

Chapter 7: Governing Water

Key Concepts:

- Laws, rules, and regulations help keep water clean and available for a variety of uses, from providing life-giving drinking water for people, to providing support for our economy, to providing habitat for other living things, to providing beauty and recreational opportunities for all.
- Federal, state, and local governments work together to care for Minnesota's waters.

Water is a public resource that all have a right to use.

WHO OWNS THE WATERS OF MINNESOTA? Who is responsible for taking care of them?

We all do, and we all are.

Water is a public resource that all have a right to use. There are different laws and regulations governing that right, but the basic idea in Minnesota is that no one owns the water—we all have rights to it.

We all can take care of water by using it wisely, not polluting or wasting it, and encouraging others to do the same. In addition to these activities, it's important to pay attention to water issues at the local, state, and national levels, providing input to elected officials as they shape laws affecting water, and providing input to those who are appointed to carry them out.

In Minnesota, the rights and responsibilities related to water are determined by federal laws, state statute, local ordinances, and the rules, regulations, and permits that result from them.

Why Govern Water? If we didn't have government controls, some people would use water to meet their own needs without adequately considering the cumulative impact of many users on the resource. This phenomenon, known as the "tragedy of the commons," leads to unsustainable use. Laws, rules, and regulations provide a framework that allows us to all share and care for water resources.

Who Governs Water?

A 2009 report by the Citizens League lists two-dozen entities involved in governing water in Minnesota. They include:

Federal
Bureau of Indian Affairs
Farm Service Agency
Natural Resources Conservation Service
U.S. Army Corps of Engineers
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service
U.S. Geological Survey
Minnesota
Board of Water and Soil Resources
Clean Water Council
Environmental Quality Board
Legislative-Citizen Commission on Minnesota Resources
Minnesota Department of Agriculture
Minnesota Department of Health
Minnesota Department of Natural Resources
Minnesota Department of Transportation
Minnesota Geological Survey
Minnesota Pollution Control Agency
Local and Regional
Cities and Towns
Counties
Lake Improvement Districts
Metropolitan Council
Sanitary Districts
Soil and Water Conservation Districts
Watershed Districts
Watershed Management Organizations

Federal Laws

A number of federal acts influence the fate of waters in the United States. The Boundary Waters Treaty of 1909 between the United States and Great Britain established an international body known as the International Joint Commission with the power to resolve disputes regarding waterways shared by the United States and Canada. Various federal laws were enacted over the years related to improving navigation on the Mississippi River. The Federal Water Pollution Control Act of 1948 laid the groundwork for subsequent legislation. Amended in 1972, it became known as the Clean Water Act with further amendments in 1977. This law set the ground rules for how water should be protected with a goal of making all waterways in the United States fishable and swimmable.

The federal Safe Drinking Water Act, passed in 1974, helps protect the quality of the water we drink. Other federal level mandates that impact Minnesota's waterways include the Wild and Scenic Rivers Act of 1968, the Coastal Zone Management Act of 1972, PL 101-233 (relating to habitat for migratory birds), and executive orders related to floodplain management and wetland protection.

The federal laws are enforced and reinforced through the efforts of multiple agencies, each with its own unique role. The U.S. Environmental Protection Agency (USEPA), U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service (USFWS), U.S. Geological Survey (USGS), Natural Resources Conservation Service (NRCS), National Park Service (NPS), National Oceanic and Atmospheric Administration (NOAA), and Federal Emergency Management Agency (FEMA) are among those involved in protecting our nation's waters according to the laws Congress passes.

Protecting Public Water Supply.

Federal regulations and state statutes and rules specify limits to contaminants in public water supplies. They require that public water suppliers notify members of the public served by a water supply if it exceeds the standards. In Minnesota, public water supplies are monitored for more than 140 kinds of microbes, radioactive minerals, inorganic contaminants, volatile organic chemicals, disinfection byproducts, and synthetic organic chemicals.



St. Croix River.

MN DNR



Saving Wetlands. In 1991 the Minnesota Legislature passed the Wetland Conservation Act, one of the most stringent wetland protection laws in the nation. Its goal is to ensure no net loss of wetlands in the state. Amended a number of times, the act requires individuals to, if possible, avoid draining or otherwise altering wetlands. If that is not possible, the law requires that the impact be minimized and any losses of function, value or acreage be compensated with the creation of a replacement wetland.

State Laws

In addition to the limits established by federal law, the fate of Minnesota's waters is also influenced by state legislation affecting the quality, distribution, and use of water. Minnesota has long been a leader in protecting its lakes, rivers, and wetlands with strong water laws.

State statutes relate to a wide range of water-related issues, from acid rain to zebra mussels, and include such diverse topics as the recovery of sunken logs and endangered species protection. Among the earliest was the Water Conservation Act of 1937. Passed partly in response to years of drought and difficulty managing Minnesota's waters, this law was the beginning of the state's public waters permit program and water appropriation permit program. Other specific acts affecting Minnesota's waters and how we use them include the Shoreland Management Act of 1969, the Floodplain Management Act of 1969, the Minnesota Wild and Scenic Rivers Act of 1973, the State Water Pollution Control Act, the Acid Deposition Control Act of 1982, the Ground

Water Protection Act of 1989, and the Wetland Conservation Act of 1991.

State agencies involved in conserving, protecting, and allocating the use of water in Minnesota include the Minnesota Pollution Control Agency (MPCA), the Minnesota Department of Natural Resources (DNR), the Board of Water and Soil Resources (BWSR), the Minnesota Department of Agriculture (MDA), and the Minnesota Department of Health (MDH). Statutes or rules give these and other agencies and government entities responsibility for various aspects of water management.

Included in state agency responsibilities are carrying out mandates of federal laws and staying within boundaries drawn by federal agencies. The Minnesota Pollution Control Agency, for example, is responsible for administering the federal Clean Water Act. The Minnesota Department of Health, which regulates drinking water quality, must adopt standards at least as strict as those of the EPA. Minnesota's standards can be and sometimes are more rigorous than federal standards. The Environmental Quality Board, made up of the heads of key state agencies, citizens, and a

representative of the governor's office, also coordinates water planning and influences water policy.

The basic principle underlying who gets to use water and how in Minnesota is a blend of what's called **riparian (waterside) rights** and **reasonable use**. In the western half of the United States, rights to use a water source belong to whoever started using it first. In Minnesota, water belongs to all of us. Anyone who owns property on the shore of a body of water has the right to access it, as long as they do so in a way that doesn't unreasonably inhibit the ability of others to exercise their same right. The Minnesota DNR is responsible for issuing permits for withdrawing groundwater and surface water. Permits are required for appropriating more than 10,000 gallons per day or 1 million gallons per year. The MPCA regulates discharges to surface water bodies.

Minnesota's 2006 Clean Water Legacy Act provided nearly \$25 million for cleaning up Minnesota's waters. It also established a Clean Water Council to help make it happen.

The Clean Water, Land and Legacy constitutional amendment, approved by voters in 2008, raised the state sales tax to provide dedicated dollars funding to, among other things, projects to protect and improve the state's waterways. The amendment, which resulted in creation of the Clean Water Fund, explicitly calls for protecting drinking water sources; protecting, enhancing, and restoring wetlands; and protecting, enhancing, and restoring lakes, rivers, streams, and groundwater. Of the funds raised, 33 percent will go to the Clean Water Fund to be spent to protect, enhance, and restore water quality in lakes, rivers, streams, and groundwater, with at least 5 percent of the fund spent to protect drinking water resources. The Clean Water Fund is overseen by the Lessard-Sams Conservation Outdoor Heritage Council, a citizen council that decides how the money will be allocated.

Local Government

Minnesota waters are also affected by action at the local level. County, township, and city governing bodies, through their authority to regulate private lands in their jurisdiction (planning and zoning) also regulate land activities that affect water resources. Because lakes and streams don't start or stop at city, township, or county boundaries, Minnesota also has local management groups organized by entire watershed areas. These are most often referred to as watershed districts. Minnesota also has 91 soil and water conservation districts. These local units of government provide funds, education, and technology to help landowners care for their land and water. Sometimes the units managing a particular water resource do overlap.

Research suggests the greatest impact to water resources is from local land use and management. As a result, federal, state, and local regulations are often implemented and managed at the smallest local governmental level.

In Minnesota,
water belongs to
all of us.



Water quality monitoring.

City of Plymouth

You and Me

Of course, the smallest, and ultimately most influential, unit of government is each of us. We alone are responsible for deciding whether our personal actions will help or harm Minnesota's waters. We get to choose for ourselves every day between behaving in a way that takes water for granted, or in a way that protects its ability to sustain us and other living things. We have the power to lead by example (see page 102 for a short list of things you can do to care for Minnesota's waters).

What will Minnesota's waters be like 10—or 50—years from now? Will they meet the needs of future generations, as they so ably have ours?

At the end of the day, it's up to you and me.



MN DNR

At the end
of the day,
it's up to you
and me.

Your Opinion Counts! Can people who aren't lawmakers or lawyers get involved in setting and enforcing laws, rules, and regulations that protect water? Absolutely!

Share your opinions with those who are running for or already in office. Each Minnesotan is represented in U.S. Congress by two senators and one representative. At the state level, we each have one senator and one representative. Other political entities that influence water policy in Minnesota include county government, city or township government, the Metropolitan Council, and watershed boards. The president of the United States and the governor of Minnesota also provide input that affects waterways. You can find contact information for your state and federal representatives by going to <http://www.gis.leg.mn/mapserver/districts/index.html> or contacting your school or local library information center. You can learn how to connect with decision makers at the county, watershed district, and local level by contacting the pertinent offices (use a phone book or do an Internet search using the name of your county

or community). You can also learn more about your watershed district at <http://www.mnwatershed.org>.

A very significant way you can help protect water through government processes is to provide testimony through public hearings. You can find out when and where public hearings will be held by watching city, county, and watershed district websites for information on planning commission meetings.

A fourth way to help establish and enforce water-protecting laws is to get involved in nongovernmental groups that work to influence water policy and legislation. Wherever you are, and whatever age you are, there is a group for you—ranging from local lake associations and sporting clubs, to statewide organizations (in Minnesota, groups like Minnesota Waters, Minnesota Center for Environmental Advocacy, Minnesota Environmental Partnership, and Clean Water Action) to national organizations such as the Izaak Walton League of America and National Audubon Society. Do an Internet search for the organization name or contact your library information center to learn more.

C A R E E R P R O F I L E

Career Profile
Kevin Reuther
Legal Director, Minnesota Center for
Environmental Advocacy
St. Paul



It's important to have laws that protect water. It's also important to make sure those laws accomplish what they are intended to accomplish. Environmental lawyer Kevin Reuther is one person who helps do just that.

Reuther acts as a legal advocate for Minnesota's water resources when state agencies make rules related to water and decide how to enforce them. He also takes water resources' side in court. When all else fails, he may file a lawsuit against a government agency that his organization thinks is not working hard enough to protect water. By getting the judicial branch of government involved, he helps ensure that laws designed to protect water are effective.

Feeling good about making the world a better place is Reuther's favorite part about being a legal director for nonprofit environmental agency. On the other side of the coin, changes in policies and laws rarely happen quickly, so sometimes it's hard not to get discouraged. But even little successes make it worthwhile.

"Working for a nonprofit comes with lots of sacrifices—no big-money salary, no fancy offices," Reuther says. "Nearly all of our cases are truly like David vs. Goliath. And we often lose. But I would never trade the feeling I have as I bike home from a long day's work—the benefit of doing a job you love and feeling good about it."

Students interested in a career in environmental law should be active and involved in school and community activities. Hard work and good grades will help, too. Even though Reuther and others in his profession have been doing their job for a long time, there will always be a need for more.

Related careers:
nonprofit director,
lobbyist



Suggested Project WET Activities and Minnesota Connections

EL = elementary

MS= middle school

HS=high school

Water resources exist within social constructs.

Pass the Jug (water rights) EL, MS, HS

Perspectives (problem solving) MS, HS

Water Bill of Rights (water rights) EL, MS, HS

Water Court (water issues, problem solving) HS

* Some Project WET Activities have Minnesota adaptations posted online for Minnesota Project WET Educators in the trained teacher page at www.mndnr.gov/projectwet. Additional adaptations will be added when possible.

Classroom Connections

<p>Local Laws: Choose a body of water near your school. Find out what laws protect it, and in what way. Find out what public agencies are responsible for caring for it.</p>	<p>Local Water Issues: Have students identify a water issue that is important in your community. After researching the issue, have them contact the appropriate elected representatives to express their opinion about it.</p>
<p>Tragedy of the Commons: Why are water laws necessary? Read Garrett Hardin’s classic article <i>The Tragedy of the Commons</i> (<i>Science</i> 162 (3859): 1243-48, readily accessible online). Present the concept to your students and discuss it with them in an age-appropriate way.</p>	<p>Water Law Lineup: Make a human timeline of water laws and milestones in class to get the group moving on a difficult and abstract subject.</p>
<p>Create a Law: Invite students to propose a law they would like to see put in place to protect Minnesota’s waters. Introduce the basic principles of debate, then allow students to participate in a formal debate of the proposed law.</p>	<p>How Can You Protect it? Ask young students if they were in charge of a lake or river, how would they protect it from harm? Students of any age can help brainstorm a set of rules to help keep a body of water in or near your community healthy.</p>
<p>Officer in the Classroom: Invite a conservation officer to your classroom to talk about laws that protect water and hear some amazing stories of how people break them.</p>	

Out and About

<p>Attend a Government Meeting: Attend a local government meeting that involves discussion of a water-related issue.</p>	<p>Attend a Citizen Meeting: Attend a meeting of a citizen group involved in influencing policy that protects Minnesota’s water resources.</p>
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A few excellent resources:

1. Water Laws in Minnesota fact sheet, MN DNR. http://files.dnr.state.mn.us/waters/watermgmt_section/pwpermits/water_law_questions_and_answers.pdf. This 4-page publication includes basic questions and answers about Minnesota water laws.
2. Water Laws: Water Resources Law, Policy and Commentary, Smith Partners. http://www.waterlaws.com/court_cases/court_cases.html. A digest of recent Minnesota state and federal court decisions on water law and watershed management.
3. MN State Water Rules, MPCA. (mainly related to water quality) http://www.pca.state.mn.us/water/water_mnrules.html
4. Minnesota Water Statutes and Rules, DNR. <http://www.dnr.state.mn.us/waters/law.html> Lists rules and statutes relating to DNR water programs.
5. Wetland Regulation in Minnesota, MN Board of Water and Soil Resources. <http://www.bwsr.state.mn.us/wetlands/publications/wetlandregulation2.html> Short description of wetland regulation in MN.

Want More? See www.mndnr.gov/projectwet for resources and information:

Academic standards correlations to Project WET activities
 Educational materials/classroom resources for Project WET teachers
 Out and About - field trip ideas
 Citizen science/service learning opportunities
 Useful websites
 Suggested books