



Association of Minnesota Counties

December 7, 2020

Members of the Subcommittee on Minnesota Water Policy,

I am Brian Martinson, Environment and Natural Resources Policy Analyst for the Association of Minnesota Counties (AMC). AMC is a voluntary association representing all 87 counties. I would like to offer comments on the agenda item: *Public Waters Inventory, Limbo Creek, Trends in Minnesota River flows*.

My comments will primarily focus on the Minnesota Department of Natural Resources' (DNR) efforts to reclassify waters of the state. But first, I would like to acknowledge the other two items incorporated into this agenda item.

The Minnesota River is an important water resource. AMC and the counties in the Minnesota River Basin actively promote and participate in efforts to protect and improve its health and function.

Limbo Creek, which is one of the watercourses currently being considered for reclassification, is the subject of litigation between the state and Renville County. However, the circumstances surrounding this one watercourse are not representative of the more than 500 watercourses across the state that are to be subjected to a Public Waters Inventory (PWI) reclassification, nor should it be considered a case study for this undertaking. Doing so distracts from the broader questions about the state's reclassification efforts and is an unfair generalization of the varied and unique conditions of each location.

The DNR posted a public comment period for "corrections and refinements" to the PWI regarding the reclassification of four watercourses in Renville County and one in Polk County in August of 2020.

AMC questions the DNR's interpretation of their authority under M.S. 103G.201 to revise the PWI and asks that they don't simultaneously dismiss the authority of local governments under M.S. 103G.201 (c) to object to a reclassification.

Establishment of the PWI under Laws 1979, Chapter 199, provided for a state and local process that both informed and engaged local governments and the public in decision-making. Minnesota Statutes have been amended to allow the DNR limited authority to do specific revisions but include protections to ensure that the voice of local entities and the public was not muted.

The statutes allow the DNR to reclassify types 3, 4, and 5 wetlands that were previously identified as public waters wetlands through Laws 1979, Chapter 199 and as needed to: correct errors in the original inventory; add or subtract trout stream tributaries within sections that contain a designated trout stream following written notice to the landowner; add depleted quarries, and sand and gravel pits, when the body of water exceeds 50 acres and the shoreland has been zoned for residential development; and add or subtract public waters that have been created or eliminated as a requirement of a permit authorized by the commissioner under section 103G.245.

The DNR Commissioner issued an order on April 13, 2017 removing certain watercourses from the PWI that the DNR is saying were mistakenly identified as public ditches on the PWI maps. The DNR order states that these watercourses were left off the PWI lists during the designation process, which resulted in these watercourses never being subject to the state required public process.

The DNR has taken an extremely broad view of what it means to correct an error to grant them authority to designate hundreds of waters, some of which were not included in the 2017 removal order, as public waters and under a process of their own creation. Furthermore, a public comment period followed by a unilateral order of the commissioner doesn't correct the error but exacerbates the injustice that was done when these watercourses were denied the lawful public process under Laws 1979, Chapter 199.

If these waters are going to be reclassified as public waters, M.S. 103G.245 (c) requires a notice to the local government unit and for the ability of those entities to file an objection. If the commissioner receives an objection from a party required to receive the notice, the reclassification is not effective.

The five watercourses currently being considered for reclassification are the first in a process to reclassify over 500 water segments, representing approximately 640 miles, located in nearly every county of the state. It is important that such a significant undertaking be done properly and with a genuine public engagement process.

AMC is prepared to work with the state leaders to ensure appropriate waters are listed as part of the PWI, and that it is done in compliance with the law through judicious public process. I look forward to working with you on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Martinson", is placed on a light gray rectangular background.

Brian Martinson
Environment and Natural Resources Policy Analyst
Association of Minnesota Counties