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MCEA appeals DNR public waters ruling to delete water protections

By Joe Albert
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St. Paul — As a result of mapping work related to the state's buffer law, which goes into effect Nov. 1, the DNR has removed public waters protections for hundreds of miles of waterways in 71 counties in the state. The agency says the removal is a necessary part of correcting procedural errors that occurred in the early 1980s.

The Minnesota Center for Environmental Advocacy disagrees, however, and last week asked the Minnesota Court of Appeals to reverse the order.

"A DNR order in April used a one size fits all approach to delete over 640 miles of waterways from Minnesota's public water inventory with no public notice, no chance for public comment, and with no transparency," an MCEA news release said. "Because there was no public input, many public waters that should be protected would lose that protection if the DNR's order is implemented."

The order affects about 543 segments of waterway, according to Barb Naramore, DNR assistant commissioner. In 1979, the Legislature directed the DNR to establish a public waters inventory, which was done on a county-by-county basis, included public comment, and was completed in the early 1980s. More recently, the Legislature directed the DNR to create a map showing the waterways that need buffers under the state's new law. Much of that map relied on information from the public waters inventory, but last year and into this year the DNR had been hearing from drainage authorities that some of the waters classified as public ditches on the buffer map weren't part of the public ditch system, she said.

While many of the waterways likely meet the definition of public waters, the DNR discovered that due to procedural errors decades ago, landowners did not have proper notification they were being designated as public waters, she said.

"We really needed to go back



DNR deleted buffer protections from 640 miles of waterways because decades ago, some landowners weren't properly notified that waterways were being designated. Photo by Brian Peterson

and correct the error, and the only avenue available for us to correct that was to remove this group of approximately 543 segments totaling 640 miles from the public waters inventory," said Naramore, who noted the order applies to about 1.2 percent of the ditch and stream miles in Minnesota.

MCEA highlighted three rivers and creeks across the state that would lose their status as public waters — and thereby potentially allow them to be drained, filled, or plowed — under the agency's order. They include more than 20 miles of the Lost River in Red Lake County, more than 8 miles of Badger and Little Badger Creeks in Faribault County, and 3.4 miles of an unnamed tributary of the Cannon River in Rice County.

The MCEA maintains that as a result of the order, the DNR removed from the public waters inventory dozens of public waters that aren't private ditches. The group's concerns include impacts

to habitat and water quality, as well as due process, said Mark Ten Eyck, program director for MCEA.

"Waters that would have had a 50-foot buffer requirement now (won't have that)," he said. "There's no buffer requirement because these waters are not on the public waters inventory and they're not included in the public drainage system."

Naramore said the agency will work with drainage authorities and soil and water conservation districts to see which segments might be included in public drainage systems, and which should be protected under the state's buffer law. The DNR will consider a proper public process to bring back protections to some waters.

"We are concerned about the loss of protection for these waters that meet the definition of public water," she said. "But with the procedural error, we felt like we had no other option for resolving this in a timely manner."