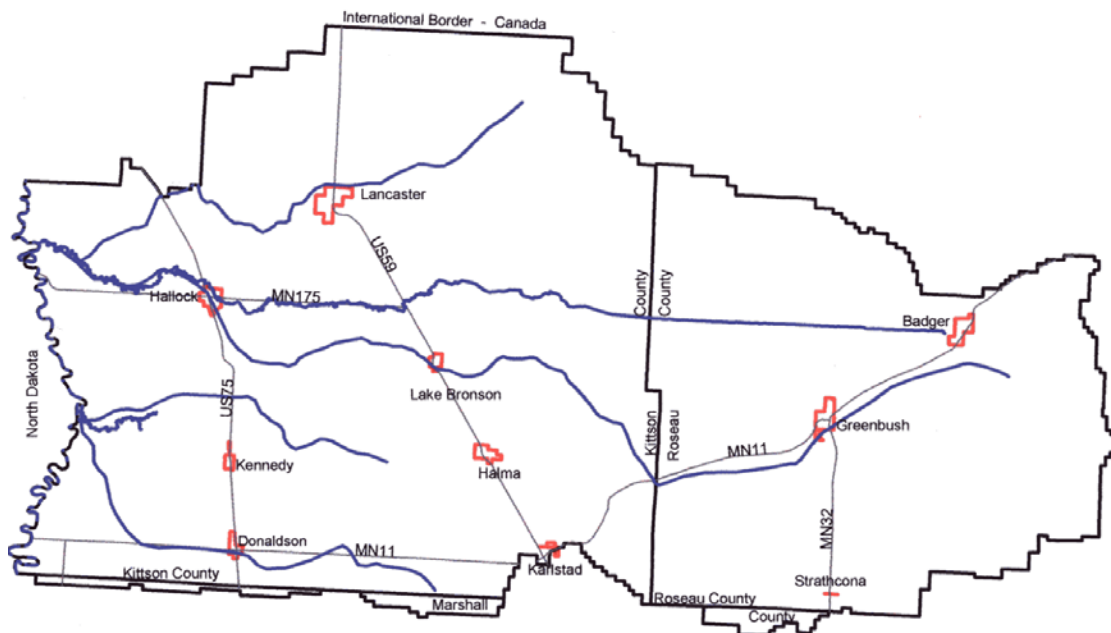


Rules of the Two Rivers Watershed District



**In Parts of Kittson, Roseau, & Marshall
Counties, MN**

**Adopted October 7, 1980
Amended June 5, 1997
Amended June 3, 2015
Amended November 1, 2017**

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Section 1.0 Introduction

The Two Rivers Watershed District was established by order of the Minnesota Water Resources Board on October 30, 1957. The District encompasses portions of Roseau, Marshall, and Kittson Counties in Minnesota.

1.1 Purpose

The purpose of these rules is to implement the intent of the Minnesota Watershed Law, more fully set forth in Minnesota Statutes Chapter 103D, as said legislation affects the Two Rivers Watershed District. Said rules are adopted pursuant to the provisions of M.S. 103D and are deemed to be necessary, proper and desirable to implement the provisions of M.S. 103D in any and all provisions for which the District was established and in accordance with the District's overall plan.

1.2 Adoption of Rules

In accordance with Minnesota Statute 103D, the Board of Managers shall comply with the following procedure in adopting rules:

- (a) A copy of the proposed rules or amendments shall be submitted to each Manager of the District at least 30 days prior to its adoption by the Managers.
- (b) Any proposed rule or amendment shall be adopted by majority vote of the Managers after public notice and hearing has been held on said proposed rule of amendment. The public hearing shall be at a date, time, and place set by the Board and notice of said hearing shall be given to the public by publication in a legal newspaper of general circulation in each county within the Watershed District.
- (c) The original copy of the Rules shall be kept in the files of the Managers and, in addition, copies shall be prepared for distribution to all entities as required by law.
- (d) Each rule adopted by the Managers shall have the full force and effect of law.

1.3 Rules

The Managers of the District shall be empowered to amend the rules of the District. Any interested person may petition the Board of Managers for an amendment to the rules.

1.4 Inconsistent Provisions

If any rules herein contained are inconsistent with the provisions of M.S. 103D, or other applicable laws of the State of Minnesota, the provisions of said Chapter 103D or other applicable law shall govern.

1.5 Severability

In the event that any section, phrase, clause or condition of these rules is declared to be invalid by a court of competent jurisdiction, the same shall not affect the validity of these rules as a whole and only the part so declared to be invalid shall be affected.

1.6 Rights of Appeal

Upon the initial issuance or denial of a permit for use or work, any person may request reconsideration of the permit decision by filing a written request for reconsideration with the district office. A decision upon a request for reconsideration shall be considered final upon the public vote of the Board, regardless of whether notice of the decision is served upon any person or party.

Any person adversely affected by the adoption or enforcement of these rules, a decision after request for reconsideration, or any other action of the managers arising out of and pursuant to the adoption or enforcement of these Rules, may appeal. Appeals must be taken in accordance with the appellate procedure and review set forth in Minnesota Statute 103D.

Permit applications and requests for reconsideration shall be processed following statutory timelines.

Section 2.0 Policy Statement

2.1 General Policy

The Managers of the Two Rivers Watershed District accept the responsibilities with which they are charged as a governing body by Minnesota Statutes. The general purpose of the District will follow M.S. 103D and the overall plan of the District. The Board of Managers will work with and cooperate with all other governmental agencies in order to manage the water resources of the District.

2.2 Review of Local Ordinances Before Passage

Copies of proposed county, municipal and township ordinances relating to surface water drainage, flood plains, and shoreland use within the Watershed District shall be submitted to the Managers 45 days prior to the first public hearing for review and comment.

2.3 Submission of Local Ordinances After passage

Ordinances relating to surface water drainage, flood plains, and shoreland use shall be submitted to the Managers within 15 days after passage.

2.4 Proposed New Rule Policies

The Board shall, from time to time, adopt policies for the fair, efficient, and proper application of the Rules of the Two Rivers Watershed District. Policies of the Board which impact the implementation, interpretation, and enforcement of these Rules are attached hereto as Exhibit A and incorporated herein as if fully set forth. These policies shall be reviewed annually by the Board. Policies concerning the implementation, interpretation, or enforcement of the Rules are without the force of Rule, but shall be considered persuasive and instructive authority which the Board may rely on when implementing, interpreting, or enforcing the Rules of the Watershed District.

Section 3.0 Definitions

For the purposes of these Rules, certain words and terms are herein defined as follows. In the absence of a definition hereinafter, the definitions established for the State of Minnesota by statute or by case law shall apply to these Rules unless clearly in conflict, clearly inapplicable, or unless the context makes such meaning repugnant thereto:

BOARD OF MANAGERS shall mean the Board of Managers of the Two Rivers Watershed District.

DEPARTMENT OF NATURAL RESOURCES or DNR shall mean the Minnesota Department of Natural Resources.

DESILTATION BASIN OR STRUCTURE shall mean any pond, depression, structure, or other device, either natural or man-made, which because of its configuration is able to reduce the velocity of moving water with a resulting deposition of silt particles onto the bottom of such basin or behind such structure.

DETENTION BASIN OR STRUCTURE, shall mean any pond, dike, depression, structure, or other device which creates a storage of water by detaining or slowing down the outflow of the water by natural or man-made means.

DRAINAGEWAY shall mean any natural or artificial channel which provides a course for the flow of water, whether that flow be continuous or intermittent.

GENERAL WELFARE shall include any act or thing tending to improve or benefit or contribute to the safety or well being of the general public or benefit the inhabitants of the District. General Welfare shall be synonymous with "Public Welfare" or "Public Benefit".

PUBLIC CORPORATION shall mean a county, town, school district, or a political subdivision or agency of the state. Public corporation except where the context clearly indicates otherwise does not include the District.

PERMIT, DNR shall be the permit document issued by the Minnesota Department of Natural Resources for the purpose of permitting an applicant or permit holder to perform work in the public waters of the state and, in particular, in the public waters of the Watershed District.

PERMIT, WATERSHED DISTRICT shall be the permit document issued by the Watershed District for the purposes of permitting the applicant or permit holder to perform work in the District.

PERSON shall mean any individual, firm, partnership, association, or corporation (either public or private), but does not include public or political subdivisions or governmental subdivisions.

PLAN is a map, drawing, report, photograph or other similar supportive exhibit for a proposed work project.

PONDING AREA shall mean any natural or man made depression capable of retaining or detaining runoff waters and may be either permanent or intermittent in that regard, but in any case such ponding area shall have been designated as such in a report or on a plan of the Watershed district or of a report or plan of another governmental subdivision.

PUBLIC HEALTH shall be any act or thing or condition which tends to improve the general sanitary conditions of the District.

RETENTION BASIN OR STRUCTURE shall mean any pond, dike, depression, structure, or other devise, either natural or man made, which because of its configuration is able to retain surface runoff waters.

SHORELAND shall mean land located within the following distances from public waters:

- (1) One thousand (1,000) feet from a normal high water mark or a lake, pond, or flowage;
- (2) three hundred (300) feet from a river or stream bank.

STORM SEWER shall mean a system of pipe installed for the specific purpose of transporting surface and or underground waters from one location to another and said system need not be continuously constructed only of pipe, but may include reaches of flumes, spillways, or open channels.

WATERSHED DISTRICT shall mean the Two Rivers Watershed District, when the first letters are capitalized. When the word “district” appears without capitalization, it shall mean the lands contained within the boundary of the Two Rivers Watershed District, as established by the Minnesota Board of Water & Soil Resources.

WORK OR WORKS shall mean any construction, maintenance, repair or improvements.

“SHALL” and “MAY” as used in these Rules shall be construed to indicate a mandatory and a permissive state or condition respectively.

Section 4.0 Permit Requirements

The requirements of obtaining a permit for certain uses of water or for performing certain works within the district are intended for effectuating the purposes and intent of the Minnesota Watershed Law and the District’s overall plan and not as an inhibition to development or to the free use of property.

4.1 General Requirements

- (a) All permits when issued shall be signed by the chairman or secretary of the Board of Managers or their designates.
- (b) No works or use requiring a permit shall be commenced prior to the issuance of the permit. Permit applicants must submit an appropriate permit application fee together with applicable permit application expenses.
- (c) Unless specified in the permit, works for which a permit is given must be completed within one year. The managers may further require as a condition of all permits, that they be notified when said work is completed.
- (d) Application for a permit will be acted upon within 60 days from the date the Managers receive the application and required data. The review period may be extended an additional 60 days in accordance with Minnesota Statute 15.99.
- (e) If a permit application is refused or granted subject to conditions, the applicant may within 30 days, demand a hearing on the application before the Board of Managers.
- (f) Applications for a permit shall be submitted to the Executive Secretary at the Watershed District offices, the Engineer, or one of the Managers.
- (g) A plan should accompany the application, and the Managers may request additional information.

(h) All applications shall be substantially in a form prescribed by the Board of Managers. A copy of this form is attached to these rules.

4.2 Other Permits or Certifications

Obtaining a permit from the District does not relieve the applicant from the responsibility of obtaining any other additional authorization or permit certifications required by any other governmental subdivisions or agencies.

4.3 Watershed District Permit

A permit shall be obtained from the Watershed District for the following activities:

(a) Any sanitary sewer system which discharges to surface water, storm sewer, or other major utility project which affects surface water within the district.

(b) Any street, road, or highway construction project which by means of its construction has any effect on the quality or quantity of water runoff.

(c) Any construction or alteration of any drain tile or drainage ditch that drains an area in excess of 20 acres.

(d) (1) Any works which include draining, filling, excavating, or dredging of any type 3, 4, 5, or 8 wetland as defined by the U.S. Fish & Wildlife Service Circular 39.

(e) Any construction or alteration of any bridge, dike, culvert, or drain across any drainageway, lake, wetland, or other water body.

(f) Any artificial or mechanical transfer of water from a water source including but not limited to gravel pits, ponds, rivers, wetlands, and other reservoirs consistent with the general purposes of the District.

(g) Any artificial drainageway cut across a subwatershed to thereby deliver water into another subwatershed.

(h) Any drainage of water by any artificial means into any legal drainage system from any land not assessed to that drainage system.

(i) Construction, alteration, or removal of any dike or reservoir.

(j) Any other acts that, in the opinion of the Watershed District, may tend to alter the quantity of runoff, affect the public health, or have any impact, whether adverse or not, upon the surface water or ground water resources of the district.

4.4 Form of Permit

All permits will be issued to the permittee on a form prescribed by the Board of Managers as amended from time to time.

4.5 Permit Procedures

The following procedures shall be followed by the applicant and the Watershed District before a permit is issued and during the prosecution of the work for which said permit has been issued:

- (a) Applicant shall obtain copies of any permit application forms.
- (b) The Board of Managers shall annually set permit application fees and field inspection fees in accordance with Minnesota Statute 103D.345
- (c) The Board of Managers may, at its discretion, require the applicant to appear before the Board to present his application for permit and to give any testimony the Board feels proper in making a decision as to the granting or refusal of the permit.
- (d) If the permit is issued, the applicant shall abide by all of the conditions of its issuance and shall, in any case, be responsible for the timely notification to the Watershed District of the commencement of work so that a proper observation and inspection can be made. The applicant also shall be responsible for the timely notification to the Watershed District of the completion of any work.
- (e) If required by the Managers of the Watershed District, the applicant shall 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. Said bond shall be filed prior to issuance of the permit. The bond shall be deposited with the Watershed District Board Secretary before any work is commenced, and when work is completed in a satisfactory manner, the bond shall be released to the applicant. If the work is of such a nature that the fact of acceptable completion is difficult to determine immediately after the completion thereof, the Watershed District may retain the bond or escrow deposit for a period not to exceed six (6) months, at which time a final determination of acceptability shall be made.
- (f) If the Watershed district determines that the work is not acceptable, the bonds shall be forfeited and the Watershed district may complete the work using those funds. Unused bond funds shall be returned to the permit holder after completion of the work by the Watershed district. If said bond funds are insufficient to complete the work, the Watershed District may complete

the work and assess the permit holder under the enforcement provisions of the statute and these Rules.

Section 5.0 Drainage

5.1 General Rules for Disposal of Surface Water

(a) Surface water shall not be artificially removed from upper land to and across lower land without adequate provision being made on the lower land for its passage, nor shall the natural flow of surface water be artificially obstructed so as to cause an overflow onto the property of others.

(b) Every person shall use his land reasonably in disposing of surface water and may turn into a natural watercourse all the surface water that would naturally drain there, but he may not artificially discharge into a watercourse more water than it has capacity to carry nor burden a lower landowner with more water than is reasonable under the circumstances.

5.2 County and Municipal Ordinances, Development and Drainage Plans

(a) Copies of existing county and municipal ordinances relating to surface water drainage and shorelands within the district shall be filed with the Managers.

(b) The Board of Managers may, at its discretion, request each municipality within the district to amend its present, or if it has none, to prepare a municipal drainage plan in accordance with Watershed District guidelines for the same for the management and transportation of surface water resulting from urban development and identify in the municipality's land development guides and drainage plans the wetlands to be left in their natural state which must not be used as dumps, fill sites, or otherwise altered without a permit from the Board. Municipalities shall, prior to final adoption, file with the Managers their proposed land development guide and drainage plan with a statement as to proposed development standards are deemed to be applicable and in conformity with the Watershed District's Overall Plan. The Board shall file its comments with the municipality within ninety (90) days thereafter.

(c) Where runoff from lands that are urban or suburban in character is contributing to the pollution of the waters of the district, a suitable system of catch basins, filters, and settling ponds shall be maintained and cleaned by the local municipality.

(d) To provide for coordinated management of surface waters a developer of land shall submit the development drainage plan to the Board and also to any municipality that is involved or affected by the proposed activity. All such plans must receive

the Board's approval as well as any other required approval before commencement of any kind of improvement.

(e) In addition to the requirements of the standards and criteria of municipal ordinances, improvements will not be allowed in the shore areas that will adversely affect the ability of the wetlands or adjacent shorelines from preventing or reducing the flow of pollution discharges directly into permanent surface waters of the district or adversely affect their efficiency in this respect.

5.3 Design Criteria for Drainage Plans and Storm Water Systems

(a) Storm water drainage shall be discharged through marshlands, swamps, retention basins, or such other treatment facilities as may be adequate for the purpose prior to entering the receiving bodies of public waters.

(b) Diversion of storm water through wetlands shall be considered for existing or planned surface drainage wherever marshlands and swamps occur naturally and are feasible as receiving bodies.

(c) Wetlands passing storm waters shall have adequate outlets.

(d) Temporary storage areas or retention basins scattered throughout developed areas shall be constructed where feasible to maximize upstream storage and to reduce peak flows, erosion damage and construction costs.

(e) Natural vegetation shall be used to reduce erosion in waterways between developed land and retention basins.

(f) Wide, shallow grass waterways, where feasible, shall be used as overflow channels from retention basins to form an above ground drainage network.

(g) in any proposed development, the possibility shall be considered of detaining storm water from a natural drainage area within that same area. Many tracts are amenable to this concept and whole developments may be handled by this method.

(h) If major facilities for temporary storage are necessary, they shall be designed for no less than a 100 year storm.

Section 6.0 Erosion & Sedimentation

Runoff of needed moisture from sloping lands, eroding and carrying with it sediment from those lands from the banks of natural drainageways, constitutes a serious problem. It shall be the policy of the Managers to

encourage the adaptation of proper land use practices and other methods to help reduce said erosion and sedimentation.

6.1 To Control & Alleviate Soil Erosion & the Siltation of the Drainageways & Lakes of the District

(a) All drainageways therein shall be constructed so as to reasonably minimize soil erosion, giving due consideration to the intended capacity of the drainageway, its depth, width and elevation, and the character of the soils through which the drain passes.

(b) Sloping lands abutting drainageways, lakes, ponds, or reservoirs shall be used in such a manner so as to provide reasonable control of sediment.

(c) Any construction project within the boundaries of the district which requires the movement of earth or the removal of vegetation or topsoil such as, but not limited to, subdivision improvements, road construction, ditch or channel construction and maintenance, and similar improvements, shall provide for the prevention of erosion by wind and water both during and after construction. The person or governmental subdivision responsible for the work may, at the discretion of the Board of Managers, be required to submit a plan to the Watershed District which shall show or describe the construction practices to be utilized to avoid and control erosion. A work schedule and timetable for erosion control measures shall accompany the time schedule for construction.

(d) Individuals or developers carrying out the erosion control measures, with permit, and all subsequent owners of the property involved, shall effectively maintain all erosion control features.

- (e)
1. Work in or near public waters and drainage systems shall be conducted so as to minimize increases in suspended solids and turbidity of runoff or receiving waters.
 2. Materials used in erosion prevention, such as riprap, shall be nonpolluting under any foreseeable conditions, and shall be installed consistent with good engineering practices and in such a way to assure effectiveness and permanence.
 3. The Watershed District shall be notified immediately of any harmful disturbance to public waters or drainageways.
 4. Fill material shall be nonpolluting.
 5. Spoils shall be prevented from entering public waters or drainageways.
 6. Drainageway side slopes and buffer strips shall be seeded to permanent grass to prevent sediment from entering the waterway.

Section 7.0 Buffer Law Enforcement

Statutory Authorization: This buffer enforcement rule is adopted pursuant to the authorization and policies contained in MN Statute 103F.48, the Buffer Law, MN Statute 103B.101, subdivision 12a, authority to issue penalty orders, and the Watershed District enabling legislation in MN Statute Chapter 103D.

Implementation of this section pertains solely to enforcement of the buffer law, 103F.48, by the Two Rivers Watershed District. As such the TRWD must have an approved resolution accepting the enforcement duties pursuant to 103F.48 Subdiv. 1 (j) and 103F.48 Subdiv. 7 (b). A resolution was approved by the TRWD on June 7, 2017 by the Board of Managers and is attached to these rules. This section regarding buffer law enforcement will become null and void in the event the TRWD decides by resolution to not accept enforcement of the buffer law.

A map of 103E drainage ditches that the TRWD has jurisdiction over is attached and hereby incorporated as a part of these Rules.

7.1 Policy

It is the policy of the Board of Managers to:

- a) Provide for riparian vegetated buffers and water quality practices to achieve the following purposes:
 - 1) Protect state water resources from erosion and runoff pollution;
 - 2) Stabilize soils, shores and banks; and
 - 3) Protect or provide riparian corridors.
- b) Coordinate closely with the District's landowners, soil & water conservation districts and counties, and utilize local knowledge and data, to achieve the stated purposes in a collaborative, effective, and cost-efficient manner.
- c) Integrate District authorities under MN Statute 103D.341 and 103F.48 to provide for clear procedures to achieve the purposes of the rule.

7.2 Definitions

BWSR or Board: Minnesota Board of Water and Soil Resources.

Buffer: An area consisting of perennial vegetation, excluding invasive plants and noxious weeds.

Buffer law: Minnesota Statutes §103F.48, as amended.

Commissioner: Commissioner of the Minnesota Department of Natural Resources.

Cultivation farming: Practices that disturb vegetation roots and soil structure, or involve vegetation cutting or harvesting that impairs the viability of perennial vegetation.

Drainage authority: The public body having jurisdiction over a drainage system under Minnesota Statutes chapter 103E.

Notice: Any notice or other communication to be provided herein shall be directed to the Landowner whose name and address appears on the County Property Taxes Records and listed as the taxpayer. Notice on said Landowner shall be considered sufficient notice to all those who may be considered a Landowner as defined in Section 7.7.7

NRCS: U.S. Department of Agriculture, Natural Resource Conservation Service.

Operator: A party other than a landowner that directly or indirectly controls the condition of riparian land subject to a buffer under the rule.

Person: Individual or entity.

Public water: As defined at Minnesota Statutes §103G.005, subdivision 15, and included within the public waters inventory as provided in Minnesota Statutes §103G.201.

Riparian protection: A water quality outcome for the adjacent waterbody equivalent to that which would be provided by the otherwise mandated buffer, from a facility or practice owned or operated by a municipal separate storm sewer system (MS4) permittee or subject to a maintenance commitment in favor of that permittee at least as stringent as that required by the MS4 general permit in effect.

Shoreland standards: Local shoreland standards as approved by the Commissioner or, absent such standards, the shoreland model standards and criteria adopted pursuant to Minnesota Statutes §103F.211.

Structure: An above-ground building or other improvement that has substantial features other than a surface.

SWCD: Soil and Water Conservation District.

WD or District: The Two Rivers Watershed District

Validation of Compliance: a notice issued by an SWCD that validates that a site is compliant and that the validation is good as long as all practices identified / documented continue to be in place and substantially in the condition identified at the time of issuance.

7.3 Data Sharing / Management

7.3.1 The District may enter into arrangements with an SWCD, a county, the BWSR and other parties with respect to the creation and maintenance of, and access to, data concerning buffers and alternative practices under this rule.

7.3.2 The District will manage all such data in accordance with the Minnesota Data Practices Act and any other applicable laws.

7.4 Vegetated Buffer Requirement

7.4.1 Except as subsection 4.3 or 4.4 may apply, a landowner must maintain a buffer on land that is adjacent to a waterbody identified and mapped on the buffer protection map established and maintained by the Commissioner pursuant to the buffer law.

7.4.1.1 For a public drainage system established under chapter 103E, a 16.5-foot minimum width continuous buffer as provided in section 103E.021, subdivision 1. The buffer vegetation shall not impede future maintenance of the ditch.

7.4.1.2 The strips of perennial vegetation shall be 16-1/2 feet in width measured outward from the top edge of the constructed channel resulting from the proceeding, or to the crown of the leveled spoil bank, whichever is the greater, except for an action by a drainage authority that results only in a redetermination of benefits and damages, for which the required width shall be 16-1/2 feet.

7.4.1.3 A buffer may not be used for cultivation farming, pasture, or grazing, but may be mowed, hayed or otherwise harvested, provided permanent growth of perennial vegetation is maintained.

7.4.2 The requirement of subsection 7.4.1 applies to all public drainage ditches within the District's boundary for which it is the drainage authority.

7.4.3 The requirement of subsection 7.4.1 does not apply to land that is:

7.4.3.1 Enrolled in the federal Conservation Reserve Program;

7.4.3.2 Used as a public or private water access or recreational use area including stairways, landings, picnic areas, access paths, beach and watercraft access areas, provided the area in such use is limited to what is

permitted under shoreland standards or, if no specific standard is prescribed, what is reasonably necessary;

7.4.3.3 Used as the site of a water-oriented structure in conformance with shoreland standards or, if no specific standard is prescribed, what is reasonably necessary;

7.4.3.4 Covered by a road, trail, building or other structure;

7.4.3.5 Regulated by a national pollutant discharge elimination system/state disposal system (NPDES/SDS) municipal separate storm sewer system, construction or industrial permit under Minnesota Rules, chapter 7090, and the adjacent waterbody is provided riparian protection;

7.4.3.6 Part of a water-inundation cropping system; or

7.4.3.7 In a temporary nonvegetated condition due to drainage tile installation and maintenance, alfalfa or other perennial crop or plant seeding, or a construction or conservation project authorized by a federal, state or local government unit.

7.4.4 Land subject to subsection 4.1 that is used for cultivation farming may meet the requirement of that subsection by means of an alternative riparian water quality practice; or combination of structural, vegetative and management practices, based on the NRCS Field Office Technical Guide, common alternative practices adopted and published by the board, other practices approved by the board, or practices based on local conditions approved by the local soil and water conservation district that are consistent with the Field Office Technical Guide, as provided in section 4.1.

7.4.4.1 An alternative practice may be approved by means of a validation of compliance issued by the SWCD. The approval must find that the proposed practice provides water quality protection comparable to the buffer protection of subsection 4.1.

7.4.4.2 A landowner may not rely on an alternative practice for compliance with subsection 7.4.1 unless the landowner holds an SWCD-issued validation of compliance for the alternative practice and the landowner has implemented the practice and is maintaining it as the validation stipulates.

7.4.5 A landowner or authorized agent or operator of a landowner may, or for the purpose of paragraph 4.4.2 must, submit an application for a validation of compliance to the SWCD pursuant to administrative procedures prescribed by the SWCD. The application may request: (a) a finding that a buffer satisfies subsection 4.1; (b) a

determination as to the applicability of an exemption listed in subsection 4.3; or (c) approval of an alternative practice pursuant to subsection 4.4. An SWCD validation of compliance will be conclusive for the purpose of subsection 7.2. In making a finding of compliance with this rule for the purpose of subsection 7.1, the District will give substantial weight to an SWCD validation of compliance. Any District compliance determination contrary to the SWCD validation will rest on specific findings justifying the contrary determination.

7.4.6 A landowner owning land subject to subsection 7.4.1 must obtain a permit from the District in order to be in compliance with this section 7.4.0. Any alternative practice that involves activities set forth under WD rule 4.3 also require a watershed district permit.

7.5 Drainage System Acquisition and Compensation for Buffer

Nothing in this rule shall prevent the acquisition and compensation of grass buffers on public drainage systems pursuant to Minnesota Statutes Chapter 103E. A request may be made to use Minnesota Statutes Chapter 103E.021, subdivision 6, or by petition pursuant to Minnesota Statutes Chapter 103E.715, subdivision 1.

7.6 Action for Noncompliance

7.6.1 When the SWCD observes potential noncompliance or receives a third party complaint from a private individual or entity, or from another public agency, it will consult with the District to determine the appropriate course of action to confirm compliance status. This may include communication with the landowner or his/her agents or operators, communication with the shoreland management authority, inspection or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of this coordination, the SWCD may issue a notification of noncompliance to the District. If the SWCD does not transmit such a notification, the District will not pursue a compliance or enforcement action under Minnesota Statutes §103F.48 and paragraph 7.7.2, but may pursue such an action under the authority of Minnesota Statutes §103D.341 and paragraph 7.7.1. If the SWCD does issue such a notification, the SWCD must include, for consideration by the District, a list of corrective actions needed to come into compliance with the requirements of Minnesota Statute Chapter 103F.48; a recommended timeline for completing the corrective actions; and a standard by which the SWCD will judge compliance with the requirements of Minnesota Statutes 103F.48 after the corrective actions are taken. The notification must also include identification of the landowner of record and any operator that, in its judgement, is a responsible party, along with identification of the tract of record to which it pertains and the portion of that tract that is alleged to be noncompliant.

7.6.2 On receipt of an SWCD notification of noncompliance, or if acting solely under authority of Minnesota Statutes §103D.341, the District may issue a corrective action list and practical schedule for compliance to the landowner. The District may inspect the property and will consult with the SWCD, review available information and exercise its technical judgment to determine appropriate and sufficient corrective action and a practical schedule for such action. The District will maintain a record establishing the basis for the corrective action that it requires.

7.6.2.1 If a corrective action list is issued, the District will issue the corrective action list and schedule to the landowner of record and to any operator that, in its judgment, is a responsible party. The landowner and any other named responsible party each may be the independent subject of enforcement liabilities under subsections 7.7.1 and 7.7.2. The District may deliver or transmit the list and schedule by any means reasonably determined to reach the responsible party or parties, and will document receipt. However, a failure to document receipt will not preclude the District from demonstrating receipt or knowledge in an enforcement proceeding under section 7.7.0.

7.6.2.2 The corrective action list and schedule will identify the tract of record to which it pertains and the portion of that tract that is alleged to be noncompliant. It will describe corrective actions to be taken, a schedule of intermediate or final dates for correction, a compliance standard against which it will judge the corrective action, and a statement that failure to respond to this list and schedule will result in an enforcement action. The District will provide a copy of the list and schedule to the BWSR.

7.6.2.3 At any time, a landowner may supply information to identify an additional responsible party, and any named responsible party may supply information as evidence that it is not responsible. In addition, at any time a responsible party may supply information in support of a request to modify a corrective action or the schedule for its performance. On the basis of any such submittal or at its own discretion, the District may modify the corrective action list or schedule, and deliver or transmit the modified list and schedule in accordance with paragraph 6.3.1, or may advise the responsible party or parties in writing that it is not pursuing further compliance action.

7.6.2.4 The corrective action list and schedule for compliance may be modified in accordance with subsection 6.2, to extend the compliance timeline for a modification that imposes a substantial new action or significantly accelerates the completion date for an action.

7.6.2.5 At any time after the District has issued the list and schedule, a landowner, or authorized agent or operator of a landowner, may request that the SWCD issue a validation of compliance with respect to property for

which the list and schedule has been issued. On District receipt of the validation: (a) the list and schedule will be deemed withdrawn for the purpose of subsection 7.2, and the subject property will not be subject to enforcement under that subsection; and (b) the subject property will not be subject to enforcement under subsection 7.1 unless the District makes a contrary compliance determination under subsection 4.5.

7.6.2.6 A corrective action list and schedule is not considered a final decision subject to appeal. A responsible party objecting to a finding of noncompliance may apply for a validation of compliance under subsection 4.5. An objection to a finding of noncompliance, or to any specified corrective action or its schedule, is reserved to the responsible party and may be addressed in an enforcement proceeding under section 7.0.

7.7 Enforcement

7.7.1 Under authority of Minnesota Statutes §§103D.545 and 103D.551, the District may seek remedies for noncompliance with section 4.0 against any responsible party including but not limited to: (a) administrative compliance order; (b) administrative order requiring reimbursement of District compliance costs under Minnesota Statutes §103D.345 and/or an escrow for same; (c) district court remedy including injunction, restoration or abatement order, authorization for District entry and/or order for cost recovery; and (d) referral to county attorney for criminal misdemeanor prosecution.

7.7.2 The District may issue an administrative order imposing a monetary penalty against a landowner for noncompliance with the corrective action list and schedule, as provided under paragraphs 7.7.2.1 and 7.7.2.2. The penalty will continue to accrue until the noncompliance is corrected as provided in the corrective action list and schedule.

7.7.2.1 The penalty for a landowner on a single parcel that previously has not received a corrective action list and schedule for compliance shall be:

- (a) \$0 for 11 months after issuance of the corrective action list and schedule or during the schedule issued for taking correction actions, whichever is greater. If the schedule extends the penalty timeline past 11 months, the Two Rivers Watershed District will make findings of fact to justify the extension; and
- (b) \$100 per parcel per month for the first six (6) months (180 days) following the time period in (a); and
- (c) \$200 per parcel per month after six (6) months (180 days) following the time period in (b).

7.7.2.2 The penalty for a landowner on a single parcel that previously has received a corrective action list and schedule for compliance shall be:

- (a) \$300 per parcel per day for 180 days after issuance of the corrective action list and schedule; and
- (b) \$500 per parcel per day for after 180 days following the time period in (a).

7.7.3 The administrative order will state:

- i. The facts constituting a violation of the buffer requirements;
- ii. The statute and/or rule that has been violated;
- iii. Prior efforts to work with the landowner to resolve the violation;
- iv. For an administrative order, the amount of the penalty to be imposed, the facts under 7.7.5.1 below supporting the amount of the penalty, the date the penalty will begin to accrue, and the date when payment of the penalty is due; and
- v. The right of the responsible party to appeal the order.

A copy of the administrative order must be sent to the SWCD and BWSR.

7.7.4 An administrative order under subsection 7.1 or 7.2 will be issued after a compliance hearing before the District Board of Managers. The landowner and any other responsible parties will receive written notice at least two weeks in advance of the hearing with a statement of the facts alleged to constitute noncompliance and a copy or link to the written record on which District staff intends to rely, which may be supplemented at the hearing. A responsible party may be represented by counsel, may present and question witnesses, and may present evidence and testimony to the Board of Managers. The District will make a verbatim record of the hearing.

7.7.5 After a hearing noticed and held for consideration of an administrative order, the Board of Managers may issue findings and an order imposing any authorized remedy or remedies.

7.7.5.1 The amount of an administrative penalty will be based on considerations including the extent, gravity and willfulness of the noncompliance; its economic benefit to the responsible party; the extent of the responsible party's diligence in addressing it; any noncompliance history; the public costs incurred to address the noncompliance; and other factors as justice may require.

7.7.5.2 The Board of Managers findings and order will be delivered or transmitted to the landowner and other responsible parties. An administrative order may be appealed to the BWSR in accordance with Minnesota Statutes §103F.48, subdivision 9, and will become final as provided therein. Other appellate relief may be sought pursuant to Minnesota Statutes Chapter 103D.537 and

.539. The District may enforce the order in accordance with Minnesota Statutes §116.072, subdivision 9, or otherwise as provided in Minnesota Statutes Chapter 103D.

7.7.5.3 The Board of Managers may forgive an administrative penalty, or any part thereof, on the basis of diligent correction of noncompliance following issuance of the findings and order and such other factors as the Board finds relevant.

7.7.6 Absent a timely appeal pursuant to paragraph 7.5.2, an administrative penalty is due and payable to the District as specified in the administrative order.

7.7.7 A landowner agent or operator may not remove or willfully degrade, wholly or partially, a riparian buffer or alternative practice, unless the agent or operator has obtained a signed statement from the landowner stating that written permission for the work has been granted by the District or that the buffer or alternative practice is not required as indicated in a validation of compliance issued by the SWCD. A prohibited action under this paragraph is a separate violation of this rule that is subject to remedies under both subsections 7.1 and 7.2.

7.7.8 Nothing within this rule diminishes or otherwise alters the District's authority under Minnesota Statutes, chapter 103E with respect to any public drainage system for which it is the drainage authority, or any buffer strip that is an element of that system, or under Minnesota Statutes Chapter 103D regarding remedies for violations of District rules.

7.8 Effect of Rule

7.8.1 If any section, provision or portion of this rule is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the rule is not affected thereby.

Section 8.0 Pollution Control

In order to provide for the abatement of the pollution of public and private water resources as a part of a comprehensive program to eliminate the pollution thereof, the Watershed District shall have the power and authority to impose certain preventive and remedial measures to promote the public health and general welfare, to promote safety and sanitation, and to improve the quality of the waters thereof for general use.

8.1 Discharges From Municipal & Industrial Waste Treatment Plants

The Board of Managers may, at its discretion, require each municipality, industry, and feedlot operator discharging wastes directly into any stream, lake or drainageway within the district to file with the Board a copy of its current NPDES permit issued by the Minnesota Pollution Control Agency describing the effluent standards and limitations prescribed by the Agency. Pursuant to M.S. 103D the Board of Managers or its designate shall have the right to enter upon any lands of the district for the purposes of inspection, monitoring, and testing the quantity and quality of the discharge, and shall have the right to install whatever hydrological recording and testing devices it may deem necessary. Any permit violations found shall be reported immediately to the discharger and to the Agency for appropriate action. Should the discharger fail to abate the violation in a reasonable period of time the board may, at its discretion, require the discharger to appear at a special meeting to show cause why the violation should not be abated, pursuant to its authority under M.S.103D.

Section 9.0 Review of Plans and Plats

In order to carry out the intent of the Minnesota Watershed Act, and to provide for assurance that the development of the district and its natural resources is carried out in an orderly manner, the Watershed District Board of Managers shall require the submission of certain plans and documents for various types of improvement, developments, projects, and proposals, and may, at its discretion, review and report on these activities together with suggestions, recommendations, and requirements as to their contemplated effect on the water resources of the district.

Section 10.0 Enforcement Powers of Managers

10.1 Manner of Enforcement

Any provision of these rules or any order or stipulation agreement made, or any permit issued by the Board of Managers of the Watershed District may be enforced by criminal prosecution, by injunction pursuant to section 103D, of the Minnesota Statutes, by action to compel performance, restoration, abatement, and other appropriate action. Any violation of these rules or of any order of stipulation agreement made, or a violation of any permit issued by the Board of Managers of the Watershed District is a misdemeanor in accordance with Section 103D of Minnesota Statutes.

10.2 Powers of Ordinance

Pursuant to 103D, the Managers shall have a limited authority to adopt rules to control encroachments, the changing of land contours, the placement of fill and structures of every type, to prevent the placement of encumbrances or obstructions and to require the landowner to remove such fill, structures, encumbrances, or other obstructions and to restore the previously existing land contours and vegetation. The Managers may by rule provide a procedure whereby the Watershed District can do the work required and assess the cost thereof against the affected property as a special assessment. Such rule shall be applicable only in the absence of county or municipal ordinances for the regulation of these items listed above herein.

10.3 Contractor' Liability

Any individuals, firms, corporations, partnerships, associations, or other entities contracting to perform services regulated by these rules shall be responsible for ascertaining that all permits herein required have been obtained and that the work performed complies with all requirements of the rules. Contractors in violation shall be subject to all sanctions or penalties, criminal or civil, imposed by these rules.

Section 11.0 Public Meeting, Hearings, and Records

11.1 Meetings

All meetings of the Watershed District, whether regular or special, shall be open to the public and shall be held at a time, date and place as determined from time to time by the Managers.

11.2 Hearings

Any member of the public may request a public hearing on the approval of a permit. Notice of a public hearing shall be given as required by statute. Testimony given and received at such public hearings may be recorded and witnesses may be sworn as required by statute or at the discretion of the Board.

11.3 Waiver of Hearing

Unless required by statute, the Managers in their discretion may waive a public hearing on any application for a permit and make their order granting or refusing such application. If said application is refused or granted subject to conditions, the applicant may, within thirty days, demand a hearing on the application.

11.4 Records

The records of the Watershed District shall be public records as required by state statute and shall be open to the public for inspection to that extent required. It is the stated intention of the Board of Managers to cooperate with all

persons, governmental subdivisions, and governmental agencies in the promotion of the conservation of the natural resources of the district and to share information with the public for the common good.

Section 12.0 Effective Date

The provisions of these Rules shall become effective upon the passage by the Board of Managers and publication and hearings as required by law.

Section 13.0 Gender Neutral

Where appropriate, the masculine includes the feminine, the plural includes the singular, and vice versa.

Section 14.0 Adoption

These Rules were hereby adopted pursuant to Minnesota Statutes Chapter 112, on October 7, 1980, effective November 1, 1980, and amended pursuant to Minnesota Statutes Chapter 103D.341 on June 5, 1997, again on June 3, 2015 and again on November 1, 2017.

For the Board of Managers
Two Rivers Watershed District

Darrel Johnson
President

Daryl Klegstad
Secretary

Sample – General Information Needed Two Rivers Watershed District Permit Application

Name _____ Phone Number _____

Address _____

Rural Route Box Street City State Zip code

Location of Project:

¼ Section ¼ Section Section Township Range Township Name County

Body of Water (river, ditch, coulee, etc.) _____

Are You: _____ Landowner _____ Renter _____ Other (describe) _____

Description of Work & Objectives: Fill in all applicable blanks below.

What's the upstream drainage area of the project? _____ Acres

Are there any upstream structures (culverts, bridges, etc.)? _____ Yes _____ No _____ Size

What kind of structure is upstream (box culvert, round pipe, bridge, etc.)? _____

Are there any downstream structures? _____ Yes _____ No _____ Size
_____ type

For Culvert Projects: Size to be Installed _____ Type of Culvert _____

Purpose: Center line culvert thru road _____ New crossing _____ Other _____

For Ditch Projects: Length _____ Bottom Width _____ Depth _____

Side Slopes _____ Attach Profile and Cross Section Information

For Diking Projects: Length _____ Top Width _____ Height _____

For Road Building: Length: _____ Width _____ Height _____

Submit grading plans, survey data, cross sections, culvert plans, ditch plans, etc.

Are Wetlands Affected? Yes _____ No _____ Size (acres) _____

Approximate Project Start Date _____ End Date _____

Describe below the purpose of the project and how it will be completed (attach sheet if necessary).

Signed: _____ **Date:** _____

Project Proposer

Landowner – If Other Than Above

**Sample – Form of Permit Issued
Two Rivers Watershed District
Permit For Public Improvement Project**

Permit Number:
Date Issued:
Expiration Date:

The Following Permit is Hereby Granted To:

To Perform the Following Work of Improvement to be Located:

The Work for Which This Permit is Granted Consists of:

This Permit is Subject to the Following Conditions:

1. That the permittee and his or her agents conform to all legal and other statutory requirements including other permits.
2. All terms and conditions contained in the Rules of the Two Rivers Watershed District and shall bind the permittee, his or her heirs, agents, assigns, or successors.
3. Upon completion of work described above, the permittee shall notify the Two Rivers Watershed District in writing.

Board of Managers, Two Rivers Watershed District

_____ Dated: _____
For the Two Rivers Watershed District Board of Mangers

Exhibit A Policies Pertaining to Rules

The following policies concerning the implementation, interpretation, or enforcement of the Rules of the Two Rivers Watershed District are without the force of Rule, but shall be considered persuasive and instructive authority which the Board of Managers may rely on when implementing, interpreting, or enforcing the Rules of the Two Rivers Watershed District. These policies are not listed in any particular order. They shall be reviewed annually by the Board.

1) General:

The District Administrator shall have the duty of processing all permit applications and mailing out permits to all successful applicants. In addition, the Administrator shall have the power to sign and execute all permit applications.

For requests for time extensions on a permit that has been issued, the District Administrator has the authority to issue a time extension if the work to be done is the same as the original permit.

The TRWD will consider the Red River Watershed Management Board's recommended guidelines for surface drainage systems when making decisions relative to permit applications affecting surface water.

2) Permit Committee:

Category 1: For permit applications regarding culvert installations no larger than 24" diameter.

The District Administrator may review and approve permit applications for field crossings, access crossings, approach culverts, and center line road and dike culverts using the following criteria.

- For drainage areas of 0 to 160 acres, an 18" round culvert or equivalent can be installed under a general permit upon review by the Administrator.
- For drainage areas of 161 to 320 acres, a 24" round culvert or equivalent can be installed under a general permit upon review by the Administrator.
- The Administrator, at his discretion, can refer permit applications to the permit committee or the Board of Managers as he sees fit. Specific situations that can be referred include but are not limited to:
 - a) The culvert is affected by additional overflows from outside of the determined drainage area.
 - b) Several culverts are located in series, such as several driveways within a few hundred feet.
 - c) Smaller culverts exist downstream.
 - d) If the applicant wishes to install larger culverts than are set by the above criteria.

- e) Any other conditions that exist that would require further consideration as determined by the Administrator.

Category 2: All permit applications not covered by Category 1.

A permit committee, consisting of the District Administrator, District consulting Engineer, and one member of the Board of Managers (preferably representing the area of the District where the permit activity is located) shall review the application. If all three members of the committee agree on approving the permit, the permit can be approved and issued. If any one of the members want further discussion or suggest conditions be placed on the permit, the application will be referred to the entire Board of Managers to be reviewed at the next regular monthly meeting.

Category 3: Permit applications reviewed by the Board of Managers.

Permit applications that are not approved by the Administrator or by the Permit Committee will be reviewed by the Board of Managers at a regular scheduled Board meeting. All information gathered and documented by the Permit Committee will be reviewed, and the decisions of the Board will be final. Permits denied or are issued with conditions may be appealed as indicated in the Rules of the Two Rivers Watershed District.

3) Roads, Dikes, & Embankments

No roads, dikes, embankments, or existing ditch banks can be cut or altered beyond original construction without the consent of the Two Rivers Watershed District. Cuts may be allowed if life is endangered. This prohibition does not apply to ordinary maintenance and repair.

4) Tile Drainage

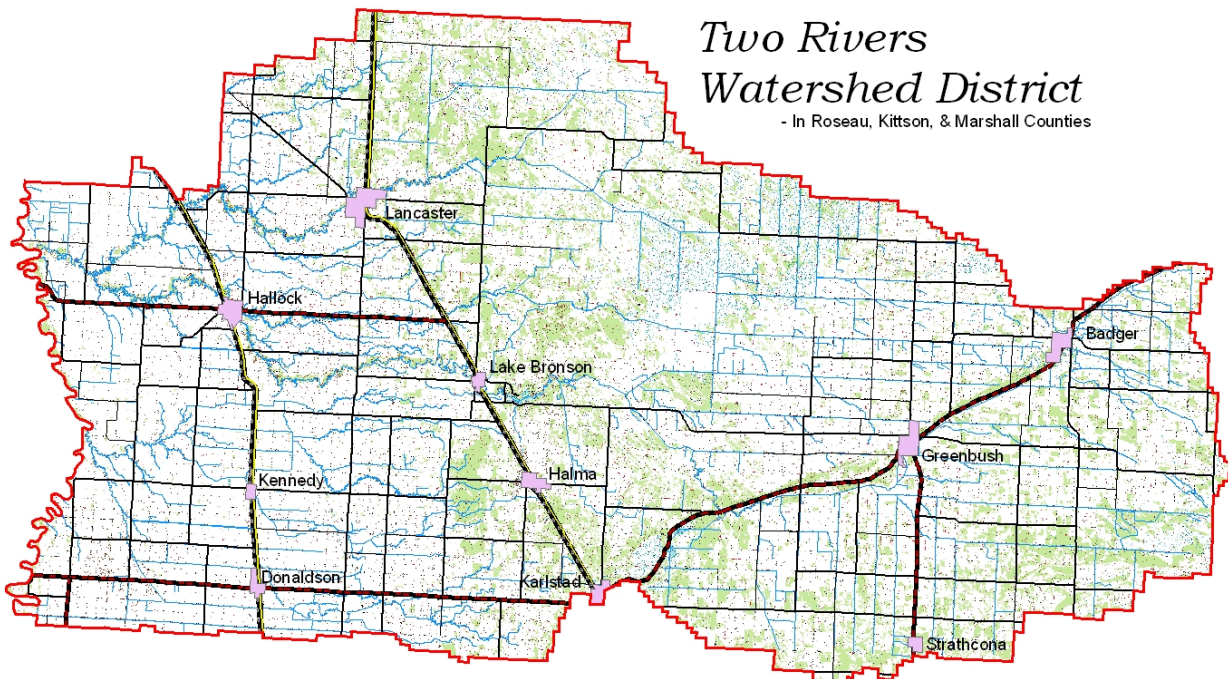
- a) Applications for tile drainage shall contain detailed plans and specifications according to criteria set by the Board of Managers and provided to the applicant upon request.
- b) For any application for tile drainage that affects a road or utilizes a ditch adjacent to a road, the road authority (township, county, or state) will be notified by the District and asked to provide comment prior to Board action on the permit application.
- c) All tile systems within the Two Rivers Watershed District shall not discharge any water when there is flooding occurring downstream of the tile outlet. The definition of downstream flooding is to be determined on a case by case basis, but in general is defined to be when the downstream ditches, coulees, or rivers are at a point where water is flowing out of the waterway onto adjacent lands.
- d) The TRWD will consider the Red River Watershed Management Board's recommended guidelines for tile drainage systems when making decisions relative to tiling permit applications.
- e) The District will notify, by letter, neighboring landowners that are affected by a tile drainage project.

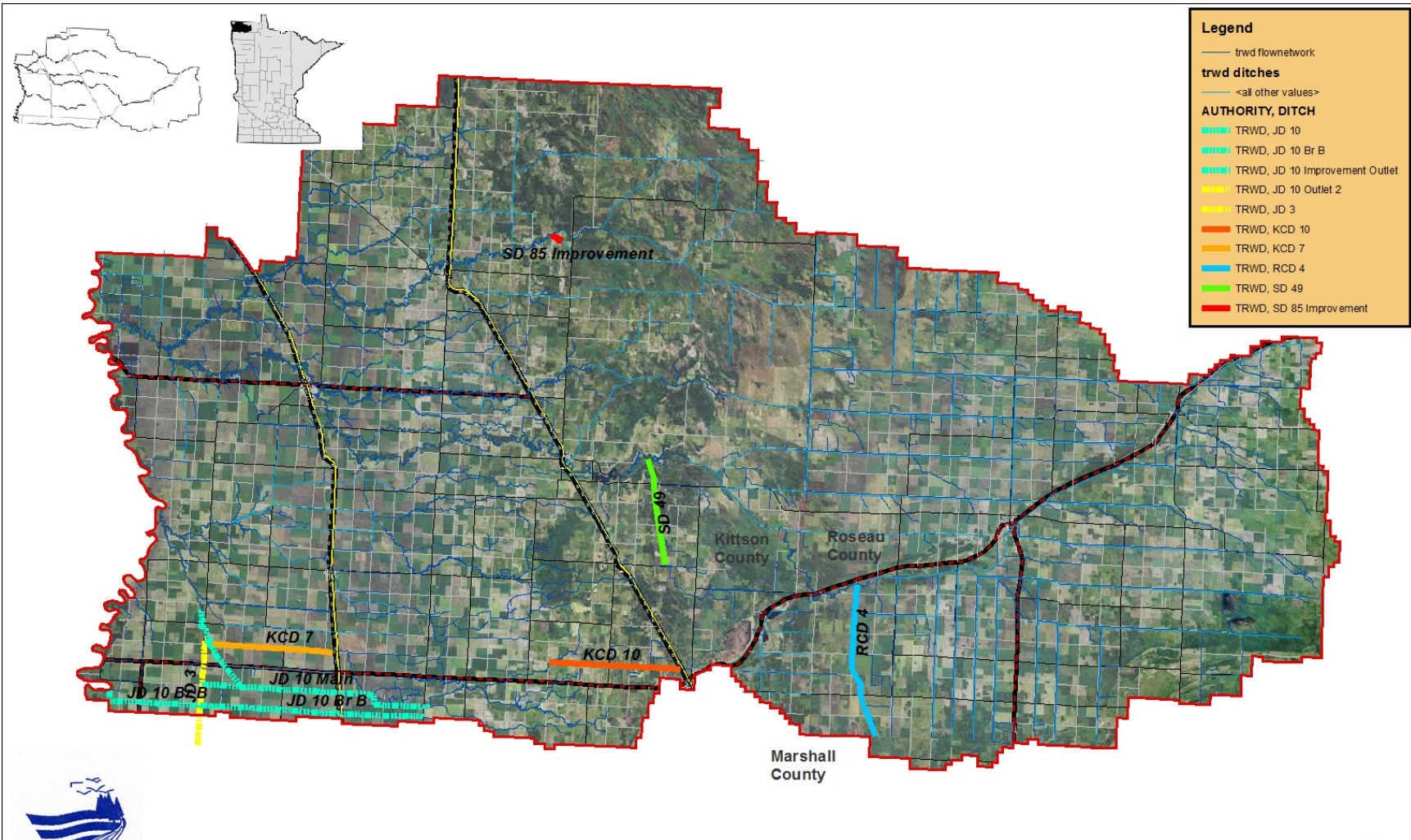
Fee Schedule

For applicants seeking approval prior to performing the work, there is no application fee. In the case of an after the fact permit, a minimum \$500 fee may be charged and the District may also require applicants to pay the applicable per-hour rate(s) that are listed in the table below.

Per Hour Fee for After the Fact Permits	
Staff Time	\$75
Managers	\$75
Consultants	\$150
Survey	\$100
Supplies& Misc.	\$10*

* Supplies & Misc. is a one time lump sum and shall include office machines, paper, postage, mileage, vehicle expense, etc.





Two Rivers Watershed District
Jurisdictional Ditches Under Buffer Law

