

***HERON LAKE WATERSHED DISTRICT
RULES AND REGULATIONS
REVISED APRIL 2005***

Section 1: Introduction.

1.1 Authority. The Heron Lake Watershed District was established by Order of the Minnesota Water Resources Board on February 25, 1970.

1.2 Statutory Policy and Rulemaking Authority. Under Chapter 103D of Minnesota Statutes, it is the policy of the State of Minnesota to authorize the establishment of watershed districts “. . . to conserve the natural resources of the State by land use planning, flood control, and other conservation projects by using sound scientific principles for the protection of the public health and general welfare and the provident use of the natural resources”. The legislature has granted express statutory authority to watershed districts to adopt rules to accomplish the purposes of Minnesota Statutes, Chapter 103D, and to implement the powers of the managers.

1.3 Watershed Regulatory Policy Statement: The Heron Lake Watershed District has been granted express authority by Nobles, Jackson, Murray and Cottonwood Counties to regulate drainage activities for the general welfare within the watershed district. The goal of such regulation is to provide for the initiation, implementation and enforcement of a comprehensive and uniform system of rules and regulations managing, conserving and controlling of the use of water within the watershed district. In order to continue to develop and implement the watershed district’s overall plan, it is desirable and beneficial to manage and control private and public drainage activities affecting water flow between private landowners and/or impacting public drainage systems within the district. Regulation of private and public drainage activities is also desirable and beneficial as a means of data acquisition and record-keeping of all drainage systems within the district as such records assist, aid and facilitate the determination of impact, influence and effect that such private activities have upon public drainage systems and the watershed as a whole. For purposes of these rules, the term “*regulate*” shall be defined as imposing such restraints upon the private rights of land owners to improve their property through tiling and drainage activity as are necessary for the general welfare.

1.4 Jurisdiction and Applicability of Rules. These rules shall apply to and include all of the area, incorporated and unincorporated, including both land and water, within the territory of the Heron Lake Watershed District. These rules shall have the force and effect of law.

1.5 Inconsistent Provisions. If any rule or regulation herein contained is inconsistent with the provisions of the water law of the State of Minnesota, or other applicable state or federal law, then such state or federal law shall govern and the rule or regulation shall be deemed null and void. Any inconsistency of a rule or regulation with a state or federal law will not and shall not be deemed to affect the validity of any other rule or regulation.

1.6 Scope. It is not intended that these rules shall repeal, abrogate, annul, or in any way impair or otherwise interfere with the existing provisions of other laws.

1.7 Severability. These rules and regulations are intended to be severable and in the event that any rule or regulation herein contained is held to be invalid, the remaining rules and regulations shall be deemed to be in full force and effect as if there had been an expungement of the invalid provisions.

1.8 Due Process. These rules and regulations are intended to provide all affected persons and entities with due process of law.

Section 2: Adoption of Existing Laws, Rules, and Regulations.

2.1 Adoption of Water Law. The Board of Managers expressly adopts by reference all of the water law of the State of Minnesota. The Board of Managers reserves the right to impose rules and regulations that are more restrictive than the laws contained within the water law of the State of Minnesota.

2.2 Other Rules, Regulations, or Provisions. The Board of Managers expressly adopts by reference the rules, regulations, and provisions of the following agencies and statutes to the extent that such rules, regulations, and provisions apply to activities regulated by these rules: Minnesota Board of Water and Soil Resources (BWSR); Minnesota Department of Health (MDH); Minnesota Pollution Control Agency (MPCA); Minnesota Department of Natural Resources (MDNR); Minnesota Environmental Quality Board (EQB); U.S. Department of Agriculture (USDA); U.S. Environmental Protection Agency (EPA); U.S. Army Corps of Engineers (ACOE); Local Soil and Water Conservation Districts (SWCD); Nobles, Jackson, Murray, and/or Cottonwood County; Local governmental units, including municipalities and townships; Minnesota Environmental Rights Law, MS Chapter 116B, as amended; State Environmental Policy, MS Chapter 116D, as amended; Minnesota Wetland Conservation Act of 1991, as amended. Where more than one rule, regulation, or provision applies, the most restrictive rule, regulation, or provision shall pertain.

Section 3: Definitions. For purposes of these rules, certain words and terms are defined herein. In absence of a definition for a word or term in these rules, the definition established by statute or case law of the State of Minnesota shall apply unless clearly in conflict, inapplicable, or absurd.

3.1 Agricultural Land: means land used for horticultural, row, close grown, pasture, and hay land crops; growing nursery stocks; animal feedlots; farm yards; associated building sites; and public and private drainage systems and field roads located on any of the foregoing. (MS 103G.005, Subd. 2a)

3.2 Board of Managers, Board, or District: means the Board of Managers of the Heron Lake Watershed District.

3.3 Conditional Use: means a land use or development that would not ordinarily be allowed under existing land use rules or ordinances, but which may be allowed with appropriate controls or conditions.

3.4 General Welfare: means any act or anything tending to improve or benefit or contribute to the safety or well being of the general public or benefit the inhabitants of the watershed district. General welfare shall be synonymous with “public welfare” or “public benefit”.

3.5 Impervious Surface: means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities or at an increased rate of flow than prior to development. Examples include, but are not limited to, rooftops, sidewalks, patios, storage areas, roads, streets, driveways, parking lots, or other structural improvements utilizing concrete, asphalt, or compacted soils.

3.6 Shore Impact Zone: means land located between the ordinary high water level of a public water and a line parallel to and one half ($\frac{1}{2}$) the distance of the required setback for structures from the ordinary high water mark of the public water; except that on property used for agricultural purposes, the shore impact zone means that land located between the ordinary high water level of a public water and a line parallel to and fifty feet (50') from the ordinary high water mark of the public water.

3.7 Terrace: means an earthen embankment, a channel, or a combination ridge and channel constructed across the existing slope of the land.

Waterway: means a natural or constructed channel, with a permanent grass or vegetative cover, that is shaped or graded to engineered dimensions, established for the stable conveyance of runoff.

3.9 Project: means any construction activity that includes clearing, grading, or excavation. Projects cannot be phased to avoid the permit requirements.

Section 4: Regulation of Activities. The following activities shall require a permit from the Board of Managers of the Heron Lake Watershed District prior to initiation of the activity.

4.1 Installation of agricultural best management practices that require land alteration including surface tile intakes, terraces, waterways, and diversions that have not been designed by the Natural Resources Conservation Service or Soil and Water Conservation District.

4.2 Installation of new surface tile intakes and catch basins.

4.3 Disposal of snow within the shore impact zone.

4.4 The installation or creation of impervious surface. District rules regulating impervious surfaces and the permit process therefore are located in Appendix A to these rules.

4.5 Earth moving projects involving more than 200 cubic yards of excavation or fill; or which disturbs more than 10,000 square feet of soil, and which project, or any part thereof, is located:

- within 300 feet of a stream, storm sewer catch basin, drainage tile intake or a wetland; or,
- within 1,000 feet of a lake.

District rules regulating earth moving projects and the permit process therefore are located in Appendix B to these rules.

Section 5: Permit Application Process: A request for permit or other approval of an activity under these rules shall be commenced by delivering, either in person or by U.S. Mail, a signed application on the form required by the Board of Managers to the office of the Heron Lake Watershed District, PO Box 345, Heron Lake, MN 56137.

5.1 Permit Fees: A \$10.00 application fee and a \$40.00 inspection fee shall be charged for each storm water permit. A \$10 application fee and a \$15.00 inspection fee shall be charged for each erosion control plan permit. Design information must be submitted with the application. After-the-fact permits will be subject to the application fee and all other costs incurred by the District. If, in the opinion of the Board of Managers, it is necessary for the watershed district engineer or other consultant to review the application and all exhibits, view the site, and make a report to the watershed district as to the technical implications of the work, costs incurred by the watershed district during this review shall be borne by the applicant.

5.2 Project Plan: A plan, design, or map of the proposed activity shall be attached to the application form. Such plan, design, or map shall be drawn and shall clearly and accurately show all work to be performed, and shall include, either within the plan, design, or map, or by attachment, the following information at a minimum.

5.3 Construction Plan. At the request of the Board of Managers, the plan, design, or map must show the materials to be used, the proposed duration of the activity and/or construction involving the activity, and the proposed initiation and completion dates.

5.4 Stormwater and Water Quality Management. The plan, design, or map must separately address the issues of, and make provisions for, stormwater management and water quality management both during construction and post-construction activities.

5.4.1 As used in these rules, “*stormwater management*” shall include the regulation of the quantity (rate control) and quality of stormwater entering lakes, rivers, streams, or public drainage systems in order to ensure that all nonpoint source pollution, erosion, and sedimentation is minimized.

5.4.2 The term “*water quality management*” shall include the monitoring and control of the quality of the water directly affected by a drainage activity, as well as the receiving waters of a drainage activity, to ensure that minimal degradation in surface or ground water quality occurs.

5.4.3 Stormwater management and water quality management may include structural water management measures (retention areas, swales, infiltration trenches, filter strips, detention basins, vegetative buffer zones, etc.) or nonstructural water management measures (temporary erosion and sedimentation controls, fertilizer and pesticide application controls, solid waste collection, phosphorous abatement and control, etc.) or a combination of both types of management measures.

5.4.4 Stormwater management and water quality management plans shall include a maintenance plan for all structural and nonstructural controls included within the plan, to include: the party responsible for maintenance, a maintenance schedule, and procedures to be followed if maintenance is not performed or is inadequately performed.

5.4.5 The goal of stormwater management under these rules is not to exceed the peak runoff rates existing at the initiation of the proposed

drainage activity as measured by the average of the 10-year, and 100-year runoff producing events of critical duration for the land involved.

5.4.6 The goal of water quality management under these rules is to maintain or improve overall surface and ground water quality.

5.5 Sewage or Waste. The plan, design, or map must be accompanied by or contain a statement as to whether the drainage activity involves the installation, abandonment, or removal of a sewage or waste disposal system.

5.6 Livestock. The plan, design, or map must be accompanied by or contain a statement as to whether livestock will be watered, fed, pastured, or held upon or around the proposed drainage activity. If livestock are involved with the proposed drainage activity, the Board of Managers may require the requestor to devise a livestock management plan that minimizes the adverse impact upon the proposed drainage activity.

5.7 Design, Material Standards. The plan, design, or map must be accompanied by or contain a statement that all culvert and tile emplacement, construction, design, and materials shall conform, at a minimum, to the standards of the NRCS.

5.8 SWCD and NRCS Checkoff. All applications must be reviewed by and bear a certification of the local Soil and Water Conservation District (SWCD) and/or the Natural Resources Conservation Service (NRCS) that the proposed activity does not involve Wetland Conservation Act standards or Swampbuster provisions.

5.9 Notice to Landowners. All requests for permits or other approval shall contain proof of notification of immediate downstream landowners affected by the drainage activity. Proof of notification may consist of a notarized statement of the requestor identifying all landowners actually notified.

5.10 Easement/Access. All permits and other approvals will contain a grant of easement and/or right of access to the watershed district, its Board of Managers, employees, agents, and assigns, for purposes of inspection and monitoring of the drainage activity.

5.11 Completion Time. Unless otherwise stated on the permit or other approval, the drainage activity involved shall be completed within two years or an extension must be requested and approved by the Board of Managers. The Board of Managers shall be notified upon completion of the activity by the permittee or holder of other approval of the Board.

5.12 Additional Information. After initial review of the request, the Board of Managers may require that the applicant provide such additional information as deemed necessary to evaluate the proposed drainage activity in accordance with the required considerations.

5.13 Best Management Practices. All permitted activities shall incorporate best management practices (BMPs). For purposes of these rules, the term “*best management practices*” shall mean practices, techniques, and measures that prevent or reduce water pollution from nonpoint sources and which will minimize erosion of soil and deposition of sediment in private or public drainage systems or waters by using the most effective and practicable means of achieving water quality and runoff goals. BMPs include, but are not limited to, structural controls, nonstructural controls, operational procedures, and maintenance procedures. It is the goal of these rules to ensure that the degree of water quality improvement and runoff protection is maximized relative to the cost of implementing the BMPs. The Board of Managers expressly recognizes that the BMPs approved by MPCA in its handbook “Protecting Water Quality in Urban Areas” satisfy the requirement for BMPs under these rules.

5.14 Restoration. Exposed and/or disturbed soil shall be restored to a condition equivalent to or better than that which existed prior to the drainage activity.

5.15 Spoils. All spoils will be leveled and shall be seeded to hinder erosion.

5.16 Discharge. Wherever feasible, drainage activities will be discharged through marshlands, wetlands, swamps, retention basins, or other diffusing structures.

5.17. Upstream Storage. Wherever feasible, drainage activities will include use of temporary storage areas, retention basins, or other similar structures to maximize upstream storage and reduce peak flows, erosion damage, and sedimentation.

5.18 Filter Strips. Unless otherwise noted in the permit or other approval of a drainage activity, all tile intake and catch basin permits include a requirement for a grass filter strip possessing a radius of 16.5 feet surrounding such device.

5.19 Impervious Surface. Permits for impervious surface will require, at a minimum, the submission of plans utilizing standards and procedures for controlling runoff rates, nutrients, and sediments contained in applicable rules of the MPCA.

5.20 Shoulder and Bank Protection. All water inlets, culvert openings, and bridge approaches shall have adequate shoulder and bank protection in order

to minimize land and soil erosion. For purposes of these rules, the term “adequate shoulder and bank protection” shall include by way of example and not by way of limitation: permanent grass or other ground cover, mulch, sod, riprap, retaining walls, and terraces.

5.21 Slopes. Each landowner shall be required to apply BMPs to minimize soil erosion and sedimentation from all drainage activities. At a minimum, the following rules shall apply:

5.21.1 All ditch, watercourse, shore land, and water basin slopes shall be constructed with a side slope as determined by customary engineering practices so as to reasonably minimize land and soil erosion.

5.21.2 All determinations as to whether a side slope reasonably minimizes land and soil erosion shall include the intended capacity of the watercourse or other water body; the depth, width, and elevation; and the character of the soils involved.

5.21.3 Exposed or disturbed soil on slopes or topographic contours of any drainage activity, above the low water mark, shall be mulched, sodded, and/or seeded to hinder erosion and maintained until stabilized by establishment of permanent grass or other approved ground cover.

5.21.4 No agricultural practices shall be permitted upon a slope or topographic contour in excess of ten degrees (10) which slope or contour was created, constructed, or developed by a drainage activity permitted or approved under these rules.

5.22 Riprap. Riprap may not be installed more than five feet waterward of the ordinary high water mark and must conform to the natural alignment of the shore or waterway and not obstruct the flow of water.

5.23 No Estoppel. The issuance of a permit or other approval for drainage activity under these rules shall not constitute an estoppel or limitation of any claim or right of action of the watershed district against the applicant, its contractors, agents, or employees for violation of or failure to comply with the provisions, conditions, or limitations of the permit or other approval granted by the Board of Managers or other applicable provisions of the law.

5.24 Changes to Activity, Plan, or Design. Any new development, redevelopment, addition, change, or modification of an existing drainage activity, or a proposed drainage activity previously approved by the Board of Managers shall require review and re-approval by the Board of Managers under these rules. The Board of Managers may waive the application fee if the requestor has previously paid an application fee within the last two years.

5.25 Termination, Cancellation, and Revocation. A permit or other approval of drainage activity may be terminated, canceled, or revoked as provided by this section. Such termination, cancellation, or revocation shall be with or without notice, provided that where no notice is given, the applicant shall possess the right to appeal said action to the Board of Managers by written request delivered within 30 days of the action to the office of the Heron Lake Watershed District.

5.25.1 Termination shall mean the permit or other approval expired by its own terms or that the drainage activity involved has been completed and approved by the Board of Managers, thereby terminating the permit.

5.25.2 Cancellation shall mean the permit or other approval was suspended, either temporarily or permanently, in whole or in part, upon a determination that such cancellation is deemed necessary to protect the public welfare.

5.25.3 Revocation shall mean the permit or other approval was withdrawn after issuance by the Board of Managers based upon an alleged violation of any of the provisions, conditions, or limitations contained in the permit, license, or other approval granted by the Board of Managers, or for failure to obtain other necessary approvals from, or comply with the requirements of an authority other than the Board of Managers.

5.26 Limited Approval Only. Obtaining a permit or other approval for drainage activity under these rules shall not constitute absolute authority to perform the drainage activity. The applicant remains responsible for obtaining any other required authorization. The permit or other authority is permissive only and shall not release the applicant from any liability nor obligation imposed by Minnesota law, Federal law, or local ordinances and shall be subject to all conditions and limitations imposed by the Board of Managers or hereafter imposed by applicable law. The Board of Managers, by approving a request for permit or other approval of a drainage activity, makes no representations to the applicant that the proposed drainage activity complies or does not comply with existing law. No liability shall be imposed upon or incurred by the watershed district, its Board of Managers, or its officers, agents, and employees, officially or personally, on account of the granting of the permit or other approval, or on account of any damage to any person or property resulting from any act or omission of the applicant or any of its contractors, agents, or employees relating to the drainage activity.

Section 6: Variances: The Watershed District Board of Managers may hear requests for variances from the literal provisions of these rules in instances where their strict enforcement would cause undue hardship because of circumstances unique to the property under consideration. The Board of Managers may grant variances where it is demonstrated that such action will be in keeping with the spirit and intent of these rules.

6.1 The Board of Managers may grant variances only where it is demonstrated that such action will be consistent with the district's watershed management plan and Minnesota water law generally.

6.2 In order to grant a variance, the Board of Managers shall determine that the special conditions that apply to the structure or land in question do not apply generally to other land or structures in the District, that the granting of the variance will not merely serve as a convenience to the applicant, and that the variance will not impair or be contrary to the intent of these rules. A hardship cannot be created by the landowner, the landowner's agent or representative, or a contractor, and must be unique to the property. Economic hardship alone is not grounds for issuing a variance. Land platted within a municipality that has storm water infrastructure installed before the adoption date of these rules, shall be eligible for a variance. The term "*undue hardship*" as used in connection with the granting of a variance shall mean that the property under consideration cannot be put into a reasonable use if these rules were strictly applied and enforced

6.3 A variance shall become void after one year after it is granted if not used.

6.4 A violation of any condition set forth in a variance shall be a violation of the District Rules and shall automatically terminate the variance.

Section 7: Restrictions and Limitations upon Board Action.

7.1 Time deadline for action. The Board of Managers will approve or deny within 60 days a written request for a permit or other governmental approval of drainage activity under these rules. Failure of the Board of Managers to deny a request within 60 days is approval of the request. If the Board of Managers denies the request, it must state in writing the reasons for the denial at the time that the request is denied. The time deadline for permit action begins the day after the Board of Managers first regular meeting following receipt of a written request containing all information required by law or by a previously adopted rule, ordinance, or policy of the watershed. If the watershed district receives a written request that does not contain all required or necessary information, the 60-day limit starts over only if the watershed sends written

notice to the requestor within ten business days of the initial consideration of the request by the Board of Managers telling the requestor what information is missing.

7.1.1 The watershed district's response meets the 60-day limit if the watershed district can document that its written approval or denial action was sent within 60 days of receipt of the written request as defined above.

7.1.2. The time limit in subdivision 6.1 is extended if a state statute, federal law, or court order requires a process to occur before the Board of Managers acts on the request, and the time periods prescribed in the state statute, federal law, or court order make it impossible to act on the request within 60 days. In cases described in this paragraph, the deadline is extended to 60 days after completion of the last process required in the applicable statute, law, or order.

7.1.3. The time limit in subdivision 6.1 is extended if a request submitted to the watershed district requires prior approval of another local, state, or federal agency or board. For purposes of this provision, another local, state, or federal agency or board includes the following: a city, county, town, school district, metropolitan, or regional entity, or other political subdivision. In cases described in this paragraph, the deadline for watershed district action is extended to 60 days after the required prior approval is granted. The watershed district will forward copies of the application to such other state or federal agencies whose approval is required.

7.1.4 The Board of Managers may extend the time limit in subdivision 4.3.1. before the end of the initial 60-day period to protect against serious or significant harm to the public health, safety, or welfare by providing written notice of the extension to the applicant. The notification must state the reasons for the extension and its anticipated length. A decision by the Board of Managers to require an engineering report, environmental impact assessment, or similar preliminary evaluation of a request submitted to the watershed district shall be deemed an act to protect against serious or significant harm to the public health, safety, or welfare.

7.2 Required Considerations. The following criteria shall be considered by the Board of Managers in approving or denying a written request for a permit or other approval of a proposed activity under these rules.

7.2.1 The private or public benefits and costs of the proposed activity.

7.2.2 The present and anticipated agricultural land acreage availability and use affected by the proposed activity.

7.2.3 The present and anticipated land use affected by the proposed activity.

7.2.4 The flooding characteristics of property affected by the proposed activity and downstream for 10 and 100-year flood events and the anticipated impact or effect upon said flooding characteristics of the proposed activity.

7.2.5 The waters to be drained and availability of alternative measures to conserve, allocate, and use the waters – including the potential for storage and retention of such waters.

7.2.6 The anticipated effect of the proposed activity upon water quality – to include construction.

7.2.7 The anticipated effect of the proposed activity upon fish and wildlife resources – to include construction.

7.2.8 The anticipated effect of the proposed activity upon shallow ground water availability, distribution, and use.

7.2.9 The overall environmental impact of the proposed activity.

7.2.10 The adequacy and non-erodability of the outlet for the proposed activity.

7.2.11 The need and reasonableness of the proposed activity.

7.2.12 The anticipated injury or damage to adjoining or downstream property from the proposed activity and potential alternatives avoiding/reducing such injury and damage.

7.2.13 Whether the benefits of the proposed activity outweigh the anticipated harm.

7.2.14 Whether the proposed activity is consistent with the “*general welfare*”. In determining the general welfare, the Board of Managers will consider both agricultural best management practices and water quality best management practices.

7.2.15 Whether, under all the circumstances, the proposed activity constitutes a reasonable use of the land and resources involved. For

purposes of these rules, the term “*reasonable use*” shall be interpreted to incorporate the doctrine of reasonable use; i.e., in affecting a reasonable use for a legitimate purpose a landowner, acting in good faith, may drain his land of surface waters and cast them as a burden upon the land of another, although such drainage carries with it some waters which would otherwise have never gone that way, if there is a reasonable necessity for such drainage; and if reasonable care be taken to avoid unnecessary injury to the land receiving the burden; and if the utility or benefit accruing to the land drained reasonably outweighs the gravity of the harm resulting to the land receiving the burden; and if, where practicable it is accomplished by reasonably improving and aiding the normal and natural system of drainage according to its reasonable carrying capacity, or if, in the absence of a practicable natural drain, a reasonable and feasible artificial drainage system is adopted.

7.3 Reservation of Right to Require Preliminary Analysis. The Board of Managers reserves the right, when in the Board’s considered opinion, such action is deemed to be in the public’s welfare, to require that any person or entity requesting a permit or other approval of a drainage activity under these rules, procure and pay for an engineering study, environmental impact assessment, or other preliminary analysis determined by the Board of Managers to be beneficial and reasonably necessary to the Board’s consideration, evaluation, and determination of the request.

Section 8: Other Regulation of Activities Affecting Drainage. The Board of Managers may enter into or issue letters of understanding, consent agreements, stipulations, orders, or other forms of approval for activities affecting drainage which do not require a permit under these rules. In all such cases, approvals will be entered into or issued upon majority approval by the Board of Managers after notice and hearing at a regular, special, or emergency meeting.

Section 9: Notification of Activities Affecting Drainage.

9.1 Activities Requiring Notification. The following activities shall not be commenced absent notification, not less than 60 days prior to the initiation of the activity, to the Board of Managers.

9.1.1. Removal, conversion, or land-use change of pasture land, agricultural land, or residential, commercial or industrial sites.

9.1.2. Construction or expansion of feedlots within the watershed. Expansion shall mean an increase in animal units or geographic size.

9.1.3. Removal of trees, brush, or other obstructions within a watercourse, ditch, or natural drainage way.

9.1.4. Maintenance performed by a private individual or entity to a public drainage system.

9.1.5. The alteration or modification of, or construction activity upon, a lake shore or land located within the shore impact zone.

9.1.6. The placement of fill, construction activity, or drainage activity within a wetland. For purposes of these rules “*wetland*” shall mean lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water; and possess the following attributes: (1) have a preponderance of hydric soil; (2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and (3) under normal circumstances support a prevalence of such vegetation. “*Wetlands*” shall include all wetlands as designated by the ACOE, the Wetland Conservation Act, FSA, NRCS, and/or the public waters inventory.

9.1.7. Any change in course, current or cross section – including any modification, alteration, or change to the bed, banks, or shores – of a public water of the State of Minnesota, as listed on the public waters inventory of the applicable county.

9.1.8. The disposal of snow within a shore impact zone or within or upon a public water.

9.1.9. Construction projects involving the movement, removal, or disturbance of earth from land areas greater than 43,560 square feet (one acre) in size.

9.1.10. Pumping water, either directly or indirectly, into a private or public drainage system. For purposes of this rule, the term “*pumping water*” shall be defined as the movement of water by artificial, natural, or mechanical means from one location to another at a rate exceeding two (2) gallons per minute, and when more than five hundred (500) gallons of water is moved in a single 24 hour period.

9.1.11. The alteration, modification, replacement, or removal of a private bridge or culvert. For purposes of these rules, a “*culvert*” shall be

any perforated or non-perforated tile, conduit, cylinder, tube, or pipe larger than twenty-four (24) inches in diameter.

9.1.12. Any alteration, modification, or construction activity within the area located between the high water mark and the low water mark of a waterway, ditch, stream, river, channel, lake, water basin, water body, public drainage system, or a private drainage system which utilizes a public water or drainage system as an outlet.

9.1.13. The installation, modification, replacement, or removal of any reservoir, catch basin, or water basin or other water impoundment structure. For purposes of these rules, the term “*water impoundment structure*” shall mean a man-made structure designed to retain or contain runoff water, not including natural or man-made pits or ponds in which water is collected and maintained primarily by subsurface seepage or percolation.

9.2 Form and Place of Notification. The notice required by this section must be in writing and delivered to the office of the Heron Lake Watershed District, PO Box 345, Heron Lake, Minnesota 56137.

Section 10: Effect on Other Drainage Law.

10.1 No Effect. These rules and regulations shall not be deemed to have any impact, influence, nor effect upon the requirements for drainage projects regulated and controlled by Minnesota Statutes Chapter 103E and 103D involving public drainage systems.

10.2 Responsibility. It remains the responsibility of the person or entity engaging in an activity which requires a drainage project petition prior to initiation pursuant to Minnesota Statutes Chapter 103E or 103D to make appropriate application to the drainage authority possessing jurisdiction.

Section 11: Enforcement Powers. The Board of Managers may enforce any violation of a watershed district’s rules and regulations, or the terms, conditions, and/or limitations of a permit or other approval of a drainage activity issued thereunder, through injunction, action to compel performance, restoration, abatement, or other appropriate relief in the district court and/or by referral of criminal misdemeanor charges to the appropriate county attorney office.

11.1 A violation of a rule, regulation, order, stipulation, agreement, or permit issued by the Board of Managers under these rules and regulations shall be a

misdemeanor as that term is defined by Minn.Stat. § 609.02, Subd. 3, as amended.

11.2 Concurrent Authority to Enforce Water Law. The enforcement powers described herein are not exclusive to the watershed district, but are concurrent with all county, state, and federal agencies possessing authority to regulate the activities embraced herein.

Section 12: Appeal of Decision by Board of Managers.

12.1 Reconsideration. Any person aggrieved by a decision on a permit or other approval of the Board of Managers shall possess the right to appeal for reconsideration to the Board of Managers by making a written demand for a hearing within 30 days of the person receiving written notice of the decision.

12.2 Appeal to County Board. Any person aggrieved by a decision of the Board of Managers upon a request for reconsideration shall possess the right to appeal the Board's decision to the appropriate Board of County Commissioners by making a written demand to the County Commissioners to be placed upon the County Board's agenda. Said demand shall be made within 30 days of the Board of Managers final decision.

12.3 Appeal to District Court or BWSR. Any person may appeal a rule, permit decision, or order made by the Board of Managers by appropriate action to the District Court or by appeal to the Board of Water and Soil Resources. An appeal of permit decision must be filed within 30 days of the Board of Managers' final decision.

Section 13: Adoption or Amendment of Rules.

13.1. Procedure. Rules of the Heron Lake Watershed District shall be adopted or amended by a majority vote of the Board of Managers after public notice and hearing. Rules must be signed by the secretary of the Board of Managers and recorded in the Board of Managers' official minute book in accordance with MS 103D.341, Subd. 2, as amended.

13.2 Repeal of Rules. All rules and regulations bearing an earlier date of adoption or amendment than these rules shall be of no further force or effect and shall be repealed on the date that these rules become effective. Hereafter, any adoption or amendment to these rules by the Board of Managers shall act as a repeal of these rules to the extent that such adoption or amendment is inconsistent herewith.

Section 14: Effective Date of Rules.

14.1 Effective Date of Rules. These rules shall be effective upon the date of the occurrence of the last of the following actions:

14.1.1 Approval of the rules by the Board of Water and Soil Resources.

14.1.2 Approval of the rules by the Board of Managers after notice and hearing and publication as required by law.

Filing of the rules with the County Recorders of Nobles, Jackson, Murray, and Cottonwood Counties, and with the governing body of each municipality located, in whole or in part, within the watershed district.

These rules are hereby adopted pursuant to Minnesota Statute Chapter 103D on this 21st day of May, 2002.

Mike McCarvel
Secretary
Heron Lake Watershed District

Appendix A

HERON LAKE WATERSHED DISTRICT AND OKABENA-OCHEDEA WATERSHED DISTRICT WATER MANAGEMENT PERMITTING RULES

EROSION CONTROL AND STORMWATER MANAGEMENT

Purposes and Policy. The purpose of this section is to afford reasonable protection to the water quality and habitat of the Heron Lake and Okabena-Ocheda watershed districts' lakes and streams. Erosion control measures provide for the prevention of nutrient, sediment and other pollutant loading from soils exposed during construction. Runoff storage and treatment systems provide for the filtration of nutrients, sediments, and other pollutants from storm flows; protection of stream beds and banks and mitigation of downstream flooding through moderation of peak flows both into and within the resource; preservation of aquatic and terrestrial habitat; protection of scenic resources; and maintenance of property values.

To accomplish these purposes, the Heron Lake and Okabena-Ocheda watershed districts hereby adopt, by reference, the standards put forth in the Minnesota Pollution Control Agency's (MPCA) *General Permit Authorization to Discharge Stormwater Associated with Construction Activity Under The National Pollutant Discharge Elimination System/State Disposal System Permit Program*, also known as the NPDES Phase II Permit, along with any future amendments.

1. Permit Coverage and Limitations

1.1 A watershed district and NPDES Phase II permit shall be required, and all construction site erosion control provisions of this permit shall apply, to land disturbing activities associated with construction activity and small construction activity as defined below.

1.1.1 Construction activity includes clearing, grading and excavation, that disturbs land of equal or greater than five (5) acres and includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five (5) acres or more.

1.1.2 Small construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than one (1) acre, and includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five (5) acres.

1.1.3 For drainage ditches, small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

2 Stormwater Pollution Prevention Plan: Permits and Administration.

2.1 No activity meeting the requirements for an NPDES Phase II Permit shall occur before a permit is issued from the Heron Lake or Okabena-Ocheda watershed district.

2.2 The applicant must provide the following when requesting a watershed district permit:

2.2.1 A completed watershed district application;

- 2.2.2 A copy of the Stormwater Pollution Prevention Plan (SWPPP) prepared for the MPCA NPDES Phase II Permit Program;
- 2.2.3 A proposed timetable and schedule for completion and installation of all elements of approved erosion control and stormwater management plans and a proposed schedule for completion of construction; and
- 2.2.4 A \$10.00 application fee and \$40.00 site inspection fee.

3 Permit Conditions

- 3.1 The SWPPP shall be implemented prior to the start of any land disturbing activity and shall be maintained over the duration of the project. Permanent stormwater components of the plan shall be maintained in perpetuity.
- 3.2 The permittee is responsible for the successful completion of the SWPPP. The permittee shall be liable for all costs incurred, including environmental restoration costs resulting from noncompliance with an approved plan.
- 3.3 Application for a permit shall constitute express permission by the permittee and landowner for the watershed district Board of Managers, employees, agents and assigns to enter the property for purposes of inspection, monitoring a project for compliance with the SWPPP, and if necessary, requiring curative action.

4 Permit Transfer

When the owner or operator changes (e.g. an original developer sells portions of the property to various homebuilders), the new owner or operator must submit to the watershed district a copy of the change of ownership/subdivision short form application that was sent to the MPCA as a requirement of the Stormwater Phase II Permit Program.

5 Plan or Permit Amendments

Any major modification to an approved SWPPP, construction schedules or alterations to accepted sequencing of land disturbing site activities shall be approved by the watershed district.

6 Fees

A \$10.00 application fee and a \$40.00 inspection fee shall be submitted with the erosion control and stormwater management permit application. Application fees are waived for public entities. After-the-fact permits will be subject to the application fee and all other costs incurred by the District. If, in the opinion of the Board of Managers, it is necessary for the watershed district engineer or other consultant to review the application and all exhibits, including the SWPPP, view the site and make a report to the watershed district as to the technical implications

of the work, costs incurred by the watershed district during this review shall be borne by the applicant. Public entities are not exempt from these costs.

7 Termination of Coverage

A permittee wishing to terminate an erosion control and stormwater management permit must submit to the watershed district a copy of the Notice of Termination (NOT) form sent to the MPCA. Compliance with the erosion control and stormwater management permit is required until the NOT is received by the watershed district.

When residential lots are transferred to the home owner, the permittee must distribute the MPCA's "homeowner factsheet" to the homeowner to inform the homeowner of the need for, and benefits of, practices to achieve final stabilization of the lot.

8 Compliance and Enforcement

8.1 The watershed districts will perform field inspections on all construction sites that disturb one acre or more to determine if:

8.1.1 The MPCA NPDES Phase II Permit application and a watershed district permit have been acquired.

8.1.2 There is a Stormwater Pollution Prevention Plan (SWPPP) for the site and it is being followed.

8.1.3 The Best Management Practices called for in the SWPPP are working properly.

8.2 The watershed districts, during inspections, will record deficiencies and violations of permitting rules and SWPPP's. Recommendations for correcting deficiencies and violations will be distributed to landowners, contractors and permittees.

8.3 The watershed districts, when necessary, will exercise enforcement actions up to and including issuing "stop work orders" for sites that do not comply with MPCA NPDES Phase II and watershed district permit requirements.

8.4 The watershed districts will make non-compliance determinations and referrals to MPCA to take enforcement action in the following situations.

8.4.1 All non-permitted sites that disturb more than 1 acre.

8.4.2 Permitted and non-permitted sites where serious environmental damage has occurred to surface waters.

Appendix B

HERON LAKE WATERSHED DISTRICT AND OKABENA-OCHEDA WATERSHED DISTRICT WATER MANAGEMENT PERMITTING RULES

EROSION CONTROL ON CONSTRUCTION SITES SMALLER THAN ONE ACRE

Purposes and Policy. The purpose of this section is to afford reasonable protection to the water quality and habitat of the Heron Lake and Okabena-Ocheda watershed districts' lakes and streams. Erosion control measures provide for the prevention of nutrient, sediment and other pollutant loading from soils exposed during construction.

1. Earth Moving Projects: A district permit will be required for any earth moving project which will result in:

- grading involving more than 200 cubic yards of cut or fill and which project, or any part thereof, is within 300 feet of a water of the state or is within 1000 feet of a lake; or
- disturbance of more than 10,000 square feet of soil and which project, or any part thereof, is within 300 feet of a water of the state or is within 1000 feet of a lake.

Waters of the state include: street gutters, stormsewer catch basins, natural streams, drainage ditches, drainage tile intakes and wetlands. The purpose of the permit is to insure that adequate erosion control measures are taken before, during and after the earth moving project.

2. Permit Requirements: Permit applicants must submit one set of the following documents to the Board for its review:

2.1 A Completed Permit Application Form. A request for permit under these rules shall be commenced by delivering, either in person or by U.S. Mail, a signed application on the form required by the Board of Managers to the office of the Okabena-Ocheda Watershed District, 1567 McMillan Street, Suite 3, Worthington, MN 56187.

A \$10.00 application fee and a \$15.00 inspection fee shall be charged for each erosion control plan permit. Application fees are waived for public entities. Erosion control plan information must be submitted with the application. After-the-fact permits will be subject to the application fee and all other costs incurred by the District.

If, in the opinion of the Board of Managers, it is necessary for the watershed district engineer or other consultant to review the application and all exhibits, view the site, and make a report to the watershed district as to the technical implications of the work, costs incurred by the watershed district during this review shall be borne by the applicant.

2.2 A set of Project Plans, including at least:

- A scale drawing of the site showing property lines and delineation of lands under ownership of the applicant and the proposed earth moving project.
- An Erosion Control Plan showing proposed methods of retaining waterborne-sediments onsite during the period of construction, and shall specify methods and schedules to determine how the site will be restored, covered, or revegetated after construction. *[Note: an erosion control plan does not require the signature of a registered professional engineer.]*

2.3 In addition, the permit applicant shall provide specific measures to control erosion based upon recognized engineering standards and the grade and length of the slopes on the site, to include--at a minimum--the following:

2.3.1 Silt fences or other approved devices shall be placed near the toe of the slopes to prevent soil from moving offsite. All devices shall be installed in accordance with the adopted standards. All silt fences and other devices must be replaced, supplemented or repaired when they become non-functional or sediment reaches the height defined in the adopted standards. These repairs must be made within 24 hours of discovery or as soon as field conditions allow.

2.3.2 Diversion channels or dikes and pipes shall be provided to intercept all drainage at the top of slopes that have grades of more than 10:1. Also, diversion channels or diked terraces and pipes shall be provided across said slopes if needed to ensure that the maximum flow length does not exceed 100 feet. No unbroken slopes longer than 75 feet on grades steeper than 3:1 shall be allowed.

2.3.3 Require that a device meeting the approved standards be installed, around each catch basin inlet on the site. The device shall remain in place until final stabilization of the site occurs.

2.3.4 Ensure that flows from diversion channels or pipes are routed to sedimentation basins or appropriate energy dissipaters in order to prevent transport of sediment to outflow conveyors and to prevent erosion and sedimentation when runoff flows into the conveyors.

Any temporary or permanent drainage ditch that drains water from a construction site, or diverts water around a site, must be stabilized within 200 linear feet of the property boundary. Stabilization and energy dissipation practices, where needed, must be installed within 24 hours of the connection to surface water.

2.3.5 Provide that site-access roads be graded or otherwise protected with a device or devices meeting the approved standards to prevent sediment from leaving the site via the access roads.

2.3.6 Require that soils tracked from the site by motor vehicles be cleaned daily (or more frequently, as necessary) from paved roadway surfaces throughout the duration of construction.

2.3.7 Assure that all erosion and sediment control measures be deployed, inspected and maintained for the duration of site construction. If construction operations interfere with these control measures, the devices may be removed or altered as needed but shall be restored to serve their intended function at the end of each day.

2.3.8 Specify that all exposed areas must have temporary erosion protection or permanent cover for the exposed soil areas year round according to the following table of slopes and time frames:

| Type of Slope | Time* |
|----------------------|--------------|
| Steeper than 3:1 | 7 days |
| 10:1 to 3:1 | 14 days |
| Flatter than 10:1 | 21 days |

*Maximum time an area can remain open when the area is not actively being worked.

A schedule of significant grading work will be required as part of the erosion and sedimentation control plan.

2.3.9 Require that temporary erosion protection and permanent cover be provided in accordance with the adopted standards.

2.3.10 Maintain an undisturbed grassed area, or install and maintain silt fence or other approved device, or provide a 4-foot wide sodded area along the curb line of all streets adjacent to the site and along all property boundaries where runoff could leave the site.

2.3.11 Erosion control practices must be maintained until final stabilization of the site occurs. (70 percent vegetative cover is achieved.)

