

# 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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Tuesday, February 20, 2024

Chair Hansen and Members of the Committee:

The undersigned organizations support HF 3385 (Pursell) and ask for your vote to advance this legislation, which clarifies the definition of “public waters” to ensure that all public waters are protected in Minnesota.

Minnesotans rightly treasure our public waters, and the Legislature has created strong protections to ensure that public waters are not damaged or converted to a private purpose. These protections include a needed “public waters works” permit, administered by the Minnesota Department of Natural Resources, before a public water can be ditched, drained or dammed. In addition, governmental actions that significantly impact public waters require an environmental assessment worksheet to be completed. Minnesota Statute 103G.005 Subd. 15 defines a “public water.” In the late 1970’s and early 1980’s, the Legislature required the creation of a “public waters inventory” (PWI), comprising a list and map of identified public waters. The PWI is an important and useful resource, but it omits a number of waterways that meet the statutory definition. This can occur for several reasons. One example is that in 2017, the Minnesota DNR deleted approximately 640 miles of stream and river segments from the PWI. The DNR subsequently agreed that some of these deletions were inaccurate, and committed to a court to restore them. However, the DNR has not yet completed this work, meaning that for this reason alone the PWI is not a complete list of public waters in Minnesota. In addition, we didn’t have the advanced geospatial tools in the 1980’s that we now have to capture and correctly characterize all water bodies that meet the statutory definition in 103G.005.

In 2022, the Minnesota Supreme Court found in favor of local citizens who sought to protect the last free-flowing stretch of Limbo Creek, a waterway that met the statutory definition of a public water, but was omitted from the PWI due to confusion over its status in the early 1980’s. The Court ruling was limited to the facts specific to that waterway, and the Court asked for the Legislature to act, stating that “[i]t is the duty of the Legislature to clarify the relationship between the inventory and the statutory definition of public waters.”

HF 3385 (Pursell) clarifies this relationship and protects the public waters that Minnesotans rely on. Thank you to Chair Hansen for hearing this important bill, and we ask for the support of all legislators.

Sincerely,

Minnesota Center for Environmental Advocacy  
Austin Coalition for Environmental Sustainability (A.C.E.S.)  
Alliance for Sustainability  
Audubon Upper Mississippi River  
Bicycle Alliance  
Clean Water Action Minnesota



The Coalition for a Clean Minnesota River (CCMR)  
Conservation Minnesota  
CURE  
Friends of the Cloquet Valley State Forest  
Friends of the Mississippi River  
Friends of Minnesota Scientific and Natural Areas  
Izaak Walton League - McCabe Chapter  
Izaak Walton League - Minnesota Division  
Land Stewardship Project  
League of Women Voters Minnesota  
Minnesota Environmental Partnership  
Minnesota Trout Unlimited  
Minnesota River Collaborative  
MN350  
Northern Waters Land Trust  
Pollinator Friendly Alliance  
Save Our Sky Blue Waters  
Save Lake Superior Association  
Sierra Club North Star Chapter  
Vote Climate  
WaterLegacy  
Wild Rivers Conservancy



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February 21, 2024

Chair Hansen  
House Environment and Natural Resources  
Finance and Policy Committee  
75 Rev. Dr. Martin Luther King, Jr. Blvd.  
Saint Paul, MN 55155

Re: Public Waters Protection; H.F. 3385Dear Chair Hansen and Committee Members,

My name is Peg Furshong, I am the director of programs at CURE in Montevideo. CURE is a nonprofit that has worked on water issues in Minnesota since 1992.

This public waters fix is not just an administrative issue, it has a real-world impact on people and communities across Greater Minnesota. One afternoon, I was driving home from work and saw a backhoe out near Limbo Creek about a 1/3 of a mile northwest of our family farm in Renville County. I was surprised and felt compelled to know what was going on. Renville County has more miles of ditches than it has roads and this section of Limbo Creek near our home is one of the last free-flowing public waters in the county. I learned that because Limbo Creek was not correctly identified as a “public water” on the DNR’s Public Water Inventory, it was vulnerable to be ditched by a local landowner without the permit needed.

The Minnesota Supreme Court’s 2022 decision protects Limbo Creek but does not address the over 600 miles of public waters that meet the statutory definition of a “Public Water” in Minnesota but are not on the DNR Public Water Inventory.

In my capacity at CURE, I see that our constituents across the state of Minnesota care deeply about water and look to CURE when it comes to protecting our natural resources. This is why CURE joined MCEA and others to intervene on behalf of Limbo Creek. While Minnesota may be the “Land of 10,000 Lakes” much of our water is at risk. Furthermore, as we look to the challenges we face in the future with drought and climate impacts, it is imperative that we accurately identify the state’s water resources and protect those resources for future generations.

We ask you to extend the outcome of the Limbo Creek decision to ensure that Minnesota Public Waters are correctly identified and protected across the state.

Sincerely,

/s/ Peg Furshong  
Director of Programs  
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