

Water Laws in Minnesota



Questions and Answers about Minnesota Water Laws

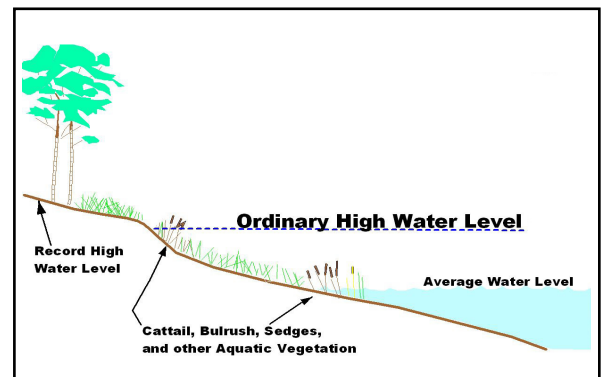
Basic Water Laws

Who owns the bed of a lake, marsh, or watercourse?

When a waterbasin or watercourse is *navigable* under the federal test, the State of Minnesota owns the bed below the natural ordinary low water level [see Minnesota Statute 84-032; *Lamprey v. State*, 52 Minn. 1981, 53 N.W. 1139 (1983) and *United States v. Holt State Bank*, 270 U.S. 49 (1926)]. The federal test used for navigability is “when they are used, or are susceptible of being used, in their natural and ordinary condition, as highways for commerce, over which trade or travel are or may be conducted.” [See *State v. Longyear Holding Co.*, 224 Minn. 451, 29 N.W. 2d 657 (1947).] If a court has found that a lake is non-navigable and meandered, the shoreland owners own the bed of the lake in severalty. [See *Schmidt v. Marschel*, 211 Minn. 543, 2d 121 (1942).] If a stream is non-navigable but has been meandered, the shoreland owners own to the thread (centerline) of the stream. If a lake or stream is non-navigable and not meandered, ownership of the bed is as indicated on individual property deeds.

What is the ordinary high water level?

The ordinary high water level is an elevation that marks the boundary of the lake, marsh, or stream bed. It is the highest level at which the water has remained long enough to leave its mark upon the landscape. [See *Lake Minnetonka Improvement*, 56 Minn. 513, 58 N.W. 295 (1894), and Minnesota Statutes, Section 103G.005, subd. 14.] Generally, it is the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.



What are riparian rights?

Riparian rights are property rights arising from owning property abutting water. They include the right to wharf out to a navigable depth; to take water for domestic and agricultural purposes; to use land added by accretion or exposed by reliction; to take ice; to fish, boat, hunt, swim; and to such other uses as water bodies are normally put [see *Sanborn v. People's Ice Co.*, 82 Minn. 43, 84 N.W. 641 (1900) and *Lamprey v. State*, 52 Minn. 181, 53 N.W. 1139 (1893)]. The riparian owner has the right to use the water over its entire surface [see *Johnson v. Seifert*, 257 Minn. 159, 100 N.W. 2d 689 (1960)].

What are riparian duties?

It is the duty of the riparian owners to exercise their rights reasonably, so as not to unreasonably interfere with the riparian rights of others [see *Petraborg v. Zontelli*, 217 Minn. 536, 15 N.W. 2d 174 (1944)]. They cannot dike off and drain, or fence off, their part of the waterbody [see *Johnson v. Seifert*, 257 Minn. 159, 100 N.W. 2d 689 (1960)]. It is a public nuisance and a misdemeanor to “interfere with, obstruct, or render dangerous for passage waters used by the public” [see Public Nuisance Law, Minnesota Statutes 609.74].

What are public rights?

Where the public is a riparian landowner, such as a public road abutting the water or at a public access, the public has riparian rights. [See *Flynn v. Beisel*, 257 Minn. 531, 102 N.W. 2d 284 (1960).]

What is considered trespassing when the public seeks access to a water body?

The belief that the state owns a strip of land around all Minnesota lakes for public use is false. Riparian property (property abutting a lake, river, or wetland) is either privately or publicly owned. The general public can access water bodies or watercourses via public property, but not through private property. Individuals entering private property without permission from the landowner are trespassing and may be prosecuted under the state trespass laws. It is illegal to trespass on private property in order to gain access to a water body or watercourse without first obtaining the verbal or written permission from a landowner. A person who has legally gained access to a water body may use its entire surface for recreation, such as boating, swimming, or fishing. Using the underlying bed of the lake or river, if access was gained legally, is called “incidental use”; the use of the bed or bottom is incidental to the water body’s primary use. Examples include poling or anchoring a boat, wading on the bed to swim or fish, and anchoring decoys or traps.

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Regulation and Water Use

What are waters of the state?

Waters of the state are *any* surface waters or underground waters, except those surface waters that are not confined but are spread and diffused over the land [see Minnesota Statutes, Section 103G.005, subd. 17]. This includes *all* lakes, ponds, marshes, rivers, streams, ditches, springs, and waters from underground aquifers regardless of their size or location.

When is a DNR permit needed to appropriate or use water?

A water appropriation permit from the Minnesota Department of Natural Resources (DNR) is needed to appropriate or use waters of the state for any use that exceeds 10,000 gallons in any one day or 1,000,000 gallons in a year except for domestic use serving less than 25 persons. [See Minnesota Statutes, Section 103A.201 and Section 103G.271, subd. 1, and Minnesota Rules, Part 6115.0600.]

What priorities are set for water use?

If there is not enough water for everyone, Minnesota law sets general priorities for which users can appropriate waters of the state. [See Minnesota Statutes, Section 103G.261.] These priorities, from highest priority to lowest priority, are as follows:

1. Domestic water supplies and power production with contingency water use plans
2. Uses of water consuming less than 10,000 gallons per day
3. Agricultural irrigation and processing of agricultural products
4. Power production without contingency water use plans
5. Uses, other than agricultural irrigation, processing of agricultural products, and power production
6. Nonessential uses of water



What are the limitations on the use of ground water?

DNR is responsible for protecting ground water supplies and has authority to establish water appropriation limits. Limitations are based on information that may be required from those applying for water use permits, including: well drilling records, pumping rates and volumes, an inventory of existing wells in the vicinity of a proposed appropriation, and the results of aquifer testing. Applications for water appropriation proposals must show that the use will be sustainable now and into the future; and that the proposed use will not harm ecosystems, degrade water quality, or reduce water levels beyond the reach of public water supply and private domestic wells. If aquifer test results show that pumping draws down water below the reach of nearby domestic wells, the applicant must develop a solution with those affected well owners before a permit will be issued. [See Minnesota Statutes, Section 103G.287.]

What are the limitations on the use of surface water?

Minnesota law sets water use limits for waterbasins and watercourses and discourages taking water from waterbasins of less than 500 acres. [See Minnesota Statutes, Section 103G.285 and 103G.261.] On any waterbasin, the total of all withdrawals cannot be more than one-half acre-foot per acre per year (6 inches of water taken off the surface of the waterbasin). The DNR can also establish minimum *protection elevations* for waterbasins and *protected flows* for watercourses. Surface water withdrawals within a watershed may be suspended when water levels fall below minimum protection levels at indicator sites. *[See Minnesota Statutes, Section 103G.285, subs. 2 and 3.]

Regulation of Public Waters and Public Waters Wetlands

What are public waters and public waters wetlands?

Public waters are all waterbasins and watercourses that meet the criteria set forth in Minnesota Statutes, Section 103G.005, subd. 15, and are designated on the DNR's public waters inventory maps. *Public waters wetlands* include all type 3, 4, and 5 wetlands (as defined in U.S. Fish and Wildlife Service Circular No. 39, 1971 ed.) that, at the time of designation, were 10 or more acres

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in rural areas and 2½ or more acres within cities and are designated on the DNR's public waters inventory. [See Minnesota Statutes, Section 103G.005, subd. 18.]

When is a DNR permit needed?

A DNR *public waters work permit* is needed to do any work that will change or diminish the course, current, or cross section of any lake, wetland, or watercourse that is designated as *public waters* or *public waters wetland* on the DNR's public waters inventory maps. Any work done below the ordinary high water level of public waters or public waters wetlands requires a permit. Examples of such work include draining; filling; dredging; channelizing; constructing dams, harbors, or permanent offshore structures; and placement of bridges and culverts. [See Minnesota Statutes, Section 103G.245, subd. 1, and Minnesota Rules, Part 6115.0150.]

What is the Public Waters Inventory (PWI)?

This is a map and list prepared by the DNR showing all public waters and public waters wetlands. [See Minnesota Statutes, Section 103G.201.] These maps can be viewed at all DNR offices, local soil and water conservation district offices, local watershed district offices, and many county offices, as well as on the DNR web site (www.dnr.state.mn.us/waters/watermgmt_section/pwi/maps.html). Until the original scanned PWI paper maps are replaced with updated GIS-based PWI maps, the paper maps will continue to be available from the Minnesota Bookstore located at 660 Olive Street, St. Paul, MN 55155, telephone 651-297-3000 (metro area) or 1-800-657-3757 (statewide).

Is the state's regulation of public waters and public waters wetlands constitutional?

The Minnesota Supreme Court has held that DNR's inventory of public waters and public waters wetlands, and the DNR's regulation of work that changes the course, current, or cross section of public waters and public water wetlands are clearly constitutional. [See *State v. Kulwar*, 266 Minn. 408, 418, 123 N.W. 2d 699, 706-707 (1963); *State v. Olsen*, 275 N.W. 2d 585 (Minn. 1979); and Minnesota Supreme Court file number C5-86-332, decided on December 24, 1987.]

Regulation of Lands Adjoining Public Waters and Public Waters Wetlands

What are the DNR's land use programs?

The DNR oversees four programs regulating the use of the shores of waterbasins and watercourses: the Shoreland Management program, the Floodplain Management program, the state Wild and Scenic Rivers program, and the Mississippi River Critical Area. Under each program, the DNR establishes minimum land use standards, which local units of government must adopt and enforce through their zoning ordinances. Administration of these ordinances, which must be approved by the DNR, is locally controlled, except for DNR approval of planned cluster developments along wild and scenic rivers. Always check with local zoning officials to learn what ordinance provisions apply to your property.

How does shoreland management apply to local zoning?

Shoreland zoning incorporates ordinances that apply to all land within 1,000 feet of the ordinary high water level of a public water, lake, pond or flowage (or sometimes a public waters wetland designated by a local unit of government), and within 300 feet of a public waters watercourse or to the landward extent of a designated floodplain on a public waters watercourse (where the floodplain is wider than 300 feet). The DNR classifies each waterbody as either *natural environment*, *recreational development*, or *general development*. The DNR also classifies river reaches as either *remote*, *forested*, *transition*, *agriculture*, *urban*, or *tributary*. The



allowable use(s) of land, lot sizes, lot widths, structure setbacks, and sanitary system setbacks are different for each class. The state's minimum shoreland development standards last underwent a major revision in 1989, focusing on additional issues, such as stormwater management, wetland alterations, best management practices for forestry and agriculture, upgrading of nonconforming sewage systems, and protection of (nearshore) shore impact zones. Eighty-five Minnesota counties and about 160 cities have a shoreland zoning ordinance. [See Minnesota Statutes, Section 103F.201-103F.221, and Minnesota Rules, Parts 6120.2500-6120.3900.] The DNR is currently

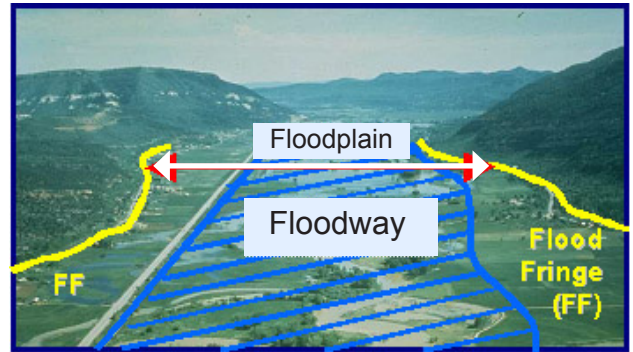
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updating the shoreland development standards to address emerging trends and issues. See the following web site for information on the process and standards:

http://mndnr.gov/waters/watermgmt_section/shoreland/shoreland_rules_update_project.html.

What is floodplain zoning?

Land within the floodplain is divided into zones, and local ordinances specify the uses permitted in each zone. Floodplain zoning ordinances apply to lakes, as well as streams, and cover all land inundated by the 100-year flood (the flood having a 1-percent chance of being equaled or exceeded in any single year). The *floodway* is that part of the floodplain necessary to allow passage of 100-year flood waters without increasing the water surface more than a designated height. Only minimal encroachments and very limited construction are allowed in the floodway. The area of the floodplain outside the floodway is called the *flood fringe*. Development conforming to the community's floodplain zoning and building standards is generally allowed in the flood fringe, but it must be placed on fill or floodproofed high enough to keep it dry during a 100-year flood. The emphasis of the program is to minimize flood damage by promoting nonstructural remedies instead of construction of costly levees, dikes, or dams. [See Minnesota Statutes, Section 103F.101-103F.155, and Minnesota Rules, Parts 6120.5000-6120.6200.]



The district boundary established at the designation hearing could not include more than 320 acres of land per river mile on both sides of the river. The boundary generally follows a government land survey line or road and includes areas that are visible from the river or are environmentally sensitive. River segments are classified as *wild*, *scenic*, or *recreational* (*urban* or *rural* for the Lower St. Croix) and have associated dimensional standards, land uses, and alteration standards. [See Minnesota Statutes, Sections 103F.301-103F.351, and Minnesota Rules, Chapter 6105.]

What is Wild and Scenic Rivers zoning?

Wild and Scenic River zoning is the ordinances that apply to those rivers and adjacent lands that have been designated under the Minnesota Wild and Scenic Rivers Act or the Lower St. Croix Wild and Scenic River Act. These are the St. Croix River from the Taylors Falls dam to the Mississippi River, the Kettle River in Pine County, the Mississippi River from the city of St. Cloud to the cities of Ramsey and Dayton, the North Fork of the Crow River in Meeker County, the Minnesota River from the Lac qui Parle dam to the city of Franklin, the Rum River from Ogechie Lake to the city of Anoka, and the Cannon River from the city of Faribault to the Mississippi River. The district boundary established at the designation hearing could not include more than 320 acres of land per river mile on both sides of the river. The boundary generally follows a government land survey line or road and includes areas that are visible from the river or are environmentally sensitive. River segments are classified as *wild*, *scenic*, or *recreational* (*urban* or *rural* for the Lower St. Croix) and have associated dimensional standards, land uses, and alteration standards. [See Minnesota Statutes, Sections 103F.301-103F.351, and Minnesota Rules, Chapter 6105.]

What is Mississippi River Critical Area zoning?

The Mississippi River Critical Area zoning is the ordinances for a 72-mile section of the Mississippi River, including an adjacent corridor of land, extending from the cities of Dayton and Ramsey downstream to the City of Hastings. The Mississippi River Critical Area was established through executive order and was permanently designated in Minnesota Statutes 116G. The Mississippi River Critical Area boundary coincides with the boundary of the Mississippi National River and Recreation Area, a unit of the National Park Service. All communities along the corridor were required to adopt plans and ordinances to meet the minimum standards and guidelines contained in Executive Order 79-19. The DNR must approve any Critical Area plan or ordinance amendments. The DNR is currently developing rules to establish new zoning districts and development standards. See the rulemaking project website at:

http://mndnr.gov/waters/watermgmt_section/critical_area/rulemaking.html. [See Minnesota Statutes 116G, Minnesota Rules parts 4410.8100 to 4410.9910, and Executive Order 79-19, available on the DNR's web site].

DNR Contact Information



DNR website and a listing of Area Hydrologists: <http://mndnr.gov/waters>

DNR Ecological and Water Resources
500 Lafayette Road, Box 32
St. Paul, MN 55155
(651) 259-5700

This information is available in an alternative format on request.

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DNR Information Center

Twin Cities: (651) 296-6157
Minnesota toll free: 1-888-646-6367
Telecommunication device for the deaf (TDD): (651) 296-5484
TDD toll free: 1-800-657-3929

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