by criminal prosecution, injunction, action to compel performance, restoration, abatement, and other appropriate action.

Subd. 3. **Attorney fees and costs.** In any civil action arising from or related to a rule, order, or stipulation agreement made or a permit issued or denied by the managers under this chapter, the court may award the prevailing party reasonable attorney fees and costs.

**History:** 1990 c 391 art 4 s 42; 1992 c 466 s 7

### 103D.551 ENFORCEMENT OF RULES AND ORDERS.

The district court may enforce the provisions of this chapter, and a rule adopted or order issued by the managers under this chapter by injunction or other appropriate order.

**History:** 1990 c 391 art 4 s 43

## PROCEDURE FOR MANAGERS' ESTABLISHMENT OF PROJECTS

### 103D.601 ESTABLISHMENT OF PROJECT BY MAJORITY OF MANAGERS.

Subdivision 1. **Requirements.** (a) The managers may initiate a project by resolution of at least a majority of the managers if:

(1) the project is financed by grants totaling at least 50 percent of the estimated project cost; and

(2) the engineer's estimate of costs to parties affected by the watershed district, including assessments against benefited properties but excluding state, federal, or other grants, is not more than \$750,000 for the project.

(b) A resolution under this subdivision may not be used to establish a project that has drainage as its essential nature and purpose.

**Subd. 2. Preliminary resolution hearing notice.** (a) The managers must set the time and location for a preliminary resolution hearing on the proposed resolution for the project.

(b) The managers must give notice of the preliminary resolution hearing by publication in a legal newspaper published in the counties affected by the watershed district. The last publication must occur at least ten days before the preliminary resolution hearing.

(c) The preliminary resolution hearing notice must contain:

(1) the date, time, and place of hearing;

(2) the substance of the proposed project resolution;

(3) the means of financing the project; and

(4) a statement that all persons who might be affected by the proposed project or who may be interested in the proposed project may appear and be heard.

(d) Defects in the notice do not invalidate the proceedings.

**Subd. 3. Preliminary report and information.** (a) The managers must have the watershed district engineer or another competent person prepare a preliminary report advising the managers whether the proposed project is feasible and estimating the cost of the project. An error or omission in the preliminary report does not invalidate the proceeding.

(b) The managers may have other helpful information prepared that will aid in determining the desirability and feasibility of the project.

**Subd. 4. Unfavorable preliminary report.** If the preliminary report is unfavorable, the managers must set a time and location for a hearing in the manner provided for the preliminary resolution. After the hearing, the project may be referred back to the watershed district engineer or another competent person for further study and report, or the managers may dismiss the proceeding.

**Subd. 5. Final resolution.** If, after the hearing, the managers determine that the proposed project promotes the public interest and welfare and is practicable and in conformity with the watershed management plan of the watershed district, the managers must adopt a final resolution approving the project and identify the proceeding by name and number.

**Subd. 6. Further procedure.** (a) When a final resolution is adopted, the proceeding must continue as provided for a project initiated by a petition.

(b) After the managers file a statement listing the property benefited, damaged, or otherwise affected by a project with the auditors of counties affected by the project, the proceedings for the project must continue under section 103D.901.

*History: 1990 c 391 art 4 s 44*

## PROCEDURE FOR BASIC WATER MANAGEMENT PROJECTS AND GOVERNMENT PROJECTS

### 103D.605 PROJECT CONSTRUCTED WITH GOVERNMENT AID OR AS PART OF PLAN.

**Subdivision 1. Procedure requirement.** The procedure in this section must be followed if:

(1) a project is to be constructed within the watershed district under an agreement between the managers and the state or federal government and the cost of the project is to be paid for in whole or in part by the state or federal government, but the rights-of-way and the cost of the project are assumed by the watershed district; or

(2) the managers are undertaking all or a portion of the basic water management project as identified in the watershed management plan.

Subd. 2. **Board's and director's reports.** A copy of the project plan must be transmitted to the board and the director. The board and the director must review the project plan and prepare reports on the project. The reports must be transmitted to the managers.

Subd. 3. **Project hearing notice.** (a) After receiving the board's and the director's reports, the managers must set a time and location for a hearing on the proposed project.

(b) The project hearing notice must state:

(1) the time and location of the project hearing;

(2) the general nature of the proposed project;

(3) the estimated cost of the proposed project; and

(4) the method by which the cost of the proposed project is to be paid, including the cost to be allocated to each affected municipality or the state government.

(c) The managers must give notice by publication before the date of the hearing in a legal newspaper, published in the counties where property is to be improved by the proposed project. The last publication must occur between 30 days and ten days before the project hearing.

(d) At least ten days before the project hearing, notice by mail must be given to the director and the municipalities entirely or partly within the project area.

(e) Failure to give mailed notice or defects in the notice do not invalidate the proceedings.

Subd. 4. **Project hearing.** At the project hearing, the managers must hear all parties interested in the proposed project.

Subd. 5. **Project establishment.** After the project hearing, if the managers find that the project will be conducive to public health, promote the general welfare, and is in compliance with the watershed management plan and the provisions of this chapter, the board must, by order, establish the project. The establishment order must include the findings of the managers.

*History: 1990 c 391 art 4 s 45*

### 103D.611 CONSTRUCTION BY GOVERNMENT AGENCIES.

Subdivision 1. **Project plan to director and board.** If a project is to be constructed within the watershed district under a contract between the watershed district and the state or the federal government, and the cost of construction or implementation is to be paid by the governmental agency but the rights-of-way, legal, and general expenses of the improvement are to be paid by the watershed district, the managers shall forward a copy of the project plan to the board and the director. The director shall prepare a director's advisory report and the board shall prepare a board's advisory report.

Subd. 2. **Hearing notice.** (a) The managers shall hold a public hearing on the proposed contract following publication of the hearing notice.

(b) The hearing notice must be published once each week for two successive weeks before the date of the hearing in a legal newspaper published in the counties where a part or all of the affected waters and lands are located. The last publication must occur at least ten days before the hearing. The notice must state the time and place of hearing, the general nature of the proposed improvement, its estimated cost, and the area proposed to be assessed.

(c) At least ten days before the hearing, notice must be mailed to each resident owner, as shown on the county auditor's most recent records maintained for taxation purposes, within the area proposed to be assessed, and to the director, and to each public body within the area to be assessed and likely to be affected. Failure to give mailed notice or defects in the notice do not invalidate the proceedings.

Subd. 3. **Hearing.** At the time and place specified in the notice, the managers shall hear all interested parties for and against the proposed project. All questions relative to the project must be determined on evidence presented at the hearing. If the managers find that the project will be conducive to public health and will promote the general welfare, and that it complies with this chapter, the managers shall make findings accordingly, authorize the project, and make the proposed contract or other arrangement.

Subd. 4. **Appraisal.** (a) After authorizing the project, the managers shall appoint three disinterested resident owners of the state to act as appraisers.

(b) After the appraisers sign an oath to faithfully and impartially perform their duties, they shall, with or without the engineer, determine the benefits and damages to property affected by the proposed project. The appraisers shall make a detailed statement and file the statement with the managers showing:

(1) the actual damages that have resulted or will result to individuals, property, or corporations from the construction or implementation of the project; and

(2) a list of property, including highways and corporations, receiving actual benefits by way of drainage, control of flood waters, or other means authorized in this chapter.

Subd. 5. **Hearing on appraisers' report.** (a) After the appraisers' report and the plans and engineering data prepared by the governmental agency are filed with the managers, the managers shall prepare a detailed statement of all costs, including damages, to be incurred by the watershed district in construction or implementation of the project.

(b) The managers shall order a time and place within the watershed district for a hearing on the appraisers' report by 35 days after the detailed statement of costs is prepared. The managers shall give notice by publication and mailing as provided in subdivision 1 for a hearing on a petition. At the time and place specified in the notice, the managers shall hear all parties interested for and against confirming the appraisers' report.

(c) The managers may order and direct the modification of the assessment of benefits and damages, and amend or change the list of properties reported as benefited or damaged. If the amended reports include property not included in the original report, the managers shall adjourn and publish and mail in the manner for the original notice, the proper notice concerning the property not included in the previous notice.

(d) If upon full hearing the managers find that the benefits resulting from the construction or implementation will be greater than the assessments including damages they shall confirm the appraisers' report.

(e) Persons or political subdivisions affected by the order may appeal the order under this chapter.

Subd. 6. **Assessments and levies.** Proceedings for assessments and levies may be brought under section 103D.901 after the managers file a statement with the auditor of a county that lists the property and corporations benefited or damaged or otherwise affected by a project as found by the appraisers and approved by the managers.

Subd. 7. **Normal project initiation does not apply.** Section 103D.701 relating to project initiation does not apply to projects of the watershed district constructed under contract as provided in this section.

Subd. 8. **Acquisition of property.** (a) If the watershed district is required to acquire an interest in real property under this section or convey an interest in real property to the federal government, the managers shall, before the filing of the appraisers' report, record a notice of the pendency of a proceeding initiated by the managers to acquire the lands to be conveyed to the federal government. The notice of pendency must be recorded in the office of the county recorder of the affected county. The notice must state the purpose for which the lands are to be taken.

(b) By 20 days before the hearing on the appraisers' report, in addition to the notice required by subdivision 2, the notice of the hearing must be served on the owners of the property to be acquired, in the same manner as the summons in a civil action. The notice must:

(1) describe the property;

(2) state by whom and for what purpose the property is to be taken;

(3) give the names of all persons appearing of record or known to the managers to be the owners;

(4) state that appraisers have been appointed as provided by subdivision 4, to determine the benefits and damages; and

(5) state that a hearing will be held by the managers on the appraisers' report at the time and place specified in the notice.

(c) After the managers have confirmed the appraisers' report listing the property to be benefited or damaged, as provided in subdivision 2, the managers have all rights of possession and entry conferred in other cases of condemnation by chapter 117.

(d) After confirmation of the appraisers' report, the attorney for the managers shall make a certificate describing the property taken and the purpose for the taking, and reciting the fact of payment of all awards determined by the appraisers appointed by the managers or judgments in relation to the land. When approved by the managers, the certificate establishes the right of the watershed district in the property taken. The certificate must be filed for record with the county recorder of the county where the property is located. The filing constitutes notice to all parties of the title of the watershed district to the property described in the certificate.

(e) After the certificate is filed, the managers may convey the property and interests in the property acquired to the federal government, if necessary.

**History:** 1990 c 391 art 4 s 46; 1995 c 199 s 33-35

## EMERGENCY PROJECTS

### 103D.615 EMERGENCY PROJECTS.

Subdivision 1. **Declaration of emergency.** If the managers find that conditions exist that present a clear and imminent danger to the health or welfare of the people of the watershed district, and that to delay action would prejudice the interests of the people of the watershed district or would be likely to cause irreparable harm, the managers may declare the existence of an emergency and designate the location, nature, and extent of the emergency.

Subd. 2. **Project order.** If an emergency has been declared to the extent necessary to protect the interests of the watershed district, the managers may order that work be done under the direction of the managers and the engineer, without a contract.

Subd. 3. **Assessment.** The cost of work undertaken without a contract may be assessed against benefited properties or, if the cost is not more than 25 percent of the most recent administrative ad valorem levy of the watershed district and the work is found to be of common benefit to the watershed district, funding may be raised by an ad valorem tax levy upon all taxable property within the watershed district, or both.

**History:** 1990 c 391 art 4 s 47

## DRAINAGE SYSTEMS AND PROJECTS

### 103D.621 DRAINAGE IMPROVEMENTS.

Subdivision 1. **Findings.** The legislature finds that because of urban growth and development in the metropolitan area problems arise for the improvement and repair of drainage systems which were originally established for the benefit of land used for agriculture. The procedure for improvement and repair of drainage systems now in the metropolitan area should be simplified to more adequately and economically improve and repair drainage systems.

Subd. 2. **Definitions.** (a) The terms in this section have the meanings given them in this subdivision.

(b) "Drainage system" has the meaning given in section 103E.005, subdivision 12.

(c) "Watershed district" means any watershed district established under this chapter, wholly or partially in a metropolitan county.

(d) "Metropolitan county" means any one of the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington.

(e) "Metropolitan area" means the combined area of the metropolitan counties.

Subd. 3. **Drainage improvements.** With the concurrence of the governing bodies of the cities and the town boards of the towns where the drainage system is located, the managers of

a watershed district where there is a drainage system may improve and repair any drainage system transferred to the watershed district under section 103D.625 by conforming to sections 429.031; 429.041, subdivisions 1 and 2; 429.051; 429.061; and 429.071.

Subd. 4. **Alternative power.** With the concurrence of the governing bodies of the cities and the town boards of the towns where the drainage system is located, the managers may improve and repair a drainage system under the power granted to them in this chapter notwithstanding any provision of chapter 103E.

Subd. 5. **Appeal.** A person aggrieved by an order for improvement or repair by the managers or by an assessment may appeal as provided in sections 103D.535 and 103D.541.

**History:** 1990 c 391 art 4 s 48; 1995 c 199 s 36

### 103D.625 DRAINAGE SYSTEMS WITHIN WATERSHED DISTRICT.

Subdivision 1. **Watershed district assumption of drainage system.** (a) The managers shall take over a joint county or county drainage system within the watershed district and the right to repair and maintain the drainage system if directed by a joint county drainage authority or a county board. The transfer may be initiated by:

- (1) the joint county drainage authority or county board;
- (2) a petition from a person interested in the drainage system; or
- (3) the managers.

(b) The transfer may not be made until the joint county drainage authority or county board has held a hearing on the transfer. Notice of the proposed transfer with the time and place of hearing must be given by two weeks' published notice in a legal newspaper of general circulation in the area where the transfer is to occur. All interested persons may appear and be heard.

(c) After the hearing, the joint county drainage authority or county board shall order the watershed district to take over the joint county or county drainage system, unless it appears that the takeover would not serve the purpose of this chapter and would not be for the public welfare or be in the public interest.

Subd. 2. **Drainage systems are works of watershed district.** A joint county or county drainage system that is taken over in whole or in part is part of the works of the watershed district to the extent taken over.

Subd. 3. **Procedure for repair or improvement.** After the transfer is ordered, all proceedings for repair and maintenance must conform to chapter 103E, except for repairs and maintenance done pursuant to section 103D.621, subdivision 4.

Subd. 4. **Construction or improvement.** Construction of new drainage systems or improvements of existing drainage systems in the watershed district must be initiated by filing a petition with the managers. The proceedings for the construction or improvement of drainage systems in the watershed district must conform to chapter 103E, except for repairs and maintenance done pursuant to section 103D.621, subdivision 4.

**History:** 1990 c 391 art 4 s 49; 1995 c 199 s 37,38

## PROJECT REPAIRS AND IMPROVEMENTS

### 103D.631 MAINTENANCE OF PROJECTS.

Subdivision 1. **Maintenance required.** The managers are responsible for maintaining the projects of the watershed district in a condition so that they will accomplish the purposes for which they were constructed.

Subd. 2. **Maintenance fund.** (a) The cost of normal or routine maintenance of the projects of the watershed district, and the cost of removing obstructions and accumulations of foreign substances from a drainage system, shall be paid from the maintenance fund on the order of the managers.

(b) The managers may assess all the parcels of property and municipal corporations previously assessed for benefits in proceedings for the construction or implementation of the

project, to establish a maintenance fund for the project. The assessment must be made pro rata according to benefits determined. An assessment for the benefit of the maintenance fund may not be made when the fund exceeds 20 percent of the original cost of construction or implementation of the project. The auditors of the affected counties shall file a tabular lien statement covering the assessment in the office of the county recorder for the county when the assessment order from the managers is received.

(c) The assessment shall be collected as provided in the order in the same manner as provided in section 103E.731.

(d) Before ordering the levy of an assessment for the benefit of the maintenance fund, the managers may give notice of a hearing on making the assessment and establishing the maintenance fund.

*History: 1990 c 391 art 4 s 50; 1995 c 199 s 39*

### **103D.635 REPAIRS AND IMPROVEMENTS EXCEEDING NORMAL MAINTENANCE.**

**Subdivision 1. Technical and cost specifications.** The managers shall order the engineer to prepare and submit to the managers technical and cost specifications on the work necessary to restore or improve the project to the desired level of operating efficiency before ordering repairs other than normal and routine maintenance if the engineer certifies to the managers, in the annual report or otherwise, that:

(1) a project of the watershed district is in such a state of disrepair that the project cannot be restored by normal and routine maintenance to the same condition as when it was originally constructed or subsequently improved;

(2) a ditch or channel must be widened or deepened; or

(3) a project of the watershed district must be altered or improved to attain the level of operating efficiency contemplated at the time of the original construction or implementation.

**Subd. 2. Hearing.** The managers shall set a date for a hearing on the report and give notice of the hearing in the same manner as in the original proceeding on the construction of the improvement after receiving the engineer's report.

**Subd. 3. Assessment.** (a) The managers may order the repair or improvement and assess the cost against the benefited properties if, after a hearing, the managers find that the repair or improvement is in compliance with the plan, is necessary to accomplish the purposes of this chapter, and that the cost of the repair or improvement will not exceed its benefits. The cost of the repair or improvement shall be apportioned and assessed pro rata upon all property that was assessed for the construction or implementation of the project.

(b) A single levy for the repair or improvement may not exceed the amount of benefits originally determined. The managers shall file a copy of the order for levy with the auditor of each affected county. The auditor shall extend the levy against affected properties as in proceedings for the levy, assessment, and collection of assessments in drainage proceedings conducted under sections 103E.601 to 103E.631.

*History: 1990 c 391 art 4 s 51; 1995 c 199 s 40, 41*

### **103D.641 WORK WITHOUT BID.**

If the managers find that the estimated cost of repair, including all fees and costs incurred for proceedings relating to it, is less than \$20,000, it may have the work done by contract without advertising for bids.

*History: 1990 c 391 art 4 s 52*

## **GENERAL PROCEDURE TO ESTABLISH PROJECTS**

### **103D.701 PROJECT INITIATION.**

Projects may not be initiated until the board approves a watershed management plan for the watershed district. The projects of the watershed district that are to be paid for by assessment of the benefited properties must be initiated:

- (1) by a project petition filed with the managers;
- (2) by unanimous resolution of the managers; or
- (3) as otherwise prescribed by this chapter.

**History:** 1990 c 391 art 4 s 53

### 103D.705 PROJECT PETITION.

Subdivision 1. **Requirements.** A project within the watershed district that generally conforms with the watershed management plan may be initiated by a project petition. A project petition must contain:

- (1) a description of the proposed project and the purpose to be accomplished;
- (2) a description of the property where the proposed project passes over or is located;
- (3) a general description of the part of the watershed district that will be affected, if less than the entire watershed district;
- (4) the necessity for the proposed project;
- (5) a statement that the proposed project will be conducive to public health, convenience, and welfare; and
- (6) a statement that the petitioners will pay all costs and expenses that may be incurred if the proceedings are dismissed or a construction or implementation contract is not awarded for the proposed project.

Subd. 2. **Signatures.** (a) The project petition must be signed by:

- (1) at least 25 percent of the property owners or the owners of more than 25 percent of the property within the limits of the area proposed to be improved, unless the project consists of the establishment of a new drainage system as defined in section 103E.005, subdivision 12, or the improvement of an existing drainage system;
  - (2) if the project consists of the establishment of a new drainage system as defined in section 103E.005, subdivision 12, a majority of the owners of the property that the proposed project passes over or is located on, or the owners of at least 60 percent of the area of the property that the proposed project passes over or is located on;
  - (3) if the project consists of the improvement of an existing drainage system as defined in section 103E.215, subdivision 2, at least 26 percent of the owners of the property proposed to be improved by the project or that the proposed project passes over, or the owners of at least 26 percent of the area proposed to be improved by the project or that the proposed project passes over;
  - (4) a county board of a county affected by the watershed district; or
  - (5) the governing body of a city entirely or partly within the area proposed to be improved.
- (b) If a proposed project improves property entirely within a city, a petition must originate from the governing body of the city.
- (c) For a signature on a project petition, holders of easements for electric or telephone transmission or distribution lines are not considered owners.

Subd. 3. **Petitioners' deposit or bond.** (a) When a project petition is filed and before the managers take action on the project petition, one or more of the petitioners must deposit at least \$2,000 with the managers. The deposit must be conditioned to pay all costs and expenses incurred if the project petitioned for is not constructed.

(b) Alternatively, with the approval of the managers, one or more of the petitioners may make and file a bond payable to the watershed district named in the petition. The bond must be for at least \$2,000 with adequate sureties, subject to the approval of the managers of the watershed district where the bond is filed. The bond must be conditioned to pay all costs and expenses incurred if the proceedings are dismissed or a contract is not entered into to construct the project petitioned for.

(c) If, before a project is established, the petitioner's deposit or bond is insufficient to protect the watershed district from loss from the costs or expenses incurred or to be incurred, the watershed district must require an additional deposit or bond. Further proceedings must be stopped until an adequate deposit or bond is furnished. If the additional deposit or bond is not furnished within a time set by the managers, the proceedings may be dismissed.

(d) In proceedings to establish a project, the expenses incurred before the project is established may not exceed the deposit or the bond furnished by the petitioners. A claim in excess of the amount of the petitioners' deposit or bond may not be audited or paid by the watershed district unless the petitioners file an additional deposit or bond within a time and in an amount directed by the managers.

(e) If a project petition is signed by a county board or governing body of a city, a bond is not required.

Subd. 4. **Petitioners may dismiss petition.** The petitioners may dismiss the petition on payment of costs and expenses.

**History:** 1990 c 391 art 4 s 54; 1995 c 199 s 42

### 100D.711 ENGINEER'S REPORT.

Subdivision 1. **Determination.** If the managers determine that a proper project petition has been filed, the proposed project promotes the public interest and welfare, is practicable and conforms with the watershed management plan of the watershed district, the managers must:

- (1) identify the project proceeding by name and number; and
- (2) designate an engineer to make surveys, maps, and a report on the proposed project.

Subd. 2. **Requirements.** (a) The engineer's report must include findings and recommendations about the proposed project. If the engineer finds the project feasible, the engineer must provide a plan of the proposed project as part of the report. The plan must include:

- (1) a map of the project area, drawn to scale, showing the location of the proposed improvements, if any;
  - (2) the estimated total cost of completing the project including construction, operation, implementation, supervision, and administrative costs;
  - (3) the acreage required as right-of-way listed by each lot and 40-acre tract or fraction of the lot or tract under separate ownership, if required to implement the project; and
  - (4) other details and information to inform the managers of the practicability and necessity of the proposed project with the engineer's recommendations on these matters.
- (b) The map of the area must include:
- (1) the location and adequacy of the outlet, if the project is related to drainage;
  - (2) the watershed of the project area;
  - (3) the location of existing highways, bridges, and culverts;
  - (4) the property, highways, and utilities affected by the project with the names of the known property owners;
  - (5) the location of public land and water affected by the project; and
  - (6) other physical characteristics of the watershed necessary to understand the area.

Subd. 3. **State and federal projects may be included.** The engineer may adopt, approve, and include as a part of the engineer's report a project of the state or federal government that is pertinent to the project and may accept data, plats, plans, details, or information pertaining to the state or federal project given to the engineer by the state or federal agency. The engineer shall omit the items required in subdivision 2 from the engineer's report if the data given by the state or federal government is sufficient to meet the requirements of subdivision 2.

Subd. 4. **Hearing after unfavorable engineer's report.** (a) If the engineer's report is unfavorable, the managers shall, by order, within 35 days set a time and place within the watershed district for a hearing for the petitioners to demonstrate why the managers should not refer the petition back to the petitioners for further proceedings or dismiss the petition.

(b) The hearing notice must state:

- (1) that the engineer's report is unfavorable;
- (2) that the engineer's report is on file with the managers and may be reviewed; and
- (3) the time and place for the hearing.

(c) The managers shall mail a copy of the notice to each of the petitioners at least 14 days before the hearing.

Subd. 5. **Advisory reports.** (a) When the engineer's report is filed with the managers, the managers shall send a complete copy to the director and to the board.

(b) The director and the board shall examine the engineer's report and by 30 days after receiving the report, the director shall make a director's advisory report and the board shall make a board's advisory report which must include:

(1) a statement on whether the engineer's report is incomplete and not in accordance with this chapter;

(2) a statement of whether the engineer's report is approved as being a practical plan;

(3) if the project as planned does not meet approval, recommendations for changes considered advisable must be stated or an opinion that the proposed project or improvement is not practical; and

(4) a recommendation as to whether a soil survey appears advisable.

(c) The director's advisory report and the board's advisory report shall be directed to and filed with the managers.

(d) The director's advisory report and the board's advisory report shall be considered advisory only.

Subd. 6. **Advisory reports must be filed before notice.** A notice may not be issued for the final hearing until the board's advisory report and the director's advisory report are filed or the time for filing the reports with the managers has expired.

Subd. 7. **Form.** The findings, recommendations, and content of the engineering report shall conform as nearly as practicable to the requirements of this section.

Subd. 8. **Soil survey.** If a soil survey is recommended to be made in the director's advisory report or the board's advisory report, the engineer shall make the soil survey and a soil survey report. The soil survey report must be submitted to the managers before the final hearing.

**History:** 1990 c 391 art 4 s 55; 1995 c 199 s 43

### 103D.715 APPRAISERS.

Subdivision 1. **Appointment.** After the engineer's report is filed, the managers shall, with the least possible delay, appoint three disinterested resident owners of the state as appraisers.

Subd. 2. **Oath.** An appraiser must subscribe to an oath to faithfully and impartially perform the appraiser's duties.

Subd. 3. **Duties.** The appraisers shall with or without the engineer determine the benefits and damages to property affected by the proposed project, including property owned by the state or a state agency, highways, and other property likely to be affected by the proposed project or that may be used or taken for construction, implementation, or maintenance.

Subd. 4. **Benefits and damages to state land.** For all watershed district projects, benefits and damages to property owned by the state or a state agency, held and used for the purposes described in sections 103E.025 and 103E.315, subdivision 1, must be determined using the procedure provided in sections 103E.025 and 103E.315, subdivision 1. If a state permit is required from the commissioner to construct the project, state land may not be taken, damaged, or benefited until the permit is issued.

Subd. 5. **Compensation.** An appraiser may be paid on a per diem basis for each day the appraiser is necessarily engaged in the performance of duties and for actual and necessary expenses. The compensation shall be set by the managers, paid by the watershed district, and included in the cost of the project.

**History:** 1990 c 391 art 4 s 56; 1995 c 199 s 44, 45

### 103D.721 DETERMINATION OF BENEFITS AND DAMAGES BY MANAGERS.

Subdivision 1. **Authority.** The managers may, in their discretion, use the procedure in this section to determine benefits and damages.

Subd. 2. **Determination.** After the engineer's report is filed, the managers, with the assistance of the engineer, shall determine the benefits or damages to the property affected by

proposed project, including 103D.725, which is the state or a state agency, or a political subdivision property taken to be benefited by the proposed improvement or that may be benefited therefor for construction, implementation, or maintenance.

Subd. 3. **State property.** For all watershed district projects, benefits and damages to property owned by the state or a state agency that is held and used for the purposes described in sections 103E.025 and 103E.315, subdivision 1, shall be determined using the procedure provided in sections 103E.025 and 103E.315, subdivision 1. If a state permit is required from the commissioner to construct the project, state land may not be taken, damaged, or benefited until the permit is issued.

Subd. 4. **Water management assessment portion.** The managers must determine the amount to be paid and generally assessed by the watershed district for the basic water management portion of the improvement projects.

**History:** 1990 c 391 art 4 s 57; 1995 c 199 s 46,47

### 103D.725 BENEFITED PROPERTY, DETERMINATION.

Subdivision 1. **Appraisers' standards.** If the proposed project includes the construction or improvement of a ditch, stream, river, or watercourse, or structures for the control or alleviation of damages from flood waters, the appraisers shall be governed by sections 103E.311 to 103E.321.

Subd. 2. **Determination of benefits.** In proceedings under this chapter, assessments for benefits shall be made based on the benefits to the property because of the project affecting the property. Benefited property must include:

(1) all property, including property owned by the state or a political subdivision receiving direct benefits, including assessments for drainage, recreation, commercial navigation, disposal of sewage or waste material, bank stabilization, flood control, land reclamation, prevention of siltation, control of erosion, and maintenance of lake levels;

(2) all property that is contributing water or is furnished an improved drainage outlet and all property that contributes waters that are stored, handled, or controlled by the proposed project;

(3) all property that is not receiving but needs drainage and that is furnishing waters handled or controlled by the proposed project;

(4) benefits to the state by reason of the improvement of lakes, streams, or other bodies of water as a place for propagation, protection, and preservation of fish and other forms of wildlife, that are assessable against the state to the extent and in the manner provided in section 84A.55, subdivision 9, and within the available appropriation;

(5) benefits to municipal corporations that occur to the property in the municipality generally and that may be in addition to special benefits to specific property within the municipality; and

(6) benefits that will result to property used for railway or other utility purposes.

**History:** 1990 c 391 art 4 s 58

### 103D.729 WATER MANAGEMENT DISTRICT.

Subdivision 1. **Water management district.** A watershed district may establish a water management district or districts in the territory within the watershed, for the purpose of collecting revenues and paying the costs of projects initiated under section 103B.231, 103D.601, 103D.605, 103D.611, or 103D.730.

Subd. 2. **Procedure.** A watershed district may establish a water management district only by amendment to its plan in accordance with section 103D.411, or 103B.231 for watershed districts in the metropolitan area, and compliance with subdivisions 3 and 4. The amendment shall describe with particularity the territory or the area to be included in the water management district, the amount of the necessary charges, the methods used to determine charges, and the length of time the water management district will remain in force. After adoption the amendment shall be filed with the county auditor and county recorder of each county affected by the water management district. The water management district may be dissolved by the procedure prescribed for the establishment of the water management district.

Subd. 3. **Notification.** The managers shall, ten days prior to a hearing or decision on projects implemented under this section, provide notice to the city, town, or county within the affected area. The city, town, or county receiving notice shall submit to the managers concerns relating to the implementation of the project. The managers shall consider the concerns of the city, town, or county in the decision on the project.

Subd. 4. **Resolution of disputes.** Unresolved differences between local governments and the managers may be brought before the committee on dispute resolution under section 103B.101, subdivision 10. Within 45 days of receiving the request for dispute resolution, the committee must consider the concerns of the local government. The committee has 30 days after meeting to issue a recommendation to the board for final decision.

**History:** 1996 c 471 art 8 s 1

#### 103D.730 STORM WATER FACILITIES.

(a) Any watershed district may build, construct, reconstruct, repair, enlarge, improve, or in any other manner obtain storm water systems, including mains, holding areas and ponds, and other appurtenances and related facilities for the collection and disposal of storm water, maintain and operate the facilities, and acquire by gift, purchase, lease, condemnation, or otherwise any and all land and easements required for that purpose.

(b) The authority granted is in addition to all other powers with reference to the facilities otherwise granted by the laws of this state or by this chapter.

**History:** 1996 c 471 art 8 s 2

#### 103D.731 APPRAISERS' REPORT, EXAMINATION.

(a) The appraisers shall prepare an appraisers' report of the benefits and damages determined and file the report with the managers.

(b) After the appraisers' report is filed, the managers shall examine the report and determine whether:

- (1) the report was made in conformity with the requirements of this chapter; and
- (2) the total benefits are greater than the total estimated costs and damages.

(c) If the managers determine the appraisers' report is inadequate in any manner, the managers may return the report to the appraisers for further study and report.

**History:** 1990 c 391 art 4 s 59

#### 103D.735 HEARING ON PETITION AND REPORTS.

(a) The managers shall order a final hearing by 35 days after:

- (1) the engineer's report is filed;
- (2) the appraisers' report is filed; and
- (3) the director's advisory report and the board's advisory report are filed or the time for that filing has expired.

(b) The order for a final hearing must set a time and place within the watershed district for a hearing upon the petition or resolution and reports.

**History:** 1990 c 391 art 4 s 60

#### 103D.741 HEARING NOTICE.

Subdivision 1. **Published final hearing notice.** The managers shall give notice by publication of the final hearing. The final hearing notice must contain:

- (1) a statement of the pendency of the petition or resolution;
- (2) the time and place for hearing;
- (3) a statement that the engineer's report and appraisers' report, including the plans, have been filed with the managers and are subject to inspection;
- (4) a brief description of the proposed project;
- (5) a description of the properties benefited or damaged, the names of the owners of the properties, the public and other corporations affected by the project as shown by the engi-

engineer's report and appraisers' report or may include a map of the affected area in lieu of the names of the owners and of the descriptions of the properties affected by the project; and

(6) a statement requiring all parties interested in the proposed project to appear before the managers at the time and place designated in the final hearing notice to present objections, and to show why an order should not be made by the managers granting the petition, confirming the reports of the engineer and appraisers, and ordering the establishment and construction or implementation of the project.

**Subd. 2. Mailed final hearing notice.** (a) The managers shall give the final hearing notice by mail, within one week after the beginning of publication, to the director and to each person, corporation, and public body that owns property benefited or damaged by the proposed project as shown by the engineer's and appraisers' report.

(b) The mailed final hearing notice must contain:

- (1) a brief description of the proposed project;
- (2) a statement that the engineer's report and appraisers' report are on file with the managers and available for public inspection;
- (3) the time and place of hearing; and
- (4) a statement that the addressee's name appears as an affected party.

**Subd. 3. Notice of property acquisition by watershed district.** (a) If the watershed district must acquire the ownership of real property, the managers must record a notice of pendency of the watershed district's proceeding to acquire property in the office of county recorder of the county where the property is located before the appraisers' report is filed. The pendency notice must state the purpose for which the property is to be acquired.

(b) By 20 days before the final hearing, the final hearing notice, in addition to being given in the manner required in subdivisions 1 and 2, must be served on the owners of the property to be acquired, in the same manner as a summons in a civil action. In addition to the other requirements of the final hearing notice, the notice to property owners must:

- (1) describe the property to be acquired;
- (2) state by whom and for what purpose it is to be taken;
- (3) give the names of all persons appearing of record or known to the managers to be the owners;
- (4) state that benefits and damages have been determined; and
- (5) state that the final hearing will be held by the managers at the time and place specified in the notice.

**Subd. 4. Final hearing notice in more than one county.** If a project affects the property in more than one county, separate final hearing notices must be prepared and published in each county affected showing only the general description of the proposed project and the names and descriptions of the property affected in the county or, instead of the names and descriptions, a map of the area affected in the county.

**History:** 1990 c 391 art 4 s 61; 1995 c 199 s 48

#### 103D.745 FINAL HEARING.

**Subdivision 1. Hearing.** (a) At the time and place specified in the final hearing notice, the managers must hear all parties interested for and against the establishment of the proposed project and confirm the engineer's report and the appraisers' report.

(b) Questions about the proposed project including jurisdiction, sufficiency of the petition or resolution, practicability, and necessity shall be determined by evidence presented at the hearing. Findings made by the managers before the final hearing are not conclusive but are subject to further investigation, consideration, and determination at the final hearing.

**Subd. 2. Modification of reports.** (a) The managers may order and direct the modification of:

- (1) the engineer's report within the scope of the watershed management plan for the watershed district;
- (2) the assessment of benefits and damages; and
- (3) amendment or change of the list of property reported as assessable for construction or implementation and maintenance.

(b) If the amended engineer's report and appraisers' report includes property not included in the original reports, the managers shall adjourn the hearing and have an amend notice published and mailed with the proper reference to all property as amended by the managers.

**Subd. 3. Establishment of project.** (a) The managers shall make findings, order a direct construction or implementation of the project, and confirm the engineer's report or the findings of the appraisers and the appraisers' report if, at the end of the final hearing, the managers find that the project will:

- (1) be conducive to public health;
- (2) promote the general welfare;
- (3) be in compliance with this chapter; and
- (4) result in benefits that will be greater than the cost of the construction or implementation and damages.

(b) The order may authorize the construction or implementation of the project as whole or authorize different parts of the project to be constructed separately.

(c) The managers shall order the engineer to proceed with making the necessary survey and preparing plans and specifications that are needed to construct the project and report the results of the surveys and plans to the managers.

**Subd. 4. Recess until awarding contract.** The final hearing shall be recessed until the engineer's report and the bids are received. The hearing may be recessed to allow compliance with section 103D.801 if it becomes applicable.

*History: 1990 c 391 art 4 s 62; 1995 c 199 s 49,50*

## CONSTRUCTION OR IMPLEMENTATION OF PROJECTS

### 103D.801 PROCEDURE WHEN CONTRACT IS NOT LET.

If all of the bids received are for a price more than 30 percent greater than the engineer's estimate in the engineer's report, or for a price in excess of the benefits less damages and other costs, the managers shall follow the procedure described in section 103E.511.

*History: 1990 c 391 art 4 s 63*

### 103D.805 FILING ORDER OF MANAGERS ESTABLISHING PROJECT.

An order of the managers establishing the project and authorizing construction must immediately be filed with the secretary of the watershed district, and a certified copy of the order must be filed with the auditor of each county affected, the board, the commissioner, the director, the pollution control agency, and the commissioner of health.

*History: 1990 c 391 art 4 s 64*

### 103D.811 BIDS FOR CONSTRUCTION.

**Subdivision 1. Call for bids.** After an establishment order has been made by the managers directing the establishment of a project, the managers shall call for bids for the construction or implementation of the work and give notice by publication specifying the time and place when the bids will be opened for awarding a contract for the construction or implementation of the project. The contract may be awarded in sections or as a whole, as directed by the managers.

**Subd. 2. Bid notice.** A bid notice shall be published in at least one of the newspapers in the state where notices are usually published.

**Subd. 3. Awarding of contract.** (a) At a time and place specified in the bid notice, the managers may accept or reject any or all bids and may award the contract to the lowest responsible bidder. The bidder to whom the contract is to be awarded must give a bond, with ample security, conditioned by satisfactory completion of the contract.

(b) Bids must not be considered which in the aggregate exceed by more than 30 percent the total estimated cost of construction or implementation.

(c) The contract must be in writing and be accompanied by or refer to the plans and specifications for the work to be done as prepared by the engineer for the watershed district. The plans and specifications shall become a part of the contract.

(d) The contract shall be approved by the managers and signed by the president, secretary, and contractor.

**History:** 1990 c 391 art 4 s 65; 1995 c 199 s 51,52

### **103D.815 CONTROL OF CONTRACTS.**

Subdivision 1. **Managers' control of contracts.** The managers have full control of contracts of the watershed district and matters pertaining to the contracts.

Subd. 2. **Extension of contracts.** If a contractor fails to complete a project within the time or in the manner specified in the contract, the managers may:

- (1) extend the time for completion;
- (2) refuse an extension of time;
- (3) cancel the contract, readvertise, and award a new contract;
- (4) require surety for the contractor to complete the project;
- (5) proceed to have the contract otherwise completed at the expense of the contractor and the surety; or
- (6) take other action with reference to the contract in the interest of the watershed district.

Subd. 3. **Engineer's authority over contractor.** Applicable provisions of chapter 103E govern the relations between the engineer and the contractor, including the examination and report of the engineer and the amount and time of payment.

Subd. 4. **Expense record.** (a) The managers shall keep an accurate account of all expenses incurred, including:

- (1) the compensation of the engineer and the engineer's assistants;
- (2) the compensation and expenses of the appraisers as provided in section 103D.715, subdivision 5;
- (3) the compensation of the petitioners' attorney;
- (4) the cost of petitioners' bond;
- (5) the fees of all county officials necessitated by the project, which are in addition to all fees otherwise allowed by law; and
- (6) the time and expenses of all employees of the watershed district, including the expenses of the managers, while engaged in an authorized project.

(b) Fees and expenses shall be audited, allowed, and paid upon the order of the managers and shall be charged to and be treated as a part of the cost of the project.

**History:** 1990 c 391 art 4 s 66

### **103D.821 DAMAGE TO HIGHWAY OR BRIDGE BY PASSAGE OF EQUIPMENT.**

Subdivision 1. **Notice.** If it is necessary to pass a dredge or other equipment through a bridge or grade of a highway or railroad owned by a corporation, county, town, or municipality, the managers shall give notice to the owner of the bridge or grade by 20 days before the removal so the bridge or grade may be removed temporarily to allow the passage of the equipment, or an agreement may be immediately entered into to allow the passage.

Subd. 2. **Cost paid by watershed district.** The owner of the bridge or grade shall keep an itemized account of the cost of removal and if necessary, of replacing of the bridge or grade. The actual cost must be paid by the watershed district.

Subd. 3. **Managers may remove bridge or grade.** If the owner of the bridge or grade refuses to provide for the passage of the equipment, the managers may remove the bridge or grade at the expense of the watershed district, interrupting traffic in the least degree consistent with good work and without delay or unnecessary damage.

Subd. 4. **Owners liable for delay.** If the managers are prevented from moving the equipment, the owner of the bridge or grade is liable for the damages resulting from the delay.

**History:** 1990 c 391 art 4 s 67

## FUNDING OF WATERSHED DISTRICT AND PROJECTS

### 103D.901 ASSESSMENTS, LEVIES.

**Subdivision 1. Assessment.** (a) After the managers file an approved assessment statement listing the property and corporations benefited or damaged or otherwise affected by a project with the auditor of an affected county, the auditor shall assess the amount specified in the assessment statement against the property, municipalities, or other corporations as specified in the pertinent provisions of chapter 103E.

(b) For a watershed district entirely within the metropolitan area, the auditor must mail an assessment notice to property owners and corporations benefited and damaged before the assessment is made under paragraph (a). The assessment notice must include:

- (1) the amount to be specially assessed against the property;
- (2) the right of the property owner to prepay the entire assessment and to whom prepayment must be made;
- (3) whether partial prepayment of the assessment is authorized;
- (4) the time within which prepayment may be made without interest being charged; and
- (5) the rate of interest to be charged if the assessment is not prepaid within the required time period.

**Subd. 2. County funding.** After the assessment statement is filed with the auditor, the county board of each affected county shall provide funds to meet its proportionate share of the total cost of the project, as shown by the engineer's report and order of the managers. The county may issue bonds of the county in the manner provided by section 103E.635. If an improvement is to be constructed under section 103D.611, the provisions of section 103E.635 requiring the county board to award a contract for construction or implementation before issuing bonds is not applicable to bonds issued to provide the funds required to be furnished by this section.

**Subd. 3. Levy and collection.** (a) The respective county auditors and county treasurers shall levy and collect the amount shown in the tabular statement and lien as provided in sections 103E.601 to 103E.631.

(b) For a watershed district entirely within the metropolitan area, the auditor must mail an assessment notice to the owners of affected property as provided in subdivision 1, paragraph (b), before the assessment is levied. The assessment may be prepaid as provided in paragraphs (c) and (d).

(c) For a watershed district entirely within the metropolitan area, a property owner or corporation may prepay the entire assessment at any time before the first installment of the assessment is entered on the tax lists for the year with the interest that has accrued to the date of payment, except that interest may not be charged on an assessment that is prepaid within 30 days after the assessment notice is mailed.

(d) After the first installment of an assessment is entered on the tax list, a property owner or corporation may prepay the entire assessment remaining due before November 15 with interest accrued to December 31 of the year in which the prepayment is made.

(e) The money received by the treasurer of a county from the sale of bonds, assessments, or otherwise, for the benefit of the watershed district shall be accounted for by the auditor and paid to the treasurer of the watershed district.

**Subd. 4. Assessment may not exceed benefits.** (a) An assessment may not be levied against property or corporations benefited under this chapter in excess of the amount of benefits received as set by the order of the managers authorizing the construction or implementation of the project or subsequently determined on appeal.

(b) If the damages for a project financed by special assessment are awarded and confirmed, the managers must determine that the project's benefits exceed the total costs, including damages awarded.

(c) The managers shall amend the project's statement filed with the county auditor to reflect the amount of damages awarded.

**Subd. 5. Damages paid before entering property.** Before entering property for which damages were awarded to begin construction or implementation of the project, the managers

shall pay the amount of damages awarded less any assessment against the property from the funds provided by the county board under subdivision 3. If the amount of damages is appealed, damages may not be paid until the final determination of the appeal.

**History:** 1990 c. 391 art. 4 s. 68; 1995 c. 199 s. 53-55

### 103D.905 FUNDS OF WATERSHED DISTRICT.

Subdivision 1. **Generally.** The money of a watershed district consists of the funds established in this section.

Subd. 2. **Organizational expense fund.** (a) An organizational expense fund, consisting of an ad valorem tax levy, shall not exceed 0.01596 percent of taxable market value, or \$60,000, whichever is less. The money in the fund shall be used for organizational expenses and preparation of the watershed management plan for projects.

(b) The managers may borrow from the affected counties up to 75 percent of the anticipated funds to be collected from the organizational expense fund levy and the counties affected may make the advancements.

(c) The advancement of anticipated funds shall be apportioned among affected counties in the same ratio as the net tax capacity of the area of the counties within the watershed district bears to the net tax capacity of the entire watershed district. If a watershed district is enlarged, an organizational expense fund may be levied against the area added to the watershed district in the same manner as provided in this subdivision.

(d) Unexpended funds collected for the organizational expense may be transferred to the administrative fund and used for the purposes of the administrative fund.

Subd. 3. **Administrative fund.** An administrative fund, consisting of an ad valorem tax levy, may not exceed 0.02418 percent of taxable market value, or \$125,000, whichever is less. The money in the fund shall be used for general administrative expenses and for the construction or implementation and maintenance of projects of common benefit to the watershed district. The managers may make an annual levy for the administrative fund as provided in section 103D.911. In addition to the annual administrative levy, the managers may annually levy a tax not to exceed 0.00798 percent of taxable market value for a period not to exceed 15 consecutive years to pay the cost attributable to the basic water management features of projects initiated by petition of a municipality of the watershed district.

Subd. 4. **Bond fund.** A bond fund consists of the proceeds of bonds issued by the watershed district secured by the property of the watershed district that is producing or is likely to produce a regular income. The bond fund is to be used for the payment of the purchase price of the property or the value of the property as determined by the court in proper proceedings and for the improvement and development of the property.

Subd. 5. **Construction or implementation fund.** (a) A construction or implementation fund consists of:

- (1) the proceeds of the sale of county bonds;
  - (2) construction or implementation loans from any agency of the federal government;
- and

(3) special assessments to be levied to supply funds for the construction or implementation of the projects of the watershed district, including reservoirs, ditches, dikes, canals, channels, and other works, and the expenses incident to and connected with the construction or implementation.

(b) Construction or implementation loans from an agency of the federal government may be repaid from money collected by special assessments on properties benefited by the project.

Subd. 6. **Preliminary fund.** A preliminary fund consists of funds authorized to be provided. The preliminary fund is to be used for preliminary work on proposed works of the watershed district.

Subd. 7. **Repair and maintenance funds.** Repair and maintenance funds are established under section 103D.631, subdivision 2.

Subd. 8. **Survey and data acquisition fund.** (a) A survey and data acquisition fund is established and used only if other funds are not available to the watershed district to pay for making necessary surveys and acquiring data.

(b) The survey and data acquisition fund consists of the proceeds of a property tax that can be levied only once every five years. The levy may not exceed 0.02418 percent of taxable market value.

(c) The balance of the survey and data acquisition fund may not exceed \$50,000.

(d) In a subsequent proceeding for a project where a survey has been made, the attributable cost of the survey as determined by the managers shall be included as a part of the cost of the work and the sum shall be repaid to the survey and data acquisition fund.

**History:** 1990 c 391 art 4 s 69; 1995 c 199 s 56,57

#### 103D.911 BUDGET.

Subdivision 1. **Hearing.** (a) Before adopting a budget, the managers shall hold a public hearing on the proposed budget.

(b) The managers shall publish a notice of the hearing with a summary of the proposed budget in one or more newspapers of general circulation in each county consisting of part of the watershed district. The notice and summary shall be published once each week for two successive weeks before the hearing. The last publication shall be at least two days before the hearing.

Subd. 2. **Adoption.** On or before September 15 of each year, the managers shall adopt a budget for the next year and decide on the total amount necessary to be raised from ad valorem tax levies to meet the watershed district's budget.

**History:** 1990 c 391 art 4 s 70; 1994 c 416 art 1 s 2

#### 103D.915 TAX LEVY.

Subdivision 1. **Certification to auditor.** After adoption of the budget and no later than September 15, the secretary of the watershed district shall certify to the auditor of each county within the watershed district the county's share of the tax, which shall be an amount bearing the same proportion to the total levy as the net tax capacity of the area of the county within the watershed bears to the net tax capacity of the entire watershed district. The maximum amount of a levy may not exceed the amount provided in section 103D.905.

Subd. 2. **Levy.** The auditor of each county in the watershed district shall add the amount of a levy made by the managers to the other tax levies on the property of the county within the watershed district for collection by the county treasurer with other taxes. The county treasurer shall make settlement of the taxes collected with the treasurer of the watershed district in the same manner as other taxes are distributed to the other political subdivisions. The levy authorized by this section is in addition to other county taxes authorized by law.

**History:** 1990 c 391 art 4 s 71; 1994 c 416 art 1 s 3

#### 103D.921 DISTRICT COURT TO CREATE PRELIMINARY FUND.

Subdivision 1. **Petition.** (a) If a petition has been filed with the managers for the construction or implementation of a project within the watershed district, the managers may file a petition with the district court in the county where the watershed district has its principal place of business asking that a preliminary expense fund be created for the watershed district.

(b) The managers may subsequently amend or supplement the petition if necessary. At least ten days' notice of a petition or amended or supplementary petition must be given to the auditor of each county affected by the proposed project.

(c) The preliminary fund must be of a size that is proportionate to the needs of the watershed district for preliminary work on the proposed project.

Subd. 2. **Court order of amount.** The district court after the hearing may designate the amount of the fund and set the proportionate amount that each county affected by the improvement shall pay, in proportion to the area in the county affected by the proposed project. The court shall order the auditor of each county to draw a warrant on the treasurer of the county for the payment of the amount specified in the order, payable to the treasurer of the watershed district. The sum advanced by the county shall be charged to the watershed district and must be repaid with interest as soon as the watershed district has funds for that purpose.

Subd. 3. **Use of fund.** The preliminary fund must be used by the managers for preliminary work. If the managers incur expenses for surveys or other preliminary work on a proposed project, all expenses connected with the work shall be included in the cost of construction or implementation of the proposed project. If construction or implementation of the project is authorized by the managers, the money advanced from the preliminary fund shall be repaid from assessments for the project.

Subd. 4. **Appropriations from governmental bodies.** The state, state agencies, and political subdivisions may appropriate money necessary to pay their proportionate share of the preliminary expenses, determined by the managers according to the benefits that will probably accrue from the proposed project.

Subd. 5. **Preliminary fund.** The district court may order a preliminary fund for all works of the watershed district instituted under section 103D.701.

**History:** 1990 c 391 art 4 s 72; 1995 c 199 s 58,59

#### **103D.925 WARRANTS.**

The managers may issue warrants of the watershed district to pay contracts for the construction or implementation of projects, ordinary general expenses, and expenses incurred in making repairs that have been approved by the managers, only if there are sufficient funds available for payment in the watershed district treasury.

**History:** 1990 c 391 art 4 s 73; 1995 c 199 s 60



## CHAPTER 103D

### WATERSHED DISTRICTS

103D.905 Funds of watershed district.

#### 103D.905 FUNDS OF WATERSHED DISTRICT.

*[For text of subs 1 to 3, see M.S.1996]*

Subd. 4. **Bond fund.** A bond fund consists of the proceeds of special assessments, storm water charges, loan repayments, and ad valorem tax levies pledged by the watershed district for the payment of bonds or notes issued by the watershed district. The bond fund is to be used for the payment of the principal of, premium or administrative surcharge, if any, and interest on the bonds and notes issued by the watershed district and for payments required to be made to the federal government under section 148(f) of the Internal Revenue Code of 1986, as amended through December 31, 1996.

Subd. 5. **Construction or implementation fund:** (a) A construction or implementation fund consists of:

- (1) the proceeds of watershed district bonds or notes or of the sale of county bonds;
- (2) construction or implementation loans from the pollution control agency under sections 103F.701 to 103F.761, or from any agency of the federal government; and
- (3) special assessments, storm water charges, loan repayments, and ad valorem tax levies levied or to be levied to supply funds for the construction or implementation of the projects of the watershed district, including reservoirs, ditches, dikes, canals, channels, storm water facilities, sewage treatment facilities, wells, and other works, and the expenses incident to and connected with the construction or implementation.

(b) Construction or implementation loans from the pollution control agency under sections 103F.701 to 103F.761, or from an agency of the federal government may be repaid from the proceeds of watershed district bonds or notes or from the collections of storm water charges, loan repayments, ad valorem tax levies, or special assessments on properties benefited by the project.

*[For text of subs 6 to 8, see M.S.1996]*

Subd. 9. **Project tax levy.** In addition to other tax levies provided in this section or in any other law, a watershed district may levy a tax:

- (1) to pay the costs of projects undertaken by the watershed district which are to be funded, in whole or in part, with the proceeds of grants or construction or implementation loans under sections 103F.701 to 103F.761;
- (2) to pay the principal of, or premium or administrative surcharge, if any, and interest on, the bonds and notes issued by the watershed district pursuant to section 103F.725; or
- (3) to repay the construction or implementation loans under sections 103F.701 to 103F.761.

Taxes levied with respect to payment of bonds and notes shall comply with section 475.61.

**History:** 1997 c 231 art 2 s 2-4

CHAPTER 100

PLANNED DISTRICT

PLANNED DISTRICT

PLANNED DISTRICT

The first section of the act is to be read as follows: "The Board of Health of the City of New York is hereby authorized to..."

The second section of the act is to be read as follows: "The Board of Health of the City of New York is hereby authorized to..."

The third section of the act is to be read as follows: "The Board of Health of the City of New York is hereby authorized to..."

The fourth section of the act is to be read as follows: "The Board of Health of the City of New York is hereby authorized to..."

The fifth section of the act is to be read as follows: "The Board of Health of the City of New York is hereby authorized to..."

The sixth section of the act is to be read as follows: "The Board of Health of the City of New York is hereby authorized to..."

The seventh section of the act is to be read as follows: "The Board of Health of the City of New York is hereby authorized to..."

The eighth section of the act is to be read as follows: "The Board of Health of the City of New York is hereby authorized to..."

PLANNED DISTRICT

The ninth section of the act is to be read as follows: "The Board of Health of the City of New York is hereby authorized to..."

The tenth section of the act is to be read as follows: "The Board of Health of the City of New York is hereby authorized to..."

The eleventh section of the act is to be read as follows: "The Board of Health of the City of New York is hereby authorized to..."

The twelfth section of the act is to be read as follows: "The Board of Health of the City of New York is hereby authorized to..."

The thirteenth section of the act is to be read as follows: "The Board of Health of the City of New York is hereby authorized to..."

PLANNED DISTRICT



MINNESOTA  
ASSOCIATION OF  
WATERSHED  
DISTRICTS, INC.

## What Is A Watershed District?



MAWD

What is  
MAWD?

## What Is A Watershed District?

Watershed districts are local units of government that work to solve and prevent water-related problems. The boundaries of the districts follow those of a natural watershed, and the districts are usually named after that watershed.

Because water does not follow political boundaries, it makes sense to manage natural resources on a watershed basis. This type of management allows for an overall, holistic approach to resource conservation.

Minnesota's 42 watershed districts are each governed by a board of managers appointed by the boards of commissioners of the counties that have land in the district. Chapter 103D of Minnesota Statutes is the enabling statute for watershed districts.

To form a watershed district, local residents, cities or county boards may petition the Board of Soil and Water Resources (BWSR). Watershed districts are formed for reasons ranging from flood control to water quality protection.

Watershed Districts are special purpose units of local government whose boundaries follow those of a natural watershed (an are of land in which all water flows to one outlet).

All other government units, such as states, counties and cities have political boundaries. But water knows no boundaries - it goes where it wants to.

Watershed Districts are established when water management problems become greater than one community, city can handle. Water management on a watershed basis is important for uniform and effective controls, not only to correct problems but to prevent them.

Watershed Districts were authorized by the Legislature in 1955 when it passed the Watershed Act, MSA103D. This legislation sets out the role and responsibilities for watershed districts in Minnesota.

Watershed Districts are formed at the request of local citizens, county boards or cities by petitioning the Minnesota Board of Water and Soil Resources (BWSR) under the procedures set forth in the Watershed Act.

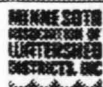
Watershed Districts are governed by a Board of Managers appointed by the Boards of County Commissioners. All watershed district meetings are open to the public.

### **Watershed Districts in Minnesota...**

- utilize a variety of water management tools to meet their goals and purpose of their district
- There are 41 watershed districts in Minnesota. They range in size from the Carnelian-Marine District with 41 square miles, to the Red Lake Watershed District with 5990 square miles.
- The name of the primary lake or river in the watershed is usually selected as the name of the watershed district.

### **Watershed districts in Minnesota...**

- Are partners in water planning and management with the state, counties, cities and soil and water conservation districts;
- Are partners in wetlands protection and management with the state, counties, cities, and soil and water conservation districts;
- Conduct water quality surveys of lakes and streams within the district;
- Monitor groundwater levels;
- Manage draining systems;
- Regulate, conserve and control the use of water within the district;
- Provide for wildlife and enhance recreational opportunities as benefit fo projects to improve water quality and provide flood protection;
- Establish, record and maintain hydrological data;
- Approve culvert size and placement in all roads of the district; and
- Other projects related to meeting the purposes of the district.



# The MAWD Internet Office



What is MAWD?



What's Happening with MAWD?



What is a Watershed District?



Legislative Program



The MAWD Internet Office



Where is my Watershed District?

## I. Introduction

### A. Purpose of Handbook

Welcome to your new role as a watershed district manager or employee!

This handbook is meant to provide you with some basic guidance in your new role. It covers a wide variety of topics, including the powers and duties of a manager, the powers and duties of a watershed district, the appointments process, how to initiate and fund a project, and the legal obligations of a watershed district. You may want to look over the table of contents to see what other types of information are covered.

This handbook will probably not answer all of your questions as you begin to get more involved in watershed district operations. It will, however, provide you with a general overview of some of the subjects you will be dealing with and provide you with direction on where further information can be found. For more information, you will want to consult the laws cited throughout this handbook before making final decisions.

Congratulations on your new position! Your efforts to maintain and protect our water resources are appreciated!

### B. Purpose of watershed districts

Watershed districts are special purpose local units of government whose boundaries follow those of a natural watershed. The name of the primary lake or stream in the watershed is usually the name of the watershed district.

Because water is difficult to manage on the basis of political boundaries such as county or city lines, the Minnesota Legislature in 1955 authorized the creation of watershed districts. Because these districts are based on the natural hydrologic boundaries of a watershed, they allow for more practical and efficient water management.

Watershed districts are formed when citizens, county boards or cities petition the Minnesota Board of Water and Soil Resources (BWSR) under provisions outlined in the law. The BWSR is the state administrative agency for watershed districts. (See Appendix F for further explanation of BWSR and others.) There are currently 42 watershed districts in Minnesota.

### C. History of watershed districts

In 1953, the U.S. Congress approved the federal Watershed Protection and Flood Prevention Act, which provided financial assistance to local agencies

responsible for the management of secondary watersheds, as long as those agencies had the power of eminent domain and the ability to levy for support of its activities. When the existing soil and water conservation districts (SWCDs) declined to assume those powers, the Minnesota Legislature in 1955 approved the Watershed Act, which provided for the establishment of watershed districts based upon a petition to the Minnesota Water Resources Board (now the Board of Water and Soil Resources) by either citizens or local governmental units.

During the discussions on the act, it was clear that many county and city officials wanted to ensure that watershed districts were somewhat removed from politics and the political process. To facilitate this, it was agreed that watershed district managers would be appointed, rather than elected. Land use zoning powers would stay with elected city and county officials.

The first watershed district, High Island Watershed District, encompassing parts of Sibley, Renville, and McLeod counties, was established in 1957. Other districts followed, with the 42nd and most recent one, the Cottage Grove Ravine Watershed District, being established in 1993.

In 1982, the Legislature approved the Metropolitan Water Management Act, which requires that the entire metropolitan area be organized into water management organizations (WMOs), which can be watershed districts or joint powers agreements. The main difference between the two is that watershed district WMOs have taxing authority and joint powers WMOs receive money through their member cities and counties. Currently, 10 of the 46 WMOs are watershed district WMOs; the remaining 36 are joint powers WMOs. To alleviate confusion, this handbook will refer to watershed district WMOs as metro area watershed districts. This handbook does not address joint powers WMOs.

Over the years, watershed districts' responsibilities have increased significantly from their original objectives of managing surface waters and flooding conditions. Watershed districts now deal with a wide variety of water-related concerns, including wetlands, groundwater management, and water quality.



## The MAWD Internet Office

### MAWD

What is MAWD?



What's Happening with MAWD?



What is a Watershed District?

## II. The Watershed Districts

### A. How created (M.S. 103D.205)

The process to establish a watershed district is fairly straightforward. Basically, citizens or local governments can petition the Board of Water and Soil Resources (BWSR) on the need for a district; ultimately, the BWSR approves or denies the petition based on hearings and public input.

The following steps must be taken:

1. The petitioning group must file a petition for establishment with the Board of Water and Soil Resources. The petition must include:

- the need for a watershed district and contemplated improvement
- the proposed name of the watershed district
- a map indicating the area to be included
- the number of managers needed
- a list of nominees for manager positions

The petition must be signed and filed with the county auditors in the counties affected. The auditors must certify the petitions and file them with the Board of Water and Soil Resources.

2. The director of the Department of Natural Resources (DNR) Division of Waters must submit a preliminary map of the district and report about the district to the board members. (M.S. 103D.215)

3. The BWSR must set and conduct a hearing. (M.S. 103D.221)

If the BWSR approves the establishment of a watershed district, it sets the boundaries, the name, place of business and the first board of managers. The BWSR can also deny the establishment of a watershed district.

### Changing boundaries/consolidating/terminating watershed districts

To change watershed district boundaries or consolidate districts, refer to M.S. 103D.251-M.S. 103D.265 or 103B.215. Termination of a district (M.S. 103D.271/M.S. 103B.221) requires a petition and a hearing.

### B. Watershed district powers and duties (M.S. 103D.335)

A watershed district may:

- sue and be sued
- incur liabilities

- exercise the power of eminent domain
- levy property taxes and special assessments
- issue certificates, warrants, bonds
- acquire and dispose of property
- hire staff and consultants
- regulate development

Additional powers and duties are given in the statute.

### **C. Watershed districts and watershed management organizations (WMOs)**

As you may recall from the introduction, the Minnesota Legislature in 1982 approved the Metropolitan Water Management Act, which required that all municipalities within the seven county metro area form joint powers watershed management organizations for the purpose of surface water planning. At that time, 10 watershed districts located wholly within the metropolitan area already existed; these are referred to as metro area watershed districts. The remaining land in the metropolitan area was organized into 36 joint powers WMOs. To alleviate confusion, this handbook addresses only watershed districts and metro area watershed districts, rather than joint powers WMOs.

In addition to the laws and rules governing watershed districts, metro area watershed districts must also comply with an additional set of laws (M.S. 103B) and rules.

### **D. The watershed management plan (M.S. 103D.401)**

The watershed management plan is one of the watershed district's most important tools for identifying problems and long- and short-term strategies and goals. The plan sets forth the goals and policies of the watershed district and establishes the basis for the WD's regulations and funding authority.

Because the plan gives the district a basis for choosing projects and activities, an out-of-date or noncompliant plan can provide a basis for appeals to permits and orders issued by the district, as well as any assessments and taxes the WD may levy.

Each revised watershed district plan must include the following elements:

- updates and supplements of the existing hydrological and other statistical data of the watershed district
- specific projects to be completed
- criteria for storm water management from impervious surfaces pursuant to M.S. 103B.3365
- a statement of the extent that the purposes for which the watershed district was established have been accomplished
- a description of problems requiring future action by the watershed

district

- a summary of completed studies on active or planned projects, including financial data
- an analysis of the effectiveness of the watershed district's rules and permits in achieving its water management objectives in the watershed district

In addition to the required plan content, the BWSR encourages districts to expand their plans to include:

- an inventory of pertinent information on the district that describes the watershed's setting and hydrologic characteristics
- a description and assessment of existing and potential water and water-related problems
- a description and assessment of possible solutions to high priority problems
- a statement of the broad goals and the specific objectives for water management within the district
- a list of district policy statements that define the district's role in managing water and water-related resources, and that establish district performance standards for sound water management

The district must submit the plan to the following organizations and people:

- the county auditors of counties affected
- the BWSR
- the commissioner of the DNR
- municipalities in the district
- SWCDs in the watershed district

The BWSR must give proper notice of and hold a hearing on the plan. The plan must be revised every ten years. Amendments to the plan may be initiated by the managers at any time; they must be approved by the BWSR.

### **Consistency with other plans**

Because virtually all counties in greater Minnesota have adopted county-wide comprehensive water management plans, watershed district plans and these county-wide plans must be consistent with each other. Any revisions of either plan should be coordinated with the administrators of the other plan.

### **E. Metropolitan area watershed management plans (M.S. 103B.201-M.S. 103B.255)**

As mentioned before, metro area watershed districts must develop their plans in compliance with the laws and regulations governing watershed districts AND an additional set of laws (M.S. 103B) and regulations.

Generally speaking, the requirements of M.S. 103B.231 are more specific

than those of M.S. 103D.401.

In addition to the previously given requirements, metro area watershed district plans must contain the following elements:

- a description of the existing physical environment, land use and development in the area
- information on the hydrologic system
- objectives and policies
- water quality goals
- a description of the effects of the plan on existing drainage systems
- identification of high priority wetlands
- a description of any conflicts with existing local government plans
- an implementation program and a capital improvement program
- a procedure for amending the plan

Following legislative direction, in 1992 the Minnesota Board of Water and Soil Resources adopted rules establishing standards for the plans and requirements for metro area watershed district plan amendments. The rules are codified as Minnesota Rules Chapter 8410. The rules provide specific guidance for plan content and have the force and effect of law. The rules establish a structure for the planning process and require close coordination with state, federal, and local agencies during the plan development process.

The plans must be updated in years divisible by five.

#### **Metro area watershed district plan review**

To ensure that the plans are coordinated with other local government and agency plans, the following municipalities within the watershed district boundaries must review them:

- counties
- SWCDs
- towns
- statutory and home rule charter cities
- adjoining WMOs and watershed districts

Other organizations that review the plans are:

- the Metropolitan Council
- the commissioner of the DNR
- the commissioner of the Department of Health
- the commissioner of the Pollution Control Agency
- the BWSR

Following review by the agencies and local units of government, and approval of the plan by the BWSR, the metro area watershed district must adopt and begin to implement its plan within 120 days.

### **Metro area watershed district plan amendments (M.S. 103B.231 Subd. 10)**

Metro area watershed district plan amendments must be submitted to local governments and state agencies for review. The BWSR reviews the plans at least once every five years and recommends changes.

### **Metro area watershed district grievances**

Anyone who believes that the watershed district has not complied with the terms of the watershed district plan can appeal his or her case to the BWSR.

### **Consistency with other plans**

As with all watershed district plans, metro area watershed district plans must be consistent with county groundwater plans.

### **Local water management plans (M.S. 103B.235)**

After the preparation of a metro area watershed district plan, each of the local units of government within the watershed district area must prepare a local water management plan that conforms with the WD plan. These local water management plans must contain:

- a description of existing and proposed physical environment and land use
- definitions of drainage areas volumes, rates and stormwater paths
- identification of areas and elevations for stormwater storage adequate to meet the WD plan
- identification of water quality and water quality protection methods adequate to meet the WD plan
- identification of regulated areas
- an implementation program

All local surface water management plans must be approved by the watershed district. The local unit must adopt and implement its plan within 120 days of watershed district approval.

Minnesota Rules Chapter 8410.0160 provides additional specific guidance for the content of local watershed plans.

Note: A WORD OF CAUTION is appropriate here. M.S. 103D.335, Subd. 23, in conjunction with M.S. 103B.211, Subd. 1, may potentially prevent a WD from exercising its land use controls (permitting and enforcement of regulations) if, after the WD approves a local plan, the local governmental unit (LGU) declines to authorize the WD to continue to enforce its regulations within the subject LGU. Due to this clause, WDs should be quite specific as to what regulations a member LGU must adopt and enforce as part of implementing its local plan. Further, WDs should include

some mechanism for oversight should an LGU fail to enforce such regulations or grant variances directly in conflict with the WD's policies and goals. There are a number of ways to provide for this oversight, including:

- a joint powers agreement
- a memo of understanding between parties
- though an administrative procedural requirement that keeps the WD in the review process of specific projects (i.e., those that might require a variance).

#### **F. Annual report (M.S. 103D.351/M.S. 103B.231 Subd. 14)**

Annual reports are a good way for watershed districts to assess the accomplishments and expenditures of the past year. They also help in determining future goals and target dates.

#### **WD annual reports**

WD reports must include the following information:

- the financial condition of the district
- the status of all projects
- the business transacted by the watershed district
- other matters affecting the interests of the watershed district
- a discussion of the managers' plans for the upcoming year

The report must be sent to the BWSR, the commissioner of the Department of Natural Resources, and the director of the DNR Division of Waters.

In addition, each WD must have a yearly audit of its books completed by the state auditor or a public accountant.

#### **Additional requirements for metro area watershed district annual reports (Minnesota Rules 8410.0150)**

The annual reporting requirements for metro area watershed districts are more specific. They must each year submit financial, activity, and audit reports (they can be combined into one document).

The annual financial report must contain:

- the approved budget
- revenues
- expenditures
- a financial audit report or section

The annual activity report must contain:

- a list of the metro area watershed district's board members, advisory committee members, and board member vacancies at the end of the

reporting year

- a list of the metro area watershed district's employees and consultants
- an assessment of whether the year's work met the goals and objectives of the annual work plan
- a projected work plan for the next year
- a summary of the permits or variances issued or denied and any enforcement actions initiated by the WD or its local units of government
- a summary of water quality monitoring data collected by the local units of government within the metro area watershed district's boundaries
- a copy of all written communication required to develop stormwater and drainage design standards
- the metro area watershed district's activities related to solicitations for interest proposals for legal, professional, or technical consultant services
- an assessment of changes in fund balances
- the status of any legally adopted wetland banking program
- an evaluation of the status of adoption of local water management plans of cities and towns

Although these requirements only apply to metro area watershed districts, other districts may want to use them as a guide for what types of information will assist managers as they review the past year and plan for the upcoming year.

#### **G. Rules, permits and regulations (M.S. 103D.341)**

To accomplish the purposes of the Watershed District Act and to implement the powers of the managers, a watershed district must adopt rules and regulations pertaining to the use of water and related land resources of the district. For example, watershed district rules may require permits for activities such as tiling, culvert replacement and culvert sizing, grading, and filling. Once these rules are adopted, they take on the same authority as an ordinance, and individuals within the district must abide by them. If the rules are violated, managers may issue cease and desist orders and pursue either restoration, corrective measures and/or damages through either civil or criminal court proceedings.

The rules must be consistent with the overall or comprehensive plan of the district and must be adopted after public notice and hearing. Managers should be aware that the district must provide for equal protection and avoid any "taking" of any land or rights (see section V.A).

On projects that the watershed district is doing, the district itself may be required to apply for permits from local, state and federal agencies with jurisdiction in the project area.

#### **H. Employees (M.S.103D.215)**

The district may employ a district administrator, chief engineer, professional assistants, consultants and other employees to administer the works of the district. Typical watershed districts hire one or more of the following either full time or part time:

- an administrator to handle the day to day activities and affairs of the district
- an engineer to provide the technical assistance and information needed to evaluate the merits of projects and/or operations and design projects as needed
- an attorney to serve as advisor to the district on all legal matters
- a secretary to assist the administrator and the board of managers
- a recording secretary to record minutes of the board of managers
- an inspector to monitor permit compliance

#### **I. Citizens advisory committee (M.S. 103D.331)**

To ensure public input, the law requires that managers appoint an advisory committee to provide recommendations on matters affecting the watershed district, including all contemplated projects and improvements. This group can play an important role in ensuring that the watershed district is fulfilling the needs of the community and is aware of citizen concerns.

The committees must have at least five members. If possible, members should include the following:

- a supervisor of a soil and water conservation district
- a county commissioner
- a representative of a sporting group
- a representative of a farm organization

The board may appoint other members as it sees fit.

### **III. The Manager**

#### **A. Role of the manager**

Each watershed district is governed by an appointed board of managers consisting of 3-9 members. Obviously, this board plays a crucial role in the success of a watershed district.

Working as part of the board, a manager helps direct the activities of the district, sets policy, guides staff, and makes key decisions on district priorities. This section outlines some of the key aspects of a manager's job.

#### **Oath and bond (M.S. 103D.315, Subd. 1 and 2)**

Each manager must take and sign an oath of office. In addition, each manager must file a bond with the BWSR before assuming a manager's duties.

#### **Position purpose (M.S. 103D.201, Subd. 1)**

The watershed district manager's job is to preside over the business of the watershed district as it pursues the conservation of the natural resources of the state through regulation and the use of sound scientific principles, for the protection of the public health, safety and welfare, and the provident use of natural resources.

#### **Qualifications (M.S. 103D.311, Subd. 1)**

A manager:

- must be a resident of the watershed district
- may not be a public officer of the county, state, or federal government
- may be a soil and water conservation district (SWCD) supervisor

#### **Appointment and term of office (M.S. 103D.311, Subd. 2 and M.S. 103D.315, Subd. 6)**

- county board is the appointing authority
- term of office is three years; a manager may be reappointed
- appointing county board must provide public notice before making appointments
- although the appointments must result in a balance of geographic and hydrologic areas, once appointed, the managers DO NOT represent that specific area, but are required to make decisions on behalf of the good of the entire watershed district

- in the case of a metro area watershed district, or a district established from a petition that originated from a majority of the cities within the watershed district, municipalities may submit a list of at least three nominees for each available position to the appointing county board. If a list is submitted, the appointing county board must choose a manager from that list.

### **Typical board responsibilities**

**Organization effectiveness:** Ensure that the district meets the needs of all the people it serves. Typical tasks should include:

- elect officers (see Appendix D): president, vice president, secretary, and treasurer
- hire staff and delegate the authority to carry out district policies
- ensure that any staff or consultants employed by the district have a complete description of their responsibilities
- define the kind and level of services to be provided
- conduct an annual presentation to the county board, city councils, and/or township boards
- provide for continued growth of the district and board members through education, succession of positions, and maintenance of the district charter, by laws and mission statement
- work as a team

**Planning, programming and budgeting:** Develop a mission statement, policies and rules for the conduct of district business and the implementation of district goals. Typical tasks should include:

- set short and long term goals through ongoing strategic planning and preparation of the Watershed Management Plan (M.S. 103D.401 and 103D.405, or M.S. 103B.231)
- establish and maintain program and project priorities (M.S. 103D.401)
- approve an annual plan and budget for conducting the business of the district and pursuing district goals for the following year (M.S. 103D.911)

**Financial management:** Ensure the financial solvency and accountability of the district and the efficient and effective use of district funds. Typical tasks should include:

- have prepared an annual audit of the books and accounts of the district (M.S. 103D.355)
- promote watershed district services; participate in lobbying and raising funds

**Reporting and evaluation:** Annually monitor the effectiveness and efficiency of district programs and services. Typical tasks should include:

- annually evaluate district, board and staff performance in relation to established mission and goals
- prepare an annual report for distribution to the county, the Board of Water and Soil Resources and the Department of Natural Resources. (M.S. 103D.351)

**Leadership:** Exercise leadership in the community. Typical tasks should include:

- hold regularly scheduled board meetings
- provide for and encourage a Citizen Advisory Committee
- work with other board members to achieve consensus on public policy issues
- review and approve contracts involving the district
- ensure the district meets all legal standards and requirements

**Regulation:** Arbitrate conflicts among competing interests. Typical tasks should include:

- conduct review of permit applications and project proposals in a fair and equitable manner

### **Desired behaviors and conduct**

A watershed district manager should be:

- courteous and tactful in dealing with the public and representatives from other agencies
- service oriented and fair minded
- willing to learn and to try new methods in performing tasks
- team oriented in the sense that federal, state, and local agencies can be both constituents and colleagues depending on the circumstances
- aware of long and short term consequences of decisions
- open and truthful in communication, stressing a cooperative, rather than alarmist, approach to working out problems
- business oriented

### **B. Powers and duties**

#### **Under the Watershed District Act**

The Watershed District Act (M.S. 103D) provides boards of managers with powers that include but are not limited to the following:

- to tax
- to regulate and control the use and development of land as it relates to water and related land resources (this does NOT include zoning authority)
- to sue and be sued
- to incur debt, liabilities and obligations

- to enter and condemn land
- to acquire and dispose of property
- to hire employees and enter into contracts

### **C. Compensation and reimbursement**

The compensation for managers for meetings and for performance of other necessary duties may not exceed \$50 a day. (This amount can change.) Managers are entitled to reimbursement for traveling and other necessary expenses incurred in the performance of official duties.

#### **IV. Watershed district projects (M.S. 103D.601-103D.821)**

THE PURPOSE OF THIS SECTION IS TO INTRODUCE MANAGERS TO THE TYPES OF PROJECTS THAT CAN BE INITIATED AND ESTABLISHED AND HOW THEY ARE COMMONLY DONE. THE LAW HAS BEEN SUMMARIZED TO HIGHLIGHT THE KEY ELEMENTS. AS MANAGERS CONTEMPLATE SPECIFIC PROJECTS OR PROGRAMS THEY SHOULD TAKE TIME TO READ AND APPLY THE ENTIRE SECTIONS FROM MINNESOTA STATUTES THAT PERTAIN TO ESTABLISHMENT OF PROJECTS.

##### **A. Types of watershed district projects**

The first step in establishing a watershed district project is the determination of the project's type or category. This is important because the Watershed District Act specifies different establishment criteria for the various types of projects. For example, the act requires that a project that essentially accomplishes drainage must follow the proceedings in the Drainage Law (103E), rather than the Watershed District Act. The following information briefly outlines the types of projects that a watershed district may do.

##### **Basic water management projects (M.S. 103D.605)**

Projects that fall under this category must be identified in the watershed district's watershed management plan and be for basic water management, meaning that they are generally considered projects that benefit the whole district.

##### **Projects constructed with government aid (M.S. 103D.605)**

Projects that fall under this category meet the following criteria:

- projects which will be constructed within the district under an agreement between the managers and the state or federal government;
- the state or federal government will pay the watershed district for all or part of the project; but
- the rights-of-way and the cost of the project will be assumed by the district (i.e., the district will actually pay the bills).

##### **Construction by government agencies (M.S. 103D.611)**

These are projects to be constructed within the district under a contract between the district and the state or federal government. The cost of the construction is paid by the governmental agency but the rights-of-way,

legal, and general expenses of the improvement are to be paid by the district.

The main difference between this type of project and projects constructed with government aid is that this section requires a contract between the parties as compared to a grant or cost-share agreement. In addition, costs attributed to construction are not assumed by the district under this section as they are under M.S. 103D.605.

#### **Emergency projects (M.S. 103D.615)**

If the managers find that an emergency situation exists and that immediate action must be taken, they may declare an emergency and designate the location, nature, and extent of the emergency. Once declared, the managers may order that work be done under the direction of the managers and the engineer, without a contract.

#### **Drainage systems and projects (M.S. 103D.621-M.S.103D.625)**

In Minnesota the Watershed District Act differentiates between the seven county metropolitan area and the remainder of the state in relation to drainage systems and projects.

##### **Metropolitan area**

In M.S. 103D.621, the law states that the Legislature has found that the urban growth and development in the metropolitan area has caused problems for the improvement and repair of drainage systems originally established for the benefit of land used for agriculture.

To remedy this situation, the law allows watershed districts operating in the seven county metropolitan area, with the concurrence of the governing bodies of the cities and towns, to improve and repair any drainage system that has been transferred to the district through the use of special assessments (M.S. Chapter 429).

##### **All districts (M.S. 103D.625)**

This section deals with drainage systems that have been transferred to the watershed district. It also states that all repairs, improvements, and new construction must conform to M.S. 103E, Minnesota Drainage Law.

##### **Project repairs and improvements (M.S. 103D.631)**

Managers are responsible for maintaining the projects of the watershed district in a condition so that they will accomplish the purposes for which they were constructed.

The cost of normal or routine maintenance of the watershed district's projects, and the cost of removing obstructions and accumulations of

foreign substances from a drainage system, must be paid from the Maintenance Fund on the order of the managers.

Repairs and improvements exceeding normal maintenance require an engineer to prepare technical and cost specifications. A public hearing must be held before the work can be ordered. A single levy for the repair or improvement may not exceed the amount of benefits originally determined.

#### **B. Project initiation and establishment (M.S. 103D.601)**

Watershed district projects can be established in one of the following ways:

- by a majority vote of the managers
- through a petition
- through a contract with a government entity
- establishment of an emergency project
- for a metro area watershed district, through a Capital Improvements Plan (M.S. 103B.210)
- establishment through the drainage code, M.S. Chapter 103E

**NOTE:** Projects may not be initiated until the BWSR approves a watershed management plan for the district. Initiation and establishment of projects involving public ditches and drainage systems must be done under the drainage code, M.S. 103E.

#### **Establishment procedure for a project constructed with government aid or as part of the watershed district plan (M.S. 103D.605)**

The board of managers must follow these steps:

- submit a copy of the project plan to the BWSR and the director of the DNR Division of Waters
- give proper notice of a project hearing
- hold a project hearing
- establish the project

#### **Establishment procedure for a project involving construction by government agencies (M.S. 103D.611)**

The board of managers must follow these steps:

- submit a copy of the project plan to the director of the DNR Division of Waters and the BWSR
- give proper notice of a public hearing
- hold a public hearing
- authorize the project
- appoint appraisers for the determination of benefits and damages to property affected by the proposed project
- hold a hearing on the appraisers' report
- file an approved assessment statement

- acquire property, if necessary

### **Establishment procedure for emergency projects (M.S. 103D.615)**

If the managers find that an emergency situation exists and that immediate action must be taken, they may declare an emergency and designate the location, nature, and extent of the emergency. Once declared, they may order that work be done under the direction of the managers and the engineer without a contract. The project may be paid for in the following ways:

- the cost of work may be assessed against benefitted properties; or
- if the cost is not more than 25 percent of the most recent administrative ad valorem levy of the watershed and the work is found to be of common benefit to the watershed district, funding may be raised by an ad valorem tax levy upon all taxable property within the watershed district; or
- both methods can be used.

### **Establishment procedure for projects initiated through petition (M.S. 103D.701)**

Most watershed district projects originate through a petition from landowners or local government within the district. The following is general information on how a project is established after being initiated by petition.

NOTE: construction of a drainage system or improvement of an existing drainage system must be initiated by a petition.

### **Requirements for project petitions**

A project within the watershed district that generally conforms with the watershed management plan may be initiated by project petition. The petition must contain the following elements:

- a description of the proposed project and purpose
- a description of the property on or over which the project is located
- a description of the part of the watershed district affected
- an explanation of the necessity for the project
- a statement that the project will be conducive to public health, convenience, and welfare
- a statement that petitioners will pay all costs incurred if the proposed project does not materialize
- a bond to pay such costs
- a given number of signatures, depending upon the project (see M.S. 103D.705 Subd. 2)

### **Withdrawal of petition**

If the petitioners wish to withdraw a petition, they may do so upon paying

the costs and expenses.

### **Engineer's report (M.S. 103D.711)**

If the managers believe the petition meets all requirements of the law, they order an engineer's report. After looking at the project, the engineer prepares a report if he or she finds the proposal feasible. If the engineer's report is unfavorable, the managers must within 35 days set a time and place within the district for a hearing to give the petitioners an opportunity to demonstrate why the petition should not be referred back to the petitioners or dismissed.

The engineer's report must be filed with the BWSR and the DNR. The agencies have 30 days to respond with an advisory report.

### **Determination of benefits and damages (M.S. 103D.721)**

After the engineer's report is filed, the managers must appoint three appraisers to help determine the benefits and damages to the property by the proposed project; or the managers can determine the benefits and damages with the help of the engineer.

Assessments for benefits must be based upon the benefits to the property because of the project. Benefitted property must include:

- all property receiving direct benefits, including property owned by the state or political subdivision
- all property that is contributing water to the project
- all property for which the project provides improved drainage
- all property that contributes waters that are stored, handled, or controlled by the project
- benefits to the state by reason of improvement of lakes, streams or other bodies of water
- others (see M.S. 103D.725)

(If the improvements deal with a ditch, stream, river, watercourse, or structures to alleviate flood damage, see M.S. 103E.311-103E.321.)

### **Hearing procedures (M.S. 103D.735-103D.745)**

Within 35 days of the filing of the engineer's report, the appraisers' report, and the DNR and BWSR advisory reports, the managers must order a final hearing. The notice of the hearing must be published. If the watershed district must acquire property to carry out the project, then the managers must record a notice of pendency in the county recorder's office.

If the hearing results in a modification of the plan and affects those not notified in the original notice, then the hearing must be adjourned and the proper notice shall be given.

If the managers approve the project, the engineer shall be directed to prepare final plans and specifications.

If the project is established, an order must be filed with the secretary of the watershed district, and a certified copy filed with the following:

- the county auditor of each county affected
- the BWSR
- the commissioner of DNR and the director of the DNR Division of Waters
- the Pollution Control Agency
- the commissioner of the Department of Health

### **C. Construction (M.S. 103D.801-103D.815)**

#### **Bids for Construction**

After it has been determined that the project will be established, the managers must call for bids for the construction work. Bid notice must be published in at least one of the newspapers of the state where notices are usually published. Bids which exceed the total cost of construction by more than 30 percent may not be considered.



## Legislative Program

### MAWD

What is MAWD?



What's Happening with MAWD?



What is a Watershed District?



Legislative Program



The MAWD Internet Office

## V. Legal Obligations

This section is compiled from information and statutes provided from state and federal agencies, as well as additional sources. **REMEMBER THIS IS NOT MEANT TO PROVIDE YOU WITH ANY FINAL ADVICE, MERELY TO GIVE YOU A BRIEF INTRODUCTION TO THE TOPIC AT HAND AND REFER YOU ELSEWHERE FOR MORE INFORMATION.** Do not base legal decisions solely on information contained in this handbook.

### A. Legal considerations in permit decisions

Permit applicants before a watershed district board of managers have the right to be provided due process, the equal protection of the law, and compensation for their property if it is so heavily limited in use by regulation as to constitute a "taking."

#### Due process

The managers must provide due process by giving the applicant and other concerned persons a chance to state their cases, and by making a decision based on the facts and the law as opposed to being arbitrary and capricious.

#### Equal protection

The managers must provide equal protection by treating different applicants equally when the facts and law are the same and there has been no relevant change in circumstances over time. It is important for managers to know that equal protection does not compel them to repeat mistakes. Mistakenly issuing a permit to applicant A does not require, justify or excuse giving subsequent applicant B the same incorrect treatment.

#### Taking

A permit applicant may assert that denying the requested permit would be an unconstitutional interference with the applicant's property rights to just compensation when private property is taken for public use. Legally, this argument seldom has merit. The U.S. Supreme Court has stated many times that regulations restricting the use of land do not require payment to the landowner by the government, even when a regulation greatly diminishes the land's value.

One circumstance in which managers should be careful is when denial of a permit might leave the applicant with no economic use of his or her entire parcel of land. If a person is denied a permit to fill a one acre wetland, but still has nine acres of useable land in a parcel, there is probably not a

"taking" requiring compensation. If the only way to make any use whatsoever of a parcel is by putting an access fill through a wetland, then the watershed district may need to issue a permit to avoid "taking" the land. (In that case, requiring mitigation by replacement of the filled wetland would be proper.)

## **B. Miscellaneous legal obligations**

### **Open Meeting Law (M.S. 471.705)**

Meetings of watershed district boards are governed by M.S. 471.705, the Minnesota Open Meeting Law, and are generally considered to be open meetings to the public. Therefore, managers should work from the assumption that the meeting is open unless closed for a specific reason which is legally permissible. (However, remember that there are certain meetings that **MUST** legally be closed.) **IF PLANNING TO CLOSE A MEETING, CONTACT AN ATTORNEY BEFOREHAND TO ENSURE THAT THE BOARD REMAINS IN COMPLIANCE WITH THE LAW.**

The following notice requirements should be observed:

- If the board has established a regular monthly or bi-monthly meeting date, time and location, it is not necessary to post notices of these meetings.
- If the date, time or place is changed, or the district holds a special meeting, it is necessary to post a written notice of the date, time, place and purpose of the meeting on the principle bulletin board of the district or, if the district has no principle bulletin board, on the door of its usual meeting room, at least three days before the meeting.
- The district must mail or deliver a notice at least three days before the meeting to anyone who has filed a written request for notice of a special meeting; or the district can publish the notice at least three days in advance in the official newspaper of the district or a qualified newspaper of general circulation within the district's area.

Although not required, it is recommended that any meeting change be publicized through a notice published in the official newspaper or a newspaper with general circulation within the district's area.

Notice of an emergency meeting, defined as a "special meeting called because of circumstances that, in the judgement of the public body, required immediate consideration by the public body," need not be published or posted. However, a good faith effort to contact the news media should be made. If matters not related to the emergency are discussed or acted upon at an emergency meeting, the minutes of the meeting shall include a specific description of those matters.

There are some meetings that **MAY** legally be closed and some meetings that **MUST** legally be closed. Meetings **MAY** be closed for the following

reasons:

- to evaluate the performance of an individual who is subject to its authority (probably an employee), provided that the individual is identified prior to closing the meeting. The findings must be summarized at the next open meeting. The meeting must be open at the request of the individual who is the subject of the meeting.
- to consider strategy for labor negotiations. There must be a motion and a majority in favor of closing the meeting.
- if expressly authorized by statute or permitted by attorney-client privilege.

Portions of a meeting **MUST** be closed if required by other law or if the following types of information will be discussed:

- data that would identify alleged victims or reporters of criminal sexual contact, domestic abuse or maltreatment of minors or vulnerable adults;
- internal data relating to allegations of law enforcement personnel misconduct;
- educational, health, medical, welfare or mental health data that are not public data; or
- for preliminary consideration of allegations or charges against an individual subject to the board's authority.

Some reasons for which meetings **CANNOT** be closed are:

to discuss data classified as "not public data," which means any government data which is classified by statute, federal law, or temporary classification as confidential, private, nonpublic or protected nonpublic. This data may be discussed at a public meeting provided that it relates to a matter that falls within the scope of the board's authority, is reasonably necessary to conduct the business or agenda item before the board, and is done without malice. During such a meeting, however, the board may take reasonable efforts to protect not public data from disclosure, including acting by referencing a letter, number, or in some other way concealing the identity of the data subject.

## **VI. Fiscal management**

### **A. Watershed district funds**

By law watershed districts are allowed to establish a number of funds for the purpose of carrying out their powers and duties. This section discusses the types of funds that a watershed district may establish to pay for district administration, improvements and programs.

As districts analyze the various funding mechanisms available to fund projects and improvements they should remember that precedent does exist for using a combination of assessments and levies for paying project costs.

#### **Funds generated by ad valorem tax levies**

Ad valorem is a phrase meaning "in proportion to the value." In regard to tax levies it means a tax that is collected over the entire taxing district and is based on property value, rather than benefits. For example, if a district wishes to raise \$100,000 through an ad valorem tax it would calculate a tax rate, expressed in percent, that is necessary to raise the \$100,000 based on the total value of real property within the district. This tax rate would then be used to determine the tax for individual properties, thereby maintaining the same proportion of tax to value for all properties within the district.

#### **Organizational Expense Fund (M.S. 103D.905 Subd. 2)**

When a watershed district is first established or later enlarged it may levy for an Organizational Expense Fund.

The fund is to pay for organizational expenses and preparation of the watershed management plan.

Unspent funds remaining in this account after organization and preparation of the watershed management plan may be transferred to the Administrative Fund.

The watershed district may levy only ONCE upon creation or expansion for this fund. (The district may levy each time it is expanded, but only in the newly included area.) The levy is an ad valorem tax levy. The amount is determined by the lesser of 0.01596 percent of the taxable market value of real property within the district or \$60,000.

Managers may borrow from the affected counties up to 75 percent of the anticipated funds which would be collected from the organizational expense levy. Advancement of funds by the counties shall be done in the same ratio as the net tax capacity of the area of each county within the watershed

district to the net tax capacity of the entire watershed district.

If a watershed district is enlarged, the watershed district may levy an Organizational Expense Fund levy in the same manner as it did for the original watershed district area.

### **Administrative Fund (M.S. 103D.905, Subd. 3)**

The purpose of the Administrative Fund is to pay for general administrative expenses, including:

- staff
- consultant fees
- insurance
- office expenses
- manager per diem and expenses
- studies
- projects of common benefit to the watershed district

A watershed district may annually levy for an Administrative Fund. The levy consists of an ad valorem tax levy which is the lesser of 0.02418 percent of taxable market value of real property within the district or \$125,000. The amount of the annual levy for the fund must be determined and justified through the watershed district's annual budget process. Districts may exceed the amount with special legislative authority.

### **Survey and Data Acquisition Fund (M.S. 103D.905, Subd. 8)**

The Survey and Data Acquisition Fund is designed to pay for making necessary surveys and acquiring data. This fund is to be established only if other funds are not available to the watershed district.

The Survey and Data Acquisition Fund is established by a ad valorem tax levy. The levy may only be collected once every five years, may not exceed 0.02418 percent of taxable market value of real property within the district, and the fund balance cannot exceed \$50,000.

For future projects where a survey has been paid for from this fund, the cost of the survey as determined by the managers shall be included as part of the project work and the sum shall be repaid to the Survey and Data Acquisition Fund.

### **Certain Projects of Common Benefit Involving Municipalities Fund (M.S. 103D.905, Subd. 3)**

In addition to the annual administrative levy, managers may annually levy a tax not to exceed 0.00798 percent of market value of real property within the district for a period not to exceed 15 consecutive years. The tax is to pay the cost attributable to the basic water management features of projects initiated by petition of a municipality of the watershed district.

### **Emergency Projects of Common Benefit Fund (M.S. 103D.615, Subd. 3)**

The purpose of this levy is to pay the costs of projects that protect the interest of the watershed district when associated with a declaration of an emergency. If the work is found to be of common benefit to the watershed district, funding may be raised by an ad valorem tax levy upon all taxable property within the watershed if the cost is not more than 25 percent of the most recent administrative ad valorem levy of the watershed district.

This ad valorem authority may be combined with assessments against benefitted property in order to pay costs associated with emergency work performed without a contract.

### **Planning and Implementation Fund - metro area watershed districts only (M.S. 103B.241)**

This statute gives authority to metropolitan watershed districts to levy an amount necessary to pay the increased costs to prepare a metropolitan surface water management plan (M.S. 103B.231 and 103B.235) or to pay costs of improvements and maintenance of improvements identified in a BWSR-approved and locally adopted plan.

This ad valorem tax levy is in addition to any other taxes authorized by law. Proceeds from this levy may also be accumulated as an alternative to issuing bonds to finance improvements.

In April 1992, the BWSR, in consultation with the Minnesota Attorney General's Office, distributed a memo to districts which provided an interpretation of the statute. In the memo the BWSR supports a district's authority to utilize this levy for implementing a 103B.201 plan, including projects such as monitoring programs, studies, capital improvements and maintenance of capital improvements, and administrative expenses. The main caveat is that the project or other activity must be adequately described in the plan, including the scope of the activity or projects and the proposed funding mechanism.

### **Maintenance of Capital Improvements Fund - metro area watershed districts only (M.S. 103B.251, Subd. 9)**

This statute gives authority to metropolitan watershed districts to collect an ad valorem levy from all property located within the district or subwatershed unit for the purpose of creating a maintenance fund to be used for normal and routine maintenance of a work of improvement. The improvement for which the maintenance fund is being established must have been constructed at least partially with money provided by the county. Use of the levy must be approved by the county.

The levy shall be certified, levied, collected, and distributed as provided for

in M.S. 103D.915 and 103D.921, and shall be in addition to any other money levied and distributed to the watershed district.

### **Funds generated by assessment levies**

An assessment levy is a special tax levied on a property to pay for a local public improvement, such as a drainage ditch, that will presumably benefit that property. The key element of assessment is that it is based on a property receiving a benefit from the work or activity being assessed.

### **Preliminary Fund (M.S. 103D.905, Subd. 6)**

This fund is used for preliminary work on proposed projects of the watershed district.

A watershed district may file a petition with the district court in the county where the watershed district has its principal place of business asking that a Preliminary Fund be created. The district court may order a Preliminary Fund for all works of a watershed district that are to be paid for by assessment, including projects that are petitioned and projects adopted by unanimous resolution of the managers or as otherwise prescribed by M.S. 103D.

The Preliminary Fund must be used by the managers for preliminary work. All preliminary expenses connected with the work shall be included in the cost of construction of the proposed project. If construction of the project is authorized by the managers, the money advanced from the Preliminary Fund shall be repaid from assessments for the project.

### **Construction Fund (M.S. 103D.905, Subd. 5)**

The purpose of a Construction Fund is to establish an account for each watershed district project for the deposit of receipts and disbursement of funds for costs associated with the project.

A Construction Fund consists of:

- the proceeds of the sale of county bonds construction loans from any agency of the federal government
- special assessments to be levied to supply funds for the construction of the projects
- the expenses incidental to and connected with the construction

### **Repair and Maintenance Fund (M.S. 103D.905, Subd. 7)**

The purpose of this fund is to provide money for maintaining the projects of a watershed district in a condition so that they will accomplish the purposes for which they were constructed.

Managers may assess all the parcels of property and municipal corporations

previously assessed for benefits at the time of construction. The assessment must be made pro rata according to benefits determined. The collection (or levy) resulting from an assessment may be made annually; however, the fund may not exceed 20 percent of the original cost of construction of the project. Before ordering the levy, the managers may give notice of a hearing.

### **Emergency Projects for Benefitted Property Fund (M.S. 103D.615, Subd. 3)**

This provision allows watershed districts to assess against benefitted property the cost of work undertaken without a contract under a declaration of emergency.

A watershed district may combine these assessments with an ad valorem tax levy, if common benefit to the watershed district exists, to pay the costs associated with emergency work orders.

### **Fund generated through sale of bonds (M.S. 103D.905, Subd. 4)**

#### **Bond Fund**

A watershed district may establish a Bond Fund which consists of the proceeds of bonds issued by the watershed district. The Bond Fund is to be used for the payment of the purchase price of the property or the value of the property as determined by the court in proper proceedings and for the improvement and development of the property.

#### **B. Collection of funds**

In general the collection of money for the various funds of a watershed district is done through the application of levies. A levy is the act of imposing and collecting a tax or other payment. For watershed districts this levy is made as either an assessment levy or a tax levy (ad valorem). The following section describes the general procedure for setting and collecting these types of levies.

#### **Procedure for tax levies (M.S. 103D.915)**

Tax levies are those taxes that are collected on an ad valorem basis across the area of the district or subwatersheds within the district. The following procedure generally applies to the adoption and certification of tax levies.

The following funds are supplied through ad valorem tax levies: the Organizational Expense Fund, the Administrative Fund, the Survey and Data Acquisition Fund, the Certain Projects of Common Benefit Involving Municipalities Fund, the Emergency Projects of Common Benefit Fund, the Planning and Implementation Fund, and the Maintenance of Capital Improvements Fund.

## **1. Adoption of proposed budget and hearing**

On or before October 1 of each year a watershed district must hold a public hearing on and adopt its proposed budget for the following year.

## **2. Adoption of budget**

On or before October 1 of each year, the watershed district shall adopt a budget for the next year and decide on the total amount necessary to be raised from ad valorem tax levies to meet the watershed district's budget.

## **3. Certification of proposed levy**

After adoption of the proposed budget and no later than October 1, the secretary of the watershed district must certify the district's proposed levy to the auditor of each county within the watershed district the county's share of the tax. (NOTE: This October 1 deadline is often changed in tax statute; for example, the deadline in 1992 was September 15 (M.S. 275.065). It is a good idea to check each year in tax statute. Obviously, this may affect when the district wants to adopt a budget.) Each county's share shall be an amount bearing the same proportion to the total levy as the net tax capacity of the area of the county within the watershed bears to the net tax capacity of the entire watershed district. The proposed levy is certified by sending each county a letter with the levy amounts itemized according to the statute that authorizes the levy.

The designated "home county" auditor apportions the levy among the various counties in the district so that each county's levy bears to the total levy the same proportion as the tax capacity of the area within the county bears to the total tax capacity of the watershed district (M.S. 275.065 Subd. 1a).

The "home county" is generally the county in which the district office is located. The Minnesota Department of Revenue also maintains a list of home county codes for watershed districts (see chart on next page).

## **4. Certification of final levy**

The final levy of the watershed district must be certified to the counties no later than five working days after December 20 (M.S. 275.07 subd. 1). The district secretary certifies the final levy by forwarding to each county original resolutions of their board of managers authorizing each of the itemized levies and a letter stating that the levy is final.

In the case of a special taxing district, such as a watershed district, the final levy may be less than, equal to, or greater than the proposed levy (M.S. 275.065 Subd. 6, Paragraph 3).

The final levy can be certified within the deadline for the proposed levy and stipulated to serve as both the proposed and final levy.

## **5. Collection of tax and distribution**

The auditor of each county in the watershed district shall add the amount of the levy made by the managers to the other tax levies on the property of the county within the watershed district for the collection by the county treasurer with other taxes. The county treasurer shall make settlement of the taxes collected with the treasurer of the watershed district in the same manner as other taxes are distributed to the other political subdivisions.

### **Procedure for assessment levies (M.S. 103D.901)**

Assessment levies are used to collect funds for construction, maintenance, or other activities authorized by M.S. 103D and ordered by the watershed district. They are based on costs that are apportioned on the basis of benefit received. The procedure for assessment levies does vary between the different types of projects and activities. In general the following sequence of events occurs for an assessment levy.

The following funds are supplied through assessment levies: the Preliminary Fund, the Construction Fund, the Repair and Maintenance Fund, and the Emergency Projects for Benefitted Property Fund.

#### **1. Determination of benefits (M.S. 103D.715-103D. 725)**

After receipt of a favorable engineer's report, the district shall have a determination of benefits and damages to property affected by the proposed project done. This determination can be done by the appointed appraisers or by the managers themselves. For construction or improvement of a ditch, stream, river, or watercourse, or structures for the control or alleviation of damages from flood waters, the appraisers shall be governed by M.S. 103E.311 to 103E.321 (Minnesota Drainage Law).

#### **2. Preliminary and final hearings**

For projects constructed under the Drainage Law (M.S. 103E) a preliminary hearing is required after the preliminary survey report is filed with the county auditor.

Final hearings are required for both projects constructed under the Watershed District Act (M.S. 103D) and the Minnesota Drainage Law (M.S. 103E).

#### **3. Order establishing project**

For projects constructed under either the Watershed District Act (M.S. 103D) or the Drainage Law (M.S. 103E) the district shall by order establish the project.

#### **4. Assessment statement**

After the managers file an approved assessment statement listing the property and corporations benefitted or damaged or otherwise affected by the project with the auditor of the affected county, the auditor shall assess the amount specified in the assessment statement against the property, municipalities, or other corporations.

### **5. County funding**

After the assessment statement is filed with the auditor, the county board of each affected county shall provide funds to meet the proportionate share of the total cost of the project. The county may issue bonds to cover its proportionate share of the project.

### **6. Levy and collection**

The respective county auditors and county treasurers shall levy and collect the amount shown in the tabular statement and lien.

### **Assessment may not exceed benefits**

An assessment may not be levied against property or corporations under M.S. 103D in excess of the amount of benefits received as set by the order of the managers for the construction of the project.

NOTE: for further information, see section V on Watershed District Projects.

### **C. Fees and charges**

Watershed districts are allowed by law to establish fees and charges for services provided.

#### **Fees**

**Permit Fees:** application fees of \$10 for processing application for a permit to do work in the district.

**Inspection Fees:** fees charged for inspection of permitted work in the district. Fee is established by the hourly rate of the individual doing the inspection.

**Engineer Review Fees:** fees charged for the review work done by the district engineer at the engineer's hourly rate.

**Wetland Delineation Fee:** a fee for determining the type and boundary of a wetland. The fee suggested in statute is \$75. Some districts have determined staff costs on an hourly rate and bill private individuals according to time involved in the delineation.

### **Permit performance escrow**

Permit performance escrow is collected from permit applicants to ensure performance of permit requirements. Escrow is generally set up so that it can be calculated by a number of different variables, depending upon which are the most appropriate to the characteristics of the district. The following items are shown as an example of the types of things that can be used to establish the escrow amount:

1. A base fee of (\$X) dollars, set by the district.
2. A frontage fee of \$X/ft on the main channel and \$X/ft on a branch.
3. Property size at \$X/acre, set by the district.

### **Wetland escrow accounts**

Since passage of the Wetland Conservation Act of 1991, some districts have set up wetland escrow accounts to cover the costs of wetland mitigation, including land acquisition, attorney's fees, etc.

### **D. Budget**

M.S. 103D.911 states that the district board shall adopt an annual budget. The budget is likely the best policy tool available to the board because it is not a wish list, but rather a reflection of where the district's priorities have been, are today, and will head in the future. What's more, it is law; once adopted it sets the legal guidelines for spending.

The process for developing and monitoring the budget requires the cooperative effort of the board, as well as staff, advisory committees and others who have a stake in the district's activities.

### **Responsibility**

It is the board members' responsibility to adopt budgets that allocate resources in response to the district's goals. To do that, managers need to understand the budget and how it relates to the district's goals, review draft presentations, raise questions, and at times make changes.

### **Budget structure**

If the budget presented is only a ledger of revenues collected and dollars expended, the district should consider an overhaul of the budget process. A good budget structure should include:

- a budget message that explains key changes from previous years and a summary of revenue and expenditures
- expenditure information that distinguishes between operating and capital expenditures. In some districts, a separate long-range capital

budget is approved by the district board on an annual basis. The current year portion of that budget is then incorporated into the annual budget.

- At a minimum, the district should structure budgeted and actual expenditures so that they include the following information:

<u>Component</u>	<u>Example</u>
	General Revenue
Fund	<ul style="list-style-type: none"> <li>• Administrative</li> <li>• Data Acquisition</li> </ul>
	Special Revenue
	Repair & Maintenance
	Ditch X
	Administration
Program or Activity	Maintenance
	Improvement
	Research (Survey & Data)
	Salaries & Per diem
Object or Expenditure	Professional Services
	Direct Program/Project
	Taxes Ad Valorem
	Assessments
Source of Revenue	Grants
	Fees

**Budget cycle**

The process the board goes through will determine the district's success in achieving its goals, fulfilling its mission, and implementing the watershed management plan. At a minimum the board should consider the following:

- setting budget goals: these should start with a review of the district's purpose and mandates. The board should review current water management problems, needs and priorities, considering how they relate to longer range goals of the district. These goals require a

cooperative effort between the board, staff, and other parties that have a stake in the goals.

- translate goals to programs: Once the big picture is in place, someone needs to plan the details, such as how much it will cost to maintain the structure/ditch, what type of studies are necessary, and what will be done first. At a minimum, M.S. 103D indicates that watershed districts should have the following programs:
  - Administration: conducting the business of the district (M.S. 103D.321, .325, .355, .501, .735, .901, .905, .915).
  - Regulation: administering the district's rules and permits (M.S. 103D.341 and .345).
  - Planning: administering the district's watershed management plan and budgets (M.S. 103D.351, .401, .911).
  - Maintenance (M.S. 103D.631, .635).
  - Capital Projects (M.S. 103D.501, .621).
  - Public Relations: administering the requirements of reporting to and notifying the public (M.S. 103D.531, .735, .745, .911).

### **Adopting the budget**

The budget must be adopted by October 1 pursuant to a public notice and hearing. If board members have done a good job in clarifying goals and describing how they will be achieved, then the board should be comfortable with the draft budget. When reviewing the draft budget, the board should consider whether it addresses the goals identified by the board. If cuts are needed, board members will weigh the importance of various services and goals and consider whether there may be more efficient ways of providing the services or tasks. Although this will involve trade-offs and tough choices, clear policies and priorities will make the work easier.

### **Implementing and evaluating the budget**

In order for a budget to be helpful, the budget structure must be reflected in the district's chart of accounts. This will allow the district to use the budget to monitor expenditures, revenues and performance. It is essential that actual accounting transactions affecting the budget be classified in a manner consistent with the budget structure.

In implementing the budget, the board of managers needs to actively oversee the program implementation to determine if goals are being achieved. To do this, a system of periodic reports is necessary.

### **E. Treasury**

Treasury management is the process of managing the monies of the district to obtain the maximum cash availability and maximum yield on invested cash while ensuring that the amount of principal is protected from loss and invested in accordance with the laws of Minnesota. It represents an important component of financial management of the district.

**F. Annual report**

The managers of a watershed district are required to prepare a yearly report of the financial conditions of the district, the status of all projects, the business transacted by the watershed district, other matters affecting the interests of the watershed district, and a discussion of the managers' plan for the next year. Copies of the report must be submitted to the Board of Water and Soil Resources and the director of the DNR Division of Waters. (see section II.F)

**G. Audit**

The managers of a watershed district must have an annual audit completed of the books and accounts of the watershed district. The annual audit may be made by a public accountant or by the state auditor.

The annual audit must be made by a certified public accountant or the state auditor at least once every five years, or when cumulative district revenues or expenditures exceed a specified amount set by the BWSR in consultation with the state auditor.

**MAWD**What is  
MAWD?What's  
Happening  
with MAWD?What is a  
Watershed  
District?Legislative  
ProgramThe  
MAWD  
Internet Office

Where

## APPENDIX A: INSURANCE NEEDS

Like many people, businesses and organizations, it is a good idea for watershed districts to purchase certain types of insurance to protect themselves against possible mishap. Many districts have the following types of insurance:

### General liability

- protection against damages caused by the district's actions or decisions
- covers things like members of the public injuring themselves on district property or at a district structure

### Workers' compensation

- any district with employees is required to have workers' compensation insurance for them
- many districts also have workers' compensation coverage for managers, in case one is hurt while performing duties as a watershed district manager
- workers' compensation can be expanded to cover volunteers

### Public official liability (errors and omissions)

- protection against poor advice given or failure to advise by district managers
- protects managers if they are sued individually or as a board

### Property coverage and vehicle coverage

- property insurance covers district buildings, office equipment, papers, maps, etc.
- vehicle insurance covers district vehicles

### Public official bond

- under statute, each manager is required to be bonded for at least \$1,000
- protects the district in case a manager embezzles money or absconds with district funds
- treasurer of a district is often insured for more than \$1,000
- districts now have something called a "position schedule bond," meaning that the positions (i.e. treasurer, vice president, president, etc.) are insured, rather than the individual person; therefore, new bonds do not have to be purchased each time a new individual is appointed to a manager's position

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### APPENDIX B: PERSONNEL

LEGAL QUESTIONS REGARDING HIRING AND TREATMENT OF PERSONNEL ARE VERY COMPLEX. DO NOT BASE ACTIONS OR DECISIONS SOLELY ON INFORMATION ON THIS HANDBOOK; INSTEAD, MAKE USE OF THE PHONE NUMBERS GIVEN TO OBTAIN FURTHER INFORMATION.

#### Discrimination/Affirmative Action

As you may know, the Minnesota Human Rights Act prohibits discrimination against employment on the basis of the following characteristics:

- national origin
- race
- color
- religion
- sex
- creed
- marital status
- status with regard to public assistance
- disability
- age

Deciding to hire, promote, or fire someone--or not hire, promote, or fire someone--based on any of these factors is illegal.

#### Affirmative action

Affirmative action takes non-discrimination a step further and emphasizes taking positive, active steps to correct the effects of past discrimination. In Title VII of the Federal Human Rights Act, Congress strongly encourages employers and others to voluntarily take steps to change practices and systems which create barriers to equal employment opportunity.

If your watershed district has employees, development of an affirmative action plan is recommended. This plan should contain three elements:

- **a reasonable self analysis** is simply an analysis of whether current employment practices tend to exclude or place at a disadvantage groups that have been victims of previous discrimination; or if current employment practices leave uncorrected the effects of prior discrimination. If they do, the self analysis should attempt to determine why.
- **a reasonable basis** means that, if the self analysis determines that the

district's employment practices have an adverse affect on previously excluded groups, leave uncorrected the effects of prior discrimination, or result in disparate treatment of groups, the employer has a reasonable basis for concluding that action is appropriate.

- **a reasonable action** on an affirmative action plan should be taken to resolve the problems highlighted in the self analysis. Reasonable action can include the following things in relation to the group or groups in question:
  - adopting goals and timetables for hiring protected class people
  - recruitment programs
  - revamping hiring procedures
  - providing career advancement training
  - monitoring the effectiveness of such efforts

For further information, contact the Minnesota Department of Human Rights at 612-296-5663.

### **Sexual harassment**

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment. Sexual harassment is illegal under Title VII of the Civil Rights Act of 1964.

Some of the things to keep in mind about sexual harassment are:

- The victim as well as the harasser may be a woman or man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

For further information call the Minnesota Department of Human Rights at 612-296-5663; or the Equal Employment Opportunity Commission at 612-370-3330.

### **Americans with Disabilities Act**

The Americans with Disabilities Act (ADA) of 1990 makes it unlawful to discriminate in employment against a qualified individual with a disability. This includes in terms of job application procedures, hiring, firing, advancement, compensation, job training, and other areas.

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### APPENDIX C: ACRONYMS

#### AGENCIES

ACE:	Army Corp of Engineers (federal)
ACOE:	Army Corp of Engineers (federal)
ASCS:	Agricultural Stabilization and Conservation Service (federal)
BWSR:	Board of Water and Soil Resources (state)
CHS:	Community Health Service (regional)
COE:	Army Corp of Engineers (federal)
DNR:	Department of Natural Resources (state)
DOER:	Department of Employee Relations (state)
EPA:	Environmental Protection Agency (federal)
FEMA:	Federal Emergency Management Agency (federal)
HUD:	Housing and Urban Development Department (federal)
LCMR:	Legislative Commission on Minnesota Resources (state)
LGU:	Local government unit (local)
MDA:	Minnesota Dept. of Agriculture (state)
MDH:	Minnesota Dept. of Health (state)
MES:	Minnesota Extension Service (state)
MGS:	Minnesota Geological Survey (state)
MPCA:	Minnesota Pollution Control Agency (state)
OWM:	Office of Waste Management (state)
PCA:	Minnesota Pollution Control Agency (state)
RC & D:	Resource Conservation & Development (federal)
RDC:	Regional Development Commission (regional)
SCS:	Soil Conservation Service (federal)
SWCD:	Soil and water conservation district
USF & WS:	U.S. Fish & Wildlife Service (federal)
USGS:	U.S. Geological Survey (federal)
WD:	Watershed district (local)
WMO:	Watershed management organization (local)

#### ASSOCIATIONS

ADA:	Association of (Watershed) District Administrators (state)
AMC:	Association of Minnesota Counties (state)

<b>MACDE:</b>	Minnesota Association of Conservation District Employees (state)
<b>MACPZA:</b>	Minnesota Association of County Planning and Zoning Administrators (state)
<b>MASWCD:</b>	Minnesota Association of Soil and Water Conservation Districts (state)
<b>MAWD:</b>	Minnesota Association of Watershed Districts (state)
<b>MLA:</b>	Minnesota Lakes Association (state)
<b>NACD:</b>	National Association of Conservation Districts (national)
<b>SWCS:</b>	Soil and Water Conservation Society (national)

### **PROGRAMS**

<b>ACP:</b>	Agricultural Conservation Program (federal)
<b>CLWP:</b>	Comprehensive Local Water Planning (state)
<b>CRP:</b>	Conservation Reserve Program (federal)
<b>FDR:</b>	Flood Damage Reduction (federal)
<b>LAP:</b>	Lake Assessment Program (state)
<b>MFIP:</b>	Minnesota Forestry Improvement Program (state)
<b>RIM:</b>	Reinvest in Minnesota Program (state)
<b>SLR:</b>	Streambank, Lakeshore, and Roadside Program(state)
<b>WCA:</b>	Wetland Conservation Act



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### MAP

Where is my Watershed District?

## APPENDIX D: THE WATERSHED BOARD MEETINGS

### A. Running your board meeting

**NOTE:** Remember that the Open Meeting Law applies to meetings of the watershed district board. See section IV.B for information on the law.

#### Elements of a successful meeting

The key to a productive meeting lies in developing and following format. This will allow you to conduct business quickly, efficiently and constructively. This format should contain:

1. orientation
2. reports
3. business decision making
4. ending formalities

**Board meeting orientation:** call meeting to order on time. Take attendance. Recognize visitors.

**Reports:** approve the agenda, minutes and treasurer's report. These should be sent to each member in advance to provide adequate time to respond and to streamline your meeting. Hear committee and administrators' reports. This will involve designated board members and staff, including technicians and consultants.

**Business decision making:** Unfinished business such as tabled motions, actions interrupted by adjournment and items intentionally carried over should be addressed. Consider new business. Deal with items needing a motion and a vote. Some issues, such as administrator's evaluation and long-range planning, don't belong except as reports or for specific recommendation for board action.

**Ending formalities:** Make informational announcements on which no action is required. Adjourn the meeting. A motion, second and majority vote are required.

#### Added tips

To add to a successful meeting, consider that the early part of a meeting tends to be more lively and creative than the end of it, so if an item needs mental energy, bright ideas, and clear heads, it may be better to put it high on the list. If an item is of great interest and concern, it may be a good idea to hold it back and get some other items taken care of first. Then the star item can be introduced to carry the meeting over the attention lag that sets

in after the first fifteen to twenty minutes.

Some items unite the meeting while others divide the members. Whether the president starts or finishes with an agenda item which splits the board, the point is to be aware of the choice. It may make a difference in the whole atmosphere of the meeting. As a rule, it is a good idea to find an item of agreement with which to end the meeting.

A common fault is to dwell too long on trivial items or run off on tangents. This can be remedied by putting on the agenda the time at which discussion of the important long-term issues will begin and by sticking to it.

Include a finishing time as well as a beginning time on the agenda.

## **B. Parliamentary procedure**

Although parliamentary procedure may seem confusing at first, it is important that board members learn and use it. When they do, you will find that your meetings are briefer and more productive.

### **Order of business**

1. The meeting is called to order by the president. Roll call (if used)
2. The minutes of the preceding meeting may be read by the secretary and:
  - may be approved as read; or
  - may be approved with additions of corrections.
3. Monthly statement of treasurer is "received as read and filed for audit" (president so states). No motion of approval is necessary.
4. Reports of standing committees are called for by the chair.
5. Reports of special committees are called for by the chair.
6. Unfinished business is next in order at the call of the chair.
7. New business is called for by the chair.
8. If the meeting is an annual or special meeting, the program--such as awards, a speech, etc.--follows. The program is considered part of the meeting. The chair presides throughout.

### **Principle motions**

**General Statement:** When a motion has been made, seconded, and stated by the president, the assembly is not at liberty to consider any other business until this motion has been disposed of. If the motion is long and involved, the president asks the mover to hand it in writing to the secretary. The mover cannot withdraw the motion after it has been stated by the president. In general, all important motions should be seconded, which may be done without rising or addressing the president.

### **Typical steps:**

1. address president

2. recognized
3. state motion
4. second motion
5. stated to group by president
6. discussion
7. vote
8. announcement of results

### **Terminology**

**To amend:** This motion is "to change, and/or omit words" in the original main motion, and is debatable; it must be approved by a majority vote. To amend an amendment is a motion to change, add or omit words in the amendment; it is debatable and must be decided by a majority vote.

**Method:** The first vote is on changing words of the amendment; the second vote (if first vote adopts change) on first amendment as changed; the third vote is on adopting main motion as changed.

**To commit:** When a motion becomes involved through amendments or when it is wise to investigate a question more carefully, it may be moved to commit the motion to a committee for further consideration. Debatable and amendable.

**To lay on the table:** The object of this motion is to postpone the subject under discussion in such a way that it could be taken up at some time in the near future when a motion "to take from the table" would be in order. These motions are not debatable or amendable; majority vote.

**To postpone:** A motion to postpone the question before the assembly to some future time is in order, except when a speaker has the floor; debatable; majority vote.

**To adjourn:** This motion is always in order except:

- when a speaker has the floor.
- when a vote is being taken.
- after it has just been voted down.
- when the assembly is in the midst of some business which cannot be abruptly stopped.

When the motion is made to adjourn to a definite place and time, it is debatable.

**To reconsider:** The motion to reconsider can be made on a motion that was carried or lost in order. The motion to reconsider a motion that was carried or lost in order, if made on the same day or the next calendar day, must be made by one who voted with the prevailing side. The motion is debatable and must be decided by a majority vote. It requires two votes: first on whether it should be reconsidered; second on original motion after reconsideration. No questions can be twice reconsidered.

The previous question: This motion is to close debate on the pending question. This motion may be made when debate becomes long and drawn out. It is not debatable. The form is "Mr. or Madam President, I move the previous question." The president then asks "Shall debate be closed and the question now be put?" If this is adopted by a two-thirds vote, the question before the assembly is immediately voted upon.

Point of order: This motion is always in order, but can be used only to present an objection to a ruling of the president or some method of parliamentary procedure. (For example, if the president makes a procedural mistake and allows someone not voting on the prevailing side to move to reconsider a motion.) This form is "(Mr. or Madam) President, I rise to a point of order." The president: "Please state your point of order." After the member has stated the objection, the president answers:

- your point of order is sustained; or
- your point of order is denied.

Any member who is not satisfied may appeal the decision of the president. The president then addresses the assembly, "Shall the decision of the president be sustained?"; this is debatable and the presiding officer may discuss it without leaving the chair. Voted on like any other motion. Majority of the vote sustains the decision of president. Requires a majority of "no" votes to reverse decision of the president.

Main motion: To bring business before the board.

Vote immediately: To stop discussion and to get a vote.

Parliamentary inquiry: To let a member ask a question.

Division: A request for the president to use a more accurate method of voting, generally a show of hands. "Mr. or Madam President, I call for a division on that last vote."

Refer to committee: To allow for study and investigation by a smaller group. "I move to refer the main motion to the Technical Advisory Committee, the Citizens Advisory Committee, or a committee of those appointed by the president."

Quorum: The minimum number of members who must be present in order to transact legal business.

Precedence: Refers to the rank of motions. When a motion has been made, any motion of higher order may be proposed but no motion of lower order may be proposed. (There are a few exceptions.) Motions are discussed and voted upon in inverse order to their proposal. (The last motion made will be acted on first.)

## **Study of parliamentary procedure**

### 1. Simplified Parliamentary Procedure

NACD

Box 355

League City, Texas 77573

### 2. Aver, J. Jeffrey, Essentials of Parliamentary Procedure

2nd Edition, Appleton-Century-Crafts, Inc., New York

### 3. Sikkink, Donald, Understanding Parliamentary Procedure

Peaceful Acres Press

17614-33rd Avenue

Clearwater, MN

## **C. Good minutes**

Minutes are the official record of board action. They need to be accurate, concise and complete. Minutes contain official history and permanent record of the proposals, reports, and decisions of the members. They are of vital importance to an organization, providing an invaluable reference, and, if the situation arises, the courts give them great weight regarding their use as evidence. Auditors depend on them for proof of authorization for expenditures.

The importance of minutes should not be taken lightly or dealt with in a lackadaisical manner. Careful review before the meeting to address errors and raise concerns can be accomplished by providing each board member with a copy three to four days prior to the scheduled meeting date. This provides an adequate amount of review time and contributes to a smoother, more efficient meeting.

The elected secretary, working under the direction of the president, is responsible for the minutes. They should be prepared as soon after a meeting as possible to ensure their accuracy. An employee may prepare them under the direction of the secretary, but only the elected secretary may sign them.

Formats may vary from district to district, but should contain the following general information:

all actions; not discussion

- date
- hour
- location
- type of meeting
- presiding officer and board members in attendance
- fact a quorum was present
- a record of motions, including:
  - whether it passed or failed
  - name of individual making motion
  - name of second
  - how motion was disposed of
  - exact wording
  - number voting on each side
  - each member's vote on a roll call
- time of adjournment, which should close the minutes

### **Special Reports and Committees**

Each report:

- should be recorded with the name of member presenting it.
- should include action taken on the report.
- should include reference to file where the report may be found.

NOTE: You may want to summarize report.

Minutes kept by committees are often more detailed than the minutes of the meetings of the organization because committee minutes frequently serve as the basis for the committee's report. Minutes of committee hearings frequently list those who speak for or against proposals and summarize the facts presented by each speaker.

### **D. Officer duties**

Regular monthly meetings are a must if the district is to be successful. Managers, as representatives of the people, are obligated to conduct the business of the district in an orderly and business-like manner. Successful board meetings depend upon the direction given by the president and upon the willingness of board members to carry out their assignments as appointed.

#### **President**

The president (or chair) is the steering mechanism of your district. It is up to the president to do that little extra to motivate board members and other public-minded individuals to do what they can to assist in serving the present and future citizens of the district. After a few years of board experience a manager should welcome the opportunity to be president of the board. It provides an opportunity to become more closely involved and gain a broader perspective of the total program and its purpose.

Specific responsibilities of the president are to:

- preside at all meetings.
- call special meetings when necessary.
- communicate with district office staff members, consultants, and the heads of other agencies involved prior to the scheduled meeting to address agenda items. This can be done by a short office visit and perhaps a few telephone calls. A formal meeting may not be necessary.
- refer regularly to the long-range goals of the district and the district plan of work and operations when preparing the agenda, trying to ensure that all planned activities are addressed.
- make sure a copy of the agenda, minutes of the previous meeting and a financial statement (at a minimum) are sent to each board member three to four days prior to the meeting.
- see that agendas and pertinent material are sent to all individuals who should attend the meeting and take part in the discussion.
- keep in contact with other managers on the progress of various programs delegated. Insist on regular attendance of managers.
- call meeting to order promptly and at the specified time. Follow proper rules of order for a business meeting. Adhere to the time schedule.
- recognize visitors and other individuals present at the board meeting.
- assume the role of facilitator. This will encourage all managers to participate in discussion of existing issues.
- complete an item of business in the order listed before taking up the next item. Stick to the agenda.
- use the Technical Advisory Committee and the Citizens Advisory Committee to involve individuals other than board members and require committee reports at board meetings.
- avoid the "rubber stamp approach." Encourage board members to question staff or individual presenters regarding clarification of a specific point, thus allowing them to draw conclusions to adequately make their own decisions.
- adjourn meeting promptly after all business has been completed.

### **Vice president**

The vice-president position becomes most important in the absence of the president. The vice-president should note the activities of the president and how they are carried out, in case it is ever necessary for the vice-president to chair a meeting.

Specific duties of the vice-president are to:

- assume the duties of the president in the absence of the president.
- assist in organizing and implementing the district program.
- oversee the work of committees and coordinate their reports as delegated by the president.

- be familiar enough with the total program of the district to be able to work closely with the president and fill in when necessary.

### **Secretary**

The primary responsibility of the district board secretary is to arrange for the recording of official proceedings of the board and to see that the entire board approves the minutes as the legal record of the district. As public officials using public funds, these minutes should then be signed, becoming the permanent record of what is done and why. Copies for general information purposes should be forwarded to the area and central office of the Board of Water and Soil Resources. They can also be sent to other interested persons or organizations.

Specific duties of the secretary are to:

- make a complete record of all proceedings.
- indicate date and place of meeting, refer to whether it is a regularly scheduled meeting or a special meeting, official presiding, names of all those present including visitors, organizations represented and names of managers absent.
- record each motion in full.
- complete action on each item of business so that a record can be made of what was addressed and completed.
- initiate correspondence on behalf of the board as the need arises.
- inform the chair of any business that should come before the board.
- the secretary or president should sign the official copy of the board minutes after approval by the board at the next meeting.

### **Treasurer**

The district treasurer is responsible for the financial matters of the district, including the financial records. The treasurer co-signs district fund checks and special fund vouchers after approval of the board. The treasurer and secretary should be bonded.

Specific duties of the treasurer are to:

- maintain complete and accurate records of receipts and expenditures. Include district staff's program records and trial balance.
- be prepared to answer questions from other board members regarding the monthly and/or quarterly financial statement, as well as year-end figures.
- pay bills approved by the board and issue receipts for incoming funds or designate staff to do so.
- make sure program records and general journal provides for adequate number of accounting categories to handle all general and special use programs.
- assure that authorization for payment of bills by the district board is recorded in the minutes of the meeting.

- work with the district staff to develop a fiscal year budget.



## The MAWD Internet Office

**MAWD**

What is MAWD?



What's Happening with MAWD?



What is a Watershed District?



Legislative Program



The MAWD Internet Office

**MAP**

Where is my Watershed District?

### APPENDIX F: LOCAL UNITS OF GOVERNMENT AND STATE AND FEDERAL RESOURCE AGENCIES

All local units of government, including watershed districts, will work quite closely with other local units of government and a variety of state and federal agencies. Familiarity with these local units and agencies will help create a good working relationship and provide a new watershed district manager with guidance on where to turn for help or information.

**Soil and water conservation districts (SWCDs)** are local units of government that manage and direct conservation programs. There are 91 SWCDs in Minnesota, most of which are formed along county lines.

SWCDs are governed by a board consisting of five elected supervisors. Virtually all SWCDs in Minnesota have at least one staff person, and some may have as many as eight. SWCDs work directly with landowners to put conservation practices on the land. SWCDs locally administer a number of state programs, including the Cost-Share Program and the Reinvest in Minnesota Reserve Program.

SWCDs do not have taxing authority; their funding comes from the county, state, and self-generated income.

**Counties** are local units of government that manage resource-related activities through planning and zoning laws. Each of Minnesota's 87 counties is governed by a board of either five or seven commissioners. Counties vary greatly in terms of how strictly they control resource use.

Counties locally administer a number of state programs, including the Comprehensive Local Water Planning Program. Through this program, counties receive a combination of state and local funding totaling about \$37,500. This funding is dedicated to development or implementation of a local water plan. Local water plans are developed by local task forces representing a variety of interests; the plans address virtually all aspects of water management, including ditch management, water quality, lake levels, wetlands, recreational water use, etc.

Many counties have designated a local water planning coordinator. Often, this is the SWCD; sometimes it is someone with the county planning and zoning or environmental health office.

#### State resource agencies

**The Board of Water and Soil Resources (BWSR)** is a state agency created in 1987 through a merger of the Soil and Water Conservation

Board, the Water Resources Board, and the Southern Minnesota River Basins Council. The BWSR has state administrative authority for soil and water conservation districts (SWCDs) and watershed districts. It approves their workplans and provides them with financial and technical assistance.

The BWSR has 12 voting members and five non-voting members. The voting members include three representatives of SWCDs, three representatives of watershed districts or watershed management organizations, and three representatives of counties. The non-voting members represent the Pollution Control Agency, the Department of Health, the Department of Agriculture, the University of Minnesota, and the Department of Natural Resources. The board generally meets on the fourth Wednesday of the month.

The BWSR has about 60 staff people, most of whom are located in regional offices in New Ulm, Duluth, Marshall, Brainerd, Bemidji, and Rochester. The central office is in St. Paul. Each office houses at least two board conservationists. These staff people provide service for all local units of government within a specific work area.

### **Minnesota Department of Natural Resources (DNR)**

The Department of Conservation was created in 1931 and was renamed the Department of Natural Resources (DNR) in 1971 to reflect the agency's broader responsibilities. The DNR staffs more than 350 offices in Minnesota's cities, towns, woods, and farmlands. The DNR's field staff are divided into six regions, with regional offices located in Bemidji, Grand Rapids, Brainerd, New Ulm, Rochester, and St. Paul.

The DNR is organized by resource divisions: Forestry, Fish and Wildlife, Parks and Recreation, Minerals, Trails and Waterways, Enforcement, and Waters.

Enforcement Division: The division enforces all natural resource laws in the state and regulates commercial and sport fishing, trapping, fur buying, and hunting. Conservation officers enforce boat and water laws, manage licensing and operation of snowmobiles and all-terrain vehicles, and enforce laws dealing with alterations of beds of lakes and streams.

Fish and Wildlife Division: The division manages all programs concerning fish and wildlife. The division also acquires land to be developed as wildlife management areas.

Division of Forestry: The division manages and protects Minnesota's forest resources. Its forest management program includes forest fire protection, insect and disease protection, management of state forests and other state owned land, management assistance to non-industrial private forest landowners, counties, schools, and municipalities, and assistance to wood users to improve harvesting, utilization, and marketing of the timber sources. The division also directs the sale of timber from state-owned lands,

and builds and maintains state forest campgrounds and recreational sites.

Minerals Division: The division is responsible for the leasing of mineral rights and of industrial minerals and peat associated with the state-owned lands the DNR is charged with managing.

Parks and Recreation Division: The division develops and manages a system of state parks and waysides that contains examples of Minnesota's most scenic lands.

Waters Division: The division regulates activities conducted in the beds of protected waters, regulated water appropriations and land use activities in shoreland and floodplain areas.

### **Minnesota Department of Health (MDH)**

The Minnesota Department of Health (MDH) is the state's official health agency. Established in 1872, MDH is responsible for developing and maintaining programs and services for protecting, maintaining, and improving the health of the citizens of Minnesota.

The Environmental Health Division is responsible for protecting the public from potential health hazards associated with drinking water, the workplace, food and beverage establishments, individual sewage treatment facilities and others. The Division of Public Health Laboratories performs lab analysis of environmental samples for MDH and other governmental agencies.

MDH is one of Minnesota's largest state agencies. Its headquarters are in Minneapolis, with district offices in seven locations around the state. MDH is headed by the commissioner of health, who is appointed by the governor.

### **Minnesota Pollution Control Agency (PCA)**

The Minnesota Pollution Control Agency (PCA) was established in 1967. The PCA enforces state and federal laws related to air quality, solid waste collection and disposal, surface and ground water quality, toxic and hazardous substances and others.

The PCA is governed by a nine-member board appointed by the governor. Staff are divided into three main divisions: Air Quality, Water Quality, and Solid and Hazardous Waste.

Air Quality Division: The division enforces laws relating to air pollution. In addition to attaining air quality standards in high pollutant areas, the division also engages in various programs to prevent deterioration of present air quality in clean-air areas. The division enforces and administers state noise and odor standards.

Hazardous Waste Division: The division has a well-established program to

regulate the treatment, storage, and disposal of hazardous waste and to prevent the mismanagement and release of hazardous waste that could become a threat to human health and the environment.

Ground Water and Solid Waste Division: The division administers solid waste programs and the Superfund, including cleaning up Superfund sites, issuing permits for solid waste facilities, and overseeing the development of solid waste management plans.

Water Quality Division: The division enforces and administers all laws relating to water pollution in the state. The division collects water quality data on rivers and lakes, establishes water quality standards to protect all water users, issues and enforces wastewater facility discharge and operating permits, provides management planning to alleviate pollution from non-point sources, administers a grants and loan program with the Minnesota Public Facilities Authority for construction of municipal treatment plants, and provides engineering review, technical assistance and training to assure proper construction, operation and maintenance of wastewater treatment facilities.

In addition to specialists located in St. Paul, the PCA has staff in five regional offices located in Duluth, Brainerd, Detroit Lakes, Marshall, and Rochester.

The PCA has staff on call 24 hours a day to respond to pollution emergencies.

### **Minnesota Department of Agriculture (MDA)**

The Minnesota Department of Agriculture (MDA) is the state agency that speaks for and promotes the development of agriculture and related industries in Minnesota. The agency adopts and enforces rules to clarify laws and to prevent fraud and deception in the manufacture and distribution of foods, animal feeds, fertilizers, pesticides and seeds.

The MDA is divided into several program areas: the Agricultural Services and Promotion Councils Program, the Agricultural Protection Program and the Administration and Financial Aids Program.

Agricultural Services and Promotion Councils Program: This program promotes Minnesota agricultural products, has developed agricultural markets, and administers the Family Farm Security Program.

Agricultural Protection Program: This program assures foodstuffs are free from adulteration, properly labeled, and handled to protect their edible quality, and to provide protection to producers and consumers against unfair economic practices.

Administration and Financial Aids Program: This program service provides administrative support to the agency through accounting and licensing,

personnel and office management, planning, laboratory support for inspection programs, and development of statistics about Minnesota agriculture.

### **Federal agencies**

The U.S. Fish and Wildlife Service (USF & WS) is a bureau of the U.S. Department of the Interior. The USF & WS is responsible for migratory birds, endangered species, certain marine animals, inland sport fisheries, and fish and wildlife research activities.

Some of the activities of the USF & WS include:

- studies of fish and wildlife populations.
- surveillance of pesticides, heavy metals, and thermal pollution.
- hatchery production of lake trout and other species.
- fisheries research on genetics, disease, nutrition, and taxonomy.
- development of the endangered species lists.
- operation of wildlife refuges.
- enforcement of game laws.
- aid programs for projects designed to conserve, develop, and enhance the nation's fish and wildlife resources.

The service is composed of a headquarters office in Washington, D.C., seven regional offices in the lower 48 states and Alaska, a regional research structure and a variety of field units and installations. These include 450 National Wildlife Refuges and 150 Waterfowl Production Acres comprising more than 91 million acres; 25 major fish and wildlife laboratories and centers; 36 cooperative research units at universities across the country; 70 National Fish Hatcheries; and a nationwide network of wildlife law enforcement agents.

Minnesota is served by the regional office located in:

**Federal Building**

**Fort Snelling**

**Twin Cities, MN 55111**

### **U.S. Army Corps of Engineers (ACOE)**

The U.S. Army Corps of Engineers (ACOE) has been regulating activities in the nation's waters since 1890. Until 1960, its primary purpose was to protect navigation. Since the early 70s, the ACOE jurisdiction has expanded and now considers the full public interest for both the protection and utilization of all waters of the United States, including wetlands.

Under Section 10 of the River and Harbor Act, a permit is needed from the ACOE before putting any structure, or doing any other work, in a navigable

water of the United States. Under Section 404 of the Clean Water Act, filling, dredging, material disposal, sidecasting for drainage, or other filling activities in lakes, streams and wetlands come within the scope of the ACOE regulatory jurisdiction.

For more information contact:

U.S. Army Corps of Engineers

Regulatory Functions Branch

1135 U.S. Post Office and Customs House

St. Paul, MN 55101-1479

### **Environmental Protection Agency (EPA)**

The Environmental Protection Agency (EPA) was created as an independent federal agency in 1970. The EPA acts to control pollution by use of a variety of research, monitoring, standard setting and enforcement activities. The agency coordinates and supports research and anti-pollution activities by state and local governments, private and public groups, individuals, and educational institutions. Some of the activities of the EPA include:

- Air: The EPA develops and enforces national standards for air quality.
- Water: The EPA develops national programs and regulations for water pollution control and water supply. It develops and enforces water quality standards and effluent guidelines.
- Solid waste and emergency response: The EPA develops policies, standards, and regulations for hazardous waste treatment storage and disposal. It manages the national Superfund Toxic Cleanup Program. It develops guidelines and standards for underground storage tanks.
- Pesticides and toxic substances: The EPA directs pesticides and toxic substances enforcement activities. It assesses the impact of existing chemicals and new chemicals to determine if they are hazardous, and, if needed, develops appropriate restrictions.
- Research and development: The Office of Research and Development directs the research activities of the agency's national laboratories. General functions include management of selected demonstration programs, planning for agency environmental quality monitoring programs, and coordination with other agency monitoring programs.

The EPA has 10 regional offices. The regional administrators are responsible for accomplishing, within their regions, the national program objectives. Minnesota is served by the Chicago regional office of the EPA located at:

230 South Dearborn Street

Chicago, Illinois 60604

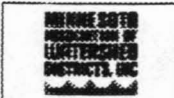
### **Agricultural Stabilization and Conservation Service (ASCS)**

The Agricultural Stabilization and Conservation Service (ASCS) was established in 1961. The ASCS is the agency in the U.S. Department of Agriculture that administers commodity and related land use programs designed for voluntary production adjustment, resource protection, and price, market, and farm income stabilization. In each of the approximately 3,080 agricultural counties, a county committee composed of three farmer members is responsible for local administration.

Resource conservation programs administered by ASCS include:

- **The Conservation Reserve Program (CRP)**: CRP was authorized by the Food Security Act of 1985 to conserve and improve soil on highly erodible cropland. Program participants receive a payment for establishing and maintaining vegetative cover, implementing a conservation plan, and not allowing grazing for the 10-year contract period.
- **The Agriculture Conservation Program (ACP)**: ACP provides cost-sharing of up to 80 percent with farmers to carry out needed conservation practices such as installing terraces or field windbreaks.
- **The Forestry Incentives Program**: This program provides cost-sharing for tree planting and timber stand improvement with private landowners.
- **The Water Bank Program**: This program provides that persons having eligible wetlands can enter into 10-year agreements and receive annual payments for preserving, restoring, and improving wetlands and adjacent areas in waterfowl nesting, breeding, and feeding areas.

The Soil Conservation Service (SCS) provides technical support for these programs.



# Where Is My Watershed District?

## MAWD

What is MAWD?



What's Happening with MAWD?



What is a Watershed District?



Legislative Program

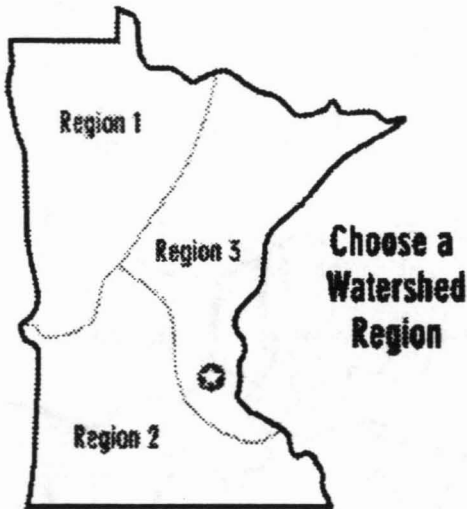


The MAWD Internet Office

## MAP

Where is my Watershed District?

To find more information on your Watershed District, just click on the Minnesota region where you live.



[Go to the alphabetical listing of the Watershed Districts in Minnesota.](#)



What's  
Happening  
with MAWD?



What is a  
Watershed  
District?



Legislative  
Program



The  
MAWD  
Internet Office

**MAP**

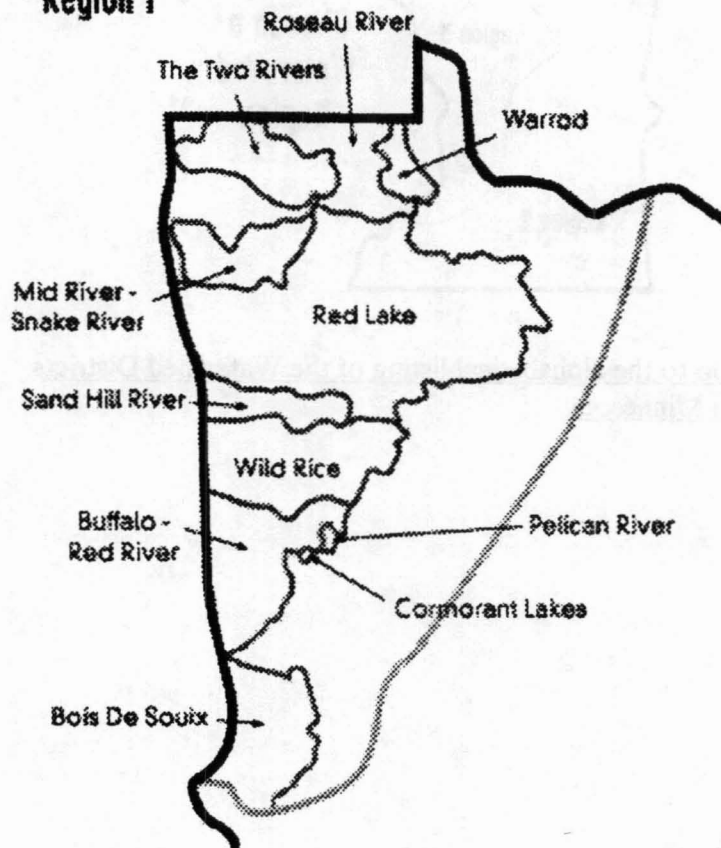
Where  
is my Watershed  
District?



Waterlinks

home

## Region 1





# Where Is My Watershed District?

## MAWD

What is MAWD?



What's Happening with MAWD?



What is a Watershed District?



Legislative Program



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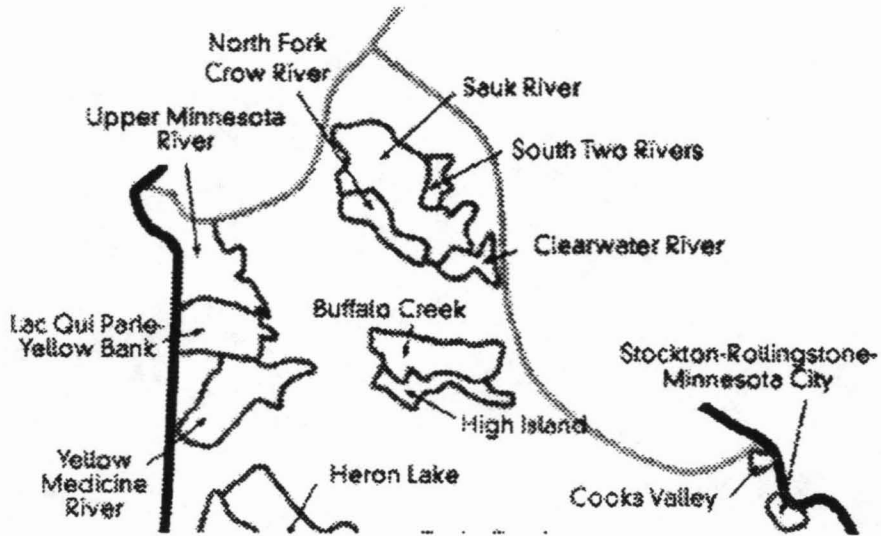
## MAP

Where is my Watershed District?

Now click on the specific Watershed District map (outlined in blue) where you live to link to District information including:

- Board of managers,
- District office address and phone number and
- Meeting dates.

## Region 2





A qualified individual is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include (but is not limited to):

- making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- job restructuring, modifying work schedules, or reassignment to a vacant position;
- acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters.

An employer is required to make an accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

Employers **MAY NOT** ask job applicants about the existence, nature or severity of a disability. Applicants may be asked about their ability to perform specific job functions.

The ADA may not apply to your watershed district, depending upon the number of employees you have.

For more information on the ADA, contact the Equal Employment Opportunity Commission at 612-370-3330.

### **Interviewing**

Good judgement should guide your decisions in what you can and cannot ask a prospective employee. If you have any doubts as to whether a question is appropriate, it is better to err on the side of caution and not ask the question.

Although no case is absolute, you should generally avoid questions which imply that hiring decisions may be based on or affected by the following:

- race or color
- sex
- national origin
- religion
- height or weight
- arrest records
- garnishment records
- credit rating
- negative departure from former employer
- marital status

- children in household
- child care provisions
- pregnancy
- unwed motherhood
- lack of separate rest room facilities
- client or customer preference

Following are some examples of questions which could be considered discriminatory in certain cases. Although some of these questions may seem innocuous at first glance, upon further reflection you will see that they could be construed to imply that hiring decisions are based on something other than merit.

**Sex:**

1. Do you regularly miss work at certain times of the month?
2. How do you get along with other women?
3. Are you married, single, divorced, widowed, separated?
4. How do you stand on women's lib?
5. Do you have children?
6. Is your spouse employed?
7. Will your spouse object to your traveling on business?

**Race:**

1. Do you get along well with people of other races?
2. What do your parents do?
3. Are "you people" able to work with technical data?
4. Have you ever been a recipient of public assistance?
5. What kind of neighborhood do you live in?
6. Are you a member of a black militant group?

**National origin:**

1. Are you offended by "polish" jokes?
2. Are your relatives born in the "old country?"
3. Were you born in this country?

4. What nationality is your name?

Religious:

1. Are you a member of any church?
2. What is your religious preference?
3. Members of your group are great on evangelizing others. How do you feel about that?
4. Can you work Saturdays, Sundays or on religious holidays?

Age:

1. How old are you?
2. When do you plan to retire?
3. Would it bother you to have a boss that is younger than you?
4. Are you regularly on medication of any kind?
5. How do you get along with younger people?
6. Do you think you can keep up with the pace of younger employees?

Examples taken from "Fair Employment Interviewing" by Jean L. Rogers and Walter L. Fortson, Addison-Wesley Publishing Co., 1976.

#### **Fair Labor Standards Act (M.S.177.21-177.35)**

As local units of government, watershed districts are subject to the Federal Fair Labor Standards Act and the Minnesota Fair Labor Standards Act. The intent of these acts is to protect the rights of the employee in the workplace, so the act that provides the greatest benefit to the employee takes precedence. Among other topics, these acts address wages, hours, and compensation for overtime.

#### **Wages**

- each district shall pay its employees wages not less than the minimum wage set by the state or federal government
- the wage that is greatest must be paid
- this amount changes frequently
- in Minnesota, there is a different minimum wage for small employers (any enterprise whose annual gross volume of sales or business is less than \$362,500) and large employers (any enterprise whose annual gross volume of sales or business is not less than \$362,500)

## Hours

- the Federal FLSA requires some employers to pay overtime for all hours worked in excess of 40 hours per workweek
- Compensation for overtime
- governmental units can compensate for overtime worked by either compensatory time at a rate of not less than 1 1/2 hours per hour of overtime worked
- or it can be paid monetarily at a rate of not less than 1 1/2 their regular rate
- or a combination of both
- an agreement or understanding regarding overtime compensation must be reached prior to the performance of work

## Exemptions

certain employees, such as executive, administrative or professional employees who receive a guaranteed predetermined wage for each workweek (NOT an hourly rate) may be exempt from these requirements; for information on how to determine who is a bona fide executive, administrative or professional employee, contact the Minnesota Department of Labor and Industry at 612-296-2282.

For more information on the Minnesota FLSA, M.S. 177.21-177.35, contact the Minnesota Department of Labor and Industry at 612-296-2282. For more information on the Federal FLSA, contact the U.S. Department of Labor, 612-370-3371.