

SF1659/HF1320: Legislation That Undermines Public Waters Protections & Elevates Drainage Over Water Quality



MCEA opposes SF1659/HF1320 because it would undermine the State's public waters protections. Minnesota's waters are held "in trust for the people" for public uses. The State has the obligation protect such waters for all members of the public. SF1659/HF1320 would create a category of exemptions for county ditches, one of the largest contributors of water quality impairments in the State. In doing so, it would violate the public trust doctrine, elevating private interests in drainage over the public's interest in clean water.

- **MCEA opposes all bills that seek to modify the Drainage Code *without approval from the Drainage Working Group*.** The Drainage Working Group has never seen, let alone evaluated, sections 1-4 of SF1659/1320.
- **Section 1: *No Need to Get Permission for Repairs*.** This Section removes the need to get DNR permission when repairing a drainage project affecting public waters, elevating ditching over public waters protections. This provision would allow counties to approve repairs that significantly adversely impact public waters without ever collaborating with DNR over impacts.
- **Section 2: *Elevating Utility and Benefit of Drainage System Over Public Water*.** The modifications to this Section would recognize a higher public benefit for using public waters as waste disposal systems rather than the public's interest in clean water and a healthy environment.
- **Section 3: *Allowing of Reestablishment of Records Without Public Participation & Elevating Engineer's Position Over State Agencies*.** The Minnesota Supreme Court held a reestablishment of record is akin to a judicial decision. The modifications to the reestablishment of records statute would put decisionmaking in the hands of a County employee or consultant, or a County panel.
- **Section 4: *Limiting Protections for Public Waters When a Ditch Is Being Repaired*.** The modifications to this Section would put decisionmaking in the hands of a County employee or consultant or, alternatively, a County panel when making public waters decisions. The language would create a higher priority for using a watercourse as a waste disposal system rather than the public's interest in the water. The proposed modifications would also lessen public water protections by involving DNR only if the repair is in, through, or adjacent to public water, instead of the broader "affecting" language in the current statute.
- **Section 5: *Turning Public Waters into Drainage Systems*.** The modifications to this Section would make the public waters inventory jurisdictional for drainage systems and make all public waters that are *on or adjacent to* a drainage system part of the drainage system. This would fundamentally undermine many public waters protections, as most public watercourses are "adjacent to" drainage systems.
- **Section 6: *Exempting all Repairs from Needing a Public Waters Work Permit*.** This exemption would remove the ability of the DNR to protect public watercourses from repairs that would detrimentally effect public waters.

Last updated 3/9/21



Distributed and produced by the Minnesota Center for Environmental Advocacy
Contact: Kara Josephson, Legislative Director
kjosephson@mncenter.org, (651) 285-4735