

MEMORANDUM

TO: Bois de Sioux Watershed District Board of Managers
& Administrator

FROM: Lukas Croaker, Attorney

DATE: January 12, 2022

RE: 2022 Recodified Rules, Bylaws, & Policies



This Memorandum addresses the recodification of the Bois de Sioux Watershed District’s rules, bylaws, and policies. Specifically, this Memorandum addresses the difference between the rules, bylaws, and policies, and describes the procedure to officially adopt the rules, bylaws, and policies.

I. BACKGROUND

In 2019, the Bois de Sioux Watershed District Board of Managers (the “Managers”) directed my office to revise the rules, bylaws, and policies of the Bois de Sioux Watershed District (the “District”). The District’s rules, bylaws, and policies were last recodified in 2009. The recent revisions turned into a complete overhaul of the rules, bylaws, and policies, also known as a recodification. Overall, the recodification differentiates the rules, bylaws, and policies while also providing additional structure and procedural guidance for the implementation, interpretation, and enforcement of the District’s rules. The additional structure and procedural steps were incorporated from other jurisdictions, Minnesota Statutes, and direction from the Managers, District staff, and District consultants.

In the Fall of 2021, the District Administrator, Engineer Technician, Engineers, and Attorney met with the District’s Policy Committee to discuss the recodification of the District’s rules, bylaws, and policies. The revisions discussed during that meeting were incorporated into the most recent versions of the rules, bylaws, and policies which are now being provided to the full Board of Managers for review. These versions will then be discussed further at the special meeting of the Board of Managers on Thursday, January 27, 2022, at 9:00 AM at the District’s Office in Wheaton, Minnesota. The remainder of this Memorandum outlines the differences between the rules, bylaws, and policies, and describes the process for the Managers to officially adopt the recodified rules, bylaws, and policies.

II. QUESTION PRESENTED

- A.** What is the difference between rules, bylaws, and policies?
- B.** What is the procedure to officially adopt the District’s recodified rules, bylaws, and policies?

III. SHORT ANSWER

- A.** In short, the United States Constitution is the supreme law of the land. After that, the Minnesota Constitution has supremacy over Minnesota Statutes, which has supremacy over the District’s rules, which have supremacy over the District’s bylaws, which have supremacy over the

District's policies. The Managers have no authority to create, remove, or amend Minnesota Statutes. However, the Managers are authorized by Minnesota Statutes to create, remove, or amend its rules, bylaws, and policies.

- B.** The Managers are being asked to review the recodified rules, bylaws, and policies before the special meeting on Thursday, January 27, 2022. At the special meeting, the Managers, District staff, and District consultants will discuss whether any additional revisions are required to any of the proposed documents. After that meeting, and any subsequent meetings, the Managers will follow the appropriate procedures to officially adopt its recodified rules, bylaws, and policies, including publishing notices and holding a public hearing.

IV. LAW AND ANALYSIS

- A. Rules, Bylaws, & Policies.** It is important to differentiate the rules, bylaws, and policies as each one has its respective role to effectuate the District's and Managers' powers and authority granted by Minnesota Statutes. Previously, these documents were merged and it was unclear as to when to apply each document for the implementation, interpretation, or enforcement of the District's or Managers' powers and authority. The 2022 recodified rules, bylaws, and policies will be separate documents that will be easily identifiable upon adoption.

1. *Rules.* Section 103D.341, subd.1 of the Minnesota Statutes provides, “[t]he managers must adopt rules to accomplish the purposes of this chapter and to implement the powers of the managers.” The District's rules have authority and control over the District's bylaws and policies. The rules incorporate the powers and procedures outlined under Minnesota Statutes and implement them within the jurisdiction of the watershed district. “It is the intention of the Managers with the implementation of the Rules to promote the use of the waters and related resources within the District in a provident and orderly manner so as to improve the general welfare and public health for the benefit of present and future residents.” Section 1.2 of the 2022 Revised Rules. The recodified rules provide the purpose of the rules, definitions used within the rules, outline permitting procedures, surface drainage and flood mitigation, subsurface drainage, municipal drainage, and the District's Buffer Rule.
2. *Bylaws.* The District's Bylaws provide specifics on the makeup and procedures of the Board of Managers, meeting guidelines, and other general District matters. Article XIII of the 2022 Bylaws states, “The District's Bylaws govern internal District matters and do not create rights in any third parties.” “The Bylaws establish rules governing conduct and procedure of the Board. The Bylaws are set forth in writing to comply with Minn. Stat. § 103D.315, subd. (11).” Section 2.2 of the 2022 Bylaws.
3. *Policies.* The Policies of the Bois de Sioux Watershed District are meant to provide guidance, describe programs, and outline various procedures utilized by the Bois de Sioux Watershed District in its role as a watershed district and drainage authority. The Policies are meant to be the most fluid as they can be created or amended by a majority vote of the Managers without a public hearing.

- B. Procedure to Officially Adopt the Recodified Rules, Bylaws, and Policies.** In order to officially adopt the District’s recodified rules, bylaws, and policies, the Managers must follow the respective procedural steps. Under Minn. Stat. § 103D.341, subd. 2(a), “[r]ules 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.” (Emphasis added).

Under Section 1, Article XII of the current Bylaws, “BDSWD by-laws may be amended, repealed or adopted by a majority of the BDSWD Board of Managers upon thirty (30) days written notice of the proposed change in its entirety during a meeting of the BDSWD Board of Managers unless said notice is waived by all of the managers. Notice of such alteration or amendment is to be contained in the notice of such meeting. The alteration/s or amendment/s must pass by a 4/5th’s vote of the BDSWD Board of Managers.

Finally, policies may be amended, repealed, or adopted by a majority vote of a quorum of the Managers. Under the revised policies, policies may be amended by a majority vote of the Managers. Therefore, before the Managers adopt the recodified rules, bylaws, and policies, the District must follow the respective procedural steps in order to properly adopt each category.

V. CONCLUSION

The next step in this process is for the Managers to review the recodified rules, bylaws, and policies before the special meeting on Thursday, January 27, 2022. At that meeting, the Managers, District staff, and District consultants will review the rules, bylaws, and policies, and discuss any proposed revisions to the same. If the Managers desire, they can schedule additional meetings. After the Managers are satisfied with the recodified rules, bylaws, and policies, the District will take the respective steps to officially adopt the recodified rules, bylaws, ad policies. The rules require the most time to adopt as Minnesota Statutes dictate that a public hearing must be published and held before the Managers can approve the rules. Upon adoption, the rules, bylaws, and policies will have full effect of law within the jurisdiction of the watershed district.



BOIS DE SIOUX WATERSHED DISTRICT

2022 BYLAWS

Effective Date: _____, 2022



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**ARTICLE I.
NAME**

- 1.1 Name.** Bois de Sioux Watershed District.
- 1.2 Short Title.** The Bois de Sioux Watershed District Bylaws shall be known and may be cited as the “Bylaws.”
- 1.3 Abbreviations.** Throughout the Bylaws, whenever it is desirable to abbreviate the name of the Bois de Sioux Watershed District, it will be referred to as the “District” or by using the initials “BdSWD.” The Bois de Sioux Watershed District Board of Managers shall be abbreviated as the “Board.”

**ARTICLE II.
PURPOSE**

2.1 General Statutory Purpose. To conserve the natural resources of the state, specifically water, 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.

2.2 Statement of Purpose. The Board accepts the responsibilities for which it is charged, as a governing body, to promote the wise stewardship of waters and related resources within the District. It shall govern in a provident and orderly manner so as to improve the general welfare and public health, for the benefit of its present and future residents.

The intention of the Board is that no person be deprived or divested of any previously established beneficial use or right, by any rule of the district, without due process of law, and that all rules of the District shall be construed according to Minn. Stat. Ch. 103D and 103E, as amended, and in accordance with all other applicable statutes and rules.

The Board shall cooperate to the fullest extent feasible with persons, groups, state and federal agencies, and other governing bodies in performing their duties. While there is no intention to usurp the authority or responsibilities of other agencies or governing bodies, the Board shall fulfill their responsibilities to District residents.

The Bylaws establish rules governing conduct and procedure of the Board. The Bylaws are set forth in writing to comply with Minn. Stat. § 103D.315, subd. (11).

**ARTICLE III.
DISTRICT OFFICE AND BOUNDARIES**

- 3.1 District Office.** The District's office is located at 704 Highway 75 South, Wheaton, MN 56296.
- 3.2 Boundaries.** The District is located in west central Minnesota and includes the entire Minnesota drainage basin of the Bois de Sioux River (including the Mustinka River watershed, which drains into the Bois de Sioux and Mustinka River watershed). The counties included in this area are Traverse, Grant, Wilkin, Stevens, Big Stone, and Otter Tail. Cities within the District are Breckenridge, Doran, Campbell, Wendell, Elbow Lake, Norcross, Herman, Donnelly, Graceville, Dumont, Johnson, Wheaton, and Tintah. The total area of the District is approximately 1,412 square miles. The Bois de Sioux River and its source, Lake Traverse, form the boundary between Minnesota, South Dakota, and North Dakota. The river flows north from Lake Traverse to Breckenridge where it joins with the Otter Tail River to form the Red River of the North. Major tributaries for the Red River in Minnesota are the Mustinka River and the Rabbit River. Tributaries in North Dakota and South Dakota contribute drainage from an additional 549 square miles.

**ARTICLE IV.
BOARD OF MANAGERS**

- 4.1 Composition of Board of Managers.** The Board is composed of nine (9) managers appointed by county commissioners of the six (6) affected counties:
- A. Wilkin County – one (1) manager;
 - B. Otter Tail County – one (1) manager;
 - C. Traverse County – three (3) managers;
 - D. Grant County – two (2) managers;
 - E. Stevens County – one (1) manager; and
 - F. Big Stone County – one (1) manager.
- 4.2 Terms of Office.** Appointments made by the respective counties’ boards of commissioners to the Board are for three (3) year terms. Terms of office begin in May of the year they are appointed unless a county delays the appointment of a manager. Subject to the term set forth herein, a Board manager’s term continues until a qualified successor is appointed.
- 4.3 Bonding.** Before assuming the duties of the Board, each manager, at the District’s expense, will obtain and file a bond in accordance with Minn. Stat. §103D.315, subd. 2, as the same may be modified or amended. The Board, at the District’s expense, will provide insurance for its managers to provide liability protection on such terms and in such amounts as the Board decides.
- 4.4 Vacancies.** Any manager who is unable to fulfill his/her three (3) year term of office on the Board shall notify their respective county commissioner of the fact they will be leaving their positions as manager on the Board, so the respective county can appoint another manager as soon as possible to complete the departing manager’s term in office.
- 4.5 Compensation.** Compensation for the managers is paid in accordance with Minn. Stat. § 103D.315, subd. 8, as the same may be modified or amended. Compensation may be set annually by the Board.
- 4.6 Submission of Expenses.** A claim form must be filled out by each manager and submitted to the District office to be processed and approved in the same manner as other claims.
- 4.7 Managers’ Powers.** The managers have all powers set forth in Minn. Stat. Ch. 103D, as the same may be modified or amended.

**ARTICLE V.
OFFICERS**

- 5.1 Election of Officers.** The following officers are elected each calendar year on or before the first regularly scheduled meeting in June: President, Vice President, Secretary, and Treasurer. Terms are for one (1) year unless re-elected. Said officers have the authority to sign legal and other binding documents on behalf of the District.
- 5.2 Officer Vacancies.** Minn. Stat. § 103D.315, subd. 3, provides “[t]he managers must fill vacancies occurring in the officers’ positions.” The Board may fill the vacancy at the next regular meeting of the Board or at a special meeting.
- 5.3 Temporary Appointments of Officers.** The Board may appoint a manager as officer pro tem if an officer is absent, or otherwise unable to execute the duties of their office, and action by that officer is required.
- 5.4 Duties of Officers.**
- A. President. The President presides at all meetings of the Board. The President serves under the supervision and direction of the Board and ensures that all orders and resolutions of the Board are carried into effect. The President executes all contracts or instruments requiring an officer’s signature, unless otherwise directed by the Board. The President has the general powers and duties usually vested in the office of President of the Board and such other powers and duties as the Board may from time to time prescribe.
 - B. Vice President. In the absence of the President at a regularly held Board meeting, the Vice President shall preside at the meeting. The Vice President shall exercise and perform the authorities and duties of the President in the event of the President’s absence, death, disqualification, or incapacity until the Board elects a new President. The Vice President shall exercise and perform such other authorities and duties as may be prescribed or limited from time to time by the Board.
 - C. Secretary. The Secretary shall cause to be recorded all votes and the minutes of all proceedings of the Board and of the members in a book to be kept for that purpose, unless said function is performed by the District Administrator. The Secretary shall give, or cause to be given, notice of all meetings of the Board, and shall perform such other duties as may from time to time be prescribed by the Board or by the President.
 - D. Treasurer. The Treasurer shall have the care and custody of the funds and securities and shall disburse the funds of the District as may be ordered from time to time by the Board. The Treasurer shall keep or cause to be kept full and accurate accounts of receipts and disbursements in books belonging to the District, and shall deposit all monies, securities, and other valuable effects of the District in the name and to the credit of the Bois de Sioux Watershed District in such depositories as may be

designated from time to time by the Board. Except to the extent that some other person or persons may be specifically authorized by the Board to do so, the Treasurer shall make, execute, and endorse all checks and other commercial paper on behalf of the District when requested by the Board and shall perform such other duties as may be prescribed by the Board.

(1) Treasurer's Report. On the third Thursday of each month, at the regular meeting of the Board, the Treasurer's report shall be presented showing the financial status of the District. No payment of invoices submitted to the Treasurer or District office shall take place without a majority vote of the Board, approving the expenditure, except where otherwise authorized in the Bylaws.

(a) Procedure. All invoices and requests for payment shall be sent to the District office where they will be reviewed for approval by District staff. A list of bills to be approved will be assembled for presentation to the Board for approval at the next regular meeting. Upon Board approval, the District Administrator is authorized to pay all the bills approved. Manager vouchers may be submitted at the regular meetings, quarterly. Paid invoices or claims shall show date and check number upon the voucher attached to the invoice. Each original invoice or request for payment shall be available at the Board meeting for review by the Board. The Treasurer's report shall be submitted to the Board prior to or at the regular meeting, either in its entirety or in part. The total Treasurer's report shall be approved at the regular monthly meeting.

The Treasurer or District staff shall keep up-to-date the following:

- (i) Savings Account. Money received by the District shall be kept in an interest earning account when possible, until needed to satisfy an operating expense.
- (ii) Checking Account. The Treasurer or District Administrator shall maintain only the minimum amount in a checking account to cover current expenses. The Treasurer or District staff shall file the monthly bank statement with the canceled checks together, for each month of the calendar year. The annual file shall also contain the checkbook stubs, paid invoices, claims, and Treasurer's reports.
- (iii) The Treasurer or District staff shall maintain the appropriate ledgers and journals as recommended by certified public accountants and in accordance with generally accepted accounting principles.

5.5 Authorized Signatories by Managers. All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the District may be signed by the Treasurer, or the District Administrator when specifically authorized by the Board. Checks may be endorsed through electronic signature.

5.6 Removal from Office. Any officer may be removed at any time, with or without cause, upon the affirmative vote of two-thirds (2/3) of the authorized votes of the Board.

**ARTICLE VI.
BOARD OF MANAGERS MEETINGS**

- 6.1 Regular Meetings.** The Board shall hold regular meetings on the third Thursday of each month at 8:00 a.m., April through September, and at 9:00 a.m., October through March. Meetings may be dispensed with or rescheduled by a majority vote of the Board.

The principal place of business for the Board shall be located at 704 Highway 75 South, Wheaton, Minnesota 56296. The Board may adjourn to other meeting places throughout the District.

The meetings of the Board shall be open meetings. The President may call upon other persons to speak on any question before the Board. The meetings of the Board shall be informal but question of the parliamentary procedure shall be reserved by application of Roberts Rules of Parliamentary Law, Newly Revised Edition. At any Board meeting, anything may be considered that is properly brought before the Board. All people present are encouraged to sign a meeting register.

- 6.2 Meeting Called by Managers.** Managers may request a meeting at any time, which shall be held in compliance with Minn. Stat. § 103D.315, subd. 10.

- 6.3 Special Meetings.** Special meetings to conduct certain specified business considering only such matters of the District may be held and shall be legally noticed at any other time that the Board may deem necessary.

- 6.4 Public Hearings.** Public hearings shall be conducted pursuant to Minn. Stat. Ch. 429 or any other charter provision requiring a public hearing. Public hearings are governed by Minn. Stat. Ch. 103D and 103E, business rules, and Roberts Rules of Parliamentary Law, Newly Revised Edition. The President may refuse to recognize any person who has already spoken twice on any single question until all other persons have spoken.

- 6.5 Quorum and Adjourned Meeting.** At all meetings of the Board, a majority of the managers appointed shall constitute a quorum to do business but a small number may adjourn from time to time. Staff is to gather information as to managers' ability to attend each meeting.

- 6.6 Electronic Attendance.** Managers may attend meetings electronically as long as the following conditions and the provisions of Minn. Stat. Ch. 13D are complied with:

- A. The District Administrator must be given at least four (4) business days' notice of a manager's desire to attend electronically and the location where the member will be present (must be open and accessible to the public).
- B. The District Administrator must be satisfied that arrangements can be made so as to comply with the provisions of Minn. Stat. § 13D.02.

- C. A manager may not attend more than two (2) meetings electronically per year. The Board may grant an exception to this on a case by case basis.
- D. There must be a quorum of managers physically present at the meeting location.
- E. All votes shall be by roll-call.
- F. Each location at which a manager is present is open and accessible to the public so as to comply with Minn. Stat. § 13D.02, subds. 1 & 4.

6.7 Chair of Meetings. The President shall preside as Chair at all meetings of the Board. In the absence of the President, the Vice President, or highest tenured Manager, shall preside.

6.8 Meeting Format.

- A. At the time appointed for a meeting of the Board, upon reaching a quorum, the meeting shall be called to order by the President or in his/her absence, by the acting President. The managers shall proceed to do business following a set agenda.
- B. The President shall preserve order. The President may make motions, second motions, or speak on any question, provided however, that in order to do any of these things, upon demand of any manager, the President shall vacate the Chair and designate a temporary President. The President, or acting President, shall be entitled to vote like other managers.
- C. Every manager, prior to his/her speaking, shall address the President and shall not proceed until he/she has been recognized by the Chair.
- D. If a manager has a personal interest in a matter that comes before the Board, the manager shall abstain from voting on said matter.
- E. No person other than a manager shall address the Board except with the consent of the President or upon approval of a majority of the managers present.
- F. The President has the authority to set a time limit that a manager or a person addressing the Board may speak.
- G. All committees shall be appointed by the President unless expressly ordered by the Board. It shall be the duty of committees to act promptly and faithfully in all matters referred to them and to make reports at a future set time/date established by the Board.
- H. Minutes of all meetings of the Board shall be prepared by the District Administrator, reviewed by the Board, adopted, and kept at the District office. Minutes shall be signed by the President and will constitute an official record of the

procedure. The format for the minutes shall take the form of one (1) paragraph for each subject matter and contain the following:

- (1) All main motions and the wording in which each motion was adopted or otherwise disposed. (The facts as to how the motion may have been debated or amended before disposition being mentioned only parenthetically).
 - (2) Discussion of topics and/or information pertinent to the purpose of the District.
- I. Proposed minutes shall normally be distributed to the managers in advance of the monthly Board meeting, and approved with corrections, if any, at the beginning of the next regular meeting. Special meeting minutes, unless written as a separate set, shall be included in the minutes of the next regular meeting. Corrections, if any, and approval of the minutes shall be done by a majority consent.
 - J. The reading of the minutes is dispensed with, provided the minutes have been made available to the Board for their review, prior to the meeting. Approval of the meeting minutes, by a majority vote, shall take place prior to any subsequent meeting minutes being read or approved.
 - K. Any manager may request that the “yeas” and “nays” be recorded on any motion voted on by the Board and such request will be granted by the President.

6.9 Conflict of Interest. The Board hereby adopts for themselves and successor managers the following guidelines in an effort to avoid real and perceived conflicts of interest and to enhance the credibility of the District’s actions:

- A. All managers shall comply with Minn. Stat. § 471.87, as may be modified or amended, which provides, “a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom.”
- B. At the beginning of the discussion on any subject, all managers shall disclose any potential conflict of interest and/or direct pecuniary interest in the matter. Examples of matters that should be disclosed include when the manager:
 - (1) Owns land which may be assessed.
 - (2) Owns land which may benefit or be damaged other than by a direct tax.
 - (3) Has close relatives who have lands as described in (a) and (b) above.
 - (4) Has business associates who have lands as described in (a) and (b) above.

- (5) Is a public officer, such as a township officer, which has potential interest or that may be affected by said project.
 - C. All managers shall abstain from voting on any resolution that involves a direct pecuniary interest.
 - D. Each manager shall use his/her own judgment in other situations and when in doubt should ask legal counsel or abstain from voting.
 - E. To avoid the appearance of wrongdoing, it is suggested that a manager removes himself/herself from the manager's chair and sit in the audience when he/she desires to participate in a public discussion, particularly a public meeting on subjects where he/she may have a direct conflict of interest.
 - F. To the extent applicable, the District staff is instructed to follow the above guidelines.
- 6.10 Appeal of Chair Ruling.** A manager may appeal to the Board from a ruling of the Chair. If the appeal is seconded, the manager may speak once solely on the question involved and the Chair may explain his/her ruling, but no other manager will participate in the discussion. The appeal will be sustained if it is approved by a majority of the managers present, exclusive of the Chair.
- 6.11 Interest Earned on Ditch Funds.** Each ditch system owns its own fund. The District is the authority for these ditch systems and manages those funds. Each ditch fund shall be credited with a pro-rated share of interest earned annually based on the average monthly balance of that fund. Each ditch fund which carries a negative balance shall be charged interest at the rate the District determines to be shared with all ditch funds that carry a positive balance.
- 6.12 Administrative Billing Policy.** Any project or ditch work performed by the District administration shall be billed at a rate to be set annually by the Board. This expense is titled an administrative expense and shall be for the purposes of covering administrative costs during the time that was spent on that project or ditch.
- 6.13 Fiscal Year.** The fiscal year of the District ends December 31, annually.
- 6.14 Ditch Reports.** The District Administrator or appointed ditch inspector shall do an annual inspection of one-third of the ditch systems, under jurisdiction of the District, on a three (3) year rotation. Upon completion of these inspections, a report on the condition of each ditch system in that year's rotation shall be filed with the Board and shall be kept as a permanent record of the ditch.

ARTICLE VII.
PARLIAMENTARY AUTHORITY

- 7.1 Parliamentary Procedure.** Robert's Rules of Order, Newly Revised, shall govern the District's meetings in all cases to which they are applicable and in which they are not inconsistent with the Bylaws and/or any special rules of order the District may adopt.
- 7.2 Suspension.** Robert's Rules of Order may be temporarily suspended by consent of the majority of the Board.

**ARTICLE VIII.
ADVISORY COMMITTEE**

- 8.1 Advisory Committee Required.** Pursuant to Minn. Stat. § 103D.331, subd. 1, “[t]he 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.”
- 8.2 Members of Advisory Committee.** Minn. Stat. § 103D.331, subd. 2, provides the following in regard to members of the advisory committee:
- 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.

**ARTICLE IX.
ANNUAL REPORT**

- 9.1 Annual Report.** Managers must prepare a yearly report of the financial conditions of the District, the status of all projects, the business transacted by the District, other matters affecting the interests of the District, and a discussion of the managers' plans for the succeeding year.
- 9.2 Copies Distributed.** Minn. Stat. § 103D.351 provides that “[c]opies of the report must be transmitted to the Board of Water and Soil Resources, the commissioner, and the director within a reasonable time.”
- 9.3 Administrator’s Authority to Act on Behalf of the District.** The District Administrator may sign legal and other binding documents on behalf of the District, where the underlying action has been approved by the Board. District staff will only have the authority to sign checks for the District for the following purposes:
- A. To meet District payroll expenses authorized by the Board, and to cover monthly operating expenses, not to exceed Two Thousand Dollars (\$2,000) aggregate for any given month.
 - B. To transfer and invest funds of the District upon consultation with the Treasurer and/or President.
 - C. When authorized by the Board for specific purposes.
- 9.4 Annual Budget.** The District Administrator shall prepare an annual budget for the administrative and project purposes of the District each year, for presentation at the regular meeting in August. The District Administrator may consult with the Treasurer and consulting staff when preparing the annual General and Construction Fund budgets and tax levies pursuant to Minn. Stat. §§ 103D.905, 103D.911, and 103D.915; the budget must be adopted and the levies certified prior to September 15, annually. The District Administrator will also prepare the annual budget and assessments for all legal ditch systems and water management districts under the authority of the District pursuant to Minn. Stat. § 275.07(1); the assessments must be certified on or before five (5) working days after December 20, annually. Copies of these budgets will be delivered to the appropriate auditors in all counties within the District. The respective counties shall cause the levies and assessments to be placed on the appropriate lands within the District.

**ARTICLE X.
ANNUAL AUDIT**

- 10.1 Annual Audit.** Minn. Stat. § 103D.355, subd. 1 provides that, “[t]he 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 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.”
- 10.2 Annual Meeting.** The annual meeting of the District shall be held at the first regular meeting in June of each year, except when the audit is not yet complete at that time. If the audit is not complete and ready for presentation at the regular meeting in June, the annual meeting shall be rescheduled at a more appropriate date.

ARTICLE XI.
COMPREHENSIVE WATERSHED MANAGEMENT PLAN

11.1 Comprehensive Watershed Management Plan. Under Minn. Stat. § 103B.801, subd. 6, the comprehensive watershed management plan may serve as a substitute for a comprehensive plan, local water management plan, or watershed management plan developed or amended, approved, and adopted, according to Minn. Stat. Chapter 103D.

- A. The managers must adopt a watershed management plan for any and 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 Minnesota 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 Minn. Stat. § 473.165.

ARTICLE XII.
AMENDMENT TO BYLAWS

- 12.1 Modifying Bylaws.** The Bylaws may be amended, repealed, or adopted by a majority of the Board upon thirty (30) days' written notice of the proposed change in its entirety during a meeting of the Board unless said notice is waived by all of the managers. Notice of such alteration or amendment is to be contained in the notice of such meeting. The alteration(s) or amendment(s) must pass by a four-fifths (4/5) vote of the Board.
- 12.2 Interpretation.** Interpretation of the Bylaws and any amendment or addition thereto rests with the Board.
- 12.3 Temporary Suspension of Bylaws.** The Bylaws may be temporarily suspended by consent of a majority of managers.

**ARTICLE XIII.
REVIEW OF BYLAWS**

The Bylaws shall be reviewed at least every five (5) years and revised if needed. The Bylaws govern internal District matters and do not create rights in any third parties.



BOIS DE SIOUX WATERSHED DISTRICT

2022 POLICIES

Effective Date: _____, 2022

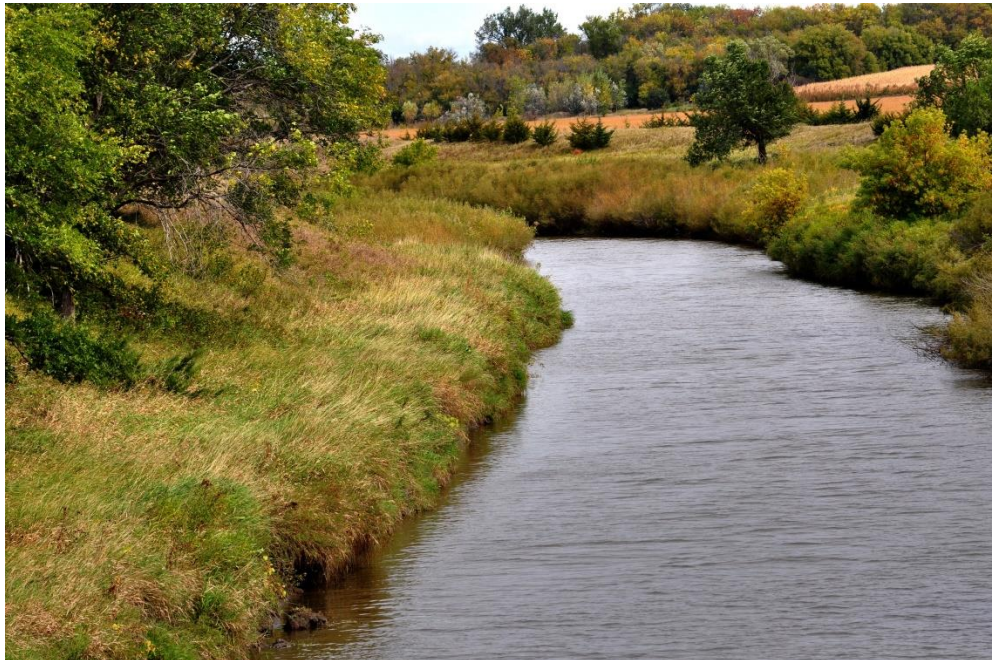


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INTRODUCTION

- 1. Introduction.** The Policies of the Bois de Sioux Watershed District (the “Policies”) are meant to provide guidance, describe programs, and outline various procedures utilized by the Bois de Sioux Watershed District (the “District”) in its role as a watershed district and drainage authority. As used herein, the District or BdSWD means the Bois de Sioux Watershed District. As used herein, the Board means the Board of the Bois de Sioux Watershed District.
- 2. General Policy; Rules and Bylaws Supersede.** The Policies provide guidance, programs, and procedures. The Policies are superseded by the Rules and the Bylaws of the District.
- 3. Short Title.** The Policies shall be known and may be cited as the “Bois de Sioux Watershed District Policies.”
- 4. Jurisdiction.** The jurisdiction of the Policies includes all of the area, incorporated and unincorporated, including both land and water, within the territory of the District.
- 5. Adoption or Amendment of Policies.** Changes to the Policies may be made by the Managers on their own prompting, from the District’s staff, or at the request of another agency or landowner. A new policy or policy amendment shall be adopted by a majority vote of the Managers.
- 6. Severability.** The provisions and terms of the Policies are severable, and invalidity of any provision or term thereof, does not make invalid any other provision or any term thereof.

POLICY FOR BOARD WHEN ACTING AS DRAINAGE AUTHORITY

1. Policy.

Pursuant to Minn. Stat. § 103E.625, the District became the drainage authority for sixty (60) legal drainage ditches in 1991. The District recognized its ongoing obligation to inspect and maintain these ditches. The District will appoint a drainage inspector to inspect the drainage systems the Board designates in accordance with Minn. Stat. § 103E.705. It is the Board's goal to inspect every ditch system at least once every three (3) years.

2. Maintenance and Repairs.

The Board established a policy of involving the landowners, assessed to the ditches, in decisions as to whether repairs are practical, particularly those that go beyond annual maintenance. The Board recognizes that these landowners, through assessments, pay for the ditch repairs. The District established an account for each ditch system in accordance with Minn. Stat. § 103E.651 and sets assessments to maintain a ditch fund balance in each account.

The Board seeks landowner requests for ditch maintenance and requests that landowners work with the District's staff to complete a Request for Maintenance – RFM form.

The typical steps for ditch maintenance are as follows:

- 1) Requests for maintenance are reported to the District's staff.
- 2) District staff evaluate the need for maintenance or a repair. Repairs or maintenance costs that do not exceed Ten Thousand Dollars (\$10,000) may be performed by the Ditch Inspector without requiring prior Board approval. The Ditch Inspector will explain the repairs or maintenance to the Board at the next meeting following completion of the repairs or maintenance.
- 3) Requests that exceed Ten Thousand Dollars (\$10,000) are presented to the Board by the District's staff as a repair. In consultation with the District Engineer, the Board will evaluate the extent of the repair request including available ditch records, past engineer's reports, and compare estimated cost of repair to the current ditch benefit amount.
- 4) The Board will determine if the scope of the repair requires additional investigation and/or a landowner meeting or if the repair can be completed immediately using the available records.
- 5) The Board may require a landowner petition before proceeding with the repair or may require that a redetermination of benefits be completed prior to the repair pursuant to Minn. Stat. § 103E.351.

Ditch maintenance will be completed as soon as practicably possible after the request for ditch maintenance is received. Typically, maintenance will occur in the fall after crops have been removed from the adjacent fields. However, the Board may, at its discretion, complete maintenance during the summer. Ditch maintenance during summer months is more prone to damaging adjacent crops. If crop damage occurs, the costs for these damaged crops is determined by the landowner/operator and the Ditch Inspector and the landowner/operator will be reimbursed utilizing ditch funds.

3. Redetermination of Benefits and Damages.

While the Board recognizes it has the responsibility to determine whether the conditions exist for a redetermination of benefits pursuant to Minn. Stat. § 103E.351, it recommends and strongly encourages support in writing of at least fifty percent (50%) of the assessed landowners or the owners of fifty percent (50%) of the assessed land area and notification of the remaining assessed landowners before going forward and appointing viewers as it does not want to incur the expense of a redetermination without substantial landowner support. Once written support is received, the Board will hold an informal meeting to consider the request. Mailed notice shall be given to all landowners assessed to the ditch as well as published notice in each county where the ditch watershed is located. Redeterminations under Minn. Stat. § 103E.351 will be financed consistent with the District's "pay as you go" ditch fund management policy.

4. Petition to Outlet into Legal Ditch System.

Upon receiving a petition to outlet into a legal drainage system, the District Administrator is authorized to schedule a hearing before the Board. The Board considers this policy to be its consultation with the District Administrator in scheduling the hearing in accordance with Minn. Stat. § 103E.401, Subd. 3, which provides, "[w]hen the petition is filed, the drainage authority in consultation with the auditor shall set a time and location for a hearing on the petition and shall give notice by mail and notice by publication of the hearing." The District Administrator will also provide notice by mail and notice by publication of the hearing.

If the District receives and approves a petition to outlet into a legal assessment ditch pursuant to Minn. Stat. § 103E.401, the Board may calculate the outlet fee and benefits to utilize the legal assessment ditch based on the following:

Current benefitted amount of lands adjacent to the parcel being added and recommend assigning a benefitted amount similar to those. Calculate an "Outlet Fee" based on all documented expenses of the ditch from the date of establishment to the current date, and pro-rate that amount across the parcel to be added.

(i.e. - total expenses to date / current benefitted acres = expense per acre X number of acres in parcel to be added = Outlet Fee).

Revised: November 18, 2021

POLICIES AND PROCEDURES FOR PUBLIC ACCESS TO DOCUMENTS & DATA PROTECTION

Public access to the data of public bodies is governed by the Minnesota Government Data Practices Act (MGDPA). The MGDPA states that data of public bodies are to be available to the public unless specifically exempted under the law, in cases where individual privacy would be violated, or where other valid concerns outweigh the interest in public availability.

The District recognizes the public interest in open access to its data as well as the public interest that requires that certain types of data not be publicly available. It is the intent of the District to comply fully with the MGDPA and, where the MGDPA allows for the exercise of judgment, to exercise that judgment consistent with the public interests underlying the law.

This policy is adopted pursuant to Minn. Stat. § 13.03, subd. 2, which states that every public body shall establish procedures to implement the MGDPA. If any provision or part of this policy conflicts with the MGDPA, the MGDPA will supersede this policy.

The District's Administrator is designated as the Data Practices Compliance Official, at:
Bois de Sioux Watershed District
704 Highway 75 South
Wheaton, MN 56296
Phone #: 320-563-4185 Fax #: 320-563-4987 Email: bdswd@runestone.net

Rights of the Public to Request Public Data

The MGDPA presumes that all government data are public unless a state or federal law says the data are not public. Government data means all recorded information a government entity has, including paper, email, flash drives, CDs, DVDs, photographs, etc.

You have the right to inspect, free of charge, all public data kept by the District. You also have the right to get copies of public data. The MGDPA allows government entities to charge for copies. You have the right to inspect data, free of charge, before deciding to request copies.

Rights of Minors

A minor employee of the District may provide a written request to the District to prohibit the release of their private data to a parent or guardian. Upon hire, minors will be given a copy of the District's policies.

How to Request Public Data

The public can request to inspect data at the District office or request copies of public data kept by the District. Requests to inspect or receive copies of the District's data, and all other inquiries regarding the MGDPA, are encouraged to be made in writing, signed by the requester, and delivered by U.S. mail, facsimile, scanned and emailed, or hand delivered during business hours, addressed to the "Data Practices Compliance Official," at the address above.

The request should include:

- 1) A statement that the requester is making a request for public data under the Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13);
- 2) Describe whether the requester would like to inspect the data, have copies of the data, or both; and
- 3) Provide a clear description of the data the requester would like to inspect or have copied.

The requester is not required to identify themselves or explain the reason for the data request. However, the requester may need to provide the District with personal information for practical reasons (for example: an address to mail copies or ID to release personal information of the subject). Basic contact information may be needed to get further details about the request or to respond to the request.

How the District Will Respond

In the event the requester desires to inspect the District's data, the Data Practices Compliance Official will gather the documents of interest, separate any documents to be withheld from inspection, and see to it that someone is available to assist with the inspection. The Data Practices Compliance Official may utilize the services of the District's attorney to review requested data before distributing the data to the requester. District files may not be removed from the office.

The District will follow the MGDPA Policy of scheduling inspections within a reasonable time of the request. The response time will vary depending on the size/complexity of the request, and also the number of requests made in a given period of time. The District may need to clarify the scope of the request with the requester.

- If the District does not have the data, the District will notify the requester within 10 business days.
- If the District has the data, but is not allowed to give it to the requester, the District will tell the requester as soon as reasonably possible and identify the law that prevents the District from providing the data.
- If the District has the data, and the data is/are public, the District will respond to the request appropriately and promptly, within a reasonable amount of time in accordance with the following:
 - Arrange a date, time, and place for the requester to inspect the data at the District office; or
 - The requester may choose to pick-up the requested copies, or have the request mailed/emailed to them. The District will provide electronic copies (such as email or CD-ROM) upon request, if the District maintains the data in that format and can reasonably make a copy.

The MGDPA does not require the District to create or collect new data in response to a data request, or to provide data in a specific form or arrangement if the data is not kept in that form or arrangement. For example, if the data exists on paper only, the District is not required to create electronic documents to respond to a data request. If the District agrees to create data in response to a data request, the District will work with the requester on the details of the request, including consideration of cost and response time.

The District is not required to respond to questions that are not about the data requests or requests for government data.

Costs to Members of the Public

There is no cost to inspect documents.

If 99 paper copies or less are requested, the requester will be charged twenty five cents (\$0.25) per page for letter and legal sized black and white documents.

If 100 or more paper copies, oversize copies, color copies, tapes, electronic data, photographs, slides, or other unusual formats are requested, the requester will be responsible for the actual cost incurred by the District to make the copy itself or to use a vendor, including the cost of staff time, to search for and retrieve data, and to make, certify, compile, and transmit copies. Time spent separating public from not public data will not be charged to the requester. Staff costs will be assessed based upon established billable hourly rates.

If requested, the District will provide approximate costs before making said copies. Payment may be made by cash or check. The District may require payment in advance of providing the data to the requester.

The District may charge a fee for data that has commercial value and was developed with a significant expenditure by the District. The District may also require a license agreement limiting the use of said data.

Costs to Data Subjects

When a data subject asks for copies, their identity will be verified through the use of state-issued identifying documents.

The requester is responsible to pay the District the actual cost, including the cost of staff time, to search for and retrieve data and to make, certify, compile, and transmit copies. Staff costs will be assessed based upon established billable hourly rates. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action is pending or additional data on the individual has been collected or created.

Data Protection

Access to private data is restricted to individuals within the District whose work assignments reasonably require access.

The District will contract with private information technical staff to provide reasonable measures to protect classified data. Following a breach of the security of the District's data has occurred and an unauthorized person has gained access to data, the District will notify data subjects by telephone, written communication, or in-person.

Revised: December 16, 2021

COST SHARE POLICY PUBLIC ROAD RAISE PROGRAM

- 1. Purpose.** To encourage and support the raising of roadways as a means of reducing flood damages and improving public safety in the District.

Road washouts occur during frequent flood events throughout most of the watershed. The associated damages to roadways result in considerable public expense and traffic hazard. Flood flows downstream are also increased when upstream roads wash out. The District has a general policy of encouraging uniform design of roadway stream crossings as a method of moderating flood flows and reducing flood damages. Proper design requires an appropriate waterway opening based on the upstream drainage area and a road elevation high enough to prevent overtopping except during extreme flood events or in situations where there is significant risk of flood damages upstream.

- 2. Cost Share Program.** In some cases, raising the roadway involves considerable expense which may be a burden on the road authority. In these cases, the District may participate in the cost of raising the road provided that the design meets the District's flood damage reduction objectives. Subject to individual recommendation by the District's engineer, the District may share in the additional cost to raise the road. Included in the engineer's review will be a determination that the waterway opening is appropriately sized and that the proposed roadway elevation is high enough to meet the District's flood damage reduction goals.

- 3. Requirements.** The project must be implemented by the road authority.

Approved: 2014

DITCH FUND MANAGEMENT POLICY

1. Ditch system funds will be managed by the District as the ditch authority.
2. The District's goal for ditch expenses is to operate on a "pay as you go" basis. To that end, ditches will be assessed so as to have sufficient positive balances to fund normal maintenance requests as they occur. When larger projects are anticipated, again, the District's goal will be to operate on a "pay as you go" basis. Therefore, for larger projects, the District will finance with preference in the following order:
 - A. Set assessments sufficient to cover the anticipated expenditure (subject to the statutory maximum) in advance of the project.
 - B. If anticipated costs cannot practically be paid in advance, the ditch system may borrow against the overall ditch fund with the goal of bringing the ditch out of debt within three (3) years by assessing up to the statutory maximum.
 - C. The District will arrange, or work with an affected county, to have bonds issued to finance projects in cases where it is neither practical to collect funds in advance of the project or borrow against other ditches. The bonds shall be arranged for before commencing work on the project.
3. Ditch funds with a positive balance annually will earn a prorated share of interest at a rate determined by the District. Ditch funds with a negative balance will pay interest to the positive funds at the average rate that interest was earned throughout the year on these funds.
4. For repairs of legal assessment ditches, the District's Ditch Inspector has authority to spend up to Ten Thousand Dollars (\$10,000) per ditch without the Board's prior approval as long as ditch benefits exceed Ten Thousand Dollars (\$10,000), and ditch funds in that ditch account are available with notice to the District Administrator. The District's Ditch Inspector will inform the Board of expenditures at the next regular meeting of the District.

Approved: January 18, 2018

LAND ACQUISITION POLICY

1. The District's policy is to only acquire lands physically necessary for its projects. Occasionally, when a willing seller owns lands within and outside a project "footprint," the District may find it necessary to acquire lands that will not be located within the project itself. The District may use such lands, when so requested, to trade for lands located within the project when both properties have been appraised by the District. Other than the above exception, the District's policy is to not engage in land trades. The District will dispose of property not needed for projects in a way that avoids unnecessary holding costs and illiquidity of assets.

The owners of lands essential to a District project often desire to replace said lands. The District may assist such efforts by making written offers to purchase so seller is guaranteed funds for a replacement purchase.

- A. The District strongly prefers to rely on willing landowners to supply land and easements through negotiated arms-length transactions.
- B. The District will evaluate a potential acquisition by considering whether the land has characteristics that make it likely to be suited for project needs in that sub-watershed, whether the price is fair, and the District's ability to avoid financial loss in the event a project using that land does not go forward.
- C. The District will obtain an appraisal before acquisition or disposition, except in very limited circumstances, such as cases where the tracts of land are small or the District determines that it is appropriate to determine benefits and damages pursuant to Minn. Stat. § 103D.721. The District may also utilize auction bidding to acquire property where the District has established a maximum price through review of recent area land sales. The District will dispose of excess lands by auction or through other competitive process.
- D. The District will obtain fee title or easements to the necessary property for its projects. In each case, the managers will judge the cost and financial risk to the District in purchasing land rights before full project definition and a formal decision to proceed with a project. The District will look to structure an acquisition to limit risk, through means such as buying an option, leasing lands consistent with project needs, preserving compatible uses by an underlying fee owner and disposing of land rights not needed for a project.
- E. The District acknowledges that it may, in rare circumstances, find it necessary to acquire land and easements for projects through all authorized means, including eminent domain, in the event project priorities so require.

CULVERT COST SHARE POLICY
CULVERT SIZING AS PART OF LEGAL DITCH SYSTEM REPAIRS

1. **Purpose.** The purpose of this Policy is to encourage and promote the sizing of culverts to reduce peak flows and provide temporary distributive storage for the Bois de Sioux Watershed District (the “District”). Because this Policy promotes flood damage reduction, the District will utilize watershed funds to reimburse legal assessment ditch system funds, for which the District is the ditch authority, upon conformance of the drainage system’s culverts with the District’s culvert sizing goals.
2. **Flood Damage Reduction Technique – Compliance with 1998 Mediation Agreement.** Culvert sizing is a flood damage reduction technique that benefits the entire watershed and the Red River Basin.

Culvert sizing is a flood control technique that incorporates roads and other man-made barriers to provide short-term detention of floodwater and reduce peak flows. It is a widely used form of flood control which can provide benefits throughout the watershed and appeals to a sense of fairness.

Culvert sizing should be based on drainage area and closely matched to channel capacity. When channel capacity is exceeded, the culvert restricts flows and the excess water temporarily impounded upstream. For the method to be safe and effective, the road grade must be high enough to prevent overtopping or be designed to overflow without washing out.

The District has routinely included culvert sizing as a mitigation requirement in granting drainage improvement permits. Projects to accelerate widespread implementation of culvert sizing may be a possibility. An inventory of existing culverts, and their respective drainage areas, is needed to evaluate the current status and future potential of this alternative.

The flood control benefits of culvert sizing are greatest when implemented in the middle and late contributing areas of the watershed.

3. **Board of Water and Soil Resources (BWSR) Performance Review and Assistance Program (PRAP).** In addition to being supported by the District’s Comprehensive Plan, culvert sizing is supported by BWSR’s PRAP Level III:

Water Quantity Planned Action or Result: Promote distributive storage across the watershed through culvert sizing criteria.

4. **Cost Share Program Requirements.** In recognition of the flood damage reduction benefits previously described, the District will reimburse a legal assessment ditch system fund, for which the District is the ditch authority, upon conformance of the drainage system’s culverts with the District’s culvert sizing goals as part of a major repair or improvement process that includes a clean water retrofit of the ditch and redetermination

of benefits. Clean water retrofits involve the flattening of ditch side-slopes, construction of berms, and installation of side-inlet culverts. The District will reimburse the ditch system fund for the following items, including but not limited to, culvert design, culvert materials, and installation. Cost share approval will be granted on a case-by-case basis depending on availability of funds, conformance with this Policy, and the following conditions:

- A. The District must be the ditch authority for the legal assessment ditch.
- B. Culvert size, design specifications, and installation specifications must be determined by District engineering staff.
- C. This Policy is limited to in-line (in-channel) crossing culverts for both public and private crossings. Side-inlet culverts are not funded under this Policy.
- D. This Policy is limited to legal assessment ditches under the authority of the District that proceed with a major repair or improvement that includes a clean water retrofit of the ditch and a redetermination of benefits.
- E. Reimbursement will be determined by the District's Board of Managers on a case-by-case basis subject to availability of funds and potential for alternative funding sources.
- F. The District's Board of Managers, at its sole discretion, will determine whether to expend funds pursuant to this Policy.

Approved: January 11, 2021

**CLEAN WATER RETROFIT COST SHARE POLICY
WATER QUALITY IMPROVEMENTS
AS PART OF LEGAL DRAINAGE SYSTEM REPAIRS OR IMPROVEMENTS**

- 1. Purpose.** The purpose of this Policy is to facilitate erosion and sedimentation reduction practices that improve water quality while protecting drainage system efficiency and reducing drainage system maintenance for priority Minn. Stat. Ch. 103E drainage systems for which the Bois de Sioux Watershed District (the “District”) is the drainage authority.
- 2. Compliance with 2021 Comprehensive Watershed Management Plan.** Erosion, sedimentation, and water quality impairments are identified as frequent problems in the District’s Comprehensive Watershed Management Plan, date January 27, 2021. This Policy aims to reduce erosion, sedimentation, and water quality impairments. The District has the authority to accept and use funds from sources other than, or in addition to, those derived from assessments based on the benefits of the drainage system for the purpose of water quality improvements pursuant to Minn. Stat. § 103E.011, subd. 5. Interpretation of the Bylaws and any amendment or addition thereto rests with the Board.
- 3. Cost Share Program Requirements.** In an effort to promote water quality benefits previously described, upon construction of a drainage system clean water retrofit, the District will reimburse a Minn. Stat. Ch. 103E drainage system fund, which the District is the drainage authority, in the amount of fifty percent (50%) for eligible cost share items. Clean water retrofits involve flattening ditch side-slopes, constructing berms, and installing side-inlet culverts. The District will pursue external funding sources first, and in cases of a shortfall, will reimburse the drainage system fund at a rate of fifty percent (50%) for the following eligible cost share items:

 - A. Side-inlet culverts, including the culvert, flared-end section, associated riprap and blanket, and related installation costs. Flap gates are not an eligible cost share item.
 - B. Excavation and spoil bank leveling necessary to construct a berm adjacent to the ditch channel. The volume of eligible earth work is calculated assuming a maximum berm height of three feet (3’), maximum top of berm width of ten feet (10’), and three to one (3:1) slopes.
 - C. Seeding within the channel is eligible; however, seeding beyond the channel daylight, including the required statutory buffer strip under Minn. Stat. § 103F.48, is not eligible under this Policy.
 - D. Grade control structures used to reduce in-channel velocity, including but not limited to, sheet-pile structures, rock riffles, and permanent rock weirs placed across the channel bottom. Temporary rock checks used for storm water erosion control are not eligible.
 - E. Reimbursement for the eligible cost share items is based on final installation costs, not the engineer’s cost estimate prior to bid.

F. Engineering fees related to the above items are eligible.

4. Cost Share Conditions. Cost share approval is granted on a case-by-case basis depending on the availability of funds, conformance with this Policy, and the following conditions:

- A. The District will diligently pursue outside funding sources to cover the fifty percent (50%) cost share under this Policy. The District will supplement or provide funding in the absence of a full cost share commitment from external funding sources.
- B. The District must be the drainage authority for the Minn. Stat. Ch. 103E drainage system.
- C. All eligible items, including related design specifications and installation specifications, must be determined by District engineering staff.
- D. This Policy is limited to Minn. Stat. Ch. 103E drainage systems, under the District's drainage authority, that proceed with a repair or improvement that includes a clean water retrofit and a redetermination of benefits, if necessary.
- E. Reimbursement will be determined by the District's Board of Managers on a case-by-case basis; availability of funds and potential for alternative funding sources are considerations.
- F. The District's Board of Managers, at its sole discretion, will determine whether to expend funds pursuant to this Policy.

**POLICY TO VERIFY THE AUTHENTICITY OF REQUESTS TO CHANGE
VENDOR BANK ACCOUNT INFORMATION**

1. **Purpose.** Although the Bois de Sioux Watershed District (the “District”) does not utilize a large number of direct ACH payments to vendors (limited to payroll and payroll taxes), this Policy aims to address fraudulent requests for changes to remit bank accounts.

2. **Process.** Requests to change bank accounts must be verified using information on hand, not information supplied in an email. The vendor will be contacted to ensure the request is legitimate. Anyone requesting such a change must supply the new bank account number and the old bank account number. The process is further defined below; the District will:
 - A. Receive a request to update banking details.

 - B. Authenticate the request; vendor must successfully answer three unique, accounting specific questions.

 - C. Send ACH Form and Instructions to the vendor and collect information to update banking details.

 - D. Receive completed ACH Form (the form may require authentication criteria on the form, requesting prior ACH bank information and requiring the tax ID on the banking form).

 - E. Verify that the routing number is correct.

 - F. Confirm that the phone number, email address, and remit address is already on the vendor record.

Approved: June 17, 2021

EDUCATION & TRAINING POLICY

- 1. Purpose.** Staff and Board Managers are encouraged to attend relevant education and training workshops, seminars, and conferences upon the approval of the District President, Personnel Committee, or District Board. Staff and Board Managers are encouraged to discuss the proposed event with the District President, Personnel Committee, or District Board to determine whether the event will be reimburseable.
- 2. Content.** Education and training reimbursed under this Policy must be related to the District's current or future work.
- 3. Form of Payment.** Payment may be made directly from the District for registration and lodging expenses, or may be provided as a reimbursement to the attendee. In both cases, documentation for all expenses must be provided to the District before payment will be processed. The District may determine a maximum annual limit for individual, department, or the District.
- 4. Separation of Duties.** Termination of employment, or separation from the District Board, prior to the training/education event will deem the related expenses unreimburseable.
- 5. Orientation.** Upon the hire of a new employee, or the appointment of a new board manager, the District President and Administrator may design and implement a documented, individually tailored training plan.

Approved: January 21, 2021



BOIS DE SIOUX WATERSHED DISTRICT

2022 REVISED RULES

Effective Date: _____, 2022

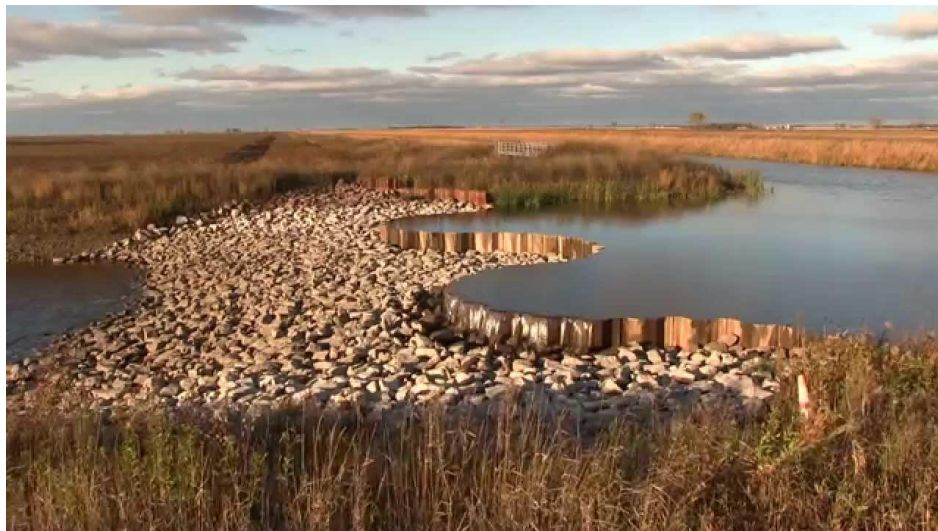


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The 2022 Revised Rules amend and replace the 2009 Revised Rules of Bois de Sioux Watershed District adopted by the Board of Managers on August 20, 2009.

Approved and signed this _____ day of _____, 2022.

Scott Gillspie, Secretary

I. INTRODUCTION AND POLICY

- 1.1 Statutory Policy. The Rules of the Bois de Sioux Watershed District (the “Rules”), as provided by Minn. Stat. § 103D.341, subd. 1, and as amended from time to time, are to effectuate the purposes of Minn. Stat. Chapter 103D and the authority of the Managers therein described. The Rules are deemed necessary to implement and make more specific the law administered by the Bois de Sioux Watershed District (the “District”). Each Rule adopted by the District shall have the full force and effect of law.
- 1.2 General Policy; Other Rules Superseded. It is the intention of the Managers with the implementation of the Rules to promote the use of the waters and related resources within the District in a provident and orderly manner so as to improve the general welfare and public health for the benefit of present and future residents. These Rules shall supersede all previous Rules adopted by the District.
- 1.3 Short Title. These Rules shall be known and may be cited as the “Bois de Sioux Watershed District Rules.”
- 1.4 Jurisdiction. The jurisdiction of the Rules includes all of the area, incorporated and unincorporated, including both land and water, within the territory of the District.
- 1.5 Adoption or Amendment of Rules. Changes to the Rules may be made by the Managers on their own prompting or following the petition of any interested person according to the procedure set forth in Minn. Stat. § 103D.341, subd. 2, as may be amended from time to time. An amendment or rule shall be adopted by a majority vote of the Managers.
- 1.6 Inconsistent or More Restrictive Provisions. If any rule is inconsistent with or less restrictive than the provisions of Minn. Stat. Chapter 103D or other applicable law, the provisions of Minn. Stat. Chapter 103D or other applicable law shall govern.
- 1.7 Severability. The provisions of the Rules are severable, and invalidity of any section, paragraph, subdivision, or any other part thereof, does not make invalid any other section, paragraph, subdivision, or any part thereof.
- 1.8 Due Process of Law. A person shall not be deprived or divested of any previously established beneficial use or right, by any Rule of the District, without due process of law, and all rules of the District shall be construed accordingly.
- 1.9 Cooperation with Other Agencies or Governing Bodies. The Managers accept the responsibility with which they are charged as a governing body and will cooperate to the fullest extent with persons, groups, state and federal agencies, and other governing bodies, while acting in accordance with their own statutory authority and responsibilities.
- 1.10 Appeals. Any person aggrieved by the adoption or enforcement of the Rules or any action of the District arising out of or pursuant to the adoption or enforcement of a rule may appeal from the Rules or any action taken thereon in accordance with the appellate procedure and review provided in Minn. Stat. §§ 103D.535 and 103D.537, as amended from time to time.

II. DEFINITIONS AND INTERPRETATION

- 2.1 Definitions. For the purposes of the Rules, certain words and terms are defined as follows. In the absence of a definition hereinafter, the definitions established for the State of Minnesota by statute or by case law apply to the Rules unless clearly in conflict, clearly inapplicable, or unless the content makes such meaning contrary thereto. Additionally, if words or phrases are not defined therein, they shall be interpreted to give them the same meaning they have in common usage and to give the Rules their most reasonable application.

“100-Year Floodplain” means the beds proper and the areas adjoining a wetland, lake, or watercourse which have been or hereafter may be covered by the base flood or the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

“Administrator” means the person currently designated by the BdSWD Board of Managers responsible for operating and managing the District office.

“BdSWD” or **“District”** means the legally established agency named and referred to as the Bois de Sioux Watershed District. When the word “district” appears without capitalization, it means the lands contained within the boundary of the governmental unit, the Bois de Sioux Watershed District, as established by BWSR in accordance with Minn. Stat. Chapter 103D.

“Best Management Practices” or **“BMPs”** means those practices that prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs include treatment practices, operating practices, and practices to control site runoff, spillage, or leaks, sludge or water disposal, or drainage from materials storage. They are practices that are capable of protecting the environment while considering economic factors, availability, and their technical feasibility to implement and effectiveness.

“Board” or **“Board of Managers”** means the Board of Managers of the BdSWD.

“Buffer” means an area consisting of perennial vegetation, excluding invasive plants and noxious weeds, adjacent to all bodies of water within the State and that protects the water resources of the State from runoff pollution; stabilizes soils, shores, and banks; and protects or provides riparian corridors.

“Buffer Law” means Minn. Stat. § 103F.48, as amended from time to time.

“Buffer Protection Maps” means buffer maps established and maintained by the Commissioner of the Minnesota Department of Natural Resources.

“BWSR” means the Minnesota Board of Water and Soil Resources.

“Commissioner” means Commissioner of the Minnesota Department of Natural Resources.

“Contaminant” means a polluting or poisonous substance that makes something impure.

“Cultivation Farming” means farming practices that disturb root or soil structure or that impair the viability of perennial vegetation due to cutting or harvesting the soil surface.

“Department of Natural Resources” or **“DNR”** means the Minnesota Department of Natural Resources.

“Desiltation Basin, Sediment Basin, or Structure” means any pond, depression, structure, or other device which creates or stores water by detaining or slowing the outflow of the water by natural or artificial means.

“Detention Basin or Structure” means any pond, depression, structure, or other device, either natural or man-made, capable of temporarily storing surface runoff water because of its configuration.

“Dike” or **“Levy”** means a bank or mound of earth or other materials that is built to control water and, especially, to protect an area from flooding or to hold water onto others.

“District Permit” means the permit document issued by the District for the purposes of permitting the applicant or permit holder to perform work or maintain improvements in the District.

“DNR Permit” the permit document issued by the DNR 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 District.

“Domestic Water Use” means the use of water for common household or farm use.

“Downstream” means an area or areas within the District situated or moving in the direction in which a stream or river flows.

“Drainage Authority” means the public body having jurisdiction over a drainage system under Minn. Stat. Chapter 103E.

“Drainage System” means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a drainage authority. A drainage system includes the improvement of a natural waterway used in the construction of a drainage system and any part of a flood control plan proposed by the United States or its agencies in the drainage system.

“Drainageway” means any natural or artificial channel which provides a course for the flow of water, whether that flow is continuous or intermittent.

“Engineer” means the person currently designated as the engineer for the District and licensed by the State of Minnesota.

“Executive Director” means the Executive Director of BWSR.

“FSA” means the United States Department of Agriculture, Farm Service Agency.

“Flood” means an overflow of water that inundates land that is usually dry.

“General Welfare” means the safety or well-being of the general public or the inhabitants of the District. General welfare shall be synonymous with **“Public Welfare”** or **“Public Benefit.”**

“Governmental Subdivision” means any legally constituted political subdivision having the powers of establishing governing policies, the authority to levy taxes, and having duly elected officials which form a governing body. Such governmental subdivisions (or governmental units) for the purposes of this definition shall include only the United States of America, the State of Minnesota, the Counties of Wilkin, Otter Tail, Traverse, Stevens, Big Stone, and Grant, and various cities, school districts, and townships or portions thereof that lie within the District.

“Governmental Agency” means any legally constituted non-elected body performing in an advisory or support capacity to a duly elected governmental subdivision. Examples of such agencies shall include, but not necessarily be limited to, the United States Department of Agriculture, BWSR, DNR, and the Minnesota Pollution Control Agency.

“Impoundment” – means a watershed project developed, constructed, and maintained by the District under Minn. Stat. Chapter 103D for the primary purpose of temporarily storing floodwaters in order to provide flood risk (damage) reduction.

“Improve” means as set forth in Minn. Stat. § 103E.215, subd. 2, which states that improvement means the tiling, enlarging, extending, straightening, or deepening of an established and constructed drainage system including construction of ditches to reline or replace tile and construction of tile to replace a ditch for any public or private system.

“Irrigation” means the application of controlled amounts of water for plants at needed intervals.

“Landforming” means changing any of the natural features of the earth’s surface and the reshaping of surface topography to planned grades.

“Landowner” means the holder of fee title, the holder’s agents or assigns, any lessee, licensee, or operator of the real property and includes all land occupiers as defined by Minn. Stat. §103F.401, subd. 7, or any other party conducting farming activities on, or exercising control over, the real property.

“Legal Ditch” means a ditch established under Minn. Stat. Chapter 103E and means a watershed, county, or judicial drainage system.

“Managers” means the BdSWD Board of Managers acting as a Board and not as individuals, unless specifically stated to the contrary.

“Maintenance” as referred to for dikes, drainage ditches, and sewers, means restoring the system as near as practicable to its original condition or as subsequently improved.

“MS4” means Municipal Separate Storm Sewer Systems.

“Normal High Water Mark” means, as used in reference to the Buffer Rule, a mark delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape. Commonly, it is that point where the natural vegetation changes from predominantly hydrophytic to predominantly terrestrial.

“NPDES” means the National Pollutant Discharge Elimination System.

“NRCS” means the United States Department of Agriculture, Natural Resources Conservation Service.

“Ordinary High Water Level” means a mark delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape. Commonly, it is that point where the natural vegetation changes from predominantly hydrophytic to predominantly terrestrial. In areas where the ordinary high water level is not evident, setbacks shall be measured from the top of the bank of the river channel. A channel is a natural or artificial depression of perceptible extent, with definite bed and banks to confine and conduct flowing water either continuously or periodically.

“One Watershed, One Plan (1WIP)” means a program through BWSR that supports partnerships of local governments in developing prioritized, targeted, and measurable implementation plans, pursuant to Minn. Stat. § 103B.801. Plans created through the 1WIP program area called Comprehensive Watershed Management Plans (CWMP) and are defined and described in Minn. Stat. § 103B.801. Once developed and adopted, a CWMP, as per Minn. Stat. § 103B.802, subd. 2(6), “serve[s] as a substitute for a comprehensive plan, local water management plan, a watershed management plan developed or amended, and adopted, according to this Chapter or Chapters 103C or 103D.”

“Operator” means a party other than a landowner that directly or indirectly controls the condition of land subject to various District and State laws under the Rule.

“Parcel” means a unit of real property that has been given a tax identification number maintained by the respective county.

“Person” means any individual, firm, partnership, association, corporation, or limited liability company but does not include Public Corporation or governmental subdivisions.

“Plan” means a map, drawing, report, aerial photograph with annotation, or other similar supportive data for proposed works.

“Planning Regions” means the placement of land use activities, infrastructure, and settlement growth across a large area of land. Specific to the BdSWD, there are nine (9) planning regions in the current 1WIP.

“Plat” means a map, drawn to scale, showing the ownership divisions of a piece of land.

“Pollutant” means a chemical or substance for which a health risk has been adopted.

“Ponding Area” means any natural or artificial depression capable of retaining or detaining runoff waters and may be either permanent or intermittent.

“Private Drainage System” means an individual or mutually agreed upon drainage system on private lands.

“Public Corporation” means a county, town, school district, or a political division or subdivision of the State.

“Public Health” means the general sanitary conditions of the District.

“Public Water” means as defined under Minn. Stat. § 103G.005, subd. 15, and included within the public waters inventory as provided in Minn. Stat. § 103G.201.

“Reservoir” means a natural or artificial lake, storage pond, or impoundment created using a dam or lock to store water.

“Right-of-Way” means a property interest, established by usage or grant, to pass along a specific route through grounds or property belonging to another.

“Riparian Area” means a vegetated ecosystem along a water body through which energy, materials, and water pass. Riparian areas characteristically have a high water table and are subject to periodic flooding and influence from the adjacent water body. These systems encompass wetlands, uplands, or some combination of these two (2) landforms.

“Rules” means, collectively, the Rules of the Bois de Sioux Watershed District as provided by Minn. Stat. § 103D.341, subd. 1, and as may be amended from time to time, which are contained herein to effectuate the purposes of Minn. Stat. Chapter 103D and the authority of the Managers herein described. Reference to a single rule contained herein may be referred to as a **“Rule.”**

“SCS” means Soil Conservation Service.

“Shoreland” means land located within the following distances from Public Water: (i) one thousand feet (1,000’) from an ordinary high water mark of a lake, pond, or flowage as defined per Minn. Stat. Chapter 103G, or (ii) three hundred feet (300’) from a river or stream.

“Shoreland Standards” means local shoreland standards as approved by the Commissioner or, absent such standards, the shoreland model standards and criteria adopted pursuant to Minn. Stat. § 103F.211.

“State” means the State of Minnesota.

“Storm Sewer” means a series of pipes installed for the specific purpose of transporting surface and/or underground waters from one (1) location to another and said system need not be continuously constructed only of pipe but may include reaches of flumes, spillways, or open channels.

“Stormwater Pollution Prevention Plan” or **“SWPPP”** means a stormwater erosion and sediment control plan, that, when implemented, will decrease soil erosion and offsite nonpoint pollution. It involves both temporary and permanent controls and must be incorporated into the construction grading plans for the project.

“Structure” means an above ground building or other improvement that has substantial manmade features.

“SWCD” means Soil and Water Conservation District.

“Tile Drainage” means an agricultural practice that removes excess water from soil subsurface using buried, perforated tile.

“Tract” means an expanse or area of land or water.

“Upstream” means an area or areas within the District situated or moving in the opposite direction from that in which a stream or river flows; nearer to source.

“USFWS” means the United States Fish and Wildlife Service.

“Wetlands” means as defined by regulatory programs that have their own specific regulatory definition of wetlands. However, generally speaking, wetlands are identified by three (3) factors:

- (1) Soils. Wetlands have mostly hydric soils. These are soils that developed in wet conditions.
- (2) Hydrology. Wetlands have standing water or saturated soil for at least part of the growing season.
- (3) Vegetation. Wetlands have vegetation adapted to wet soil conditions.

Wetlands are classified into two (2) main classification systems in Minnesota regulatory programs:

- (a) Circular 39. The Circular 39 system, developed by the U.S. Fish and Wildlife Service in 1956, divides wetlands in Minnesota into eight (8) types. See “Wetlands in Minnesota,” a document created by the Minnesota Board of Water and Soil Resources, a/k/a “Circular 39 Minnesota Wetland types.” See also Minn. Stat. § 103G.005, subd. 17b.

- (b) Cowardin et al. The Cowardin classification, developed by the U.S. Fish and Wildlife Service in 1979, can be used to classify sub-portions of a wetland. See Lewis M. Cowardin et al., *Classification of Wetlands and Deepwater Habitats of the United States*, U.S. Fish and Wildlife Service (1979).

“Wetland Delineation” means a determination of the regulatory jurisdictional boundary of a wetland. Under the Minnesota Wetland Conservation Act and the Corps of Engineers Section 404 Program, delineations are conducted using the *Corps of Engineers Wetland Delineation Manual*, Technical Report Y-87-1, by Environmental Laboratory, US Army Corps of Engineers Wetlands Research Program (1987) and Regional Supplements to Corps Delineation Manual.

- (1) Delineations using the Wetland Delineation Manual are prepared based on field work, taking into account the three (3) parameters of soils, hydrology, and vegetation.
- (2) Under the DNR Public Waters Permit Program, the jurisdictional boundary of a wetland is the Ordinary High-Water Level (OHWL). Information on determining the OHWL can be found in “Guidelines for Ordinary High-Water Level (OHWL) Determinations,” Minn. Department of Natural Resources (1993).

“Work” means exertion or effort directed to produce or accomplish something, including but not limited to, construction, maintenance, repair, or improvements.

“Works” means construction or engineering projects.

2.2 Interpretation.

- A. The headings of articles and sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of the Rules.
- B. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined.
- C. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms.
- D. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.”
- E. The word “will” shall be construed to have the same meaning and effect as the word “shall.” Both terms shall be construed to indicate a mandatory state or condition.
- F. The word “may” shall be construed to indicate a permissive state or condition.

- G. The words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to the Rules in its entirety and not to any particular provision hereof.
- H. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” mean “to and including.”
- I. All distances, unless otherwise specified, shall be measured horizontally.

III. PERMITS

- 3.1 Policy. The District's permit requirements are not intended to delay or inhibit development. Rather, permits are needed so that the Managers are kept informed of planned projects, can advise and in some cases, provide assistance, and can ensure that land disturbing activity and development occurs in an orderly manner and in accordance with the current Comprehensive Watershed Management Plan. The Managers may approve, conditionally approve, or deny a permit under the procedure outlined in this article. All interpretations of the Rules and permit decisions under the Rules will incorporate and be consistent with District purposes set forth in Minn. Stat. § 103D.201.
- 3.2 Permit Officer. The Board shall designate a person to serve as permit officer. The permit officer will facilitate the permit review process and have the authority to deem a permit application incomplete, to require the applicant to provide additional information, and to use all District resources, including the District's engineer, attorney, and individual Managers, in the application review. The permit officer may approve, conditionally approve, or deny an uncontested or simplistic permit, or submit the permit application to the Managers for review and consideration.
- 3.3 Actions Requiring Permits. The following actions shall not be commenced before the issuance of a permit by the Bois de Sioux Watershed District Board of Managers:
- A. The installation of new or improvement of existing public and private drainage systems, including surface and subsurface systems, excluding routine maintenance.
 - B. The alteration, removal, or reconstruction of any public or private drainage system.
 - C. The installation of agricultural best management practices that require land alteration including surface tile intakes, terraces waterways, and diversions.
 - D. Landforming, which is the reshaping of surface topography, excluding routine farming operations, on a given tract of land.
 - E. The installation of new surface tile intakes and catch basins.
 - F. The installation or alteration of drainage structures which will increase the capacity of the structure.
 - G. The disposal of snow within the shore impact zone of streams, lakes, creeks, and rivers.
 - H. The creation of one (1) acre or more of impervious surface.
 - I. The creation of an artificial drainageway across a watershed and thereby delivering water into another sub-watershed.
 - J. The diversion of water by any artificial means into any public drainage system from land not assessed into said drainage system, and the excavation, shaping, removal

of soils, fence lines, or other natural or artificial structures affecting the flow of water into any public drainage system from land not assessed into said drainage system.

- K. The draining, filling, or alteration of natural waterways, streams, lakes, marshes, or wetlands, including the bed, banks, or shores. Wetland activities may also be subject to the Minnesota Wetland Conservation Act and a variety of other local, state, and federal regulations.
- L. The construction, alteration, improvement, or removal of a dike.
- M. The alteration, construction, removal, or abandonment of a reservoir or impoundment of water.
- N. The construction, reconstruction, repair, or replacement of a bridge, culvert, or drain laid in, to, or across any natural, legal, or private drainageway or through any public or private road embankment resulting in a change in elevation or hydraulic capacity.
- O. The construction, reconstruction, removal, or repair of any structure or drainage system that will disturb the sixteen and one-half foot (16.5') buffer along an open ditch in a county in which the District is the drainage authority.
- P. The performance of other actions that may adversely affect ground water or surface water quality or quantity in the district.
- Q. The alteration of a public road resulting in a change in elevation of the road surface or a change in the dimensions of the adjacent ditches.
- R. The installation of field approaches, driveways, or other embankments with or without culverts.
- S. The sections above notwithstanding, a permit from the District is not required:
 - (1) To perform maintenance on an existing drainage way or field drain, so long as the work does not remove clay or virgin soils or alter the original alignment, depth, or cross-section of the drainageway.
 - (2) To repair or replace tile (replace with the same size) within a private drainage way without altering the system invert.
 - (3) To disturb surface soils in the course of ordinary cultivation or other agricultural activity.
 - (4) To repair or restore a dike system to its original configuration.
 - (5) To create stock ponds for livestock or wildlife.

- 3.4 Permit Responsibility. A contractor, equipment operator, or landowner is responsible to ascertain whether a permit is required by the Rules and, if so, that it has been obtained. Failure of a contractor, equipment operator, or landowner to verify the existence of a permit will subject that contractor, equipment operator, or landowner to civil fines, remediation costs, injunctive relief, potential litigation, and criminal penalties.
- 3.5 Standard Permit Procedure. The following procedure must be followed to obtain a permit from the District:
- A. Any person, agency of the State, or political subdivision undertaking an activity for which a permit is required by the Rules must first submit a permit application. The application must be submitted on the form provided by the District and must include all exhibits required by the permit application. Application forms are available on the District's website and must be signed by the applicant and landowner. Landowner and applicant signatures will be accepted by mail, electronic mail, hand delivery, or by facsimile to allow for the review process set forth herein to begin.
 - B. Permits must be on file at the District's office at least ten (10) days prior to the next regular meeting in order to be considered at that meeting. The permit officer or the Board shall act upon an application for a permit within sixty (60) days after the application is determined to be complete in accordance with Minn. Stat. § 15.99. An applicant may withdraw an application at any time.
 - C. The permit officer may approve, conditionally approve, or deny an uncontested or simplistic permit. Upon making a decision, the permit officer must give written notice to the applicant.
 - D. The permit officer may direct any contested, non-conforming, or complex permits to the Board for their review and consideration. The applicant will be notified of the date the permit will be acted upon by the Board. The applicant, and any interested landowner, has the opportunity, but not the obligation, to provide testimony and any evidence or documentation supporting approval or denial of the permit. The documentation may be provided before the meeting to allow the Board an opportunity to review the materials.
 - E. The Board may then take the following action after hearing testimony and reviewing supporting evidence and/or documentation:
 - (1) Approve, conditionally approve, or deny the permit;
 - (2) Request additional information; and/or
 - (3) Request that the landowners work together to develop a compromise on any contested portion of the permit and return to a regular or special meeting to discuss the compromise.

- F. If a permit application is approved, conditionally approved, or denied, the applicant or an interested landowner may, within thirty (30) days thereafter, appeal the decision of the Board as provided under Minn. Stat. § 103D.537.
- G. It is important to note that obtaining a permit from the Board does not relieve the applicant from the responsibility of obtaining any other authorization required. Upon successfully obtaining a permit, the applicant is authorized to proceed with the action requiring the permit.
- H. A permit is valid for three (3) years from the date the permit is issued, with or without conditions, unless specified otherwise or unless the permit is suspended or revoked. Any infrastructure constructed with a permit can be maintained beyond three (3) years without renewal of the permit, but if any additional work is to be conducted outside the scope of the original approved permit, another permit or a renewal must be requested from the District. Permit extensions of three (3) years may be granted by the Board or permit officer or his/her designated agent. Additional conditions may be added to the permit when an extension is granted.
- I. The District may suspend or revoke a permit issued under the Rules if the permit is issued based on incorrect information supplied to the District by the applicant.
- J. Nothing in this provision requires the Board to issue a permit to a landowner who does not meet permitting criteria or limits the District's ability or remedies to require removal or blockage of drainage installed that is not permitted or installed in violation of permit conditions.
- K. A future permit may not be issued to an applicant who is in violation of the Rules or a previously issued District permit until the violation has been remedied to the sole satisfaction of the District.

3.6 After-the-Fact Permit Procedure. In addition to the standard permit procedure, the landowner is responsible for complying with the following procedure for after-the-fact permits:

- A. After-the-fact permits for any action taken on the land for which a permit is required but not obtained prior to taking that action, may be subject to a fee of Two Hundred Fifty Dollars (\$250), in addition to administrative, engineering, and legal fees associated with processing and reviewing the after-the-fact permit. The landowner is responsible for paying the Two Hundred Fifty Dollar (\$250) after-the-fact permit fee upon application for the permit. Additional administrative, engineering, and legal fees must be paid upon final decision from the Board regardless of whether the after-the-fact permit is approved, conditionally approved, or denied. Failure to pay these fees within thirty (30) days' written notice of the Board or District staff may result in the Board taking legal action.
- B. If the landowner fails to execute an after-the-fact permit application and pay the after-the-fact permit fee within thirty (30) days after notice of violation is sent to the landowner by US mail, and fails to make any and all changes necessary to be in

compliance with any of the Rules, drainage law, or permit requirements, an additional fee of One Hundred Dollars (\$100) per month, or any fraction of a month, shall be added to the after-the-fact permit fee application, in addition to administrative, engineering, and legal fees associated with processing and reviewing the after-the-fact permit.

- C. In addition to the remedies provided in Minn. Stat. § 103D.545, and other remedies provided for in these Rules, in those instances where work has been performed before a permit has been approved, the District may require that the property be returned to its original condition before consideration of the after-the-fact permit application.

3.7 Permit Conditions. A permit may be approved subject to reasonable conditions to assure compliance with the requirements and intent of the Rules and address site-specific or activity-specific concerns. All conditions of the permit, to the greatest extent possible, must be satisfied before the permit is deemed to be issued and the applicant can begin work.

- A. Inspections. Inspections may be required to ensure that the applicant complies with the conditions of the permit. By requesting or receiving a District permit, an applicant affirmatively grants the District a right of entry onto the landowner's property for the purpose of performing required site inspections.
- B. Other Permissions. Obtaining required permissions (NPDES permit, wetland determination, public waters permit, road authority permit, impacted landowner signature, etc.) is the sole responsibility of the permit applicant/landowner.
- C. Alteration of Watercourses. A permit for channelization of watercourses and lakeshore alterations will, at a minimum, require that the exposed banks be mulched and seeded and that all spoil piles be seeded.
- D. Best Management Practices. A permit for agricultural best management practices that have not been designed by the Natural Resource Conservation Service or Soil and Water Conservation District will, at a minimum, require that measures are taken to minimize the erosion of soil and deposition of sediment.
- E. Snow Disposal. A permit for disposal of snow within a shoreland impact zone may be issued provided the disposal conditions will not pollute surface water or ground water and no other adverse conservation or water management concerns exist.
- F. Impervious Surfaces. A permit for creation of impervious surface will, at a minimum, require the submission of plans utilizing standards and procedures for controlling runoff rates, nutrients, and sediments as described by Minnesota Pollution Control Agency. Wetlands may be incorporated to reduce the rate of runoff and improve the quality of discharge.

3.8 Permit Fees. The District may charge applicants a permit fee in accordance with State law and a schedule maintained by the Board of Managers to ensure that permit fees cover the District's actual costs of administrating and enforcing permits. Fees will also cover actual

costs related to field inspections, administrative, engineering, and/or legal costs of permitted projects, such as investigation of the area affected by the proposed activity, analysis of the proposed activity, services of consultants, and any required 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. The fee provided for in this section will not be charged to any agency of the United States or of any governmental unit or political subdivision of the State of Minnesota.

3.9 Financial Assurance.

- A. The Managers, at their discretion, may require an applicant to file a bond, letter of credit, or other escrow deposit in a form approved by the District as a condition of permit issuance. The amount of the financial assurance required will be set in accordance with a schedule established and maintained by the Board of Managers by resolution. The District may require that the District be named as a beneficiary in the financial assurance of the agency's contractor. When the permitted activities are certified as having been completed in compliance with the District permit and the Rules, the financial assurance will be released.
- B. If the District determines that the permitted activities have not been completed in compliance with the District permit and the Rules, the Board of Managers may determine that the assurance is forfeited, and the District may use the funds to take such actions the District deems necessary to bring the subject property into compliance with the District permit and the Rules, to prevent or mitigate harm to protected resources or other property, to abate or restore damages, or otherwise to ensure conditions in compliance with an applicable District permit and/or the Rules. If financial assurance funds prove insufficient to complete the necessary work, the District may complete the work and assess the permit holder and/or landowner for any excess costs.
- C. Financial assurance will not be required of any agency of the United States or of any governmental unit or political subdivision of the State of Minnesota.

3.10 Project Agreement. The Board may require that an applicant and landowner, including any mortgagee, enter into an agreement with the District which includes but is not limited to the following provisions: specify responsibility for the construction and future maintenance of approved structures; document other continuing obligations of the applicant or landowner; grant reasonable access to the property for inspection, monitoring, and enforcement purposes; affirm that the District or other political subdivisions can require or perform necessary repairs or reconstruction of such structures; require indemnification of the District for claims arising from issuance of the permit or construction and use of the approved structures; and reimburse the reasonable costs incurred to enforce the agreement. Permits and agreements may be filed for recording with the county recorder to provide notice of the conditions and continuing obligations. When a permit is conditionally approved upon the applicant entering into an agreement with the District, the agreement must be executed before the permit is deemed to be issued and the applicant can begin work.

3.11 Variations. The Board may hear requests for variances from the provisions of the Rules in the rare circumstances where strict enforcement would cause undue hardship because of conditions unique to the property under consideration and not created by the landowner. The Board may grant a variance in the rare circumstances where it is demonstrated that such action will be consistent with the spirit and intent of the Rules. Such a request must be addressed to the Board as part of a permit application. In order to grant a variance, the Board must find that the request meets all of the following four (4) standards:

- A. Special conditions apply to the landowner's property that do not apply generally to other property in the District.
- B. Because of the unique conditions of the property involved, undue hardship to the applicant will result, as distinguished from mere inconvenience, if the strict letter of the Rules is carried out. Economic considerations alone shall not constitute undue hardship if any reasonable use of the property exists under the terms of the District's Rules.
- C. The proposed activity for which the exemption is sought will not adversely affect the public health, safety, and welfare; will not create extraordinary public expense; and will not adversely affect water quality, water control, or drainage in the District.
- D. The intent of the District's Rules is met.

A variance expires when the permit with which it is associated expires without construction. A violation of any condition of a permit where an exemption has been granted will automatically terminate the variance.

3.12 General Permits and Exceptions.

A. District-Wide General Permits. The District may issue District-wide general permits, approving certain routine activities or specific classes of projects where a standard design has been approved by the District, as long as the work is conducted in compliance with applicable District Rule requirements.

(1) Each District-wide permit will be subject to such specific requirements as the Board may establish.

(2) The District will hold a hearing before any District-wide permit is issued or renewed.

B. Public Culverts. Public corporations within the District may replace approach culverts or centerline culverts without an individual permit, subject to the following conditions:

(1) Existing eighteen inch (18") or smaller culverts may be replaced with eighteen inch (18") culverts. The cross sectional area of the pipe must not exceed the equivalent of one (1) eighteen inch (18") diameter pipe;

- (2) Existing culverts of any size may be replaced without a District permit if the replacement has the same capacity and is set at the same grade;
 - (3) The culvert must be installed on public right of way; and
 - (4) The culvert must be designed and installed according to generally accepted engineering design principles.
- C. Private Culverts. Landowners may replace existing eighteen inch (18”) or smaller culverts with eighteen inch (18”) culverts. The cross sectional area of the pipe must not exceed the equivalent of one (1) eighteen inch (18”) diameter pipe.
- D. Construction of NRCS Standard Water and Sediment Control Basin.
- (1) Landowners within the District may construct NRCS standard water and sediment control basins without obtaining an individual permit, but they must comply with the following conditions:
 - (a) The facility must be designed by NRCS in accordance with all current applicable standards and constructed in accordance with NRCS specifications.
 - (b) The upstream drainage area cannot exceed forty (40) acres.
 - (c) The maximum height of the dam must not exceed fifteen feet (15’).
 - (d) The pool capacity must be sufficient to handle runoff from a ten (10) year, twenty four (24) hour rainfall event without overtopping the embankment or emergency spillway.
 - (e) A project completion form, with plans and specifications attached, must be signed by the landowner of the parcel and the NRCS representative, certifying construction in accordance with the above conditions, and filed with the District.
 - (f) The elevation of the top of the dam must be below the field elevation of all adjacent upstream property lines.
 - (2) The landowner must obtain an individual District permit before abandoning, removing, or modifying the facility.
- E. Construction of SCS Standard 600 Terrace. Landowners within the District may construct the above type-facility without obtaining an individual permit, but they must comply with the following conditions:
- (1) The facility must be designed by Soil Conservation Service (“SCS”) in accordance with all current applicable SCS standards and specifications.

- (2) The capacity must be sufficient to control runoff from a ten (10) year, twenty-four (24) hour storm without overtopping.
- (3) An adequate vegetated or underground outlet must exist. Soil infiltration may be used as an outlet if it is known it will function properly.
- (4) File a project completion form with the District, with plans and specifications attached. The form must be signed by the landowner and SCS representative certifying construction in accordance with the above conditions.
- (5) The landowner must obtain an individual District permit before abandoning, removing, or modifying the facility.

3.13 Miscellaneous.

- A. The District is subject to the time deadlines set forth in Minn. Stat. § 15.99 for agency actions.
- B. All permits, when issued, shall be officially acknowledged as approved by the Board of Managers or their designee(s).
- C. Work, actions, or activities requiring a permit shall not be commenced prior to the issuance of a permit.
- D. A plat or drawing shall accompany the application, and the Managers reserve the right to request additional information. If digital designs for any project are available, the applicant must submit such designs with the application.
- E. When an incomplete application is received, the District's staff will communicate in writing with the applicant that information is missing from the permit application.
- F. A permit applicant and/or landowner consents to entry and inspection of the subject property by the District and its authorized agents at reasonable times as necessary to evaluate the permit application or determine compliance with the requirements or conditions of a District permit or the Rules.
- G. A District permit is permissive. Obtaining a permit from the District does not relieve the applicant from responsibility of complying with any procedures or approvals that may be required by Minn. Stat. Chapter 103D or Chapter 103E or other drainage laws, nor does it relieve the applicant from responsibility for obtaining authorizations required, if any, by other regulatory bodies or property owners where the activity occurs.
- H. Approval of a permit for one (1) component of a project shall not be deemed a waiver by the District of the right to take enforcement on any other illegal or non-conforming aspects of an applicant's work or project. The scope of the permit

approval is limited to the scope of the specific activity requested in the permit application.

- 3.14 Permit Violations. Any violation of a permit or permit conditions may result in the Board taking one (1) or more of the following actions:
- A. The permit may be revoked or suspended.
 - B. The landowner or applicant may be required to return the property to its original condition before the permit application was considered.
 - C. Unless specifically stated otherwise, if the landowner or applicant fails to make any and all changes necessary to be in compliance with any of the Rules, drainage law, or permit requirements within thirty (30) days after notice of violation is sent to the landowner or applicant by US Mail, the Board may charge and assess a non-compliance fee of One Hundred Dollars (\$100) per month, or any fraction of a month, in addition to administrative, engineering, and legal fees associated with processing and reviewing the permit.
 - D. Enforce remedies provided pursuant to Minn. Stat. § 103D.545 and other remedies provided for in these Rules, specifically those enumerated under Article VIII herein.

IV. SURFACE DRAINAGE AND FLOOD MITIGATION

- 4.1 Policy. It is the policy of the Board to promote the use of the waters and related resources within the District in a provident and orderly manner to improve the general welfare and public health and safety for the benefit of the District's present and future residents. Further, it is the policy of the Board to regulate new construction, improvement, repair, and maintenance of legal and private drainageways for the following purposes:
- A. Preserve the capacity of existing and future drainage systems;
 - B. Improve water quality and minimize flooding;
 - C. Avoid cumulative regional adverse impacts as a result of improved drainage;
 - D. Minimize the loss of drainage opportunities within the District's jurisdiction;
 - E. Avoid drainage conditions that cause, or aggravate, erosion or sedimentation of downstream drainageways or water bodies; and
 - F. Ensure that parties responsible for accumulation of debris, soil, and sediment in drainageways maintain those drainageways.

Every person shall use their land reasonably in disposing of surface water and may use a natural drainageway for all the surface water that would drain naturally. The natural flow of surface water must not be obstructed so as to cause an overflow onto the property of others without just compensation paid to the impacted landowners for any necessary flowage easements.

- 4.2 Regulation. The District's legal authorities allow the Board to control waterways, impoundments, and drainage systems within the District and engage in enforcement actions against the activities identified herein:
- A. A person or public corporation shall not allow an artificially or naturally created obstruction on their property to impede the flowage within a waterway or cause an impoundment to be created on adjoining property without a permit from the District.
 - B. A person who allows dirt and sediment to blow from his/her land into a private drainage system is responsible for removal of the same.
 - C. Surface water shall not be artificially removed from the upper land to and across lower land without adequate provision being made on the lower land for its passage.
 - D. Any parcel subdivision not covered by existing county flood plain regulations that includes land abutting upon any lake or stream within the District or which includes any land within a floodplain within the District shall be submitted to the Board for their approval to ensure the protection of the bed, banks, and shore of said lakes or

streams from improper encroachment for the purpose of preventing erosion, pollution, and alleviating damage by flooding.

- E. To control and alleviate soil erosion and siltation of watercourses of the District:
- (1) All watercourses therein shall be constructed with a side slope as determined by proper engineering practice, so as to reasonably minimize soil slippage erosion, giving due consideration to the intended capacity of the watercourse, its depth, width, and elevation, and the character of the soils through which the drain passes.
 - (2) Water inlets, culvert openings, and bridge approaches shall have adequate shoulder and bank protection in order to minimize soil erosion
- F. A landowner or occupant shall not destroy any portion of the required sixteen and one-half foot (16.5') buffer strip on ditch systems where they have previously been established. Where buffer strips have been partially or completely destroyed, landowners will be required to restore the destroyed area to the original specifications at their own expense. If not restored after receiving proper notice with a reasonable, attainable restoration date, the necessary work will be performed by the District and the costs subsequently billed to or collected with the landowner's real estate taxes in the following year.
- G. In the interest of sanitation and public health and to prevent the pollution of waters of the District, all septic tanks and drain fields which outlet directly or indirectly into the waters of the District shall be constructed and maintained in accordance with the rules and recommendations of the State Board of Health and the Minnesota Pollution Control Agency. Septic tanks or other waste disposal facilities shall not outlet into any project, river, stream or public or private drainage system except as authorized by permits of the State Board of Health, Minnesota Pollution Control Agency, and/or the District. Refuse, garbage, or noxious materials may not be dumped in or within fifty feet (50') of any project, river, stream, or public or private drainage system within the District or be placed in such a manner as to be potentially cast into these same systems by flowing water.
- Construction of new legal drainage systems or improvements to existing legal drainage systems shall be administered by the District. Copies of plans and specifications for the repair or alteration of any drainage system shall be submitted and approved by the Board before construction may begin. Repairs of an emergency nature on a drainage system by a political subdivision may be undertaken without a permit; however, the District must be notified of the proposed work and a reason given for the emergency nature of the action.
- H. Flap gates, where installed, shall typically remain closed, unless operated in accordance with a plan approved by the District.
- I. The requirements of the Rules are in addition to other applicable laws and procedures, including those of Minn. Stat. Chapter 103E. The Rules are to provide

for management of waters in the public interest and they do not displace in whole or part any private legal rights a landowner or other person may have with respect to the use and drainage of waters.

4.3 Crossings and Culverts – Legal Drainage Systems.

A. Private Crossings of Legal Drainage Systems.

(1) Replacement Crossings.

- (a) The District desires to encourage the consolidation of private crossings where at all practical, as all culverts restrict the flow of water and, thus, the efficiency of the drainage systems to some degree.
- (b) When a private landowner seeks to replace a crossing on a drainage system, the private landowner must obtain a permit from the District to ensure proper elevation, capacity, and overall conformance with the drainage system's design. Culvert capacity shall meet the Basin Technical and Scientific Advisory Council Briefing Paper No. 3 guidelines.
- (c) If the District determines the replacement is necessary and where there exists no more than one (1) private crossing per mile along the section where the crossing is located, the District will pay for the cost of the culvert material from the drainage system fund, less the cost of a twenty-four inch (24") culvert. The landowner is responsible for all installation costs, other materials such as granular fill and surface gravel, fill material, riprap, and maintenance.
- (d) If the District determines the replacement is necessary and where there exist two (2) private crossings in a mile where the crossing is located, the District will pay for seventy-five percent (75%) of the culvert material from the drainage system fund, less the cost of a twenty-four inch (24") culvert. The landowner is responsible for all installation costs, other materials such as granular fill and surface gravel, fill material, riprap, and maintenance.
- (e) In the event replacement is requested where there exists more than two (2) private crossings in the mile, the application will be evaluated by the District giving consideration to all relevant circumstances, including the necessity for the crossing. In the event the District determines the crossing is necessary, the District may participate in the replacement costs at its discretion, but in no event, shall the District pay more than seventy-five percent (75%) for the culvert material.

- (2) **New Private Crossings.** When a private landowner seeks to install a new private crossing on a drainage system, the private landowner shall obtain a permit from the District. Permit applications for new private crossings over drainage systems shall be considered by the Board and evaluated on a case by case basis, and the landowner carries the burden of establishing that there is a practical need and necessity for said crossing and that there is no reasonable alternative. If the Board determines that there is a need and necessity for a new private crossing, it may, at its discretion, participate in the structure cost on the same terms and conditions set forth for its participation in the cost of replacement structures.
- B. **Public Road Crossings of Legal Drainage Systems.** When a road authority seeks to replace a crossing on a legal drainage system, the road authority shall obtain a permit from the District to ensure proper elevation, capacity, and overall conformance with drainage system design. Minn. Stat. § 103E.721 shall be followed, which states the road authority is responsible for all project costs.
- C. **Side Inlet Culverts of Legal Drainage Systems.** When a private landowner or road authority seeks to install or replace a side inlet culvert to a legal drainage system, a permit from the District is required. When a private landowner or road authority initiates a side inlet culvert installation, the landowner or road authority is responsible for project costs and maintenance. The District, if the drainage authority may, at its discretion, provide cost share dollars from the legal drainage system fund to the landowner or road authority which initiated side inlet culvert installations. The amount of cost share funds will be determined based on the availability of funds. In the case of a drainage authority led project, the drainage authority shall pay for all side inlet project costs and maintenance. Capacity of side inlet culverts shall meet the requirements of the District.

V. SUBSURFACE DRAINAGE

- 5.1 Policy. The Board encourages practices for the sound construction and management of subsurface drainage systems in order to minimize downstream flooding and to optimize water storage and agricultural productivity.
- 5.2 Regulation. Any person that desires to install, alter, or construct any subsurface drainage system may not do so without obtaining a permit from the District.
- 5.3 Additional Permit Considerations. In addition to the general permit requirements set forth in Article III, the following shall apply to subsurface drainage:
- A. Subsurface drainage applications which propose the drainage of water into a different sub-watershed basin other than the existing surface drainage pattern may be brought to the Board for review and approval.
 - B. Applicants and designers are encouraged to develop systems with controls that allow for the project to be “shutoff” during periods of flooding. Projects that include controls which allow for the system to be “shutoff” when necessary are not restricted by drainage coefficient limitations. Projects that do not include controls are restricted to a quarter inch (1/4”) per day drainage coefficient at the outlet, including projects with surface inlets.
- 5.4 Standard Conditions. Any subsurface permit issued by the District will be subject to the following conditions unless specifically noted on the permit approval.
- A. Applicant is responsible to obtain approval from other drainage authorities for outlets to any legal ditch not under the District’s jurisdiction.
 - B. Applicant is responsible for adequate erosion control measures at the outlet of a system. This should include the installation of riprap or other protection measures at pump outlets as appropriate. It will remain the responsibility of the applicant to maintain this protection. If erosion anywhere in the system causes the system to be exposed, the applicant or landowner can be ordered to repair erosion, reinstall the system, or remove the system.
 - C. Applicant is responsible to ensure that all gravity outlets be installed above, but no more than two feet (2’) above, the elevation of the original design gradeline of a receiving ditch or channel.
 - D. Pumps and other associated pipes installed above ground will not block vehicle traffic on the right-of-way of ditch systems or public roads.
 - E. Applicant is responsible to ensure that all disturbed areas in ditch or road right-of-way are restored and reseeded to preexisting conditions.
 - F. Surface inlets are allowed on subsurface tile drainage projects.

- G. All pumps must be turned off, and gates closed, during all times the District determines flood conditions exist downstream. Determinations that flood conditions exist shall be shown on the District’s website. All pump/gate owners and operators are required to either check the website daily or call the District office during the spring runoff and in the event of summer heavy rains.
- H. Gates must be opened at the time of crop harvest and remain open until just prior to spring runoff. At any other time of year, gates may be operated as the operator desires, all subject to the above conditions.
- I. Projects with pump outlets must be “shutoff” if downstream culverts are being impacted by ice buildup due to freezing of tile discharge water.
- J. The District or its agents and representatives are authorized right of entry to the property to perform site inspections to ensure compliance with the Rules, drainage regulations, State drainage law, and permit conditions.
- K. Applicant and landowner signatures at the bottom of the permit along with the following statement: “I accept and agree to comply with the above conditions.”
- L. During the spring snowmelt period, the District will require tile pump and gate closure operations based on regional and local conditions. During all other times of the year, the District will require pump and gate operations based primarily on local conditions. When tile pump and gate closure operations are required, the District will utilize its website to communicate with the public. On an as needed basis, the District Administrator, the District’s engineer, and select Board members will discuss flood conditions, discuss pump and gate operations, post explanations, and update the District website as necessary until operations are no longer warranted.
- M. Pump stations or other tile control structures shall not be placed within the right-of-way of legal ditch systems, or within a distance of sixteen and one half feet (16.5’) from the crown of the ditch; and the outlet pipe buried underground into the side slope of the ditch so long as adequate erosion control measures are utilized without approval of the District, or its designated representative.

5.5 Trap Gates.

- A. Drainage Systems – Drainage Authority. The following applies to drainage systems which the District functions as the drainage authority:
 - (1) The District will consider installing trap gates along the entire drainage system for an overall repair or improvement; however, the District will not install trap gates along drainage systems on a parcel by parcel basis. When the District installs a trap gate, it is considered part of the drainage system infrastructure and will be owned and maintained by the drainage system in the future.

- (2) If a landowner desires to install a trap gate, a permit from the District is required. Individual trap gates are not considered part of the drainage system and therefore will not be owned or maintained by the drainage system. Applicant must sign a “Trap Agreement,” as provided on the District’s website; the agreement must be included in the permit application submittal.
- (3) The District’s drainage inspector will note trap gates that were observed in the field during inspections. Trap gates that are not permitted or installed by the District, as the drainage authority, require a permit and must adhere to all the conditions required for private trap gates along drainage systems. Failure to obtain a permit and adherence to the conditions will result in removal of the trap gate by the District.
- (4) Trap gate installation must not result in greater than a ten (10) year, twenty-four hour (24) event protection for undeveloped property.

B. Legal Drainage Systems – District Not Drainage Authority. The following applies to drainage systems over which the District is not the drainage authority:

- (1) Applicant shall obtain written approval from the drainage authority for individual trap gate installations and the written approval shall be included with the permit application.
- (2) Trap gate installation must not result in greater than a ten (10) year, twenty-four hour (24) event protection for undeveloped property.

C. Non-Legal Drainage Systems.

- (1) An applicant seeking to install trap gates along drainage facilities that are not part of a legal drainage system shall obtain a permit from the District. The applicant, however, is not required to execute and submit a “Trap Agreement.”
- (2) Trap gate installation must not result in greater than a ten (10) year, twenty-four hour (24) event protection for undeveloped property.

VI. MUNICIPAL DRAINAGE

- 6.1 Policy. In order to reduce sediment transport, municipal stormwater drainage will be discharged through wetlands, retention basins, or other treatment facilities, where feasible, prior to release into the receiving bodies of public waters. Maximum utilization will be made of temporary storage areas or retention basins throughout developing areas to maximize upstream storage and to reduce peak discharge flows, erosion damage, and storm sewer construction costs. Open drainage ditches shall make maximum use of vegetation to reduce channel erosion.
- 6.2 Regulation. All projects affecting runoff shall require a permit from the Board. Maintenance of existing facilities, as defined in the Rules, does not require a permit. Installation of interior drainage facilities for previously developed areas will not require a permit provided the area drained is less than five (5) acres.

VII. RIPARIAN PROTECTION AND WATER QUALITY PRACTICES RULE “BUFFER RULE”

7.1 Statutory Authorization and Purpose.

- A. **Statutory Authorization.** The riparian protection and water quality practices defined under the Buffer Rule are adopted pursuant to the authorization and policies contained in Minn. Stat. Chapter 103D and Minn. Stat. § 103F.48 (the “Buffer Law”).
- B. **Purpose.** It is the purpose and intent of the District to establish riparian buffers and water quality practices to:
 - (1) Protect State water resources from erosion and runoff pollution;
 - (2) Stabilize soils, shore, and banks; and
 - (3) Protect or provide riparian corridors.

7.2 General Provisions.

- A. **Coordination and Implementation.**
 - (1) The respective SWCD must assist landowners with implementation of the water resource riparian protection requirements established under the Buffer Law pursuant to Minn. Stat. § 103F.48, subd. 6. Assistance includes planning, technical assistance, implementation of approved alternative practices, and tracking progress toward compliance with the requirements.
 - (2) The Commissioner or the Board must provide sufficient funding to the respective SWCD to implement the provisions of Minn. Stat. § 103F.48.
 - (3) The District will coordinate the implementation and enforcement of the Buffer Rule with the management of legal drainage systems under applicable rules, statutes, policies, and jurisdiction of the District. The District will provide efficient and effective direction to landowners and protection of surface water quality and related land resources upon request.
- B. **Data Sharing – Management.** The District may enter into agreements with any SWCD, BWSR, or other parties with respect to the creation and maintenance of, and access to, data concerning buffers and alternative practices under the Buffer Rule.
- C. **Delegation of Enforcement.** Nothing herein prevents the District from entering into an agreement with any other entity authorized by law to enforce buffer requirements, within its jurisdiction according to the Buffer Law or other properly adopted enforcement rule.

- D. Drainage System Acquisition and Compensation for Buffer. Nothing herein prevents the acquisition and compensation of buffers on legal drainage systems pursuant to law.
- E. Jurisdiction. The provisions of the Buffer Rule apply to legal drainage systems shown on the buffer protection map for which the District is the drainage authority.

7.3 Buffer Requirements.

- A. Buffer Width. Except as otherwise stated herein, a landowner owning property adjacent to a legal drainage system identified on the buffer protection map must establish and maintain a buffer width of at least sixteen and one half feet (16.5’).
- B. Measurement. In any proceeding to establish, construct, improve, or do any work affecting a legal drainage system under any law that appoints viewers to assess benefits and damages, the buffer is 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. In any action by the District that results only in a redetermination of benefits and damages, the required width shall be sixteen and one-half feet (16.5’).
- C. Use of Buffer Area. Except as otherwise stated herein, a buffer may not be put to any use which would remove or prevent the permanent growth of perennial vegetation including, but not limited to, cultivation farming. Harvesting the vegetation from the permanent buffer in a manner not harmful to the vegetation or the legal drainage system is the privilege of the fee owner or assigns.
- D. Exemptions. Land adjacent to waters subject to Minn. Stat. § 103F.48, subd. 3 is exempt from the water resource protection requirements under Minn. Stat. § 103F.48, subd. 3, if it is:
 - (1) Enrolled in the Federal Conservation Reserve Program;
 - (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, and permitted water-oriented structures as provided in the shoreland model standards and criteria adopted pursuant to Minn. Stat. § 103F.211 or as provided for in an approved local government shoreland ordinance;
 - (3) Covered by a road, trail, building, or other structures;
 - (4) Part of a water-inundation cropping system;
 - (5) In a temporary non-vegetated condition due to drainage tile installation and maintenance, alfalfa, or other perennial crop or plant seeding, or construction or conservation projects authorized by a federal, state, or local government unit; or

- (6) Regulated by a national pollutant discharge elimination system/state disposal system (“NPDES/SDS”) permit under Minnesota Rules Chapter 7090, and provides water resources riparian protection in any of the following categories:
 - (a) Municipal separate storm sewer system (“MS4”);
 - (b) Construction storm water (“CSW”); or
 - (c) Industrial storm water (“ISW”).

E. **Alternative Practices.** A landowner practicing cultivation farming may demonstrate compliance with the Buffer Rule by establishing and maintaining an alternative riparian water quality practice, or combination of structural, vegetative, and management practices which provide water quality protection comparable to the water quality protection provided by a required buffer. Included in these practices are retention ponds and alternative measures that prevent overland flow to the water resource. The adequacy of any alternative practice allowed under this section is based on:

- (1) Natural Resources Conservation Service (“NRCS”) Field Office Technical Guide (“FOTG”);
- (2) Practices based on local conditions approved by the SWCD that are consistent with the NRCS FOTG; or
- (3) Other local practices adopted by BWSR.

7.4 Compliance.

- A. **Compliance Determinations.** Compliance with the buffer requirement will be determined on a parcel by parcel basis. The compliance status of each individual parcel will be determined independently.
- B. **Action for Noncompliance.** When the SWCD identifies potential noncompliance with the buffer requirement 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 document compliance status. This may include communication with the landowner, inspection, or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of the evidence gathered in this process, the SWCD may issue a “Notification of Noncompliance” to the District.
- C. **Corrective Actions.**
 - (1) If, pursuant to Minn. Stat. § 103F.48, subd. 7, the SWCD determines a landowner is not in compliance with the Buffer Rule, the SWCD must notify the District and BWSR. The District must then provide the landowner with

a list of corrective actions needed to come into compliance and a practical timeline to meet the requirements of the Buffer Rule. The District must provide a copy of the Corrective Action Notice to BWSR.

- (2) If the District or BWSR determines that sufficient steps have been taken to fully resolve noncompliance, all or part of the penalty may be forgiven.
- (3) A landowner, agent, or operator may appeal the decision to the respective district court as provided under the Minnesota Rules of Court.
- (4) A corrective action is not required for conditions resulting from a flood or other act of nature.
- (5) A landowner, agent, or operator of a landowner may not remove or willfully degrade a riparian buffer or water quality practice, wholly or partially, unless the agent or operator has obtained a signed statement from the landowner stating that the permission for the work has been granted by the unit of government authorized to approve the work in the Buffer Rule or that a buffer or water quality practice is not required as validated by the SWCD. Removal or willful degradation of a riparian buffer or water quality practice, wholly or partially, by an agent or operator is a separate and independent offense and may be subject to the corrective actions and penalties in the Buffer Rule.

D. Service of Notice. The District shall serve the “Corrective Action Notice” by one (1) of the following methods:

- (1) Personal service; or
- (2) Certified mail, return receipt requested. A copy of the notice will also be provided to the respective SWCD and BWSR.

Refusal of the landowner to accept service is not a defense to lack of notice.

E. Proof of Compliance by Landowner. At any time during the process set forth above, the landowner may provide documentation of compliance to the District. The District and SWCD may then review the documentation, inspect the buffer, and evaluate alternative practices to determine if the parcel is in compliance. The District shall then issue a written determination of compliance to the landowner and appropriate county SWCD and BWSR. The SWCD may also issue a validation of compliance if applicable and requested by the landowner.

F. Request for Modification of Corrective Action Notice. After service of a Corrective Action Notice, the landowner may supply information to the District in support of a request to modify a corrective action or the timeline for compliance. The District may, at its discretion, make a written modification to the Corrective Action Notice. Any modification must be served on the landowner in the same manner as Section 6.4(D).

- 7.5 Enforcement. Under authority of Minnesota Statutes, the District may seek remedies against any landowner or responsible party for noncompliance with the Buffer Rule including referral to the county attorney for criminal misdemeanor prosecution in the county where the offense occurred. Violations of the Buffer Rule may be enforced pursuant to Minn. Stat. § 103D.545.
- 7.6 Reporting Documentation. The District shall maintain the following records for any potential violation of the riparian protection and water quality practices requirements, including, but not limited to:
- A. The cause of the violation;
 - B. The magnitude and duration of the violation;
 - C. Documentation showing whether the violation presents an actual or imminent risk to public health and safety;
 - D. Documentation showing whether the violation has the potential to harm the natural resources of the State;
 - E. A record of past violations;
 - F. Efforts by the SWCD, the District, or BWSR to assist the responsible party or parties to become compliant, including written and oral communications with responsible parties; and
 - G. Past and present corrective action efforts by the responsible party or parties.

VIII. ENFORCEMENT

- 8.1 Matter of Enforcement. In the event of a violation, or potential violation, of a District Rule, permit, order or stipulation, or a provision of Minn. Stat. Chapters 103D or 103E, the District may take action to prevent, correct, or remedy the violation or any harm to water resources resulting from it. Enforcement action includes but is not limited to, injunction, action to compel performance, abatement, or restoration, and prosecution as a criminal misdemeanor in accordance with Minn. Stat. §§ 103D.545 and 103D.551.
- 8.2 Investigation of Noncompliance. The District's authorized representatives may enter and inspect property in the District to determine the existence of a violation or potential violation as described in the preceding section.
- 8.3 Preliminary Administrative Compliance Order. The District may issue a preliminary compliance order without notice or hearing when it finds a violation or potential violation, and that the violation or potential violation presents a serious threat of adverse effect on water resources. A preliminary compliance order may require that the landowner or responsible contractor cease the land-disturbing activity; apply for an after-the-fact permit; and take corrective or restorative action. A preliminary compliance order is not effective for more than ten (10) days. District staff are authorized to issue preliminary compliance orders.
- 8.4 Board Hearing – Administrative Compliance Order. After due notice and a hearing at which evidence may be presented, the Board shall make findings. If the Board finds a violation, it may issue an administrative compliance order that may require the landowner or responsible contractor to cease land-disturbing activity; apply for an after-the-fact permit; take corrective or restorative action; reimburse the District for costs under Minn. Stat. § 103D.545, subd. 2; and/or be subject to any other remedy within the District's authority. An administrative compliance order may supersede a preliminary administrative compliance order or may be issued without a prior preliminary administrative compliance order.
- 8.5 Liability for Enforcement Costs. To the extent provided for by Minn. Stat. § 103D.545, subd. 2, a landowner, responsible contractor, or equipment operator is liable for investigation and response costs incurred by the District under the Rules, including but not limited to the costs to inspect and monitor compliance, engineering and other technical analyses costs, legal fees and costs, and administrative expenses.
- 8.6 Contractor Liability. Any individual, firm, corporation, partnership, association, or other legal entity contracting to perform work subject to one (1) or more projects will be responsible to ascertain that the necessary permit has been obtained and that the work complies with the permit, the Rules, regulations, statutes, and any applicable District orders or stipulations. A contractor that, itself or through a subcontractor, engages in an activity constituting a violation or potential violation is not a responsible contractor for purposes of the Rules.