

# Public Waters Inventory (PWI) Update Project

## Answers to 10/2/2024 Webinar Questions

### Process, Scope, Timeline and Stakeholder Engagement

1. **Question:** Has there been a change to the definition of public waters? Is that why the PWI Update is being done?

**Answer:** There was no change to the definition of public waters in statute. The statute change did clarify that a waterbody's presence or absence on the PWI is not how you determine whether a waterbody is a public water. The existing statutory definition is used to determine if a waterbody is a public water and the PWI is an informational tool that helps to identify public waters.

2. **Question:** Who should we contact to confirm a waterbody's presence or absence on the PWI?

**Answer:** Contact your DNR Area Hydrologist. A map and list of Area Hydrologists with their contact information is online at: [https://files.dnr.state.mn.us/waters/area\\_hydros.pdf](https://files.dnr.state.mn.us/waters/area_hydros.pdf).

3. **Question:** Prior to the 2024 session law directing the DNR to update the PWI, had the agency made corrections to the PWI?

**Answer:** Yes. In 2000, language was added to statute to enable the DNR to revise the PWI to correct errors in the original PWI. Since that time, the DNR has made corrections to the PWI when an error was discovered.

4. **Question:** Do you have an estimate for the scale of alterations or corrections that may be needed? Are there any geographies where you anticipate more changes?

**Answer:** At this point, it's difficult to estimate the number of corrections. The number of corrections will vary between counties, depending on how many public waters are on the landscape. Areas with designated trout streams will likely have more corrections because trout stream tributaries are being added to the PWI.

5. **Question:** What makes a county "easier" to evaluate, if the review is completely based on the definition of public waters?

**Answer:** The PWI update will be easier in those counties with fewer PWI corrections. Counties with more water resources will take longer to review and

**will likely have more PWI corrections. Areas where there are public drainage systems, and overlap of regulation of the water resources, are more difficult to review.**

- 6. Question:** When will the schedule for each county PWI update be shared? Are ag-heavy regions being prioritized?

**Answer: The schedule hasn't been established yet, but counties will be informed before the PWI update process starts. Any updates on process and timing will be announced on the project website and emails will be sent to all individuals that have signed up for updates at the project website.**

- 7. Question:** Will current complaints and PWI corrections be completed before the updated PWI?

**Answer: No. DNR will address all pending complaints/corrections at the time the area is under review. If there is a need to prioritize review, the DNR could consider expediting, but that would be rare.**

- 8. Question:** Why are 8 years needed when the original PWI was completed within 4 years and how was this lengthy timeline determined?

**Answer: The original PWI took more than four years, it took about 8 – 9 years in total. The eight-year estimate was based on the human resources that could reasonably be secured and managed for the project. Experiences with previous efforts in Renville and Polk Counties also helped assess the level of effort needed.**

- 9. Question:** Right now, who will decide if a waterbody is a public water if there is a question? Is that the DNR, and what does that process look like?

**Answer: DNR Area Hydrologists are local experts for determining if a waterbody meets the definition of a public water. If an error is identified outside of the PWI Update effort, the Area Hydrologist would elevate the determination within the agency. This would likely only occur if there was proposal to do work within the waterbody and the DNR's authority and responsibility to regulate that activity needed to be determined.**

- 10. Question:** Will DNR staff make jurisdictional decisions as requested to determine if a waterbody is a public water, and what does that process look like? If not the DNR, who is responsible for making this determination?

**Answer: The DNR is responsible for determining if a waterbody is a public water. If you have a question as to whether a waterbody is a public water, please contact your DNR area hydrologist. A map and list of Area Hydrologists with their contact information is online at: [https://files.dnr.state.mn.us/waters/area\\_hydros.pdf](https://files.dnr.state.mn.us/waters/area_hydros.pdf).**

**11. Question:** Is it still anticipated that this effort will add 640 miles of public waters?

**Answer: The DNR will review all of the public watercourses removed from the PWI by the 2017 Commissioner's Order, to determine if they meet the statutory definition of public waters and need to be added back onto the PWI.**

**12. Question:** Over the next 8 years, will PWI GIS data be updated piecemeal as counties are completed or will the DNR be rolling out a finished product at the end of the project?

**Answer: The DNR will update the PWI GIS data as the PWI corrections are finalized in each county.**

**13. Question:** After a county PWI update is complete, how will the PWI continue to be maintained and updated?

**Answer: The DNR maintains a public waters program and field hydrologists that, among many other activities, will continue to monitor the PWI, address petitions, and make any needed revisions as authorized under Minn. Stat. 103G.201 (e).**

**14. Question:** Once the PWI update is complete, will that final product be the tool to identify if a waterbody is a public water? Or will there be a requirement to ask state staff if a waterbody is a public water, even if it's not shown on the PWI?

**Answer: The PWI is the tool to use to identify if a waterbody is a public water. The PWI has been the tool to use for the last 40 years to identify public waters, and it will continue to be the tool to use to identify public waters. There still could be situations, for whatever reason, where a waterbody meets the definition of a public water but didn't make it onto the PWI. Those situations would be very rare but could still be possible.**

**15. Question:** Drainage area being the primary determining factor for listing on the PWI seems like a very limiting criteria for water protection. Not all watersheds are created equally. Considering unique circumstances, does the DNR have any leeway under the statute to add a water body to the PWI?

**Answer: No. The PWI update process uses the statutory definition for public waters to determine if waters meet the definition or not.**

**16. Question:** Who will be digitizing the waters? Does the DNR have GIS specialists who will be focused on this? Will the DNR be putting out RFPs for the GIS work?

**Answer: The PWI Update Project is an in-house project. In addition to in-house DNR GIS expertise, DNR is utilizing the services of Minnesota Information Technology (MNIT) to assist in updating the GIS data.**

**17. Question:** What are examples of public lands from this part of the public waters definition, "water basins located within and totally surrounded by publicly owned lands"?

**Answer: Public lands include, but are not limited to, federal, state, and county lands, wildlife refuges, Wildlife Management Areas (WMAs), state parks, and federal and state forests.**

**18. Question:** Has there been a determination of what will be included in the PWI?

**Answer: The PWI update project is to correct errors and the DNR will be using the statutory definition of public waters to guide those determinations.**

**19. Question:** Arguments can be made that the statutory criteria has its shortcomings for water protection. Does the DNR intend to, as part of this update, to make any recommendations about potential revisions to the existing statute?

**Answer: There are no plans for statutory revision.**

**20. Question:** Will there be an effort to make sure the PWI alignments will match across county lines before finalizing the information by county?

**Answer: The DNR will review the public waters at county boundaries to make sure that if a waterbody extends into an adjacent county, that portion is also included as part of the waterbody being reviewed.**

**21. Question:** Has there been any thought in working on the PWI update on a Watershed scale to make it easier to not miss part of a public water in the review?

**Answer: Yes. While we recognize that there are some advantages to working on a watershed scale, at this stage in the project planning, the decision is to work county-by-county, also taking into consideration public waters that cross county boundaries.**

**22. Question:** Does the DNR intend to weigh in on instances where water bodies do not meet statutory criteria for a public water but without protections would warrant considerations for ecological and water quality impacts?

**Answer: No. This project is solely to correct PWI errors based on the statutory definition of public waters. Other agencies such as the Board of Water and Soil Resources (BWSR), Minnesota Pollution Control Agency (MPCA), and local governments have responsibility for water quality and for other waters of the state that do not meet the statutory definition of a public water.**

**23. Question:** Our city has excavated lakes in historic gravel mining areas. Historically, these have not been a PWI, but have a Basin ID #. Will you be looking at additional information for these water bodies and clarifying their designation?

**Answer: Yes. Water bodies will be reviewed against the definitions in statute for natural watercourse, altered natural watercourses, and water basins. All three definitions require that the feature was naturally occurring prior to physical alterations.**

**24. Question:** How much due process will be afforded to landowners whose land is identified as being “omitted” from the original PWI and will be added to the new PWI? Will they get a hearing in District Court? Will they be able to meet in person with DNR hydrologists? Will the DNR meet in person onsite with landowner-retained wetland consultants, or will these landowners only be afforded the right to “comment”?

**Answer: Landowners riparian to potential PWI corrections will get direct notice. Public meetings will be held in each county where questions can be asked and information submitted. Any information submitted will be considered in the final DNR Order. In general, the DNR would only meet onsite with landowners if there is a need to make a visual inspection and data collection of the waterbody. Any individual that disagrees with the DNR Order is entitled to judicial review at the Minnesota Court of Appeals.**

**25. Question:** Will landowners receive notice of field visits?

**Answer: If a site visit is required, the DNR would first request landowner permission.**

**26. Question:** Will watersheds be given advance notice of reviews done within their boundaries? Will they be given the chance to have meaningful input to proposed changes aside from the opportunity to "comment"?

**Answer: Before the DNR begins the PWI update in a county, the DNR will give notice to local governments, including watershed districts, counties, cities, and the public, to provide an opportunity for individuals to provide the DNR with information on corrections that might be needed. Also, public meetings will be held in each county where questions can be asked and information submitted. Any information submitted will be considered in the final DNR Order.**

**27. Question:** How long of a comment period will be offered?

**Answer: The length of the comment period for review of changes has not been determined but will likely be between 60 and 90 days.**

**28. Question:** Will new and updated maps be able to be printed for the counties like we currently have? Will we have a final product to reference?

**Answer: Yes. Mapping of public waters will be available that will not require using Geographic Information System (GIS) software to view.**

**29. Question:** When will the updated maps be available for the public to use?

**Answer: Currently the plan is to work through the state on a county-by-county basis. When the PWI corrections for a county are finalized, the information will be available for anyone to use.**

**30. Question:** Will the DNR hire consultants through an RFP process for any of this work or will it all be completed internally?

**Answer: No. This work will be completed by the DNR.**

## **Methodology**

**31. Question:** Is the presence of water necessary for the DNR to decide that a waterbody is a public water?

**Answer: No. Year-round presence of water is not a requirement in the definition of public waters. Intermittent streams are an example of water that only needs to be present long enough to create a definable bed and bank, to be a public water.**

**32. Question:** Will the DNR use high-definition satellite or aerial photography or drone-gathered data for this review, given that those technologies weren't available in the 1980s?

**Answer: The DNR will use publicly available data for its reviews.**

**33. Question:** Are Type I and Type II wetlands exempt?

**Answer:** Type I and Type II wetlands are not included in the definition for public waters wetlands. These wetland types are regulated under the Minnesota Wetland Conservation Act.

**34. Question:** Are stormwater ponds or other created water features that are considered a type 3, 4, or 5 wetland classified as a public water?

**Answer:** In general, constructed stormwater ponds do not meet the definition of public waters. However, stormwater ponds that were constructed in naturally occurring water bodies may meet the definition of public waters and be included on the PWI.

**35. Question:** Example: Stony Run Creek's buffer map indicates the creek moving from a public water to a ditch and back 16 times during its course. Would classifying the whole creek as a public water (per statute) result in an amendment to the buffer map?

**Answer:** A public watercourse can also be part of a public drainage system. Stony Run Creek in Big Stone County is a public watercourse with sections that are also public ditch. While the entirety of the creek is a public water, those sections that are part of the public drainage systems are managed by the public drainage authority under Minn. Stat. 103E. Public waters include both natural and altered natural watercourses including watercourses that have been ditched. With respect to buffer requirements, those portions of a public watercourse that are part of a public drainage system need a 16.5-foot buffer unless the watercourse has a shoreland classification, in which case the shoreland classification buffer requirement controls.

**36. Question:** There was mention of a watercourse being a stream or river, with the smallest being a trout stream. Does the term watercourse also include low areas in fields that are channelized during spring flooding or during large summer rainfall events?

**Answer:** Natural and altered natural watercourses with a total drainage area greater than two square miles meet the definition of public waters. In agricultural fields, some watercourses that are farmed through stay channelized or become re-channelized annually during spring flooding or summer rainfall events. These watercourses, because they have bed and bank, meet the definition of public waters and are included on the PWI.

**37. Question:** Does the public waters designation stop at the county jurisdictional boundary? Or does the county boundary affect the contributing drainage area to help determine if it is a public water or not, since it is completed by a county-by-county determination?

**Answer: The public waters designation does not stop at the county boundary. For public watercourses, the drainage area is determined by the topography on the landscape and is not limited by administrative boundaries. Efforts are underway to address those situations where a waterbody is present in more than one county.**

**38. Question:** If a watercourse has a drainage area larger than 2 square miles but is not on the map is it still considered a public water? And will it be added to the PWI?

**Answer: Natural and altered natural watercourses with definable beds and banks and a total drainage area greater than two square miles are public waters. Yes, any watercourse that meets the definition will be added to the PWI.**

**39. Question:** There have been a number of public waters in urban areas that were historically altered for purposes of capturing stormwater drainage. With retrofits to improve stormwater, stormwater maintenance needs, and TMDL requirements to meet stormwater permits, will the DNR consider removing those public waters that were previously altered and are now used as stormwater basins?

**Answer: Alterations to a public water do not make the water ineligible to be a public water.**

**40. Question:** If a landowner has a wetland restoration that results in a type 5 wetland greater than 10 acres but before restoration it was a type 1 wetland then that should be considered a non-PWI wetland basin, correct?

**Answer: Any wetland restoration situations would need to be evaluated on a case-by-case basis. Factors to consider include the condition of the wetland prior to the restoration and the purpose of the wetland restoration.**

**41. Question:** Please clarify whether watercourses that do not meet the definition of a public water will be included on the PWI.

**Answer: Watercourses that do not meet the definition of a public water will not be included on the PWI.**



**42. Question:** How will private agricultural drainage be handled? For example, there are channels with continuously flowing water that exist today as a result of tile drainage that didn't previously exist. Would this be considered a public water under this update?

**Answer:** In these situations, the DNR evaluates the entire history of the watercourse. If there was an existing channel that was altered, it would be an altered natural public watercourse under the definition.

**43. Question:** Will converted wetlands that were once greater than 10 acres in unincorporated areas or 2.5 acres in incorporated areas but no longer meet the area criteria continue to be classified as public waters?

**Answer:** Wetlands that have changed over time will be reviewed on a case-by-case basis, taking into consideration multiple factors, including the reason for the change in wetland type or area.

**44. Question:** Would a public water stream that has been replaced with tile and is now farmed over or has a grassed waterway without perennial surface flow still be considered a public water?

**Answer:** Natural and altered natural watercourses with definable beds and banks and a total drainage area greater than two square miles meet the definition of public waters. Year-round presence of water is not a requirement in the definition of public waters. Intermittent streams are an example of water that only needs to be present long enough to create a definable bed and bank, to be a public water. Some watercourses that flow through fields but that have been farmed through or that do not have perennial surface flow still meet the definition of public waters because they continue to form beds and banks during periods of spring flooding or summer rainfall events.

**45. Question:** There is a large wetland I work on, and the PWI map layer shows a public waters channel flowing through the area of the wetland. In reality, there is no distinct channel in the wetland. Would the rest of the wetland be considered a public water?

**Answer:** For public watercourses that flow through wetlands, the Ordinary High Water Level (OHWL) of the watercourse is the jurisdictional boundary of the public water. The wetland would only be considered a public water if it was a type 3, 4 or 5 wetland and met the size requirement (2.5 acres in incorporated areas; 10 acres in unincorporated areas). All wetland areas above the OHWL that are not designated public waters would be regulated under the Minnesota Wetland Conservation Act (WCA).

**46. Question:** By public drainage, does that also mean the privately owned drainage systems?

**Answer: No. A public drainage system is a legally established ditch system. Private ditches are generally privately owned and not part of a public drainage system.**

**47. Question:** What methodology of review will be used - is this a desktop software exercise?

**Answer: The PWI Update Project will primarily include desktop review of features using Geographic Information System (GIS) software and a variety of digital data sources, but it will also include review of historical documents and site visits when needed.**

**48. Question:** Will the Basin ID # (DOW #) currently used to uniquely identify public waters be adjusted as a result of this process e.g., if a new lake is added or a lake is removed?

**Answer: If a public waters basin or public waters wetland is added to the PWI, it will be assigned a new unique Basin ID #. If a waterbody is removed from the PWI, it's assigned Basin ID # will be retired.**

**49. Question:** Many public waters currently have no official name. In databases, they are called simply "Unnamed" which is a bit confusing. Will there be any effort to name unnamed lakes or associate local/colloquial names with those waterbodies?

**Answer: Naming or renaming public waters is not a part of the PWI Update Project. Naming and renaming of geographic features has its own formal process.**

**50. Question:** How are you dealing with drained or altered basins? The webinar made it sound like they will remain on the PWI, so will they be restored?

**Answer: These types of circumstances will be examined and decided on a case-by-case basis.**

## **Calculation of Watercourse Drainage Area**

**51. Questions:** I was unclear on the calculation you showed for defining public watercourse extent. There are portions of the stream reach you indicated that would be far less than 2 square miles. My understanding is that the definition should only include those portions of the watercourse that drain more than 2 square miles, not the entire reach. This would be consistent with prior public watercourse designation.

**Answer: This is not correct. The drainage area is measured at the confluence with the next downstream watercourse. You do not measure at points along the watercourse to determine where the contributing area becomes greater than 2 square miles. The term “total” drainage area means the entire drainage area of the watercourse, not just a portion of the drainage area.**

**52. Question:** Does a public waters watercourse begin where the accumulated drainage area reaches 2 square miles? Does the public waters watercourse begin at that point?

**Answer: No. The statutory definition is the “total” drainage area of the watercourse, not a portion of the drainage area. If a watercourse with definable bed and bank has a total drainage area greater than two square miles, the entirety of that watercourse is a public water.**

**53. Question:** For watercourses, will the 2 square mile drainage area be based on pre-settlement conditions or current conditions (including altered drainage)?

**Answer: The DNR will make use of all information available to determine what will be included as part of drainage area calculations.**

**54. Question:** Please elaborate on how the 2 square mile drainage area logic will be applied. The example provided was very simple and not reflective of more complex scenarios. How will this logic apply in highly dendritic, ditched, or drain tiled systems?

**Answer: As was stated in the webinar, translating these simple statutory definitions to complex ecosystems has inherent challenges. However, the data available now such as aerial photographs, elevation data, and watersheds will be used to sort out what areas are considered as part of the total drainage area.**

**55. Question:** When determining the 2 square mile drainage area for a stream, how will you determine where the PWI stream designation begins? Will it begin at the point of convergence of the 2 square miles or at the initial channelization of the stream segment?

**Answer: The extent of the watercourse will be determined by the presence of a definable bed and bank. A public waters watercourse begins at its confluence and extends upstream until there is no longer a definable bed and bank observed on the landscape.**

## Ordinary High Water Level (OHWL)

**56. Question:** Will OHWL determinations be part of this effort or merely just identifying the waterbodies that are public waters?

**Answer:** In general, this review will not include OHWL determinations.

**57. Question:** We have several lakes where the water level is consistently lower than the OHWL. Will the PWI boundary be set based on recent lake levels or by the official OHWL?

**Answer:** The PWI Update Project is intended to correct errors in the existing PWI. Determining the specific elevation of Ordinary High Water Levels is not in the scope of this project. Any corrections that add a waterbody to the PWI will be reviewed for accurate geometry (size, shape, and location) of the waterbody.

**58. Question:** Are you going to set new Ordinary High Water Levels? Like if the waterbody is rising or going down?

**Answer:** The purpose of the PWI Update Project is not to review OHWL elevations, but rather to make corrections to the PWI.

**59. Question:** How will drainage area be identified for situations where there is subsurface drainage in addition to the surface drainage area?

**Answer:** As was stated in the webinar, translating these simple statutory definitions to complex ecosystems has inherent challenges. However, the data available now such as aerial photographs, elevation data, and watersheds will be used to sort out what areas are considered as part of the total drainage area.

## Tribal Consultation

**60. Question:** Are Tribes considered landowners, stakeholders, or the public? Tribes were not mentioned in the introduction.

**Answer:** Tribes are not simply stakeholders, they are sovereign nations within the state of Minnesota. The DNR will implement notification and coordination process for Tribes and, if requested, consultation on the PWI corrections within Tribal boundaries.

**61. Question:** You mentioned the process will go by county and local government. What about Tribes?

**Answer: The DNR will address Tribal governments as sovereign nations. Any corrections within Tribal reservations will be subject to Tribal coordination and potentially Tribal consultation.**

**62. Question:** Will Tribes be given notice when the PWI review process begins within their boundaries?

**Answer: Yes. Tribes will be noticed at the start of PWI review within their boundaries. Any corrections within Tribal reservations will be subject to Tribal coordination and potentially Tribal consultation.**

**63. Question:** By January 2025 will MNDNR have considered Tribal input?

**Answer: Yes, to the degree Tribal input has been provided.**

**64. Question:** We [Grand Portage Tribe] have asked for consultation and that has not occurred. Most of the waters within the Reservation are on PWI list but do not meet the definition. When will there be consultation and coordination with the Tribes?

**Answer: Tribal engagement will occur over the next several months and continue throughout the project.**

**65. Question:** It doesn't look like it, but is there any consideration of whether a waterbody is partially or wholly on Tribal lands in this process, or do Tribal land boundaries play any meaningful role in this review?

**Answer: The statutory definition for public waters does not address geopolitical boundaries. The DNR is aware of and sensitive to geopolitical differences, however the PWI Update will be consistent statewide.**

## **Regulations**

**66. Question:** How will this impact the Buffer Law of 2015?

**Answer: The PWI Update Project will not impact the buffer law but it will change the buffer requirements on some public waters subject to corrections.**

**67. Question:** The state's 50-foot buffer maps were at least partially based on public waters. If the PWI update identifies additional public water streams and rivers will the buffer maps be updated accordingly?

**Answer: Yes. The buffer map will be updated to reflect changes to the PWI.**

**68. Question:** Will newly identified public waters added to the PWI be subject to the Minnesota Buffer Law? If so, when?

**Answer:** If waterbodies are added to the PWI, the buffer map will also be updated. The update to the buffer map would occur after the PWI updates in a county are finalized.

**69. Question:** Are the changes to the PWI only additions, or will some public waters be removed as well in the process?

**Answer:** It is likely that this project will both add public waters to the PWI and remove public waters from the PWI, based on whether or not the waterbodies meet the definition of public waters in statute.

**70. Question:** Will the PWI update have any impact on shoreland regulation?

**Answer:** This project will not change shoreland regulations on existing public waters on the PWI. Any waterbody added to the PWI will not automatically have a shoreland classification. The assessment and designation of shoreland classifications is not part of the PWI update project.

**71. Question:** Existing lakes, typically in urban areas, that were identified as public waters wetlands have been added to the impaired waters list as a lake by the MPCA. Do you anticipate the PWI be changed to reflect other state agencies identifying these waters as a lake in the PWI?

**Answer:** The determination of whether a public water is considered a basin or a wetland is based on the statutory definition of public waters in Minn. S. 103G.005, not determinations by other state agencies.

**72. Question:** Being subject to public waters permits won't automatically require shoreland protections and/or the DNR won't be designating shoreland?

**Answer:** Any waterbody added to the PWI will be subject to applicable buffer requirements. Other shoreland protections will be determined by local shoreland ordinances.

**73. Question:** Are all judicial ditches with running water considered as possible additions to the PWI?

**Answer:** No. Not all judicial ditches with running water would be added to the PWI. If a ditch is part of a public drainage system, it could also meet the definition of an altered natural watercourse and thus also be considered a

**public water. However, if the public ditch is managed by a public drainage system, it is managed under drainage law (Minn. Stat. 103E).**

**74. Question:** Will the definition of a public waters wetland be changed in the future to be similar to the changes that happened to the Wetland Conservation Act? The changes took effect on August 1, 2024. The Wetland Conservation Act converted from using the wetland classification system of wetland types in U.S. Fish and Wildlife Service Circular 39 to the Hydrogeomorphic classification system.

**Answer: Currently there is no plan to change the definition in statute for public waters wetlands.**

**75. Question:** What authorizes the DNR the rights of usage, and control over Torrens Deeded Property, & establishing the OHWL? Our State issued Certificate of Title is dated 12-26-1929, prior to the DNR's existence. Plotted dry land!

**Answer: The State of Minnesota, through its police power, has been defining and protecting its public waters resources since 1867 (1867 Minn. Laws, c. 40). The State's authority to regulate and control public waters has been constant since at least 1937, regardless of the PWI.**

**76. Question:** Statutory Dedication, Adverse Possession, Prescriptive Easements are all against the MN Torrens Act! In 1975, the MN Supreme Court ruled Government Entities cannot establish a protected interest in Torrens Property as "It's a Taking"! ( 232 N.W.2d911,920) Is the DNR a Governmental entity by Statutory authority?

**Answer: The Torrens system is a land registration system and does not impact the classification of water. Classifying a waterbody as a public water is not a taking.**

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