

**BOARD ORDER**

**Fiscal Year 2024 Water Quality and Storage Grant Program**

**PURPOSE**

Authorize a fiscal year 2024 Water Quality and Storage Grant Program and adopt the updated Water Quality and Storage Grant Program Policy.

**RECITALS /FINDINGS OF FACT**

1. Laws of Minnesota 2023, Chapter 60, Article 1, Sec. 4(p), appropriated \$17 million in Fiscal Year 2024 to a water quality and storage program.
2. Laws of Minnesota 2021, 1<sup>st</sup> Special Session, Chapter 6, Article 2, Sec. 80 provides the statutory authority for the Water Quality and Storage Program (Minn. Stat. 103F.05), and includes the purposes of the Program that are “to control water volume and rates to protect infrastructure, improve water quality and related public benefits, and mitigate climate change impacts”, identifies eligible practices, and establishes that the priority areas for the program are the Minnesota River basin and the lower Mississippi River basin.
3. Experience with the FY22-23 Pilot Program and using feedback from partners, BWSR staff have made recommendations for revisions to the program to move the program past its pilot phase.
4. The program policy, request for proposals, and frequently asked questions documents have been updated for the fiscal year 2024 Water Quality and Storage Grant Program application period.
5. The Grants Program and Policy Committee, at their January 10, 2024 meeting, reviewed the proposed Water Quality and Storage Grant Program Policy and associated documents and recommended approval to the Board.

**ORDER**

The Board hereby:

1. Adopts the attached FY24 *Water Quality and Storage Program Policy*.
2. Authorizes staff to issue the FY24 Request for Proposal, in the amount of \$3 Million, and score and rank the responses for future consideration by the board.

Dated at St. Paul, Minnesota, January 24, 2024.

**MINNESOTA BOARD OF WATER AND SOIL RESOURCES**



Todd Holman, Chair  
Board of Water and Soil Resources

Date: 1/24/2024

# Water Quality and Storage Program Policy

From the Office of Board of Water and Soil Resources, State of Minnesota

**Version:** 2.0  
**Effective Date:** 01/24/24  
**Approval:** Board Order #24-03

## Policy Statement

The Water Quality and Storage Program was established to provide financial assistance to local units of government and tribal governments to control water volume and rates to protect infrastructure, improve water quality and related public benefits, and mitigate climate change impacts. This program is authorized by Minnesota Statute 103F.05.

## Reason for the policy

The purpose of this policy is to provide clear expectations for the implementation of grants delivered through this program. More specific requirements or criteria may apply when specified by statute, rule, funding sources, or appropriation language.

Grantees are responsible for the administration and decisions concerning the use of these funds in accordance with applicable Minnesota Statutes, state agency policies, and other applicable laws. BWSR will use grant agreements as contracts for assurance of deliverables and compliance with applicable laws and program policies.

**The BWSR Grants Administration Manual provides the primary framework for management of these funds.**

## Applicant Eligibility

Eligible applicants include municipalities, towns, counties, soil and water conservation districts, watershed districts, or organizations formed for the joint exercise of powers, as defined under section 103B.305, subdivision 5, and includes tribal governments. LGU applicants must operate under a State approved and locally adopted local water management plan, comprehensive watershed management plan, watershed district plan, or soil and water conservation district (SWCD) comprehensive plan.

## Match Requirements

A minimum 10% match is required from non-state funds. The anticipated source(s) for the match shall be identified in the grant proposal. Activities listed as ineligible (see below) may not be counted towards match. Match can be provided by a landowner, land occupier (as defined in MN Statute 103C.101), local government or other non-State source and can be in the form of cash or the cash value of services or materials contributed to the accomplishment of grant objectives.

## Eligible Activities for Final Design and Construction Grants

Eligible activities must result in a reduction to peak flow rates and/or volumes to demonstrate a decrease in downstream flooding, improvement of water quality or related public benefits, or to mitigate climate change impacts. Grants may include any number of practices, but the practices cumulatively must reduce the peak runoff flow and/or volume at an area of interest (to be determined by the applicant). The area of interest must be identified at the time of application and an explanation provided of the flooding, water quality, or climate vulnerabilities at that location. Pre-project and post-project runoff hydrographs must be provided to quantify the reduction in peak flow rate and/or volume.

Examples of eligible practices include, but are not limited to:

- Ponds without permanent pools (Dry detention ponds)
- Ponds with permanent pools (Wet detention ponds)
- Water and Sediment Control Basins (WASCOBs )
- Wetland Construction or Restorations
- Improvements or retrofits of existing storage areas to increase storage capacity or retention time

Project lifespan must be at least 25-years and the applicant must develop an Operation and Maintenance plan that includes an inspection schedule, expectations for routine maintenance, and a financing system to ensure the design function of the project(s).

Eligible activities also include construction costs, project development, administration and coordination. Technical and engineering assistance necessary for design of these practices is essential and may be included in the project cost.

Payments for land protection including easement payment (temporary, perpetual, or flowage), pre-title acquisition payments, property acquisition costs, survey, title, and recording fees are eligible expenses under this grant. If any of the previous items are included in the application, the method to establish payment rates must be approved by the Board of Water and Soil Resources (BWSR) prior to approval of the workplan.

## Ineligible Expenses for Final Design and Construction Grants

- Activities that do not demonstrate a reduction in the hydrograph peak or volume at an area of interest.

- Activities that are multi-phase, multi-year storage systems (i.e. – the project must not rely on components that will be constructed at a later time in order to get the reduction in peak flow rates and/or volumes)
- Maintenance or repair of existing structures/storage projects.
- Activities that would negatively affect drinking water.
- Infrastructure installation and upgrades that would be required to meet Municipal Separate Storm Sewer System (MS4) General Permit Requirements for development or redevelopment.

### **Eligible Activities for Modeling and Conceptual Design Grants**

Eligible activities include the modeling of a stream or drainage system and conceptual design of the subsequently selected projects or practices within the modeled watershed. The intent of the proposed sites must be to reduce flooding, improve water quality, or mitigate climate change impacts and they must decrease the peak flow rate of the runoff hydrograph at an area of interest. The area of interest must be identified at the time of application and an explanation provided of the flooding, water quality, or climate vulnerabilities at that location.

Eligible activities include outreach, modeling, grant management, and administration. Technical and engineering assistance necessary for conceptual design of these practices is essential and may be included in the project cost.

### **Ineligible Activities for Modeling and Conceptual Design Grants**

- Modeling of one individual storage practice .
- Model development of a MS Chapter 103E public drainage system that consists of an Improvement. This modeling must be completed before the work plan is approved so that the grant funds will only be used to model the addition of storage on the system.
- Costs such as modeling software fees or development of new modeling software.

### **Technical Quality Assurance**

Grantees must identify the technical assistance provider(s) for the practice or project and their credentials for providing this assistance. The technical assistance provider(s) must have appropriate credentials for practice investigation, design, and construction. Credentials can include conservation partnership Job Approval Authority (JAA), also known as technical approval authority; applicable professional licensure; reputable vendor with applicable expertise and liability coverage; or other applicable credentials, training, and/or experience.

BWSR reserves the right to review the qualifications of all persons providing technical assistance and review the technical project design if a recognized standard is not available. See also the Technical Quality Assurances section of the Grants Administration Manual.

## Grant Work Plan and Reporting Requirements

To ensure the success of the program, development of grant work plans, regular reporting of expenditures, and technical assistance and accomplishments are required.

- a. **Grant Execution.** Grant agreement must be executed before work can begin on this grant and all work must occur within the grant period.
- b. **Grant Work Plan.** Work plans shall be developed in eLINK and must be approved before work can begin on this grant. Work plans shall reflect each eligible activity, a description of the anticipated activity accomplishments, and grant and match funding amounts to accomplish each of the activities.
- c. **Grant Reporting.** Descriptions of actual results and financial expenditures for each work plan activity must be reported in eLINK by February 1 of each year.
- d. **Grant Closeout.** Within thirty (30) calendar days of the expiration of each grant agreement or expenditure of all grant funds, whichever occurs first, grantees are required to provide a summary of all work plan accomplishments with grant funding in eLINK.

## BWSR Grant Administration Requirements

BWSR staff is authorized to review grant applicant's financial records to establish capacity to successfully manage state grant funds, develop grant agreements, including requirements and processes for work plans, project outcomes reporting, closeouts, and fiscal reconciliations. All grantees must follow the grant agreement and other applicable sections of the Grants Administration Manual.

In the event there is a violation of the terms of the grant agreement, BWSR will enforce the grant agreement and evaluate appropriate actions, up to and including repayment of grant funds at a rate up to 100% of the grant agreement.

## History

Version	Description	Date
1.0	Water Quality and Storage Program Policy - new	1/26/22
1.1	Revised to remove the requirement of reduction of peak flow or volume at the HUC12 scale.	1/25/23

<b>Version</b>	<b>Description</b>	<b>Date</b>
2.0	Moved program out of the pilot phase. Added the modeling and conceptual design grant option and updated to current eligible and ineligible activities. Change match requirement.	TBD





## BOARD ORDER

### Boundary change for the Bois de Sioux Watershed District and Upper Minnesota River Watershed District

#### PURPOSE

Approve a boundary change between the Bois de Sioux Watershed District and the Upper Minnesota River Watershed District.

#### RECITALS /FINDINGS OF FACT

1. A joint petition (Petition) for boundary change, dated June 23, 2023, from the Bois de Sioux Watershed District (BdSWD) and the Upper Minnesota River Watershed District (UMRWD), was received by the Board of Water and Soil Resources on July 31, 2023.
2. The boundary change described in the Petition would correct the watershed assessment designation of three parcels along the common boundaries of the watershed districts. The proposed change would result in the transfer of zero acres from BdSWD to UMRWD and transfer approximately 120 acres from UMRWD to BdSWD.
3. The Board has reviewed the Petition for conformance with state law and rule and has determined that the Petition is valid in accordance with Minn. Stat. § 103D.251.
4. Legal notice of filing on the Petition, pursuant to Minn. Stat. § 103D.251, was published in the Ortonville Independent on October 3, 2023 and October 10, 2023; the Traverse County Gazette News on October 4, 2023 and October 11, 2023; and the Northern Star on October 5, 2023 and October 12, 2023. Further, a copy of the notice of filing was sent to each affected city, county, and watershed district.
5. The legal notice of filing required within 30 days of the last date of publication of the notice, that at least one written request for hearing be received by the Board before a hearing will be held. The Board did not receive any written requests for a hearing therefore no hearing was held. The Board did not receive any comments on the Petition.
6. The Board assisted BdSWD and UMRWD through the boundary change petition process, providing guidance, comments, and recommendations. All relevant, substantive, and procedural requirements of law and rule have been fulfilled. The Board has proper jurisdiction in the matter of approving a watershed district boundary change. The requested boundary change is consistent with the purpose and the requirements of Minn. Stat. § 103D.251. The boundary change, as proposed in the petition, would be for the public welfare and public interest and would advance the purpose of Minnesota Statutes Chapter 103D. The boundaries of the BdSWD and the UMRWD as proposed in the Petition are more accurately based on the hydrology of the subject area than the present boundaries. The proposed boundary change should be approved per the petition. Therefore, Board staff recommends approval of the boundary change as petitioned.
7. On January 3, 2024, the Board's Northern Region Committee and staff met in Detroit Lakes to review and discuss the Petition. Members of the Committee that participated in the discussion included Committee Chair Rich Sve, Jeff Berg, Kurt Beckstrom, Theresa Ebbenga, Theresa Haugen, Todd Holman, LeRoy Ose, Neil Peterson, and Ron Staples. Board staff in attendance were Northern Region Manager Ryan Hughes. Board staff recommended approval of the boundary change. After discussion, the Northern Region Committee voted to recommend approval of the Petition.

**ORDER**

The Board hereby orders that the boundaries of the Bois de Sioux Watershed District and the Upper Minnesota River Watershed District are changed per the Petition as depicted on the maps, attached to this Order.

Dated at St. Paul, Minnesota, this January 24, 2024.

**MINNESOTA BOARD OF WATER AND SOIL RESOURCES**

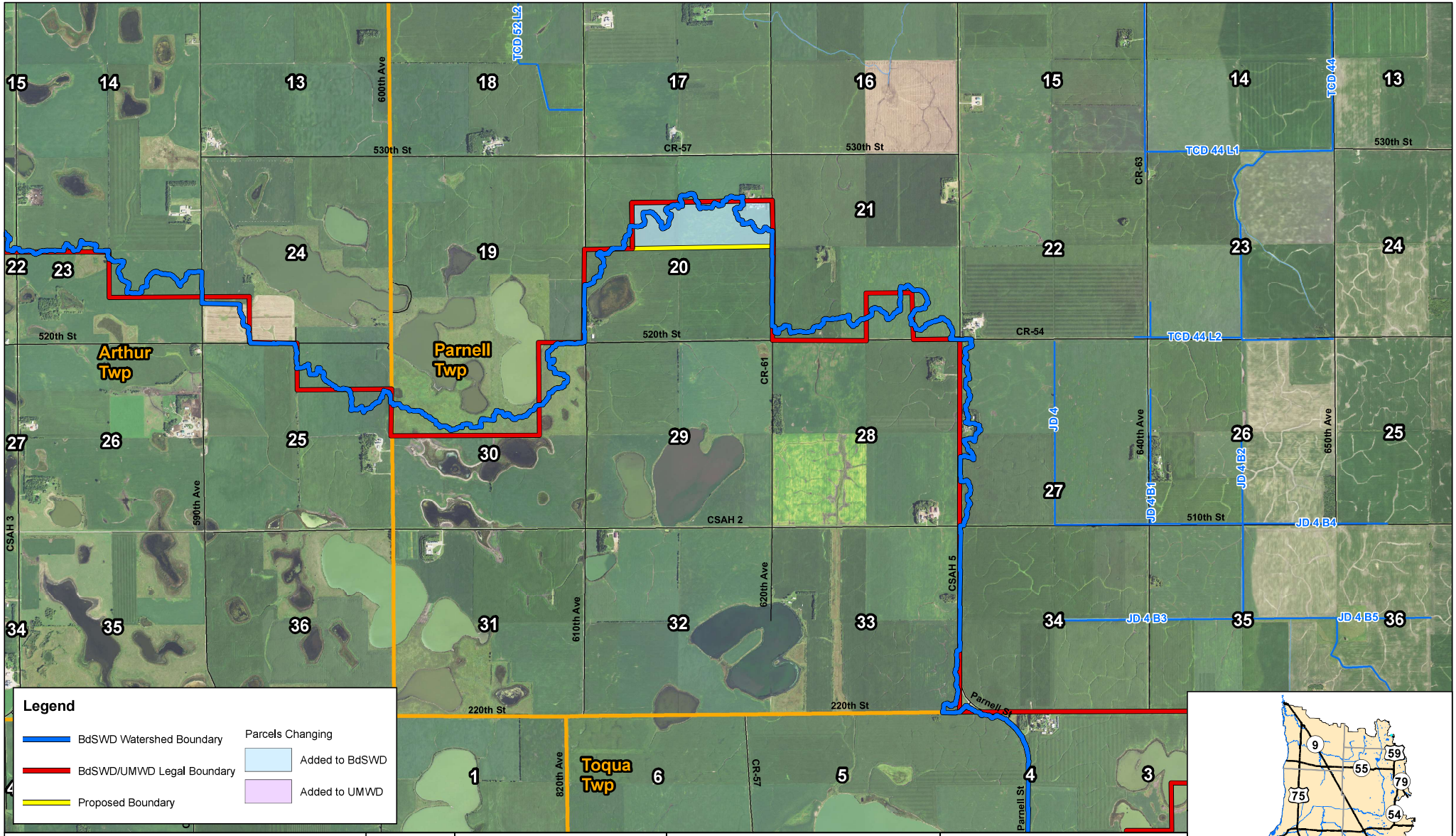


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Todd Holman, Chair  
Board of Water and Soil Resources

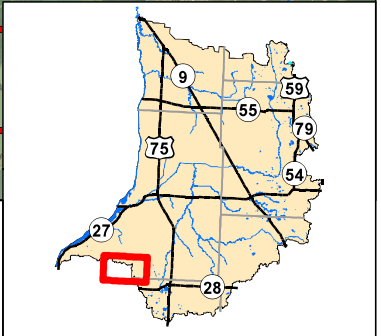
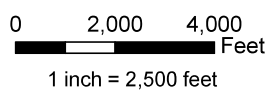
Date: 1/24/2024





Legend	
	BdSWD Watershed Boundary
	BdSWD/UMWD Legal Boundary
	Proposed Boundary
	Parcels Changing Added to BdSWD
	Added to UMWD

**Preliminary Boundary Change**  
**Southern Boundary**  
**Bois de Sioux Watershed District, MN**



Created By: NHT Date Created: 04/17/19 Date Saved: 11/20/18 Date Plotted: 09/28/17 Date Exported: 09/28/23  
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SECTION 20 – PARNELL TOWNSHIP, TRAVERSE COUNTY, MINNESOTA



**LEGEND**

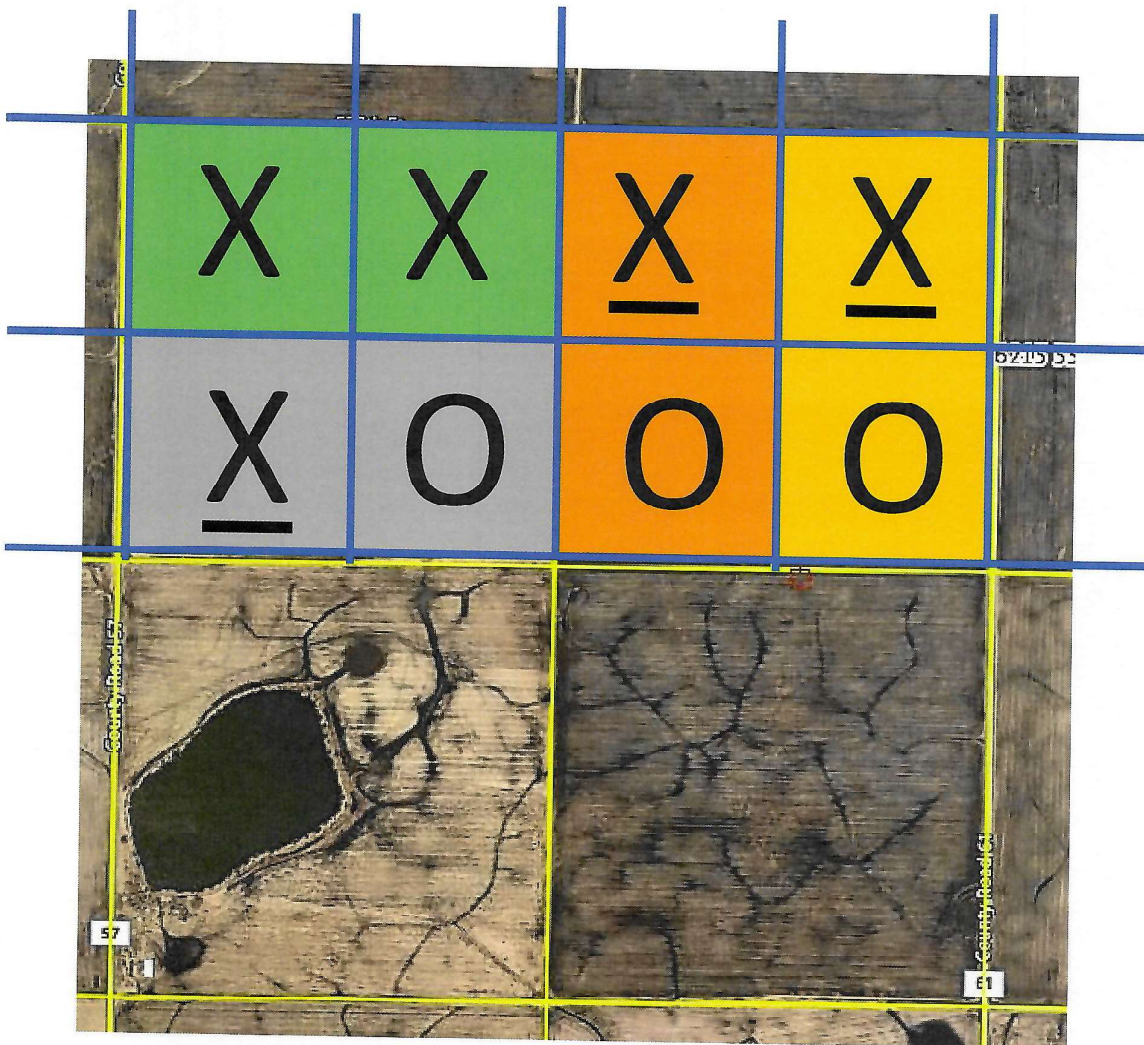
**RED = CURRENTLY INCLUDED IN THE BOIS DE SIOUX WATERSHED DISTRICT**

**YELLOW = 2023 REQUEST TO BE ADDED NOW WITH THIS AMENDMENT:**

**SE1/4 of the NE1/4 of Section 20, Parnell Township, Traverse County  
SW1/4 of the NE1/4 of Section 20, Parnell Township, Traverse County  
SE1/4 of the NW1/4 of Section 20, Parnell Township, Traverse County**



SECTION 20 – PARNELL TOWNSHIP, TRAVERSE COUNTY, MINNESOTA



**LEGEND**

**X** = HISTORICALLY INCLUDED IN THE BOIS DE SIOUX WATERSHED DISTRICT

**X** = ADDED DURING 2020 – 2021 BOUNDARY REVISION FORMAL PROCEEDINGS

**O** = CURRENT 2023 REQUEST TO BE ADDED NOW WITH THIS AMENDMENT:

- SE1/4 of the NE1/4 of Section 20, Parnell Township, Traverse County
- SW1/4 of the NE1/4 of Section 20, Parnell Township, Traverse County
- SE1/4 of the NW1/4 of Section 20, Parnell Township, Traverse County

Minnesota Board of Water and Soil Resources  
520 Lafayette Road North  
St. Paul, Minnesota 55155

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In the Matter of the review of the Comprehensive Watershed Management Plan for the Sand Hill River Watershed, pursuant to Minnesota Statutes, Sections 103B.101, Subdivision 14 and 103B.801.

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**ORDER  
APPROVING  
COMPREHENSIVE  
WATERSHED  
MANAGEMENT PLAN**

**Whereas**, the Policy Committee of the Sand Hill River Watershed Partnership submitted a Comprehensive Watershed Management Plan (Plan) to the Minnesota Board of Water and Soil Resources (Board) on November 29, 2023 pursuant to Minnesota Statutes, Sections 103B.101, Subdivision 14 and 103B.801 and Board Resolution #21-08, and;

**Whereas**, the Board has completed its review of the Plan;

**Now Therefore**, the Board hereby makes the following Findings of Fact, Conclusions, and Order:

**FINDINGS OF FACT**

- Partnership Establishment.** The Sand Hill River Watershed Partnership (Partnership) was established in February 2022, through adoption of a Memorandum of Agreement for the purposes of developing a Comprehensive Watershed Management Plan. The membership of the Partnership includes Norman County Soil and Water Conservation District (SWCD), Mahnommen SWCD, East Polk SWCD, West Polk SWCD, as well as Norman County, Mahnommen County, Polk County, and the Sand Hill River Watershed District.
- Authority to Plan.** Minnesota Statutes, Sections 103B.101, Subdivision 14 allows the Board to adopt resolutions, policies or orders that allow a comprehensive plan, local water management plan, or watershed management plan, developed or amended, approved and adopted, according to Chapter 103B, 103C, or 103D to serve as substitutes for one another or be replaced with a comprehensive watershed management plan. Minnesota Statutes, Sections 103B.801, established the Comprehensive Watershed Management Planning Program; also known as the One Watershed, One Plan (1W1P) program and Board Decision #21-08 adopted the One Watershed, One Plan Operating Procedures Version 2.1 and Board Decision #19-41 adopting the One Watershed, One Plan Content Requirements Version 2.1 policies.
- Nature of the Watershed.** The Sand Hill River Watershed is a fairly small watershed that encompasses 570 square miles (364,800 acres) of land within the Red River Basin spanning a narrow landscape from a small lakes region in the east to the central beach ridges, and eventually flows into the flat Lake Agassiz basin to the west before joining the Red River of the North. Major towns in the watershed include Fosston, Winger, Fertile, Beltrami, Nielsville, and Climax.

4. **Plan Development.** The Plan was developed as a single, concise, and coordinated approach to watershed management. The Plan consolidates policies, programs, and implementation strategies from existing data, studies and plans, and incorporates input from multiple planning partners to provide a single plan for management of the watershed. The Plan focuses on prioritized, targeted, and measurable implementation efforts and lays out specific actions to manage water quantity, protect and restore water quality, natural habitat, recreational uses and drinking water sources in the watershed.
5. **Plan Review.** On November 29, 2023, the Board received the Plan, a record of the public hearing, and copies of all written comments pertaining to the Plan for final State review pursuant to Board Resolution #21-08. During the development of the Plan, State agency representatives attended and provided input at advisory committee meetings. The following state review comments were received during the comment period.
  - A. Minnesota Department of Health (MDH): MDH staff thanked the partnership for including MDH priorities and inputs in the plan and looks forward to their continued partnership through final approval and implementation. MDH recommends approval of the plan.
  - B. Minnesota Department of Natural Resources (DNR): DNR staff thanked the partnership for offering DNR the opportunity to participate in the plan process. DNR has no additional comments to provide. DNR recommends approval of the plan.
  - C. Minnesota Pollution Control Agency (MPCA): MPCA staff noted that they appreciated the opportunity to participate and provide input and that the plan is well done and thorough. MPCA also noted that the planning partners worked well together and all partner input was properly and professionally considered and addressed. MPCA recommends approval of the plan.
  - D. Minnesota Environmental Quality Board (EQB): EQB did not provide comments for the final review but noted that the plan was received.
  - E. Minnesota Department of Agriculture (MDA): MDA did not have additional comments nor concerns with the plan and recommended approval.
  - F. Minnesota Board of Water and Soil Resources regional staff: BWSR staff provided comments throughout the planning process and had no suggested or required changes to the Plan submitted for the final review. We commend the partners for their trust level and commitment to the resources of the Plan area. BWSR staff recommend approval of the Plan and look forward to working with the Partnership during implementation.
6. **Plan Summary and Highlights.** The highlights of the Plan include:
  - A thorough narrative description of the land and water resource features that shape the planning area and inform the broad priorities within the plan.
  - A collection of 13 priority issues split between two distinct levels as selected by the group to focus efforts and define measurable goals.
  - The plan includes focused priorities for four (4) planning regions to ensure issue prioritization is specific to the needs of each geographical area.
  - Each planning region has unique short and long-term goals and implementation schedules.

- The Prioritize, Target, and Measure Application (PTMApp) was used to identify, prioritize, and target possible locations of upland structural projects and field management conservation practices in each specific planning region in the plan utilizing direct local input.
  - This plan contained resource protection priorities utilizing a ranked quality index.
  - A thorough discussion of capital improvement projects within the watershed including seven projects identified for implementation.
  - A thorough discussion of regulatory and enforcement measures to meet the needs of county and watershed district obligations including shoreland management, public drainage, buffers, and land use planning to name a few.
7. **Northern Regional Committee.** On January 3, 2024, the Northern Regional Committee met to review and discuss the Plan. Those in attendance from the Board’s Committee were Committee Chair Rich Sve, Jeff Berg, Kurt Beckstrom, Theresa Ebbenga, Theresa Haugen, Todd Holman, LeRoy Ose, Neil Peterson, and Ron Staples. Board staff in attendance were Brett Arne, Henry Van Offelen, and Ryan Hughes. The representatives from the Partnership were Nicole Bernd, West Polk SWCD; Rachel Klein, East Polk SWCD; Lori Thronson, Norman SWCD; Aaron Neubert, Mahnomon SWCD; Joan Lee, Polk County; Craig Engelstad, Sand Hill Watershed District; and Chris Cournia, West Polk SWCD. Nicole Bernd presented the Plan on behalf of the partnership. Board regional staff provided its recommendation of Plan approval to the Committee. After discussion, the Committee’s decision was to present a recommendation of approval of the Plan to the full Board.
8. This Plan will be in effect for a ten-year period until January 24, 2034.

## CONCLUSIONS

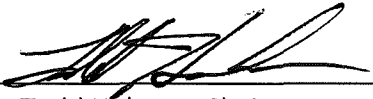
1. All relevant substantive and procedural requirements of law have been fulfilled.
2. The Board has proper jurisdiction in the matter of approving a Comprehensive Watershed Management Plan for the Sand Hill River Watershed pursuant to Minnesota Statutes, Sections 103B.101, Subd. 14 and 103B.801 and Board Resolution #21-08.
3. The Sand Hill River Watershed Comprehensive Watershed Management Plan attached to this Order states water and water-related problems within the planning area; priority resource issues and possible solutions thereto; goals, objectives, and actions of the Partnership; and an implementation program.
4. The attached Plan is in conformance with the requirements of Minnesota Statutes Section 103B.101, Subd. 14 and 103B.801 and Board Resolution #21-08.
5. The attached Plan when adopted through local resolution by the members of the Partnership will serve as a substitute for the comprehensive plan, local water management plan, or watershed management plan, developed or amended, approved and adopted, according to Chapter 103B, 103C, or 103D, but only to the geographic area of the Plan.

**ORDER**

The Board hereby approves the attached Comprehensive Watershed Management Plan of the Sand Hill River Watershed, submitted November 29, 2023.

Dated at St. Paul, Minnesota, this twenty-fourth day of January 2024.

**MINNESOTA BOARD OF WATER AND SOIL RESOURCES**



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BY: Todd Holman, Chair





## BOARD ORDER

### Report to Legislature and Drainage Work Group (DWG) Policy Recommendation on Sunset Extension of Minnesota Statutes §103E.729

#### PURPOSE

- A. Authorize a report to the legislature on Drainage Work Group (DWG) deliberations related to a 2023 statutory requirement; and,
- B. Authorize BWSR Staff to work with DWG participants and the legislature to pursue a policy recommendation for a sunset date extension for §103E.729.

#### FINDINGS OF FACT / RECITALS

1. The Board has various authorities under Minnesota Statutes §103B.101, that include working with drainage stakeholders to foster mutual understanding and provide recommendations for drainage system management and related water management, including recommendations for updating the drainage law in Minnesota Statutes Chapter 103E and other related provisions, as prescribed in Minnesota Statutes §103B.101, subd. 13.
2. The board has and continues to convene an informal working group and work teams to develop information, education, and recommendations for these purposes known as the "Drainage Work Group" (DWG).
3. Laws of Minnesota 2023, chapter 60, article 1, section 4 (d) charged the Board of Water and Soil Resources and the DWG established under Minnesota Statutes, §103B.101, subd. 13, to evaluate and develop recommendations on the following subjects:
  - (1) the definition and application of outlet adequacy as provided in Minnesota Statutes §103E.261; and
  - (2) public notice requirements for proposed public drainage activities, including a drainage registry portal.and required the Board to submit a report to the chairs and ranking minority members of the house of representatives and senate committees and divisions with jurisdiction over environment and natural resources by February 1, 2024.
4. The DWG has and continues to utilize a DWG Process Summary (as adopted by the DWG on 10/11/2018) as a framework for developing and providing recommendations to the legislature on proposed amendments to Minnesota Statutes §103E.
5. Current Minnesota Statutes §103E.729 includes a sunset provision causing its expiration in 2024.
6. At its December 14, 2023, meeting the DWG agreed to recommend a 5-year extension of the Minnesota Statutes §103E.729 sunset provision.
7. The DWG and designated subcommittees met approximately eighteen times from to February 2023 to January 2024 to evaluate and develop recommendations on the definition and application of outlet adequacy as provided in Minnesota Statutes §103E.261, and on the public notice requirements for proposed public drainage activities, including a drainage registry portal.

8. The attached report was developed in coordination with the DWG including opportunities for feedback on two previous drafts from the participating members of the DWG.
9. The attached report, prepared by agency staff, represents the deliberations of the DWG on the above referenced topics.
10. The attached report does not represent consensus of the participating DWG members.
11. The Buffers Soils and Drainage Committee at their January 22, 2024, meeting reviewed the DWG recommendations and the attached report and recommended the Board approve this order.

### ORDER

The Board hereby:

- A. Accepts the attached legislatively directed agency report on Drainage Work Group deliberations and authorizes it to be prepared in final form and transmitted to the chairs and ranking minority members of the house of representatives and senate committees and divisions with jurisdiction over environment and natural resources by February 1, 2024; and,
- B. Authorizes staff to work with DWG participants and the legislature to seek a 5-year extension to the §103E.729 sunset provision.

Dated at St. Paul, Minnesota, this January 24, 2024.

**MINNESOTA BOARD OF WATER AND SOIL RESOURCES**

  
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Todd Holman, Chair  
Board of Water and Soil Resources

Date: 1/24/2024

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# Report to the Minnesota Legislature

Minnesota Public Drainage; Outlet Adequacy and Public Notice  
January 24, 2024

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This report has been prepared for the Minnesota State Legislature by the Minnesota Board of Water and Soil Resources (BWSR) in pursuant to Minnesota Statutes, section 103B.101, subdivision 13 and Minnesota Laws 2023, Chapter 60, Article 1, section 4, paragraph (d).

Prepared by: Tom Gile, BWSR Resource Conservation Section Manager, tom.gile@state.mn.us.

The estimated cost of preparing this report (as required by Minn. Stat. 3.197) is:

Total staff time: 202 hours

Production/duplication: N/A

Total: \$46,266

BWSR is reducing printing and mailing costs by distributing reports and information to wider audiences in digital, online formats. This report can be made available in alternative formats upon request.

## Table of Contents

<b>Introduction and Overview .....</b>	<b>3</b>
<b>Definition and Application of Outlet Adequacy .....</b>	<b>4</b>
<b>Public Notice Requirements for 103E Activities .....</b>	<b>6</b>
Clarifying and Aligning Notice Requirements.....	6
Broader Notice. ....	7

## Introduction and Overview

During the 2023 legislative session the following language was enacted (Laws 2023, Chapter 60, Article 5, section 21):

*(a) The Board of Water and Soil Resources [BWSR] and the Drainage Work Group [DWG] established under Minnesota Statutes, section 103B.101, subdivision 13, must evaluate and develop recommendations on the following subjects:*

*(1) the definition and application of outlet adequacy as provided in Minnesota Statutes, section 103E.261; and*

*(2) public notice requirements for proposed public drainage activities, including a drainage registry portal.*

*(b) The Board must submit the report to the chairs and ranking minority members of the house of representatives and senate committees and divisions with jurisdiction over environment and natural resources by February 1, 2024.*

The DWG was also directed to complete another task as provided in Laws of Minnesota Chapter 60, Article 1, section 4, paragraph (d):

*The Drainage Work Group must review a drainage authority's power under Minnesota Statutes, Chapter 103E, to consider the abandonment or dismantling of drainage systems; to re-meander, restore, or reconstruct a natural waterway that has been modified by drainage; or to deconstruct dikes, dams, or other water-control structures.*

This report addresses each of the directives identified above and also presents the DWG recommendation for the sunset language in Section 103E.729.

There are no consensus recommendations at this time with respect to “outlet adequacy” or “public notice requirements for proposed public drainage activities”. There is reasonable agreement that more time would be needed to effectively bring forward potential policy recommendations on these two topics.

Other tasks completed by the DWG during the past season include:

- 1) The DWG initiated efforts to assess Drainage Authority Powers during the past year which was legislatively directed and which does not require a legislative report.
- 2) While not a required part of this report, the DWG is supporting a recommendation to extend the sunset provision of 103E.729 for an additional five years via legislative action during the 2024 Legislative Session.

## Definition and Application of Outlet Adequacy

Drainage law specifies in Section 103E.261, subd. 4, that in order to authorize a new public drainage system or an improvement to an existing one, the drainage authority must determine that the “outlet” into which the system discharges will be “adequate.” Neither of these terms is explicitly defined, leading to uncertainty and disagreement as to both the scope of what is to be assessed and what is sufficient to show “adequacy”.

Short of providing more clarity in the statute, a common understanding among those involved in proposing or reviewing potential projects of both scope and assessment could improve the administration of drainage projects.

The DWG began discussions related to the use of “outlet adequacy” in October 2022.

The DWG agreed to convene a technical subcommittee to assess outlet adequacy which would examine the topic in more detail and provide preliminary assessment for the full DWG to consider. This report was intended to be a starting point for what would likely be an iterative process covering several detailed topic areas that fall under the concept and framework of “outlet adequacy”.

The technical subcommittee consisted of 16 individuals selected by state agencies, drainage authorities, watershed districts, agricultural organizations, and environmental groups. This subcommittee was charged to look at terms and methods used to evaluate outlets for drainage projects and if appropriate provide options and recommendations to make the evaluation of an outlet a more repeatable and defensible process. The efforts of the technical subcommittee should be commended as an important first step in the assessment of and future discussions on outlet adequacy by the DWG. Those efforts culminated in a technical report that was delivered to the DWG.

While a deadline for the technical subcommittee’s discussion in 2023 was not originally envisioned, the Technical Subcommittee Report was provided to the DWG on December 12, 2023, for their review and consideration. Areas of technical agreement and disagreement are presented in that report, with the intent that all topics may be discussed further by the full DWG and may require further assessment.

As of the writing of this legislative report, the DWG discussed the following items from the Technical Subcommittee Report: hydrograph duration, model calibration, approaches to modeling private drain tile, and if/how to model future conditions.

These items had consensus on the general scope and importance to a preliminary engineer’s report and the considerations of outlet adequacy. Members of the DWG generally agree that further development of consensus language addressing these topics should be completed by the DWG for inclusion in the Minnesota Public Drainage Manual. While there is consensus on these items, not all participating members of the DWG have indicated they are willing to move forward in considering application of those changes until they feel there is sufficient agreement on the larger assessment of outlet adequacy.

Items that did not have consensus at the subcommittee level included: how to consider water quality outside of channel scour, requirements if the existing outlet is unstable, and how the project may affect downstream conditions at times other than peak flow from the storm event.



The DWG did not have time to discuss these items prior to the preparation of this report, but they are planning to discuss each outstanding item and determine a path forward for each. This plan may include deciding the topic and adding recommendations to the Multi-Purpose Drainage Management, convening another subcommittee to discuss the topic further, or working through policy changes to address the item. At this time, the DWG does not have specific policy recommendations; however, there was strong support expressed at its last meeting for continued dialoged by the DWG to continue this work.

The efforts put into the Technical Subcommittee report and importance of the outlet adequacy assessment for drainage projects lead many members to support further work by the DWG to clarify and advance the overall understanding of the definition and application of outlet adequacy as provided in Minnesota Statutes, section 103E.261.

# Public Notice Requirements for 103E Activities

The legislative directive has been separated into two parts for the purposes of DWG deliberations and this report.

- 1) **Clarifying and Aligning Notice Requirements**
- 2) **Broader Notice**

## Clarifying and Aligning Notice Requirements

The DWG spent time at each meeting from June through December 2023 reviewing forms of notice and their application in 103E. That assessment identified 37 different sections of Chapter 103E that specify some form of public notice for a matter before the drainage authority. The type of notice, timing of notice, and who receives notice is specific in each of these 37 sections of statute.

As the statute has been amended over time, these sections read differently and, in some places, are ambiguous in describing the form of notice, the timing of notice, and who is to receive notice.

With a number of different activities requiring notice of a hearing and variation in timing and methods, it can be challenging to communicate and implement notice in a predictable manner. This is important from the perspective of informing the public and providing due process.

Variation and inconsistency in timing and methods also increases potential for administrative error which could imperil both the proposed project and due process. Administration of the drainage code would benefit by standardizing and bringing clarity to these many disparate notice provisions.

The DWG assessed each of the 37 sections that specify notice and sought to assess the forms and extent of notice that are warranted given the impact of the associated drainage activity on the physical system and its taxation/assessment consequences. This effort was valuable for the members to better understand the scope of drainage authority actions that currently require some form of notification.

Attorneys working with the DWG stakeholders also reviewed constitutional due process requirements so that modernization revisions of chapter 103E proposed by the DWG pass legal/constitutional muster for any future recommendations.

The DWG's work on this topic started with identifying specific areas to be evaluated:

- Establishing a more adaptable and uniform set of definitions for notice.
- Establishing a more uniform timing and method for giving notice.
- Incorporating these definitions and this consistent timing framework into the 37 sections of statute that currently call for notice.

Based on the above areas of evaluation, the DWG identified the following for future work to establish consensus on these items:

- DWG will consider an overarching notice framework to streamline timing and methods of notice.
- The DWG will consider application of the public notice framework to chapter 103E.
- The DWG will bring any consensus recommendations proposing modification of 103E to the legislature.

## Broader Notice.

Notice requirements for proceedings under the drainage law focus on landowners who pay for and benefit from drainage systems and to public agencies tasked with overseeing drainage activity that may have an impact on the state's natural resources. There is interest in improving options for notice of drainage projects to the general public that allows interested parties opportunity to engage in the process.

During the 2022 legislative session, a bill was introduced to establish a "Drainage Registry Portal". The language requested a searchable electronic database of all documents initiating proceedings and non-petitioned repairs under Minnesota Statutes, Chapter 103E. This bill was introduced without consideration by the DWG. The bill was not adopted by the legislature.

After the legislative session, this subject was on each DWG meeting agenda in June 2022 through February 2023. The DWG discussed many options including statutory notice requirements, reports to state agencies, repairs, early coordination, drainage authority websites, email notification through drainage authority websites, and email notification through a state agency process. Revisions were discussed on the language introduced in the prior legislative session as well; however, DWG consensus was not achieved.

A revised bill was introduced during the 2023 legislative session but was not adopted.

Instead, the legislature directed the DWG to consider public notice requirements for proposed public drainage activities, including a drainage registry portal.

When it became apparent the scope of the notice assessment was quite expansive, the Drainage Work Group formed a subcommittee to discuss public notice requirements for proposed public drainage activities as well as the drainage registry portal concept of early public notice. The subcommittee included representatives from Association of Minnesota Counties (AMC), Minnesota Watersheds (MW), Minnesota Center for Environmental Advocacy (MCEA), Friends of the Minnesota River Valley, the Minnesota Corn Growers Association, and the Minnesota Department of Natural Resources (DNR).

The subcommittee was tasked to respond to the legislative mandate to "to evaluate and develop recommendations on public notice including a drainage registry portal". That subcommittee met in November and December 2023.

As a set of recommendations was being developed, several members of the committee ceased participation in the subcommittee meetings and the committee discontinued meeting at that time. Therefore, the subcommittee concluded deliberations without bringing forward a set of recommendations. The DWG did not have an opportunity to consider further options given no specific recommendations from the subcommittee and the deadline associated with the legislative report.

Specific areas of evaluation on this topic included: modification of public notice to include web-based or electronic notice or to create a centralized database; timing of broadened notice, duration of notice (i.e., whether specific notice duration provide greater opportunity for comment and feedback); and information that should be made available via notice.

The DWG also has and may continue considering ways to advance web-based or electronic notice but did not fully vet ideas before finalizing this report.





## BOARD ORDER

### Performance Review and Assistance Program 2023 Report to the Minnesota Legislature

#### PURPOSE

#### Adopt 2023 PRAP Legislative Report

#### FINDINGS OF FACT / RECITALS

1. The 2007 Legislature directed the Board of Water and Soil Resources (Board) to develop and implement an ongoing program to evaluate and report on the performance of each local water management entity.
2. In 2007 the Board developed a set of guiding principles and directed staff to implement a program for reviewing performance, offering assistance, and reporting results, now called the Performance Review and Assistance Program (PRAP), in consultation with stakeholders and consistent with the guiding principles as published on the BWSR website.
3. According to Minnesota Statutes Chapter 103B.102, Subdivision 3, beginning February 1, 2008, and annually thereafter, the Board shall provide a report of local water management entity performance to the chairs of the House and Senate committees having jurisdiction over environment and natural resources policy.
4. The 2023 PRAP Report to the Minnesota Legislature contains the summaries of the local water management entity performance reviews conducted by BWSR staff in 2023 and a summary of findings describing the performance of local water management entities regarding compliance with plan status and basic reporting requirements.
5. The 2023 PRAP Report to the Minnesota Legislature was reviewed by the Board's Audit and Oversight committee on January 22, 2024 and was recommended for Board adoption by the committee.

#### ORDER

The Board hereby:

Adopts the 2023 Performance Review and Assistance Program Report and directs staff to submit to the Minnesota Legislature and publish it on the Board's website, with allowance for any minor editing modifications necessary for finalization.

Dated at St. Paul, Minnesota, this January 24, 2024.

MINNESOTA BOARD OF WATER AND SOIL RESOURCES

Todd Holman, Chair  
Board of Water and Soil Resources

Date: 1/24/2024