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STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

COMMISSIONER'S ORDER NO. 1

ESTABLISHING EMERGENCY RULES AND REGULATIONS,
PROCEDURES AND GUIDELINES CONCERNING
PUBLIC WATERS, INCLUDING THEIR DESIGNATION
AND CLASSIFICATION

NR 5200 AUTHORITY; SCOPE

(a) AUTHORITY; EFFECTIVE DATE

These regulations are of no effect and null and void unless they are authorized and made valid and enforceable by an Act of the 1976 Minnesota Legislature establishing an accelerated program of inventorying, classifying, and designating waters of this state, and prescribing these regulations by making specific reference to them. If such an Act becomes law, these regulations are effective on the effective date of that Act, and shall remain in effect for each county until the designation and classification of public waters in that county pursuant to the Act and these regulations has been completed. Any procedure specified herein, shall be modified as necessary so as not to conflict with the language of the act.

(b) SCOPE

- (1) These regulations supplement the above-referenced Act by providing additional procedures and criteria for the identification and classification of public waters.
- (2) These regulations also provide interim guidelines for making public waters determinations as the need arises prior to completion of the process described in the Act.

(c) WATER BASINS AND WATERCOURSES

Only those surface waters of the state which are confined may be considered for designation as public waters. There are two types of confining containers:

water basins, and watercourses. The definitions of the two types relate only to their ability to contain confined waters. The determination of whether or not the confined waters are public waters is based on the criteria in Minnesota Statutes Sections 105.37, subdivision 6, and 105.38, and on the further delineation of those criteria in these rules.

- (1) Definition of Water Basin: An enclosed basin normally filled or partly filled with water may be defined as a water basin. The water basin may have inlet and outlet streams, it may have only an inlet or outlet, or it may be completely enclosed.

All water basins have a natural fluctuation in water levels. Water basins with intermittent surface water inflow and little ground water inflow fluctuate through great ranges in levels from very low to extremely high. Other water basins which have perennial streams as inlets and outlets may fluctuate within a narrow range. Water basins which receive a major portion of their water supply from ground water, springs and seeps will generally have fairly uniform levels as long as the ground water supply to the basin remains somewhat constant.

Water basins may include all natural enclosed depressions which have substantial banks normally containing water and which are discernible on aerial photographs taken during normal conditions. This includes all bodies of water, except streams, which are shown within the meander lines on plats of the General Lake Office surveys.

Water basins constantly undergo changes in size, depth, and shape. The rate and type of change in a given water basin is dependent upon several factors including: the climatic and topographic conditions; the nature of the soil or rock materials which underlie the water

basin and cover the basin watershed; the biological environment; the physical configuration; and the nature and extent of artificial and natural drainage within the watershed of the water basin.

(2) Definition of Watercourse: There are three kinds of watercourses.

(aa) Natural Watercourses:

Natural watercourses may be defined as any natural channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods, water may leave the confining beds and banks but under low and normal flows, water is confined within the channel. A watercourse may be intermittent or perennial. Natural, as defined herein, means in a state provided by nature without deepening, straightening or widening.

(bb) Altered Natural Watercourses:

An altered natural watercourse is a former natural watercourse which has been affected by man-made changes resulting in straightening, deepening and widening of the original channel. Altered natural watercourses have been altered as the result of legally authorized changes under provisions of Minnesota Statutes, Chapter 106, public drainage laws, or prior applicable laws, or as the result of private actions without any public drainage procedures.

(cc) Artificial Watercourses:

An artificial watercourse is a watercourse which has been artificially constructed by man where there was no previous natural watercourse.

(3) Wetlands types referred to in these rules are as described in Circular 39, Wetlands of the United States, published by the United States Department of Interior.

(d) PUBLIC WATERS

(1) The following water basins shall be public waters:

- (aa) All water basins which have been classified as public waters under the Shoreland Management Act (Minnesota Statutes, Section 105.485) and which have been specified as public waters under county and municipal shoreland zoning ordinances, subject to a determination that such water basin is not permanently dry or has not reverted to wetland Types 1 or 2.
- (bb) All meandered lakes, except those which have been legally drained.
- (cc) All water basins designated by the Commissioner for management for a specific purpose pursuant to applicable laws. For example, trout lakes.
- (dd) All water basins located within and surrounded by publicly owned lands, including, but not limited to State Parks, Scientific and Natural Areas, and Wildlife Management Areas.

(2) The following water basins not listed in (1) above may be public waters, subject to application of the statutory criteria of Minnesota Statutes, Sections 105.37, subd. 6 and 105.38, as further explained in Table 1 of these rules.

- (aa) In unincorporated areas, water basins greater than 10 acres in area, excluding Type 1 and Type 2 wetlands.
- (bb) In incorporated areas, water basins of any size.
- (cc) Any water basin which a county or municipality asks to be considered for designation as public waters.
- (dd) Any water basin which the private owners of all the land around the basin ask to be considered for designation as public waters.

- (3) Any watercourse may be public waters which fits the criteria of Minnesota Statutes Sections 105.37, subd. 6, and 105.38, as further explained in Table 1 of these rules.

NR 5201 INVENTORY AND DESIGNATION OF WATER BASINS AS PUBLIC WATERS

(a) PRELIMINARY DESIGNATION PROCEDURES

The Commissioner, using an analysis of the data on file and a review and analysis of aerial photos, shall make preliminary evaluations of those water basins which may be considered for inclusion as "Public Waters" within each county.

- (1) The Commissioner will prepare maps for each county showing the location of all water basins in each county originally inventoried in Bulletin 25 "An Inventory of Minnesota Lakes" published in 1968 by the Division of Waters, Soils and Minerals, and the location of any other water basins of any size in incorporated areas and of 10 acres or more in unincorporated areas not listed in the Bulletin but determined from the most recent available detailed aerial photographs of the county, not taken during a period of flooding, or drought. The use of the photos is only to determine if a basin exists and not to prove the basin is public waters solely on the photographic data.
- (2) The Commissioner shall designate on the map, as a preliminary evaluation, those water basins which are considered to be public waters, utilizing the criteria specified in NR 5200(d) and Table 1 of these regulations. This preliminary designation will be supported by explanations of the basis for making the designation of each water basin as public waters. A listing of those basins, a map showing their general location in the county, and an explanation of the reason for the preliminary selection of the water basin as public waters will

be submitted to those local governmental agencies with jurisdiction in the area where the water basin is located for their review, analysis and comment. Local governments may add any water basin for consideration, regardless of the size of the water basin.

(b) COUNTY REVIEW

- (1) Where the county disagrees with the preliminary designation of the Commissioner, the Commissioner shall undertake discussions with the county in order to resolve differences. Where necessary, he may initiate a detailed field investigation.
- (2) A field investigation, when necessary, may be made by the Department of Natural Resources with full cooperation and consultation with local governmental authorities and any of their designated representatives in order to assure maximum input from the local governmental authorities and to allow maximum discussion and interchange of facts regarding the area involved, utilizing the criteria specified in Table 1 of these regulations.
- (3) At a minimum, the Commissioner shall seek assistance in making field investigations from the following:
 - (aa) Counties and other local governmental agencies and their representatives.
 - (bb) Soil and Water Conservation Districts
 - (cc) Watershed Districts, if there are any organized districts, located in the area where the water basins are situated.
 - (dd) Any U.S. Governmental agencies which may be willing to assist in the field investigation in a fact-finding capacity.
 - (ee) Affected property owners and parties who may wish to contribute technical expertise.

(c) FURTHER PROCEDURES

The Commissioner shall make maximum efforts to resolve any problems involving designations after completion of field investigations. Further procedures for designating water basins as public waters are specified in the Act prescribing these regulations.

NR 5202 INVENTORY, DESIGNATION AND CLASSIFICATION OF WATERCOURSES AS PUBLIC WATERS

(a) PRELIMINARY DESIGNATION PROCEDURES

- (1) The Commissioner will furnish each county with copies of the latest available U.S. Geological Survey Topographic (quadrangle) maps for use in making a preliminary designation and classification of watercourses which may be public waters within the county. Counties may use any other available maps and information in making the inventory. It is recommended that counties enter into agreements with Soil and Water Conservation Districts and Watershed Districts, where existent, in order to expedite the inventory and provide maximum local assistance and cooperation.
- (2) It is recommended that counties use, as official work maps, the U.S. Geological Survey Topographic (quadrangle) maps of the county, and where such maps are not available, the use of similar scale aerial photographic blue-line prints. These maps and prints form the best available base for showing the location and extent of the various watercourses. It should be noted that the maps may not and often will not contain all of the watercourses, especially since the maps were prepared at various times and some are quite old.
- (3) The Commissioner will furnish each county with reproducible county maps at a scale of 1 inch equals 1 mile for use as an official designation map for final watercourse designation and classification.

- (4) Each county shall indicate on the official map the location of all watercourses, natural, altered, and artificial as defined in NR 5200(c).
- (5) Counties shall include the location and extent of all these watercourses and identify them as to their character by using the following map symbol along the watercourse extent:
 - (aa) Natural watercourses, solid lines.
 - (bb) Altered natural watercourses, dashed lines.
 - (cc) Artificial watercourses, dotted lines.
- (6) Each county shall indicate on the official map the name of the natural watercourse or the number and designation of the altered natural or artificial watercourse.
- (7) The county shall designate on the map, as a preliminary evaluation, those watercourses which it considers to be public waters, utilizing the criteria specified in NR 5200(d) and Table 1 of these regulations. The county shall classify each public watercourse as to the degree of regulation which shall apply to each watercourse. The criteria for each class, and the degree of regulation which the Commissioner shall apply to each class, are as follows:
 - (aa) Class I public watercourses:

Natural watercourses serving as major drainage outlets, or major tributaries to those outlets, which are capable of serving a number of beneficial public purposes. Examples include the Rainy River, Mississippi River, Red River, Root River, Blue Earth River and the Rum River. Smaller natural watercourses serving specific values such as trout streams and scenic watercourses. Examples might include: Nine Mile Creek, Hennepin County; Minnehaha Creek, Hennepin County; Baptism River, Lake County;

and Spring Creek, Goodhue County. Permits shall be required under Minnesota Statutes, Section 105.42 for all activities which change the course, current, or cross-section of Class I public watercourses and under Minnesota Statutes, Section 84.415 for all utility crossings thereof.

(bb) Class II public watercourses:

Natural watercourses serving as tributaries of Class I watercourses which are often perennial streams serving more than one beneficial public purpose. Permits shall be required under Minnesota Statutes, Section 105.42 for all activities which change the course, current, or cross-section of Class II public watercourses and under Minnesota Statutes, Section 84.415 for all utility crossings thereof.

(cc) Class III public watercourses:

Smaller natural watercourses and altered natural watercourses not constructed under Minnesota Statutes, Chapter 106, which are often intermittent streams serving at least one beneficial public purpose.

Permits shall not be required under Minnesota Statutes, Section 84.415. Nor shall permits be required under Minnesota Statutes Section 105.42, except for the following types of activities on Class III public watercourses.

- (i) Any activity which would require widening, deepening, or straightening of a Class I or II public watercourse as a result of the change in the Class III public watercourse.
- (ii) Construction of any dam 20 feet or more in structural height as measured vertically from the lowest point of

the foundation surface to the top of the dam and/or impounding 50 acre-feet or more of water at maximum storage capacity. (Based on the National Dam Inspection Program.)

(iii) Any diversion of water from a Class III public watercourse into a different watershed which is not part of the same drainage basin.

(iv) Any lowering of the streambed elevation which would result in an overfall of two feet or more in elevation of a channelization project when there is no provision for erosion control structures to prevent headward erosion.

(dd) Class IV watercourses:

These shall include any watercourses in existence at the time of inventory which are artificial watercourses and altered natural watercourses, constructed under the provisions of Minnesota Statutes Chapter 106 or prior laws, or as the result of private actions without any public drainage proceedings.

Permits shall not be required under Minnesota Statutes, Section 84.415. Nor shall permits be required under Minnesota Statutes Section 105.42, except for the following types of actions on Class IV watercourses:

(i) Any activity which would require widening, deepening, or straightening of a Class I or II public watercourse as a result of the change in the Class IV public watercourse.

(ii) Construction of any dam 20 feet or more in structural height as measured vertically from the lowest point of the foundation surface to the top of the dam and/or impounding 50 acre-feet or more of water at maximum

storage capacity. (Based on the National Dam Inspection Program.)

(iii) Any diversion of water from a Class IV public watercourse into a different watershed which is not part of the same drainage basin.

(iv) Any lowering of the streambed elevation which would result in an overfall of two feet or more in elevation of a channelization project when there is no provision for erosion control structures to prevent headward erosion.

(8) Counties shall indicate on the official designation map their preliminary classification of watercourses as to Class I, II, III, or IV.

(9) Upon completion of the preliminary classification of watercourses delineated by the county, the county will submit the preliminary inventory and classification to the Commissioner by indicating the classification review, evaluation and comment.

(b) COMMISSIONER REVIEW

Where the Commissioner disagrees with the preliminary designations and classifications of the county, he shall undertake discussions with the county in order to resolve differences. He may initiate field investigations of the sort described in NR 5201 (b).

(c) FURTHER PROCEDURES

The Commissioner shall make maximum efforts to resolve any problems involving designations and classifications after completion of discussions and field investigations. Further procedures for designating watercourses as public waters and classifying them are specified in the Act prescribing these regulations.

NR 5203 INTERIM PROCEDURES AND CRITERIA FOR MAKING PUBLIC WATERS DETERMINATIONS

(a) PURPOSE

In order to provide a systematic transition from the present method for dealing with determinations of "public waters" and the program for state-wide delineation on a county-by-county basis, it is necessary that interim procedures for classifying public waters be adopted. It is intended that these procedures be especially applicable in the agricultural areas of the state and where, because of the need for agricultural land drainage, there are major problems involving these waters.

(b) PROCEDURE

Any person contemplating a change in the course, current, or cross-section of a water basin or watercourse which may be one of the kinds described in NR 5200 (d) shall consult with the nearest regional office of the Department of Natural Resources to find out if it is public waters, or ask county or municipal officials to contact the Department for him or her. Except during periods when climatic conditions prevent adequate field investigations, the Commissioner shall have not to exceed 60 days from the date of request by the party or county or municipality to determine whether or not the basin is public waters, and if the determination is not made within that time, then the water basin is not public waters for purposes of the particular change contemplated by the particular party, or the watercourse is Class III, or is Class IV if it is a part of a legal drainage system.

(c) CRITERIA

The Commissioner's interim criteria for determining whether or not a water basin or watercourse is a public water are those specified in NR 5200(d). His criteria for classifying watercourses are those specified in 5202(a) (7).

NR 5204 INTERIM CRITERIA FOR COMMISSIONER'S PERMITS FOR PUBLIC DRAINAGE PROJECTS

(a) NEW PROJECTS

A drainage project undertaken under the authority of Minnesota Statutes Chapters 106 or 112 which will alter the course, current or cross-section of a water basin whose status as public waters or not public waters has not yet been determined pursuant to NR 5201, or which will alter the course, current or cross-section of a watercourse whose status and classification have not yet been determined pursuant to NR 5202, may be limited by the Commissioner's authority under Minnesota Statutes, Sections 105.42 and 106.021, only if the waters to be affected are determined to be public waters pursuant to NR 5203 and then only if the project will substantially affect such waters. Substantially affect means:

- (1) Partly or wholly drain a water basin.
- (2) Channelize a natural watercourse

(b) REPAIRS AND IMPROVEMENTS

Normal repairs and improvements in existing legal drainage systems undertaken under the authority of Minnesota Statutes, Sections 106.471 or 106.501, or Chapter 112, should not involve any requirements for regulation by the Commissioner except for substantial affects similar to those for new projects as set forth in NR 5204(a).

Dated at Saint Paul, Minnesota, this 4th day of March, 1976.

Approved as to Form & Execution

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TABLE 1

CRITERIA TO BE CONSIDERED WHEN DETERMINING WHETHER A WATER BASIN OR WATERCOURSE WHICH MAY BE A PUBLIC WATER, AS LISTED IN NR 5210(d) (2) and (d) (3), IS A PUBLIC WATER.

PARAMETER	REASON CODE	
Nutrient Entrapment	N	1. Proximity to lakes and streams and relationship to surface drainage system.
		2. Chemical quality of waters and other adjacent lakes and streams. (Requires a laboratory analysis of samples collected.)
		3. Vegetation characteristics and analysis of chemical composition of vegetation (Requires a laboratory analysis of samples collected.)
		4. Estimated nutrient assimilation load of the water area involved. (Based on an analysis and evaluation of chemical quality analysis samples.)
		5. Analysis of the area as a sediment collection basin to prevent sediment pollution in nearby lakes or streams.
Wildlife Habitat	W	1. Wetland characteristics in regard to vegetation types and value of vegetation as feeding, nesting or rearing areas or as protective cover.
		2. Relationship of this area to other areas in the county and in the surrounding region. What kind of cover is available? Is this a unique area?
		3. What evidence is available regarding the kinds and numbers of animals that use the area. What is the importance of these animals?
		4. What would be the impact on fish and wildlife of the waters involved if the area was destroyed as a wetland?
		5. Is it within an existing water bank program or is there a firm proposal to include it in a water bank program subject to fund availability.
		6. Is the water within or directly adjacent to a state or federally acquired wildlife management area? Are there plans for acquiring the area as a wildlife area within the immediate future (ie. Are there files or records which show the area is planned for acquisition within the present biennium subject to fund availability).

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PARAMETER	REASON CODE	
Wildlife Habitat	W	7. Is there available eye witness testimony to show the water is used by a number of animals? What are the names and assumptions of observers?
Recreational Activities	R	<ol style="list-style-type: none"> 1. Is the area readily accessible to the public? How is public access granted? 2. Are other characteristics of the area adequate for certain uses including but not limited to: hunting, fishing, swimming, boating? Is there evidence to show the area is used for any of the above purposes? If so, by how many persons and for what periods of time? 3. What is the potential of the area for public recreational use, in regard to possible future availability and use both locally and in the county and region? 4. Is there any eye-witness testimony available regarding public use of the area? What are names, addresses and occupations of observers?
Flood Water Retention	F	<ol style="list-style-type: none"> 1. What is the flood damage occurrence and frequency adjacent to and downstream from the waters involved? And what is the character and value of lands involved and extent of damages? (This determination may include information from aerial photos, county flood maps, soils evaluations, eye-witness accounts, flood marks and other engineering determinations.) 2. What are the hydrologic and topographic relationships between the waters involved and the areal drainage system? 3. What percentage of floodwaters of the local drainage system would be retained within the waters involved if the waters were used as floodwater retarding and retardation basin? What effect would the loss of the water involved have on local flooding conditions?
Scientific And Natural Areas	H	1. Does the water area involved have an inherent natural value for: a living museum; site for scientific study; an area for teaching natural history and conservation;

PARAMETER	REASON CODE	
Scientific And Natural Areas (cont.)	H	a habitat for rare and endangered species of plants and animals? If so, would the area be designated as a Scientific and Natural Area under provisions of M.S. 84.033 and acquired by gift, lease, easement, or purchase, if funds were available.
Public Navigational Purposes, other than recreational	P	1. Is there any evidence to show the waters involved are important for public navigational purposes, other than recreational? If so, describe the characteristics which make the area important including depth, areal extent and type of navigational use? Are there any records of such navigational use? By whom? How often?
Water Supply	S	1. Is there any evidence to show the waters involved are important sources of water supply? If so, for what uses and how is the water obtained? Who owns the lands around the waters involved? How long has the water been used for a water supply for a particular purpose?
Underground Water Recharge	G	1. What are the local groundwater-surface water relationships in and around the waters involved? 2. What are the shallow ground water levels? (ie. depth to water table?) 3. What are the soils of the area and underlying the waters involved? Is this area part of a larger recharge area? If so, what significance would loss of the waters involved have on the recharge?
Surrounding Land Character and Potential	L	1. What is the nature of the land surrounding the waters involved? What is the suitability of the land and beds of the waters for agricultural use in regard to soils, slopes, and other characteristics? 2. What would the impact be on agricultural values and cropping practices if the waters were not allowed to be drained for agricultural use.