

Buffalo-Red River



Rules 2019

Watershed District

Approved July 8, 2019

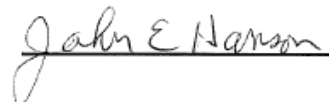
BUFFALO-RED RIVER WATERSHED DISTRICT

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When adopted, these Rules will amend the previous BRRWD Rules dated May 21, 1979.

Approved and signed this 8th day of July, 2019.



John E. Hanson, Secretary

BUFFALO-RED RIVER WATERSHED DISTRICT

SECTION 1 - INTRODUCTION AND GENERAL POLICY

- 1.1 The Rules of the Buffalo-Red River Watershed District (BRRWD) are to accomplish the purposes of *Minnesota Statute, Chapter 103D* and *Minnesota Statute Chapter 103E*, as applicable, and the authority of the Managers therein described. These Rules are deemed necessary to implement and make more specific the law administered by them.
- 1.2 If any part of these Rules is for any reason held to be invalid, such decision shall not affect the validity of the remaining rules.
- 1.3 Changes to these Rules may be made by the Managers. Any interested person may petition the Managers for a change in these Rules.
- 1.4 If any rule is inconsistent with the provisions of *Minnesota Statutes, Chapter 103D, Chapter 103E*, or other applicable law, the provisions of said *Chapter 103D* or other applicable law shall govern.
- 1.5 The Managers accept the responsibility with which they are charged as a governing body. While the Managers have no intention to usurp the authority or responsibilities of other agencies or governing bodies, neither will they shirk their responsibilities. The Managers will cooperate to the fullest extent feasible with persons, groups, state and federal agencies and other governing bodies regarding said Rules.
- 1.6 Through these Rules, the Managers do not intend to divest any persons of any rights without due process and just compensation for any taking.
- 1.7 It is the intention of the BRRWD to manage the waters and related resources within the District in a provident and orderly manner so as to safeguard and assure the general welfare and public health for the benefit of present and future residents.

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SECTION 2 - DEFINITIONS

For the purposes of these 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 shall apply to these Rules unless clearly in conflict, clearly inapplicable, or unless the context makes such meaning unacceptable thereto:

100-YEAR FLOODPLAIN shall mean the beds proper and the area 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 chance of being equaled or exceeded in any given year.

ADMINISTRATOR shall be the person currently designated by the Board of Managers, BRRWD, for running the Watershed office.

BEST MANAGEMENT PRACTICES or **BMPs** prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also 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 shall mean the Board of Managers of the BRRWD.

BRRWD shall mean the Buffalo-Red River Watershed District.

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 shall mean *Minnesota Statutes §103F.48*, or as amended.

BWSR shall mean the Minnesota Board of Water and Soil Resources.

COMMISSIONER shall mean Commissioner of the Minnesota Department of Natural Resources.

CONTAMINANT is a polluting or poisonous substance that makes something impure.

CULTIVATION FARMING shall mean practices that disturb vegetation roots and soil structure, or involve vegetation cutting or harvesting that impairs the viability of perennial vegetation.

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

DESILTATION BASIN, SEDIMENT BASIN, OR STRUCTURE shall mean 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.

DIKE shall mean 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.

DOMESTIC WATER USE shall mean the use of water for common household or farm use.

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DRAINAGE AUTHORITY shall mean the public body having jurisdiction over a drainage system under *Minnesota Statutes Chapter 103E*.

DOWNSTREAM for the purposes of the Rules shall mean an area or areas within the Watershed District situated or moving in the direction in which a stream or river flows.

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

FSA shall mean a Farm Service Agency.

FLOOD is an overflow of water that inundates land that is usually dry.

GENERAL WELFARE shall include the safety or well-being of the general public or benefit the inhabitants of the District. General welfare shall be synonymous with "Public Welfare" or "Public Benefit".

GOVERNMENTAL SUBDIVISION shall mean 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 Clay, Becker, Otter Tail, and Wilkin, and various cities, school districts, and townships or portions thereof that lie within the Watershed District.

GOVERNMENTAL AGENCY shall mean 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 are the United States Department of Agriculture, the Minnesota Board of Water and Soil Resources, the Minnesota Department of Natural Resources, and the Minnesota Pollution Control Agency.

IMPROVE shall have the meaning set forth in *Minnesota Statutes 103E.215, Subdivision 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 is the application of controlled amounts of water for plants at needed intervals.

LANDFORMING shall mean changing any of the natural features of the earth's surface and the reshaping of surface topography to planned grades.

LEGAL DITCH shall mean a ditch established under *M.S. 103E* of the State of Minnesota, and means a Watershed, County, or Judicial drainage system.

MANAGERS shall be the Board of Managers, BRRWD, acting as a Board and not as individuals, unless specifically stated to the contrary.

MAINTENANCE as referred to for dikes, drainage ditches, and sewers shall mean restoring the system as near as practicable to its original condition or as subsequently improved.

MS4 shall be the abbreviation for Municipal Separate Storm Sewer Systems.

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NORMAL HIGH-WATER MARK is a term used in reference to the Buffer Rule and 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.

NRCS shall mean U.S. Department of Agriculture, Natural Resources Conservation Service.

ORDINARY HIGH WATER MARK 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 mark 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 (1W1P) is a program through BWSR that supports partnerships of local governments in developing prioritized, targeted, and measurable implementation plans, pursuant to *Minnesota Statutes Chapter 103B.801*. Plans created through the 1W1P program area called Comprehensive Watershed Management Plans (CWMP) and are defined and described in *103B.801*. Once developed and adopted, a CWMP, as per *103B.802, Subd. 2 (6)* "serve 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 shall mean 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 in real estate, a lot or plot is a tract or parcel of land owned or meant to be owned by some owner(s).

PERMIT, DNR shall be 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 Watershed District.

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

PERSON shall mean any individual, firm, partnership, association, corporation, or limited liability company but does not include public or governmental subdivisions.

PLAN is a map, drawing, report, aerial photograph with annotation, or other similar supportive data for proposed works.

PLANNING REGIONS deal with the placement of land-use activities, infrastructure, and settlement growth across a large area of land. Specific to the BRRWD, there are nine planning regions in the current 1W1P.

PLAT is 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. *Minnesota Statutes §103H.005, Subd. 11.*

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PONDING AREA shall mean 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 as defined at *Minnesota Statutes §103G.005, Subd. 15*, and included within the public waters inventory as provided in *Minnesota Statutes §103G.201*.

RECONSIDERATION means the act of considering something again; review.

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

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

RIGHT-OF-WAY (R/W) shall mean the legal right, established by usage or grant, to pass along a specific route through grounds or property belonging to another. Such as "road" R/W.

RIPARIAN AREA is 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 landforms.

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

One thousand (1,000) feet from an ordinary high water mark of a lake, pond, or flowage as defined per *Minnesota Statutes §103G*.

Three hundred (300) feet from a river or stream.

SHORELAND STANDARDS pertain to local shoreland standards as approved by the Commissioner or, absent such standards, the shoreland model standards and criteria adopted pursuant to *Minnesota Statutes §103F.211*.

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

STORMWATER POLLUTION PREVENTION PLAN or **SWPPP** is 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.

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STRUCTURE shall mean an above-ground building or other improvement that has substantial man-made features.

SWCD shall mean Soil and Water Conservation District.

TILE DRAINAGE shall mean an agricultural practice that removes excess water from soil subsurface using buried, perforated tile.

TRACT an expanse or area of land or water.

UPSTREAM for the purpose of the Rules shall mean an area or areas within the Watershed District situated or moving in the opposite direction from that in which a stream or river flows; nearer to source.

USFWS shall mean the United States Fish and Wildlife Service

WATERSHED DISTRICT shall mean the legally established agency named and referred to as the Buffalo-Red River Watershed District, when the first letters are capitalized. When the word "district" appears without capitalization, it shall mean the lands contained within the boundary of the governmental unit, the Buffalo-Red River Watershed District, as established by the Minnesota Board of Water and Soil Resources in accordance with *M.S. 103D*. See www.brrwd.org for a map of the District.

WETLANDS as defined by regulatory programs that have their own specific regulatory definition of wetlands. However, generally speaking, wetlands are identified by three 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 different types. There are two main classification systems in use in Minnesota regulatory programs:

Circular 39. The *Circular 39* system, developed by the U.S. Fish and Wildlife Service in 1956, divides wetlands in Minnesota into eight types. See "Wetlands in Minnesota"

(https://bwsr.state.mn.us/sites/default/files/2018-12/WETLANDS_delin_Circular_39_MN.pdf).

See also *Minn. Stat. §103G.005, Subd. 17b*.

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).

(<https://www.fws.gov/wetlands/Documents/Classification-of-Wetlands-and-Deepwater-Habitats-of-the-United-States.pdf>).

WETLAND DELINEATION is a determination of the regulatory jurisdictional boundary of a wetland. Under the *Minnesota Wetland Conservation Act* and the Corps of Engineers Section 404 Program,

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delineations are conducted using the 1987 United States Army Corps of Engineers *Wetland Delineation Manual* and applicable regional supplements.

See

<https://www.lrh.usace.army.mil/Portals/38/docs/USACE%2087%20Wetland%20Delineation%20Manual.pdf>

https://www.usace.army.mil/missions/civilworks/regulatoryprogramandpermits/reg_supp.aspx

Delineations using this manual are prepared based on field work, taking into account the three parameters of soils, hydrology, and vegetation.

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).

See https://files.dnr.state.mn.us/waters/surfacewater_section/hydrographics/ohwl.pdf

WORK is exertion or effort directed to produce or accomplish something.

WORKS is used to describe construction or engineering projects.

"**SHALL**" & "**MAY**" as used in these Rules shall be construed to indicate a mandatory and a permissive state or condition, respectively.

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SECTION 3 - PERMITTING PROCEDURES, FEES AND FINANCIAL ASSURANCES

- 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 *Revised Watershed Management Plan (RWMP)* or the *One Watershed, One Plan (1WIP)* for the District. All interpretations of these Rules and permit decisions under these Rules will incorporate and be consistent with District purposes set forth in *Minnesota Statutes, §103D.201*.
- 3.2 **PERMIT REQUIREMENT.** Any person or agency of the State of Minnesota or political subdivision undertaking an activity for which a permit is required by the District Rules must first submit a permit application. The application must be submitted on the form provided by the District or the substantial equivalent and must include all exhibits required by the applicable District rule(s). Application forms are available on the District's website at <http://www.brrwd.org/permits>.
- A. The BRRWD is subject to *M.S. 15.99*, time deadlines for Agency actions.
 - B. All permits, when issued, shall be officially acknowledged as approved by the Board of Managers or their designee(s).
 - C. No works, use, or activities requiring a permit shall be commenced prior to the issuance of a permit.
 - D. Permit application forms may be completed and filed at the District's office at 1303 4th AVE NE, Barnesville, MN, on the BRRWD's website at <http://www.brrwd.org/>, or mailed to: Buffalo-Red River Watershed District, PO Box 341, Barnesville, MN 56514.
 - E. Permits must be on file at the District's office at least ten (10) days prior to the regular semimonthly meeting to be considered at that meeting.
 - F. Application for a permit will be acted upon within sixty (60) days from the date the Managers receive the application, or otherwise handled in accordance with *M.S. 15.99*.
 - G. A plat or drawing shall accompany the application. The Managers may request additional information
 - H. Applicant will be notified of the date the permit will be on the BRRWD meeting agenda. Applicant has the opportunity, but not the obligation, to explain and encourage approval of the permit. Any opponents will be afforded an opportunity to voice concerns at the board meeting when the permit is considered or to submit concerns in writing to the Board before the meeting.
 - I. Work performed within the MS4 boundary, as shown on the BRRWD's website at www.brrwd.org, will be required to follow the procedures set forth in **SECTION 9 - MS4 REGULATIONS**.
 - J. The Board of Managers will make permit decisions, except as may be delegated to staff or the District engineer by written resolution. The Board will review a staff permit decision on the applicant's request. The District may approve or deny an application and may impose reasonable

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conditions on approval. Conditions may include, consistent with the Rules, requirements for financial assurances and maintenance agreements or declarations, and may require that these documents be properly executed or recorded before permit issuance.

- K. A permit is valid for one (1) year from the date the permit is approved, 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 one year 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. The Board of Managers can delegate to BRRWD Staff the ability to renew or extend permits beyond one (1) year.
- L. To renew or transfer a permit, the permittee must notify the District in writing prior to the permit expiration date and provide an explanation for the renewal or transfer request. The District may impose different or additional conditions on a renewal or deny the renewal in the event of a material change in circumstances, except that on the first renewal, a permit will not be subject to additional or different requirements solely because of a change in District Rules. New or revised rule requirements will not be imposed on renewal of a permit where the permittee has made substantial progress toward completion of the permitted work. If the activities subject to the permit have not substantially commenced, no more than one renewal may be granted. An applicant wishing to continue to pursue a project for which permit approval has expired must reapply for a permit from the District and pay the applicable fees.
- M. A permittee may assign a permit to another party only upon approval of the District, provided:
 - 1) the proposed assignee agrees in writing to assume responsibility for compliance with all terms, conditions, and obligations of the permit as issued;
 - 2) there are no pending violations of the permit or conditions of approval;
 - 3) the proposed assignee has provided any required financial assurance deemed necessary by the District to secure performance of the permit; and
 - 4) the District may impose different or additional conditions on the transfer of a permit or deny the transfer if the proposed transferee has not demonstrated the ability to perform the work under the terms of the permit as issued. Permit transfer does not extend the permit term. The District may suspend or revoke a permit issued under these Rules if the permit is issued based on incorrect information supplied to the District by the applicant.
- N. The Managers can further require, as a condition of a permit, that they be notified when the permitted activity is completed.
- O. A permit applicant 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 of a District permit or rule(s).
- P. A District permit is permissive. Obtaining a permit from the District does not relieve the applicant from responsibility to comply with any procedures or approvals that may be required by *Minnesota Statutes 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.

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- Q. Approval of a permit for one 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.

3.3 **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.

- A. Each district-wide permit will be subject to such specific requirements as the Board may establish.
- B. The BRRWD will hold a hearing before any district-wide permit is issued or renewed.

3.4 A Board of Manager's decision is deemed their final decision, unless, within 5 days of the Decision, the applicant requests reconsideration of the decision by the Board. To request reconsideration, the applicant must file at the District's office a *Request for Reconsideration* on a form provided by the District including a written description of what aspect of the decision should be reconsidered and written information underscoring why the decision should be reconsidered. The Board will consider whether to grant the Request for Reconsideration at the next meeting. If the Board elects to allow reconsideration and set another opportunity for the applicant to present evidence to the Board, the permit will be deemed denied, unless overturned by the Board at a hearing within 60 days of approving the Request for Reconsideration, for the purposes of *Minnesota Statutes §15.99*.

- A. The District will give the applicant due notice of when the Board of Managers will reconsider the permit decision. The District will not take longer than 60 days from its receipt of the Notice of Reconsideration to issue a final decision including reconsideration, unless a further extension is approved by the applicant, or is permissible under *Minnesota Statutes §15.99*, i.e., if more information is timely requested by the District on the reconsideration, then the 60 days starts over per *Minn. Stat. §15.99* upon receipt of such information.
- B. District costs incurred for reconsideration are permit administration costs for which an applicant may be responsible under Section 3.5 of this Rule.

3.5 **PERMIT FEE.** 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, legal, or engineering 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 Rule will not be charged to any agency of the United States or of any governmental unit or political subdivision of the State of Minnesota.

3.6 **"AFTER THE FACT" PERMIT.** An "After The Fact" permit may be considered by the District and granted to an individual, if the "After The Fact" permit submission is the first submission provided to the District by said person or entity for the work that has been done. If a person or entity has had a prior warning given to them in regard to their failure to follow the permitting rule requirements, a \$500.00 late filing fee may be assessed against said person or entity for the "After The Fact" permit submission. Said late filing fee assessment is in addition to any other conditions or requirements that may be ordered by the District in regard to repair or restoration of non-permitted work by said persons or entity in regard to

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an approval or disapproval of an "After The Fact" permit application. In addition to the remedies provided in *Minnesota Statute 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. The District may also require the applicant to pay actual engineering and attorney's fees, allowed by law, incurred by the District in dealing with the un-permitted work.

3.7 FINANCIAL ASSURANCE. 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. When the permitted activities are certified as having been completed in compliance with the District permit and Rules, the financial assurance will be released.

- A. If the District determines that the permitted activities have not been completed in compliance with the permit and District 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 permit and District 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 District 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 property owner for any excess costs.
- B. No financial assurance will be required of any agency of the United States or of any governmental unit or political subdivision of the State of Minnesota. The District may require that the District be named as a beneficiary in the financial assurance of the agency's contractor.

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SECTION 4 - SURFACE DRAINAGE AND FLOOD MITIGATION

- 4.1 **POLICY.** It is the policy of the Board of Managers 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 for the benefit of the District's present and future residents. Further, it is the policy of the Board of Managers to regulate new construction, improvement, repair, and maintenance of legal and private drainage ways for the following purposes:
- A. To preserve the capacities of drainage systems;
 - B. To improve water quality and prevent localized flooding;
 - C. To prevent the loss of drainage capacity;
 - D. To avoid drainage conditions that cause, or aggravate, erosion or sedimentation of downstream drainageways or water bodies; and
 - E. To ensure that parties responsible for accumulation of debris, soil, and sediment in drainageways maintain those drainageways.
 - F. 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 naturally drain there but may not burden a lower landowner with more water than is reasonable under the circumstances. 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, nor shall the natural flow of surface water 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 watershed and the discretion to issue permits for or engage in enforcement actions against the activities identified herein:
- A. No person or public corporation shall 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. No person or public corporation shall cut an artificial drainage way across a subwatershed without a permit from the District.
 - C. No person or public corporation shall divert or cast water by any artificial means into any legal drainage system from lands not assessed to said drainage system without complying with the proper statutory procedure and securing a permit from the District.
 - D. No landowner, occupant, contractor, or equipment operator shall undertake to construct or improve any private drainage system that has the effect of draining an area in excess of a five (5) acre watershed without obtaining a permit from the District. Existing field drains may be cleaned but may not be deepened or enlarged without a permit.
 - E. No person or public corporation shall construct, alter, repair to other than the original design and function, or remove any dike without a permit from the Board of Managers.

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- F. Repairs of an emergency nature to restore a dike system to its original configuration shall not require a permit; however, the Board of Managers shall be notified of the proposed work prior to the commencement thereof and the reasons necessitating the emergency action.
- G. No person or public corporation shall undertake the construction, removal, or abandonment of any reservoir for the impoundment of water without a permit from the District; nor shall any works be done which would alter the effectiveness of a reservoir without a permit from the District.
- H. No landowner, occupant, contractor, or equipment operator shall undertake landforming, which is the reshaping of surface topography on a given tract of land without a permit from the District.
- I. 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 BRRWD shall be submitted to the Managers for their approval to insure 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.
- J. 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. Plans and specifications relating to matters covered in this section shall be submitted to the Managers for their consideration prior to construction and installation of any of the foregoing works.
- K. No landowner or occupant shall destroy all, or any portion, of the required sixteen and one-half foot (16.5') grass strip on ditch systems where they have previously been established. Where grass 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.
- L. 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. No septic tank or other waste disposal facility shall 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 BRRWD. No refuse, garbage or noxious materials may 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.
- M. In order to maintain beneficial use, no wetland may be filled or drained without a permit from

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the District. Wetland activities may also be subject to the Minnesota Wetland Conservation Act and a variety of other local, state, and federal regulations.

- N. No repair or alternation of any legal drainage system shall be done without a permit from the District. Copies of plans and specifications for the repair or alteration of any legal drainage system shall be submitted and approved by the Managers before construction may begin. Repairs of an emergency nature on a legal 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.
- O. No construction of new, or improvements, to existing private drainage systems shall be undertaken without first filing plans and specifications with a permit application and being authorized by the receipt of an approved permit for the intended work from the District.
- P. No irrigation project, public or private, serving an area in excess of five (5) acres, shall be constructed without a permit from the District.
- Q. The requirements of these Rules are in addition to other applicable laws and procedures, including those of *Minnesota Statutes Chapter 103E*. These Rules are to provide for management of waters in the public interest and does not displace in whole or part any private legal rights a property owner or other person may have with respect to the use and drainage of waters.
- R. A copy of all permits prepared for the Department of Natural Resources to appropriate waters of the State for irrigation and other purposes shall be forwarded to the Board of Managers for comment.
- S. No installation or alteration of drainage structures, which will increase the capacity of the structure, shall be undertaken by anyone without a permit from the Board of Managers. Flap gates, where installed, shall typically remain closed, unless operated in accordance with a plan approved by the BRRWD.
- T. A contractor or equipment operator is responsible to ascertain whether a permit is required by these Rules and, if so, that it has been obtained. Failure of a contractor or equipment operator to verify the existence of a permit will subject that contractor or operator to civil fines, remediation costs, injunctive relief, potential litigation, and criminal penalties.
- U. The sections above notwithstanding, no permit from the District is 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 drainage way;
 - 2) To repair or replace up to 50 lineal feet of tile 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; or
 - 4) To replace an existing drainage structure (culvert) with the same size structure at the original elevation provided it has been deemed adequate.

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SECTION 5 - SUBSURFACE TILE DRAINAGE

- 5.1 **POLICY.** The Board of Managers encourages practices for the sound construction and management of subsurface tile drainage systems in order to minimize downstream flooding and to optimize water storage and agricultural productivity.
- 5.2 **REGULATION.** No person shall install, alter, or construct any subsurface tile drainage system without obtaining a permit from the Watershed District.
- 5.3 **STANDARD CONDITIONS.** Any subsurface tile permit issued by the Watershed District will be subject to the following conditions unless specifically noted on the permit approval.
- A. Applicant is responsible to contact and coordinate any tile project with all local, state, and federal agencies to ensure approval/clearance regarding any potential wetland issues (and with the USFWS for installation of tile on any parcel that is under easement from the USFWS).
 - B. Applicant is responsible to obtain approval from an affected road authority (township, county, state) for any work in the road R/W and other drainage authorities for outlets to any legal ditch not under BRRWD jurisdiction.
 - C. Applicant is responsible for adequate erosion control measures at the outlet of a tile 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 tile system causes the tile to be exposed, the Applicant or landowner can be ordered to repair erosion, reinstall tile, or remove tile.
 - D. Applicant is responsible to ensure that all gravity outlets be installed above (however not more than 2-ft) the elevation of the original design gradeline of a receiving ditch or channel.
 - E. Applicant is responsible to ensure that the pump(s) not be operated during freezing conditions to cause downstream icing conditions.
 - F. Pumps and other associated pipes installed above ground will not block vehicle traffic on the R/W of ditch systems or public roads.
 - G. Applicant is responsible to ensure that all disturbed areas in ditch or road R/W's are restored and reseeded to preexisting conditions.
 - H. Pattern-tiled fields 40-acres and larger shall include a control structure or pump station at its outlet.
 - I. Pump stations or other tile control structures, shall not be placed within the R/W of legal ditch systems, or within a distance determined as follows: 6 times the depth of the ditch (measured from top of the spoilbank elevation to the bottom of ditch) from the fieldside bottom the of the ditch, unless approved in writing by the BRRWD. For example, if the vertical depth measured from top of spoilbank elevation to bottom of ditch is 8-ft, the pump station shall not be located within 48-ft from the fieldside bottom of the ditch, or within the existing R/W, whichever is greater. If these standards are not followed at time of installation, applicant agrees to relocate said facilities at their expense should future ditch repairs or improvements require said relocation.

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- J. The BRRWD shall require that tile system out flows for those systems capable of being regulated be stopped during periods of flooding within the BRRWD. Systems with control structures or pumps shall be considered tile systems capable of being regulated. The National Weather Service (NWS) does probabilistic flood predictions leading up to the flood. It will not be until they get to their deterministic predictions that we can make a determination as to whether the flood will be above or below flood stage. **Those deterministic predictions for United States Geological Survey (USGS) gaging station locations typically come out about 2 weeks prior to the crest at each station.**

1) For areas contributing to the Otter Tail River at Wahpeton/Breckenridge:

If the NWS flood forecast is predicting a crest in excess of **Moderate** flood stage (13.0 feet) at USGS Gaging Station 05051500 RED RIVER OF THE NORTH AT WAHPETON, ND, a tile outlet within this gauging station's drainage area will remain closed until:

- (a) Water at the USGS Gaging Station 05046475 OTTER TAIL RIVER DIVERSION AT BRECKENRIDGE, MN has crested and is receding;
- (b) Water at the USGS Gaging Station 05051500 RED RIVER OF THE NORTH AT WAHPETON, ND has crested and is receding; and
- (c) Local runoff has peaked and there is no immediate threat to downstream properties

USGS Gaging Station on the Diversion at Breckenridge:

https://waterdata.usgs.gov/nwis/dv?referred_module=sw&site_no=05046475

USGS Gaging Station Red River at Wahpeton:

https://waterdata.usgs.gov/nwis/dv?referred_module=sw&site_no=05051500

Note: The 13.0-foot Moderate flood stage has been exceeded 24 times from 1942 to 2014 (73 years).

If the NWS flood forecast is predicting a crest below **Moderate** flood stage (13.0 feet) at USGS Gaging Station 05051500 RED RIVER OF THE NORTH AT WAHPETON, ND, a tile outlet structure within this gauging station's drainage area will remain closed until:

- (a) Otter Tail River in Breckenridge (11th Street) is receding; and
- (b) Local runoff has peaked and there is no immediate threat to downstream properties.

2) For areas Downstream of Wahpeton/Breckenridge and Upstream of Hickson/Fargo:

If the NWS flood forecast is predicting a crest in excess of **Major** flood stage (30.0 feet) at USGS Gaging Station 05054000 RED RIVER OF THE NORTH AT FARGO, ND, a tile outlet structure as noted above will remain closed until:

- (a) Water at the USGS Gaging Station 0505152130 RED RIVER OF THE NORTH AT ENLOE, ND has crested and is receding;

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(b) Water at the USGS Gaging Station 05051522 RED RIVER OF THE NORTH AT HICKSON, ND has crested and is receding; and

(c) Local runoff has peaked and there is no immediate threat to downstream properties. USGS Gaging Station Red River at Enloe:

https://waterdata.usgs.gov/nwis/dv?referred_module=sw&site_no=0505152130

USGS Gaging Station Red River at Hickson:

https://waterdata.usgs.gov/nwis/dv?referred_module=sw&site_no=05051522

USGS Gaging Station Red River at Fargo:

https://waterdata.usgs.gov/nwis/dv?referred_module=sw&site_no=05054000

Note: The 30.0-foot Major flood stage has been exceeded 19 times recorded from 1897 to 2014 (117 years).

If the NWS flood forecast is predicting a crest below **Major** flood stage (30.0 feet) at USGS Gaging Station 05054000 RED RIVER OF THE NORTH AT FARGO, ND, a tile outlet structure will remain closed until:

Local runoff has peaked and there is no immediate threat to downstream properties.

3) **For areas Upstream of Fargo:**

If the NWS flood forecast is predicting a crest in excess of **Major** flood stage (30.0 feet) at USGS Gaging Station 05054000 RED RIVER OF THE NORTH AT FARGO, ND, a tile outlet structure will remain closed until:

(a) Water at the USGS Gaging Station 05054000 RED RIVER OF THE NORTH AT FARGO, ND has crested and is receding, and

(b) Local runoff has peaked and there is no immediate threat to downstream properties.

USGS Gaging Station Red River at Fargo:

https://waterdata.usgs.gov/nwis/dv?referred_module=sw&site_no=05054000

If the NWS flood forecast is predicting a crest below **Major** flood stage (30.0 feet) at USGS Gaging Station 05054000 RED RIVER OF THE NORTH AT FARGO, ND, a tile outlet structure will remain closed until:

Local runoff has peaked and there is no immediate threat to downstream properties.

4) **For areas Upstream of Sabin:**

If the NWS flood forecast is predicting a crest in excess of **Moderate** flood stage (15.0 feet) at USGS Gaging Station 05061500 BUFFALO RIVER SOUTH BRANCH AT SABIN, MN, a tile outlet structure will remain closed until:

(a) Water at the USGS Gaging Station 05061500 BUFFALO RIVER SOUTH BRANCH AT SABIN, MN has crested and is receding, and

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(b) Water at the USGS Gaging Station 05062000 BUFFALO RIVER NEAR DILWORTH, MN has crested and is receding, and

(c) Local runoff has peaked and there is no immediate threat to downstream properties

USGS Gaging Station South Branch of the Buffalo River at Sabin, MN:

https://waterdata.usgs.gov/mn/nwis/inventory/?site_no=05061500

USGS Gaging Station Buffalo River near Dilworth, MN:

https://waterdata.usgs.gov/mn/nwis/inventory/?site_no=05062000

Note: The 15.0 flood stage (Moderate) has been exceeded 19 times from 1945 to 2014 (70 years).

If the NWS flood forecast is predicting a crest below **Moderate** flood stage (15.0 feet) at USGS Gaging Station 05061500 BUFFALO RIVER SOUTH BRANCH AT SABIN, MN, a tile outlet structure will remain closed until:

Local runoff has peaked and there is no immediate threat to downstream properties.

5) **For areas Upstream of Hawley:**

If the NWS flood forecast is predicting a crest in excess of **Moderate** flood stage (9.0 feet) at USGS Gaging Station 05061000 BUFFALO RIVER NEAR HAWLEY, MN, a tile outlet structure will remain closed until:

(a) Water at the USGS Gaging Station 05061000 BUFFALO RIVER NEAR HAWLEY, MN has crested and is on the decline; and

(b) Water at the USGS Gaging Station 05062000 BUFFALO RIVER NEAR DILWORTH, MN has crested and is receding;

(c) Local runoff has peaked and there is no immediate threat to downstream properties

USGS Gaging Station Buffalo River near Hawley, MN:

https://waterdata.usgs.gov/mn/nwis/inventory/?site_no=05061000

USGS Gaging Station Buffalo River near Dilworth, MN:

https://waterdata.usgs.gov/mn/nwis/inventory/?site_no=05062000

Note: The 9.0 flood stage (moderate) has been exceeded 20 times from 1945 to 2014 (70 years).

If the NWS flood forecast is predicting a crest below **Moderate** flood stage (9.0 feet) at USGS Gaging Station 05061000 BUFFALO RIVER NEAR HAWLEY, MN, a tile outlet structure will remain closed until:

Local runoff has peaked and there is no immediate threat to downstream properties.

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6) For areas Upstream of Dilworth:

If the NWS flood forecast is predicting a crest in excess of **Moderate** flood stage (20.0 feet Note: Breakouts occur at Gage Height 21) at USGS Gaging Station 05062000 BUFFALO RIVER NEAR DILWORTH, MN, a tile outlet structure will remain closed until:

- (a) Water at the USGS Gaging Station 05062000 BUFFALO RIVER NEAR DILWORTH, MN has crested and is receding, and
- (b) Local runoff has peaked and there is no immediate threat to downstream properties

USGS Gaging Station Buffalo River near Dilworth, MN:

https://waterdata.usgs.gov/mn/nwis/inventory/?site_no=05062000

Note: The 20.0 flood stage (moderate) has been exceeded 22 times from 1931 to present (84 years).

If the NWS flood forecast is predicting a crest below **Moderate** flood stage (20.0 feet) at 05062000 BUFFALO RIVER NEAR DILWORTH, MN, a tile outlet structure will remain closed until:

Local runoff has peaked and there is no immediate threat to downstream properties.

7) For areas Downstream of Fargo:

If the NWS flood forecast is predicting a crest in excess of **Major** flood stage (30.0 feet) at USGS Gaging Station 05054000 RED RIVER OF THE NORTH AT FARGO, ND, a tile outlet structure will remain closed until:

- (a) Water at the USGS Gaging Station 05054000 RED RIVER OF THE NORTH AT FARGO, ND has crested and is on the decline;
- (b) The Red River near Georgetown is receding; and
- (c) Local runoff has peaked and there is no immediate threat to downstream properties.

USGS Gaging Station Red River at Fargo:

https://waterdata.usgs.gov/nwis/dv?referred_module=sw&site_no=05054000

If the NWS flood forecast is predicting a crest below **Major** flood stage (30.0 feet) at USGS Gaging Station 05054000 RED RIVER OF THE NORTH AT FARGO, ND, a tile outlet structure will remain closed until:

Local runoff has peaked and there is no immediate threat to downstream properties.

During periods of flooding, please monitor the BRRWD's website at www.brrwd.org. The BRRWD will monitor runoff and precipitation amounts by planning regions and may temporarily issue a "no pumping" regulation when conditions dictate. It is the tile owner's responsibility to monitor the website for compliance.

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- 5.4 Where possible, the BRRWD strongly encourages the use of Drainage Water Management (DWM) on pattern tile systems to provide multiple resource benefits. Funding assistance for DWM may be available from local, state, and federal agencies.

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SECTION 6 - ALTERATION OF NATURAL DRAINAGEWAYS AND WETLANDS

6.1 **POLICY.** Management of natural drainageways, lakes, and wetlands should be done in such a manner so as to reduce their deterioration and to maximize their value for the general welfare of the District.

6.2 **REGULATION.**

- A. No artificial change may be made in the beds, banks, or shores of natural drainageways, lakes or regulated wetlands without a permit from the District, or any other local, state, and federal applicable agencies.
- B. To prevent obstructions in the natural drainageways, landowners shall remove any trees cut along the banks of natural waterways. No wastes shall be disposed of directly or indirectly into the drainageways.
- C. Excavations, grading, or filling near any natural drainageway, lake, or wetland shall be done in a manner to minimize detrimental effects. A permit is required from the District for construction activities involving any drainageway, lake, or regulated wetland. This is not to be construed to include maintenance of roadways.
- D. Any work in public waters of the State requires a permit from the MN DNR, *Minnesota Statutes §105.42.*

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SECTION 7 - MUNICIPAL DRAINAGE

- 7.1 **POLICY.** In order to reduce sediment transport, municipal stormwater drainage shall 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.
- 7.2 **REGULATION.**
- A. Copies of current ordinances relating to surface water drainage for municipalities within the District shall be filed with the Managers.
 - B. Municipalities having populations greater than 1000 persons shall prepare a municipal drainage plan for management and transport of surface waters resulting from urban development. The drainage plan will include an inventory of all existing surface water removal installations, together with recommended improvements for a planning period of not less than 20 years. This drainage plan will address utilization of wetlands, low land areas, land use, floodwater detention, sediment control, stormwater pollution, and the maintenance of public ditches and water courses owned and operated by the municipality. The drainage plan shall also address removal of stormwater from land whose character may be changed by future development over the study period.
 - C. All projects affecting runoff shall require a permit from the Board of Managers. Maintenance of existing facilities, as defined in these Rules, shall not require a permit. Installation of interior drainage facilities for previously developed areas will not require a permit provided the area drained is not greater than 5 acres.

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SECTION 8 - MS4 REGULATIONS

- 8.1 **POLICY.** The BRRWD is designated as a small Municipal Separate Storm Sewer Systems (MS4) owner; therefore, the BRRWD is required to obtain coverage from the Minnesota Pollution Control Agency (MPCA) to discharge stormwater within an urbanized area. Work performed within the MS4 boundary will require regulations set forth in this section to be followed. The MS4 boundary can be found on the BRRWD's website at <http://www.brrwd.org/>.
- 8.2 **REQUIREMENT.** Terms of this section will be enforced when construction activities including, but not limited to, clearing and grubbing, grading, excavation, and demolition, occur within the MS4 boundary and:
- A. Result in land disturbance of one (1) acre or more, or
 - B. Result in land disturbance less than one (1) acre but part of a larger project disturbing one (1) acre or more.
- 8.3 **REGULATIONS.**
- A. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.
 - B. Work performed within the City of Moorhead, MN MS4 boundary, shall follow the stormwater ordinance set forth by the City of Moorhead, MN.
 - C. Work performed within the City of Dilworth, MN MS4 boundary, shall follow the stormwater ordinance set forth by the City of Dilworth, MN.
 - D. Work performed within the Clay County, MN MS4 boundary, shall follow the stormwater ordinance set forth by Clay County, MN.
- 8.4 **CONSTRUCTION SITE STORMWATER RUNOFF CONTROL.**
- A. Site plans and a Stormwater Pollution Prevention Plan (SWPPP) must be submitted to the BRRWD for review and approval, prior to the start of the construction activity. Site plans and the SWPPP must be kept up to date.
 - B. All exposed soil areas within construction activities must be stabilized to limit soil erosion but in no case, later than fourteen (14) days after the construction activity in that portion of the site has temporarily or permanently ceased.
 - C. All nonfunctional BMPs must be repaired, replaced, or supplemented with functional BMPs within twenty-four (24) hours after discovery, or as soon as field conditions allow.
 - D. Where water from ten (10) or more acres of disturbed soil drains to a common location, a temporary sediment basin must be provided to contain runoff before it leaves the construction site or enters surface waters. A temporary sediment basin may be converted to a permanent basin

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after construction is complete. The temporary basin is no longer required when permanent cover has reduced the acreage of disturbed soil to less than ten (10) acres draining to a common location.

8.5 POST CONSTRUCTION STORMWATER MANAGEMENT.

- A. Site plans with post-construction stormwater management BMPs must be submitted to the BRRWD for review and approval, prior to the start of the construction activity.
- B. Where a project's ultimate development replaces vegetated and/or other pervious surfaces with one (1) or more acres of impervious surface, the project must be designed so that the water quantity volume of one (1) inch of runoff from the new impervious surfaces created by the project is retained on site and not discharged to a surface water, subject to, and in compliance with, the limitations and exceptions within the Minnesota Pollution Control Agency MS4 permit.
- C. Final stabilization is complete when all the following requirements are met:
 - 1) All soil disturbing activities at the site have been completed and all soils are stabilized by a uniform perennial vegetative cover with a density of 70 percent of its expected final growth density over the entire pervious surface area, or other equivalent means necessary to prevent erosive conditions.
 - 2) The permanent stormwater management system is constructed and is operating as designed. Temporary or permanent sedimentation basins that are to be used as permanent water quality management basins have been cleaned of any accumulated sediment. All sediment has been removed from conveyance systems and ditches are stabilized with permanent cover.
 - 3) All temporary synthetic and structural erosion prevention and sediment control BMPs (such as silt fence) have been removed. BMPs designed to decompose on site (such as some compost logs) may be left in place.
 - 4) For construction projects on agricultural land, the disturbed land has been returned to its preconstruction agricultural use.

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SECTION 9 – BUFFER RULE FOR WD 103E SYSTEMS

9.1 **POLICY.** It is the policy of the Board of Managers to:

- A. Provide public drainage system ditches with vegetated buffers and water quality practices to achieve the following purposes:
 - 1) Protect state water resources from erosion and runoff pollution; and
 - 2) Stabilize soils, and banks.
- B. Coordinate closely with the District’s landowners, SWCD's and counties, and utilize local knowledge and data, to achieve the stated purposes in a collaborative, effective and cost- efficient manner.
- C. Integrate District authorities under *Minnesota Statutes §§103D.341, 103E.021, and 103F.48* to provide for clear procedures to achieve the purposes of the rule.
- D. Implement and enforce buffers through the use of Drainage Law (*Minnesota Statutes §§103E.021 and 103E.351*) and when that cannot be accomplished through the use of Administrative Penalty Order (APO) powers granted through *Minnesota Statutes §103F.48*.

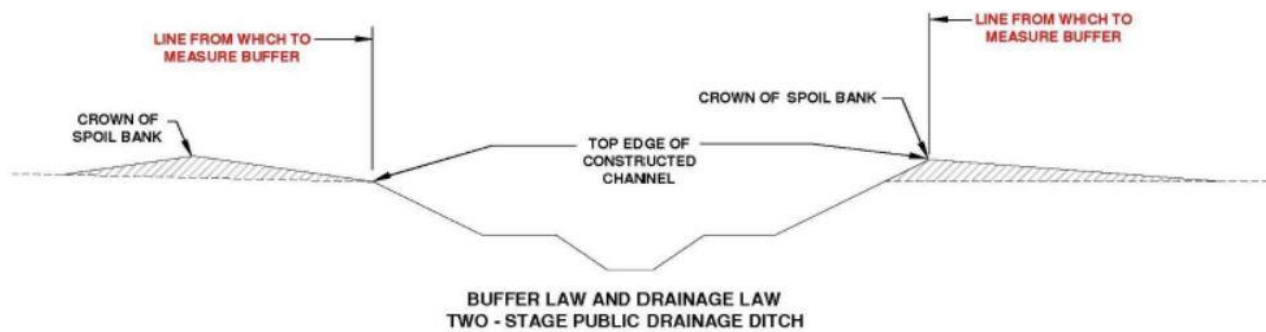
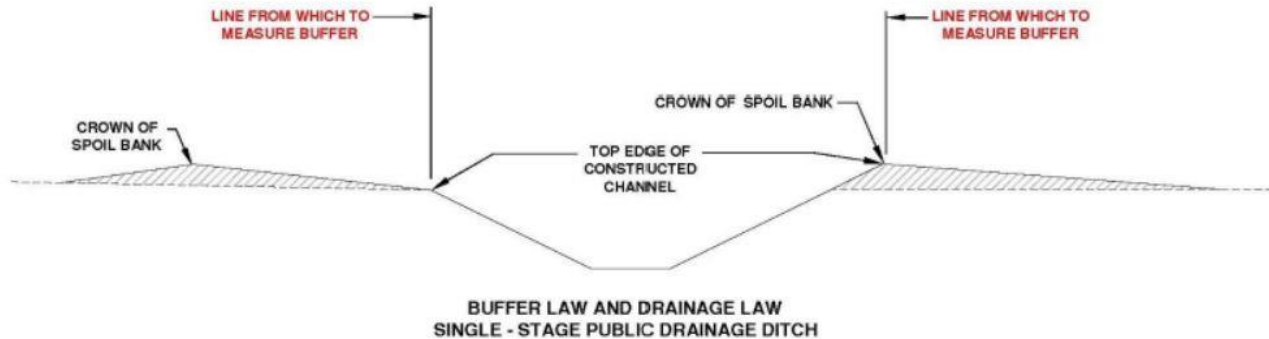
9.2 **DATA SHARING/MANAGEMENT.**

- A. The District may enter into arrangements with an SWCD, a county, BWSR or other parties with respect to the creation and maintenance of, and access to, data concerning buffers and alternative practices under this rule.
- B. The District will manage all such data in accordance with the *Minnesota Data Practices Act* and any other applicable laws.

9.3 **VEGETATED BUFFER REQUIREMENT.**

- A. Except as Subsection 9.3C may apply, a landowner must maintain a buffer on land that is adjacent to a public drainage system ditch identified and mapped on the buffer protection map established and maintained by the Commissioner pursuant to the *Buffer Rule*.
 - 1) For a public drainage system ditch, the buffer must be of a 16.5-foot minimum width. This rule does not apply to the portion of public drainage systems consisting of subsurface tile.
 - 2) The buffer is measured from the top or crown of bank. Where there is no defined bank, measurement will be from the normal water level. The District will determine normal water level in accordance with BWSR guidance. For a public drainage system, the District will determine top or crown of bank in the same manner as for measuring the perennially vegetated strip under *Minnesota Statutes §103E.021*. See illustration below:

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- 3) A buffer may not be used for cultivation farming, but may be grazed, mowed, hayed, or otherwise harvested, provided perennial vegetation is maintained.
- B. The requirement of Section 9.3A applies to all public drainage ditches within its boundary for which it is the drainage authority.
- C. The requirement of Section 9.3A does not apply to land that 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, provided the area in such use is limited to what is permitted under shoreland standards or, if no specific standard is prescribed, what is reasonably necessary;
 - 3) Used as the site of a water-oriented structure in conformance with shoreland standards or, if no specific standard is prescribed, what is reasonably necessary;
 - 4) Covered by a road, trail, building or other structure;
 - 5) Regulated by a national pollutant discharge elimination system/state disposal system

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(NPDES/SDS) municipal separate storm sewer system, construction or industrial permit under *Minnesota Rules, Chapter 7090*, and the adjacent waterbody is provided riparian protection;

- 6) Part of a water-inundation cropping system; or
- 7) In a temporary non-vegetated condition due to drainage tile installation and maintenance, alfalfa or other perennial crop or plant seeding, or a construction or conservation project authorized by a federal, state, or local government unit.

9.4 DRAINAGE SYSTEM ACQUISITION AND COMPENSATION FOR BUFFER

- A. In accordance with *Minnesota Statutes §103F.48, Subd. 10(b)*, a landowner owning land within the benefited area of, and adjacent to, a public drainage ditch may request that the District, as the drainage authority, acquire and provide compensation for the buffer strip required under this rule.
 - 1) The request may be made to use *Minnesota Statutes §103E.021, Subd. 6*, or by petition pursuant to *Minnesota Statutes §103E.715, Subd. 1*.
 - 2) The decision on the request is within the judgment and discretion of the District, unless the request concerns a buffer strip mandated by *Minnesota Statutes §103E.021*.
 - 3) If the request is granted or the petition proceeds, the requirements of the buffer strip and the compensation to be paid for its incorporation into the drainage system will be determined in accordance with the statutes referenced in Paragraph 9.4A.1, and associated procedures. When the order establishing or incorporating the buffer strip is final, the buffer strip will become a part of the drainage system and thereafter managed by the District in accordance with *Minnesota Drainage Law*.
 - 4) On a public drainage ditch, which is also a public water subject to a 50-foot average buffer, the drainage system will be required to acquire only the first 16.5 feet of the buffer.
- B. The District, on its own initiative pursuant to *Minnesota Statutes §§103F.48 and 103E.021*, may acquire and provide compensation for buffer strips required under this rule on individual or multiple properties along a public drainage system.
- C. The District's decision to grant or deny a request under Section 9.4 is not subject to appeal. A determination as to compensation or another term of the order may be appealed as provided for under the drainage code.
- D. Section 9.4 supplements, and does not displace, the terms of *Minnesota Statutes Chapter 103E* requiring or providing for drainage system establishment and acquisition of vegetated buffer strips along public ditches.

9.5 ACTION FOR COMPLIANCE

- A. When the District observes potential non-compliance or receives a third-party complaint from a private individual or entity, or from another public agency (such as the SWCD), it will determine the appropriate course of action to confirm compliance status. This may include communication

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with the landowner or his/her agents or operators, communication with the shoreland management authority, inspection, or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of this coordination, the SWCD may issue a notification of noncompliance to the District. If the SWCD does not transmit such a notification, the District will not pursue a compliance or enforcement action under *Minnesota Statutes §103F.48* but may pursue such an action under the authority of *Minnesota Statutes §§103E.021, 103D.545, and 103D.551* and Section 9.6.

- B. On receipt of an SWCD notification of noncompliance, or if acting solely under authority of *Minnesota Statutes §§103E.021 or 103D*, the District will determine first whether sufficient public drainage system easement exists to establish the required vegetative buffer. If sufficient easement does not exist, the District will attempt to acquire the necessary easements through incremental buffer establishment provided in *§103E.021, Subd. 6* or through a redetermination of benefits provided in *Minnesota Statutes §103E.351* and will establish the required buffers. The establishment of the required buffers will occur within 12 months of the determination that inadequate easement exists, and no more than 18 months from the receipt of a SWCD notification of noncompliance or the Watershed District decision to establish the required buffers. If sufficient easement does not exist and the District is unable to acquire the necessary easements through incremental buffer establishment provided in *§103E.021, Subd. 6* or through a redetermination of benefits, or if sufficient easement does exist and an established buffer has been adversely altered, the District will issue a corrective action list and practical schedule for compliance to landowner. The District may inspect the property and will consult with the SWCD, review available information, and exercise its technical judgment to determine appropriate and sufficient corrective action and a practical schedule for such action. The District will maintain a record establishing the basis for the corrective action that it requires.
- 1) The District will issue the corrective action list and schedule to the landowner of record. The landowner may be the subject of enforcement liabilities under Subsections 9.6A and 9.6B. The District may deliver or transmit the list and schedule by any means reasonably determined to reach the responsible party or parties and will document receipt. However, a failure to document receipt will not preclude the District from demonstrating receipt or knowledge in an enforcement proceeding under Section 9.6.
 - 2) The corrective action list and schedule will identify the parcel of record to which it pertains and the portion of that tract that is alleged to be noncompliant. It will describe corrective actions to be taken, a schedule of intermediate or final dates for correction, a compliance standard against which it will judge the corrective action, and a statement that failure to respond to this list and schedule will result in an enforcement action. The District will provide a copy of the list and schedule to the BWSR.
 - 3) In addition, at any time a responsible party may supply information in support of a request to modify a corrective action or the schedule for its performance. On the basis of any such submittal or at its own discretion, the District may modify the corrective action list or schedule and deliver or transmit the modified list and schedule in accordance with Paragraph 9.5B.1, or it may advise the landowner in writing that it is not pursuing further compliance action.
 - 4) The corrective action list and schedule for compliance may be modified in accordance with Subsection 9.5B, to extend the compliance timeline for a modification that imposes a substantial new action or accelerates the completion date for an action.

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- 5) At any time after the District has issued the list and schedule, a landowner, or authorized agent or operator of a landowner, may request that the SWCD issue a validation of compliance with respect to property for which the list and schedule has been issued. Upon the District's receipt of the validation: (a) the list and schedule will be deemed withdrawn for the purpose of Subsection 9.6B, and the subject property will not be subject to enforcement under that subsection; and (b) the subject property will not be subject to enforcement under Subsection 9.6A.
- 6) A corrective action list and schedule are not considered a final decision subject to appeal. An objection to a finding of noncompliance, or to any specified corrective action or its schedule, is reserved to the responsible party and may be addressed in an enforcement proceeding under Section 9.6.

9.6 ENFORCEMENT

- A. Under authority of *Minnesota Statutes §§103E.021, 103D.545, and 103D.551*, the District may seek remedies for noncompliance with Section 9.3 against any responsible party including but not limited to: (a) reimbursement of District compliance costs under *Minnesota Statutes §§103D.345 and 103E.021* and/or an escrow for same; (b) administrative compliance order; (c) district court remedy including injunction, restoration or abatement order, authorization for District entry and/or order for cost recovery; and (d) referral to county attorney for criminal misdemeanor prosecution.
- B. In instances where existing vegetation on the ditch buffer easement has been adversely altered and has not been restored, the District may collect compliance expenses in accordance with *Minnesota Statutes §§103E.021* from a landowner for noncompliance with the corrective action list and schedule, as provided under Paragraphs 9.5B.1 and 9.6B.2 The District will restore any adversely altered buffer and charge the landowner for the cost of the restoration if the landowner does not meet the requirements of the corrective action list and schedule.
- C. In instances where a ditch buffer easement cannot be established in a timely manner, the District may issue an administrative order imposing a monetary penalty against a landowner for noncompliance with the corrective action list and schedule, as provided under Paragraphs 9.6C.1 and 9.6C.2. The penalty will continue to accrue until the noncompliance is corrected as provided in the corrective action list and schedule.
 - 1) The penalty for a landowner on a single parcel that previously has not received an APO issued by the District shall be:
 - a) \$0 for 11 months after issuance of the corrective action list and schedule;
 - b) \$50 to \$200 per parcel per month for the first six (6) months (180 days) following the time period in (a); and
 - c) \$200 to \$500 per parcel per month after six (6) months (180 days) following the time period in (b).
 - 2) The penalty for a landowner on a single parcel that previously has received an APO issued by the District shall be:

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- a) \$50 to \$200 per parcel per day for 180 days after issuance of the corrective action list and schedule; and
 - b) \$200 to \$500 per parcel per day after 180 days following the time period in (a).
- D. The administrative order will state:
- 1) The facts constituting a violation of the buffer requirements;
 - 2) The statute and/or rule that has been violated;
 - 3) Prior efforts to work with the landowner to resolve the violation;
 - 4) For an APO, the amount of the penalty to be imposed, the date the penalty will begin to accrue, and the date when payment of the penalty is due; and
 - 5) The right of the responsible party to appeal the order.
 - 6) A copy of the APO must be sent to the SWCD and BWSR.
- E. An administrative order under Subsection 9.6A or 9.6C will be issued after a compliance hearing before the District Board of Managers. The landowner and any other responsible parties will receive written notice at least two weeks in advance of the hearing with a statement of the facts alleged to constitute noncompliance and a copy or internet link to the written record on which District staff intends to rely, which may be supplemented at the hearing. A responsible party may be represented by counsel, may present and question witnesses, and may present evidence and testimony to the Board of Managers. The District will make a written or recorded record of the hearing.
- F. After a hearing noticed and held for consideration of an administrative penalty or other administrative order, the Board of Managers may issue findings and an order imposing any authorized remedy or remedies.
- 1) The amount of an administrative penalty will be based on considerations including the extent, gravity and willfulness of the noncompliance; its financial benefit to the responsible party; the extent of the responsible party's diligence in addressing it; any noncompliance history; the public costs incurred to address the noncompliance; and other factors as justice may require.
 - 2) The Board of Managers' findings and order will be delivered or transmitted to the landowner and other responsible parties. An APO may be appealed to the BWSR in accordance with *Minnesota Statutes §103F.48, Subd. 9*, and will become final as provided therein. The District may enforce the order in accordance with *Minnesota Statutes §116.072, Subd. 9*. Other remedies imposed by administrative order may be appealed in accordance with *Minnesota Statutes §103D.537*.
 - 3) The Board of Managers may forgive an administrative penalty, or any part thereof, on the basis of diligent correction of noncompliance following issuance of the findings and order and such other factors as the Board finds relevant.

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- G. Absent a timely appeal pursuant to Paragraph 9.6F2, an administrative penalty is due and payable to the District as specified in the APO.
- H. A landowner agent or operator may not remove or willfully degrade, wholly or partially, a riparian buffer, unless the agent or operator has obtained a signed statement from the landowner stating that written permission for the work has been granted by the District or that the buffer is not required as indicated in a validation of compliance issued by the SWCD.
- I. Nothing within this rule diminishes or otherwise alters the District's authority under *Minnesota Statutes, Chapter 103E* with respect to any public drainage system for which it is the drainage authority, or any buffer strip that is an element of that system.

9.7 EFFECT OF RULE

- A. If any section, provision, or portion of this rule is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the rule is not affected thereby.
- B. Any provision of this rule, and any amendment to it, that concerns District authority under *Minnesota Statutes §103F.48* is not effective until an adequacy determination has been issued by BWSR. Authority exercised under *Minnesota Statutes Chapter 103D* and *103E* does not require a BWSR adequacy determination.

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SECTION 10 - RELATED ORDINANCES

10.1 **POLICY.** The Managers will cooperate with public corporations and state and federal agencies in the application of ordinances and/or rules concerning water and related resources within the District.

10.2 **REGULATION.**

- A. In the interest of public health and to prevent pollution of the waters of the District, the applicable ordinances and rules of the appropriate county and state agencies regarding the disposal of wastes, are by reference hereby adopted as rules of the District within the limits of statutory authority granted to the Watershed Districts.
- B. Copies of proposed county, municipal, and/or town ordinances relating to surface water drainage, land use zoning, shoreland regulations and flood plain zoning, as applied to changes within the flood plain shall be submitted to the District thirty (30) days prior to the first public hearing date for review and comment.
- C. Ordinances relating to surface water drainage, land use zoning, shoreland regulation and flood plain zoning shall be submitted to the District within forty-five (45) days after passage.
- D. "Rules" by the Board of Water and Soil Resources (BWSR) governing the implementation of the 1991 Minnesota "Wetland" law are hereby adopted by reference for the purposes of carrying out duties as may be directed by cooperating county boards.
- E. The Board of Managers will endeavor to inform and assist any resident of the District with regard to filing necessary applications for State and Federal permits for projects approved by the Board of Managers.

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SECTION 11 - ENFORCEMENT

- 11.1 **MANNER OF ENFORCEMENT.** In the event of a violation, or potential violation, of a District Rule, permit, order or stipulation, or a provision of *Minnesota Statutes, Chapters 103D and 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 *Minnesota Statutes §§103D.545 and 103D.551*.
- 11.2 **INVESTIGATION OF NONCOMPLIANCE.** The District's authorized representatives may enter and inspect a property in the Watershed to determine the existence of a violation or potential violation as described in Section 11.1, above.
- 11.3 **ADMINISTRATIVE COMPLIANCE ORDER.** The District may issue a preliminary compliance order without notice or hearing when it finds a violation or potential violation as described in Section 11.1, above, 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 property owner 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 days. The Board of Managers by resolution may delegate to District staff the authority to issue preliminary compliance orders.
- 11.4 **BOARD HEARING.** After due notice and a hearing at which evidence may be presented, the Board of Managers shall make findings. If the Board finds a violation as described in Section 11.1, above, it may issue a compliance order of indefinite duration that may require the property owner 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 *Minnesota Statutes §103D.545, Subd. 2*; and/or be subject to any other remedy within the District's authority. A compliance order may supersede a preliminary order or may be issued without a prior preliminary order.
- 11.5 **LIABILITY FOR ENFORCEMENT COSTS.** To the extent provided for by *Minnesota Statutes § 103D.545, Subd. 2*, a property owner or responsible contractor is liable for investigation and response costs incurred by the District under this rule, 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.
- 11.6 **CONTRACTOR LIABILITY.** Any individual, firm, corporation, partnership, association, or other legal entity contracting to perform work subject to one or more District Rules will be responsible to ascertain that the necessary permit has been obtained and that the work complies with the permit, rules and 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 under Section 11.1, above, is a responsible contractor for purposes of this rule.