

Water Laws in Minnesota



Questions and Answers about Minnesota Water Laws

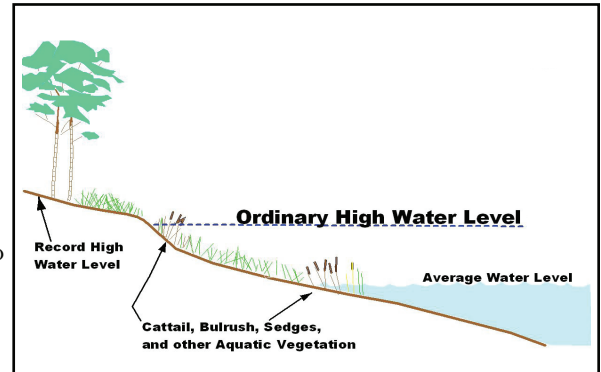
Basic Water Laws

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 a regulatory boundary of a Public Water lake, wetland, or stream. 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, for basins, it is the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. On streams and rivers, it is the top of the bank of the channel.



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 harm the ecosystem nor 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 where there is a public access site, 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. A person who has legally gained access to a water body may use its entire surface for recreation, such as boating, swimming, or fishing; and any “incidental use” of the bed or bottom, such as anchoring a boat or decoys, wading to fish or swim, and poling a boat, is allowed.

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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, wetlands, 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 producers who have DNR-approved contingency plans
2. Uses of water consuming less than 10,000 gallons per day
3. Agricultural irrigation and processing of agricultural products (consuming in excess of 10,000 gallons per day)
4. Power production, without approved contingency plans
5. Other uses that consume over 10,000 gallons per day
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 through its water use permitting program. 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. [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 also establishes 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, subds. 2 and 3.]

Regulation of Public Waters and Public Waters Wetlands

What are public waters and public waters wetlands?

Public waters are all waterbasins, wetlands, 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 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.]

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When is a DNR permit needed?

A DNR *public waters work permit* may be 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 a public *water* 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 may require 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.] Certain projects are exempt from needing a permit provided they are done in accordance with conditions spelled out in Minnesota Rule (Part 6115).

What is the Public Waters Inventory (PWI)?

This is a map prepared by the DNR showing all public waters and public waters wetlands for each county in the State. [See Minnesota Statutes, Section 103G.201.] These maps are available for viewing on the DNR web site (mndnr.gov/waters/watermgmt_section/pwi/maps.html). The DNR is in the process of converting the original paper and scanned PWI maps to more accurate GIS-based maps. Until the GIS-based maps are completed for every county, 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). The GIS-based maps available on the website should be used where available as they more accurately depict the basin and stream locations and they contain corrections to errors discovered on the original paper maps.

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.]

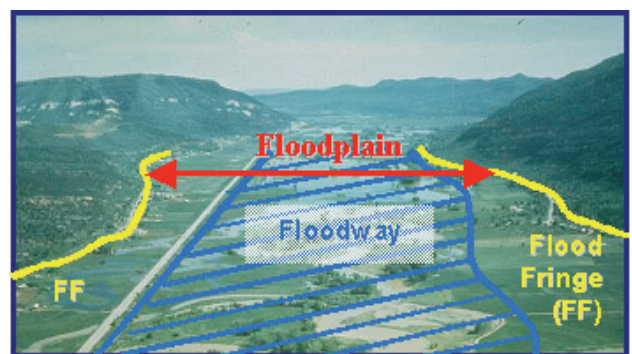
Regulation of Lands Adjoining Public Waters

What types of Land Use Regulations do we have in Minnesota?

Land use regulations guide development and land management activity on lands adjacent to public waters through city and county zoning ordinances. These regulations seek the wise development of shoreland areas to preserve their economic and natural environmental values and to protect surface water quality. Most of Minnesota's water-related land use regulations are authorized in Minnesota Statutes, Chapter 103F. These land use regulations generally fall into two categories: floodplain and shoreland. Floodplain regulations work to minimize damage to property and human life. Shoreland regulations work to maintain the ecological and hydrological services of shoreland areas, and to protect the wild, scenic and recreational values of designated river segments. Minnesota's floodplain regulations address the Federal Emergency Management Agency (FEMA) floodplain and flood insurance requirements, as well as Minnesota standards. Minnesota has a variety of shoreland programs covering different bodies of water, including select rivers and river segments. The DNR establishes the minimum statewide standards and criteria for all floodplain and shoreland programs, and local governments implement the programs through land use ordinances. Always check with your local zoning authority for specific ordinance requirements.

What is floodplain zoning?

Floodplain zoning ordinances apply to the land around lakes, rivers, and streams inundated by the 100-year flood (the flood having a 1-percent chance of being equaled or exceeded in any single year). This land is known as the floodplain and is divided into two zones. Local ordinances specify the uses and construction activity permitted in each zone. The floodway is that part of the floodplain where floodwaters are likely to be deepest and fastest. This area needs to be kept free of obstructions to allow floodwaters to move downstream. The area of the floodplain outside the floodway is called the flood fringe. Development 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.]



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How do the shoreland regulations apply to local zoning?



Minnesota's shoreland programs originated in the 1970s with public concern over poor shoreland development in general and with specific high valued rivers in particular. All programs described here are implemented through local government zoning ordinances. Zoning provisions typically include minimum lot size and width, structure height, structure and septic system setbacks from the water, bluff and vegetation protections, stormwater management, and impervious surface limits. Following is a brief description of the shoreland management regulations in Minnesota.

Shorelands

This regulatory program covers land adjacent to most public waters in Minnesota. Shoreland protection is extended to land within 1,000 feet of the ordinary high water level of a lake, pond, or flowage, and within 300 feet of a river or stream or to the landward extent of a designated floodplain on a river or stream, if it is wider than 300 feet. Waterbodies vary greatly in their size, depth, use and type of habit and are classified to reflect these characteristics. Minimum lot size and width and structure and septic system setbacks vary depending on the waterbody classification. These dimensional standards are intended to manage development impacts appropriate to the waterbody classification. Eighty-five Minnesota counties and about 160 cities have shoreland ordinances. Many of these communities are also covered by other program regulations (description of these other programs follows). In some cases performance standards for the different programs may overlap and conflict. In these situations, the stricter standard applies. [See Minnesota Statutes, Section 103F.201-103F.227, and Minnesota Rules, Parts 6120.2500-6120.3900.]

Wild and Scenic Rivers

This program applies to all or portions of seven rivers including the St. Croix (the only federal-designated river), the Mississippi, the Kettle, the Minnesota, the Rum, the Cannon, and the North Fork of the Crow. The boundary generally follows a land survey line or road and includes areas that are visible from the river. Locally administered ordinance standards vary for each river and are based on the management plan specific to each river and river classification. Segments of these rivers are classified as wild, scenic, or recreational. Note that the river management plans have been promulgated into Minnesota State Rules pertaining to each river. [See Minnesota Statutes, Section 103F.301-103F.345, and Minnesota Rules, Parts 6105.0010-6105.1700.]

Mississippi River Critical Area

The Mississippi River Critical Area includes designated land adjacent to the 72-mile section of the Mississippi River that runs through the 7-county metro area. This area was originally designated in 1976, and the designation was extended in 1979 by Executive Order 79-19 and made permanent by resolution of the Metropolitan Council in Minnesota Statute 116G. The Critical Area boundary coincides with the boundary of the Mississippi National River and Recreation Area, a unit of the National Park Service. All cities containing land within the boundary are required to develop a management plan and adopt zoning ordinances that implement the plan. The DNR and the Metropolitan Council review and approve community land use plans and ordinances. [See Minnesota Statutes, Section 116G.15 and Minnesota Rules, Parts 4410.8100-4410.9910.]

Other River-Related Land Use Regulations

A number of river segments are protected through local management plans and regulations that are jointly administered by local governments. These include:

Upper Mississippi River Headwaters: The upper 400 miles of the Mississippi River and seven headwater lakes are covered by land use regulations developed by the Mississippi Headwaters Board (MHB) in its management plan. All of the eight counties from the headwaters to Little Falls have adopted zoning ordinances that implement land use standards of the MHB. The district includes land within 500 feet of the river for the scenic portion of the river and 1000 feet of the river for the wild portion of the river. Land use applications are reviewed and approved by the county and then sent to the MHB for final review and certification. [See Minnesota Statutes, Section 103F.361-103F.377 and <http://www.mississippiheadwaters.org/>]

Minnesota River: Shoreland along the Minnesota River between the City of Franklin in Renville County and the City of Le Sueur in Le Sueur County is protected by the zoning ordinances of Renville, Redwood, Brown, Nicollet, Blue Earth, and Le Sueur counties. These ordinances implement the policies developed in the 1981 Project Riverbend Comprehensive Plan. [See Minnesota Statutes, Section 103F.381-103F.393.]

DNR Contact Information



DNR website and a listing of Area Hydrologists: mndnr.gov/contact/ewr.html

DNR Ecological and Water Resources
500 Lafayette Road, Box 32
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This information is available in an alternative format on request.

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DNR Information Center

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Minnesota toll free: 1-888-646-6367
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