

Wayne 1/13
Gray 1/13/10
Carrie 1/19/10

Pat (Comment directly
on hardcopy

1/13/10

SAUK RIVER WATERSHED DISTRICT

PROPOSED RULES

STATEMENT OF NEED AND RESONABLENESS

November 24, 2009

Public Hearing on 1/26/10
@ 7:00 pm
@ Melrose City Center

I will not be attending -

I CANNOT ATTEND - BEGS

I have a conflicting mtg that night - Carrie

INTRODUCTION

Purpose

The Sauk River Watershed District (the “District”) is required by Minnesota Chapter Statutes 103D to promulgate administrative rules. The District is also required by state law to adopt a watershed management plan. The watershed management plan identifies certain issues that are central to the District’s overarching purposes. The District’s watershed management plan identifies several areas where District rules are necessary to effectuate the District’s statutory purposes. These areas are storm water management, erosion control, drainage, and water uses. The District’s rules are intended to fill gaps in existing federal, state, and local regulations and are not intended to duplicate existing regulations.

This Statement of Need and Reasonableness is intended to provide background on, and an explanation of, the proposed rules of the Sauk River Watershed District. This Statement of Need and Reasonableness includes a narrative section by section analysis that explains the need and reasonableness of each provision of the proposed rules.

Overview of the Rulemaking Process

The District was created in July if 1986. The District adopted its current, second, watershed management plan in 2003. The District adopted its prior plan in 1987. The current plan identifies and prioritizes the several areas of concern to the District

The District adopted its current rules in 1987. The current rules do not provide the appropriate regulation necessary to accomplish the goals of the District’s current watershed management plan. The proposed rules attempt to address the areas of concern identified in the management plan in a manner that is relevant and effective, yet can be administered by the District.

The District has intended for the rulemaking process to be inclusive of all of cities, townships, counties, and concerned residents (“stakeholders”) within the watershed. As such, multiple stakeholder meetings have been held throughout the rulemaking process to ensure stakeholders have had an opportunity provide input and direction in the development of the rules. To the extent practicable, comments, both written and oral, gathered during the development process were incorporated into the proposed rules.

The District believes that rules must have support from stakeholders in order to be effective. With the implementation of the proposed rules, the District anticipates and welcomes stakeholder input in identifying opportunities to further refine the rules in order to better achieve the goals of the District’s watershed management plan and improve the administration of the rules. The proposed rules are the culmination of a very long rulemaking process involving significant input from stakeholders within the watershed and major a refocusing of the scope of the rules.

The scope of the District’s rules has been guided by the District’s existing rules, city and county ordinances within the watershed, as well as state and federal regulations. The purpose of

the rules is two-fold. First, the District intends for its rules to fill gaps within existing regulations, not create duplication of regulation. Second, where existing regulations do not go far enough in achieving the goals of the District's watershed management plan in improving water quality, the District intends for its rules to be the regulatory floor that townships, cities, and counties are free to rise above. Where other entities have the ability and resolve to enact more stringent regulations, the District encourages them to do so in order to improve water quality within the watershed.

NECESSITY AND REASONABLENESS

Section-By-Section Analysis

While this document is intended to explain the rules, it is not a substitute for the rules. Interested parties must refer to the actual text of the rules to fully understand the District's regulatory scheme.

Section 1. Introduction

This section explains the purposes for which the District was created, and general policy concerns the District has identified. The section also explains why the District has promulgated rules, and the general intent of the rules. This section does not contain substantive regulation. This section has been pared down from Section 1 of the existing rules. Several of the provisions have been moved to other sections of the rules for purposes of clarity. Key concepts articulated in the introduction to the rules include the general preference to yield to more restrictive local, state and federal regulation that meets the objectives of the District. Nothing in the rules eliminates the need for other permits where required by local, state and federal agencies.

Section 2. Rule Adoption.

This section lays out the process for adopting or amending District rules. Watershed district rulemaking is controlled by Minnesota Statute 103D.341. This section is consistent with the statute, but it is structured differently than the statute in order to provide clarity. Some additional provisions, not found in statute, have been added. This section is adapted from the District's current rules.

The statute is silent on how new rules or amendments are initiated. Under the proposed rules, any property owner within the District, a Manager, or the District Administrator may propose a rule to the Board of Managers. A provision has also been added to allow the Board to direct District staff to conduct stakeholder meetings. These provisions are not found within state law, but are implied powers of the Board. These provisions are reasonable and necessary because they increase public participation.

While the language in the proposed rule is different ^{than} ~~that~~ state law, the process for adopting new rules or rule amendments is the same. The District must provide BWSR and transportation authorities with a 45 day period to comment on the rules. The District must hold a

public hearing to solicit input from the public. Notice of the hearing must be published in newspapers in each county in which the District is located. Proposed rules or amendments are adopted by a majority vote of the Managers. Once the rules are adopted, they become effective once they are published in newspapers of each county. Copies of the approved rules must also be sent to a list of interested entities. This list is slightly more comprehensive than required under state law. This is necessary and reasonable to ensure that all affected parties are put on notice of rule changes.

Section 3. Definitions.

Often times rulemaking authorities create definitions for terms before drafting the actual rules, based on definitions used in other regulations. This typically causes rules to be difficult to understand since the authority was forced to squeeze its rules into the constraints of predetermined definitions. The District took an alternative approach and drafted its proposed rules first, then defined terms in order to fit the objective of the rule. As a result, some of the more technical terms may have a slightly different definition than found in other regulations. For many of the definitions, an attempt was made to avoid significant conflict with the definitions found in other state or local regulations.

Terms with ordinary meanings do not require an explanation, but the more technical terms do:

The definition of **BMPs** (Best Management Practices) is an abridged version of the definition of BMP used in MPCA's rules governing storm water management. Minn. Rules 7090.0080 Subd. 2. This is reasonable and necessary because the District rules for storm water and erosion control require the use of BMPs in accordance with MPCA guidance documents. Using a definition different than MPCA's would cause confusion for permit applicants.

Drainage Facilities are defined as "*open ditches and drain tile systems collectively.*" Under the drainage rule it is necessary to have a blanket term for all means of conveying water. **Open Ditch** and **Drain Tile System** are defined only as those systems used to drain agricultural land. The purpose is to avoid regulating municipal improvements which is beyond the scope of the rules identified by the District.

Drainage Way is defined very broadly to include natural and artificial channels that hold water continuously or intermittently. The broad definition of drainage way, in conjunction with the broad definition of waterbody, is intended to capture all water features. This is reasonable and necessary because the District's goals, as discussed in the watershed management plan, are broadly to protect water quality and quantity, not just specific classes of waterbodies.

The definition for **Impervious Surface** is derived from a combination of Douglas, Pope, Meeker, Todd, and Stearns counties' definitions which are all relatively similar. The intent is to have the District's definition fall within the definition of all of the counties' to

ensure that regulated parties don't have to deal with multiple definitions for the same term.

The definition of **Land Disturbing Activity** is adapted from the definition of "*construction activity*" as used in Minn. Rules 7090.0080 Subd. 2. Since storm water pollution prevention is closely tied to erosion control, this is reasonable. It was necessary to modify and simplify the definition because the scope and purpose behind the state rule is different than that of the District rule.

The term **Person** covers private individual and entities, but does not include **Political Subdivision**. This is important because some of the District rules treat governmental entities different than other regulated parties. Most of these disparities are required by state law.

PUD (Planned Unit Development) is defined in the Douglas, Pope, Todd and Stearns counties' ordinances. The definition used in the rules is a pared down version of these definitions because PUD is used in the District's storm water rule and has a narrower scope than the county regulations. The definition also explicitly includes resort conversions. This is necessary because the rules are aimed at regulating intensive uses of property along waterbodies.

Redevelopment is used in determining the threshold for the storm water rule. The term is broadly defined to cover any change to property that alters the drainage pattern or increases pollutants in runoff from the property. The broad definition is necessary because identifying specific redevelopment activities will inevitable leave out activities that the District intends to regulate.

The definition of **Resort** has been tailored to meet the specific needs of the District's rules. The term, in other regulations, is very broad and does not typically relate only to water-oriented uses as the District's does. The purpose behind a narrowly tailored definition is so that only intensive uses near water are regulated.

The definition of **Shoreland** is carried over from the existing rule and is similar the definition found in the DNR shoreland rules. This creates consistency for regulated parties.

The term **Third Party Regulatory Entity** is broadly defined to include any governmental entity that grants a water related permit within the watershed. The breadth of this definition is necessary to ensure that the District has the authority to enforce all other water related permits within the watershed.

Waterbody is defined very broadly to include all waters. This is reasonable and necessary because the District's goals, as discussed in the watershed management plan, are broadly to protect water quality and quantity, not just lakes and streams.

Wetland is also defined broadly. The definition includes Wetland Conservation Act wetlands and public water wetlands. Again, the District's watershed management plan includes a goal to protect wetlands in general, not a specific legal class of wetlands, so a broad definition is necessary.

Section 4. Public Meetings, Hearings, and Records

This section provides for the general governance of the District with respect to meeting times, notice and conduct for public hearings, and the sharing of District records. These three subdivisions have been extracted from the existing rules and do not impose any new regulations.

Section 5. Permit Requirements.

The permitting process is the core means by which the District will give effect to its rules. It is critical that the process is easily understood by applicants and equally easy to administer. This section is intended to clearly layout the application requirements, the review process, general conditions for all permits, and discretionary conditions that might be necessary to ensure compliance with the rules.

Prior to submitting an application, the applicant must meet with District staff. The purpose of this requirement is two-fold. First, the pre-application meeting will make applicants aware of the application requirements for their project before applying—avoiding incomplete applications. This will minimize applicant frustration by helping the applicant avoid spending excessive time and money in revising incomplete applications. Second, by avoiding incomplete applications, Staff time is used more efficiently.

A uniform and detailed application form will be created once a final version of the rules is adopted. This form will address technical specifics so Staff and applicants have a standard set of expectations. The form will specifically address the technical requirements for plans and drawings that are required to be submitted with a permit application. The application form will be included as an Appendix to the adopted rules. The permit application fee is set at \$10 which is the maximum amount allowed by state law. State law also requires that governments be exempted from the permit fee.

All permits that must be reviewed by the Board must be submitted and deemed complete 10 business days prior to the next Board meeting. This requirement is necessary because only complete applications will be brought before the Board. Also, Staff needs a minimum of 10 days time to review the application, prepare recommendations for the Board, and to allow enough time to place the application on the meeting agenda.

State law allows the District to charge a site inspection fee to the applicant when a site inspection is required. The law specifically allows the District to charge the applicant its actual costs for the inspection, but at a minimum not less than \$35. A schedule of the District's actual costs for site inspections will be included in the permit application form that will be created after the rules are adopted.

The proposed rules contemplate two possible ways a permit application may be reviewed and approved—administratively or by the Board. All permits will be reviewed by District Staff. For permit applications below certain thresholds, Staff may administratively approve the permit. These thresholds will be set at a level intended to balance efficiency with comprehensive review of significant projects. Further, if a permit meets the administrative approval requirements but the District Administrator determines that administrative approval is inappropriate due to an unusual circumstance, the permit application may be brought to the Board for review and approval. The purpose behind administrative approval is to provide an efficient and effective means for administering minor project permits so that applicants can obtain quick approval and the Board is not burdened with lots of minor permit applications at each meeting. Through the administrative approval process, Staff may work with District consultants and require reasonable conditions. While Staff may administratively approve a permit, courts have held that Staff cannot deny a permit; only the Board may deny a permit.

For permit applications that do not fall below the thresholds for administrative review, Staff will bring the application to the Board with written recommendations at regular meetings. The applicant is required to be at the Board meeting when the permit is reviewed. This is necessary so that the Board can ask questions of the applicant if they exist. If the Board has questions and the applicant is not present to answer them, the Board may be forced to deny a permit. This would require the applicant to reapply for the permit and begin the process over. If the District denies a permit, it must provide written findings. This is necessary because it provides applicants with information so that they can possibly modify the project to obtain approval. It also provides a record for the Board's decision in the event that the denial is appealed by the applicant.

Reasonable conditions may be added to a permit to address site specific concerns. In addition, all permits are subject to three standard conditions. (1) The District may reasonably require a site inspection at any time during the project. (2) The conditions of any other permit required for the project are incorporated into the District permit. A violation of other required permits are deemed to be a violation of the District permit. (3) As a condition of requesting a District permit, the applicant grants the District the right to enter the applicant's property for inspection purposes. All of the above conditions are necessary to ensure compliance with the requirements and intent of the rules.

State law imposes deadlines for action on a permit application. If the District fails to act within the required time, an applicant's request is automatically approved. The law does allow the District to automatically extend the deadline by providing written notice to the applicant. In order to avoid automatic approval without District review, the rules require a number of actions before the statutory timeline begins to run. First, an application must be complete and all fees must be paid in full. Second, all initial site inspections must be performed. When an inspection cannot be performed due to conditions beyond the District's control, the timeline is tolled. Third, the timeline is also tolled if prior permit approval from another entity is required. Under no circumstances will a failure by the District to meet a deadline authorize any activity for which a permit cannot be granted because the activity is unlawful under applicable law.

The District is authorized, under state law, to require sureties from permit applicants as a condition of a permit. Sureties are necessary to ensure that work is properly completed, or in the alternative, that the District has a financial remedy to draw upon and complete the work itself. Governments are exempt from the surety requirement.

The Board may require that an applicant enter into an agreement as a condition of the permit. This agreement is intended to be analogous to development agreements utilized by cities when permitting large developments. Similar to development agreements required by cities, the applicant agreement is only appropriate for large projects. However, setting a threshold on when such an agreement can be required is problematic because the appropriateness is not directly linked to the area, cost, or time span of the project; appropriateness is highly fact driven. Therefore, only the Board has the discretion to require an applicant agreement. The Board will rely on staff and consultant recommendations when making the determination on the appropriateness of requiring an agreement and the content of the agreement.

Permits can only be transferred with permission of the District Administrator. This is necessary because some conditions of permits create contractual relationships that must be maintained upon transfer, the District must maintain current contact information for permit holders, and to provide notice to parties assuming a permit of outstanding obligations of the original permit holder.

Permits are valid for 12 months. This is a reasonable time period because it allows for an entire construction season to be utilized by an applicant. An expiration date is necessary because conditions may change that make the permit no longer appropriate. The rules do allow for an extension of the expiration date which accommodates unexpected contingencies, but allows the District to add or modify permit conditions if necessary.

The Board, under the proposed rules, has the authority to grant an exemption from the requirements of the rules. This is analogous to a variance. In order for the Board to grant an exemption, the Board must find that special circumstances exist that create a hardship, that an exemption will not affect public safety or welfare, and the exemption meets the intent of the rules. This provision is necessary to avoid undue hardship. However, an exemption is only rarely appropriate and must meet all of the criteria found in the rules.

The District shares common jurisdictional boundaries with several townships, cities, counties and watershed districts. In some cases, activities requiring a District permit might extend across the District's boundary. To reduce regulatory requirements and improve efficiency, the District may, by Joint Powers or other agreement, coordinate with an adjacent jurisdiction to allow single permitting of an activity lying in both jurisdictions.

SECTION 6. APPEALS

State law lays out a specific procedure for appealing a District decision. The proposed rules cite to the relevant statutory provisions. Additional language or procedures are unnecessary and would likely run afoul of state law because the Legislature appears to have preempted the District from promulgating additional appeals processes.

SECTION 7. STORM WATER.

The first regulatory section of the rules regulates storm water. The purpose of this section is to manage storm water runoff within the watershed in a way that promotes infiltration, encourages pretreatment, and minimizes peak flows. The storm water rule sets four triggers which require a permit. The rule then sets two standards that all permitted activities must meet.

The four triggers parallel the most expansive county ordinance currently in place within the District. This is necessary for consistency within the watershed. The four triggers are: (1) the development or redevelopment of property resulting in the creation of more than one acre of new impervious surface; (2) the development of any new resort or PUD; (3) the expansion or replacement of a structure at an existing resort; and (4) the redevelopment of a parcel that currently exceeds impervious surface limits imposed by Minnesota Rules Chapter 6120 or by any political subdivision within the watershed. These are activities that involve an intensive use, or an intensification of a use, and are the activities most likely to cause detrimental storm water discharges to waterbodies and wetlands within the watershed, and therefore regulation is necessary.

The storm water standards for permitted activities are a compromise. Political subdivisions within the watershed currently have dramatically varying standards. The least stringent standards in existence within the District do not regulate storm water to the extent that the District has determined is appropriate and necessary to achieve water quantity and quality management goals. Conversely, the most stringent standards currently in existence within the District go above and beyond the current capabilities of the District to monitor and enforce. Further, immediately imposing the most stringent standards on individuals currently subject to the least stringent standards may cause a hardship. As a compromise, the District proposes standards that will improve water quality but at the same time will be feasible for the District to administer. Standards can always be raised in the future. Political subdivisions within the District may still enact and enforce standards that are more stringent than the District's. Those political subdivisions can enter into an agreement with the District for exemption in accordance with Section 12 of the rules.

The first storm water standard requires that runoff rates do not exceed existing runoff rates for the 2-year, 10-year, and 100-year and 7.2 inch snow melt critical storm events. The "existing runoff rate" for the property is considered for the predominant land use of the site over the past 10 years. The 10 year look back period is necessary to prevent an applicant from manipulating the land use prior to requesting a permit in order to maximize the allowed runoff rate. The second standard requires that the development or redevelopment of property treats 0.5 inch of runoff from impervious surfaces on the property. Applicants must use MPCA BMPs to treat any runoff leaving the property. The third standard applies to sites located within one mile of a special or impaired water. These properties must treat for 1.0 inch of runoff, and infiltrate $\frac{1}{2}$ of the volume of runoff from the property. This is reasonably consistent with new NPDES standards. Applicants must provide a site plan and calculations showing that the standards will be met. The District will identify approved models for performing these calculations. These

standards are reasonable because they set at a high enough level that improve water quality, but also at a level that can be administered by the District.

The District recognizes the challenge the storm water rule presents in heavily urbanized areas. For example, road reconstruction in the urban landscape offers little land space for creation of holding or treatment facilities. Similarly, many existing commercial and industrial properties exceed impervious surface standards. Neither of these conditions should be an excuse for compromising state and federally mandated storm water, pollution or water quality standards. In the case of municipal improvements and re-constructions within the District, major urban areas are subject to Municipal Separate Storm Sewer System (MS4) permits. It is expected that municipalities will make efforts to incorporate BMPs into their municipal improvements and re-constructions. In those instances where municipalities have adopted standards or hold MS4 permits, it is likely that their activities will be exempted from the District's rules as allowed in section 12 of the rules. For re-development of parcels exceeding current impervious surface standards, it is reasonable to expect re-development to occur in a manner that is environmentally responsible. For those properties and municipal project where compliance with the rules works a hardship, an exemption may be available under section 5.

SECTION 8. EROSION CONTROL.

The District intends to prevent erosion and sedimentation into surface waters within the watershed by regulating land disturbing activities. While large scale land disturbing activities are currently regulated, the District is concerned about the cumulative effects of small land disturbing activities near waterbodies and wetlands that currently go unregulated. The District requires that erosion and sediment control measures be in place for all land disturbing activities that fall within the rule. The control measures must minimize erosion and sedimentation to the greatest extent possible.

The District will regulate any land disturbing activity that disturbs an area greater than 200 square feet where the disturbance is within 500 feet of any waterbody or wetland. This threshold is reasonable because it allows very minor activities such as patios and small landscaping to remain unregulated and only regulates activities that are likely to impact waterbodies and wetlands due to a close proximity. Further, it is anticipated that the threshold will not overwhelm the District with permits for very minor projects.

Recommend to USE the term "waters of the State"
ANY WETLAND?
I WOULD LOOK AT HOW MUCH NON-AG LAND IS LEFT.
we will see!

Ordinary agricultural activities are exempt from the erosion control rule due to resource limitations and because the District has determined that agricultural practices are better dealt with through education and incentive-based programs. During the rules development process the District received many comments regarding backyard gardens. For that reason the District included a domestic horticultural exemption to the rule. During the rules development process the District also received many comments about agricultural practices occurring in road ditches. The District has determined that intentional disturbance of road ditches increases the potential for erosion and sediment/nutrient delivery within the District. For that reason, the agricultural exemption does not apply to agricultural activities that disturb land in the right of way of any public road or in any road ditch adjacent to any public road.

- Discuss Somewhere How the Right of Way Can be Identified in the Field.

The standards for activities covered by the erosion control rule require the phasing of work, the implementation of BMPs, and the consideration of topography and soils conditions of the site. These standards, as opposed to rigid technical requirements, allow for project-specific control measures and creativity in controlling erosion and sedimentation.

SECTION 9. DRAINAGE.

Private ditches and drain tiles that drain agricultural properties are prevalent within the District. These drainage facilities, if improperly installed or maintained, have the potential to introduce pollutants in waterbodies and wetlands within the District and contribute to flooding. As a result, it is necessary for the District to regulate drainage facilities. The District has promulgated this rule with the goals of preserving drainage capacity, preventing flooding, and improving water quality.

This section regulates any new or ^{define.} expanded private open ditch, any new or expanded drain tile system with an outlet greater than 12 inches in diameter, the construction of any surface intake to agricultural drainage facilities, work within the right of way of a public drainage system, the diversion of water into a public drainage system from land not assessed for the public system, and any work in or connection to a public drainage system. The repair or replacement of existing drainage facilities is exempt from this section so long as the replacement is not an expansion. Since the District is a drainage authority, it is necessary to regulate work within a public drainage system.

Setting the threshold for drain tile outlets at greater than 12 inches limits the regulation to those drain tiles that have significant capacity, and therefore significant potential to pollute or flood. Setting the threshold at a smaller diameter would apply the rule to almost all drain tiles which would overwhelm the District. Surface intakes are included because of their potential for sediment and nutrient delivery. Municipal drainage facilities are exempt from this section because the District has determined that they are better addressed through education. - A lot of little ones are > = ASIGONE.

For drainage facilities and work in public drainage systems subject to these rules, the following standards apply: the applicant must demonstrate that downstream capacity exists for the additional water discharged by the drainage facility; a stable outfall that minimizes erosion and sedimentation in accordance with the MPCA guidance documents must be provided and maintained; drain tile system intakes must be designed and maintained in a way that minimizes the introduction of sediments to the drainage facility; the applicant must demonstrate that the drainage facility complies with all federal, state and local wetland regulations; and the applicant must provide a site drawing with the location of all drainage facilities, ^{and} must be submitted with the permit application. These standards are reasonable because they can be implemented with minimal cost, they do not take land out of production, and they do not impede the agricultural process.

SECTION 10. WATER USES.

Improper manipulation or alteration of hydrology, including the intentional flooding of land or enlargement of a wetland by means of diversion, detention, or impoundment; the construction, installation or alteration of water control structures; the diversion of water into a different sub-watershed; or the construction or reconstruction of waterbody crossings have historically created the most conflict within the District. When performed haphazardly, these activities have damaged private and public property and significantly impacted water quality and quantity.

In order to gain visibility of such activities before they create issues, and in order to provide regulatory guidance to ensure such activities are properly designed and implemented, a District permit is required for the activities. All Water Use permits must: demonstrate that capacity exists; ensure that BMPs are implemented to minimize pollution; prevent impacts to neighboring properties; and require construction to engineered specifications.

SECTION 11. WATERSHED NOTICE AND DISCRETIONARY ENFORCEMENT.

The District must focus its regulatory efforts due to limited resources. Other political subdivisions within the watershed regulate activities relevant to water quality and water quantity in the watershed. Where these other regulated activities are outside of the scope of the District's rules, the District requires notice and an opportunity to comment in the permitting process for these other regulated activities. The District also incorporates compliance with third party permits related to water as a requirement for all district permits. This is necessary to ensure that the District is well informed of activities within the Watershed, can manage it accordingly, and prevents violations that are beyond the control or authority of the District.

Specifically the District requires notice of, and an opportunity to comment on, any environmental review required by Minnesota law; all NPDES permits, any pollution discharge permits required under Minnesota Statutes Chapter 115, Minnesota Rules, or other state law; all wetland applications under Minnesota Statutes Chapter 103G and Minnesota Rules Chapter 8420, U.S. Army Corp of Engineers permits under Sections 404 or 401 of the federal Clean Water Act; public waters permits required under Minnesota Statutes Chapter 103G and Minnesota Rules Chapter 6115; the approval of any nutrient management plan as required by state law or by any political subdivision within the watershed; the approval of any application for a PUD within the watershed; and the approval of any application for shoreland development within the watershed including variance requests, conditional use permit requests, or other permit requests. These are the permitting processes of activities most likely to affect water quality and quantity. The District will retain a copy of these documents in the District's files.

The rules grant the District the authority to enforce third party permits in instances when third party regulatory entities lack the means, will, or capacity to enforce their permits. Any violation of a permit by a third party regulatory entity related to water quality or water quantity within the watershed is a violation of the District rules and subject to all enforcement measures authorized by these rules. This is necessary to carry out the District's watershed management

plan, by ensuring that the failure to enforce by a third party regulator does not undermine the regulatory requirements of the District.

SECTION 12. EXEMPTION FOR EXISTING REGULATION.

It is the District's intention that its rules be the minimum standard within the watershed. The District does not intend to duplicate the regulations of other political subdivisions where other political subdivisions have regulations that are equally as stringent or more stringent than the District's regulations. In fact, the District encourages other political subdivisions to take further regulatory steps to improve water quality. To eliminate multiple layers of regulation, the District intends to enter into agreements with political subdivisions that have regulations that are equally as stringent or more stringent than the District's regulations that allow for the exemption of regulation by the District within the subject political subdivision. The District requires that the agreements contain provisions that require the political subdivision to agree to enforce its regulations; the agreement terminates if the political subdivision amends its regulations in a way that causes them to be less stringent than the District's rules; the agreement must be amended and signed by the District and the political subdivision when the District amends its rules; and the political subdivision must provide the District with notice of all permits issued within the watershed by the political subdivision subject to the agreement. These requirements are necessary to insure that other political subdivisions are carrying out regulations in a way that meets the intent of the District's rules and with outcomes that will work to accomplish the goals of the District's watershed management plan.

SECTION 13. ENFORCEMENT.

Central to every regulation is enforcement of violations. State law provides the District with broad discretion in enforcing its rules. All violations of District rules or a District permit are misdemeanors subject to the maximum penalty provide by Minnesota law.

The rules provide the District with four general enforcement options. First, the District can bring a court action to compel action, stop harmful action, or to file criminal charges against a violator. Second, the District may itself issue an administrative cease and desist order to stop harmful or unpermitted actions. Third, the District can issue an order to show cause. Such an order requires individuals of political subdivisions to appear before the Board and show why an activity is not in violation of District rules or permits. Lastly, the Board can withhold future permits until all violations have been remedied.

SECTION 14. EFFECTIVE DATE.

This Section merely describes when these rules become effective.

SECTION 15. ADOPTION.

This Section merely contains the appropriate signatures for adopting these rules.