

Minnesota Water Resources Board

500 Lafayette Road  
First Floor  
St. Paul, Minnesota  
55146

STATE OF MINNESOTA)  
                                  )ss  
COUNTY OF RAMSEY )

AFFIDAVIT

Mel Sinn being first duly sworn on oath,

deposes and says:

THAT He IS the Executive Director for the Minnesota  
Water Resources Board; that He has compared the attached copy of  
an Order relating to the Establishment of the South Two River  
Watershed District

dated at Saint Paul, Minnesota, on the 31st day of December 1986  
with the original thereof on file in His official custody; and  
THAT SAID COPY is a true and correct copy of said original and the  
whole thereof.



Mel Sinn  
Executive Director

STATE OF Minnesota  
COUNTY OF Ramsey

Subscribed and sworn to before me  
this 2 day of January 1987

My Commission Expires Jan. 9, 1989

MARGARET M. WINKEL  
NOTARY PUBLIC-MINNESOTA  
RAMSEY COUNTY  
MY COMMISSION EXPIRES JANUARY 9, 1989

STATE OF MINNESOTA  
FILED

JAN 2 1987

Jan Andrew Hove  
Secretary of State

137079



STATE OF MINNESOTA  
WATER RESOURCES BOARD  
500 Lafayette Road  
Box 34  
St. Paul, Mn. 55101

(612) 296-2840

STATE OF MINNESOTA  
FILED

JAN 2 1987

*Jan Anderson*  
Secretary of State

-----  
In the Matter of the Petition for the  
Establishment of the South Two Rivers  
Watershed District Filed on March 7,  
1986 (Minn. Stat. sec. 112.37)  
-----

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
ORDER

On March 7, 1986 a nominating petition for the establishment of the South Two Rivers Watershed District (District) signed by over eighty landowners was filed with the Water Resources Board (Board) pursuant to Minn. Stat. ch. 112 (1984). Additional signatures supporting the nominating petition were filed on April 14 and June 18, 1986. The territory of the proposed District includes the entire watershed of the South Branch Two River in Stearns and Morrison Counties. A contested case hearing on the proposed District was held on August 11, 1986 in Albany, Minnesota. The report of Administrative Law Judge, Allan Klein, was received by the Board on October 14, 1986.

The Board provided the parties to the proceeding an opportunity to present oral argument on the administrative law judge's report at a regular Board meeting on November 14, 1986. One written exception to the report was filed with the Board.

Three Board members attended the hearing. The two Board members who did not attend the hearing read the hearing transcript.

Having considered the entire record of the proceeding, including the oral argument and exceptions to the administrative law judge's report, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

- I. Findings 1 through 56 of the attached report of Administrative Law Judge, Allan Klein, are adopted by the Board with the following exceptions:
  - A. In Finding 33, strike the words "and Water" in the first and second lines on page 6; and after the word "Conservation" in the third line on page 6 insert the word "Service".
  - B. In Finding 38, strike the word "with" in the third line from the bottom of page 6 and insert "between the district and".
- II. The Board makes the following additional findings:
  57. On November 14, 1986 the Board received written exceptions to the administrative law judge's report from Attorney Peter S. Donohue on behalf of the City of Holdingford. Mr. Donohue argued that: there is no necessity for including Holdingford in the proposed District; inclusion in the proposed District would expose City residents to harmful potential assessments; the City historically has managed its water problems; and the City must be excluded from the proposed District.
  58. Stearns County Auditor, Henry Kohorst, testified at the August 11th hearing on the impact an additional one-mill tax levy would have on properties of various classifications and assessed values within the proposed District.

Stearns County Surveyor and Ditch Inspector, Leland Wallace, testified on the general condition of public drainage systems within the proposed District.

59. No testimony or evidence was offered by either Stearns County or Morrison County at the August 11th hearing regarding the County Boards of Commissioners' positions on the proposed District or plans of action regarding the water management issues presented by the petitioners.

#### CONCLUSIONS OF LAW

- I. Conclusions 1 through 4 of the attached report of Administrative Law Judge, Allan Klein, are adopted by the Board.
- II. The Board makes the following additional conclusions:
  5. The evidence demonstrates a need for coordinated water resources planning and management in the South Branch Two River watershed.
  6. A watershed district can coordinate water management in the South Two River watershed across the several local governmental units affected through planning, public education, regulation, and project implementation.
  7. The City of Holdingford is an integral part of the natural watershed of the South Branch Two River. The City could directly benefit from coordinated water planning and management within the watershed of the South Branch Two River, and should be included within the proposed District and participate in developing a water management plan for the watershed.

IT IS THEREFORE ORDERED THAT

- I. The proposed District is hereby established and given the corporate name of "South Two River Watershed District". The District shall have all the powers, duties, and purposes provided by law.
- II. The territory of the South Two River Watershed District includes all of the tracts of land described below, including all bodies of water therein. The described land may contain all or parts of quarter-quarter tracts, government lots, and lots within platted areas. The territory of the South Two River Watershed District is described as follows:

A. Morrison County

5th Principal Meridian

1. Township 127 North, Range 30 West (Elmdale)

E 1/2 of E 1/2	Section	28
SW 1/4 of SE 1/4	"	28
SE 1/4 of SW 1/4	"	30
W 1/2 of SE 1/4	"	30

2. Township 127 North, Range 30 West (Two Rivers)

S 1/2 of SW 1/4	Section	14
SW 1/4 of SE 1/4	"	14
SE 1/4 of SE 1/4	"	15
NE 1/4	"	22
E 1/2 of NW 1/4	"	22
SW 1/4 of NW 1/4	"	22
S 1/2	"	22
All of Section	"	23
W 1/2 of NW 1/4	"	25
All of Sections	Sections	26 and 27.

B. Stearns County

5th Principal Meridian

1. Township 127 North, Range 31 West (Krain)

SE 1/4 of NE 1/4	Section	35
SE 1/4 of SW 1/4	"	35
NE 1/4 of SE 1/4	"	35
S 1/2 of SE 1/4	"	35
S 1/2 of N 1/2	"	36
S 1/2	"	36.

2. Township 127 North, Range 30 West (Holding)

All of Section	Section	31
S 1/2 of N 1/2	"	32
S 1/2	"	32
All of Sections	Sections	33 and 34
NW 1/4 of NE 1/4	Section	35
S 1/2 of NE 1/4	"	35
NW 1/4	"	35
S 1/2	"	35
W 1/2 of SW 1/4	"	36.

3. Township 126 North, Range 31 West (Krain)

All of Sections	Sections	1, 2, and 3
NE 1/4 of NE 1/4	Section	4
S 1/2 of NE 1/4	"	4
SE 1/4	"	4
E 1/2 of E 1/2	"	8
NW 1/4 of SE 1/4	"	8
All of Sections	Sections	9 through 15, incl.
NE 1/4	Section	16
NE 1/4 of NW 1/4	"	16
S 1/2 of NW 1/4	"	16
S 1/2	"	16
SE 1/4 of SE 1/4	"	17
NE 1/4 of NE 1/4	"	20
All of Sections	Sections	21 through 28, incl.

3. Township 126 North, Range 31 West (Krain) (Cont.)

SE 1/4 of SE 1/4	Section	29
NE 1/4	"	31
E 1/2	"	32
NW 1/4 of NW 1/4	"	32
S 1/2 of NW 1/4	"	32
E 1/2 of SW 1/4	"	32

All of Sections                      Sections    33 through 36, incl.

4. Township 126 North, Range 30 West (Holding)

N 1/2	Section	2
N 1/2 of SW 1/4	"	2
SW 1/4 of SW 1/4	"	2
N 1/2	"	3
N 1/2 of S 1/2	"	3
SW 1/4 of SW 1/4	"	3
S 1/2 of SE 1/4	"	3

All of Sections                      Sections    4 through 8, incl.

N 1/2	Section	9
SW 1/4	"	9
N 1/2 of SE 1/4	"	9
SW 1/4 of SE 1/4	"	9
N 1/2 of NE 1/4	"	10
W 1/2 of E 1/2	"	16
W 1/2	"	16

All of Sections                      Sections    17 through 20, incl.

W 1/2	Section	21
NW 1/4 of NW 1/4	"	28

All of Sections                      Sections    29, 30, and 31

N 1/2	Section	32
SW 1/4	"	32
N 1/2 of SE 1/4	"	32
SW 1/4 of SE 1/4	"	32
NW 1/4 of NW 1/4	"	33
S 1/2 of NW 1/4	"	33
N 1/2 of NE 1/4 of SW 1/4	"	33
NW 1/4 of SW 1/4	"	33.

5. Township 125 North, Range 32 West (Oak)

SE 1/4 of NE 1/4	Section	36
N 1/2 of SE 1/4	"	36
SE 1/4 of SE 1/4	"	36.

6. Township 125 North, Range 31 West (Albany)

All of Sections	Sections	1, 2, and 3
E 1/2	Section	4
NE 1/4 of NW 1/4	"	4
S 1/2 of SE 1/4	"	8
E 1/2	"	9
NE 1/4 of NW 1/4	"	9
NE 1/4 of SW 1/4	"	9
S 1/2 of SW 1/4	"	9
All of Sections	Sections	10 through 16, incl.
E 1/2	Section	17
E 1/2	"	20
NE 1/4 of SW 1/4	"	20
S 1/2 of SW 1/4	"	20
All of Sections	Sections	21 through 24, incl.
N 1/2 of NE 1/4	Section	25
SW 1/4 of NE 1/4	"	25
W 1/2	"	25
NW 1/4 of SE 1/4	"	25
All of Sections	Sections	26 through 29, incl.
E 1/2 of NE 1/4	Section	30
Gov't. Lot 16	"	30
SE 1/4	"	30
E 1/2	"	31
Gov't. Lot 1	"	31
Gov't. Lots 5-16, incl.	"	31
All of Sections	Sections	32 through 35, incl.
W 1/2	Section	36
W 1/2 of SE 1/4	"	36.

7. Township 125 North, Range 30 West (Avon)

S 1/2 of SW 1/4	Section	4
All of Sections	Sections	5 through 8, incl.



7. Township 125 North, Range 30 West (Avon) (Cont.)

W 1/2	Section	9
NW 1/4 of NE 1/4	"	17
NW 1/4	"	17
NW 1/4 of SW 1/4	"	17
N 1/2	"	18
SW 1/4	"	18
N 1/2 of SE 1/4	"	18
SW 1/4 of SE 1/4	"	18
SW 1/4 of NE 1/4	"	19
W 1/2	"	19
That part of the NW 1/4 lying north of the centerline of Interstate 94	"	30.

8. Township 124 North, Range 32 West (St. Martin)

E 1/2 of NE 1/4	Section	1
NE 1/4 of SW 1/4	"	1
SE 1/4	"	1.

9. Township 124 North, Range 31 West (Farming)

NW 1/4 of NW 1/4	Section	1
N 1/2 of NE 1/4	"	2
SE 1/4 of NE 1/4	"	2
NW 1/4 of NE 1/4	"	3
W 1/2	"	3
All of Sections	Sections	4, 5, and 6
NE 1/4	Section	7
Gov't. Lots 1-4, incl.	"	7
NE 1/4 of NE 1/4	"	8
W 1/2 of NW 1/4	"	8
N 1/2 of N 1/2	"	9
NW 1/4 of NW 1/4	"	10.

III. The legal boundary of the South Two River Watershed District is defined as the perimeter of the whole land area described in the preceding paragraph and shown on the attached Boundary Map.

The District includes approximately 88 square miles in Stearns County and 5 square miles in Morrison County, for a total of 93 square miles.

IV. The board of managers of the South Two River Watershed District shall consist of five managers. Managers must meet the eligibility requirements established by the Minnesota Watershed Act.

V. The following persons are named as the initial managers of the South Two River Watershed District; their terms of office shall be for one year, effective the date of this Order:

<u>Name</u>	<u>Address</u>	<u>County</u>
1. Jerry Beckham	Route 1, Box 194, Avon, 56310	Stearns
2. Mary Douvier	Route 1, Box 310, Albany, 56307	Stearns
3. James Kastanek	701 Fifth Street, Albany, 56307	Stearns
4. Randy Roehl	Route 2, Box 59, Albany, 56307	Stearns
5. Clyde Weivoda	401 Forest Avenue, Albany, 56307	Stearns

VI. The distribution of the power to appoint managers to the South Two River Watershed District, upon expiration of the one-year terms of the initial managers, shall be as follows:

Stearns County - Five Managers

VII. After the initial managers have served their one-year terms, the first county-appointed managers shall be appointed to staggered terms as follows:

Stearns County - One manager for a one-year term;  
two managers for two-year terms;  
and two managers for three-year terms.

VIII. Following the expiration of the managers' terms set forth in the preceding paragraph, all succeeding appointments shall be for terms of three years. If a vacancy occurs on the board of managers, the county shall make an appointment for the remaining portion of the unexpired term.

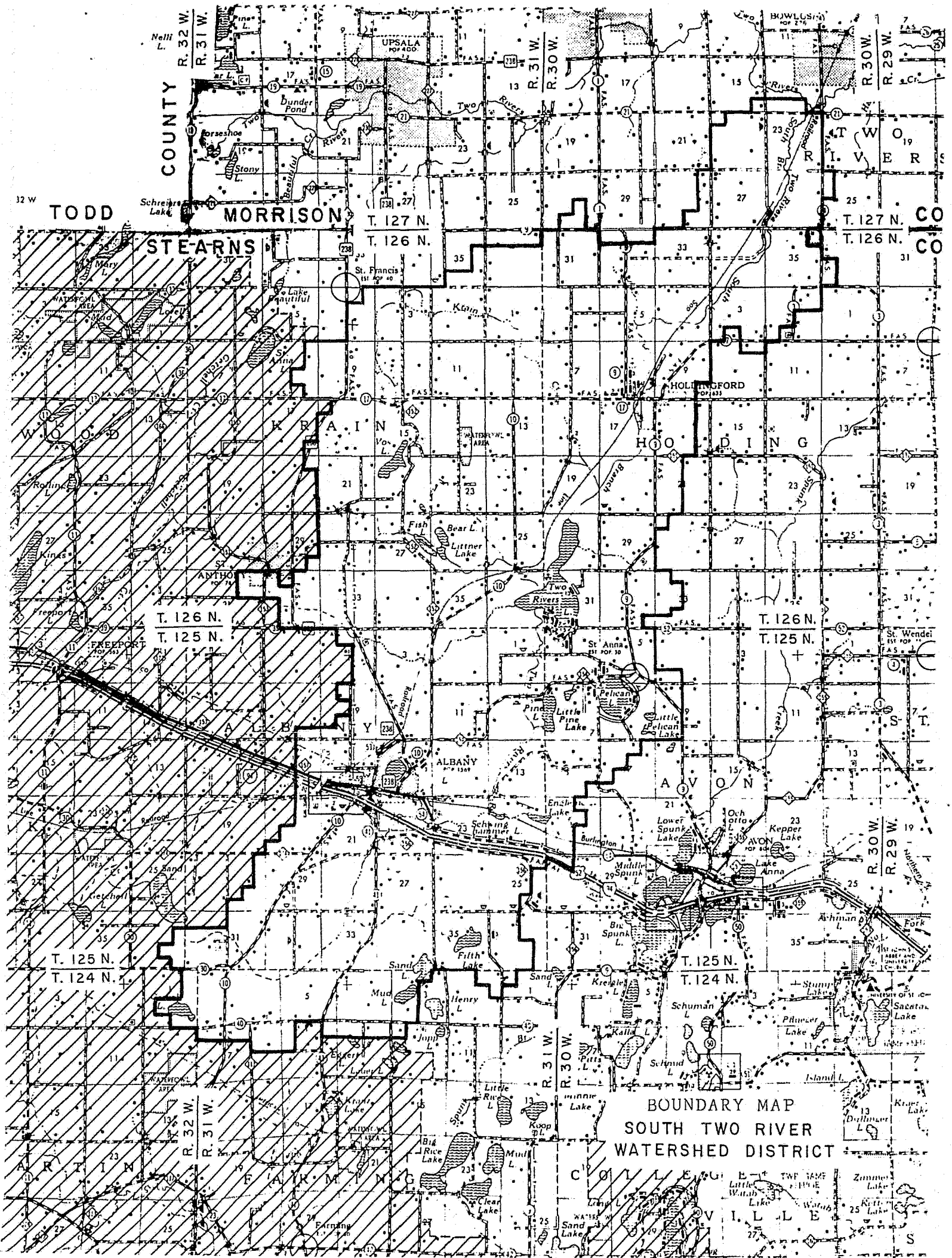
IX. The principal place of business of the South Two River Watershed District shall be located in the City of Albany, Minnesota, 56307.

Dated at Saint Paul, Minnesota, 55101, this 31st day of December 1986.

MINNESOTA WATER RESOURCES BOARD



Duane R. Ekman  
Chairman



BOUNDARY MAP  
SOUTH TWO RIVER  
WATERSHED DISTRICT

COUNTY

TODD

STEARNS

MORRISON

T. 127 N.  
T. 126 N.

HOLLINGFORD

HOO D I N G

T. 126 N.  
T. 125 N.

ALBANY

AVON

T. 125 N.  
T. 124 N.

BOUNDARY MAP  
SOUTH TWO RIVER  
WATERSHED DISTRICT

COLLEGE

W I L L E

T. 127 N. CO  
T. 126 N. CO

R. 30 W.  
R. 29 W.

ZIMMERMAN

W I L L E



STATE OF MINNESOTA  
WATER RESOURCES BOARD  
500 Lafayette Road  
Box 34  
St. Paul, Mn. 55101

(612) 296-2840

-----  
In the Matter of the Petition for the  
Establishment of the South Two Rivers  
Watershed District Filed on March 7,  
1986 (Minn. Stat. sec. 112.37)  
-----

MEMORANDUM

Like the administrative law judge, the Board had some concern about the establishment of this watershed district. The Board's concern, however, was not over the magnitude of the problems in the area, but rather the limited size of the District and the fact that it does not extend all the way to the Mississippi River.

The Mississippi River through central Minnesota gathers flow from numerous tributaries, most of which have relatively small contributing watersheds. Two of these tributaries are the Two River and the North Branch Two River, which outlet into the Mississippi River in southern Morrison County.

The South Branch Two River is a subwatershed of the Two River. It outlets into the Two River about three miles upstream of where the Two River empties into the Mississippi River. The 93 square mile contributing watershed of the South Branch represents roughly half of the total area of the Two River basin.

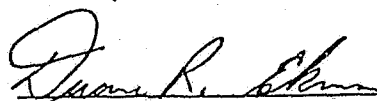
The South Two River Watershed District encompasses only this 93 square mile watershed, as requested by the petitioners. Its lower reach does not extend all the way to the Mississippi River.

The Board thinks that a district extending all the way to the Mississippi River would be in a better position to deal with problems in the lower reaches of the South Branch Two River.

The Board also thinks that a district encompassing the entire watershed of the Two River, both the Two River and North Branch Two River, or other combination of small Mississippi tributaries would have a greater capacity to manage water resources. Although the record is not clear about the exact amount the District will be able to raise for its administrative fund, it is evident that it will not provide for significant staff resources. Those watershed districts in the state that have developed staff capability are generally the most active and effective watershed districts. At the same time, the Board recognizes the critical importance of committed citizens serving on the board of managers.

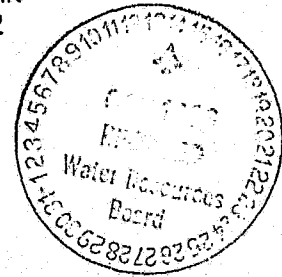
If local interest in organizing watershed districts in neighboring areas develops in the future, it should be noted that the Minnesota Watershed Act does provide a procedure for enlarging existing districts.

MINNESOTA WATER RESOURCES BOARD

  
\_\_\_\_\_  
Duane R. Ekman  
Chairman

WRB-87-001-AK  
6-3300-782-2

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA WATER RESOURCES BOARD



In the Matter of the Petition for the  
Establishment of the South Two River  
Watershed District Filed on March 7, 1986.

FINDINGS OF FACT,  
CONCLUSIONS,  
RECOMMENDATIONS AND  
MEMORANDUM

The above-entitled matter came on for hearing before Administrative Law Judge Allan W. Klein on August 11, 1986, in Albany, Minnesota.

Appearing on behalf of the Petitioners for the proposed district was Kurt A. Deter, of the firm of Rinke, Noonan, Grote & Smoley, Ltd., Attorneys at Law, 700 Norwest Center, P.O. Box 1800, St. Cloud, Minnesota 56302. Appearing on behalf of the Minnesota Water Resources Board was Dwight S. Wagenius, Special Assistant Attorney General, Suite 200, 520 Lafayette Road, St. Paul, Minnesota 55155.

Three members of the Board participated in the hearing. They were Marlin Riepple, Secretary; Peggy Lynch; and Erika Sitz.

The record closed on September 12, 1986.

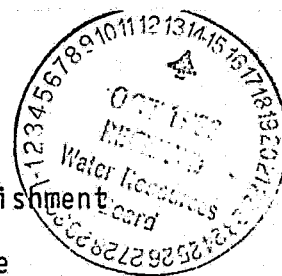
This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board, Executive Secretary to the Board. Parties should contact Mel Sinn, Executive Secretary, Water Resource Board, 500 Lafayette Road, St. Paul, Minnesota 55146 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

1. Would the establishment of a watershed district be for the public welfare and public interest, and would it serve the purposes of Minn. Stat. Ch. 112?
2. If a district should be established, what ought its boundaries to be?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

### FINDINGS OF FACT



1. On March 7, 1986, the Board received a Petition for the establishment of a new watershed district proposed as the South Two Rivers Watershed District. On March 5, 1986, a copy of the Petition was served upon the Stearns County Auditor.
2. On March 14, 1986, copies of the Petition were served upon the Morrison County Auditor, the Director of the DNR's Division of Waters and the Commissioner of Natural Resources.
3. On March 25, 1986, the Board received notice from the Morrison County Auditor that none of the Petitioner were resident freeholders of Morrison County.
4. On April 14, 1986, the Board received two additional pages of signatures and an additional nominee for the first board of Managers. This additional list was served upon the Stearns County Auditor and Morrison County Auditor on April 11, 1986.
5. On April 21, 1986, the Board received a listing from the Stearns County Auditor of those persons on the second Petition who were, in fact, resident freeholders of Stearns County.
6. On June 10, 1986, the Board received the listing of persons on the original Petition who were resident freeholders of Stearns County from the Stearns County Auditor.
7. On June 18, 1986, an additional page of signatures was submitted to the Board. On June 17, it had been submitted to the Stearns County Auditor.
8. On June 20, 1986, the Board received a notice from the Stearns County Auditor that all of the persons on the additional list were, in fact, resident freeholders of Stearns County.
9. On June 27, 1986, the Board issued its Notice of and Order for Hearing in this matter, setting the hearing for August 11, in Albany.
10. On July 15, 1986, the Board mailed copies of the Notice of and Order for Hearing to the County Auditors of Morrison and Stearns County, and the Mayors of Holdingford, St. Anthony, and Albany. In addition, copies were mailed to the Chairs of the Soil and Water Conservation Districts for Morrison and Stearns County. Copies were mailed to the State Senators and State Representatives whose districts included land proposed to be within the watershed district. Copies were also mailed to the United State Geological Survey, the United States Corps of Engineers, the State Conservationist, Environmental Quality Board, the Pollution Control Agency, the Department of Natural Resources, the State Soil and Water Conservation Board, the State Planning Agency, and other interested persons.
11. On July 21 and July 28, the complete Notice of and Order of Hearing was published in the Morrison County Record.
12. On July 22 and July 29, the complete Notice of and Order for Hearing was published in the Stearns Morrison Enterprise.



13. On August 5, 1986, the Board received a report on the proposed district from the Division of Waters, Department of Natural Resources.

Description of the Proposed District

14. The proposed district is located in the northeast quarter of Stearns County, northwest of the City of St. Cloud. A small portion of the proposed district lies in southwestern Morrison County. Approximately 95% of the area is in Stearns County, while the remaining five percent is in Morrison County.

15. The size of the proposed district is approximately 90 square miles.

16. Land use is approximately as follows:

<u>Type</u>	<u>Sq. Miles</u>	<u>Percentage of Watershed</u>
Water	2.68	2.97%
Marsh	7.65	8.49
Urban-Residential	0.71	0.79
Roads	0.07	0.08
Other - Primarily Agricultural	79.12	<u>87.66</u> 100%

17. As can be seen, agriculture is the predominant land use in the proposed district. Urban-residential uses are only a minute fraction, less than one percent. The district includes the Cities of Albany, Holdingford, and a part of St. Anthony.

18. The principal lakes within the boundaries of the proposed district are Two River Lake (523 acres), Pelican Lake (310 acres), and Pine Lake (137 acres). There are other lakes scattered throughout the proposed district. But all lakes total only 2.7 square miles.

19. The Mississippi River flows in a generally north-south direction along the eastern end of Stearns County. It forms the boundary between Stearns County and Benton County. The South Branch of Two River ultimately flows into the Mississippi River northeast of the proposed district, in Morrison County. The South Branch flows, therefore, from southwest to northeast. However, before it flows into the Mississippi, it is joined by the main stem of Two River.

20. The northeastern end of the district is at the junction of the South Branch and the main stem. The district's boundaries are, therefore, those of the watershed of the South Branch of Two River. The proposed district does not include any of the watershed area of the main stem or the North Branch, nor does it include the relatively short distance between the junction of the South Branch and main stem and the Mississippi.

21. The South Fork of Two River flows into Two River Lake at the southwest end of the lake. It flows out of Two River Lake at the north end of

the lake. At points, the River is designated as County Ditch 28 and County Ditch 6. There are numerous other ditches, creeks and other waterways that empty into the South Fork as it flows northeasterly towards the Mississippi.

#### Problems

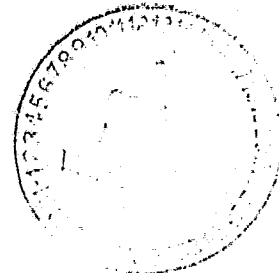
22. The vast majority of the water related problems within the boundaries of the district arise in two specific locations. The first is the City of Albany, which has encountered substantial flooding in the last few years. The second is Two River Lake, which has seen volatile fluctuations in its water level and deteriorating water quality over the last few years. While there were other areas mentioned which were encountering water related problems, the vast majority of the problems arise in those two specific locations. The City of Albany and the Two River Lake Improvement Association were the two primary movers behind the Petition.

#### A. Flooding in City of Albany

23. The City of Albany lies in the southwestern part of the district. It has a population of approximately 1,500. The principle geographic feature is Albany Lake (also referred to during the hearing as North Lake) which is located in the northeast corner of the city. The lake is approximately 60 acres in surface area. The city is at a lower elevation than much of the surrounding land, particularly land to the north and west. While the slopes are not steep, there is a definite gradient from the northwest to the southeast toward the city and lake. In addition to this natural slope, there has been some ditching and drainage of lands to north and west of the City. The carrying capacity of the drainage system into the Lake has been exceeded, resulting in overflows.

24. For most parts of the City, flooding is not a common problem. Instead, it occurs only at times of heavy rains. There were only sporadic complaints of flooding prior to 1984.

25. During the first two weeks of June, 1984, more than ten inches of rain fell in the Albany area. This included approximately five inches on the night of June 11. This resulted in flooded basements and first floors, streets under water (the City's squad car was declared a total loss after it was almost covered with water), backed-up sewer lines and similar damages. The City formed a Storm Water Control Study Commission, which met for the first time in early July of 1984. The Commission had contact with a variety of governmental and private entities, including the Stearns County Board of Commissioners, the Stearns County Soil and Water Conservation District, the Stearns County Ditch Inspector, the Minnesota Department of Natural Resources, the Minnesota Department of Transportation, the League of Municipalities, and others. The Committee identified a number of short-term solutions within the City's boundaries, and implemented them. These included such actions as increasing the size of some culverts, installing extra catch basins and, beyond the City's boundaries, working with the Township of Albany to restrict the flow of waters into one part of the City. However, during the course of their deliberations, the Committee needed hydrologic information to allow it to make long-range plans. It discovered that this information was not available from any of the foregoing sources.



26. In September of 1984, during the course of its deliberations, the Committee met with Jerry Beckham, President of the Two River Lake Improvement Association, and in October, with Issac Yomtovian, President of Enviroscience, Inc., a St. Cloud consulting firm. These two explained problems that were occurring on Two River Lake and one of the solutions which they were looking into, the formation of a watershed district. Ironically, on the same night that the Committee heard the presentation from Mr. Yomtovian regarding watershed districts, they also heard a report from an individual who had been designated to contact the Department of Natural Resources for help. That individual reported to the Committee that the interest of the DNR was limited to the maintenance of the established level of Albany Lake, and that any change in the size of outlet structures across Highway 238 would have to come from the Minnesota Department of Transportation. Immediately after that report, the Minutes reflect that the Committee voted to write a letter to Mr. Beckham indicating the City's interest in joining in any Petition to establish a watershed district.

27. Flooding problems continued in the City. Despite the short-term actions which had been taken in 1984, heavy rains in June of 1986 also resulted in damage to homes and businesses. For example, the Albany Golf Club has been closed 19 days in the months of April, May, June and July of 1986 due to flooding. The Club estimated that it has lost approximately \$10,000 or eight percent of its projected gross income, as a result of these forced closures. However, the person who owned that land prior to its being used for golf purposes recalled that it was swampy, and he had difficulty grazing cattle there during wet times.

#### B. Flooding and Water Quality at Two River Lake

28. Two River Lake is fed by the South Fork of Two River (which is also known as County Ditch 28) from the south. The Lake's outflow is also to County Ditch 28/South Fork Two River, at the north end of the lake.

29. County Ditch 28 was originally built in 1906, and the only record of any major change is a repair in the mid-1940s.

30. Some of the older persons who live around the Lake recall that there have been times, in earlier decades, when the Lake has been substantially higher than its June, 1986 high level.

31. In recent years, the first indication of flooding problems on the Lake occurred in June of 1984. At that time, as in the City of Albany, the area received extremely heavy rains. These resulted in the flooding of lakeshore homes, septic systems, roads, trees, and other property. Flooding was not localized, but extended from south of Albany to north of Holdingford.

32. Following the June, 1984 flooding, the Minnesota Department of Health and the Stearns County Community Health Service both expressed concern about flooded septic systems contaminating drinking wells.

33. In 1984, the Two River Lake Improvement Association began seeking help from various public and private agencies to deal with the flooding problem. It contacted a Holding township supervisor, the County Ditch Inspector, the County Planning Department, the County Attorney and the County Board. Presentations were made before the County Board. The U.S. Department

of Agriculture, the Watershed Planning Group from the Soil and Water Conservation Service in St. Paul, and the St. Cloud Soil and Water Conservation Office were all contacted. The Minnesota Pollution Control Agency and the Department of Natural Resources, the U.S. Army Corps of Engineers were all contacted. None offered any overall, long-term solution to the flooding. Members of the Association conducted an aerial search of County Ditch 28 from Holdingford north to the Mississippi River, and believed that they saw a number of beaver dams blocking the natural flow of water. This resulted in a September, 1984 hydrographic survey and field inspection of the area north of Holdingford by the DNR. It disclosed numerous obstructions, such as fallen trees and debris, and remnants of several beaver dams. However, the Association was informed by the County that in order to improve the ditch, they would have to put up a \$10,000 bond.

34. By September of 1984, the Association had gotten in touch with Mr. Issac Yomtovian of the St. Cloud consulting firm of Envirosience, Inc. Mr. Yomtovian toured the area. On October 1, 1984, he appeared before the Albany Storm Water Control Study Commission. The Commission voted to support the petition to establish a watershed district.

35. In the spring of 1986, the Association made an aerial survey of the South Fork of Two River, from Two River Lake north to the far side of Holdingford. The survey showed flooding not only on the Lake, but also along the course of the River. However, photographs (Petitioner's Ex. 15) illustrate that there was still some snow on the ground, and thus this represented spring snowmelt flooding, which is not particularly unusual in Minnesota.

36. Lake level gauge readings illustrate that there was a 2.7 foot fluctuation between the high and low levels during the 1985 water year. The high level for that year was 6.4 in both June and July of 1985, while the low was 3.7 in August of 1985. Even during the months of June and July, 1985, the lake varied 2.5 feet within each month. During the next year, 1986, lake level data was available only for the months of April, May and June. The high water level was 8.2 in April, while the low 4.7 in June, a difference of 3.5 feet. During the month of June, alone, the lake varied 2.8 feet.

37. The above lake level readings are vertical levels. When a lake's level rises by one foot vertically, the lake may encroach upon lake shore for many more feet, depending on how flat or steep the lake shore is. Fluctuations of 2.5 feet and 2.8 feet within single months do have substantial impacts on the shoreline.

38. The history of water quality problems on the Lake goes back farther than the flooding of 1984. In 1981, the Association contacted the MPCA with complaints about algae. Water samples were provided to the Agency. The Agency analyzed them, and reported that the underlying problem was excessive nutrients in the Lake, both from farm feed lots and from lake shore septic systems. In 1984, the MPCA was again contacted by the Association. The Agency informed the Association that its Clean Lakes Group was busy, and the Association would have to solve its own problems. However, the Agency suggested that the formation of a watershed district, and the establishment of joint power agreements with other governmental units (such as the local Soil and Water Conservation District) had been successful in other areas, and ought to be investigated in this case.

39. In 1986, the MPCA furnished the Association with some data on Two River Lake. The data reveals that the Lake has a transparency (as measured by a secchi disk) of approximately 1.9 meters, which places it in about the middle of the measurements taken across the state. Other data from the Department of Natural Resources, Montrose Fishery Office, compared secchi disk data from Two River Lake with seven other lakes in Stearns County. Of those, Two River was the second worst in terms of clarity.

40. The Department of Natural Resources has classified Two River Lake as eutrophic, which means that the Lake is aging, and is polluted. Symptoms of eutrophication are excessive algae blooms, abundant aquatic plants, increasing populations of rough fish, and decreasing populations of walleyes and crappies.

41. As mentioned earlier, one of the primary concerns of lakeshore owners is with the contamination of underground water supplies and drinking water wells. A number of residents around the Lake testified that they now import their own drinking water, and have been doing so for several years.

#### C. Other Problem Areas

42. The County drainage ditches within the boundaries of the proposed district are, generally, in very poor condition. They were originally built with very steep, 1:1 or 1:1.5, side slopes. The slopes have now eroded, and the ditches are plugged with slit, grass and weeds. In some areas, water is stagnating and does not flow quickly.

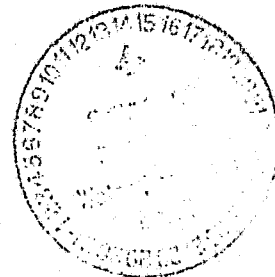
43. Pelican Lake, to the southeast of Two River Lake, has a timing problem. Water comes into the Lake at a faster rate than it used to because of ditches and drains. When a rain comes, the Lake jumps up faster than it used to. There have been both high and low water level complaints to the DNR regarding Pelican Lake.

44. In 1984, there was severe structure and road flooding on Pine Lake, which is located directly south of Two River Lake. There have been complaints of moderate flooding there several other years.

#### Boundaries

45. Petitioner's expert, Issac Yomtovian, candidly admitted that there were a few areas on the eastern boundary of the proposed district where it was unclear whether or not certain lands should, or should not, be included in the district.

46. One witness suggested that the northwest border of the District was improperly placed, and ought to include more lands than were included. Specifically, the witness stated that in Krain Township, Sections 34 and 35, the boundary ought to be moved to the north and west, even into Morrison County, because lands to the north and west do drain into the watershed district. The Administrative Law Judge is unable, from an examination of the U.S.G.S map, to render any opinion with regard to the validity of that recommendation.



47. Another witness raised a question about the eastern boundary of the proposed district, in the area just to the northeast of Pelican Lake and St. Anna. In Avon Township, between Sections 5 and 6, there is a wetland and lake shown on Petitioner's Ex. 1. The wetland and lake are surrounded by the elevation 1150 contour, meaning that they are at or below 1150 feet in elevation. At the western tip of the 1150 contour is a road which was identified in the record as going to the Elmer Korneck property. Immediately on the other side of that road is another 1150 contour. In other words, the road is higher than the land on either side of it. A landowner testified that it was uncertain where his land would drain. It appears most likely that it would flood over the road and drain to the northwest, into Two River Lake. While the undersigned makes no claim to expertise in reading maps, that outcome appears to be the most likely. Therefore, the land is properly within the watershed district.

48. The proposed district is only the watershed of the South Fork of Two River. There are a number of alternatives which Petitioner's could have asked for. There is a main stem of Two River which flows from the western edge of Morrison County to its junction with the South Fork. The two then flow together for a few miles to the Mississippi. Even if the entire watershed area of the main stem were not included, Petitioners could have chosen to include the area that drains into the combined portion just upstream of the Mississippi. Finally, there is the North Branch of Two River, which flows entirely in Morrison County. It, too, flows into the Mississippi, but it never meets any other branch: it joins the Mississippi approximately one-half mile north of where the South Branch and the main stem flow into the Mississippi. Petitioners could have added to their Petition the lands that drain into the North Branch. Any of these choices would be logical. There is nothing inherently wrong with Petitioners having chosen the boundaries which they did.

#### Activities in Connection with the Formation of District

49. On August 28, 1985, the City of Albany wrote to Stearns County, asking for assistance in gathering data regarding water problems. In the course of the letter, the City also mentioned that it would like to have assistance from the County in helping to establish a watershed district.

50. On September 1, 1985, a public meeting was held at St. Anna concerning the creation of a district.

51. On September 23, 1985, the City of Albany hosted a public meeting in the Albany Senior High School.

52. On October 9, 1985, the Albany City Council voted in favor of the establishment of a district.

53. On October 14, 1985, a meeting was held in Holdingford with Stearns and Morrison County Commissioners and Township Boards to discuss the possibility of the watershed district.

54. On November 29, 1985, the Albany Township Board met and voted to oppose the formation of the district.

55. On January 27, 1986, the City of St. Anthony hosted a public meeting at the Green Lantern Pavilion. A straw vote taken at that meeting indicated 33 persons in favor of the district, 72 against, and 4 undecided.

56. On April 21, 1986, a meeting was held at the Holdingford High School gymnasium, convened by "concerned citizens". A newspaper report of the meeting suggests that most of the speakers were opposed to the formation of a district.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The nominating Petition is valid in all respects. It meets the tests set forth in Minn. Stat. § 112.37 and in particular, subd. 1(4).
2. Due, timely and proper notice of the hearing was given. All other relevant requirements of law or rule have been fulfilled. The Board and the Administrative Law Judge do have jurisdiction to determine the issues herein.
3. The establishment of a watershed district as proposed would be for the public welfare and public interest within the meaning of Minn. Stat. § 112.39, subd. 3 (1984).
4. The establishment of a watershed district as proposed would subserve the purposes of Minn. Stat. § 112.34, subd. 1. It would serve the purposes set forth in Minn. Stat. § 112.36, subd. 2(1), (2), (5), (6), (9), (10), (11), (13), and (14).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Board establish the South Two River Watershed District, fix the boundaries thereof (to be essentially the same as those proposed), and name the first Board of Managers of the District.

Dated this 13<sup>th</sup> day of October, 1986.

*Allan W. Klein*

ALLAN W. KLEIN  
Administrative Law Judge

#### NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Joanne M. Ertl, St. Cloud Area Court Reporting



MEMORANDUM

I.

During the hearing, Petitioners sought to introduce into the record 25 survey responses which they had obtained from residents around Two River Lake in a 1984 survey. The President of the Association stated that there had been 75 survey forms returned, and that he had selected the 25 at random. Following an objection, the Administrative Law Judge ruled that if any of the survey forms were to be accepted into the record, all of the survey forms had to be supplied. The 25 were thus accepted, subject to receipt of the remaining 50.

Shortly at the hearing, the Administrative Law Judge received a letter from the wife of the Association's President, stating that she had been in charge of the mailings for the Association. She stated that although 75 survey forms were sent out, only 25 were returned. In other words, the 25 which had been brought to the hearing were the only ones which had been returned. She stated that her husband had misunderstood her explanation of the numbers.

The Administrative Law Judge accepts the explanation, and has included the 25 in the record despite the fact that there were not an additional 50 submitted.

II.

The decision of whether or not to recommend that the district be established was closer than many. It is clear that there are water problems, but it is also clear that those problems have been restricted to times of heavy rain and occur only in a limited number of areas within the proposed district.

At the hearing, there was substantial opposition from opponents, who claimed that existing units of government could solve the problems without forming a watershed district. The reason that formation has been recommended is that existing units of government have failed, in the past, to solve the problems. Although the City of Albany and Albany Township agreed on some changes, they were not enough to avoid the flooding of 1986. Although the County did build a new bridge in the City of Holdingford, with a bigger opening for water, it still was not enough to prevent the 1986 flooding.

The Board would certainly be justified, however, in noting that the mid-1980s have been years of high precipitation and water problems through much of the state, and that presumably those water problems will diminish if and when we return to more normal rainfalls.

A.W.K.

STATE OF MINNESOTA  
DEPARTMENT OF STATE  
FILED  
JAN 2 1987  
Joan Anderson Howe  
Secretary of State

837079

