



MEMORANDUM

To: MCWD Board of Managers
From: Becky Christopher
Date: November 9, 2018
Re: Item 12.1: MCWD Position on MAWD Resolutions

Purpose:

At the November 15, 2018 Board Meeting, the Board will be asked to discuss its position on a number of resolutions that will be voted on at the annual meeting of the MN Association of Watershed Districts (MAWD). This memo provides a brief analysis of the proposed resolutions for the Board's consideration.

Summary:

The MAWD Resolutions Committee has recommended approval of nine resolutions to be considered at this year's MAWD annual meeting. Staff has reviewed the proposed resolutions and received input from the District's legal counsel and government relations consultant. A brief analysis is provided below. The MAWD resolution packet is attached for further detail.

1. Allow an Increase to Manager Compensation

The proposed resolution would support legislation to lift and/or increase the maximum \$75 a day manager compensation rate set in MN Statute 103D.315 Subd. 8. There has been some concern in previous years that pressing for increased per diems may at least incrementally increase scrutiny on watershed districts in the context of the size and cost of government. Presumably, the per diem maximum should remain similar to statutory per diems for comparable appointed positions.

2. Increase or Remove the \$250K General Fund Tax Levy Limit

The proposed resolution would support legislation to increase or remove the \$250,000 general fund ad valorem tax levy limit set in MN Statute 103D.905 Subd. 3. The increase in the general fund ad valorem maximum principally is important to non-metro districts without the unlimited 103B levy, and is not essential to the MCWD. It would seem reasonable to advocate for an increase to what is a low maximum in light of inflation, increased cost-share needs and the desire for increased water project activity.

We collaborate with public and private partners to protect and improve land and water for current and future generations.

3. Require Timely Appointments to the BWSR Board

The proposed resolution would support legislation to require the Governor to make BWSR Board appointments within 90 days of a vacancy or board member term expiration. While likely not a significant concern, imposing a deadline could potentially produce adverse results. The Governor's office may choose to delay making an appointment if they do not like the pool of applicants and are actively recruiting others to consider serving.

4. Require Watershed District Permits for DNR

The proposed resolution would support an amendment to MN Statute 103D.315 Subd. 5 to include the DNR as a state agency required to get watershed district permits. There is some concern with this proposal. Since the statute was amended over 20 years ago to state explicitly that MnDOT is subject to watershed district permit jurisdiction, there has been an open question about whether this means that all other state agencies are not subject to jurisdiction. The DNR has taken the stance that it is not, but some agencies continue to accept jurisdiction (e.g., MnSCU), and others at least engage in review and endeavor to conform their designs to meet watershed district rules, in part due to the leverage, to whatever degree, created by the fact that the statute is unclear. Amending the statute to specifically add DNR would substantially strengthen the interpretation that only the named agencies (MnDOT, DNR) are subject to permit jurisdiction, and not any other state agencies.

The preferred action would be to amend the statute simply to state explicitly that all state agencies are subject to jurisdiction, which would seem to be the legislature's original intent. But that may prompt a broader pushback from the State that MAWD and the District may not wish to instigate.

5. Adjust WD Statutory Borrowing Limit

The proposed resolution would support an amendment to watershed law and/or the drainage code to improve the capacity of watershed districts to finance drainage projects. This resolution is less important for metro districts that advance projects principally under 103B and have broader county financing options as a result. But it would seem that the District would support this as removing artificial constraints on sound project financing for all districts, including metro districts.

6. Ensure Timely Updates to Wildlife Management Area Plans

The proposed resolution would support that Wildlife Management Area (WMA) Plans are drafted or updated in a timely fashion, with local government input, to ensure consideration in One Watershed One Plan efforts. Presumably, the District has no objection to some type of mandate for the DNR to engage the host watershed district more directly in WMA planning.

7. Remove Impediments to Common Carp Removal in Lakes

The proposed resolution would support legislation to require the DNR to allow common carp removal as part of an electrofishing program, and to license and assign multiple commercial fishermen to ensure watershed districts have the ability to remove carp as part of their management programs.

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The DNR does have authority under existing statutes to efficiently authorize carp harvesting for water quality/ecological purposes outside of the otherwise-applicable commercial licensing framework. The District engaged with the DNR for this purpose for the Six Mile Creek-Halsted Bay program. DNR staff recognized the merit of the District's having the ability to work around the licensed commercial fisherman, and also recognized that its regulatory/administrative framework needs updating/adjustment to accommodate rough fish harvesting for water quality/ecological purposes. The District was able to work out a framework with the DNR that is acceptable to the District for its present needs, but of course it would be preferable to have a clear and efficient path for the future.

DNR has compiled a rulemaking package to address the carp fishing issue and is hosting an informational meeting with key stakeholders. Ordinarily, the District would not favor legislation where the issue can be, and is more appropriately, addressed by agency rulemaking, but in this case a clear legislative statement, recognizing rough fish harvesting for water quality/ecological purposes as a separate activity that merits a separate agency approval path, may be helpful as the DNR works to adjust its rules and authorizing procedures as needed.

It is not clear why the resolution would be focused narrowly on electrofishing, as opposed to any harvesting for water quality/ecological purposes. It may also be useful to expand beyond just commercial fisherman, or have a pathway for other contractors to get a commercial carp removal license without having a pre-determined commercial fishing region, though that may be too complex at this time.

8. Reinforce Existing Rights to Maintain/Repair 103E Drainage Systems

The proposed resolution would support legislation reinforcing that the DNR cannot restrict existing rights to maintain and repair 103E public drainage systems. In general, this would clarify the process for DNR review of drainage system repair and would help prune away some of the bureaucratic overlay. The only substantive change appears to be the proposed change to 103G.225. Presently, if a drainage repair would have impact on a public water wetland (PWW), the DNR must pay to protect the PWW from impact. Preventing impacts to public waters other than PWWs is a cost to the drainage system. The proposal, it appears, would shift the cost of protecting public waters other than PWWs from the drainage system to the public.

9. Recommend Administrators for Clean Water Council Appointments

The proposed resolution would ask that any representative of the Clean Water Council (CWC) resign when they lose their direct association to a watershed district, and would have MAWD recommend to the Governor's office that administrators in good standing with MAWD be appointed to the CWC. This could potentially limit the ability to appoint or retain well qualified individuals.

If there are questions in advance of the meeting, please contact: Becky Christopher at (952) 641-4512 or bchristopher@minnehahacreek.org.

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Minnesota Association of Watershed Districts, Inc.
www.mnwatershed.org

**MN Association of Watershed Districts, Inc.
2018 Annual Convention and Trade Show
November 29-December 1, 2018
Arrowwood Resort, Alexandra MN**

Watershed District Member Material

Enclosed are the following items:

1. Notice of Annual Meeting
2. Delegate Appointment Form – please return to mnwatershed@gmail.com
3. Proposed Fiscal Year 2019 Budget
4. Resolutions and Bylaws Amendment Information Packet

This packet has been distributed to administrators via email with “read receipt” enabled at time of delivery. Administrators – please distribute copies to your managers. No paper copies will be sent via the US Postal Service.

Note: a full meeting packet, including an agenda, previous meeting minutes, and reports, will be distributed to watershed district administrators and made available on the MAWD website no later than one week prior to the Annual Meeting.

We are looking forward to seeing you at this year’s convention!



Minnesota Association of Watershed Districts, Inc.
www.mnwatershed.org

MN Association of Watershed Districts, Inc. 2018 Annual Meeting Notice

NOTICE IS HEREBY GIVEN that the 2018 Annual Meeting of the Minnesota Association of Watershed Districts, Inc. will be held at the Arrowwood Conference Center, Alexandria, MN, beginning at 8:00 a.m. on Friday, November 30, 2018 for the following purposes:

1. To receive and accept the reports of the President, Secretary, and Treasurer regarding the business of the association of the past year;
2. To receive the report of the auditor;
3. To consider and act upon the Fiscal Year 2019 budget;
4. To consider and act upon proposed resolutions;
5. To consider and act upon proposed bylaws changes;
6. To elect three directors, one from each region, for terms ending in 2021;
7. To consider and act upon any other business that may properly come before the membership.

Sincerely,

Mary Texer

Mary Texer
Secretary



MN Association of Watershed Districts, Inc. 2018 Delegate Appointment Form

The _____ **Watershed District** hereby certifies that it is a watershed district duly established and in good standing pursuant to Minnesota Statutes 103D and is a member of the MN Association of Watershed Districts, Inc. (MAWD) for the year 2018.

The _____ **Watershed District** hereby further certifies the following individuals have been appointed as delegates, or as an alternate delegate, all of whom are managers in good standing with the District.

Delegate #1: _____

Delegate #2: _____

Alternate: _____

Authorized by: _____
Signature Date

Title

** Please return this form to mnwatershed@gmail.com at your earliest convenience. **

MAWD Proposed Fiscal Year 2019 Budget
October 1, 2018 - September 30, 2019

	FY2019	FY2018	FY2018	FY2017	FY2016
	Oct '18-Sep '19	Oct '17-Sep '18	Oct '17-Sep '18	Nov '16- Sep '17	Nov '15-Oct '16
INCOME	Proposed BUDGET	Last Year's BUDGET	FY2018 ACTUAL	FY2017 ACTUAL (11 months)	FY2016 ACTUAL
Dues - Watershed District Members	216,600	225,000	218,421	117,590	121,412
Dues - Associate Members (WMOs)	2,500	2,500			
Annual Convention					
Annual Meeting Registrations	55,000	55,000	59,129	52,068	49,390
Annual Trade Show	25,000	13,000	21,655	22,250	11,495
Pre Conference Workshop: Drainage	6,500	5,000	6,800	5,595	9,010
Pre Conference Workshop: Administration	2,400	600	2,550	775	600
Pre Conference Workshop: Managers	2,400	2,500	2,295	2,950	4,250
Legislative Day at the Capitol	9,000	9,000	8,185	8,325	7,450
Summer Tour	17,500	17,500	18,891	21,469	14,390
MAWD Workshops	2,500	2,500	0	2,720	3,000
Interest	100	100	66	111	241
TOTAL	339,500	332,700	337,992	233,853	221,238
EXPENSES					
Administration & Program Management					
General Administration - Staff	70,000	90,000	70,747	62,311	81,345
Benefits /Taxes for Salaried Employees	30,000	30,000	15,069		
General Administration - Contract	12,000				
Communications, Conferences - Contract	36,000	48,000	48,835	33,750	10,000
Legislative Affairs					
Lobbying - Staff (includes Administrative Lobbying)	24,500				
Lobbying - Contracted Services	40,000	35,000	48,251		
Lobbyist Expenses	1,000	1,000	1,395	3,647	1,754
Professional Services					
Legal Fees	2,000	2,000	1,377	1,308	
Accounting and Audit Fees	6,000	5,000	4,650	4,100	3,550
Liability Insurance	1,800	1,700	1,645	1,645	1,551
Office Expenses					
Rent	3,600	3,000	2,400		
Mileage and General Office Expenses	11,250	7,200	11,965	4,257	3,994
Dues, Other Organizations	500	500			
Memorials	250	250	50		
Board and Committee Meeting					
Per Diems and Expenses - Directors	20,000	34,000	16,448	22,092	26,400
Board and Committee Meeting Expenses	1,500	1,500	1,081	1,440	1,471
Special Projects					
WD Handbook, Surveys, etc.	1,600	1,500		1,361	7,250
Education and Events					
Annual Convention					
Annual Meeting	40,000	40,000	45,073	39,208	37,079
Annual Trade Show	8,500	9,000	8,631	6,322	9,569
Pre Conference Workshop: Drainage	2,500	2,000	2,871	1,817	2,993
Pre Conference Workshop: Administration	1,000	500	587	339	
Pre Conference Workshop: Managers	1,000	2,500	1,754	580	2,288
Legislative Breakfast	5,500	7,500	6,246	7,045	7,177
Summer Tour	12,500	20,000	9,483	16,000	14,402
Credit Card Processing Fees	3,500	3,500	3,020	3,323	2,791
Special Workshops	2,500	2,500		2,271	
Partner Event Participation	500				1,153
TOTAL	339,500	348,150	301,578	212,816	214,767
STATEMENT OF NET POSITION					
Assets, Cash and Equivalents, actual			217,693	154,113	140,033
Deposits received, deferred				(4,799)	(11,385)
Liabilities, accounts payable, taxes payable			(34,352)	(2,387)	(2,760)
ENDING NET ASSETS			183,341	146,927	125,888

Memorandum

DATE: October 31, 2018
 TO: MAWD Members
 FROM: Sherry Davis White, Resolutions Committee Chair
 Mary Texer, Governance Committee Chair

PLEASE BRING THIS PACKET TO THE CONVENTION; EXTRA PRINTED COPIES WILL NOT BE AVAILABLE ONSITE.



RE: Committee Recommendations for 2018 Resolutions and Bylaws Amendment

Enclosed are items that will require a vote at this year’s annual meeting. Please review them as a board and have your appointed delegates prepared to vote on Friday, November 30th. Here is a recap of our timeline, along with recommendations made by the Resolutions Committee on nine resolutions and the Governance Committee on proposed changes to the bylaws.

Timeline

- End of October** Resolutions (along with committee feedback) will be emailed to districts
- November** Districts should discuss the resolutions at their November meetings and name delegates for voting at the annual meeting
- November 30** Debate and voting to take place at the Friday morning business meeting
- December / January** Legislative Committee will review any newly adopted resolutions, along with existing ones, and make recommendations to the MAWD Board of Directors for the 2019 legislative platform
- January** MAWD Board of Directors will finalize the 2019 legislative platform

Resolutions Committee Recommendations

#	Resolution Title	Committee Recommendation
1	Allow an Increase to Manager Compensation	Approve
2	Increase or Remove the \$250k General Fund Tax Levy Limit	Approve
3	Require Timely Appointments to the BWSR Board	Approve
4	Require Watershed District Permits for DNR	Approve
5	Adjust WD Statutory Borrowing Limit	Approve
6	Ensure Timely Updates to Wildlife Management Area (WMA) Plans	Approve
7	Remove Impediments to Common Carp Removal in Lakes	Approve
8	Reinforce Existing Rights to Maintain/Repair 103E Drainage Systems	Approve
9	Recommend Administrators for Clean Water Council Appointments	Forward to Membership for a Vote - See Notes in Packet

Governance Committee Recommendations on Bylaws Amendment

Description of Bylaws Changes	Committee Recommendation
(1) Allow Water Management Organizations (WMOs) to be full voting members of MAWD. (2) Make non-substantial language changes to clean up the document and make it consistent with language in the Manual of Policy and Procedures (MOPP).	The committee reviewed both the Bylaws and the MOPP in July 2018. In addition to cleaning up the language to make the documents consistent both internally and with each other, the committee recommends adding language to allow for WMOs to join MAWD with full voting rights. Dues would be calculated using the same formula as used for Watershed District members starting in 2020. The MAWD Board of Directors accepted the committee’s proposed changes to the MOPP at the September 21 board meeting and further recommends the changes proposed to the Bylaws as presented.

BACKGROUND INFO on PROPOSED RESOLUTION #1

Allow an Increase to Manager Compensation

Proposing District:	Bois de Sioux WD	Roseau River WD
Contact Name:	Jamie Beyer	Tracy Halstensgard
Phone Number:	320-563-4185	218-463-0313
Email Address:	bds wd@runestone.net	rrwd@mncable.net

Background that led to submission of this resolution:

Board Manager compensation has not been adjusted since 2005, despite increasing water quality and water quantity demands and responsibilities placed on Watershed Districts.

If we want to recruit and retain competent, thoughtful, forward-looking individuals, compensation is an important tool - and the flexibility to customize pay according to regional norms could also be very important to some districts.

Ideas for how this issue could be solved:

Support the pursuit of legislation that increases the per diem for watershed district managers, or the ability for watershed districts to determine their own rates - similar to the authority granted to cities.

Anticipated support or opposition from other governmental units?

Opposition has told us that the per diem is a standard amount and is comparable to other government official per diems - however, those comparisons sometimes involve a government position that receives a base salary.

This issue is of importance (Check one):

To the entire State: _____
Only our Region: _____
Only our District: _____

PROPOSED 2018 MAWD RESOLUTION #1

Allow an Increase to Manager Compensation

Submitted by: Bois de Sioux WD and Roseau River WD

WHEREAS Manager compensation is restricted to \$75 per day by 103D.315 Subd. 8;

WHEREAS Manager compensation has not been increased by the MN Legislature since 2005;

WHEREAS \$75 no longer reflects current pay standards, and does not represent fair compensation for the knowledge, skills, abilities, and effort provided by individuals serving in the highly-specialized public service of governing water quantity and quality; and

WHEREAS the ability to recruit and retain willing individuals to fill Board Manager positions is hampered by the outdated compensation limit.

THEREFORE, BE IT RESOLVED that MAWD supports legislation to lift and/or increase the maximum \$75 a day manager compensation rate set in MN Statute 103D.315 Subd.8. If the compensation rate is raised to a new dollar amount, MAWD supports the inclusion of an annual cost of living adjustment with the local board having authority to set their own rates for a lesser amount if deemed appropriate.

Notes:

1. If approved, this resolution would replace existing language from a resolution passed in 2015 that stated:

“MAWD supports amending Statute 103D.315 Subd 8 to reflect compensation not to exceed \$100 a day.”

2. MN Statute 103D.905 Subdivision 3 currently reads:

“MN Statute 103D.315 MANAGERS.

Subd. 8. **Compensation.** The compensation of managers for meetings and for performance of other necessary duties may not exceed \$75 a day. Managers are entitled to reimbursement for traveling and other necessary expenses incurred in the performance of official duties.”

3. Committee Recommendation: “Approve” since it allows more options than existing policy.

BACKGROUND INFO on PROPOSED RESOLUTION #2

Increase or Remove the \$250k General Fund Tax Levy Limit

Proposing District:	Bois de Sioux WD	Roseau River WD
Contact Name:	Jamie Beyer	Tracy Halstensgard
Phone Number:	320-563-4185	218-463-0313
Email Address:	bdswd@runestone.net	rrwd@mncable.net

Background that led to submission of this resolution:

The General Fund ad valorem tax levy has not been adjusted since 2001 despite increasing water quality and water quantity demands and responsibilities placed on watershed districts. At the very least, the figure could be updated based on an inflationary index.

Ideas for how this issue could be solved:

Support the pursuit of legislation that increases the maximum amount or net formula result or adds an annual inflationary adjustment.

Anticipated support or opposition from other governmental units?

unknown

This issue is of importance (Check one):

To the entire State: _____
Only our Region: _____
Only our District: _____

PROPOSED 2018 MAWD RESOLUTION #2
Increase or Remove the \$250k General Fund Tax Levy Limit
Submitted by: Bois de Sioux WD and Roseau River WD

WHEREAS Minnesota watershed district administrative levies are restricted to \$250,000 by MN Statute 103D.905 Subd. 3;

WHEREAS the \$250,000 limit was legislatively enacted in 2001 and has not kept pace with the current needs and expectations placed on watershed district operations; and

WHEREAS the ability to fulfill water management expectations of local, state, and federal government regulations, as well as that of landowners in the District are hampered by the outdated levy limit.

THEREFORE, BE IT RESOLVED that MAWD supports legislation to increase or remove the \$250,000 general fund ad valorem tax levy limit set in MN Statute 103D.905 Subd. 3. If the limit is raised to a new dollar amount, MAWD supports an inflationary adjustment be added to statute.

Notes:

1. If approved, this resolution would replace existing language from a resolution passed in 2016 that stated:

“MAWD supports legislation to increase the cap on the general fund levy to \$500,000.”

2. MN Statute 103D.905 Subdivision 3 currently reads:

“MN Statute 103D.905 FUNDS OF WATERSHED DISTRICT.

Subd. 3. **General fund.** A general fund, consisting of an ad valorem tax levy, may not exceed 0.048 percent of estimated market value, or \$250,000, whichever is less. The money in the fund shall be used for general administrative expenses and for the construction or implementation and maintenance of projects of common benefit to the watershed district. The managers may make an annual levy for the general fund as provided in section [103D.911](#). In addition to the annual general levy, the managers may annually levy a tax not to exceed 0.00798 percent of estimated market value for a period not to exceed 15 consecutive years to pay the cost attributable to the basic water management features of projects initiated by petition of a political subdivision within the watershed district or by petition of at least 50 resident owners whose property is within the watershed district.”

3. Committee Recommendation: “Approve” since it allows more options than existing policy.

BACKGROUND INFO on PROPOSED RESOLUTION #3

Require Timely Appointments to the BWSR Board

Proposing District:	Bois de Sioux WD	Roseau River WD
Contact Name:	Jamie Beyer	Tracy Halstensgard
Phone Number:	320-563-4185	218-463-0313
Email Address:	bdswd@runestone.net	rrwd@mncable.net

Background that led to submission of this resolution:

Although there are two issues here - board member positions left vacant on the BWSR board and employing a policy of continuing the membership of board members whose terms have expired - we feel that the same solution can be applied to both: require that vacancies and expirations be filled within 90 days.

When vacancies occur on the BWSR Board, there is no statute that limits the length of time the position may be left vacant – and vacant board positions equate to public underrepresentation. We feel that unfilled vacancies can be used strategically, to lock-out specific organizations and/or regions of Minnesota out of the BWSR Board and allow the appointed Board to pass agency rules that are politically driven.

When board member terms expire, under Minn. 15.0575 Subd. 2 successors need not be appointed and qualified until July 1st, thus permitting the expired board member to serve up to an additional six full months past their term. We feel six months is unnecessarily long and is used as a political strategy to slow and delay board appointments. Board terms are clearly stated and understood; the Governor should be able to evaluate potential candidates ahead of board term expirations, and have appointees lined-up for succession in less than half a year.

Ideas for how this issue could be solved:

Support the pursuit of legislation that requires board member appointment within 90 days of a vacancy or board member term expiration.

Anticipated support or opposition from other governmental units?

Unknown

This issue is of importance (Check one):

To the entire State: _____

Only our Region: _____

Only our District: _____

PROPOSED 2018 MAWD RESOLUTION #3
Require Timely Appointments to the BWSR Board
Submitted by: Roseau River WD and Bois de Sioux WD

WHEREAS the Governor has statutory authority to appoint members to the Board of Water and Soil Resources (BWSR);

WHEREAS no statute limits the length of time the position may be left vacant once vacated;

WHEREAS vacancies equate to public underrepresentation; and

WHEREAS when board member terms expire, under MN Statute 15.0575 Subd. 2 successors need not be appointed and qualified until July 1st, then permitting the expire board member to serve up to an additional six full months;

THEREFORE, BE IT RESOLVED that MAWD supports legislation that requires the Governor to make BWSR Board appointments within **90 days** of a vacancy or board member term expiration.

Notes:

4. If approved, this resolution would replace existing language from a resolution passed in 2014 that stated:

“MAWD supports legislation that requires the Governor to appoint BWSR representatives within **30 days** of any occurring vacancy.”

1. MN Statute 15.0575 Subd. 2 currently reads:

“15.0575 ADMINISTRATIVE BOARDS AND AGENCIES.

Subd. 2. **Membership terms.** An appointment to an administrative board or agency must be made in the manner provided in section 15.0597. The terms of the members shall be four years with the terms ending on the first Monday in January. The appointing authority shall appoint as nearly as possible one-fourth of the members to terms expiring each year. If the number of members is not evenly divisible by four, the greater number of members, as necessary, shall be appointed to terms expiring in the year of commencement of the governor's term and the year or years immediately thereafter. If the number of terms which can be served by a member of a board or agency is limited by law, a partial term must be counted for this purpose if the time served by a member is greater than one-half of the duration of the regular term. If the membership is composed of categories of members from occupations, industries, political subdivisions, the public or other groupings of persons, and if the categories have two or more members each, the appointing authority shall appoint as nearly as possible one-fourth of the members in each category at each appointment date. Members may serve until their successors are appointed and qualify but in no case later than July 1 in a year in which a term expires unless reappointed.”

2. Committee Recommendation: “Approve” since 90 days is a more realistic timeframe to complete the appointment process.

BACKGROUND INFO on PROPOSED RESOLUTION #4

Require Watershed District Permits for the DNR

Proposing District: Wild Rice Watershed District
Contact Name: Kevin Ruud
Phone Number: 218-784-5501
Email Address: kevin@wildricewatershed.org

Background that led to submission of this resolution:

1. Watershed districts are local, special-purpose units of government that work to solve and prevent water -related problems (MAWD Website).
2. While all other government units, such as states, counties and cities have political boundaries, because water knows no boundaries and goes where it wants to, it makes sense to manage natural resources on a watershed basis. This type of management allows for an overall, holistic approach to resource Conservation (MAWD Website).
3. Watershed Districts have overall plans that are intended to protect, enhance, manage, and maintain the natural resources of the district in the best interest of the citizens and other stakeholders.
4. Watershed Districts currently have rules and permit requirement that 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 overall plan for the District.
5. The MNDNR owns, operates and maintains wildlife management area and other conservation-oriented property within the WRWD.
6. As part of the operation of this property, the MNDNR periodically does improvements (i.e. wetland restoration, channel modifications, etc.) on their land without going through the process of obtaining a permit from watershed districts, because they are currently not subject to 103D.345. Without requiring a permit, the watershed managers are not assured of being adequately kept informed of planned projects to ensure that land disturbing activity and development occurs in an orderly manner and in accordance with the overall plan for the District.

Ideas for how this issue could be solved:

MAWD could seek legislative authority to amend MN Statute 103D.345, Subd. 5 as follows:

"Subd. 5. **Applicability of permit requirements to state.** A rule adopted by the managers that requires a permit for an activity applies to the Departments of Transportation and Natural Resources."

Anticipated support or opposition from other governmental units?

We would anticipate support from watersheds and opposition from the MNDNR

This issue is of importance (Check one):

To the entire State: _____

Only our Region: _____

Only our District: _____

PROPOSED 2018 MAWD RESOLUTION #4
Require Watershed District Permits for the DNR
Submitted by: Wild Rice WD

WHEREAS discussion was had that the Minnesota Department of Natural Resources has engaged in certain activity on property owned by the DNR which would require a permit for such activity as being within the scope of an existing rule of the WRWD, but the DNR asserts its position that it is exempt from obtaining any such permit; and

WHEREAS the WRWD has concerns that the non-permitted work being done by the DNR on its property impacts other property owners/residents within the WRWD resulting in such impacted property owners/residents having no recourse for water flowing, seeping, or otherwise being cast upon such other owners/residents; and

WHEREAS the WRWD desires that Minn. Stat.§ 103D.345, Subd. 5 which pertains to the applicability of watershed permit requirements to the state and provides that a rule adopted by the managers that requires a permit for an activity applies to the Department of Transportation should be expanded to include the Minnesota Department of Natural Resources; and

THEREFORE, BE IT RESOLVED that MAWD supports an amendment to the Minn. Stat.§ 103D.315, Subd. 5, to include the MN Department of Natural Resources as a state agency required to get permits from watershed districts when applicable.”

Notes:

1. Minn. Stat.§ 103D.345, Subd. 5 currently reads:

“103D.345 PERMITS.

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

2. Preferred amendment language would be:

“103D.345 PERMITS.

Subd. 5. **Applicability of permit requirements to state.** A rule adopted by the managers that requires a permit for an activity applies to the Departments of Transportation and Natural Resources.”

3. Committee Recommendation: “Approve”

BACKGROUND INFO on PROPOSED RESOLUTION #5

Adjust WD Statutory Borrowing Limit

Proposing District: Heron Lake WD
Contact Name: Jan Voit, District Administrator
Phone Number: 507-793-2462
Email Address: jvoit@hlwdonline.org

Background that led to submission of this resolution:

- The Heron Lake Watershed District (HLWD), as drainage authority, is undertaking several substantial drainage system improvement projects.
- Minnesota Statutes §103E.635, subdivision 1, authorizes issuance of county drainage project bonds only after a contract for construction has been awarded. The extensive process leading to drainage project establishment, as well as design and other implementation acts in advance of construction contract award, must be financed in advance of funds from county project bonds or project assessments.
- Minnesota Statutes §103D.335, subdivision 17, limits watershed districts to \$2M in outstanding loans from counties and financial institutions. This is insufficient for a watershed district that has several substantial drainage projects in progress, as well as other watershed project financing needs. A proposed improvement project through the final hearing can cost in excess of \$500,000.
- County bonding practices can add to financing challenges. The county in which all of the HLWD's present improvement projects are located would prefer to wait to bond for a project until it is within one year of completion.
- Borrowing options should be preserved, as presently the HLWD is able to borrow from commercial banks at a better interest rate than its counties offer. The HLWD anticipates that costs for current improvement projects will exceed \$15 million, so minimizing borrowing costs will be important. Borrowing from local lenders also supports the local economy.
- The bank with which the HLWD has a relationship is willing and able to loan funds in excess of \$2 million.

Ideas for how this issue could be solved:

- Amend Minnesota Statutes §103D.335, subdivision 17, to increase the amount of outstanding loans that a watershed district may hold.
- More narrowly, add a term to the drainage code (Minnesota Statutes chapter 103E) authorizing drainage authorities to hold loans for drainage project financing that do not count against the outstanding loan cap of Minnesota Statutes §103D.335, subdivision 17.
- Amend Minnesota Statutes §103E.635, subdivision 1, to authorize counties to issue drainage project bonds before award of construction contract.
- Amend Minnesota Statutes §103E.635, subdivision 11, to remove any mandated interest rate for county loans to watershed districts and allow for competitive rates.

Anticipated support or opposition from other governmental units?

Positive

This issue is of importance (Check one):

To the entire State: X
Only our Region:
Only our District:

PROPOSED 2018 MAWD RESOLUTION #5

Adjust WD Statutory Borrowing Limit

Submitted by: Heron Lake WD

WHEREAS watershed districts serve as drainage authorities under the Minnesota drainage code, Minnesota Statutes Chapter 103E, and in that role fulfill statutory responsibilities to conduct extensive procedures to establish, design and construction major drainage projects, and

WHEREAS drainage projects are funded by multi-year assessment of benefited lands, but substantial costs are incurred in advance of the flow of funds from assessment, and

WHEREAS drainage project costs may be financed by county bonds, but the drainage code does not allow for county project bonds to be issued until the construction contract is awarded (Minnesota Statutes §103E.635, subdivision 1); and

WHEREAS a watershed district may finance project costs through loans but is constrained by statute (Minnesota Statutes §103D.335, subdivision 17) to holding no more than \$2 million in outstanding loans from counties and financial institutions, and

WHEREAS a watershed district may finance internally through a loan from another drainage account (Minnesota Statutes §103E. 655, subdivision 2), but this source is insufficient for substantial project financing.

WHEREAS these limitations constrain watershed districts' capacity to fulfill their responsibilities as drainage authorities.

THEREFORE, BE IT RESOLVED that MAWD supports amending the watershed law (Chapter 103D) and/or the drainage code (Chapter 103E) to improve the capacity of watershed districts to finance drainage projects, by:

- Increasing watershed districts' limit on borrowing;
- Allowing counties to issue drainage project bonds earlier in the project development process; and
- Enhancing watershed district ability to obtain competitive borrowing rates from both counties and financial institutions.

Notes:

1. MN Statute §103D.335, subdivision 17 reads:

“103D.335 DISTRICT AND MANAGERS' POWERS.

§Subd. 17. **Borrowing funds.** The managers may borrow funds from an agency of the federal government, a state agency, a county where the watershed district is located in whole or in part, or a financial institution authorized under chapter 47 to do business in this state. A county board may lend the amount requested by a watershed district. A watershed district may not have more than a total of \$2,000,000 in loans from counties and financial institutions under this subdivision outstanding at any time.”

2. Committee recommendation: “Approve.”

BACKGROUND INFO on PROPOSED RESOLUTION #6

Ensure Timely Updates to Wildlife Management Area (WMA) Plans

Proposing District: Roseau River
Contact Name: Tracy Halstensgard
Phone Number: 218-463-0313
Email Address: rrwd@mncable.net

Background that led to submission of this resolution:

It came to our attention that the planning process was underway for a WMA in the upper reaches of our District. It is the second of eight major WMA's in the state that will have their plans updated. We also learned that the planning writing process only involves DNR staff with, in our opinion, minimal opportunity for input from local counties and watershed districts where these WMA's are located.

Ideas for how this issue could be solved:

The DNR could include watershed districts in the process by allowing us to have more input as the plans are being updated. Most of the current plans view WMA land as independent from everything else around it. We understand the goal of the One Watershed One Plan to look at things from the watershed perspective. If that is the case, these WMA plans need to address water management issues in a way that is consistent with the watershed they are in. That can really only be accomplished if we are allowed to participate in the process.

Anticipated support or opposition from other governmental units?

Yes. Roseau County has expressed support, and we believe other counties that have authority over jurisdictional drainage systems near or on WMA's would also support more participation.

This issue is of importance (Check one):

- To the entire State: _____
- Only our Region: _____
- Only our District: _____

PROPOSED 2018 MAWD RESOLUTION #6
Ensure Timely Updates to Wildlife Management Area (WMA) Plans
Submitted by: Roseau River WD

WHEREAS Minnesota's Wildlife Management Area (WMA) system started in 1951, when the State established its "Save the Wetlands" program to buy wetlands and other habitats from willing sellers to address the loss of wildlife habitat in the state and has evolved into the present-day system of WMAs; and

WHEREAS today there are over 1.3 million acres of high-quality habitat in about 1,500 WMAs located throughout the state, making it one of the largest WMA systems in the country; and

WHEREAS the Minnesota Department of Natural Resources is responsible for the management of these acres.

WHEREAS consistency of written operation and maintenance plans for individual WMAs vary considerably from no written plan to extremely dated plans.

WHEREAS the state of Minnesota has made watershed management plans a priority with the One Watershed One Plan (1W1P) initiative.

WHEREAS effective management, including interagency coordination of said management, of our natural resources is imperative to the health and wellbeing of the visitors and residents of the state.

THEREFORE, BE IT RESOLVED that MAWD supports that Wildlife Management Area (WMA) Operation and Maintenance Plans and/or Management Plans are either drafted or brought current in a timely fashion, with input from local governmental entities, to ensure their consideration in future One Watershed One Plan efforts.

Notes:

1. Committee Recommendation: "Approve."

BACKGROUND INFO on PROPOSED RESOLUTION #7

Remove Impediments to Common Carp Removal in Lakes

Proposing District: Prior Lake-Spring Lake Watershed District
Contact Name: Diane Lynch
Phone Number: 952-440-0067
Email Address: dlynch@plslwd.org

Background that led to submission of this resolution:

1. The Legislature has given sole authority to the Commissioner of Natural Resources to issue special permits for taking, possessing, transporting and disposing of wild animals, which includes carp research, capture and removal.
2. The Department of Natural Resources allows electrofishing of common carp as “research projects” under an educational special permit. Common carp are categorized as a “nuisance species.”
3. The Department of Natural Resources, by practice, does not allow carp removal under educational permits except where it is part of a clearly defined research project.
4. Carp removal is allowed under an “Inland Commercial Fish Removal Permit Class B.” Under Rule 6260.2400, inland commercial fishing areas are assigned. Commercial fishing in state waters is allowed by license, permit or contract under Rule 6260.0200. The Department of Natural Resources licenses and assigns commercial fishermen to the inland commercial fishing areas. The fisherman assigned to the inland commercial fishing areas may be unavailable, unmotivated, lacking proper equipment etc., so removal may not happen when needed by the District. In addition, the licensed fisherman must give permission for other individuals to remove the carp as part of a management program.
5. Electrofishing is part of a District’s carp management program. Other aspects of carp management include installing carp barriers, seining, carp tournaments and disposal.
6. It is in the best interest of a watershed district and the state of Minnesota to remove nuisance species when they are electrofished to aid a District’s carp management program and to demonstrate to the public that efforts are being made to reduce common carp populations on multiple levels. It is also in the best interest of a District and the state of Minnesota to contract with other commercial fisherman besides the one assigned to the inland commercial fishing area to ensure removal can be implemented.

Ideas for how this issue could be solved:

Initiate legislation to require the Department of Natural Resources to routinely allow Class B permits to be issued in conjunction with “educational special permits” to watershed districts and the entities they hire to do the electrofishing for common carp. In addition, entities should be allowed to hire licensed commercial fishermen other than those assigned to a particular inland commercial fishing area for common carp removal only.

Anticipated support or opposition from other governmental units?

We would expect watershed districts to support it. The Department of Natural Resources may welcome legislation since they will not have to go through a lengthy rulemaking process.

This issue is of importance (Check one):

To the entire State: _____
Only our Region: _____
Only our District: _____

PROPOSED 2018 MAWD RESOLUTION #7
Remove Impediments to Common Carp Removal in Lakes
Submitted by: Prior Lake – Spring Lake WD

WHEREAS the Department of Natural Resources (DNR) regulates the state's fisheries;

WHEREAS Common Carp are a nuisance species and destroy native vegetation habitat needed by native fish and wildlife;
and

WHEREAS the activities of Common Carp cause turbidity, lack of water clarity and suspend pollutants in the water column;
and

WHEREAS watershed districts use electrofishing as a way to estimate numbers of Common Carp as part of their aquatic invasive species management plans; and

WHEREAS the DNR does not allow carp removal permits with electrofishing except where removal is part of a clearly defined research project;

WHEREAS the DNR assigns commercial fishermen to inland commercial fishing areas as a sole source, the fisherman may be unavailable to assist the watershed districts and watershed districts are required to get their permission to capture and dispose of Common Carp;

WHEREAS it is in the best interest of the watershed districts and the state of Minnesota to remove Common Carp to enhance water quality;

THEREFORE, BE IT RESOLVED that MAWD supports legislation to require the DNR to allow Common Carp removal as part of an electrofishing program.

THEREFORE, BE IT FURTHER RESOLVED that MAWD supports legislation to require the DNR to license and assign multiple commercial fishermen to commercial fishing areas to ensure that watershed districts will have the ability to remove the carp as part of their management programs.

Notes:

1. If approved, this resolution modifies a resolution originally passed in 2014 as follows:

“MAWD supports ~~actions~~ legislation to require the DNR to allow Common Carp removal as part of an electrofishing program.”

“MAWD supports ~~actions~~ legislation to require the DNR to license and assign multiple commercial fishermen to commercial fishing area to ensure that watershed districts will have the ability to remove the carp as part of their management programs.”

2. Committee Recommendation: “Approve,” but the committee notes that the original resolution did not preclude legislation and this version would not preclude non-legislative options from being pursued if deemed appropriate.

3. We will vote on each “THEREFORE, BE IT RESOLVED” statement separately.

BACKGROUND INFO on PROPOSED RESOLUTION #8

Reinforce Existing Rights to Maintain/Repair 103E Drainage Systems

Contact Name: Phil Belfiori
Phone Number: 763-398-307
Email Address: pbelfiori@ricecreek.org

Background that led to submission of this resolution:

The State enacted a number of laws related to water resources after the establishment of the public drainage systems. However, there was a commitment that these laws would not restrict existing rights including those related to the existence of, and obligation to maintain public drainage systems.

The public waters inventory was never intended to restrict the right to maintain existing drainage systems. The legislature specifically exempted repairs from DNR permitting; gave the DNR a mechanism to ensure proposed work was repair; and directed the DNR to provide for the lawful function of public drainage systems that affected public waters. The DNR also adopted a rule exempting repairs from permitting and announced a policy in 1980 that stated repair of public drainage systems should be allowed without permits.

More recent DNR practices have departed from the 1980 policy. The agency has increasingly required permits, approvals, and conditions specifically contrary to current law and the 1980 policy. The DNR issued new guidance in February 2018 that has not addressed the public drainage authority concerns while creating more uncertainty, expense, and delays in the public waters regulatory program and for drainage system repairs.

HF2687 and SF2419 were introduced during the 2018 legislative session to restate the protections given to drainage system repairs. These bills were placed on hold in committee when the DNR indicated that its new guidance would address the concerns that drainage authorities had with its current practices (relating to permitting and permission requirements for work affecting public waters). Though these bills were never withdrawn by their authors, the start of a new biennium (2019-2020) requires that they be reintroduced for consideration in the new biennium.

The DNR policy and its implementation do not adequately address drainage authority concerns. Reintroduction and approval of new legislation modeled after HF2687 and SF2419 would restate in clear terms the DNR’s role in drainage system repairs.

Ideas for how this issue could be solved:

Current issues with the DNR could be resolved through protracted litigation (least desirable course of action) or by clear legislative directive. New legislation, modeled after HF2687 and SF2419, will provide this clear legislative directive. The legislation would reinforce existing law regarding the DNR’s and the drainage authorities’ requirements when maintaining the public drainage systems.

Anticipated support or opposition from other governmental units?

All public drainage authorities (counties, watershed districts, and watershed management organizations) should support this legislation. Non-governmental environmental organizations in the state and the DNR may oppose this legislation.

This issue is of importance (Check one):

- To the entire State: _____
- Only our Region: _____
- Only our District: _____

PROPOSED 2018 MAWD RESOLUTION #8
Reinforce Existing Rights to Maintain/Repair 103E Drainage Systems
Submitted by: Rice Creek WD

WHEREAS courts have identified the rights of benefitted landowners to have public drainage systems maintained as a property right;

WHEREAS many watershed districts are 103E drainage authorities for all public drainage systems within their jurisdictional boundaries pursuant to statute chapter;

WHEREAS statute chapter 103E places an obligation on drainage authorities to maintain public drainage systems on behalf of benefitted landowners;

WHEREAS the State enacted laws related to water resources after the establishment of the public drainage systems with the commitment that these laws would not restrict existing rights to maintain public drainage systems;

WHEREAS DNR practices have departed from past policy and extended its authority by regulating, permitting and restricting drainage system repairs;

WHEREAS House File (HF) 2687 and Senate File (SF) 2419 were introduced during the 2017 legislative session to restate the protections given to drainage system repairs and were placed on hold in committee to await new DNR guidance that would address the concerns of the drainage authorities;

WHEREAS the DNR issued new guidance in February 2018 that did not address the public drainage authority concerns and has created more uncertainty, expense and delays in the public waters regulatory program and for drainage system repairs; and

WHEREAS Though HF2687 and SF2419 were never withdrawn by their authors, the start of a new biennium (2019-2020) requires that they be reintroduced for consideration in the new biennium.

THEREFORE, BE IT RESOLVED that MAWD supports legislation modeled after House File 2687 and Senate File 2419 of the ninetieth Legislature (2017-2018) reinforcing that the DNR cannot restrict existing rights to maintain and repair 103E public drainage systems.

Notes:

1. The following items are included for your review:
 - A fact sheet created by Rice Creek WD that highlights the issues
 - Letter of Support for the resolution from Sauk River WD
 - HF 2687 as introduced in the 90th legislature (Note: SF 2419 has the exact same language as HF 2687)

2. Committee Recommendation: “Approve.”

This Document can be made available
in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 2687

05/18/2017 Authored by Fabian, Hamilton, Poppe, Green, Anderson, P., and others
The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy and Finance

- 1.1 A bill for an act
- 1.2 relating to natural resources; clarifying public waters and public drainage system
- 1.3 laws; amending Minnesota Statutes 2016, sections 103E.701, subdivision 2;
- 1.4 103G.225; 103G.245, subdivision 2.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2016, section 103E.701, subdivision 2, is amended to read:
- 1.7 Subd. 2. **Repairs affecting public waters.** (a) Where as-built records, reestablished
- 1.8 records under section 103E.101, subdivision 4a, or prior concurrence of the commissioner
- 1.9 exists, the drainage authority may proceed with a drainage system repair as provided in this
- 1.10 section without further concurrence, review, or permission of the commissioner under
- 1.11 section 103E.011, subdivision 3.
- 1.12 (b) Where as-built records, reestablished records under section 103E.101, subdivision
- 1.13 4a, or prior concurrence of the commissioner does not exist, before a repair is ordered, the
- 1.14 drainage authority must notify the commissioner if the repair ~~may affect~~ will be conducted
- 1.15 in, through, or adjacent to public waters. Notice to the commissioner must include the
- 1.16 proposed repair design and configuration. Within 60 days of notice, the commissioner must
- 1.17 concur or not concur that the proposed repair is, in fact, repair as provided in this section.
- 1.18 Failure of the commissioner to concur or not concur with the repair design and configuration
- 1.19 within 60 days is deemed concurrence. If the commissioner ~~disagrees~~ does not concur with
- 1.20 the repair ~~depth~~ design and configuration, the engineer, a representative appointed by the
- 1.21 director, and a soil and water conservation district technician must jointly determine the
- 1.22 repair ~~depth~~ allowed under this section using soil borings, field surveys, and other available
- 1.23 data or appropriate methods existing records and evidence, including but not limited to
- 1.24 applicable aerial photographs, soil borings, test pits, culvert dimensions, invert elevations,

2.1 and bridge design records. Costs for determining the repair ~~depth~~ design and configuration
 2.2 beyond the initial meeting must be shared equally by the drainage system and the
 2.3 commissioner. The determined repair ~~depth~~ design and configuration must be recommended
 2.4 to the drainage authority. The drainage authority may accept the joint recommendation and
 2.5 proceed with the repair.

2.6 (c) The commissioner's concurrence with repair design and configuration or the drainage
 2.7 authority acceptance of a repair design and configuration recommendation under this
 2.8 subdivision constitutes permission of the commissioner under section 103E.011, subdivision
 2.9 3.

2.10 Sec. 2. Minnesota Statutes 2016, section 103G.225, is amended to read:

2.11 **103G.225 STATE WETLANDS PUBLIC WATERS AND PUBLIC DRAINAGE**
 2.12 **SYSTEMS.**

2.13 If the state ~~owns~~ has inventoried and designated public water courses, basins, or public
 2.14 waters wetlands on or adjacent to existing public drainage systems, the state shall consider
 2.15 the use of the public waters ~~wetlands~~ as part of the drainage system. If the commissioner's
 2.16 desired management or protection of public waters ~~wetlands~~ interfere with or prevent the
 2.17 authorized functioning of the public drainage system, the state shall provide for necessary
 2.18 work to allow proper use and maintenance of the drainage system while still preserving the
 2.19 public waters ~~wetlands~~.

2.20 Sec. 3. Minnesota Statutes 2016, section 103G.245, subdivision 2, is amended to read:

2.21 Subd. 2. **Exceptions.** A public-waters-work permit is not required for:

2.22 (1) work in altered natural watercourses that are part of drainage systems established
 2.23 under chapter 103D or 103E if the work in the waters is undertaken according to chapter
 2.24 103D or 103E;

2.25 (2) repair of a public drainage system lawfully established under chapters 103D and
 2.26 103E and sponsored by the public drainage authority as provided in section 103E.701;

2.27 (3) a drainage project for a drainage system established under chapter 103E that does
 2.28 not substantially affect public waters; or

2.29 ~~(3)~~ (4) culvert restoration or replacement of the same size and elevation, if the restoration
 2.30 or replacement does not impact a designated trout stream.



524 4th Street South
Sauk Centre MN 56378
Phone: (320)-352-2231
Fax: (320)-352-6455
Web: www.srwdmn.org

October 1, 2018

Minnesota Association of Watershed Districts
Attn: Resolutions Committee
18681 Lake Drive East
Chanhausen, MN 55317

Subject: Resolution Support

To Whom It May Concern,

On behalf of the Board of Managers for the Sauk River Watershed District (SRWD), I submit this letter of support for the Rice Creek Watershed District's resolution regarding DNR Regulatory Authority over Public Drainage Maintenance and Repairs.

As a MN Statute 103E Drainage Authority, the SRWD had vetted interest in HF2687 and SF2419 and believe that these bills need to be reintroduced in the new biennium to restate the protections given to drainage authorities for maintenance and repair of public drainage systems. The uncertainty that comes with performing maintenance and repair on public drainage systems creates delays and increases expense to the benefitted landowners. The level of uncertainty has increased within our district, due to our authority over drainage systems in 2 different regional DNR offices. The lack of consistency even between regional offices makes an unclear situation that much murkier.

The SRWD hopes that the Resolution Committee and the entire membership of MAWD sees the validity with Rice Creek Watershed District's resolution and moves forward with making this a priority within MAWD's legislative agenda for the 2019-2020 biennium.

Sincerely,

A handwritten signature in blue ink that reads "Scott Henderson".

Scott Henderson
District Administrator

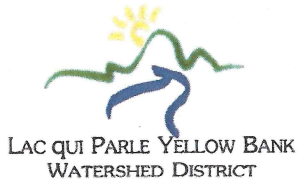
BOARD OF MANAGERS

Tyler Carlson, Dennis Ritter, Lee Bautch, Gary Barber, Duane Willenbring,
Jim Bailey, Steve Schmitt, Emily Wolf, Larry Ladwig

STAFF

Scott Henderson, Melissa Roelike, Lynn Nelson, Adam Hjelm, Sarah Jo Boser, Jon Roeschlein, Kady Krivanek

"Water Quality Is Our Concern"



*Lac qui Parle - Yellow
Bank Watershed District*
lqpybwatershed.org

Phone: 320-598-3117
320-598-3319
Fax: 320-598-3125
600 6th St #7
Madison, MN 56256

October 2, 2018


Minnesota Association of Watershed Districts
18681 Lake Drive East
Chanhassen, MN 55317

SUBJECT: Letter of Support for the Rice Creek Watershed Districts proposed resolution regarding
New Legislation in the 2019-2020 Biennium Modeled After H2687 and SF2419 (2018)
Regarding DNR Regulatory Authority over Public Drainage Maintenance and Repairs.

The Lac qui Parle-Yellow Bank Watershed District Board of Managers are writing this letter in support of a MAWD resolution submitted by the Rice Creek Watershed District regarding New Legislation in the 2019-2020 Biennium modeled after H2687 and SF2419 (2018) Regarding DNR Regulatory Authority over Public Drainage Maintenance and Repairs.

The Board agrees that DNR policy and its implementation do not adequately address drainage authority concerns. They also agree that reintroduction and approval of new legislation modeled after HF2687 and SF2419 (2018) would provide clear legislative directive. This legislation would reinforce existing law regarding the DNR's and the drainage authorities' requirement when maintaining the public drainage systems.

Sincerely,



Darrel Ellefson, Chairman
Lac qui Parle-Yellow Bank
Watershed District

MAWD Proposed Resolution Regarding DNR Regulatory Authority Over Public Drainage Maintenance and Repairs

THE ISSUE

Many of the state's public drainage systems were established in the late-1800s to mid-1900s. They initially tied together large areas of flat, wet ground to allow for the development of agriculture. They now serve as some of the only stormwater conveyances and outlets for many communities.

The State enacted multiple laws related to water resources after the establishment of the public drainage systems. In developing these laws, the state committed to protecting existing rights including those related to public drainage system repair and maintenance obligations. The public waters inventory was never intended to restrict the right to maintain existing drainage systems.

The legislature specifically exempted repairs from DNR permitting; gave the DNR a mechanism to ensure proposed work was repair; and directed the DNR to provide for the lawful function of public drainage systems that affected public waters.

The DNR has increasingly required permits, approvals, and conditions specifically contrary to current law. The DNR policy and its implementation do not adequately address drainage authority concerns.

BACKGROUND RELATED TO THE PROPOSED LEGISLATIVE CHANGE

Legislation is requested to restate the protections given to drainage system repairs and the DNR's role in those repairs. HF2687 and SF2419 were introduced during the 2018 legislative session to restate the protections given to drainage system repairs.

These bills were placed on hold in committee when the DNR indicated that its new guidance would address the concerns that drainage authorities had with its current practices of regulating public drainage system repairs. The guidance has not addressed drainage authority concerns and has increased the inconsistency and uncertainty around the DNR's interpretation and application of authority.

Reintroduction and approval of new legislation modeled after HF2687 and SF2419 would restate in clear terms the DNR's role in drainage system repairs.

IMPLICATIONS OF THE PROPOSED LEGISLATIVE CHANGE

- Provide clear legislative directive
- Reinforce existing laws
- Reduce uncertainty and expense to the drainage authorities and affected landowners and communities



DRAINAGE AUTHORITY EXAMPLE

The Rice Creek Watershed exists in a part of the state with severely limited water outlet capacity. Public drainage systems within the watershed were established and constructed to address this limitation. The public drainage systems are now critical infrastructure for effective stormwater management and are the only way stormwater can leave many residential and commercial areas. Restricting maintenance of these critical systems puts agriculture, development, and economic and safety interests of the public at risk.

- The planned 2018 repairs of JD 2 Br. 1/2 were delayed a construction season when the DNR asserted regulatory jurisdiction but could not identify the mechanism for approval for a three month period. To date, DNR has requested RCWD provide additional technical data three times.
- ACD 53-62 was repaired in 2014 following \$100,000 in research costs to address DNR-imposed conditions. Four years later, the DNR informed the RCWD that permission was required to complete maintenance in the same location using the same methods and imposed additional conditions upon the work. The ability to complete maintenance in the future is uncertain due to these conditions.

BACKGROUND INFO on PROPOSED RESOLUTION #9

Recommend Administrators for Clean Water Council Appointments

Proposing District: MN Association of Watershed Administrators
Contact Name: Scott Henderson
Phone Number: 320.352.2231
Email Address: scott@srwdmn.org

Background that led to submission of this resolution:

The current watershed district representative to the Clean Water Council (CWC) is not currently employed by a watershed district or a member of a watershed district board. The CWC makes recommendations to the legislature and governor on how Clean Water Funds are spent throughout the state. Watershed districts have a vested interest in how those funds are apportioned and should have a strong voice to ensure funds are spent for implementation of water quality/quantity projects. Communication between the Minnesota Association of Watershed District (MAWD) membership and the representative has been virtually non-existent. To better align with the vision of MAWD and watershed districts, the Minnesota Association of Watershed Administrators (MAWA) supports a governor-appointed representative for watershed districts but believes the representative should be an individual with ties to MAWD and its membership. MAWA advocates for a representative that supports the vision of MAWD and watershed districts.

Ideas for how this issue could be solved:

This issue of communication and influencing watershed district perspectives on the CWC could be resolved by recommending a watershed district administrator for the position, from a watershed district in good standing with MAWD. Much like the soil and waters conservation district and city representatives on the CWC, having an individual that works within a watershed district could guide recommendations that further the vision of MAWD and watershed districts. MAWA understands that MAWD is currently within a change; however, the CWC has an important function that warrants a more proactive stance and what better time to affect change than when change is occurring.

Anticipated support or opposition from other governmental units?

MAWA believes that this would be supported by SWCDs, counties and cities with local water plans and other state agencies. MAWA does not see any outside opposition to this resolution.

This issue is of importance (Check one):

- To the entire State: _____
- Only our Region: _____
- Only our District: _____

PROPOSED 2018 MAWD RESOLUTION #9
Recommend Administrators for Clean Water Council Appointments
Submitted by: MN Association of Watershed Administrators (MAWA)

NOTE: This resolution needs approval by the MAWD Board of Directors before it can come before the membership for a vote. See notes below.

WHEREAS the Clean Water Council is a 28-member council that advises the Legislature and the Governor on the administration and implementation of the Clean Water Fund;

WHEREAS the Clean Water Fund shall use priority funding as set by the Board of Water and Soil Resources for nonpoint restoration and protection;

WHEREAS the potential funding generated from Clean Water Fund appropriations could be utilized for projects at the local government level;

WHEREAS the current watershed district representative is not currently associated with a watershed district in any capacity; and

WHEREAS the appropriations are being utilized for things other than clean water implementation due to a lack of recommendations from the council in that manner.

THEREFORE, BE IT RESOLVED that MAWD asks any representative of the Clean Water Council to resign when they lose their direct association to a watershed district; and

THEREFORE, BE IT FURTHER RESOLVED that MAWD will recommend to the Governor's office that administrators in good standing with MAWD be appointed to the Clean Water Council.

Notes:

1. MAWA cannot submit resolutions on their own; but, the MAWD Board of Directors may review the resolution and move it forward for a vote by the membership. The MAWD Board will review the resolution and make a decision on how to proceed on November 29th. If approved, members will have an opportunity to vote on this resolution during the business meeting on November 30th.
2. Committee Recommendation: Committee recommends the MAWD Board move the resolution to a vote.
3. We will vote on each "THEREFORE, BE IT RESOLVED" statement separately.

2018 Proposed Changes to MAWD Bylaws

The Governance Committee reviewed both the Bylaws and the Manual of Policies and Procedures (MOPP) during the summer of 2018. In addition to cleaning up the language to make the documents consistent both internally and with each other, the committee recommends adding language to allow for Water Management Organizations (WMOs) to join MAWD with full voting rights. Dues would be set by the Board of Directors and will use the same formula as used for Watershed District Members starting in 2020. For 2019, WMOs will not see an increase in the dues they are charged to be associate members (\$500.)

The MAWD Board of Directors accepted the changes as proposed in the MOPP at the September 21st Board Meeting in Sauk Centre. The MAWD Board further recommends the changes proposed to the Bylaws as shown below.

BYLAWS

MINNESOTA ASSOCIATION OF WATERSHED DISTRICTS, INC.

St. Paul, Minnesota

ARTICLE I.

Offices and Corporate Seal

- 1.1 Official Name. The official name of the corporation is the Minnesota Association of Watershed Districts, Inc., hereinafter referred to as MAWD.
- 1.2 Purpose. The purpose of MAWD is to provide educational opportunities, access to information resources, interface with other agencies, facilitate tours, meetings, ~~and other educational opportunities~~ and lobby on behalf of ~~watershed districts members~~. Additionally, MAWD will facilitate the exchange of information to help ~~members Watershed District Managers and Watershed staff~~ better comply with governmental regulations and laws while offering an informed interface with the community or communities being served.
- 1.3 Organized. The corporation is organized as a 501(c)(4) organization. Notwithstanding any provision of the Articles of Incorporation or Bylaws which may be interpreted to the contrary, MAWD shall not authorize or undertake any actions which jeopardize its status as a 501(c)(4) organization.
- 1.4 Office. The registered office of the corporation shall be designated by the Board of Directors.
- 1.5 Corporate Seal. The corporation shall have no corporate seal.
- 1.6 Manual of Policy and Procedures. The Board of Directors has established a management document identified as Manual of Policy and Procedures (MOPP) to support the orderly and timely details of regular operation. It may be revised at any time by a majority vote of the Board of Directors.

ARTICLE II.
Membership

- 2.1 Regular Membership. Each dues-paying watershed district (WD) or water management organization (WMO) duly established and in good standing pursuant to Minnesota Statutes, Chapter 103B or 103D, shall be entitled to ~~a regular~~ membership in this corporation.
- 2.2 Delegates. Alternates. When a ~~watershed district~~WD or WMO becomes a ~~regular~~ member of this corporation, it shall designate from among its managers-board members two delegates to represent it in this corporation. In addition, each ~~regular~~ member may designate alternate delegates to represent such member in the absence of any originally designated delegate. Thereafter, each ~~regular~~ member shall annually designate its delegates and alternate delegates so long as it remains a member in good standing of this corporation.
- 2.3 Termination of Membership. Any member that has failed to pay its dues ~~as provided in the Policy and Procedure Manual~~ is not in good standing and shall be stricken from the membership roll.
- 2.4 Resignation of Member. Any member may withdraw from this corporation effective immediately by notifying the secretary in writing. ~~45 days prior to the end of the fiscal year. Regardless of the date of termination, there shall be no refund of the annual dues paid by the member.~~
- 2.5 Associate Membership. The Board of Directors may from time to time extend associate membership to this corporation upon payment of dues as determined by the Board of Directors. An associate member shall not be entitled to submit resolutions, vote, or serve on the Board of Directors, but shall otherwise be afforded all the rights and privileges granted to ~~regular~~ members, their delegates and alternate delegates by law and by the Articles of Incorporation and Bylaws of this corporation.
- ~~2.6 Members or Memberships. Subject to the corporation's Articles of Incorporation and paragraph 2.5 herein, the terms "member" and "membership," or the plural of either, appearing in these Bylaws shall mean both regular members and associate members and memberships, unless a contrary meaning is clearly indicated.~~

ARTICLE III.
Meetings of Membership

- 3.1 Annual Meeting. An annual meeting of this corporation shall be held to vote for the election of the Board of Directors and to transact such other business as shall properly come before them. Notice of the time and place of such annual meeting shall be mailed, either physically or electronically, by the secretary to all members at least thirty (30) days in advance thereof.
- 3.2 Special Meeting. Special meetings of the members of the corporation shall be called by the president upon request of a majority of directors of the Board of Directors or upon the written request of one-third of the ~~regular~~ members of the corporation in good standing. This request shall be in writing addressed to the president or the secretary of the corporation. Within thirty days of receipt of said request, the Board of Directors shall, mail (either physically or electronically) notice of said special meeting to all members. This notice shall state the objective of the meeting and the subjects to be

considered.

- 3.3 Quorum. A majority of the delegates (two per ~~regular~~ member) shall constitute a quorum for the transaction of business.
- 3.4 Voting. Any action taken by the ~~regular~~ members shall be by majority vote of the delegates present unless otherwise specifically provided by these Bylaws. Each member shall be entitled to one (1) vote for each delegate present.

ARTICLE IV. Board of Directors

- 4.1 General Powers. The business activities of the corporation shall be directed and managed by the Board of Directors. ~~(hereinafter referred to as the board)~~. The Board of Directors shall be authorized to pay officers and directors of the corporation per diem allowances and expenses as may from time to time be submitted to the Board of Directors, and such other expenses as may from time to time be necessary for the furtherance of the corporation's business, consistent with the rate and provisions of watershed ~~manager board member~~ per diem allowances and expense reimbursement provided in state law. The Board of Directors is authorized to hire and/or contract for services needed.
- 4.2 Directors to be Elected by Regions. For the purpose of election of the Board of Directors, ~~the State of Minnesota is divided~~ members are grouped into three regions; three Directors shall be elected from each region, with staggered three-year terms. Members from each region shall elect one director for a three-year term at the annual meeting of the Association. No ~~Watershed District~~ WD or WMO shall have more than one ~~Manager board member~~ elected to be a Director on the Board of Directors of the Corporation. Regional caucuses shall elect a Chairman and Recording Secretary from its delegates for the purpose of its election procedure and report the election results to the Convention at a designated time.
- 4.3 Regions. ~~At the annual meeting, the delegates~~ The Board of Directors may re-align the regions or the ~~watershed districts~~ members contained therein, it being the intent and purpose that each region contain the approximate same number of ~~watershed districts~~ members. Any ~~watershed district~~ WD or WMO in Minnesota not presently a member of this corporation, upon admission to membership, will be assigned to a region by the Board of Directors. Regional membership shall be listed in the Policy and Procedure Manual.
- 4.4 Number, Qualification and Term of Office. The number of directors constituting the board shall be nine. Each director elected at the annual meeting shall be elected for a three-year term. Directors shall be on the board of a watershed member in good standing of this corporation.
- 4.5 Vacancies. If there be a vacancy among the officers of the corporation or among the directors by reason of death, resignation, termination of membership, or removal as provided by law, the Articles of Incorporation, or these Bylaws, or otherwise or for non-excused absences for three consecutive meetings, such vacancy shall be filled by the Board of Directors until the next Annual Meeting of the Association.

4.6 Removal of Directors by Members. At a special meeting of the Board of Directors called solely for that reason, the notice of which meeting shall have been given in writing to members of this board at least thirty days prior thereto and not more than fifty days prior thereto, a majority of the members of this board may remove one or more directors from their term of office without cause.

4.7 Meetings. Actions. The Board of Directors shall hold the annual meeting of the Board of Directors immediately after the annual meeting of the members of this corporation, and at such annual meeting shall elect the officers as above provided for. Regular meetings of the Board of Directors shall be held at a time and place to be fixed by resolution or adopted by the majority of the Board of Directors.

The majority of the Board of Directors shall constitute a quorum. Directors may participate and vote in Board of Directors meetings by telephone or other electronic means approved by the Board in the MOPP.

Actions may be taken by a majority vote of those Directors present or participating by telephone or other electronic means approved by the Board in the MOPP. The secretary of the board shall give written or electronic notice to each director at least ten (10) days in advance of any regular or special directors' meeting. Special meetings may be called at the discretion of the President of the board or upon demand in writing to the secretary by three (3) directors of the Board of Directors.

4.8 Conflicts of Interest. Members of the Board of Directors shall act at all times in the best interests of the corporation. This means setting aside personal self-interest and performing their duties in transacting the affairs of the corporation in such a manner that promotes public confidence and trust in the integrity, objectivity and impartiality of the Board. No Director shall directly or indirectly receive any profit from his/her position as such, and Directors shall serve without remuneration other than as provided in Section 4.1 of these Bylaws for the payment for reasonable expenses incurred by them in the performance of their duties. The pecuniary interests of immediate family members or close personal or business associates of a Director are considered to also be the pecuniary interest of the Director.

4.9 Indemnification. All directors and officers of the corporation shall be indemnified against any and all claims that may be brought against them as a result of action taken by them on behalf of the corporation as provided for and subject to the requirements of Chapter 317A of Minnesota Statutes as amended.

ARTICLE V. Board Officers

5.1 Officers and Duties. There shall be four officers of the board, consisting of a president, vice-president, secretary and treasurer. All officers shall be directors of the corporation. Their terms and duties are as follows:

5.2 President. The president shall serve a term of office of one year and may, upon re-election succeed himself/herself for two additional successive terms. The president shall have the following duties:

- Convene and preside over regularly scheduled board meetings.

- Have general powers and duties of supervision and management usually vested in the office of president.
- Appoint such committees as he/she shall deem necessary with the advice and consent of the Board of Directors.

5.3 Vice-President. The Vice-President shall serve a term of office of one year and may, upon re-election succeed himself/herself for two additional successive terms. The Vice-President shall have the following duties:

- Assume and perform the duties of the president in case of his/her absence or incapacity; and shall chair committees on special subjects as designated by the President.
- Have general powers and duties of supervision and management usually vested in the office of Vice-President.

5.4 Secretary. The Secretary shall serve a term of office of one year and may, upon re-election succeed himself/herself for two additional successive terms.

The Secretary shall be responsible for preparing and keeping all records of board actions, including overseeing the taking of minutes at all board meetings, sending out meeting announcements, distributing copies of minutes and the agenda to each board member, and assuring that corporate records are maintained.

5.5 Treasurer. The Treasurer shall serve a term of office of one year and may, upon re-election succeed himself/herself for two additional successive terms.

The treasurer shall chair the finance committee, maintain account of all funds deposited and disbursed, disburse corporate funds as designated by the Board of Directors, assist in the preparation of the budget, collect membership dues, and make financial information available to board members and the public.

ARTICLE VI.

Fiscal Year, Dues and ~~Audit~~ Annual Review of Financial Procedures

6.1 Fiscal Year. The fiscal year of the corporation shall end on September 30 each year.

6.2 Membership Dues. Dues will be determined annually by the Board of Directors as specified in the Policies and Procedures Manual.

6.3 Annual Dues. Annual dues shall be payable in ~~advance during the month of~~ January of each year. If a member's dues are not paid on or before April 30 of each year, such member's name shall be stricken from the membership roll. Reinstatement shall be upon such terms and conditions as prescribed by the Board of Directors.

The Board of Directors shall have the authority to suspend or defer dues of any newly organized ~~watershed district~~ WD or WMO that joins this association until such member ~~watershed district~~ WD or WMO is in actual receipt of its first authorized fund. The Board shall send out the annual dues statement with payment directed to the Authorized ~~District~~ Accounting firm. The Board of Directors

may consider deferring, suspending, or reducing dues on an individual case basis when an appeal is made by a ~~Watershed District member~~ because of hardship or funding problems.

- 6.4 ~~Annual~~ Audit Review of Financial Procedures. The Board of Directors of this corporation shall provide for an annual audit review of financial procedures of all its resources and expenditures. A full report of such audit review and financial status shall be furnished at each annual meeting of the members. This audit review will be conducted by an auditing firm selected by the Board of Directors with experience in the field of government and water management. The audit review results shall be furnished to all members ~~s-districts~~ within forty-five days after receipt thereof by the Treasurer.

ARTICLE VII.

Employees

- 7.1 Employees. At the discretion of and under the direction of the Board of Directors, MAWD may choose to hire and administer various employees. Their positions and job expectations shall be individually developed and included in the Policies and Procedures Manual.

ARTICLE VIII.

Resolutions and Petitions

- 8.1 Resolutions: The Chair of the MAWD Resolutions/Policy Committee will send a request for resolutions, along with a form for submission, to the membership at least 3 months prior to the annual MAWD membership meeting. Resolutions and their justification must be submitted to the MAWD Resolutions/Policy Committee in the required format at least 2 months prior to the annual MAWD membership meeting for committee review and recommendation. The committee will present these resolutions and their recommendations to the ~~MAWD~~ Board of Directors and the MAWD membership at least 1 month prior to the start of the annual MAWD membership meeting. The ~~MAWD~~ Board of Directors may make additional recommendations on each proposed resolution through its board meeting process. This same procedure will be used when policy issues are to be considered at any special MAWD membership meeting.
- 8.2 Petitions: Any member or group of members may submit to the Board of Directors at any time a petition requesting action, support for, rejection of, or additional information on any issue of potential importance to the members. Such petitions require signed resolutions from that at least 15 members ~~s watershed-districts submit the petition~~ before a Special meeting of the membership will be convened.

ARTICLE IX.

Chapters

- 9.1 Chapters. Members ~~s-Districts~~ may form chapters to further the purposes stated in Article II of the Articles of Incorporation, to carry out policies of the Board of Directors, and to suggest policies for consideration by the Board of Directors. ~~The chapters shall report on their activities at the Annual Meeting of the Association.~~

**ARTICLE X.
Rules of Order**

10.1 Rules. When consistent with its Articles of Incorporation and these Bylaws, Robert's Rules of Order shall govern the proceedings of this corporation. For consistency in operation, a copy of Robert's Rules of Order shall be available for consultation if requested at every scheduled meeting of the Board of Directors and Membership meetings.

**ARTICLE XI.
Amendments**

11.1 Amendments. These Bylaws may be amended by a majority vote of the ~~regular~~ members of this corporation only as provided below.

11.2 Annual Meeting. At the annual meeting of the ~~regular~~ members of this corporation, the Bylaws may be amended by the majority of the ~~regular~~ members present if there is a quorum at said annual meeting and due notice has been given to the membership of the changes 30 days in advance of the meeting.

11.3 Special Meeting. These Bylaws may be amended by the ~~regular~~ members at a special meeting called for that reason but only by a majority vote of the entire ~~regular~~ membership of the corporation, and only if there has been thirty days' written notice to all ~~regular~~ members of such special meeting. Such special meeting may be called upon the request of one-third of the ~~regular~~ members of this corporation by notice in writing to the secretary or president, which notice shall ask for said special meeting and shall state the proposed Bylaws changes, and upon receipt of such request, the secretary or president must send written notice of the meeting to the members of this corporation within thirty days of receipt of such request, which shall be not less than thirty days nor more than fifty days of the date of the written notice.