

Invitation for Feedback on Proposed Commissioner's Order

Sustainable Use of Groundwater in the Little Rock Creek Area

March 24, 2023

Background

Groundwater use is vital to the people and economy in the Little Rock Creek Area. The Minnesota Department of Natural Resources (DNR) wants individuals, communities and businesses to continue using groundwater. However, the DNR can issue permits for groundwater use only if the use is sustainable as defined by statute.

The DNR technical analysis indicates that a [direct relationship of groundwater and surface water exists](#) in the area around Little Rock Creek and that current amounts of groundwater use are having a [negative impact on the instream ecosystem](#) of Little Rock Creek. This means that the existing groundwater use is not sustainable as described in Minn. Statute [103G.287, Subd. 5. Sustainability Standard](#).

The [technical analysis also defines a "zone of influence"](#) that includes 95 authorized irrigation permits (106 wells) of varying quantities; 17 of those permits were issued as "time limited" and were set to expire December 31, 2022. These limited permits have been extended to December 31, 2025. The time limit on permits will be lifted once the DNR Commissioner approves a plan to avoid the negative impact to Little Rock Creek. Permit holders are seeking long-term resolution and desire more certainty in the use of water going forward.

What's new

The DNR hosted a stakeholder meeting in the City of Rice on March 16, 2023. People at the meeting heard about the DNR's proposed Commissioner's Order that lays out the next steps to provide for permitted water use while avoiding negative impacts to Little Rock Creek. A durable solution is best achieved with input from the public. Attendees were invited to provide feedback on the proposed Commissioner's Order that would seek to:

- Limit streamflow diversions inside the zone of influence to 15% of the August median base flow at each of three gauges. This is described as the sustainable diversion limit ([link to technical report](#))
Purpose: this action formally adopts the DNR's technical work and will be used as the basis for actions on any permit applications and water management in the future.
- Declare a water use conflict ([link to definition](#)) inside the zone of influence.
Purpose: The water use conflict process provides a clear path for mitigating the impact of water use and will affect only the permits of water users inside the defined zone of influence.
- Activate a "temporary just cause exemption" ([link to statute](#)) from state statutes during plan development inside the zone of influence.
Purpose: A temporary exemption will provide a reasonable amount of time for permit holders and the DNR to work out a long-term solution.
- Communicate a temporary moratorium on new permits and increases in authorized volumes within the zone of influence.
Purpose: Until a plan to resolve the water use conflict is approved by the DNR Commissioner, the DNR is prohibited from authorizing new or increased water use ([Link to M.R. 6115.0740](#)).

- Continue to listen to water users. The DNR Commissioner will consider a plan (see more below) from permitted water users inside the zone of influence. This plan should result in resolving the water use conflict (avoiding negative impacts to ecosystems).
Purpose: Permitted water users know best what water use changes will be viable for their operations. While the DNR Commissioner has the final responsibility to resolve the water use conflict, collaboration with users will result in a more durable outcome.

What's next

Anyone wishing to provide feedback on the proposed Commissioner's Order outlined above can send an email to wateruse.dnr@state.mn.us with the subject line "Little Rock Creek Feedback." Feedback received by 4:30 p.m. May 15, 2023, will be considered for inclusion in the final issuance of the Commissioner's Order. Feedback after May 15 is still welcomed but may or may not be included in the Commissioner's Order.

We encourage you to access the DNR Little Rock Creek Area web page (www.mndnr.gov/littlerock) for updates and links.

What's ahead

June 2023 Issue Commissioners Order Establishing the Protected Flow and Declaring a Water Use Conflict. Inside the zone of influence:

- a. Invoke [Minn. Statute 103G.285, Subd. 1](#) – Waiver to allow for continued water use during times when stream flow is lower than protected flow and suspend time limitations on water use from a trout stream and direct permitted water users inside the zone of influence to propose to the DNR a solution to resolve the water use conflict within three years (by December 31, 2025) (date could be flexible if progress is happening; criteria and communication will be important).

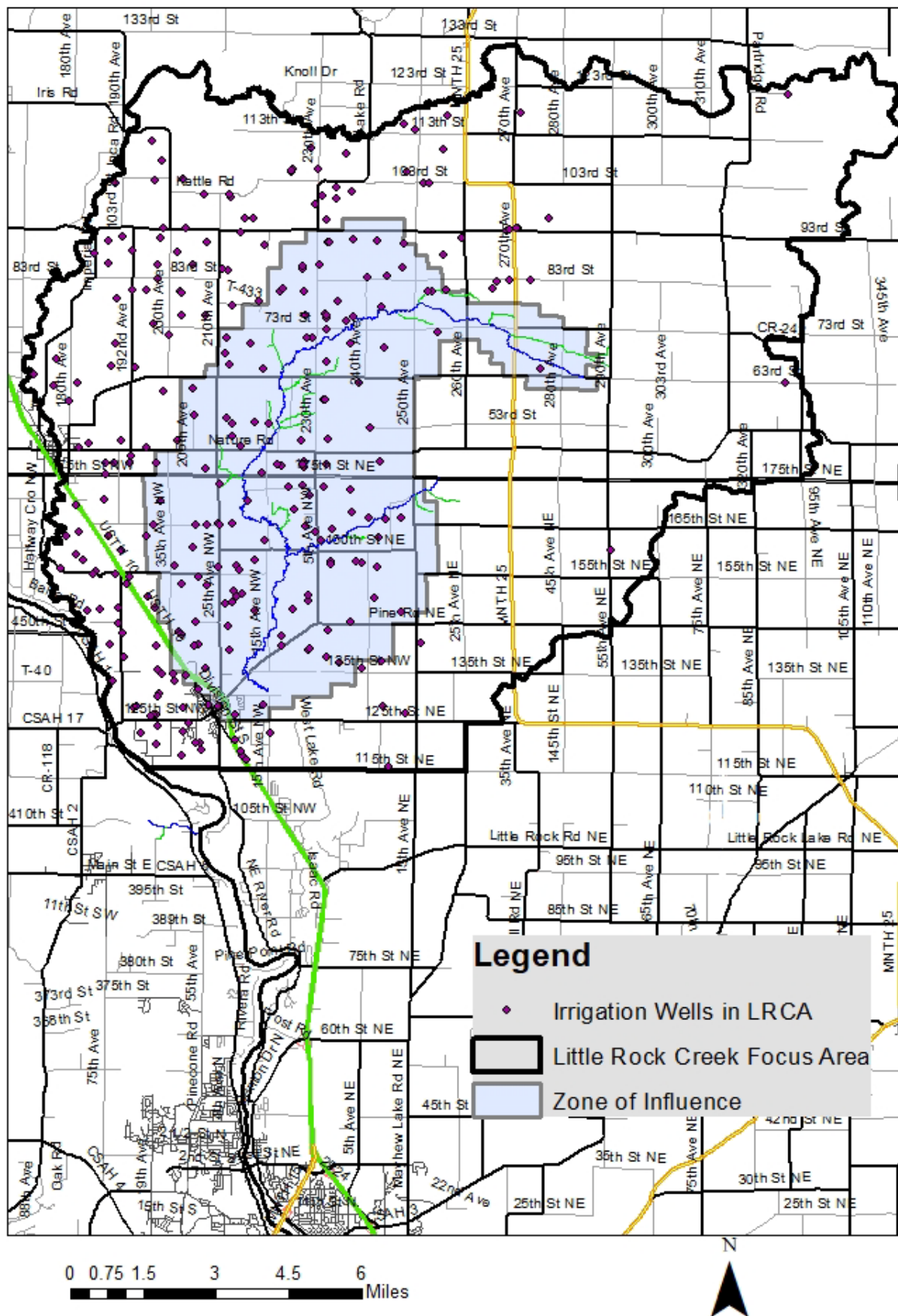
2023-2025 Collaborate on solutions with permitted water users within the zone of influence.

- b. The DNR will provide technical assistance to support water users in developing their proposal to assure protected flow and resolve the water use conflict.
- c. Keep stakeholders informed and involved throughout the process.

2026 or before DNR Commissioner considers proposal by water users.

- d. If approved, notify all permittees of intention to modify permits within the zone of influence according to the plan.
- e. Develop findings of fact to modify permits.
- f. Hold public hearing on permit modifications.
- g. Modify permits ([6115.0750, Subp. 5. B.](#)) within the zone of influence. Permittee may demand a hearing within 30 days of notice to modify permit.

Little Rock Creek Zone of Influence and Focus Area



Reference Material

Relevant Statutes

- [Minn. Statute 103G.287, Subd. 2](#) – **Relationship to surface water resources.** Groundwater appropriations that will have negative impacts to surface waters are subject to applicable provisions in section 103G.285.
- [Minn. Statute 103G.285, Subd. 2](#) - **Natural and altered natural watercourses.** If data are available, permits to appropriate water from natural and altered natural watercourses must be limited so that consumptive appropriations are not made from the watercourses during periods of specified low flows. The purpose of the limit is to safeguard water availability for in-stream uses and for downstream higher priority users located reasonably near the site of appropriation.
- [Minn. Statute 103G.285, Subd. 5](#). - **Trout streams.** Permits issued after June 3, 1977, to appropriate water from streams designated trout streams by the Commissioner's Orders under section 97C.005 must be limited to temporary appropriations.
- [Minn. Statute 103G.285, Subd. 1](#) – **Waiver.** The Commissioner may waive a limitation or requirement in subdivisions 2 to 6 for just cause.
- [Minn. Statute 103G.315, Subd. 15](#) - **Denying and Issuing Permits.** The Commissioner shall adopt rules prescribing standards and criteria for issuing and denying water-use permits.

Relevant Rules

[M.R. 6115.0670](#) Commissioner's Actions on Permit Applications

- [Subpart 3](#) **Decisions** - Local governments can demand a hearing within 30 days of notice.
- [Subpart 3. \(B\).](#) Approval of any surface water appropriation application shall be further subject to the following:
 - [Subpart 3. \(B\) \(6\)](#) **protected flows shall be established** (parties affected shall be notified and provided an opportunity for public hearing before modification of their permits).
 - [Subpart 3 \(C\)](#) Approval of appropriation from ground water shall be further subject to the following:
 - [Subpart 3 \(C\) \(2\)](#) If the Commissioner determines, based on substantial evidence, that a direct relationship of ground and surface waters exists such that there would be adverse impact on the surface waters through reduction of flows or levels below protected flows or protection elevations, the **amount and timing of the proposed appropriation from ground water shall be limited.**
- [Subpart 4 Waiver](#) - The Commissioner shall waive any of the provisions of subpart 3 if it is determined that conditions are such that implementation of a provision would be unnecessary or inapplicable, or if an applicant provides sufficient evidence to show just cause why such provision would not be reasonable, practical or in the public interest. In the event the Commissioner does not grant an applicant's request for waiver, the applicant may demand a hearing.

[M.R. 6115.0740](#) Water Use Conflict

Subpart 1. **Conflict defined.** For the purpose of these rules, a conflict occurs where the available supply of waters of the state in a given area is limited to the extent that there are competing demands among existing and proposed users which exceed the reasonably available waters. Existing and proposed appropriations could, in this situation, endanger the supply of waters of the state so that the public health, safety and welfare would be impaired.

Subpart 2. **Procedure.** Whenever the total withdrawals and uses of ground or surface waters would exceed the available supply based on established resource protection limits, including protection elevations and protected flows for surface water and safe yields for groundwater, resulting in a conflict among proposed users and existing legal users, the following shall apply:

- A. In no case shall a permittee be considered to have established a right of use or appropriation by obtaining a permit.

B. The Commissioner shall analyze and evaluate the following:

- (1) the reasonableness for use of water by the proposed and existing users;
- (2) the water use practices by the proposed and existing users to determine if the proposed and existing users are or would be using water in the most efficient manner in order to reduce the amount of water required;
- (3) the possible alternative sources of water supply available to determine if there are feasible and practical means to provide water to satisfy the reasonable needs of proposed and existing users.

C. If conflicts can be resolved by modifying the appropriation of the proposed and existing users, the Commissioner shall do so.

D. If conflicts cannot be resolved through modification of proposed and existing permits, the Commissioner shall base the decision regarding issuance of new applications and retention, modification or termination of existing permits on the basis of existing priorities of use established by the legislature as follows:

- (1) If the unresolved conflict involves users who are or would be in the same priority class, the Commissioner shall require the proposed users and existing permitted users to develop and submit a plan which will provide for proportionate distribution of the limited water available among all users in the same priority class. The Commissioner shall withhold consideration of new applications and shall, if the existing permitted appropriations endanger the supply of waters of the state, suspend or limit existing permits until a plan is approved by the Commissioner.

The plan must include proposals for allocating the water which address the following: possible reduction in the amounts of appropriation, so that each user would receive a proportionate amount of water for use; and possible restrictions in the timing of withdrawals, so that each user would be allowed to withdraw a proportionate share of water for use over certain periods of time.

If the Commissioner approves the proposed plan, new permits will be issued and existing permits will be amended in accordance with that plan.

If the Commissioner determines that the proposed plan is not practical or reasonable, the Commissioner shall develop a new plan or modify the proposed plan to provide proportionate share of water among the users involved. The Commissioner shall issue new permits and amend existing permits based on that plan.

- (2) If the unresolved conflict involves users who are or would be in a different priority class, the available water supply shall be allocated to existing and proposed users based on the relative priority of use. Highest priority users shall be satisfied first. Any remaining available water supply shall be allocated to the next succeeding priority users, until no further water is available. Users in the same priority class shall be offered the same options as provided in subitem (1).

Subpart 3. **Notice and hearing.** All actions by the Commissioner shall be made after notice and opportunity for public hearing.