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MEMORANDUM OF AGREEMENT FOR USE, OPERATION, AND MAINTENANCE OF THE PRIOR LAKE OUTLET CHANNEL AND OUTLET STRUCTURE

Between the Prior Lake–Spring Lake Watershed District,

the City of Prior Lake,

the City of Shakopee, and

the Shakopee Mdewakanton Sioux Community

Effective May 2, 2019

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ARTICLE 1. AGREEMENT AND EFFECTIVE DATE

The PRIOR LAKE–SPRING LAKE WATERSHED DISTRICT, a Minnesota political subdivision (the "**Watershed District**"), the CITY OF PRIOR LAKE, a Minnesota municipal corporation ("**Prior Lake**"), the CITY OF SHAKOPEE, a Minnesota municipal corporation ("**Shakopee**"), and the SHAKOPEE MDEWAKANTON SIOUX COMMUNITY, a Federally recognized Indian tribe (the "**SMSC**"), jointly the "**Project Cooperators**", enter into this *Memorandum Of Agreement For Use, Operation, And Maintenance Of The Prior Lake Outlet Channel And Outlet Structure* (this "**MOA**," as more fully defined in Section 2.1Y) to be effective as of May 2, 2019 (the "**Effective Date**") and is automatically renewed but may be revised or amended by the Project Cooperators by formal action and signed by their representatives. In entering into this MOA, the Project Cooperators mutually acknowledge that this MOA's Provisions constitute sufficient consideration.

ARTICLE 2. DEFINITIONS

2.1 Definitions

Unless otherwise expressly provided in this MOA or the context otherwise requires, the following capitalized words have the following defined meanings when used in this MOA.

A. ***Annual Meeting.*** As defined in Section 11.2.

B. ***B. Best Storm Water Management Practices.*** Storm water management practices approved or required by the Watershed District.

C. ***Claims.*** Any and all actions, causes of action, claims, costs, damages, demands, debts, executions, expenses (including reasonable attorneys' fees and expert and other fees and expenses), fines, judgments, liens, losses, obligations, penalties, or suits.

D. ***Conceptual Design.*** The *Prior Lake Outlet Channel Future Conceptual Plan*, a plan for restoring and enhancing the Outlet Channel, that was developed with the input of the Project Cooperators as part of the *Prior Lake Outlet Channel and Lake Volume Management Study* completed by the Watershed District in 2003. The Conceptual Design is based on the use of ecological principles, bioengineering, and natural stream technology practices to improve channel stability, reduce erosion, and enhance the habitat and aesthetics of the Outlet Channel.

E. ***Construct/Construction.*** All activities involved in building, creating, improving, or restoring a drainage way, trail, underground utility, or other device, object, or structure including: acquiring land for the work; bidding and contracting for the work; building, managing, inspecting, and approving the work; and remediating contamination or pollution of soil, water, structures, or other media necessary to perform the work.

F. ***Construction Costs.*** All costs related to Construction including: accountant, architect, appraisal, attorney, Construction management, engineering, and other professional fees and costs; contamination and pollution remediation costs; bidding, budgeting, contracting, office, travel, and other management costs; building or construction costs; easement, right-of-way, and other acquisition costs; erosion control costs; inspection costs; material costs; security costs; and staff costs.

G. ***Design.*** All activities involved in conceiving, designing, and planning, and in obtaining approval for plans for, a drainage way, trail, underground utility, or other device, object, or structure including: devising, discussing, drawing, and modifying plans and specifications; determining easements, rights-of-way, and other property interests needed; investigating contamination or pollution of soil, water, structures, or other media; preparing remedial action plans and other

documents related to contamination and pollution; testing soil and water; asking for, discussing, and getting comments on, or approvals of, plans and specifications from Project Cooperators or others; and asking for, discussing, and getting governmental comments on, or approvals of, licenses, permits, or other approvals for plans and specifications.

H. ***Design Costs.*** All costs related to Design including: accountant, architect, appraisal, attorney, engineering, geotechnical, scientific, and other professional fees and costs; bidding, budgeting, contracting, office, travel, and other management costs; investigation and testing costs; meeting and coordination costs; application preparation costs and fees; license, permit, and other governmental approval fees; administrative appeal and contested case fees and costs; and staff costs.

I. ***Design Flows.*** As defined in Section 7.1.

J. **DNR.** The Minnesota Department of Natural Resources.

K. ***District Administrator.*** The District Administrator of the Watershed District is empowered to implement this MOA on behalf of the Cooperators by the District's Board of Managers and to conduct Operation and Maintenance, as approved by the Cooperators in a non-emergency situation. In the case of an emergency, the District Administrator is empowered to act on behalf of the Cooperators and will contact them as soon as possible to notify them of the emergency.

L. **Effective Date.** As defined in Article 1.

M. **Emergency Maintenance.** All activities necessary to achieve immediate compliance with applicable laws and agreements, when immediate compliance is required, and to address conditions that pose an immediate threat to the functioning of a drainage way, trail, underground utility, or other device, object, or structure such as accidental damage, acts of vandalism, bank failure, culvert obstruction, storm damage, structural failure, or a contaminant or pollutant spill including: repairing or rebuilding the device, object, or structure; rebuilding, repairing, or restoring drainage channel banks or beds; removing obstructions; burning, mowing, planting, replanting, spraying, trimming, or otherwise managing vegetation; removing sediment from accumulation zones; cleaning up

contaminant or pollutant spills; and protecting wildlife habitat and the aquatic environment.

N. ***Emergency Maintenance Costs.*** All costs related to Emergency Maintenance including: accountant, appraisal, architect, attorney, construction management, engineering, geotechnical, scientific, and other professional fees and costs; bank and bed stabilization costs; bidding, budgeting, contracting, office, travel, and other management costs; clean-up costs; contaminant or pollution remediation costs; building or construction costs; erosion control costs; inspection costs; license, permit, and other approval costs; material costs; repair costs; replacement costs; security costs; sediment removal costs; staff costs; vegetation management costs; and wildlife and aquatic environment protection costs.

O. ***Emergency Maintenance Fund.*** The fund defined and established in Section 10.5A.

P. ***Fee Land.*** Land owned in fee now or hereafter by the SMSC.

Q. ***Other Meetings.*** As defined in Section 11.3.

R. ***Lake Outlet Project.*** As defined in Section 3.1B.

S. ***LMCIT.*** As defined in Section 12.6A.

T. ***Maintain/Maintenance.*** All activities necessary to keep a drainage way, trail, underground utility, or other device, object, or structure in good repair, working efficiently, and in compliance with applicable laws and agreements including: rebuilding, repairing, or restoring the drainage way, device, object, or structure; rebuilding, repairing, or restoring channel banks or beds; removing obstructions; burning, mowing, planting, replanting, spraying, trimming, or otherwise managing vegetation; removing sediment from accumulation zones; cleaning up contaminant or pollutant spills; and protecting wildlife habitat and the aquatic environment.

U. ***Maximum Average Discharge Rate(s).*** *As defined in Section 6.3.*

V. ***MOA.*** This *Memorandum Of Agreement For Use, Operation, And Maintenance Of The Prior Lake Outlet Channel And Outlet Structure*, including the following exhibits that are attached to and are a part of this MOA:

Exhibit A – Outlet Channel Map

Exhibit B – Outlet Channel Segment Drainage Areas

Exhibit C – Projected Average Discharge Rate Calculation Formula and Example Calculations

Exhibit D – Calculation Method for Cost-Share Allocation

Exhibit E – Drainage Area Change Recalculation Example

Exhibit F—Inspection Sites and Schedule

W. ***100-Year Rainfall Event.*** The total rainfall from a 24-hour rainfall event with a 100-year frequency of return, assuming precipitation depths and the MSE 3 24-hour rainfall distribution, as specified in Atlas 14, Volume 8, *Precipitation Frequency Atlas of the United States, Midwestern States* for Durations of 30 minutes to 24 Hours and Return Periods of one to 100 Years (NOAA, 2013).

X. ***Operate/Operation.*** All activities needed to keep a drainage way, trail, underground utility, or other device, object, or structure working, including; accounting for funds received and expended; adjusting equipment that is part of, and regularly inspecting, the drainage way or other device, object, or structure; bidding and contracting for, or otherwise providing, Maintenance; budgeting the use of funds received; overseeing the use of the drainage way or other device, object, or structure; providing staff for these activities; raising funds to pay for the enterprise; and otherwise managing the enterprise.

Y. ***Operation And Maintenance Budget.*** As defined in Section 10.3A

Z. ***Operation And Maintenance Costs.*** All costs related to Operation or Maintenance including: accountant, architect, appraisal, attorney, engineering, geotechnical, scientific, and other professional fees and costs; bank and bed stabilization costs; bidding, budgeting, contracting, office, travel, and other management costs; clean-up costs; contamination and pollution remediation costs; building or construction costs; erosion control costs; inspection costs; license, permit, and other approval costs; repair costs; replacement costs; sediment removal costs; security costs; staff costs; vegetation management costs; and wildlife and aquatic environment protection costs.

AA. ***Operation And Maintenance Fund.*** The fund defined and established in Section 10.3B.

BB. ***Outlet Channel.*** The seven miles of natural and built drainage courses within the

municipal boundaries of Prior Lake and Shakopee that were connected, built, and improved as part of the Lake Outlet Project. See Exhibit A – Outlet Channel Map. The Outlet Channel extends from the Outlet Structure north to the Minnesota River at Blue Lake. The Outlet Channel is divided into the following eight segments:

Segment 1: Prior Lake to County Road 42
Segment 2: County Road 42 to the inlet of Pike Lake
Segment 3: The outlet of Pike Lake to Pike Lake Trail
Segment 4: Pike Lake Trail to County Road 16
Segment 5: County Road 16 to the inlet of Dean Lake
Segment 6: The outlet of Dean Lake to State Trunk Highway 169
Segment 7: State Trunk Highway 169 to State Trunk Highway 101
Segment 8: State Trunk Highway 101 to the Minnesota River

CC. ***Outlet Operating Plan.*** The *Outlet Control Structure For Prior Lake Management Policy And Operating Procedures* (July 3, 2017), a plan documenting the management policy and operating procedures for the Outlet Structure, as developed by the Watershed District and approved by the DNR in July 2017.

DD. ***Outlet Structure.*** The structure and pipe that were installed on Prior Lake by the Watershed District in 1983 as part of the Lake Outlet Project, to provide an outlet for the lake. See Exhibit A.

EE. ***Outlet Structure Repair Project.*** As defined in Section 3.1G.

FF. ***Prior Lake.*** As the context requires, either a Project Cooperator as defined in Article 1 or a lake in the City of Prior Lake.

GG. ***Project.*** As defined in Section 3.1J.

HH. ***Project Cooperators.*** As defined in Article 1.

II. ***Projected Average Discharge Rate.*** The expected average storm water discharge rate from development that occurs after the Effective Date, as calculated by a Project Cooperator according to the formula in Exhibit C – Projected Average Discharge Rate Calculation Formula and Example Calculations, for the entire drainage area within that Project Cooperator's jurisdiction tributary to an Outlet Channel segment.

JJ. ***Projected Discharge Rate.*** The expected storm water discharge rate from a development or redevelopment calculated in cfs for the 100-Year Rainfall Event using storm water discharge specifications for a developed or redeveloped area.

KK. ***Provision.*** Any agreement, condition, duty, grant, immunity, indemnity, obligation, promise, provision, release, representation, responsibility, right, term, or warranty.

LL. ***Public Service Activity/Activities.*** As defined in Section 8.5A.

MM. ***Shakopee.*** A Project Cooperator as defined in Article 1.

NN. ***SMSC.*** A Project Cooperator as defined in Article 1.

OO. ***State.*** The State of Minnesota.

PP. ***Trust Land.*** Land held now and hereafter by the United States, in trust, for the beneficial interest of the SMSC.

QQ. ***2-Year Rainfall Event.*** The total rainfall from a 24-hour rainfall event with a two year frequency of return, precipitation depths and the MSE 3 24-hour rainfall distribution, as specified in Atlas 14, Volume 8, *Precipitation-Frequency Atlas of the United States, Midwestern States* for Durations of 30 minutes to 24 Hours and Return Periods of one to 100 Years (NOAA, 2013).

RR. ***Watershed District.*** A Project Cooperator as defined in Article 1.

2.2 Rules

In interpreting this MOA, the following rules will be used.

A. ***Captions, Gender, Number, And Language Of Inclusion.*** The Article and Section headings in this MOA are for convenience of reference only and do not define, limit, or prescribe the scope or intent of any MOA Provision. As used in this MOA, the singular includes the plural and vice versa, and the masculine, feminine, and neuter adjectives include one another.

B. ***Construction.*** The rule of strict construction does not apply to this MOA. This MOA will not be interpreted in favor of or against any Project Cooperator merely because of their respective efforts in preparing or modifying it.

C. ***Words And Phrases.*** The following words and phrases have the following meanings in this MOA.

(1) *applicable law* means all applicable Federal, State, regional, county,

municipal, local, or other constitutions, charters, bylaws, laws, statutes, codes, licenses, ordinances, rules, and regulations, including the applicable law of the Project Cooperators.

(2) *cfs* means cubic feet per second.

(3) *include* means include without limitation.

(4) *including* means including but not limited to.

(5) *incurred by* means asserted against, imposed upon, incurred by, paid by, or suffered.

(6) *parties* means two or more of the Project Cooperators as the context of this MOA indicates.

(7) *party* means one or more of the Project Cooperators as the context of this MOA indicates.

(8) *subject to approval by* means the entity whose approval is necessary may grant or deny approval, but approval cannot be unreasonably conditioned or delayed, and denial must have a reasonable basis and cannot be unreasonably delayed.

ARTICLE 3. RECITALS AND STATEMENT OF PURPOSE

The following recitals and statement of purpose are incorporated in this MOA.

3.1 Recitals

A. The Project Cooperators have the power to enter into this MOA and desire to do so.

B. In 1983, the Watershed District completed a project to build an artificial outlet for Prior Lake to drain water from Prior Lake and transport the water to the Minnesota River (**"Lake Outlet Project"**). The Lake Outlet Project connected and improved a natural drainage system of lakes, streams, and wetlands within the municipal boundaries of Prior Lake and Shakopee to connect Prior Lake and the Minnesota River. The resulting drainage way is known as the Outlet Channel. See Exhibit A.

C. The Outlet Channel drains water from land within the jurisdictions of Prior Lake and Shakopee and SMSC Fee Land and Trust Land. The drainage areas tributary to each Outlet Channel segment are shown on Exhibit B – Outlet Channel Segment Drainage Areas.

D. Since completion of the Lake Outlet Project, development has occurred in areas of Prior Lake and Shakopee tributary to the Outlet Channel, and the SMSC has acquired land tributary to the Outlet Channel for development. Consequently, Prior Lake, Shakopee, and the SMSC use the Outlet Channel to convey storm water from developed areas within their boundaries or ownership to the Minnesota River.

E. The approved comprehensive plans of Prior Lake, Shakopee, and Scott County identify substantial additional development that will occur in drainage areas tributary to the Outlet Channel.

F. The SMSC plans additional development on both Fee Land and Trust Land in drainage areas tributary to the Outlet Channel.

G. The Watershed District completed repairs and modifications to the Outlet Structure in 2010 to address wear and tear that had occurred since its installation; to improve its efficiency and safety; and to reduce its operating costs ("**Outlet Structure Repair Project**").

H. The Outlet Structure directly and immediately benefits properties within the City of Prior Lake because it reduces Prior Lake water levels on riparian property within the established flood plain. The completed Outlet Structure Repair Project continues these benefits.

I. The Project Cooperators desire to clarify their respective responsibilities and rights regarding the ongoing use, Operation, and Maintenance of the Outlet Structure.

J. The Project Cooperators completed the project which restored and enhanced the Outlet Channel using ecological principles, bioengineering, and natural stream technologies that restored channel stability, improved water quality, enhanced channel habitat and aesthetics, and assured capacity for existing and future storm water flows ("**Outlet Channel Restoration And Enhancement Project**" or "**Project**"), all in accordance with the Conceptual Design.

K. Prior Lake and Shakopee desire to assist the Watershed District to acquire the easements and rights-of-way necessary on land the cities might purchase in the future.

L. The SMSC desires to assist the Watershed District to acquire the easements and rights-of-way necessary on Fee Land and Trust Land that the SMSC might purchase

in the future.

M. The Project Cooperators desire to clarify their respective responsibilities and rights regarding the ongoing use, Operation, and Maintenance of the Outlet Channel.

N. The Project Cooperators have agreed to allocate Operation And Maintenance Costs and Emergency Maintenance Costs for the Outlet Channel among the Project Cooperators using the following principles.

(1) The cost-share obligation should be allocated among the Project Cooperators based on each Project Cooperator's current and anticipated use of the Outlet Channel for storm water conveyance.

a. The Watershed District's cost-share obligation should be based on its maximum release rate through the Outlet Structure of 65 cfs.

b. The cost-share obligation for Prior Lake, Shakopee, and the SMSC should be based on each Project Cooperator's tributary drainage area by Outlet Channel segment and its Maximum Average Discharge Rate or Rates as identified by each Project Cooperator and incorporated into this MOA.

(2) The contributing drainage area from the SMSC should include Fee Land and Trust Land.

(3) A separate cost-share allocation should be determined for each Outlet Channel segment.

(4) Each Project Cooperator's cost-share obligation should begin at the point furthest from Blue Lake where storm water from that Project Cooperator's jurisdictional boundaries first flows into the Outlet Channel and extend from that first point of discharge downstream to the point of inlet into Blue Lake.

O. To provide for ongoing use, Operation, and Maintenance of the Outlet Channel and Outlet Structure, one agreement, this MOA, is being signed by the Watershed District, Prior Lake, SMSC and Shakopee.

3.2 Statement Of Purpose

The general purpose of this MOA is to:

A. Establish Provisions under which the Watershed District will improve, use, Operate, and Maintain the Outlet Structure.

B. Preserve the Watershed District's discharge capacity rights to the Outlet Channel

from consumption by storm water drainage generated from new development and redevelopment in the Outlet Channel drainage area.

C. Allocate Outlet Channel drainage capacity above that required for the Watershed District among the other Project Cooperators to promote orderly development within the Outlet Channel drainage area.

D. Establish Provisions under which the Project Cooperators will use, Operate, and Maintain the Outlet Channel, including specification of their respective responsibilities for Operation, Maintenance, and Emergency Maintenance, allocation of Operation And Maintenance Costs and Emergency Maintenance Costs among them, and identification of additional uses that Prior Lake, Shakopee, and the SMSC can make of the easements acquired for the Outlet Channel Restoration And Enhancement Project.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES

Each Project Cooperator represents and warrants to the other Project Cooperators, and each of them, as follows:

4.1 Existence and Authority Of Watershed District

The Watershed District represents and warrants that it is a watershed district duly organized and operating under Minnesota Statutes Chapters 103B and 103D and that it has the corporate power and authority to execute and deliver this MOA, to perform fully its obligations under this MOA, and to consummate the transactions contemplated by this MOA. The execution and delivery by the Watershed District of this MOA, the performance of its obligations under this MOA, and the consummation of the transactions contemplated by this MOA have been duly authorized by all requisite corporate action of the Watershed District, and do not and will not conflict with, result in a violation of, or constitute a default under any State statute, its Constitution or bylaws, any other applicable law, any agreement or other instrument binding upon the Watershed District, or any court decree or order applicable to the Watershed District. This MOA is the legal, valid, and binding obligation of the Watershed District, enforceable against the Watershed District in accordance with its Provisions.

4.2 Existence And Authority Of Prior Lake

Prior Lake represents and warrants that it is a municipal corporation duly organized and operating under Minnesota Statutes Chapter 412 and that it has the corporate power and authority to execute and deliver this MOA, to perform fully its obligations under this MOA, and to consummate the transactions contemplated by this MOA. The execution and delivery by Prior Lake of this MOA, the performance of its obligations under this MOA, and the consummation of the transactions contemplated by this MOA have been duly authorized by all requisite corporate action of the Prior Lake City Council, and do not and will not conflict with, result in a violation of, or constitute a default under any State statute, its Code of Ordinances, any other applicable law, any agreement or other instrument binding upon Prior Lake, or any court decree or order applicable to Prior Lake. This MOA is the legal, valid, and binding obligation of Prior Lake, enforceable against Prior Lake in accordance with its Provisions.

4.3 Existence And Authority Of Shakopee

Shakopee represents that it is a municipal corporation duly organized and operating under Minnesota Statutes Chapter 412 and that it has the corporate power and authority to execute and deliver this MOA, to perform fully its obligations under this MOA, and to consummate the transactions contemplated by this MOA. The execution and delivery by Shakopee of this MOA, the performance of its obligations under this MOA, and the consummation of the transactions contemplated by this MOA have been duly authorized by all requisite corporate action of the Shakopee City Council, and do not and will not conflict with, result in a violation of, or constitute a default under any State statute, its Code of Ordinances, any other applicable law, any agreement or other instrument binding upon Shakopee, or any court decree or order applicable to Shakopee. This MOA is the legal, valid, and binding obligation of Shakopee, enforceable against Shakopee in accordance with its Provisions.

4.4 Existence And Authority Of SMSC

The SMSC represents and warrants that it is a Federally recognized Indian tribe, duly organized and existing under Section 16 of the Indian Reorganization Act of 1934, as amended (25 U.S.C. §476), and its Constitution. The SMSC has the full power and authority to enter into this MOA, to perform fully its obligations under this MOA, and

to consummate the transactions contemplated by this MOA The execution and delivery by the SMSC of this MOA, the performance by the SMSC of its obligations under this MOA, and the consummation of the transactions contemplated by this MOA have been duly authorized by all necessary governmental action of the SMSC, and do not and will not conflict with, result in a violation of, or constitute a default under its Constitution, any other applicable law, any agreement or other instrument binding upon the SMSC, or any court decree or order applicable to the SMSC. This MOA is the legal, valid, and binding obligation of the SMSC, enforceable against the SMSC in accordance with its Provisions.

ARTICLE 5. OPERATION AND MAINTENANCE OF OUTLET STRUCTURE

5.1 Operation And Maintenance Of Outlet Structure

The Watershed District will operate and maintain the outlet structure. In doing so, the Watershed District will release water from the outlet structure in accordance with the Outlet Operating Plan and must not exceed the maximum release rate of 65 cfs as specified in the Plan. All Operation And Maintenance Costs and Emergency Maintenance Costs related to the outletsStructure are the sole and exclusive responsibility of the Watershed District.

ARTICLE 6. USES AND DRAINAGE RATES FOR OUTLET CHANNEL

6.1 Permitted Use By Watershed District

The Watershed District will use the Outlet Channel to drain water from Prior Lake and for no other purposes.

6.2 Permitted Uses And Drainage Areas For Prior Lake, Shakopee, And SMSC

Prior Lake, Shakopee, and the SMSC will use the Outlet Channel to convey storm water from their respective drainage areas tributary to the Outlet Channel as specified in Table 1, or Table 1 as subsequently modified in accordance with Section 10.3, and for no other purposes. Prior Lake, Shakopee, and the SMSC must not convey storm water to the Outlet Channel from acres not specified in Table 1, or Table 1 as subsequently modified in accordance with Section 10.3.

Table 1: Outlet Channel Tributary Drainage Areas (downstream of Prior Lake)

Outlet Channel Segment	Area (acres)				
	PLSLWD[1]	Prior Lake	Shakopee	SMSC[2]	Subtotal
1	-	771	-	7	778
2	-	180	-	30	210
3	-	924	15	109	1,048
4	-	1,056	1,749	2,141	4,946
5a	-	37	456	87	580
5b	-	-	143	-	143
6	-	-	758	303	1,061
7	-	-	1,469	26	1,495
8	-	-	29	-	29
Total	**-**	**2,968**	**4,619**	**2,703**	**10,290**

[1] *The Watershed District's contribution to the Outlet Channel is not dependent on drainage area; it is based on a maximum release rate through the Outlet Structure of 65 cfs as provided in Section 5.3 of the JPA.*

[2] *Includes both Fee Land and Trust Land*

6.3 Maximum Average Discharge Rates

The Watershed District, Prior Lake, Shakopee, and the SMSC will not discharge storm water to the outlet channel at rates in excess of the maximum average discharge rate or rates set for each in this Section 6.3 ("**Maximum Average Discharge Rate(s)**").

A. ***Maximum Average Discharge Rate For Watershed District.*** The Watershed District's Maximum Average Discharge Rate is its maximum release rate for water through the Outlet Structure to the Outlet Channel as provided in Section 5.1 and as shown in Table 2.

B. ***Maximum Average Discharge Rates For Prior Lake, Shakopee, And SMSC.*** Prior Lake, Shakopee, and the SMSC will not discharge storm water to any Outlet

Channel segment from drainage areas in their respective jurisdictions tributary to that segment at a rate that exceeds their respective Maximum Average Discharge Rates for that segment as specified in Table 2, or Table 2 as modified in accordance with Sections 6.6 or 10.3. As stated in Table 2, the Maximum Average Discharge Rates are based on the 100-Year Rainfall Event. For example, in Segment 4: Prior Lake cannot discharge storm water from its 805 acres of tributary drainage area at a rate that exceeds 0.25 cfs per acre; Shakopee cannot discharge storm water from its 2,443 acres of tributary drainage area at a rate that exceeds 0.10 cfs per acre; and the SMSC cannot discharge storm water from its 1,989 acres of tributary drainage area at a rate that exceeds 0.05 cfs per acre.

Table 2: Maximum Average Discharge Rates to Outlet Channel Segments

Project Cooperator	Maximum Average Discharge Rate to Outlet Channel per Acre for 100-Year Rainfall Event
Watershed District	65.00 cfs[1]
Prior Lake	0.25 cfs/acre[2]
Shakopee: south (upstream) of Dean Lake, except 124.61 acres directly tributary to Outlet Channel Segment 5 (i.e., Segment 5A)	0.10 cfs/acre[2]
Shakopee: north (downstream) of Dean Lake, plus 124.61 acres directly tributary to Outlet Channel Segment 5 (i.e., Segment 5B)	0.25 cfs/acre[2]
SMSC	0.05 cfs/acre[2]

[1] The Watershed District's Maximum Average Discharge Rate to the Outlet Channel is not an average rate per acre; it is the District's maximum release rate through the Outlet Structure of 65 cfs as provided in Section 6.3A.

[2] Each Maximum Average Discharge Rate was provided by the respective Project Cooperator.

6.4 Verifying Watershed District's Maximum Average Discharge Rate

On an annual basis, the Watershed District will provide to the other Project Cooperators a summary of the operating records and any continuous level and flow monitoring data for the Outlet Structure to show the release rates through the Outlet Structure for the previous calendar year and will certify that its release rates did not exceed the Maximum Average Discharge Rate specified in Section 6.3A and Table 2. If the Watershed District cannot make this certification, it will describe the reason for the failure to certify and the extent of any exceedance

6.5 Verifying Other Tributary Acreages And Maximum Average Discharge Rates

On an annual basis, Prior Lake, Shakopee, and the SMSC will each verify to the other Project Cooperators that its use of the Outlet Channel conforms to the tributary drainage acreages specified in Section 6.2 and the Maximum Average Discharge Rates specified in Section 6.3 as follows.

*A. **Information To Be Provided.*** Prior Lake, Shakopee, and the SMSC will each provide a summary of the following for tributary drainage areas in their respective jurisdictions.

(1) All relevant development construction plans and hydrologic and hydraulic modeling as land is developed and a culvert construction plan when a culvert/pipe is reconstructed so the District can maintain a current and accurate model of the Outlet Channel.

(2) The tributary drainage acres developed by Outlet Channel segment before the Effective Date. Acreage in Prior Lake and Shakopee will be considered developed before the Effective Date if the preliminary plat for the development was approved by Prior Lake or Shakopee prior to the Effective Date. SMSC Fee Land or Trust Land Acreage will be considered developed if the SMSC General Council or Business Council approved the development before the Effective Date.

(3) The tributary drainage acres developed by Outlet Channel segment after the Effective Date.

(4) The tributary drainage acres remaining to be developed by Outlet Channel segment based on each Project Cooperator's current comprehensive plan or equivalent.

(5) The Projected Discharge Rate by Outlet Channel segment for tributary drainage areas developed after the Effective Date.

(6) The Projected Discharge Rate by Outlet Channel segment for any tributary drainage area redeveloped after the Effective Date.

(7) An explanation of any discharge rate offsets within an Outlet Channel segment for tributary drainage areas redeveloped at a discharge rate higher than the area's Projected Discharge Rate when first developed. For example,

if a low-density residential area is redeveloped as a commercial area, the Project Cooperator must show how one or more Projected Discharge Rates will be reduced elsewhere in the tributary drainage area to offset the rate increase associated with commercial development.

(8) A calculation of the Projected Average Discharge Rate for each Outlet Channel segment that includes all tributary drainage areas developed after the Effective Date; and

(9) An explanation of how future development will be managed within each Outlet Channel segment to ensure conformance with the tributary drainage acreages specified in Section 6.2 and the Maximum Average Discharge Rates specified in Section 6.3.

(10) The formula that the Project Cooperators will use to calculate the Projected Average Discharge Rates for each Outlet Channel Segment and example calculations are attached as Exhibit C.

B. Use Of Monitoring Data. As an alternative to calculating a Projected Average Discharge Rate for any Outlet Channel segment, Prior Lake, Shakopee, or the SMSC may provide the monitored, actual discharge rate for one or more segments using monitoring methods that are consistent with U.S. Geological Survey standards, subject to approval by the Watershed District.

C. Certification

(1) Prior Lake, Shakopee, and the SMSC will each certify the following for tributary drainage areas in their respective jurisdiction:

a. The tributary drainage acres by Outlet Channel segment do not exceed those specified in Table 1; and

b. The Projected Average Discharge Rate or monitored actual discharge rate for each Outlet Channel segment does not exceed the Maximum Average Discharge Rate specified in Section 6.3 for each Outlet Channel segment.

(2) If Prior Lake, Shakopee, or the SMSC, cannot make this certification, it will describe the reason for the failure to certify and the extent of any exceedance.

6.6 Exceeding Maximum Discharge Rates And Changes To Address Exceedances

A. Options To Address An Excess Discharge Rate. If a Project Cooperator exceeds

its tributary drainage acres as specified in Section 6.2 or its Maximum Average Discharge Rate as specified in Section 6.3 for any Outlet Channel segment or wishes to modify either, the Project Cooperator will either:

(1) Reduce flows elsewhere within its drainage area tributary to the Outlet Channel segment so its Maximum Average Discharge Rate as specified in Section 6.3 is not exceeded, or

(2) Reduce flows within its drainage area tributary to an adjacent Outlet Channel segment, upon approval by all Project Cooperators, or

(3) Assuming the Project Cooperator obtains all applicable approvals, *make all improvements or undertake any Maintenance to the Outlet Channel necessary to handle the increased Maximum Average Discharge Rate and pay all Design Costs, Construction Costs, Operation And Maintenance Costs, and Emergency Maintenance Costs for the increased Maximum Average Discharge Rate.*

B. MOA To Be Amended

(1) *For Reduced Flows To Address An Exceedance.* If a Project Cooperator decides to reduce flows elsewhere within its drainage area tributary to the Outlet Channel,

a. It will sign the necessary amendments to this MOA to implement and require the flow reduction, and

b. It will request that the Watershed District incorporate the amendments into this MOA, subject to approval by the other Project Cooperators in the form of signed amendments.

(2) *For Improvements Or Maintenance To Address An Exceedance.* If a Project Cooperator decides to make improvements to, or undertake Maintenance of, the Outlet Channel:

a. It will sign the necessary amendments to this MOA to incorporate the increased Maximum Average Discharge Rate and to pay for all Design Costs, Construction Costs, Operation And Maintenance Costs, and Emergency Maintenance Costs for that increased Maximum Average Discharge Rate; and

b. It will request that the Watershed District incorporate the amendments into this MOA, subject to approval by the other Project Cooperators in the form of signed amendments.

ARTICLE 7. DESIGN OF OUTLET CHANNEL

7.1 Design Flows

The Design for each segment of the Outlet Channel should provide sufficient capacity for the Outlet Channel's expected future flows ("**Design Flows**") specified in Table 3, which are based on the Outlet Channel's 2018 XPSWMM model. The Design shall consider baseflows equal to the 2-Year Rainfall Event plus 65 cfs of release through the Outlet Structure and conveyance capacity for the 100-Year Rainfall Event plus 65 cfs of release through the Outlet Structure.

Table 3: Design Flows (Rainfall Event + 65 cfs)

Segment	Design Flow (cfs) (from 2006 MOA)	2018 Design Flow (cfs) 2-year	2018 Design Flow (cfs) 100-year
1	118	72	89
2	141	83	135
3	112	76	108
4	174	77	320
5	269	86	341
6	216	98	320
7	407	129	420
8	400	130	421

ARTICLE 8. ACQUISITION AND USE OF OUTLET CHANNEL EASEMENTS

8.1 Acquisition By Dedication, Purchase, Or Right-of-Way Grant

To the extent possible, the Project Cooperators will obtain the necessary easements for the ongoing Operation and Maintenance of the Outlet Channel:

A. By dedication pursuant to the Prior Lake and Shakopee subdivision ordinances if land containing a portion of the Outlet Channel or needed easements is developed or redeveloped during this MOA's term;

B. Through the grant of easements on Fee Land if the SMSC purchases Fee Land that includes a portion of the Outlet Channel or needed easements during this MOA's

term; or

C. Through the grant of rights-of-way over Trust Land by the United States Government, if the SMSC purchases Trust Land that includes a portion of the Outlet Channel or needed easements during this MOA's term.

8.2 Acquisition By Purchase Or Condemnation In Prior Lake Or Shakopee

If necessary, the Watershed District will negotiate for and acquire through purchase or condemnation the necessary Outlet Channel easements within the municipal boundaries of Prior Lake and Shakopee. In acquiring the easements, the Watershed District will comply with Minnesota Statutes Chapters 103D, Watershed Districts and 117, Eminent Domain.

A. ***Assistance By Prior Lake.*** If the Watershed District determines that condemnation proceedings are required to acquire an easement in Prior Lake, the Watershed District will notify Prior Lake, and Prior Lake will assist the Watershed District in pursuing condemnation. In that event, all legal proceedings will be brought in the joint name of the Watershed District and Prior Lake by the Prior Lake City Attorney. Prior Lake will be solely responsible for all legal fees of its City Attorney.

B. Assistance By Shakopee

(1) Easement Within Watershed District's Legal Boundaries. If the Watershed District determines that condemnation proceedings are required to acquire an easement in Shakopee and the easement is within the Watershed District's legal boundaries, Shakopee will cooperate with and assist the Watershed District in pursuing condemnation. The legal proceedings will be brought in the joint name of the Watershed District and Shakopee by the Shakopee City Attorney. Shakopee will be solely responsible for all legal fees of its City Attorney.

(2) *Easement Outside Watershed District's Legal Boundaries.* If the Watershed District determines that condemnation proceedings are required to acquire an easement in Shakopee and the easement is outside the Watershed District's legal boundaries, Shakopee will undertake the condemnation action, and the Watershed District will cooperate with and assist Shakopee. The legal

proceedings will be brought by the Shakopee City Attorney in the joint name of the Watershed District and Shakopee if permissible under applicable law, or if that is not permissible under applicable law, in the name of Shakopee for the benefit of the Watershed District and Shakopee. Shakopee will be solely responsible for all legal fees of its City Attorney.

C. ***Uses Of And Title To Easements.*** Easements acquired by the Watershed District will be for drainage purposes over, under, and across the affected properties. However, the Watershed District, Prior Lake, Shakopee, or the SMSC may acquire an easement for purposes in addition to drainage as provided in Section 8.5. In Prior Lake, title to the easements will be acquired in the joint names of the Watershed District and Prior Lake. In Shakopee, title to the easements will be acquired in the joint names of the Watershed District and Shakopee. It is intended that unless the District assumed responsibility under the terms of a FEMA funding agreement, the owner of the culvert and field road is responsible for their operation and maintenance. If an emergency arises that is caused by or is a result of the culvert and the owner does not comply with the District's request to repair it, the District may respond promptly and perform the necessary work and charge the costs to the owner of the culvert or road. If the owner does not pay for the work, it will be billed to the Emergency Maintenance Fund.

8.3 Acquisition Of Easements Or Rights-Of-Way On Fee Land Or Trust Land

The SMSC could acquire Fee Land or Trust Land that includes a portion of the Outlet Channel or needed easements. If this happens and if the Watershed District needs an easement or right-of-way to build the Project on the Fee Land or Trust Land, the SMSC will provide an easement over Fee Land or will cooperate with the Watershed District to request a right-of-way grant from the United States Government over Trust Land.

8.4 Easement Acquisition Costs

Throughout the entire MOA term, the Project Cooperators will pay all easement acquisition costs according to the cost-share allocation in Section 10.2 using the Operation and Maintenance Fund established in Section 10.3. However, if Prior Lake or Shakopee acquire an easement for the Outlet Channel by dedication, the Project Cooperator acquiring or granting the easement or approving the grant of right-of-way

will receive no cost reimbursement for the value of the easement. If the SMSC grants an easement on Fee Land or if the United States Government grants a right-of-way over Trust Land, the SMSC will receive cost reimbursement based on the SMSC's acquisition cost of that portion of the Fee Land subject to the easement, or Trust Land subject to the right-of-way.

8.5 Additional Authorized Easement Uses

*A. **Project Cooperators May Use Easements.*** Subject to the limitations of specific Outlet Channel easements, Prior Lake, SMSC and Shakopee may use Outlet Channel easements in their respective jurisdictions for the Emergency Maintenance, Operation, Maintenance, repair, reconstruction, and removal of trails and underground utilities (individually, a "**Public Service Activity**," and collectively "**Public Service Activities**"), including nature and recreational trails, electricity, natural gas, sanitary sewer, storm sewer, telephone and other communications, and water. In no event will any Public Service Activity interfere with or otherwise restrict the drainage function of the Outlet Channel. If the Watershed District reasonably believes a Public Service Activity will do so, it may refuse to allow a Public Service Activity in a specific easement. Upon completion of any Public Service Activity in an Outlet Channel easement by Prior Lake or Shakopee, it will restore the Outlet Channel to its previous condition, unless some alteration of the Outlet Channel was approved by the Watershed District as part of the Public Service Activity.

*B. **Plan Submission And Approval.*** Before using an Outlet Channel easement in its jurisdiction for Public Service Activities, Prior Lake, SMSC or Shakopee will obtain approval from the Watershed District for its proposed use. To begin, Prior Lake, SMSC or Shakopee will consult with the Watershed District and prepare plans for the Public Service Activities. Next, Prior Lake, SMSC or Shakopee will furnish the Watershed District with complete copies of the plans and specifications for the Public Service Activities. The Watershed District will approve the plans and specifications or request modifications to them within 60 days of delivery. If modifications are requested, Prior Lake, SMSC or Shakopee will incorporate the modifications into the plans and specifications and resubmit them to the Watershed

District. The Watershed District will approve the resubmitted plans and specifications or request modifications to them within 30 days of delivery. This process will be repeated until the Watershed District approves the plans or specifications or until an impasse is reached. If Prior Lake, SMSC or Shakopee and the Watershed District reach impasse, then to the extent the Watershed District determines the plans and specifications are inconsistent with the Outlet Channel Design Flows or the Conceptual Design, the Watershed District's determination will be conclusive, and Article 14 will not apply.

C. ***Implement Public Service Activities In Accordance With Plan.*** After approval by the Watershed District, Prior Lake, SMSC or Shakopee may implement the Public Service Activities in accordance with the approved plans and specifications. The Project Cooperator will implement the Public Service Activities in conformance with all applicable laws and will obtain all permits and approvals required for the Public Service Activities. If any permit or approval requires modification of the approved plans and specifications, the Project Cooperator will not implement the Public Service Activities until the modification has been incorporated into the plans and specifications, subject to approval by the Watershed District.

D. ***Expanded Size Or Use Of Easements Yet To Be Acquired.*** If Prior Lake, SMSC or Shakopee anticipate using an Outlet Channel easement yet to be acquired for Public Service Activities, and if the easement will be acquired for more than drainage purposes, then Prior Lake, SMSC or Shakopee will inform the Watershed District of the need for the larger easement or broader purpose when the Design process for the affected segment begins. The Watershed District will then endeavor to incorporate the larger easement or broader purpose in the plans and specifications for the affected segment that are furnished to the Project Cooperators. The Project Cooperator requesting the larger easement or broader purpose will comment on that portion of the plans and specifications relating to the easement size and purpose and may request modifications to these portions. The Watershed District will endeavor again to address the comments and incorporate the modifications into the plans and specifications. However, if the Watershed District determines that the larger easement or broader purpose is inconsistent with the Outlet Channel Design Flows

or the Conceptual Design, or will delay the Project, the Watershed District's determination will be conclusive, and Article 15 will not apply.

E. ***Costs To Be Borne By Those Conducting Public Service Activities.*** Prior Lake, SMSC or Shakopee will be solely and exclusively responsible for all costs related to their respective Public Services Activities on Outlet Channel easements, including:

(1) Costs incurred by Prior Lake, SMSC or Shakopee to Design, Construct, Operate, and Maintain the Public Service Activities;

(2) Outlet Channel Operation And Maintenance Costs and Emergency Maintenance Costs related to an easement acquired under Section 8.5D to the extent those costs exceed the estimated Operation And Maintenance Costs and Emergency Maintenance Costs for an easement that was not larger than required to implement the Conceptual Design and that did not include purposes other than drainage; and

(3) Outlet Channel Operation And Maintenance Costs and Emergency Maintenance Costs related to any Public Service Activities.

F. ***Claims Arising From Public Service Activities.*** Prior Lake, SMSC or Shakopee will be solely and exclusively responsible for all Claims arising out of or in connection with their Public Service Activities, or with any trail or underground utility placed in an Outlet Channel easement as a part of their Public Service Activities.

ARTICLE 9. OPERATION AND MAINTENANCE OF OUTLET CHANNEL

9.1 General

Annual Operation and Maintenance activities will be necessary to monitor the status of the Outlet Channel and ensure the stability and continued performance of the Outlet Channel. In addition, Emergency Maintenance may be required following significant or sustained flows or other events.

9.2 Preparation Of Maintenance Plans

The Watershed District will lead, coordinate, and if necessary, make final decisions on plans and specifications for Maintenance of the Outlet Channel. To begin, the Watershed District will consult with the Project Cooperators and prepare plans and

specifications for Maintenance of each Outlet Channel segment that preserve the Design Flows considering generally acceptable engineering practices for drainage systems and Best Storm Water Management Practices. Next, the Watershed District will furnish the Project Cooperators with complete copies of the plans and specifications for the Maintenance activities. The Project Cooperators will comment on the plans and specifications or request modifications to them within 60 days of delivery. If a Project Cooperator provides comments or requests modifications, the Watershed District will endeavor to address the comments and incorporate the modifications into the plans and specifications. However, if situations arise where the Watershed District receives comments or modifications that are inconsistent with the Outlet Channel Maintenance needs, the Design Flows, or with other comments or requested modifications, to avoid delays in Outlet Channel Maintenance, the Watershed District's determination on Maintenance questions will be conclusive, and Article 15 will not apply.

9.3 Operation And Maintenance By Watershed District Or Other Project Cooperators

*A. **Watershed District To Operate And Maintain Outlet Channel.*** The Watershed District will Operate and Maintain the Outlet Channel in accordance with the Prior Lake Outlet Structure Management Policy and Operating Procedures as approved by the Minnesota Department of Natural Resources (MDNR) in 2017 and any subsequent revisions approved by the MDNR. The Watershed District will do so in conformance with all applicable laws and will obtain all permits and approvals required for Operation and Maintenance activities by any governmental unit having jurisdiction over the Outlet Channel, including Prior Lake, Shakopee, the SMSC, the Lower Minnesota Watershed District, the DNR, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency. If any permit or approval requires modification of a Maintenance plan developed under Section 9.2, the Watershed District can make the required modification. The Watershed District will notify the other Project Cooperators of the change prior to the start of Maintenance but need not submit the modified plans to the other Project Cooperators for review and comment.

*B. **Annual Inspection.*** Each year, the Watershed District will inspect the Outlet

Channel as required in the Prior Lake Outlet Structure Management Policy and Operating Procedures. If an inspection reveals changed conditions in any Outlet Channel segment that warrant changes in that segment's Maintenance plan, the Watershed District will amend the segment Maintenance plan using the procedure in Section 9.2. If an inspection reveals that Emergency Maintenance is required, the Watershed District will undertake Emergency Maintenance as provided in Section 9.4.

C. ***Operation Or Maintenance By Other Project Cooperators.*** The Watershed District may contract with or enter into a delegation agreement with other Project Cooperators to Operate or Maintain Outlet Channel segments within that Project Cooperator's jurisdiction. The contract or delegation agreement will specify the method for documenting Operation And Maintenance Costs incurred by the Project Cooperator to the Watershed District and for payment of the Project Cooperator. All Operation or Maintenance undertaken by other Project Cooperators will be in accordance with the Outlet Channel segment Maintenance plans developed under Section 9.2. The Project Cooperator will Operate or Maintain Outlet Channel segments in conformance with all applicable laws and will obtain all permits and approvals required for Operation or Maintenance by any governmental unit having jurisdiction over the Outlet Channel, including Prior Lake, Shakopee, the SMSC, the Watershed District, the Lower Minnesota Watershed District, the DNR, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency. If any permit or approval requires modification of a final segment Maintenance plan developed under Section 9.2, the Project Cooperator will not commence work until the modification has been incorporated into the Maintenance plan, subject to approval by the Watershed District. The Operation And Maintenance Costs incurred by the Project Cooperator will be paid from the Operation And Maintenance Fund, or be counted as a credit against the Project Cooperator's next Operation And Maintenance Fund payment, subject to approval by the Watershed District after it receives an itemized statement of those costs from the Project Cooperator.

9.4 Emergency Maintenance By Watershed District Or Other Project Cooperators

*A. **Watershed District To Perform Emergency Maintenance.*** Whenever the need for Emergency Maintenance arises, the Watershed District will respond promptly and perform the necessary work. To the extent possible under the circumstances, Emergency Maintenance will conform to the Maintenance plan for the Outlet Channel segment in which the Emergency Maintenance occurs. The Watershed District will perform the Emergency Maintenance in conformance with all applicable laws and will obtain all permits and approvals required for Emergency Maintenance activities by any governmental unit having jurisdiction over the Outlet Channel, including Prior Lake, Shakopee, the SMSC, the Lower Minnesota Watershed District, the DNR, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency.

*B. **Emergency Maintenance By Other Project Cooperators.*** If a Project Cooperator discovers the need for Emergency Maintenance, it will communicate the emergency to the Watershed District immediately. If the Watershed District is unavailable or unable to perform the Emergency Maintenance, a Project Cooperator may perform the Emergency Maintenance, which will, to the extent possible under the circumstances, conform to the Maintenance plan for the Outlet Channel segment in which the Emergency Maintenance occurs. The Project Cooperator will perform the Emergency Maintenance in conformance with all applicable laws and will obtain all permits and approvals required for Operation or Maintenance by any governmental unit having jurisdiction over the Outlet Channel, including Prior Lake, Shakopee, the SMSC, the Watershed District, the Lower Minnesota Watershed District, the DNR, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency. When circumstances allow, the Project Cooperator undertaking the Emergency Maintenance will provide the other Project Cooperators with 24 hour notice of the Emergency Maintenance; however, the Project Cooperator is entitled to move forward with the Emergency Maintenance regardless of response from the other Project Cooperators. The Emergency Maintenance Costs incurred by the Project Cooperator will be paid from the Emergency Maintenance Fund. The costs will be counted as a credit against the

Project Cooperator's next Emergency Maintenance Fund payment, subject to approval by the Watershed District after it receives and approves an itemized statement of those costs from the Project Cooperator.

9.5 Operation and Maintenance Cost Participation

*A. **Operation And Maintenance Costs.*** Throughout the entire MOA term, the Project Cooperators will pay all Operation And Maintenance Costs for the Outlet Channel according to the cost-share allocation in Section 10.2 using the Operation And Maintenance Fund established in Section 10.4.

*B. **Emergency Maintenance Costs.*** Throughout the entire MOA term, the Project Cooperators will pay all Emergency Maintenance Costs for the Outlet Channel as specified in Article 10 using the Emergency Maintenance Fund established in Section 10.4. But if a discharge exceeding the Maximum Average Discharge Rates in Table 2 causes conditions requiring Emergency Maintenance, then the Project Cooperator whose discharge exceeds its Maximum Average Discharge Rate will pay all related Emergency Maintenance Costs and Claims. If multiple discharges exceeding the Maximum Average Discharge Rates in Table 2 cause conditions requiring Emergency Maintenance, then the Project Cooperators whose discharges exceed their Maximum Average Discharge Rates will pay all related Emergency Maintenance Costs and Claims in amounts proportional to their excess discharges.

ARTICLE 10. COST-SHARE ALLOCATION

10.1 Cost-Share Allocation

*A. **Operation, Maintenance, And Emergency Maintenance Cost-Share Allocation***

(1) For Specific Channel Segments. Operation And Maintenance Costs and Emergency Maintenance Costs for a specific Outlet Channel segment will be allocated to the Project Cooperators according to the Outlet Channel segment cost-share allocation in Table 4 for that Outlet Channel Segment, or in Table 4 as modified in accordance with Sections 6.6 or 10.3.

(2) *For Entire Outlet Channel.* Operation And Maintenance Costs and Emergency Maintenance Costs for the overall Outlet Channel (for example, annual inspection costs and the annual Emergency Maintenance Fund payments) will

be allocated to the Project Cooperators according to the "Total" cost-share allocation in Table 4, or Table 4 as modified in accordance with Sections 6.6 or 10.3.

Table 4: Cost-Share Allocation for Outlet Channel

Outlet Channel Segment	Segment Flow			
	PLSLWD	Prior Lake	Shakopee	SMSC
1	87.0%	12.9%	0.0%	0.1%
2	84.1%	15.4%	0.0%	0.5%
3	72.1%	26.0%	0.3%	1.6%
4	40.7%	22.9%	22.1%	14.3%
5	37.4%	21.3%	27.6%	13.7%
6	33.2%	18.9%	34.2%	13.7%
7	27.9%	15.9%	44.5%	11.6%
8	27.8%	15.9%	44.7%	11.6%
Total Flow	**42.0%**	**18.6%**	**29.0%**	**10.4%**

B. Cost-Share Allocation Formula. The formula used to calculate the cost-share allocation is more particularly described in Exhibit D – Calculation Method for Cost-Share Allocation and will be used to recalculate the cost-share allocation when required by other Provisions of this MOA.

10.2 Revisions To Cost-Share Allocations Due To Changes In Tributary Drainage Areas

If any Project Cooperator's tributary drainage area changes by more than 40 acres, the Watershed District will recalculate that Project Cooperator's cost-share allocations and amend this MOA as follows:

A. Recalculation And Payment Of Cost-Share Allocations. As to Outlet Channel Operation and Maintenance Costs, and Outlet Channel Emergency Maintenance Costs incurred subsequent due to a change in tributary drainage area, the following Provisions will apply.

(1) Cost Recalculation

a. The Watershed District will recalculate the cost-share allocation according to the method described in Exhibit E to reflect the change in tributary drainage area and to document the change in Maximum Average

Discharge Rate associated with change in the tributary drainage area. For any tributary drainage area changing jurisdictions, the Maximum Average Discharge Rate will be the Maximum Average Discharge Rate originally associated with the tributary drainage area.

b. In addition, the Watershed District will amend this MOA to incorporate the recalculation including any necessary changes to Tables 1, 2, and 4, subject to approval by the other Project Cooperators in the form of signed amendments.

(2) *Payment Of Cost-Share Allocations.* All these costs incurred after the change in tributary drainage area will be borne by the Project Cooperators according to the cost-share allocations recalculated under Section 10.2 If the change in tributary drainage area results in an overall discharge to that Outlet Channel segment in excess of the acquiring Project Cooperator's Maximum Average Discharge Rate for that segment as specified in Table 2 (recalling that Section 6.3 provides that the Maximum Average Discharge Rate for a tributary section changing jurisdictions will be the same as originally provided for that tributary drainage area), the Project Cooperator acquiring the additional area will address the excess discharge in accordance with Section 6.6.

10.3 Operation and Maintenance Fund and Payment of Operation and Maintenance Cost-Share Allocations

A. ***Annual Payments To Operation And Maintenance Fund.*** In February of every calendar year, each Project Cooperator will pay into the Operation And Maintenance Fund its share of the Operation And Maintenance Budget for that calendar year and any deficiency from the previous year, according to the cost-share allocation in Section 10.1.

B. ***Operation And Maintenance Fund Administration.*** The Operation And Maintenance Fund will be administered by the Watershed District in accordance with the following Provisions.

(1) *Authorized Payments.* The Watershed District may use the Operation And Maintenance Fund at any time to pay Operation And Maintenance Costs of the Outlet Channel and to pay any Project Cooperator who acts under and

complies with Section 9.3C.

(2) *Consistency With Budget.* The Operation and Maintenance expenditures will be consistent with the budget developed during the Annual Meeting. Any variation from the budget of more than ten percent is subject to approval by all the Project Cooperators in writing.

(3) *Year End Reconciliation.* Following the end of a calendar year and before April 30 of the next year, the Watershed District will provide the Project Cooperators with a detailed accounting of the Operation And Maintenance Fund for the previous year. If any funds remain at calendar year end, the Watershed District will allocate the funds as credits to the Project Cooperators according to the cost-share allocation in Section 10.1. The Watershed District will then refund the credits, or at a Project Cooperator's direction, will subtract the credit from that Project Cooperator's next annual Operation And Maintenance Fund payment. If a deficit exists at calendar year end, the Watershed District will allocate the deficit among the Project Cooperators as deficiencies according to the cost share allocation in Section 10.1 and will add the deficiencies to the following year's Operation And Maintenance Fund payments for the Project Cooperators.

(4) *Interest To Remain In Fund.* Interest earned by the Operation And Maintenance Fund, up to $10,000, will remain in the Fund to pay future Operation And Maintenance Costs. The interest will be reviewed annually and if there are any amounts over $10,000, they will be used to defray future costs in the next budgeting year.

10.4 Payment Of Emergency Maintenance Cost-Share Allocations

A. ***Emergency Maintenance Fund Administration.*** The Emergency Maintenance Fund will be administered by the Watershed District and initiated when there is Emergency Maintenance as described in the Definitions Section and in accordance with the following Provisions.

(1) *Authorized Payments.* The Watershed District may use the Emergency Maintenance Fund at any time to pay Emergency Maintenance Costs of the Outlet Channel and to pay any Project Cooperator who acts under and

complies with Section 9.4B.

(2) *Year End Report.* Following the end of a calendar year and before April 30 of the next year, the Watershed District will provide the Project Cooperators with a detailed accounting of the Emergency Maintenance Fund for the previous year.

(3) *Replenishment Of Fund.* When Emergency Maintenance is performed on an Outlet Channel segment, the Watershed District will replenish the Emergency Maintenance Fund by invoicing the Project Cooperators using that segment in an amount equal to the Emergency Maintenance Costs, according to the cost-share allocation in Section 10.1. The District will maintain $250,000 in the Emergency Maintenance Fund.

(4) *Interest To Remain In Fund.* Interest earned by the Emergency Maintenance Fund, up to $10,000, will remain in the Fund to pay future Emergency Maintenance Costs. The amount of interest will be reviewed annually and amounts over $10,000 will be used to defray future costs in the next budget year.

10.5 General Fund Administration And Recordkeeping

In addition to the specific fund administration requirements in Sections 10.3, and 10.4, the Watershed District will administer the Operation And Maintenance Fund and Emergency Maintenance Fund according to the following Provisions.

A. ***Accounts To Conform To Statutory Requirements.*** Funds will be retained in accounts that conform to the requirements of Minnesota Statutes Chapter 118A.

B. ***Retention And Inspection Of Records.*** The Watershed District will retain all financial records for the Funds for a period of six years following the completion of any work. The Project Cooperators may inspect the books and records maintained by the Watershed District for the Outlet Channel during normal business hours.

C. ***Quarterly Reports.*** The Watershed District will provide quarterly fund balance statements for each Fund to the Project Cooperators.

D. ***Annual Audit.*** The Watershed District will include the Funds in its annual audit, provide a copy of the audit to the Project Cooperators, and, upon request, will make these financial records available for review or audit by any Project Cooperator.

*E. **Reimbursement Of Watershed District.*** The Watershed District will be reimbursed from the Operation And Maintenance Fund for actual staff costs and accounting fees associated with implementing activities in the approved budget/work plan, maintaining financial records and reporting to the Project Cooperators and others about the Operation And Maintenance Fund, and Emergency Maintenance Fund. The Watershed District will also be reimbursed from the Operation and Maintenance Fund for actual staff costs, legal and accounting fees associated with doing emergency work.

ARTICLE 11. PROJECT COOPERATOR MEETINGS

11.1 General Provisions

*A. **Representation At Meetings.*** Each Project Cooperator will designate an individual and an alternative to serve as representatives and attend Project Cooperator meetings.

*B. **Meetings Open And Noticed.*** All meetings of the Project Cooperators will be noticed and open to the public in accordance with the requirements of applicable law governing any Project Cooperator.

*C. **Quorum.*** No business may be conducted at a meeting unless representatives of three Project Cooperators are present.

*D. **Voting.*** Each Project Cooperator will have one vote, and any action requires the vote of three Project Cooperators.

*E. **Conduct Of Meeting.*** Meetings will be conducted in accordance with this MOA's Provisions and the latest edition of Robert's Rules of Order. If a conflict arises between this MOA's Provisions and Robert's Rules of Order, this MOA will control. The Watershed District's representative will serve as chair.

11.2 Annual Meeting And Failure To Agree On Budgets

The Watershed District will convene a coordination and planning meeting of the Project Cooperators each year in August (the "**Annual Meeting**").

*A. **Annual Meeting Activities.*** At the Annual Meeting, the Project Cooperators will:

(1) Review the previous year's activities;

(2) Discuss the Operation and Maintenance planned for the Outlet Channel in the

next calendar year;

(3) Review any completed or requested modifications to the cost-share allocations;

(3) Review the status of the Operation And Maintenance Fund, and the Emergency Maintenance Fund;

(5) Refine the Operation And Maintenance Costs based on the most recent data.

(8) Approve a budget for Operation And Maintenance Costs for the next calendar year ("**Operation And Maintenance Budget**").

B. Failure To Agree On Budgets.

(1) *Failure To Agree On Operation And Maintenance Budget.* If for any reason, the Project Cooperators fail to agree on an Operation And Maintenance Budget for the Outlet Channel, the Operation And Maintenance Budget for the prior year plus an inflation factor equal to the Engineering News Record Construction Cost Index calculated using the prior year as the base year will apply to the next year, and the annual contributions of each Project Cooperator will be based on the prior year's budget as adjusted.

11.3 Other Meetings

Project Cooperator meetings will be called by the Watershed District quarterly or by a written request to the Watershed District signed by any two Project Cooperators.

ARTICLE 12. INDEMNIFICATION

12.1 Watershed District Indemnification Of Prior Lake, Shakopee, And SMSC

Subject to the limitations of Minnesota Statutes Chapter 466, the Watershed District will defend, indemnify, and hold Prior Lake, Shakopee, and the SMSC harmless from Claims arising out of or in connection with any Operation, Maintenance, or Emergency Maintenance by the Watershed District of the Outlet Structure or Outlet Channel; or any failure by the Watershed District to comply with this MOA's Provisions. Under no circumstances, however, will the Watershed District be required to pay any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one Project Cooperator. Claims may not be aggregated to exceed the

statutory limits afforded by Minnesota Statutes Chapter 466.

12.2 Prior Lake Indemnification Of Watershed District, Shakopee, And SMSC

*A. **Prior Lake General Indemnity.*** Subject to the limitations of Minnesota Statutes Chapter 466, Prior Lake will defend, indemnify, and hold the Watershed District, Shakopee, the SMSC, and their respective elected and appointed officials, employees, and agents harmless from Claims arising out of or in connection with: any Operation, Maintenance, or Emergency Maintenance by Prior Lake of the Outlet Channel; any Public Service Activity by Prior Lake; or any failure by Prior Lake to comply with this MOA's Provisions. Under no circumstances, however, will Prior Lake be required to pay any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one Project Cooperator. Claims may not be aggregated to exceed the statutory limits afforded by Minnesota Statutes Chapter 466.

*B. **Prior Lake Indemnity For Public Service Activities.*** Subject to the limitations of Minnesota Statutes Chapter 466 as modified in this Section 12.2B., Prior Lake will defend, indemnify, and hold the Watershed District, Shakopee, the SMSC, and their respective elected and appointed officials, employees, and agents harmless from Claims arising out of or in connection with Prior Lake's Public Service Activities or with any trail or underground utility placed in an Outlet Channel easement as part of Prior Lake's Public Service Activities. Prior Lake understands that under Minnesota Statutes Section 466.03, subd. 6e, Prior Lake is not subject to tort liability for Claims arising out of or in connection with any trail placed in an Outlet Channel easement as part of Prior Lake's Public Service Activities or the Public Service Activities necessary to Design, Construct, Operate, and Maintain any trail. Nevertheless, for the purpose of the indemnity provided in this Section 12.2B only and up to the limits on liability established in Minnesota Statutes Chapter 466 only, Prior Lake waives its sovereign immunity. Under no circumstances, however, will Prior Lake be required to pay any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one Project Cooperator. Claims may not be aggregated to exceed the statutory limits afforded by Minnesota Statutes Chapter 466.

12.3 Shakopee Indemnification Of Watershed District, Prior Lake, And SMSC

*A. **Shakopee General Indemnity.*** Subject to the limitations of Minnesota Statutes Chapter 466, Shakopee will defend, indemnify, and hold the Watershed District, Prior Lake, the SMSC, and their respective elected and appointed officials, employees, and agents harmless from Claims arising out of or in connection with: any Operation, Maintenance, or Emergency Maintenance by Shakopee of the Outlet Channel; any Public Service Activity by Shakopee; or any failure by Shakopee to comply with this MOA's Provisions. Under no circumstances, however, will Shakopee be required to pay any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one Project Cooperator. Claims may not be aggregated to exceed the statutory limits afforded by Minnesota Statutes Chapter 466.

*B. **Shakopee Indemnity For Public Service Activities.*** Subject to the limitations of Minnesota Statutes Chapter 466 as modified in this Section 12.3B, Shakopee will defend, indemnify, and hold the Watershed District, Prior Lake, the SMSC, and their respective elected and appointed officials, employees, and agents harmless from Claims arising out of or in connection with Shakopee's Public Service Activities or with any trail or underground utility placed in an Outlet Channel easement as part of Shakopee's Public Service Activities. Shakopee understands that under Minnesota Statutes Section 466.03, subd. 6e, Shakopee is not subject to tort liability for Claims arising out of or in connection with any trail placed in an Outlet Channel easement as part of Shakopee's Public Service Activities or the Public Service Activities necessary to Design, Construct, Operate, and Maintain any trail. Nevertheless, for the purpose of the indemnity provided in this Section 12.3B only and up to the limits on liability established in Minnesota Statutes Chapter 466 only, Shakopee waives its sovereign immunity. Under no circumstances, however, will Shakopee be required to pay any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one Project Cooperator. Claims may not be aggregated to exceed the statutory limits afforded by Minnesota Statutes Chapter 466.

12.4 SMSC Indemnification Of Watershed District, Prior Lake, And Shakopee

The SMSC will defend, indemnify, and hold the Watershed District, Shakopee, Prior Lake, and their respective elected and appointed officials, employees, and agents harmless from Claims arising out of or in connection with:; any Operation, Maintenance, or Emergency Maintenance by the SMSC of the Outlet Channel; any Public Service Activity by the SMSC; or any failure by the SMSC to comply with this MOA's Provisions. Under no circumstances, however, will the SMSC be required to pay any Claims from which Minnesota municipalities are immune under Minnesota Statutes Chapter 466 or any amounts in excess of the limits on liability for Minnesota municipalities established in Minnesota Statutes Chapter 466 applicable to any one Project Cooperator. Claims may not be aggregated to exceed the statutory limits afforded by Minnesota Statutes Chapter 466 and this Section 12.4.

12.5 Limitation On Liability Of Project Cooperators

Notwithstanding anything to the contrary in this MOA, under no circumstances will a Project Cooperator, including for the avoidance of doubt the SMSC, be required to pay on behalf of itself and the other Project Cooperators any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one Project Cooperator. The limits of liability for some or all of the Project Cooperators may not be added together to aggregate or determine the maximum amount of liability for any Project Cooperator. The intent of this Section 12.5 is to impose a limited duty to defend and indemnify for Claims arising under this MOA subject to the limits of liability under Minnesota Statutes Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of Claims by eliminating conflicts among defendants, and to permit Claims against multiple defendants from a single occurrence to be defended by a single attorney.

12.6 Insurance And Evidence Of Coverage

A. ***Insurance For Watershed District, Prior Lake, And Shakopee.*** The Watershed District, Prior Lake, and Shakopee will maintain liability coverage with the League of Minnesota Cities Insurance Trust ("**LMCIT**") under standard LMCIT liability coverage forms for at least the amount of the maximum limit of liability under Minnesota Statutes Section 466.04 for any number of claims arising out of a single

occurrence, as such limit may change during the term of this MOA. The coverage limit shall conform to Minnesota Statutes Section 466.04. Each Project Cooperator will name the other three Project Cooperators as additional insureds. If insurance cannot be obtained from the LMCIT, the Watershed District, Prior Lake, or Shakopee will maintain private liability insurance coverage as required for the SMSC in Section 12.6B.

B. ***Insurance For SMSC.*** The SMSC will maintain the following private liability insurance coverage through an insurance company licensed to do business in the State.

(1) *Commercial General Liability Coverage.* The SMSC will maintain commercial general liability coverage with a limit of at least the amount of the maximum limit of liability under Minnesota Statutes Section 466.04 for any number of claims arising out of a single occurrence, as such limit may change during the term of this MOA. If this commercial general liability insurance contains a general aggregate limit, the SMSC will maintain a general aggregate limit of not less than twice the amount of coverage for each occurrence. The coverage limit shall change to conform to Minnesota Statutes Section 466.04. The commercial general liability insurance will cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and contractually-assumed liability. The SMSC will name the other three Project Cooperators as additional insureds.

(2) *Public Officials' Errors And Omissions Insurance.* The SMSC will maintain public officials' errors and omissions or equivalent coverage, in a form acceptable to the Watershed District, with a limit of at least $1 million per occurrence, and, if this insurance contains an aggregate limit, an aggregate limit of not less than $2 million. The SMSC will name the other three Project Cooperators as additional insureds.

C. ***Evidence Of Coverage And Ongoing Coverage.*** Each Project Cooperator will provide the Watershed District with a certificate of insurance showing that the required coverages are in effect, and the Watershed District will provide the other

Project Cooperators with the same evidence. No Project Cooperator will allow the insurance required by this MOA to lapse, be canceled, be reduced in limits or coverage, not be renewed, be changed materially, or have restrictive modifications added during this MOA's term. In the event any Project Cooperator fails to procure or maintain any insurance coverage required under this MOA, the Watershed District may buy such coverage on an annual basis and add the coverage cost to the next annual Operation And Maintenance Fund payment due from that Project Cooperator. If the Watershed District fails to procure or maintain any insurance coverage required under this MOA, any other Project Cooperator may buy such coverage on an annual basis and deduct the coverage cost from its next annual Operation And Maintenance Fund payment.

ARTICLE 13. DISPUTE RESOLUTION

13.1 Policy For Resolving Disputes

The Project Cooperators acknowledge that, if disputes arise over the interpretation of this MOA, or over the rights and obligations of the Project Cooperators under this MOA's Provisions, such disputes will, in all likelihood, impinge on substantial rights affecting the health and safety of the persons and property of the citizens residing within their respective jurisdictions. If there are disputes among the Cooperators, the following dispute procedure will apply:

13.2 Procedure For Resolving Disputes

All disputes arising out of or in connection with this MOA will be resolved as follows.

*A. **Dispute Notice And Initial Meeting.*** If a dispute arises between two or more Project Cooperators, any Project Cooperator involved in the dispute may send notice of the dispute to all Project Cooperators specifying the nature of the dispute and the parties to the dispute. Within five days after delivery of notice, a meeting between the parties to the dispute (and any other Project Cooperator that wishes to attend) will be held to attempt in good faith to negotiate a resolution of the dispute.

*B. **Mediation.*** If the parties to the dispute fail to resolve the dispute after a meeting, or any additional meetings as the parties to the dispute mutually deem necessary, or if the parties to the dispute fail to meet within five days after delivery of the notice, the parties to the dispute will submit the dispute within five days thereafter to

mediation in accordance with Rule 114 of the Minnesota General Rules of Practice and bear equally the costs of the mediation. The parties to the dispute will participate in good faith in the mediation for a period of ten days, unless the parties to the dispute mutually extend the mediation period.

C. ***Binding Arbitration.*** If the parties to the dispute are not successful in resolving the dispute through mediation or if they fail to meet within the ten-day meeting period, then the dispute will be resolved by binding arbitration in accordance with Chapter 572, the Minnesota Civil Mediation Act, as amended, and the following conditions.

(1) *Selection Of Arbitrator.* The dispute will be heard by a single arbitrator selected as follows.

a. Within five days after the expiration of the ten-day period for mediation of the dispute (or after the expiration of a longer period if the mediation period has been extended by the parties to the dispute), each Project Cooperator will propose three potential arbitrators who meet the qualifications set forth in Section 14.2C(2) by personally serving three names with brief qualification statements on the other Project Cooperators. Any Project Cooperator that fails to propose three potential arbitrators as provided in this Section 142C(1)a waives its right to propose arbitrators.

b. Within five business days of the expiration of the deadline for proposing potential arbitrators, each Project Cooperator will personally serve on the other Project Cooperators a ranked list of all proposed arbitrators with a ranking of "1" indicating the highest or first choice, "2" the second choice, and so on for each potential arbitrator. On its list, each Project Cooperator may strike rather than rank one potential arbitrator. All persons so stricken will no longer be considered as an arbitrator for the dispute. Any Project Cooperator that fails to provide a ranked list as provided in this Section 14.2C(1)b waives its right to strike a potential arbitrator and to rank potential arbitrators.

c. Within two business days after the deadline for receiving the ranked lists, the Watershed District will combine the ranked lists properly served with the ranking for each non-struck potential arbitrator totaled. For example, a

potential arbitrator who receives a ranking of "1" from the Watershed District, "5" from Prior Lake, "2" from Shakopee, and "7" from the SMSC will receive a total ranking of "15." The potential arbitrator with the lowest total ranking will be appointed as the arbitrator for the dispute. If the arbitrator so selected cannot serve, then the potential arbitrator with the next lowest score will be appointed.

d. In the case of any tie, then the tie will be broken by random draw conducted by the Watershed District.

(2) *Qualifications For Arbitrator.* The arbitrator must be impartial and independent. The arbitrator may be an attorney, engineer, government official, or other person who has at least five years of experience with drainage law, hydraulics, watersheds, water law, or watershed law. Following appointment, the arbitrator will serve subject to recusal by a majority of the parties for just cause or disability.

(3) *Challenge To Qualifications.* If a party wishes to challenge a potential arbitrator or a selected arbitrator as unqualified, the party must give notice of the challenge to the Watershed District stating the reasons the potential or selected arbitrator is unqualified. Within five business days after the notice is effective the Watershed District will convene the three individuals designated under Section 11.1A to serve as meeting representatives from the three parties who did not propose that person as a potential arbitrator to decide by majority vote whether the person is qualified. A potential arbitrator deemed unqualified will no longer be considered as an arbitrator for the dispute. A selected arbitrator deemed unqualified will no longer be considered as an arbitrator for the dispute and will be replaced by the Watershed District with the potential arbitrator with the next lowest score as established under Section 14.2C(1).

(4) *Hearing Timing.* The hearing before the arbitrator will be held within ten days after the arbitrator's selection, unless otherwise mutually agreed by the parties to the dispute.

(5) *Decision By Majority And Timing.* The arbitrator's decision will be rendered

within 15 days after her or his selection, unless otherwise mutually agreed by the parties to the dispute.

(6) *Governing Law.* The law governing interpretation of this MOA in any arbitration will be the laws of the State.

(7) *Costs.* The parties to the dispute will bear equally the costs of the arbitrator and any other costs of the arbitration.

13.3 Enforcement Of Judgment Or Order

A. ***Money Judgment Involving Watershed District, Prior Lake, Or Shakopee.*** If the arbitrator's decision under Section 14.2C involves a money judgment against the Watershed District, Prior Lake, SMSC or Shakopee, the respective Project Cooperator will pay the money judgment within 60 days after it is issued by the arbitrator. If the Watershed District, Prior Lake, or Shakopee fails to do so, the money judgment will be enforceable by any other Project Cooperator in the District Court of Scott County, Minnesota.

B. ***Money Judgment Or Order Involving SMSC.*** If the arbitrator's decision under Section 14.2C involves a money judgment against the SMSC, the SMSC will pay the money judgment within 60 days after it is issued by the arbitrator.

C. ***Non-monetary Judgment Involving Watershed District, Prior Lake, Or Shakopee.*** If the arbitrator's decision under Section 14.2C involves a non-monetary judgment against the Watershed District, Prior Lake, or Shakopee or a judgment about how to interpret this MOA, the respective Project Cooperator will immediately conform to the judgment. If the Watershed District, Prior Lake, or Shakopee fails to do so, the judgment will be enforceable by any other Project Cooperator in the District Court of Scott County, Minnesota.

D. ***Non-monetary Judgment Involving SMSC.*** If the arbitrator's decision under Section 14.2C involves a judgment about how to interpret this MOA, the SMSC will conform to the judgment. If the SMSC fails to conform to the judgment and this failure causes damage to any other Project Cooperator, the failure will be deemed a default.

13.4 Limited Sovereign Immunity Waiver

The Project Cooperators acknowledge that the SMSC is a Federally recognized Indian

tribe and that the SMSC possesses sovereign immunity from unconsented suit and other legal proceedings, including arbitration. Despite the U.S. Supreme Court's decision in *C&L Enterprises, Inc. v. Citizen Band Potawatomi Tribe,* nothing in this Agreement shall be deemed to be an express or implied waiver of the SMSC's sovereign immunity, except as explicitly provided in this Section 14.4.

A. ***Limited Waiver of Sovereign Immunity.*** The SMSC hereby irrevocably waives its sovereign immunity, and all defenses based thereon, for the limited purpose of submitting to binding arbitration as provided in Section 14.2.

B. ***Limitation on Recourse.*** Notwithstanding any other Provisions herein, any arbitration award against the SMSC may only be enforced and collected in Tribal Court.

C. ***Waiver of Exhaustion.*** The SMSC expressly waives the application of the doctrines of exhaustion of tribal remedies, abstention, or comity and all other rights of the SMSC that might otherwise require that claims arising from this Agreement be heard in any of the SMSC courts (whether now or hereafter existing) or other SMSC forums (whether now or hereafter existing) prior to the commencement of arbitration.

ARTICLE 14. TERM AND TERMINATION

The term of this MOA is perpetual, or until otherwise expressly terminated by a unanimous vote of the Project Cooperators. The Watershed District's right to release 65 cfs through the Outlet Structure and the rights of other Project Cooperators to drain areas tributary to the Outlet Channel as described in Table 1 at the Maximum Average Drainage Rates described in Table 2 will survive this MOA's termination. Any termination will be recorded in the office of the Scott County Recorder.

ARTICLE 15. DISTRIBUTION OF PROPERTY UPON TERMINATION

15.1 Distribution Of Property Generally

Upon this MOA's termination, all personal property acquired as a result of this MOA will be returned to the contributing Project Cooperator. And all monies remaining in the Operation And Maintenance Fund, or the Emergency Maintenance Fund will be

returned to the Project Cooperators according to the cost-share allocation in Section 10.1.

15.2 Conveyance Of Title To Easements Outside The Watershed District

*A. **Conveyance To Shakopee.*** Upon this MOA's termination, the Watershed District will convey to Shakopee, all of its right, title, and interest in that portion of the Outlet Channel lying outside of the legal boundaries of the Watershed District, east of Pike Lake Trail or north of Scott County Road 16 within the municipal limits of Shakopee, subject to the rights of the Watershed District and other Project Cooperators in Article 15.

*B. **Conveyance To SMSC.*** Upon this MOA's termination, the Watershed District will convey to the SMSC, all of its right, title, and interest in that portion of the Outlet Channel lying outside of the legal boundary of the Watershed District, and lying within either Trust Land or Fee Land, subject to the rights of the Watershed District and other Project Cooperators in Article 15.

ARTICLE 16. GENERAL PROVISIONS

16.1 Counterparts

This MOA may be signed in separate counterparts, and the counterparts, taken together, shall constitute a single agreement.

16.2 Entire Agreement, Amendment, And Waiver

This MOA embodies the entire agreement and understanding of the Project Cooperators regarding the subject matter of this MOA and all prior agreements, representations, statements, and understandings, oral and written, are merged in this MOA by this Section 17.2. This MOA may not be altered, amended, modified, or supplemented except in a writing signed by the Project Cooperators, which will be effective from and after the date that it is signed by all the Project Cooperators if an effective date is not specified. No MOA Provisions is waived unless done so in writing and signed by the Project Cooperator against whom such waiver is asserted.

16.3 Notices

*A. **Written Notice Required.*** Except as otherwise specifically provided in this MOA,

all notices, demands, and communications required or provided to be given under this MOA will be in writing and will be directed as follows:

If to Watershed District:	Prior Lake–Spring Lake Watershed District Attn: District Administrator 4646 Dakota Street SE Prior Lake, MN 55372
If to Prior Lake:	City of Prior Lake Attn: City Manager 4646 Dakota Street SE Prior Lake, MN 55372
If to Shakopee:	City of Shakopee Attn: City Administrator 129 South Holmes Street Shakopee, MN 55379
If to the SMSC:	Shakopee Mdewakanton Sioux Community Attn: Chairman 2330 Sioux Trail NW Prior Lake, MN 55372

B. How Notices May Be Delivered. Except when personal service is required in this MOA, notices may be:

(1) Delivered personally;

(2) Sent by nationally recognized overnight courier; or

(3) Sent by first class, certified United States Mail, return receipt requested, postage prepaid.

C. When Notices Are Effective.. Notices are effective:

(1) On receipt if delivered personally;

(2) On the next business day if delivered by overnight courier; or

(3) On the date shown on the receipt if mailed, unless delivery is refused or delayed by the addressee, in which event they are deemed delivered on the third business day following deposit in the United States Mail.

D. Changes In Notice Address. A Project Cooperator may change the address to which notice will be delivered by notice given to all Project Cooperators. No

Project Cooperator may require notice to be delivered to more than two addresses.

16.4 No Third Party Beneficiaries

Except as otherwise specifically provided in this MOA, no rights, privileges, or immunities of any Project Cooperator under this MOA will inure to the benefit of any third-party, nor will any third-party be deemed to be a beneficiary of any of this MOA's Provisions.

165 Successors And Assigns

This MOA binds and inures to the benefit of the legal successors and assigns of the Project Cooperators.

SIGNED by the Watershed District, Prior Lake, Shakopee, and the SMSC to go into force on the Approval Date as of the Effective Date.

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MEMORANDUM OF AGREEMENT

SIGNATURE PAGE FOR

PRIOR LAKE–SPRING LAKE WATERSHED DISTRICT

PRIOR LAKE–SPRING LAKE WATERSHED DISTRICT

By: _____
Mike Myser, President

By: _____
Bruce Loney, Secretary

STATE OF MINNESOTA)
) ss
COUNTY OF SCOTT)

On this 9 day of July, 2019, the foregoing Memorandum of Agreement was acknowledged before me by Mike Myser and Bruce Loney, the President and Secretary respectively, of the Prior Lake–Spring Lake Watershed District, a Minnesota political subdivision, on behalf of the District.

AMY A TUCCI
Notary Public
State of Minnesota
My Commission Expires
January 31, 2020

_____
Notary Public

MEMORANDUM OF AGREEMENT

SIGNATURE PAGE FOR

CITY OF PRIOR LAKE

CITY OF PRIOR LAKE

By: _____
Kirt Briggs, Mayor

By: _____
Michael Plante, City Manager

STATE OF MINNESOTA)
) ss
COUNTY OF SCOTT)

On this 17th day of June, 2019, the foregoing Memorandum of Agreement was acknowledged before me by Kirt Briggs and Michael Plante, the Mayor and City Manager respectively, of the City of Prior Lake, a Minnesota municipal corporation, on behalf of the City.

ANN ELIZABETH BAUCOM-ORLOFSKY
Notary Public-Minnesota
My Commission Expires Jan 31, 2024

_____
Notary Public

MEMORANDUM OF AGREEMENT

SIGNATURE PAGE FOR

CITY OF SHAKOPEE

CITY OF SHAKOPEE

By: LPM
Bill Mars, Mayor

By:
Bill Reynolds, City Administrator

STATE OF MINNESOTA)
) ss
COUNTY OF SCOTT)

On this 18th day of June, 2019, the foregoing Memorandum of Agreement was acknowledged before me by Bill Mars,and Bill Reynolds, the Mayor and City Administrator respectively, of the City of Shakopee, a Minnesota municipal corporation, on behalf of the City.

HEIDI N EMERSON
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2024

Heidi Emerson
Notary Public

MEMORANDUM OF AGREEMENT

SIGNATURE PAGE FOR

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

By: _____
Charles Vig, Chairman

By: _____
Rebecca Crooks-Stratton, Secretary/Treasurer

STATE OF MINNESOTA)
) ss
COUNTY OF SCOTT)

On this 15th day of May, 2019, the foregoing Memorandum of Agreement was acknowledge before me by Charles Vig and Rebecca Crooks-Stratton, the Chairman and Secretary/Treasurer respectively, of the Shakopee Mdewakanton Sioux Community, a Federally recognized Indian tribe, on behalf of the Community.

SARA L DOBESH
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES 01/31/24

_____
Notary Public

Exhibit A – Outlet Channel Map

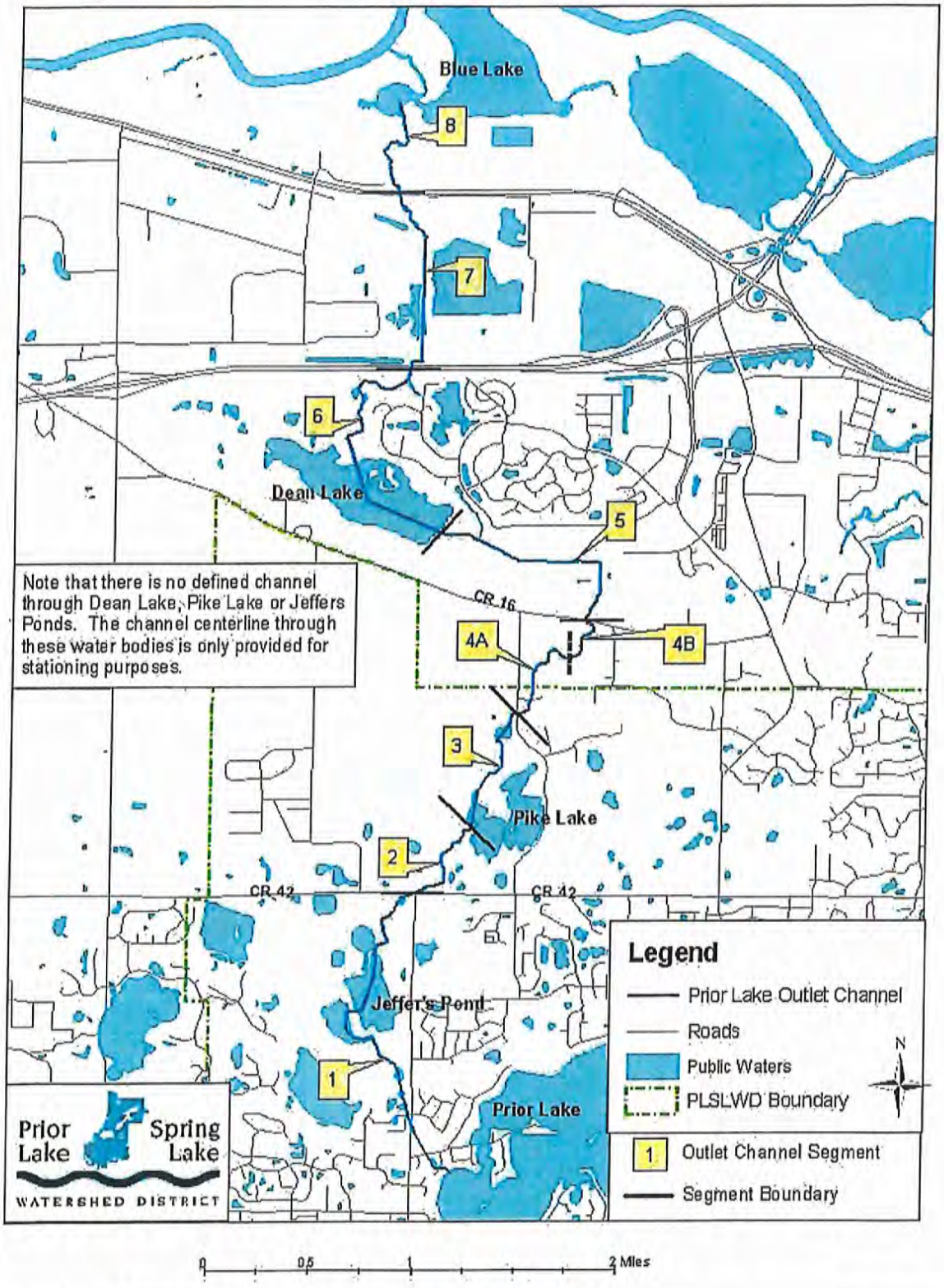


Exhibit B – Outlet Channel Segment Drainage Areas

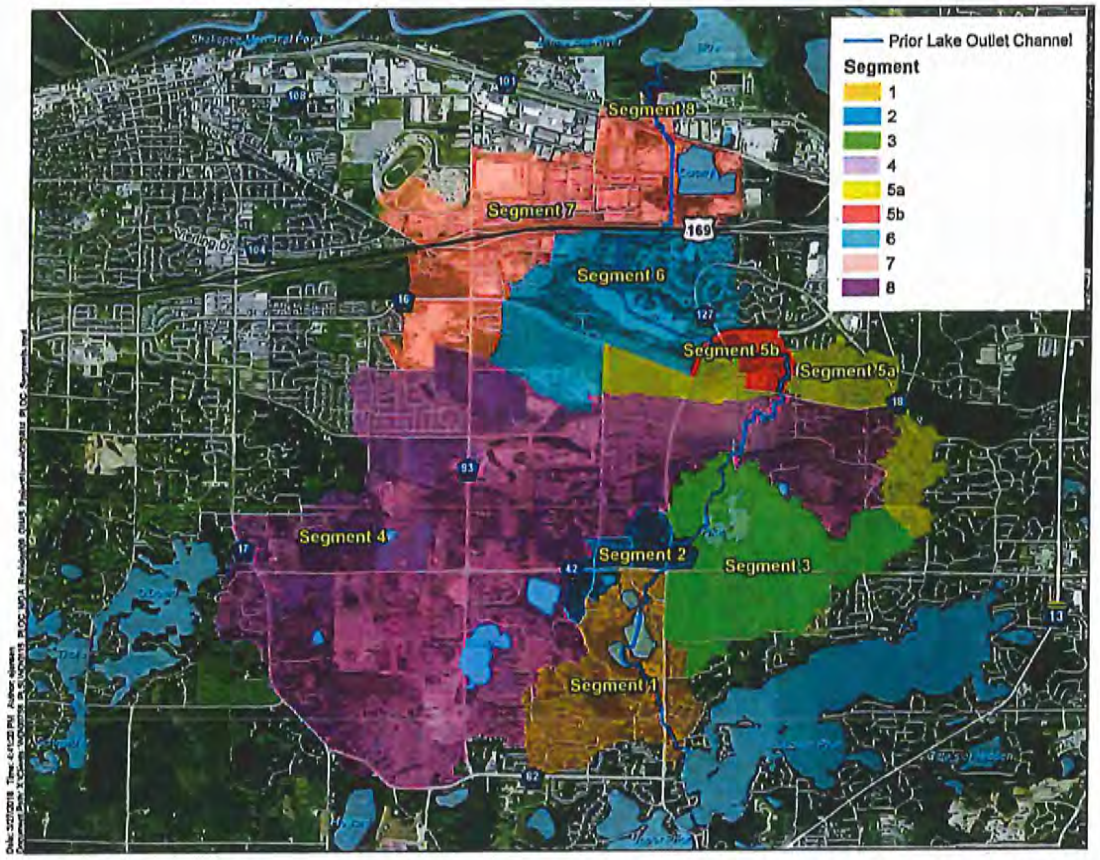


Exhibit C – Projected Average Discharge
Rate Calculation Formula and Example Calculations

1. Calculation Formula

Projected Average Discharge Rate =

Area-weighted average of the Projected Discharge Rates of individual new developments =

$$\sum [(A_{ND}/TA_{ND}) * \text{Max } D_{ND}]$$

Where:

A_{ND} = acres (i.e. size) of an individual new development

TA_{ND} = total acres of all new development after the MOA effective date

Max D_{ND} = Projected Discharge Rate for the 100-Year Rainfall Event, in cfs/acre, for each new development

2. Example Calculations

2.1 Scenario:

Assume that Outlet Channel Segment 2 has a drainage area of 260 acres, all within Prior Lake. A total of 60 acres was developed prior to the MOA Effective Date, and the remaining 200 acres are developed over a three-year period following the MOA Effective Date, as follows:

- Year 1: 50 acres of commercial development at a Projected Discharge Rate of 0.5 cfs/acre.
- Year 2: 100 acres of low-density residential development at a Projected Discharge Rate of 0.125 cfs/acre; and 25 acres of a development that existed prior to the MOA Effective Date is redeveloped.
- Year 3: 50 acres of medium-density residential development at a Projected Discharge Rate of 0.25 cfs/acre.

2.2 Background Information:

- Prior Lake Maximum Average Discharge Rate (from MOA Table 2): 0.25 cfs/acre
- Projected Discharge Rate of an existing development: 0.64 cfs/acre

2.3 Annual Certification:

Given the assumptions and background information presented above, Prior Lake would complete its annual certification for Years 1, 2, and 3 following the MOA Effective Date as follows:

A. Year 1:

(1) Prior Lake would report acres of land developed before the MOA Effective Date, land developed after the MOA Effective Date, and undeveloped land as follows:

Developed area prior to MOA:	60 acres
Developed area after MOA:	50 acres
Undeveloped area:	150 acres

(2) Prior Lake would report that no land was redeveloped in Year 1.

(3) Prior Lake would present the Projected Average Discharge Rate for new development as follows:

Projected Average Discharge Rate

$= \sum [(A_{ND}/TA_{ND}) * \text{Max } D_{ND}]$

= [(50 acres in Year 1/50 acres total) * 0.5 cfs/acre] = 0.5 cfs/acre

(4) Prior Lake would show how it plans to manage future development on the remaining 150 acres of undeveloped land in this Outlet Channel segment to meet its Maximum Average Discharge Rate of 0.25 cfs/acre.

B. Year 2:

(1) Prior Lake would report the acres of land developed before the MOA Effective Date, land developed after the MOA Effective Date, and undeveloped land as follows:

Developed area prior to MOA:	60 acres	
Developed area after MOA:	150 acres	(50 acres in Year 1 + 100 acres in Year 2)
Undeveloped area:	50 acres	

(2) Prior Lake would note that 25 acres of developed land was redeveloped. Prior Lake would show that the Projected Discharge Rate of the redeveloped land is equal to or less than the Projected Discharge Rate of the developed condition that existed on the MOA Effective Date (that is, 0.64 cfs/acre), or if the Projected Discharge Rate of the redeveloped land exceeded 0.64 cfs/acre, Prior Lake would show how that additional rate was offset by a reduction elsewhere in the Segment 2 tributary drainage area.

(3) Prior Lake would present the Projected Average Discharge rate of the new development since the MOA Effective Date as follows:

Projected Average Discharge Rate

$= \sum [(A_{ND}/TA_{ND}) * \text{Max } D_{ND}]$

= [(50 acres in Year 1/150 acres total) * 0.5 cfs/acre] +

[(100 acres in Year 2/150 acres total) * 0.125 cfs/acre] = 0.25 cfs/acre

(4) Prior Lake would show how it plans to manage future development on the remaining 50 acres of undeveloped land in this segment to meet its Maximum Average Discharge Rate of 0.25 cfs/acre.

C. Year 3:

(1) Prior Lake would report the acres of land developed before the MOA Effective Date, land developed after the MOA Effective Date, and undeveloped land as follows:

Developed area prior to MOA:	60 acres	(25 acres redeveloped in Year 2)
Developed area after MOA:	200 acres	(50 acres Year 1 + 100 acres in Year 2 + 50 acres in Year 3)
Undeveloped area:	0 acres	

(2) Prior Lake would report that no land was redeveloped in Year 3.

(3) Prior Lake would present the Projected Average Discharge rate of the new development since the MOA Effective Date as follows:

Projected Average Discharge Rate

$= \sum [(A_{ND}/TA_{ND}) * \text{Max } D_{ND}]$

= [(50 acres in Year 1/200 acres total) * 0.5 cfs/acre] +

[(100 acres in Year 2/200 acres total) * 0.125 cfs/acre] +

[(50 acres in Year 3/200 acres total) * 0.25 cfs/acre] = 0.25 cfs/acre

(4) Prior Lake would note that no new development will occur in this segment.

D. After Year 3:

After Year 3, Prior Lake's future annual certifications would consist of reporting on any redevelopment that occurs and demonstrating that the Projected Discharge Rate of the redevelopment is equal to or less then the previous developed condition.

Exhibit D – Calculation Method for Cost-Share Allocation

The Outlet Channel cost-share allocation in MOA Table 4 is calculated for each Outlet Channel segment as follows (see Table F-2 below for the column references and calculation results):

Step 1: The cumulative land transfers that have occurred between Project Cooperators to date are added to each Project Cooperator's Original Tributary Drainage Area within each Outlet Channel segment (Column A) and the result is recorded as the Updated Tributary Drainage Area (Column B).

Step 2: Each Project Cooperator's Maximum Average Discharge Rate from MOA Table 2 (Column C) and Duration Factor from MOA Table F-1 (Column D) are multiplied and the result is recorded as the Maximum Average Discharge Volume (Column E).

Step 3: The original tributary drainage area for each Project Cooperator in each Outlet Channel segment from MOA Table 1 (Column A) is multiplied by the Project Cooperator's Maximum Average Discharge Volume (Column E) calculated in Step 2. The result is preliminarily recorded as the Project Cooperator's Segment Discharge (Column F).

Step 4: The change in tributary drainage area resulting from cumulative land transfers between the Project Cooperators is calculated (Column B minus Column A).

Step 5: If the cumulative land transfers within an Outlet Channel segment have resulted in a decrease in tributary area for one of the Project Cooperators, then the absolute value of the result from Step 4 is multiplied by the Project Cooperator's Maximum Average Discharge Volume (Column E), and the result (called the Change in Segment Discharge) is subtracted from the Segment Discharge for that Project Cooperator that was recorded in Step 3. The result should be a decrease in Segment Discharge for that Project Cooperator.

Step 6: If the cumulative land transfers within an Outlet Channel segment have resulted in an increase in tributary area for one of the Project Cooperators, then the sum of all Changes in Segment Discharge calculated in Step 5 are added to the Segment Discharge for that Project Cooperator that was recorded in Step 3. The result should be an increase in Segment Discharge for that Project Cooperator.

Step 7: The Discharge From Upstream (Column G) is calculated as the cumulative flow in all upstream Outlet Channel Segments (from Column F).

Step 8: The Total Segment Flow (Column H) is calculated as the Segment Discharge (Column F) plus the Discharge From Upstream (Column G). The Total Segment Flow for the Watershed District should be manually assigned as 650 cfs-days in all Outlet Channel segments.

Step 9: The % of Total Segment Flow is calculated as the proportion of Total Segment Flow attributed to each Project Cooperator within each Outlet Channel segment. These are the values that are used to update the cost-share allocations.

Table D-1: Duration Factors for discharge to Outlet Channel segments

Project Cooperator	Duration Factor
Watershed District	10.0 days
Prior Lake	0.5 days
Shakopee: south (upstream) of Dean Lake, *excluding* 124.61 acres directly tributary to Outlet Channel Segment 5 (i.e. Segment 5a)	2.0 days
Shakopee: north (downstream) of Dean Lake, *including* 124.61 acres directly tributary to Outlet Channel Segment 5 (i.e. Segment 5b)	1.0 days
SMSC	2.0 days

Table D-2: Cost-Share Allocation Table with example land transfer from Prior Lake to SMSC in Segment 4

Outlet Channel Segment	Project Cooperators	A Original Tributary Drainage Area (acres)	B Updated Tributary Drainage Area (acres)	C Maximum Average Discharge Rate (cfs/acre)	D Duration Factor (days)	E Maximum Average Discharge Volume (cfs-days/acre)	F Segment Discharge (cfs-days)	G Discharge From Upstream (cfs-days)	H Total Segment Flow (cfs-days)	I % of Total Segment Flow
1	PLSLWD	0	0	65	10	650	650.0	0.0	650.0	87.0%
	Prior Lake	770.5	770.5	0.25	0.5	0.125	96.3	0.0	96.3	12.9%
	Shakopee	0	0	0.1	2	0.2	0.0	0.0	0.0	0.0%
	SMSC	6.6	6.6	0.05	2	0.1	0.7	0.0	0.7	0.1%
	Total	777.1	777.1						747.0	100.0%
2	PLSLWD	0	0	65	10	650	0.0	650.0	650.0	84.1%
	Prior Lake	180.2	180.2	0.25	0.5	0.125	22.5	96.3	118.8	15.4%
	Shakopee	0.0	0.0	0.1	2	0.2	0.0	0.0	0.0	0.0%
	SMSC	30.2	30.2	0.05	2	0.1	3.0	0.7	3.7	0.5%
	Total	210.4	210.4						772.5	100.0%
3	PLSLWD	0	0	65	10	650	0.0	650.0	650.0	72.1%
	Prior Lake	924.2	924.2	0.25	0.5	0.125	115.5	118.8	234.4	26.0%
	Shakopee	14.7	14.7	0.1	2	0.2	2.9	0.0	2.9	0.3%
	SMSC	108.7	108.7	0.05	2	0.1	10.9	3.7	14.5	1.6%
	Total	1047.5	1047.5						901.9	100.0%
4	PLSLWD	0	0	65	10	650	0.0	650.0	650.0	40.7%
	Prior Lake	1055.7	975.7	0.25	0.5	0.125	122.0	234.4	356.3	22.3%
	Shakopee	1748.7	1748.7	0.1	2	0.2	349.7	2.9	352.7	22.1%
	SMSC	2140.7	2220.7	0.05	2	0.1	224.1	14.5	238.6	14.9%
	Total	4945.1	4945.1						1597.6	100.0%

5a	PLSLWD	0	0	65	10	650	0.0	650.0	650.0	38.2%
	Prior Lake	37	37.09	0.25	0.5	0.125	4.6	356.3	361.0	21.2%
	Shakopee	455.8	455.8	0.1	2	0.2	91.2	352.7	443.8	26.1%
	SMSC	86.5	86.5	0.05	2	0.1	8.7	238.6	247.3	14.5%
	Total	579.4	579.4						1702.1	100.0%
5b	PLSLWD	0	0	65	10	650	0.0	650.0	650.0	37.4%
	Prior Lake	0	0	0.25	0.5	0.125	0.0	361.0	361.0	20.8%
	Shakopee	143.3	143.3	0.25	1	0.25	35.8	443.8	479.6	27.6%
	SMSC	0	0	0.05	2	0.1	0.0	247.3	247.3	14.2%
	Total	143.3	143.3						1737.9	100.0%
6	PLSLWD	0	0	65	10	650	0.0	650.0	650.0	33.2%
	Prior Lake	0	0	0.25	0.5	0.125	0.0	361.0	361.0	18.4%
	Shakopee	758.2	758.2	0.25	1	0.25	189.5	479.6	669.2	34.2%
	SMSC	302.8	302.8	0.05	2	0.1	30.3	247.3	277.6	14.2%
	Total	1061.0	1061.0						1957.7	100.0%
7	PLSLWD	0	0	65	10	650	0.0	650.0	650.0	27.9%
	Prior Lake	0	0	0.25	0.5	0.125	0.0	361.0	361.0	15.5%
	Shakopee	1469	1469.32	0.25	1	0.25	367.3	669.2	1036.5	44.5%
	SMSC	26	25.89	0.05	2	0.1	2.6	277.6	280.1	12.0%
	Total	1495	1495.21						2327.6	100.0%
8	PLSLWD	0	0	65	10	650	0.0	650.0	650.0	27.8%
	Prior Lake	0	0	0.25	0.5	0.125	0.0	361.0	361.0	15.5%
	Shakopee	29.0	29.0	0.25	1	0.25	7.2	1036.5	1043.8	44.7%
	SMSC	0	0	0.05	2	0.1	0.0	280.1	280.1	12.0%
	Total	29.0	29.0						2334.9	100.0%

Exhibit E – Drainage Area Change Recalculation Example

1. Scenario:

The SMSC purchases 80 acres of land in Prior Lake that is tributary to Outlet Channel Segment 4.

2. Background Information:

Size of Tributary Drainage Area Change:	80 acres
SMSC Tributary Drainage Area in Segment 4 prior to land transfer:	2,140.7 acres
Prior Lake Tributary Drainage Area in Segment 4 prior to land transfer:	1,055.7 acres

3. Step-by-Step Recalculation Example:

Step 1: The Updated Tributary Drainage Areas are calculated:

SMSC	2,140.7 acres + 80 acres = 2,220.7 acres
Prior Lake	1,055.7 acres - 80 acres = 975.7 acres

Step 2: The Maximum Average Discharge Volumes are calculated for all Project Cooperators:

Prior Lake	0.25 cfs/acre * 0.5 days = 0.125 cfs-days/acre
Shakopee	0.1 cfs/acre * 2 days = 0.2 cfs-days/acre
SMSC	0.05 cfs/acre * 2 days = 0.1 cfs-days/acre

Step 3: The original Segment Discharges are calculated for all Project Cooperators:

Prior Lake	1,055.7 acres * 0.125 cfs-days/acre = 132.0 cfs-days
Shakopee	1,748.7 acres * 0.2 cfs-days/acre = 349.7 cfs-days
SMSC	2,140.7 acres * 0.1 cfs-days/acre = 214.1 cfs-days

Step 4: The cumulative change in tributary drainage area is calculated for all Project Cooperators:

Prior Lake	975.7 acres – 1,055.7 acres = -80 acres
Shakopee	1,748.7 acres – 1,748.7acres = 0 acres
SMSC	2,220.7 acres – 2,140.7 acres = 80 acres

Step 5: The cumulative changes for Prior Lake is negative, so Segment Discharge is decreased:

Prior Lake [to SMSC]	132.0 cfs-days - (80 acres * 0.125 cfs-days/acre) = 122.0 cfs-days
Shakopee [to SMSC]	349.7 cfs-days - (0 acres * 0.2 cfs-days/acre) = 349.7 cfs-days

Step 6: The cumulative change for SMSC is positive, so Segment Discharge is increased:

SMSC	214.1 cfs-days
[from Prior Lake]	+ (80 acres * 0.125 cfs-days/acre)
	+ (0 acres * 0.2 cfs-days/acre)
	= 224.1 cfs-days

Step 7: The Discharge From Upstream is calculated as the Total Segment Flow from Segment 3:

PLSLWD	650.0 cfs-days
Prior Lake	234.4 cfs-days
Shakopee	2.9 cfs-days
SMSC	14.5 cfs-days

Step 8: The Total Segment Flow is calculated:

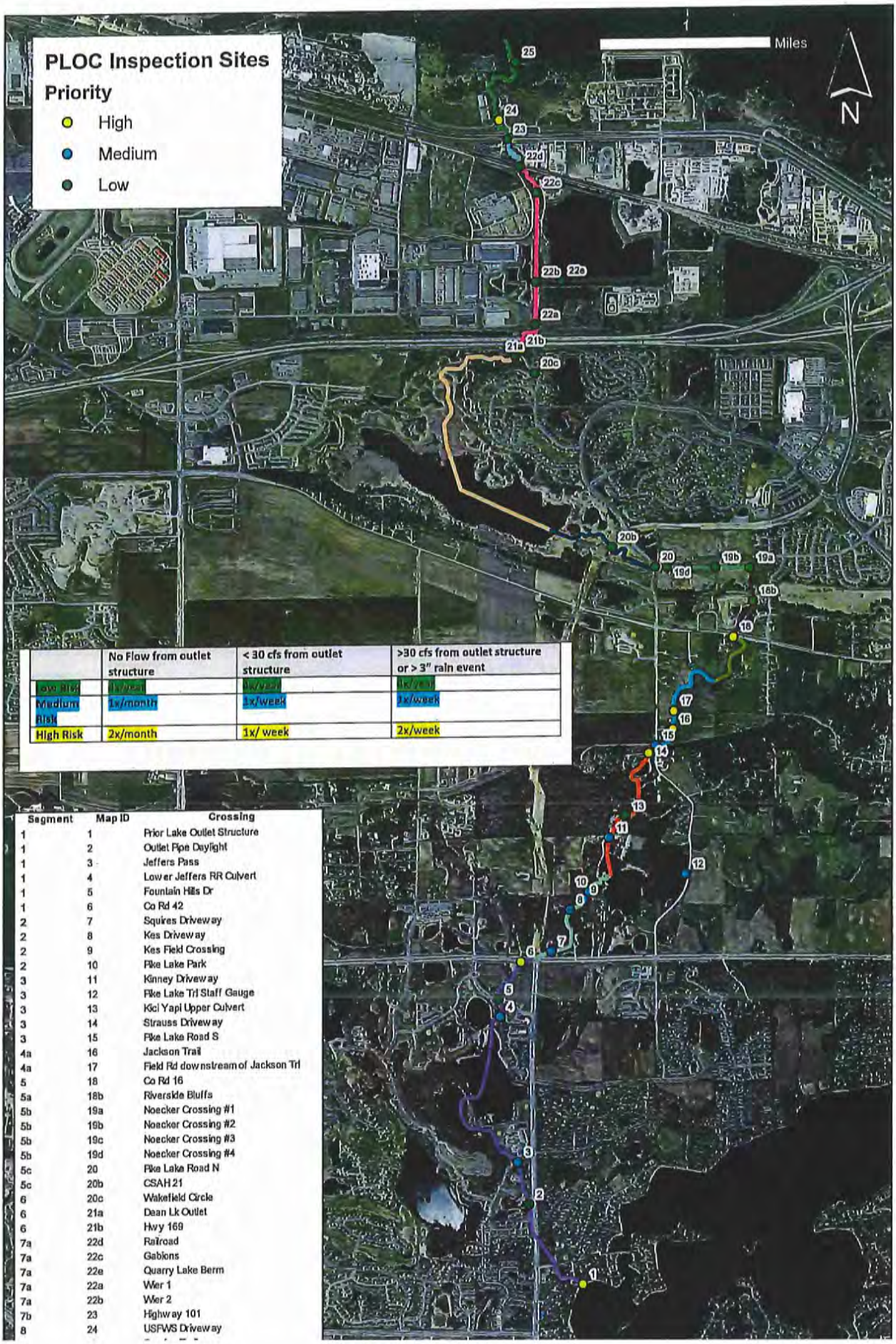
PLSLWD	650 cfs-days
Prior Lake	122.0 cfs-days + 234.4 cfs-days = 356.3 cfs-days
Shakopee	349.7 cfs-days + 2.9 cfs-days = 352.7 cfs-days
SMSC	224.1 cfs-days + 14.5 cfs-days = 238.6 cfs-days
Segment 4 Total	1,597.6 cfs-days

Step 9: The % of Total Segment Flow is calculated:

PLSLWD	650 / 1,597.6 = 40.7%	(unchanged)
Prior Lake	356.3 / 1,597.6 = 22.3%	(decreased by 0.6%)
Shakopee	352.7 / 1,597.6 = 22.1%	(unchanged)
SMSC	238.6 / 1,597.6 = 14.9%	(increased by 0.6%)

The values for the remaining downstream Outlet Channel segments will also need to be recomputed, and the resulting percentages can be used to allocate Outlet Channel maintenance costs for each segment.

Outlet Channel Inspection Sites



	No Flow from outlet structure	< 30 cfs from outlet structure	>30 cfs from outlet structure or > 3" rain event
Low Risk	1x/year	1x/year	1x/year
Medium Risk	1x/month	1x/week	1x/week
High Risk	2x/month	1x/ week	2x/week

Segment	Map ID	Crossing
1	1	Prior Lake Outlet Structure
1	2	Outlet Pipe Daylight
1	3	Jeffers Pass
1	4	Lower Jeffers RR Culvert
1	5	Fountain Hills Dr
1	6	Co Rd 42
2	7	Squires Driveway
2	8	Kes Driveway
2	9	Kes Field Crossing
2	10	Pike Lake Park
3	11	Kinney Driveway
3	12	Pike Lake Trl Staff Gauge
3	13	Kcl Yapi Upper Culvert
3	14	Strauss Driveway
3	15	Pike Lake Road S
4a	16	Jackson Trail
4a	17	Field Rd downstream of Jackson Trl
5	18	Co Rd 16
5a	18b	Riverside Bluffs
5b	19a	Noecker Crossing #1
5b	19b	Noecker Crossing #2
5b	19c	Noecker Crossing #3
5b	19d	Noecker Crossing #4
5c	20	Pike Lake Road N
5c	20b	CSAH 21
6	20c	Wakefield Circle
6	21a	Dean Lk Outlet
6	21b	Hwy 169
7a	22d	Railroad
7a	22c	Gabions
7a	22e	Quarry Lake Berm
7a	22a	Wier 1
7a	22b	Wier 2
7b	23	Highway 101
8	24	USFWS Driveway

Prior Lake-Spring Lake Watershed District

Prior Lake Outlet Control Structure

Management Policy and Operating Procedures

Revised July 3, 2017

Prior Lake-Spring Lake Watershed District

4646 Dakota Street SE
Prior Lake, MN 55372

Contents

Introduction

The purpose of this document is to state the goals, policies, and operating procedures that govern the use of the Prior Lake Outlet Control Structure (Outlet Structure). The outlet and discharge of excess water from Prior Lake is addressed in the District's Water Resources Management Plan, last revised May 2013, a plan approved under Minnesota Statutes, Chapter 103B and 103D. Original construction of the Outlet Structure, subsequent modifications, reconstruction as well as operation of the Outlet Structure is permitted under Minnesota Protected Waters Permit 1979-6016.

The Outlet Structure is designed to provide an outlet for a landlocked chain of lakes (Spring, Upper and Lower Prior Lakes) allowing water to be drained off Prior Lake during times of high lake levels, or predicted high water levels, in order to create storage and minimize adverse impacts to property and structures around Prior Lake. The outlet has been used to discharge excess water from Prior Lake since it was constructed in 1983. The original structure controlled discharge by means of a front slide gate and 16 side gates. After 20 years of use, the original structure was beginning to deteriorate and discharge monitoring showed that it was inefficient in maximizing the capacity of the 36-inch reinforced concrete outlet pipe. In addition, it was determined that the Prior Lake Outlet Channel (Outlet Channel) downstream could also be modified in several places to operate more efficiently with reduced erosion and downstream sedimentation. The District therefore proposed Outlet Channel improvements and a new Outlet Structure.

The existing Outlet Structure was constructed in 2010 with a fixed-crest weir set at an elevation of 902.5 feet (NGVD 1929), which eliminated the need to manually open the structure to discharge water from the lake. The Outlet Structure is also equipped with a slide gate (low-flow gate) to allow manual discharge down to a lake elevation of 902.0 as allowed by this Management Policy and Operating Procedures. The Outlet Structure is also equipped with a slide gate (main gate) on the outlet pipe to allow for full closure of the outlet, as needed for emergencies or maintenance.

Background information and studies leading up to the decision for Outlet Channel improvements and a new Outlet Structure are documented in the *Environmental Assessment Worksheet for the Prior Lake Outlet and Channel Improvement Project, July 2004*, and the *Prior Lake Outlet Channel and Lake Volume Management Study, May 2003*. Preparation of this study was made possible by a Flood Damage Reduction Grant from the Minnesota Department of Natural Resources, and included significant input from the public and from project partners such as the Cities of Prior Lake and Shakopee, Shakopee Mdewakanton Sioux Community (SMSC), and the Minnesota Department of Natural Resources (DNR). Construction Plans and As-Built Plans for the Outlet Structure are included as Attachment 1.

Section I – Management Goals

The District manages runoff within the District and the discharge from the Outlet Structure holistically by adhering to the *Memorandum of Agreement for Use, Operation & Maintenance of the Prior Lake Outlet Channel and Outlet Structure (MOA)*, pursuing watershed runoff management and minimizing

flood impacts by efficient operation of the Outlet Structure within the confines of the capacity of the Outlet Structure and the Outlet Channel. This plan is drafted with the following Management Goals in mind:

1) To reduce flooding on the lake and within the Outlet Channel to the greatest practical extent.
2) To enhance the recreational value of the lake and the terrestrial and aquatic life habitat values of the lake and Outlet Channel when feasible and consistent with this plan.
3) To minimize shoreline erosion from flooding.

Section II – Management Policy

Management Policies are a means to achieving an established goal. They are listed according to the goal they are designed to help achieve.

A. Flood Reduction

1) The District will control the discharge from Prior Lake to a flow rate not to exceed 65 cubic feet per second (cfs).
2) The District will actively operate the low-flow gate in order to create storage capacity and maximize outlet efficiency.
3) The District will implement stormwater management rules to minimize runoff volume and peak flow rates from new development and redevelopment.
4) The District will cooperate with local, state and federal units of government to manage development based on the 100-year flood level for all bodies of water.
5) The District will actively pursue partners and funding opportunities in order to implement cost-effective cost-share and capital improvement projects in the watershed to reduce runoff volume discharged to the lake.

B. Recreation & Habitat Values

1) The District will discourage the use of lake beds and beds of water bodies for the placement of roads, highways, utilities, and other non-water related actives.
2) The District will encourage the wise use and protection of shorelands and other sensitive areas (e.g., steep slopes) in the District.

These policies are consistent with the MNDNR's goal to manage public waters as listed under Minnesota Administrative Rule 6115.0220 Water Level Controls Subpart 1.A, "to maintain or restore natural flow and natural water level conditions to the maximum feasible extent."

C. Shoreline & Bank Stability

1) The District, in partnership with the MOA Cooperators, will inspect the condition of and maintain a stable outlet channel via implementation of engineered bank stabilization and maintenance projects, as necessary.

2) The District will implement erosion control rules to improve and protect the stability of shoreline areas.

Section III – Operating Procedures

These procedures establish discharge zones and the limits within which discharges may occur as a function of lake level and time (months). A range of discharges is defined for each zone to account for the fixed-weir outlet capacity and operation of the low-flow gate. The discharge zones are based on sound hydrologic principles and are designed to achieve the Management Goals and Policies. Hydrologic analysis and decisions related to establishing the discharge zones are documented in the *Prior Lake Outlet Channel and Lake Volume Management Study*, *May 2003,* the *Prior Lake Stormwater Management and Flood Mitigation Study*, *December 2016*, and Outlet Structure rating curves established by District monitoring, included herein as Attachment 2. Attachment 3 shows the discharge zones and their allowable discharge rates in graphical form. These zones are described in Section III.A below.

The MOA with the Cities of Prior Lake and Shakopee and the SMSC specify certain actions to be taken before releasing any water through the Outlet Structure. Prior to discharge from the Outlet Structure, the Outlet Channel must be inspected to ensure free flow conditions and the District shall provide notice to the Cities of Shakopee and Prior Lake and the SMSC.

A. Discharge Settings and Adjustments

Discharge settings and adjustments are described as zones of control in the following paragraphs. It should be noted that the low-flow gate is intended to be used minimally, as the outlet elevation was established at 902.5 (NGVD 1929) via Minnesota Protected Waters Permit 1979-6016 in order to comply with Minnesota Administrative Rule 6115.0221.

A-1: Zone 1 – 65 cfs Maximum Discharge (lake elevation >903.5')

The discharge capacity of the Outlet Structure is the same at or above a lake elevation of 903.5, whether or not the low-flow gate is open. Therefore the low-flow gate will be operated in its closed position at or above a lake elevation of 903.5. If the low-flow gate was open prior to the lake level reaching 903.5', it may remain open. At these lake elevations, the maximum discharge of 65 cfs is based on the capacity of the outlet pipe that extends from the Outlet Structure to its daylight point west of CSAH 21. Staff will ensure the Outlet Structure trash rack is free of debris to allow maximum flow through the structure.

A-2: Zone 2 – 50 cfs Maximum Discharge (lake elevation 902.5-903.5)

Discharge within this zone ranges from zero to 50 cfs. The Outlet Structure is designed such that discharge will occur automatically above elevation 902.5 when the low-flow gate is closed. It is the intent of the District to operate the low-flow gate minimally during Zone 2 discharge. The low-flow gate was not designed to manage high flows and is not to be expected to manage high water levels. However, as can be seen in Attachment 2, some additional discharge capacity can be realized with the low-flow gate open between the lake elevations of 902.5 and 903.5. Therefore, the District may open the low-flow gate if the Spring Lake discharge rate (minus estimated infiltration and evaporation) exceeds the Outlet Structure discharge rate with the low-flow gate closed and there is an immediate

threat of Prior Lake rising above 904.0. If the low-flow gate is opened within this zone, it will again be closed if: a) the lake elevation drops to 902.5, or b) the Spring Lake discharge rate (minus estimated infiltration and evaporation) drops below the Outlet Structure discharge rate with the low-flow gate closed. The low-flow gate will not be opened below the lake elevation of 902.5, except for Zone 3 discharge.

A-3: Zone 3 – Spring & Fall Drawdown (902.0-903.5)

The low-flow gate was not designed to manage high flows and is not to be expected to manage high water levels. The main purpose of the low-flow gate is to provide additional storage in spring and/or fall. During March and April, the lake level will be allowed to drop to an elevation of 902.0 by opening the low-flow gate, if additional storage is anticipated to be needed. Lake level forecasting may be calculated on a volume basis by translating the volume of water stored in upstream lakes and the snow-water equivalent of the snowpack to the surface area above the (then) current elevation of Prior Lake. The low-flow gate will be closed when the lake reaches 902.0 or the need for additional storage has diminished.

Under extraordinary wet conditions, the low-flow gate may also be opened during November & December to a level no less than 902.0. These wet conditions would entail saturated ground conditions and a significant amount of discharge from Spring Lake to Prior Lake during November and December. These conditions represent an increased risk for an over-winter rise in lake level and potential spring flooding problems in combination with snowmelt.

A-4: Zone 4 – No Discharge (<902.0)

The lake may not be lowered below 902.0 by use of the low-flow gate. The Outlet Structure is capable of lowering the lake level to 901.5 if the low-flow gate is open. This will not be allowed unless an emergency occurs and the DNR grants approval.

B. Data Collection and Discharge Adjustment

Field data shall be collected and discharge adjustments at the Outlet Structure shall be performed in accordance with this section to implement the policy identified in Section I, Management Policy.

B-1: Outlet Channel Discharge Data

Discharge will be calculated using a relationship with lake level or by installing equipment capable of calculating continuous discharge. Lake level loggers will be installed and operated at the Outlet Structure when the Outlet Structure is in operation.

The Outlet Channel will also be routinely inspected during outlet operation per the *Prior Lake Outlet Channel Inspection Frequency Guidelines*, appended hereto as Attachment 4. These inspections will be completed to identify erosion, blockages, or flooding problems and may result in adjustment of the low-flow gate or closure of the Outlet Structure main gate if maintenance is needed in the channel.

B-2: Lake Levels, Ditch and Creek Discharge Data

The following data will be collected:

Stage & Discharge Data	Frequency
County Ditch 13 to Spring Lake	Continuous recording during open water season
Spring Lake to Prior Lake	Continuous recording during open water season
Prior Lake to Outlet Channel	Continuous recording during open water season

B-3: Analysis and Reporting of Data

The District shall analyze regularly and summarize annually the discharge and level data collected on Prior Lake as well as the log of Outlet Structure operations. This summary shall be transmitted to the DNR Regional Office and the MOA Cooperators annually, or more frequently if problems or issues arise. This information shall also be posted to the District's website.

B-4: Implementation of Recommended Action

The District shall operate the Outlet Structure in accordance with Section III Operating Procedures.

B-5: Emergency Adjustment

The District shall have the authority to adjust the Outlet Structure discharge rate when immediate change is necessary to reduce or avoid significant risk to safety or damage to property. The District shall promptly communicate any emergency adjustments to the DNR and Prior Lake Outlet Channel Cooperators.

If discharge to the Outlet Channel causes erosion, flooding, or other adverse consequences downstream, the outlet may be closed to allow Outlet Channel flows to abate and allow maintenance. The District has a monitoring program to assist with promptly reacting to extreme rainfall events.

B-6: High Water Conditions

When high water conditions are reported or predicted, the District shall promptly investigate the reported or predicted high water condition and determine whether adjustments can be made in the discharge through the Outlet Structure that would reduce the high water conditions. If adjustments can be made that are consistent with the Management Policy, the District shall promptly make such adjustments as are appropriate to reduce high water conditions. For purposes of these operation procedures, high water is defined as a lake level at or above the Ordinary High Water elevation of 903.9.

B-7: Operational Responsibility

The District may enter into a contract with another governmental agency to provide operating personnel. Employees of the contracting agency will handle minor maintenance and repairs when required and will make regular trips to the site as directed by the District. The Outlet Structure shall be operated by the District in accordance with the limitations set forth in the *Prior Lake Outlet Control Structure Management Policy and Operating Procedures*, Minnesota DNR Permit No. 79-6016 and the MOA with the Cities of Prior Lake and Shakopee and the SMSC.

Section IV – Terms and Amendments to the Management Policy and Operating Procedures

A. Term

This document defines the Management Policy and Operating Procedures for the Prior Lake Outlet Structure for the period of July 1, 2017 and thereafter. Any amendments to this document shall be made pursuant to Section IV.B below.

B. Review of Management Policy and Operating Procedures

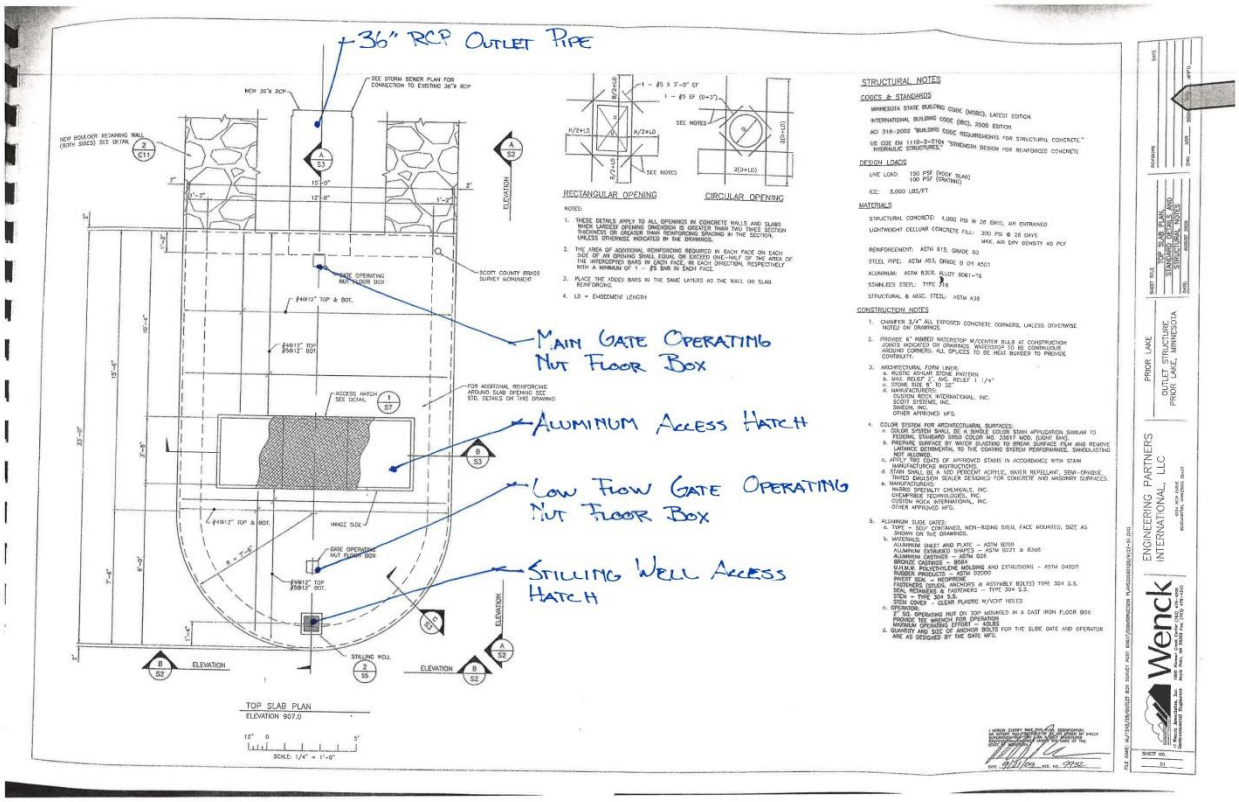
On or before April 1, 2020, the District shall submit to the DNR any amendments to this Management Policy and Operating Procedures deemed necessary by the District for the three (3) year period commencing July 1, 2020. At least thirty (30) days prior to any submittal to the DNR, the District shall provide the municipalities within the watershed a copy of the proposed amendments such that sufficient opportunity to submit comments to the DNR is allowed. Within sixty (60) days of receipt, the DNR shall advise the District in writing of the acceptance, rejection, modification or additions to the proposal.

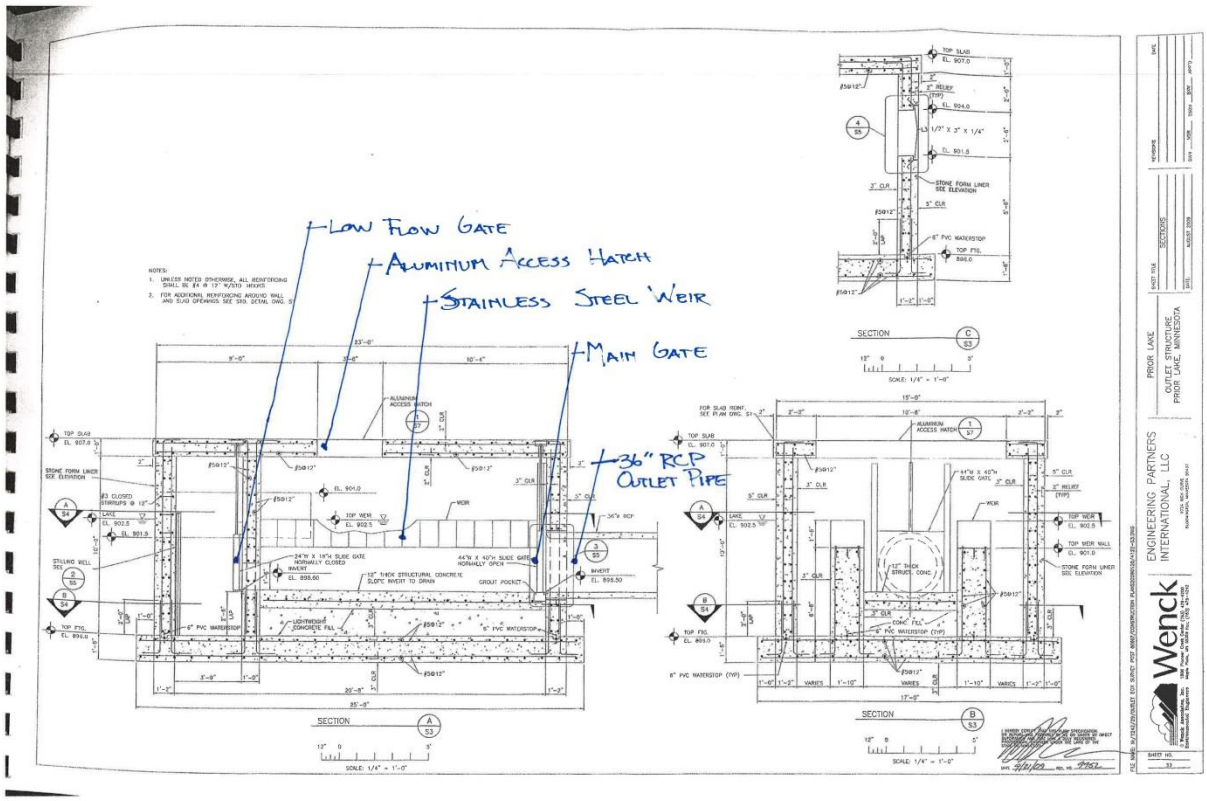
Any public hearing that may be held on a proposed amendment to the Management Policy and Operating Procedures shall be governed by Minnesota Statutes 103F.311. If a hearing is held, the existing operational procedures shall remain in full force and effect until a final administrative decision is reached. Following the final administrative hearing decision, or if no hearing is held, the amendments, if any, shall be incorporated into the foregoing Management Policy and Operating Procedures for the following three (3) year term commencing July 1, 2020 and be distributed to affected municipalities and agencies.

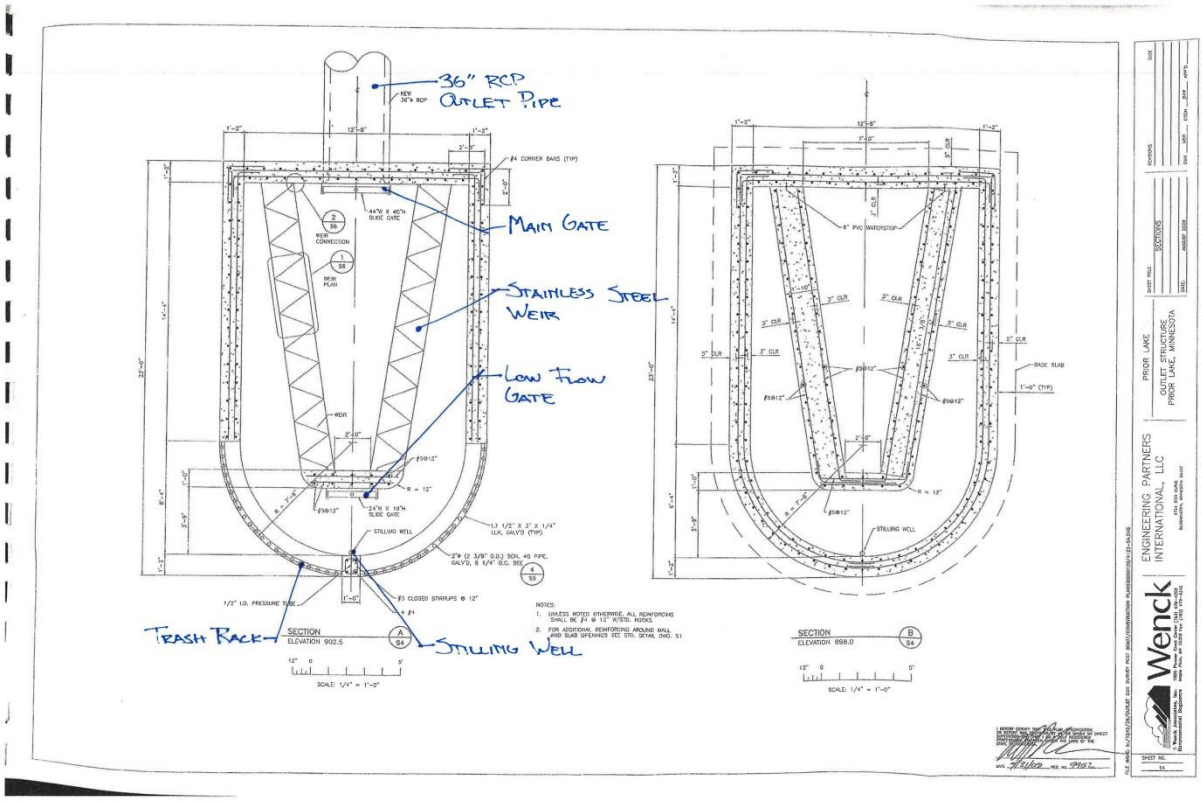
This review procedure shall be repeated every three (3) years, although the District may deem that amendments are not necessary.

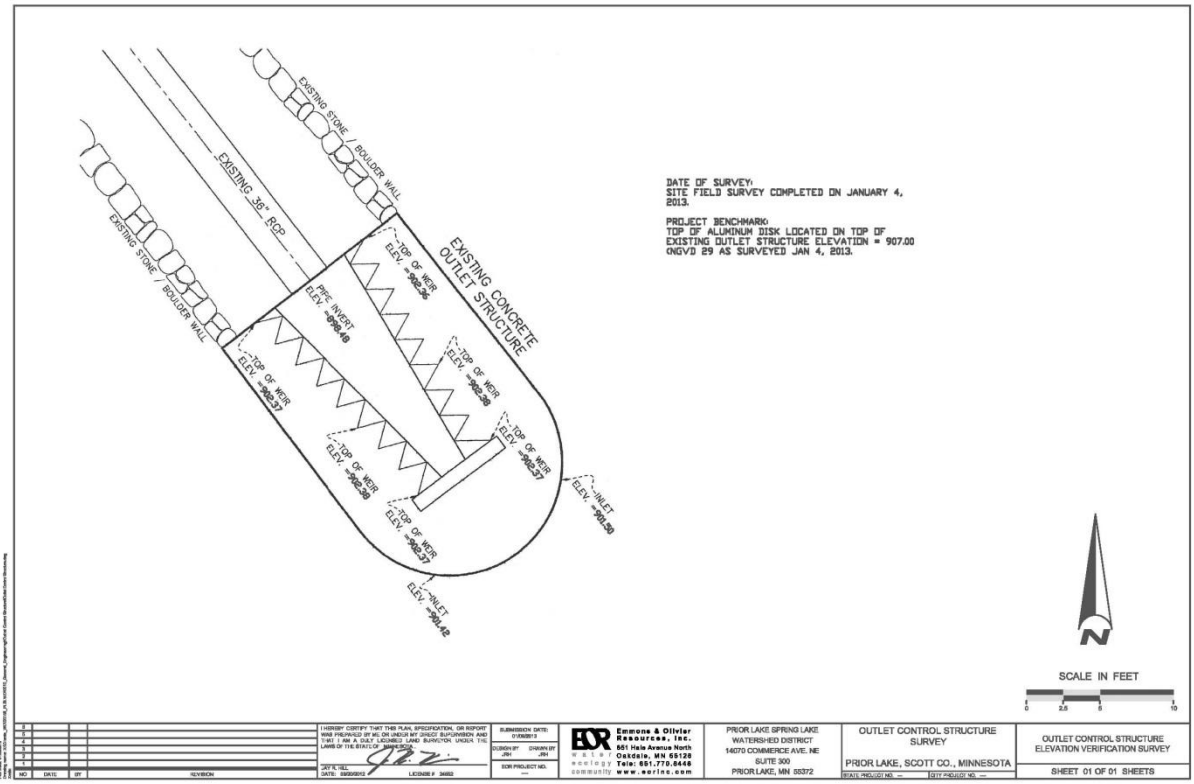
Attachment 1: Outlet Structure Construction Plans & As-Built

(Pages 9-10)

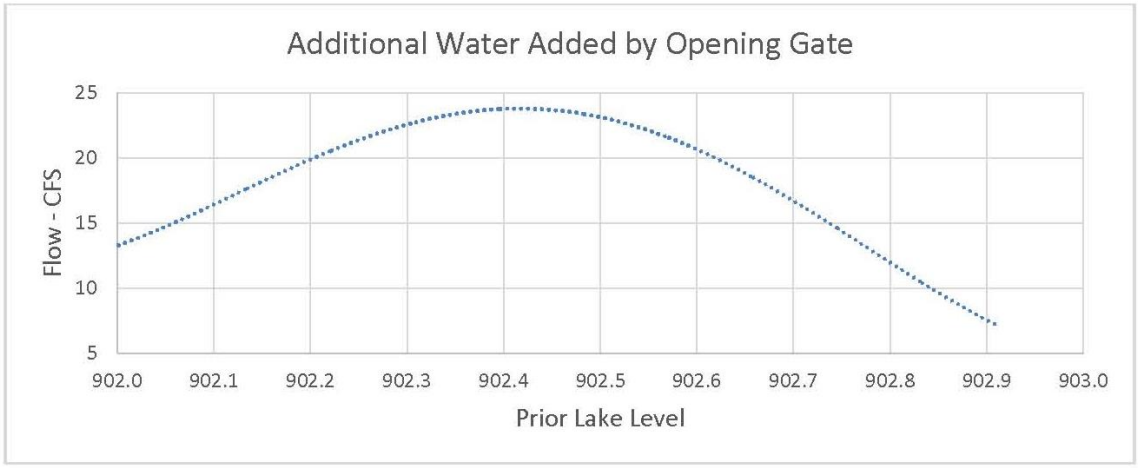

36" RCP Outlet Pipe
Main Gate Operating Nut Floor Box
Aluminum Access Hatch
Low Flow Gate Operating Nut Floor Box
Stilling Well Access Hatch
TOP SLAB PLAN
ELEVATION 907.0
RECTANGULAR OPENING
CIRCULAR OPENING
STRUCTURAL NOTES
CONSTRUCTION NOTES
PRIOR LAKE
OUTLET STRUCTURE
PRIOR LAKE, MINNESOTA
ENGINEERING PARTNERS INTERNATIONAL, LLC
Wenck

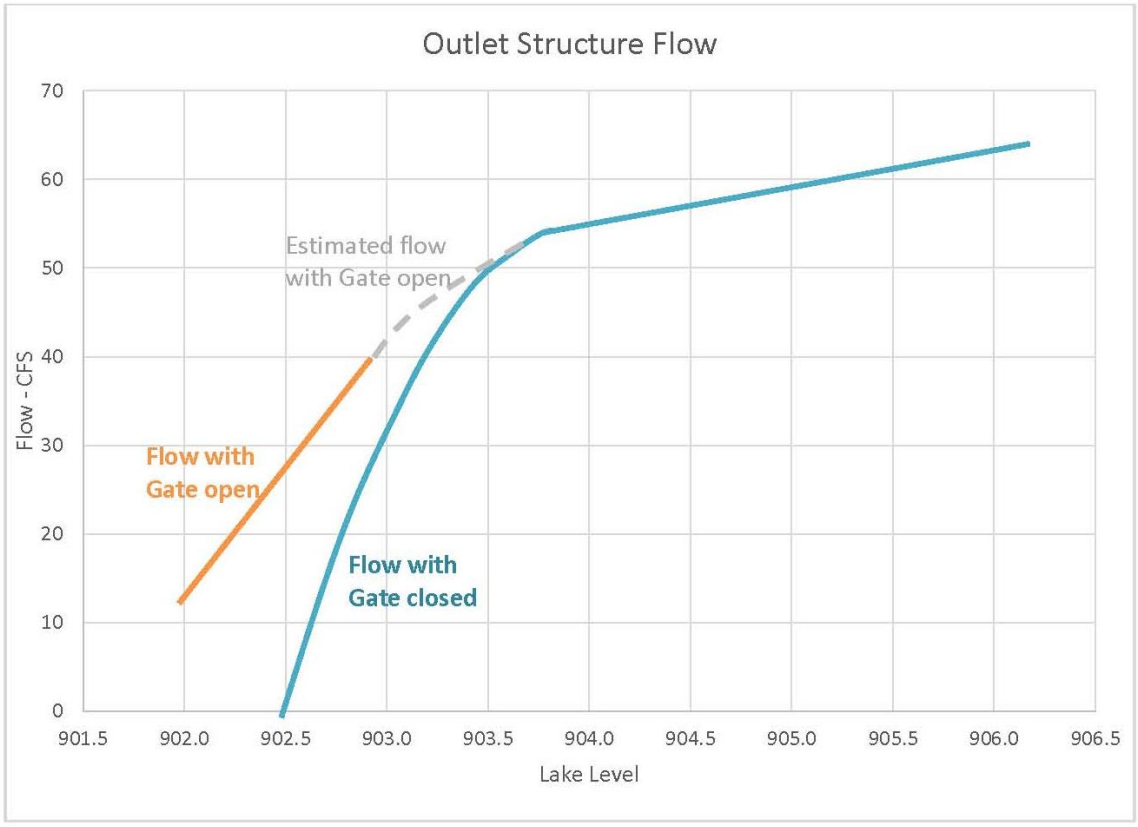

Low Flow Gate
Aluminum Access Hatch
Stainless Steel 'Weir
Main Gate
36" RCP Outlet Pipe
SECTION
PRIOR LAKE
OUTLET STRUCTURE
PRIOR LAKE, MINNESOTA
ENGINEERING PARTNERS INTERNATIONAL, LLC
Wenck


36" RCP
OUTLET PIPE
MAIN GATE
STAINLESS STEEL
WEIR
LOW FLOW
GATE
TRASH RACK
STILLING WELL
SECTION
ELEVATION 902.5
SECTION
ELEVATION 898.0
PRIOR LAKE
OUTLET STRUCTURE
PRIOR LAKE, MINNESOTA
ENGINEERING PARTNERS
INTERNATIONAL, LLC
Wenck

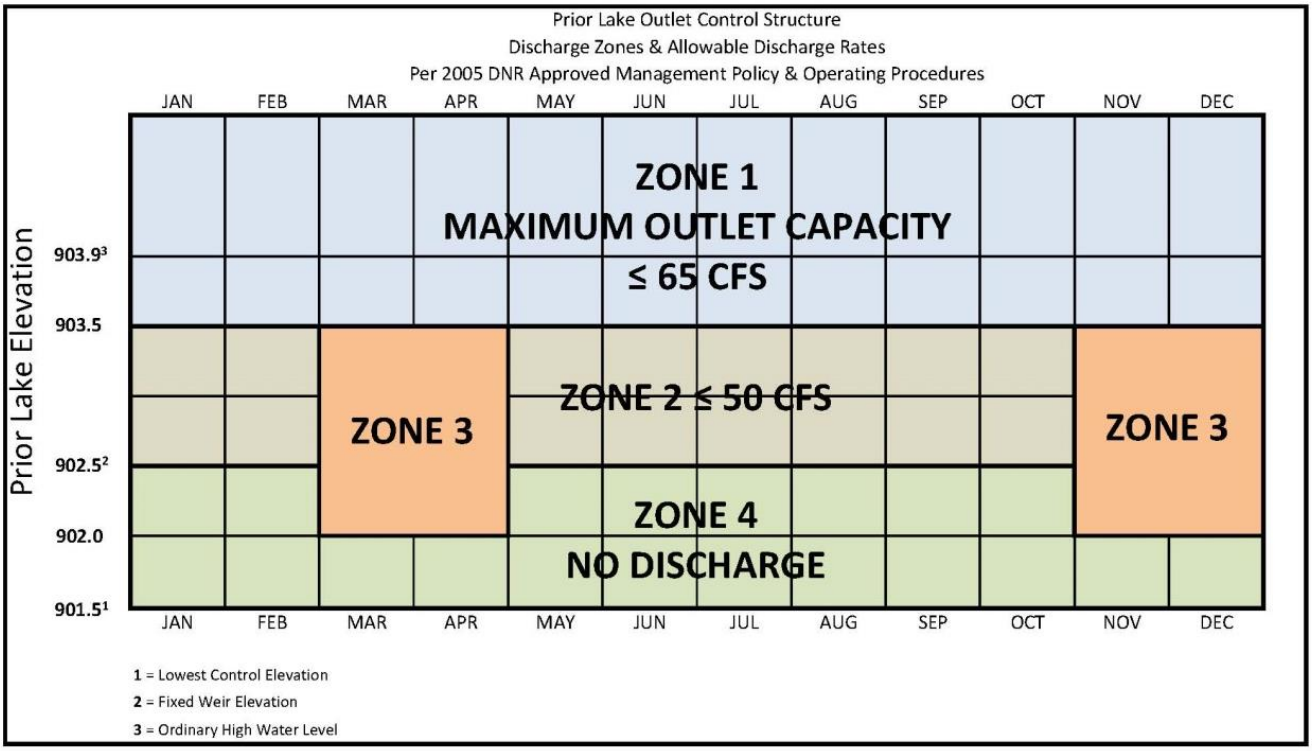

EXISTING STONE / BOULDER WALL
EXISTING 36" RCP
EXISTING CONCRETE
OUTLET STRUCTURE
PIPE INVERT
ELEV. =898.48
TOP OF WEIR
ELEV. =902.36
TOP OF WEIR
ELEV. =902.38
TOP OF WEIR
ELEV. =902.37
TOP OF WEIR
ELEV. =902.37
TOP OF WEIR
ELEV. =902.37
TOP OF WEIR
ELEV. =902.37
INLET
ELEV. =901.30
INLET
ELEV. =901.42
DATE OF SURVEY:
SITE FIELD SURVEY COMPLETED ON JANUARY 4, 2013.
PROJECT BENCHMARK:
TOP OF ALUMINUM DISK LOCATED ON TOP OF EXISTING OUTLET STRUCTURE ELEVATION = 907.00 (NGVD 29 AS SURVEYED JAN 4, 2013.
SCALE IN FEET
Emmons & Olivier Resources, Inc.
651 Hale Avenue North
Oakdale, MN 55128
Tele: 651.770.8448
www.eorinc.com
PRIOR LAKE SPRING LAKE WATERSHED DISTRICT
14070 COMMERCE AVE. NE
SUITE 300
PRIOR LAKE, MN 55372
OUTLET CONTROL STRUCTURE SURVEY
PRIOR LAKE, SCOTT CO., MINNESOTA
OUTLET CONTROL STRUCTURE ELEVATION VERIFICATION SURVEY
SHEET 01 OF 01 SHEETS

Attachment 2: Outlet Structure Rating Curves





Attachment 3: Discharge Zone Figure



Attachment 4: PLOC Inspection Frequency Guidelines

(Pages 14-15)

DRAFT Prior Lake Outlet System Inspection Frequency Guidelines

Updated 4/28/17

Channel Inspections: Walk entire length of channel during spring and fall to document any significant changes that could cause issues, such as: erosion, blockage, downed trees, hazardous waste, or invasive species. If possible, inspect before outlet structure starts discharging or when flow is low.

Culvert Inspections: All crossings of the outlet channel will be inspected based on risk factor. These are general guidelines and may be modified if needed.

LOW RISK CROSSINGS:

- Bridges
- Box culverts
- Oversized culverts
- Weirs
- Downstream sides of crossings when no grate is attached

MEDIUM RISK CROSSINGS:

- Crossings constructed or reconstructed within the last year
- All other crossings that are not considered high or low risk

HIGH RISK CROSSINGS:

- Culverts with grates
- Undersized culverts
- Crossings with items of concern from previous inspections

	No Flow from outlet structure	Flow from outlet structure
Low Risk	2x/year	2x/year
Medium Risk	2x/year	1x/month
High Risk	1x/month	1x/ week

Report Frequency – An annual report will be emailed to all partners by February 20th of each year summarizing the inspections and all projects in along the PLOC. If issues arise and need attention, the appropriate partner will be contacted.

Illicit Discharge: All crossings of the outlet channel will be inspected based on risk factor. These are general guidelines and may be modified if needed. The District's PLOC Inspection Form can be used during routine outlet channel inspections to detect continuous, transitory or intermittent discharges. If an illicit discharge is observed, such as significant flow during dry weather, the presence of raw sewage indicators, staining or residue, then an Illicit Discharge Detection and Elimination (IDDE) Inspection Form may be used during a follow-up inspection (See SOP Minimum Control Measure 3). If a citizen calls in a complaint about an illicit discharge, fill out the Illicit Discharge Inspection Form and follow-up, as needed.

Date:			Current Weather Conditions:
Inspector:			Ground Conditions:
Recent Precip:			Inspection Start Time:
Level of Prior Lake:			Inspection End Time:
	SEGMENT	***CROSSING NAME/MAP ID #***	***NOTES***
	1	1-Prior Lake Outlet Structure	
	1	2-Outlet Pipe Daylight	
	1	3-Jeffers Pass	
	1	4-Lower Jeffers RR Culvert & Fish Barrier	
	1	5-Fountain Hills Dr	
	1	6-Co Rd 42	
	2	7-Squires Driveway (4070)	
	2	8-Kes Driveway	
	2	9-Kes Field Crossing	
	2	10-Pike Lake Park	
	3	11-Kinney Driveway (4270)	
	3	12-Pike Lake Staff Gauge	
	3	13-Kici Yapi Upper Culvert (camp manager inspects this all year)	
	3	14-Strauss Driveway (2318)	
	3	15-Pike Lake Rd	
	4a	16-Jackson Trail	
	4a	17-Gonyea Crossing	
	5	18-Co Rd 16	
	5a	18b-Riverside Bluffs (Check West pond outlet)	
	5c	20-Pike Lake Road	
	5c	20b-CSAH 21	
	6	21-Dean Lk Outlet & Hwy 169	
	7a	22-Gabions, Quarry Lake Berm, Railroad, New Quarry Lake Park Crossing	
	7b	23-Highway 101	
	8	25-Service Trail	

Attachment 5: Minnesota DNR Permit No. 1979-6016

(Pages 17-20)

Minnesota Department of Natural Resources

Central Region Waters - 1200 Warner Road, St. Paul, MN 55106-6793
Telephone: (651) 259-5845 Fax: (651) 772-7977

July 30, 2009

Mike Kinney
Prior Lake-Spring Lake Watershed District
15815 Franklin Trail S.E.
Prior Lake, Minnesota 55372

RE: Amended Permit #1979-6016, Prior Lake (#70-26P) Outlet, Scott County

Dear Mr. Kinney:

Enclosed is Amended DNR Permit #1979-6016, authorizing the reconstruction of the Prior Lake outlet control structure and for the stabilization and enhancement of the outlet channel from Prior Lake to the Minnesota River in segments 2, 3, 4, and 7.

This amended permit authorizes the construction of a replacement control structure, maintaining the normal water elevation of 902.5'. Preliminary plans for the new structure were received July 17, 2009. Please note Condition 17 of this amended permit requires submittal of final design construction drawings for the Prior Lake Outlet structure. Work shall proceed only after your receipt of written approval of the final design by the Area Hydrologist.

In addition, the permit approves of the channel stabilization as described in the amendment request materials received June 23, 2009. The work detailed in the plans for Prior Lake Outlet Channel Segments 2, 3, 4, and 7 are approved as part of this amended permit. As stated, the goals of the project are to maintain hydrologic capacity, reduce maintenance needs, provide long-term stability, improve water quality, increase aesthetics, provide improved habitat and provide consistency with city and county plans for parks and greenways.

Please review all the conditions of your permit carefully. In particular, note Conditions 14, 16, 18 below and 17 as described above.

Condition 14 prohibits permanent placement of excavated material within a designated floodplain or shoreland area without any required local approvals.

Condition 16 allows for the use of dewatering cofferdams and construction dewatering after submitting plans to the Area Hydrologist for his review and approval at least five days prior to start of construction.

Condition 18 approves the revised Management Policy and Operating Procedures, dated October 2004. These procedures, originally adopted in June 1987, were revised to reflect the proposed design and efficiency of the replacement structure. Future revisions or amendments to this document must be approved by the DNR Regional Hydrologist.

If you have any questions about your permit amendment, please call me at 651-259-5776.

Sincerely,

Janell Miersch
Area Hydrologist

Enclosure

c: BWSR, Ken Powell
City of Prior Lake, Danette Parr
City of Shakopee, Joe Swentek
U.S. Army Corps of Engineers, Christina Carballal
Scott County SWCD, Pete Beckius
Lower Minnesota River WD, Terry Schwalbe
DNR Conservation Officer, Adam Block
DNR Ecological Services, Melissa Doperalski
DNR Fisheries, Daryl Ellison
DNR Permits, John Fax
DNR Wildlife, Diana Regenscheid
Lower Prior Lake (70-26P) File

Minnesota Department of Natural Resources

AMENDED PROTECTED WATERS PERMIT

Permit Number

1979-6016

This amended permit supersedes the original permit and any previous amendments

Pursuant to Minnesota Statutes, Chapter 103G, and on the basis of statements and information contained in the permit application, letters, maps, and plans submitted by the applicant and other supporting data, all of which are made a part hereof by reference, PERMISSION IS HEREBY **GRANTED** to the applicant to perform the work as authorized below:

Public Water Name	**County**
Lower Prior Lake (70-26P) and the Prior Lake Outlet Channel	Scott (70)
Name of Permittee	Telephone Number (Include Area Code)
Prior Lake-Spring Lake Watershed District, Mike Kinney	(952) 447-4166
Address (No. & Street, RFD, Box No., City, State, Zip Code	
15815 Franklin Trail S.E., Suite 100, Prior Lake, Minnesota 55372	
Authorized Work:	
Reconstruct outlet control structure, maintaining weir elevation of 902.5' (NGVD, 1929) in accordance with preliminary plans received July 17, 2009*; construct outlet stabilization and enhancement measures, in general conformance with permit amendment application dated June 23, 2009*, and the Conditions of this permit. * see Condition #17.	
Purpose of Permit	**Expiration Date of Permit**
Improvement of outlet and stabilization of the outlet channel.	November 30, 2011
Property Described As:	
Outlet control structure: SE¼ NW¼ NW¼ Section 35, T115N-R22W Outlet channel: Sections 3, 10, 14, 22, 23, and 27, T115N-R22W as further described in the permit file.	

This permit is granted **subject to** the following **CONDITIONS**:

1. The **permittee** is not released from any rules, regulations, requirements, or standards of any applicable federal, state or local agencies; including, but not limited to, the U.S. Army Corps of Engineers, Board of Water and Soil Resources, MN Pollution Control Agency, watershed districts, water management organizations, county, city and township zoning. This permit does not release the **permittee** of any permit requirement of the St. Paul District, U.S. Army Corps of Engineers, Army Corps of Engineers Centre, 190 Fifth Street East, St. Paul, MN 55101-1638.

2. This permit is not assignable by the **permittee** except with the written consent of the Commissioner of Natural Resources.

3. The **permittee** shall notify the Area Hydrologist at least five days in advance of the commencement of the work authorized hereunder and notify him/her of its completion within five days. The Notice of Permit issued by the Commissioner shall be kept securely posted in a conspicuous place at the site of operations.

4. The **permittee** shall make no changes, without written permission previously obtained from the Commissioner of Natural Resources, in the dimensions, capacity or location of any items of work authorized hereunder.

5. The **permittee** shall grant access to the site at all reasonable times during and after construction to authorized representatives of the Commissioner of Natural Resources for inspection of the work authorized hereunder.

6. This permit may be terminated by the Commissioner of Natural Resources at any time deemed necessary for the conservation of water resources of the state, or in the interest of public health and welfare, or for violation of any of the Conditions or applicable law of this permit, unless otherwise provided in the Conditions.

7. Construction work authorized under this permit shall be completed on or before the date specified above. The **permittee** may request an extension of time to complete the project, stating the reason thereof, upon written request to the Commissioner of Natural Resources.

(over, please)

8. In all cases where the **permittee** by performing the work authorized by this permit shall involve the taking, using, or damaging of any property rights or interests of any other person or persons, or of any publicly owned lands or improvements thereon or interests therein, the **permittee**, before proceeding, shall obtain the written consent of all persons, agencies, or authorities concerned, and shall acquire all property, rights, and interests needed for the work.

9. This permit is permissive only. No liability shall be imposed by the State of Minnesota or any of its officers, agents or employees, officially or personally, on account of the granting hereof or on account of any damage to any person or property resulting from any act or omission of the **permittee** or any of its agents, employees, or contractors. This permit shall not be construed as estopping or limiting any legal claims or right of action of any person other than the state against the **permittee,** its agents, employees, or contractors, for any damage or injury resulting from any such act or omission, or as estopping or limiting any legal claim or right of action of the state against the **permittee,** its agents, employees, or contractors for violation of or failure to comply with the permit or applicable provisions of law.

10. Any extension of the surface of protected waters from work authorized by this permit shall become protected waters and left open and unobstructed for use by the public.

11. Where the work authorized by this permit involves the draining or filling of wetlands not subject to DNR regulations, the **permittee** shall not initiate any work under this permit until the **permittee** has obtained official approval from the responsible local government unit as required by the Minnesota Wetland Conservation Act.

12. Erosion control measures shall be adequately designed for the site characteristics. They may include staked haybales, diversion channels, sediment ponds, sediment fences or floating silt curtains as appropriate. They shall be installed in accordance with "The Minnesota Stormwater Manual", MPCA, November 2005 (and as revised in the future), prior to commencement and maintained throughout the project. All exposed soil shall be stabilized as soon as possible and no later than 72 hours after the completion of the project. Topsoil should be used to re-dress disturbed soil areas and indigenous plant species should be used to revegetate disturbed areas whenever possible.

13. Any work below the water level shall be encircled by a flotation sediment curtain to prevent sediment from being transported beyond the construction site. This sediment curtain shall be constructed and maintained as illustrated on the enclosure entitled "6.32 Treatment Measures: Flotation Silt Curtains." (Copy Enclosed) The barrier shall be removed upon completion of the work after the silt has settled.

14. Excavated material shall not be permanently placed within community designated floodplain areas or shoreland areas, unless all necessary local permits and approvals have been obtained.

15. The **permittee** shall monitor all disturbed areas for the presence of purple loosestrife and control the plant as described in the attached pamphlet titled "Purple Loosestrife Alert". The DNR aquatic plant manager should be contacted at 772-7950 for permit needs and additional information.

16. Dewatering cofferdams must be constructed, utilized, and removed, in order to minimize degradation of water quality. Dewatering in excess of 10,000 gallons per day or one million gallons a year, is authorized by this permit. Plans for such cofferdams and dewatering must be approved by the Area Hydrologist at least five days prior to start of construction.

17. The **permittee** shall submit final construction drawings for the new outlet control structure and subsequent phases of the outlet channel stabilization project to the DNR Area Hydrologist at 1200 Warner Road, St. Paul, Minnesota, 55106, at least 10 working days prior to commencement of construction for final review and written approval. Authorized work shall not proceed without written approval of the final plans by the Area Hydrologist.

18. The operation and maintenance of the Prior Lake outlet and outlet channel shall be conducted in conformance with Management Policy and Operating Procedures, revised October 2004, and any future revisions to it. Future revision or modification to the adopted policy and procedures must be approved, in writing, by the DNR Regional Hydrologist.

c: BWSR, Ken Powell
City of Prior Lake, Danette Parr
City of Shakopee, Joe Swentek
U.S. Army Corps of Engineers, Christina Carballal
Scott County Soil and Water Conservation District, Pete Beckius
Lower Minnesota River Watershed District, Terry Schwalbe
Lower Prior Lake (70-26P) File
DNR Conservation Officer, Adam Block
DNR Ecological Services, Melissa Doperalski
DNR Fisheries, Daryl Ellison
DNR Wildlife, Diana Regenscheid
DNR Permits, John Fax

Authorized Signature	Title	Date
Janell Miersch	Area Hydrologist	July 30, 2009

This information is available in an alternative format upon request