

Public Waters Protection

HF 3385 / SF 3558



THE PROBLEM

- Minnesota statute defines a “public water” in Section 103G.005, and a list and map of public waters called the public waters inventory (PWI) was created in the 1980’s that attempted to document public waters in Minnesota.
- Currently, the PWI erroneously leaves off waters that meet the definition of public waters. Some of these waters were incorrectly deleted from the PWI in 2017, when 640 stream miles were removed from the PWI by the Minnesota Department of Natural Resources (DNR). DNR has acknowledged that some of the deleted waters should be restored to the PWI and has committed to systematically review the deleted waters in each county and restore waters to the PWI as appropriate.
- The Minnesota Supreme Court in a 2022 case regarding a specific stretch of a creek failed to reach a definitive conclusion on the general interaction between the PWI and the definition in statute adding “[i]t is the duty of the Legislature to clarify the relationship between the inventory and the statutory definition of public waters.”

BACKGROUND

The Public Waters Inventory (PWI) is a list of the streams and rivers of Minnesota that meet the definition of a public water. The legislature tasked the DNR with creating and maintaining the PWI.

Public waters include all natural and altered watercourses with a total drainage area greater than two square miles.

In 2020, the DNR started the process of returning public waters deleted in 2017 to the PWI. This review has not yet been completed by the DNR, meaning that waters that meet the definition in statute are not listed on PWI. There are also other waterways that meet that definition that are also not included in the PWI for a variety of reasons, including the technology available when the PWI was created.

Public waters are protected and require a permit from the DNR (“public waters work permit”) before they can be ditched, drained, or dammed. There are also mandatory categories for environmental review for public waters.

MINNESOTA’S PUBLIC WATERS DESERVE PROTECTION

HF 3385 (Pursell) / SF 3558 (Kunesh) would answer the Supreme Court’s question of the Legislature by clarifying that public waters are not exclusively determined by inclusion in or exclusion from the PWI.

This is consistent with how the Minnesota DNR currently identifies public waters. Efforts to make the PWI as accurate as possible, including restoration of inappropriately deleted waters, are important and must continue, as the PWI is a useful and important tool for all stakeholders.



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