

Commissioner's Order of 4-13-17

Framework for Review of Subject Watercourses for Possible Inclusion in the PWI

Background

On April 13, 2017 the Commissioner issued a Findings of Fact, Conclusions and Order revising Public Water Inventory (PWI) maps by removing certain watercourses (Attachment A). The DNR removed the watercourses to correct a procedural error in the original PWI process affecting these watercourses. Finding of Fact #21 states, "the DNR may review the subject watercourses for possible inclusion in the PWI in the future, subject to requisite public comment opportunity prior to any additions to the PWI." The purpose of this document is to generally describe DNR's framework for review of the subject watercourses for possible inclusion in the PWI.

Prior to issuing the April 13, 2017 Findings of Fact, Conclusions and Order, the DNR considered options for addressing the identified procedural error. These options included keeping the subject watercourses on the PWI pending a public review and notice process to resolve their individual status. However, the landowners affected by the error needed timely resolution to provide regulatory certainty regarding their obligations under the buffer law (Minn. Stat. § 103G.48). The DNR determined that it would not be possible to evaluate the subject watercourses individually, determine which of those watercourses should be retained on the PWI, and go through a public review and notice process prior to the November 1, 2017 compliance deadline for public waters under the buffer law. Therefore, in the interest of providing the needed regulatory certainty to affected landowners, the DNR exercised its authority under Minn. Stat. § 103G.201 to correct the error by removing the subject watercourses from the PWI. As part of this action, the DNR expressly reserved the right to review the subject watercourses in the future for possible inclusion in the PWI. This document presents the results of DNR's preliminary categorization of the subject watercourses and describes how we will work with local authorities to resolve the status of these watercourses.

Framework for Review of Subject Watercourses

The DNR has determined that the watercourses removed from the PWI by the Commissioner's Order dated April 13, 2017 fall into five categories. We have further identified a proposed review method and responsible party for each category, as described below. Where the DNR is the responsible party, (categories 1, 2, and 3) the DNR proposes to add the watercourses back to the PWI using a public process. Where the drainage authority or watershed district is the responsible party (categories 4, 5) the DNR proposes the watercourses be considered for addition to the drainage authorities' public ditch systems.

Following is a discussion of the five categories, responsible party, and general review method. To implement this framework, the DNR will form a project team and develop a project plan that will include a detailed review process, milestones, and timelines. The number of miles, watercourses, and counties described below for each category is based on the DNR's preliminary categorization of the watercourses subject to the April 13, 2017 Commissioner's Order (listed in Attachment A). These figures provide an understanding of the relative scope of each category. However, the precise figures are subject to revision.

Category 1: Watercourse segments included due to data errors.

This category represents watercourse segments included in Appendix A due to data errors. Please see Attachment B for further discussion on watercourses included in Attachment A due to data errors.

- Nine miles (9 watercourses) were included in Attachment A in error due to discrepancies between the original PWI map/list and the digital PWI data layer. The original map depicts these segments as a solid line, but the digital PWI layer depicts them as a heavy, dashed line (indicating public ditch status). Thus it appears that these segments were incorrectly digitized in the PWI data layer, causing DNR to erroneously identify them as public ditches subject to the procedural errors the Commissioner's Order was seeking to correct.
- The other watercourse segments in this category were included in Appendix A of the April 13, 2017 Findings of Fact, Conclusions and Order because:
 - The watercourse exists within a mapped and listed public water basin. The DNR intended to exclude these from Attachment A, but in some cases the value of the data attribute flag used to exclude them was not accurate.
 - Watercourse is a very short basin inlet, outlet, or a basin connector.
 - Watercourse segments so short (e.g., 0.01 miles) that they are insignificant at the parcel level.
 - Watercourse is already noted as a public ditch, but included in Attachment A due to slight mismatch between the mapped location of a public ditch and a public water.

Procedure: DNR will review these segments to ensure they are accurately categorized. DNR will revise the list as appropriate, adopt an Order and publish a final notice in the appropriate local newspapers and provide the notice to County and SWCD staff.

Responsible parties: DNR leads effort.

Category 2: Designated trout streams and their tributaries.

The Commissioner's Order removed 19 miles of designated trout streams and 2 miles of designated trout stream tributaries that were not identified as designated trout streams at the time of the Commissioner's Order. In addition, DNR is in the final stages of revising the list of

designated trout streams. Additional trout streams and tributaries may have to be added to the PWI after the current trout stream designation process is completed. Designated trout streams and their tributaries are public waters under Minn. Stat. § 103G.005 subd. 15 (a) (10).

Procedure: Once the current trout stream designation process is complete, DNR will review these segments to ensure they are accurately categorized. DNR will revise the list as appropriate, adopt an Order and publish a final notice in the appropriate local newspapers and provide the notice to County and SWCD staff.

Responsible parties: DNR leads effort.

Category 3: Features that are clearly a public watercourse by watershed size and watercourse sinuosity.

DNR field staff need to further investigate the watercourse segments in this category to confirm that they properly belong in the category. If not, the watercourse segment will be assigned one of the other categories as appropriate. The preliminary categorization includes a total of 194 miles (114 watercourses). Of the total, 60 miles (26 watercourses) have a specific DNR shoreland classification assigned to them. The shoreland classes of the segments removed are Agricultural, Forested, Transition, and Natural Environment. Additionally, 25 miles (31 watercourses) are meandered reaches at the outlet of a public ditch prior to confluence with a main stem or higher order watercourse. Some of these 25 miles of watercourses might have been included in Attachment A due to location errors related to the original PWI map. Please see Attachment B for further discussion.

Procedure: DNR will review these segments to ensure they are accurately categorized. The segments will then be identified in a public notice in the appropriate local newspapers for public comments and provided to County and SWCD staff for their review. DNR will consider comments, revise the list as appropriate, adopt an Order and publish a final notice with copies to the counties and SWCDs.

Responsible parties: DNR leads effort, with counties and SWCDs participating.

Category 4: Features that are a small segment between a public ditch and a public watercourse.

DNR field staff need to further review the watercourse segments in this category to confirm that they properly belong in the category. If not, the watercourse segment will be assigned to one of the other categories as appropriate. The preliminary categorization consists of 56 watercourse miles (98 watercourses) where the actual starting or ending location of a public ditch does not coincide precisely with the location of an altered natural watercourse on the PWI data layer. Please see Attachment B for further discussion on watercourses included in Attachment A due to location errors related to the original PWI map.

Procedure: Once the DNR review is complete, DNR will contact the drainage authority or watershed district and request that they consider if the watercourse segments that remain in this category should be added to their public drainage systems. If the drainage authority adds a segment to the public drainage system, the segment will be added back to the PWI as heavy-dashed line, indicating a public water that is also a public ditch. Watercourse segments that are not added to public drainage systems will be reviewed to ensure they are accurately categorized. The segments proposed for addition to the Public Waters Inventory will then be identified in a public notice in the appropriate local newspapers for public comments and provided to County and SWCD staff for their review. DNR will consider comments, revise the list as appropriate, adopt an Order and publish a final notice with copies to the counties and SWCDs.

Responsible parties: DNR, counties and watershed districts.

Category 5: Ditch segments that could be added to a public drainage system.

This category represents 294 miles (205 watercourses) of watercourses that are clearly ditched. If the drainage authority adds a segment to the public ditch system, the segment will be added back to the PWI as heavy-dashed line, indicating a public water that is also a public ditch.

Procedure: DNR will contact the drainage authority or watershed district and request that they consider if the watercourse segments that remain in this category should be added to their public drainage systems. If the drainage authority adds a segment to the public drainage system, the segment will be added back to the PWI as heavy-dashed line, indicating a public water that is also a public ditch. Watercourse segments that are not added to public drainage systems will be reviewed to ensure they are accurately categorized. The segments proposed for addition to the Public Waters Inventory will then be identified in a public notice in the appropriate local newspapers for public comments and provided to County and SWCD staff for their review. DNR will consider comments, revise the list as appropriate, adopt an Order and publish a final notice with copies to the counties and SWCDs.

Responsible parties: DNR, counties and watershed districts.

Summary

Table 1 is a summary by priority category of watercourse miles, segments, number of counties involved, and the party responsible to initiate the review process.

Table 1. Summary by category^a

| Category | Miles | Watercourse Segments | Number of Counties | Responsible party that initiates review |
|----------|-------|----------------------|--------------------|--|
| 1 | 70 | 105 | 47 | DNR |
| 2 | 21 | 15 | 9 | DNR |
| 3 | 196 | 114 | 44 | DNR |
| 4 | 56 | 98 | 54 | Drainage authority or watershed district |
| 5 | 294 | 205 | 61 | Drainage authority or watershed district |

^a The number of miles, watercourse segments, and counties described above for each category is based on the DNR's preliminary categorization of the watercourses listed in Attachment A. These figures provide an understanding of the relative scope of each category. However, the precise figures are subject to revision.

Timeline

To implement this framework, the DNR will form a project team and develop a detailed project plan that includes development of a detailed review process, milestones, and timelines. The milestone tasks and tentative completion dates are as follows:

| Milestone | Completion Date | Category |
|--|-----------------|----------|
| DNR completes further review and re-lists watercourse segments | March 1, 2018 | 1 |
| DNR completes further review and re-lists trout stream segments | May 1, 2018 | 2 |
| DNR engages drainage authorities; provide detailed information on watercourse segments | July 1, 2018 | 4, 5 |
| DNR completes further review and identifies watercourse segments for re-listing | July 1, 2018 | 3 |
| County and SWCD review | August 1, 2018 | 3 |
| Public notice in newspaper | October 1, 2018 | 3 |

| Milestone | Completion Date | Category |
|---|-------------------|----------|
| Public comments | November 30, 2018 | 3 |
| Final Notice | January 1, 2019 | 3 |
| Drainage authority informs DNR of its decisions | various | 4, 5 |
| DNR completes further review and identifies ditch segments for re-listing | various | 4, 5 |
| County and SWCD review | Undetermined | 4, 5 |
| Public notice in newspaper | Undetermined | 4, 5 |
| Public comments | Undetermined | 4, 5 |
| Final Notice | Undetermined | 4, 5 |

Attachments

Attachment A: Commissioner's Order of 4-13-2017

Attachment B: Data and Location Precision Errors