



## The problem

Agricultural drainage has transformed the landscape, rivers, and streams across much of Minnesota. Underground drain tile quickly moves water off tilled land into drainage ditches, and drainage ditches quickly move water into rivers, increasing flow and velocity and eroding river banks. The elimination of wetlands that store water and slow its movement have dramatically changed the landscape.

## Background

- The Legislature defined “public waters” in statute as including all “natural and altered natural watercourses with a total drainage area greater than two square miles.”
- The Legislature also required the DNR to create the Public Waters Inventory (PWI). The PWI is an informational tool that does not include all of the waters the Legislature defined as “public.”
- DNR concluded watercourses that meet the statutory definition are “subject to all applicable public waters regulations, regardless of whether they are included in the PWI.”
- Limbo Creek, which meets the definition of a public water, is one of the last free-flowing streams in Renville County. Despite meeting the “public waters” definition, Limbo Creek does not appear on the PWI because of a mistake that occurred during the PWI process.
- In 2016, project proposers petitioned Renville County to transform more than one mile of Limbo Creek from a stream to a ditch.
- In 2020, MCEA submitted a petition asserting Renville County needed to prepare a mandatory environmental assessment worksheet (EAW) for the project.
- The County denied the petition on the sole basis that Limbo Creek did not appear on the PWI.

- MCEA appealed and the Court of Appeals ordered Renville County to prepare a mandatory EAW. The Court concluded that Renville County legally erred by applying the PWI rather than the statutory definition of “public water.”
- Renville County and the project proposers have asked the Minnesota Supreme Court to review the decision.
- The Supreme Court will decide whether to take the case around December 31, 2021.

## MCEA needs your help

If the Supreme Court takes this case, there will be an opportunity for interested groups to submit an “amicus” or “friend of the court” brief. A “friend of the court” is not a party to an action, but has a strong interest in the matter and may ask the court if it can submit a brief with the intent of influencing the court’s decision. Under Minnesota rules, groups have 14 days to make such a request.

Renville County has already recruited big agricultural interests and the Minnesota Association of Counties to submit “friend of the court” briefs, arguing the PWI should be determinative of all public waters in the state for all purposes.

To counteract these well-funded interests, MCEA is working to encourage impacted groups to write their own “friend of the court” brief to talk about the potential legal and environmental impacts that could result if the Supreme Court reverses the Court of Appeals’ decision.

We have identified you and/or your organization as a group we think is impacted by these issues and may be interested in having an attorney write a “friend of the court” brief on their behalf.



### Groups already committed to submitting an amicus brief:

Clean Up the River Environment  
 Lake Pepin Legacy Alliance  
 Sever Peterson  
 Dr. Markus Howard

Coalition for a Clean Minnesota River  
 Minnesota Conservation Federation  
 Minnesota Lakes & Rivers  
 Fish and Wildlife Legislative Alliance

Friends of the Minnesota Valley  
 Minnesota Izaak Walton League  
 Dr. Dan Engstrom

### MCEA contact information:

Andrea Lovell  
[alovoll@mncenter.org](mailto:alovoll@mncenter.org)

Jay Eidsness  
[jeidsness@mncenter.org](mailto:jeidsness@mncenter.org)

Stephanie Fitzgerald  
[sfitzgerald@mncenter.org](mailto:sfitzgerald@mncenter.org)



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Contact: Andrea Lovell, MCEA Legislative Associate | [alovoll@mncenter.org](mailto:alovoll@mncenter.org)