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**ATTORNEY/CLIENT COMMUNICATION
PRIVILEGED AND CONFIDENTIAL**

DATE: December 19, 2014
TO: Chris Pence
FROM: Paul D. Reuvers
RE: Legal Opinion for Thirty Lakes Watershed District

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I understand the Board of Managers for Thirty Lakes Watershed District has requested a legal opinion concerning the following question:

Does the statutory authority governing watershed districts supersede the state permitting authority for work in public waters for lake restoration work that would include dredging?

In my opinion, the answer is no. The watershed district must obtain a permit to perform restoration work in public waters that includes dredging.

Minn. Stat. § 103G.245, which governs work in public waters, provides in pertinent part:

Subdivision 1. Permit requirement.

Except as provided in subdivisions 2, 11, and 12, the state, **a political subdivision of the state**, a public or private corporation, or a person **must have a public waters work permit to:**

- (1) construct, reconstruct, remove, abandon, transfer ownership of, or make any change in a reservoir, dam, or waterway obstruction on public waters; or
- (2) **change or diminish the course, current, or cross section of public waters, entirely or partially within the state, by any means, including filling, excavating, or placing of materials in or on the beds of public waters.**

(Emphasis supplied.) In other words, a watershed district, which is a political subdivision of the state, is required to obtain a permit before performing any

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excavation work on the beds of public waters (subject to certain exceptions, which have no application for the purposes of this opinion).

The Commissioner of the Minnesota Department of Natural Resources (“DNR”) has promulgated rules further governing excavation work in public waters. *See* Minnesota Rules Chapter 6115; Minn. R. 6115.0200, Subp. 1 (providing “It is the goal of the department to limit the excavation of materials from the beds of public waters . . .”); Minn. R. 6115.0240, Subp. 2(A) (providing “a governmental agency . . . may apply” for a permit). Neither the statutory authority nor the rules promulgated by DNR exempt watershed districts from obtaining a permit before performing excavation work in public waters.

In addition, the statutory authority governing watershed districts does not contain any exemption for dredging or excavating lakes for restoration purposes. In particular, Minn. Stat. § 103D.201 merely outlines the purposes for which watershed districts may be formed, but does not contain an exemption from the state permitting requirements. In short, while a watershed district may authorize restoration work, it still must comply with the statutory permitting process for work in public waters.

Please let me know if you need have any questions or need further clarification. Thank you.