

ESTABLISHING A WATERSHED DISTRICT

PURPOSE OF A WATERSHED DISTRICT

The general purpose of a watershed district is 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 welfare and the provident use of the natural resources.

A watershed district may be established for and use its powers to advance any of the following specific purposes:

1. to control or alleviate damage from floodwaters to promote climate resilience;
2. to protect, improve, or restore watercourses and water basins for drainage, navigation, water quality, flood mitigation, and any other public purpose;
3. to manage impacts to, restore, or replace wet and overflowed land;
4. to provide a water supply for irrigation;
5. to regulate and conserve the flow of watercourses;
6. to provide or conserve water supply for domestic, industrial, recreational, agricultural, or other public use;
7. to provide for sanitation and public health and regulate the use of streams, ditches, or watercourses to dispose of waste;
8. to repair, improve, relocate, modify, consolidate, and abandon all or part of drainage systems within a watershed district;
9. to control or alleviate soil erosion and siltation of watercourses or water basins;
10. to regulate improvements by riparian property owners of the beds, banks, and shores of lakes, streams, and wetlands for preservation and beneficial public use;
11. to provide for hydroelectric power generation;
12. to protect or enhance the water quality in watercourses or water basins;
13. to provide for the protection of groundwater and regulate its use to preserve it for beneficial purposes; and
14. to otherwise manage and protect surface waters and groundwaters for any beneficial purpose

SCOPING PHASE

A concerned person or group seeking action on a water resource problem or issue should contact existing local water management authorities. These are primarily counties, cities, watershed districts, and soil and water conservation districts (SWCDs). Local water management authorities are listed on the Board of Water and Soil Resources (BWSR) website at www.BWSR.state.mn.us.

DETERMINING THE GENERAL BOUNDARY OF THE PROPOSED WATERSHED DISTRICT

If it appears that establishment of a watershed district would be the best approach for addressing identified problems or issues, the general area to be included in the proposed district must be determined.

A watershed is an area of land that contributes runoff to a particular stream or body of water. On a stream, the contributing drainage area increases as one moves downstream. Usually, the point where the stream outlets into a larger watercourse is used to define the downstream end of the stream's watershed. From that outlet point, a line is

drawn upstream around all the lands that drain into the stream. This line defines the stream's watershed boundary. Topographic maps, often from the United States Geological Survey, are used to determine an approximate watershed boundary.

Existing watershed districts in Minnesota vary in size from less than 60 square miles to nearly 6,000 square miles. The area of the proposed district should include the entire contributing watershed of the problem area. The area's tax base should also be estimated and carefully considered. The general levy limit for watershed districts in Greater Minnesota increased in 2023. State law currently allows a watershed district to establish an annual general fund of up to \$500,000. However, the ad valorem tax levy for the general fund cannot exceed 0.096% of the watershed's taxable market value. A small watershed district with a small tax base will be able to raise only a small general fund. This can severely hamper a district's ability to function effectively.

If the area is adjacent to an existing watershed district, the option of enlarging the existing district is available under the law and should be discussed with the district's board of managers.

BUILDING LOCAL UNDERSTANDING AND SUPPORT

A common method of organizing support is the establishment of a steering committee. The steering committee should include local leaders; people known and respected in their communities who will be able to build understanding and support for action on the problem or issue. In some cases, a local organization already exists that can take the lead role, such as a lake association or sportsmen's club.

BWSR strongly encourages local efforts to build as much local understanding and support for the proposed watershed district as possible prior to submitting a petition. The lead group should meet with each affected county board and soil and water conservation district to explain the group's water management goals and reasons for seeking the establishment of a watershed district.

Informational meetings should be held for other local officials and the public to explain the purposes for seeking the establishment of a watershed district.

From the beginning, it is important for local leaders to gain a good understanding of the Watershed Law (Minnesota Statutes Chapter 103D) and to be able to provide accurate information about watershed district operation. Inaccurate information about the potential effects of a watershed district on local property taxes and land use regulations can cause confusion and erode public support. Questions about the Watershed Law should be directed to both Minnesota Watersheds and BWSR. Minnesota Watersheds and BWSR staff are available to attend local meetings to provide information about the watershed law and watershed district authorities and responsibilities.

Minnesota Watersheds and BWSR encourage the lead group to obtain information from county auditors on the approximate tax base within the proposed watershed district before any informational meetings are held. It is important for watershed district proponents to be able to provide answers to residents on the potential impact a watershed district levy could have on local taxpayers.

ESTABLISHMENT PROCEDURE

The following information lays out the steps to establish a watershed district. No state financial help is currently available to the petitioners to defray the costs associated with the establishment process.

FILING A PETITION

The petitioner must file an establishment petition with the following: 1) BWSR, 2) the auditors of the counties affected by the proposed watershed district, and 3) the director of the Division of Ecological and Water Resources of the Department of Natural Resources (DNR). After an establishment petition has been filed, a petitioner may not withdraw from the establishment petition unless the withdrawing petitioner obtains the written consent of all other petitioners and files the written consent with the board.

The original establishment petition, with a signed statement of delivery or receipt for each of the establishment petitions submitted to the auditors of affected counties and the director, must be filed with BWSR. Any similar and duplicate establishment petitions for the same proposed watershed district may be filed and regarded as one establishment petition. All establishment petitions filed before the establishment hearing must be considered by the board as part of the original petition.

The establishment petition must state:

1. the name of the proposed watershed district;
2. in general terms, a description of the property to be included in the watershed district;
3. the necessity for the watershed district and the contemplated improvements within the watershed district;
4. the reasons why the watershed district and the contemplated improvements would be conducive to public health and public welfare or would accomplish any of the purposes in section 103D.201;
5. by illustration in a map, the proposed watershed district; the number of managers proposed for the watershed district; and
6. a list of the nominees for manager positions containing at least twice the proposed number of managers. The number of managers proposed for a watershed district may not be less than three or more than nine. A manager must not be a public officer of the county, state, or federal government, except that a soil and water conservation supervisor may be a manager.

PETITION SIGNATURES

The establishment petition must be signed by one or more of the following groups:

1. one-half or more of the counties within the proposed watershed district. It is best practice to have the petition signed by the affected county or counties, if possible. County board support usually indicates broad public support for the proposed district and can help during the remainder of the establishment process by securing county staff assistance. If affected counties support the idea of a watershed district, but do not wish to sign the petition, they should be asked to pass resolutions of support;
2. counties having 50% or more of the area within the proposed watershed district;
3. a majority of the cities within the proposed watershed district; or
4. 50 or more resident owners residing in the proposed watershed district, excluding resident owners within the corporate limits of a city if the city has signed the petition. If the petition is validated by signatures of resident owners, it is best practice that it contains several times the minimum number of 50 signatures and include residents from all parts of the watershed.

Support should also be sought from affected townships, and soil and water conservation districts.

An establishment petition that has the requisite number of petitioner signatures may not be dismissed because of defects in the establishment petition. The board must allow petitioners to amend a defective establishment petition at any time before the end of the establishment hearing.

AUDITOR'S CERTIFICATION

An auditor that receives a copy of an establishment petition must determine if the petitioners are resident owners from the tax records. The tax records are prima facie evidence of ownership. The auditor must certify the number of petitioners that are resident owners and file the certification with BWSR.

DNR REPORT

After receiving a copy of the establishment petition, the DNR director must notify the board that an establishment petition has been received and prepare a preliminary watershed map of and a preliminary report about the watershed district. The preliminary watershed map must show the natural watershed boundaries within the proposed watershed district. The preliminary report must be based on the establishment petition and other available data and must recommend whether the watershed district should be established. The DNR director must submit the preliminary report and the preliminary watershed map to the board within 30 days after the date the establishment petition was received by the DNR director, unless the time is extended by BWSR.

BWSR REVIEW OF THE PETITION

After receiving an establishment petition, BWSR will determine whether the establishment petition has the requisite number of petitioner signatures. If the establishment petition does not have the requisite number of petitioners, BWSR will dismiss the establishment petition and return it to the petitioners with an explanation of why the petition was dismissed.

If BWSR determines that an establishment petition has the requisite number of petitioner signatures, then BWSR will order a hearing on the establishment petition within 35 days after its determination. The hearing must be held within the limits of the proposed watershed district for an establishment hearing unless the board determines a suitable place is not located within the proposed watershed district and selects a place within the limits of a county affected by the proposed watershed district.

NOTICE OF ESTABLISHMENT HEARING

BWSR will give notice of the establishment hearing by publication in a legal newspaper that is published in counties affected by the proposed watershed district. The last publication must occur at least ten days before the establishment hearing. BWSR will give notice of the establishment hearing by mail to the auditors of counties and to the chief executive officials of municipalities affected by the proposed watershed district.

The notice must include:

1. a statement that an establishment petition has been filed with the board and auditors of counties affected by the proposed watershed district;
2. a general description of the need for the proposed district, and the purpose of the proposed watershed district's contemplated improvements, if any;

3. a general description of the property to be included in the proposed watershed district;
4. the date, time, and location of hearing; and
5. a statement that all persons affected or interested in the establishment of the proposed watershed district may attend and give statements at the establishment hearing.

HEARING

BWSR will allow all persons interested in or affected by the proposed watershed district to be given an opportunity to make oral and written statements at the establishment hearing. The petitioners will present their petition and provide evidence on the need for the proposed district. Oftentimes petitioners will hire legal and technical experts to help them present the petition and exhibits and explain the resource problems that exist in the watershed. Again, if the county or counties are the petitioners, their staff can generally perform this function. BWSR may continue the establishment hearing.

ESTABLISHMENT ORDER

If BWSR determines after the establishment hearing that the establishment of the proposed watershed district would benefit the public welfare and public interest, and would advance the purpose of natural resource conservation, BWSR will order the establishment the watershed district.

BWSR will select the first board of managers of a proposed watershed district from the list of nominees in the establishment petition except metro watershed districts (described below). The number of managers may not be less than three or more than nine, except that a proposed watershed district entirely within the metropolitan area may not have fewer than five managers. A manager may not be a public officer of the county, state, or federal government, except that a soil and water conservation supervisor may be a manager. The term of the first board of managers is for one year and until their successors can be appointed and qualified.

For a proposed watershed district entirely within the metropolitan area, BWSR will select managers from a list of persons nominated by one or more of the cities and towns affected by the proposed watershed district. The list must contain at least three nominees for each manager position. BWSR will select managers to fairly represent the various hydrologic areas within the proposed watershed district according to their residence within an area. If the cities or towns fail to nominate managers under this paragraph, the board shall select managers from the nominations in the petition.

The establishment order will include:

- the findings of the board supporting its determination to establish the watershed district;
- the official name of the watershed district;
- the location of the principal place of business of the watershed district;
- the boundaries of the watershed district; and
- the names of the managers for the first board of managers selected and the terms of office for the first board of managers appointed by the county boards. If the first board of managers has three members, the term of office for the managers is one for a term of one year, one for a term of two years, and one for a term of three years. If the first board of managers has five members, the term of office for the managers is one for a term of one year, two for a term of two years, and two for a term of three years. If the first board of managers

does not have three or five members, the managers must be appointed so that as nearly as possible one-third serve terms of one year, one-third serve terms of two years, and one-third serve terms of three years.

FILING ESTABLISHMENT ORDER

BWSR will file a certified copy of the findings and order establishing a watershed district with the secretary of state and, at the same time:

- mail a copy of the findings and order to the auditor of each county affected by the watershed district, the commissioner, and the director; and
- have each manager personally served with a copy of the order.

After the establishment order is filed with the secretary of state, the watershed district is a political subdivision of the state with the power, authority, and duties prescribed in this chapter.

A watershed district established under this chapter exists from the time the order establishing the watershed district is filed with the secretary of state until the watershed district is terminated.