

Dear County Attorney Mike Riley:

03/05/2009

Please find evidence supporting the claim by the Lake Hallett Association that Unnamed Lake 52-001 (aka Lake Hallett and Hallett's Pond) is a type 5 Public Waters Wetland as defined in Minnesota Statute 103G.005. Public Waters are subject to the control of the state (103A.201), which precludes any party from "taking possession of" or "owning" the lake, a claim made by the City of St. Peter to the Nicollet County Commissioners prior to the hearing to name 52-001 "Lake Hallett." on February 24<sup>th</sup> 2009. Further, Commissioner James Stenson, cited the City's "possession of Hallett's Pond" as the reason the petition was denied. The City of Saint Peter's platting of Unnamed 52-1 after the "purchase" to show "ownership" of the property under the lake is immaterial. Platting has no bearing on the Public Waters designation or permit rules so the Minnesota Department of Natural Resources has total regulatory jurisdiction of this body of water and the property underneath it. Unnamed 52-001 remains a Public Waters. The County board's ignorance of Minnesota State laws regarding public waters does not change the facts and the petition should not have been denied due to erroneous information.

Thank you for your time. I will await your timely response.

Trudi Olmanson

Lake Hallett Association  
302 Saint Julien Street  
Saint Peter, MN 56082  
507-931-6679

**Document 1:**

"Final Inventory of Protected (i.e. Public) Water and Wetlands for Nicollet County"  
July 7, 1987

This document identifies 52-001 as a "protected" or "public" wetland on the State of Minnesota final inventory list.

**Document 2:**

"Bulletin 25: An Inventory of Minnesota Lakes"  
1968

This document showing that 52-001 has been recognized as a "lake" since 1968.

**Document 3:**

"Definition of Public Waters"

This document clarifies the term *Public Water Wetland*. 52-001 is classified as a type 5 public waters wetland.

**Document 4:**

"Water Law Basics"

This document discusses ownership of public waters and riparian rights and duties.

**Document 5:**

"2008 Minnesota Statutes"

Clarifies the distinction between "wetlands" and "public waters wetlands." For regulatory purposes 52-001 is not a "wetland" but a "public waters wetland." This is a critical distinction providing 52-001 with State protections.

REPARTMENT OF NATURAL RESOURCES  
DIVISION OF WATERS  
FINAL INVENTORY OF PROTECTED WATERS AND WETLANDS WITHIN  
NICOLLET COUNTY, MINNESOTA

A. Listed below are the names of the waters and wetlands which are included in this inventory and the township and range in which they occur.

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

Pursuant to Minnesota Statutes, Section 105.391, Subd. 1, the Commissioner of Natural Resources hereby publishes the final inventory of Protected (i.e. Public) Waters and Wetlands for Nicollet County. This list is to be used in conjunction with the Protected Waters and Wetlands Map prepared for Nicollet County. Copies of the final map and list are available for inspection at the following state and county offices:

DNR Regional Office, New Ulm  
DNR Area Office, Mankato  
Nicollet SWCD  
Nicollet County Auditor

Dated: July 7, 1987

STATE OF MINNESOTA  
DEPARTMENT OF NATURAL RESOURCES

JOSEPH N. ALEXANDER, Commissioner

By: 



**DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF WATERS  
FINAL DESIGNATION OF PROTECTED WATERS AND WETLANDS WITHIN  
NICOLLET COUNTY, MINNESOTA.**

A. Listed below are the townships of Nicollet County and the township/range numbers in which they occur.

<u>Township Name</u>	<u>Township #</u>	<u>Range #</u>
Belgrade	108;109	26;27
Bernadotte	111	29
Brighton	110	29
Courtland	109;110	29;30
Granby	110	28
Lafayette	110;111	30
Lake Prairie	111	26;27
New Sweden	111	28
Nicollet	108;109	28
Oshawa	109;110	26;27;28
Ridgely	111	32;33
Traverse	110	26;27
West Newton	110;111	31

**B. PROTECTED WATERS**

1. The following are protected waters:

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
52-8 : Erickson Lake	9,10	110	27
52-10 : Oak Leaf Lake	25	110	27
52-22 : Horseshoe Lake	7,18;12	109	27;28
52-23 : Middle Lake	various	110	27;28
52-24 : Little Lake	30,31;25,36	110	27;28
52-25 : Mud Lake	1,2,11	109	28
52-30 : Duck Lake	11,14	110	28
*52-33 : Rice Lake	2,3;34	111;112	28
52-34 : Swan Lake	various	109;110	28;29
52-37 : Peterson Lake	11,12	110	29
52-56 : Unnamed	8	111	32
*52-60 : Unnamed	21	110	30
*72-89 : Clear Lake	1,2,11,12;26,35,36	111;112	31

2. The following natural and altered natural watercourses are protected waters:

<u>Name</u>	<u>Section</u>	<u>From Township</u>	<u>Range</u>	<u>Section</u>	<u>To Township</u>	<u>Range</u>
*Minnesota River (MNR)	2	111	33	3	111	26
Fort Ridgely Creek	6	111	32	7	111	32
Little Rock Creek	3	111	32	30	111	31
*Eight Mile Creek	16	111	31	32	111	31
Unnamed to MNR	27	111	31	3	110	31
Unnamed to MNR	36	111	31	2	110	31
Unnamed to MNR	30	111	30	7	110	30
Fritsche Creek	3	110	30	17	110	30
Heyman's Creek	22	110	30	27	110	30
	27	110	30	34	110	30
Unnamed to MNR	10	109	29	15	109	29
Unnamed to MNR	24	109	29	23	109	29
Nicollet Creek	6(Basin 34)	109	28	33	109	28
Unnamed to MNR	32	109	27	7	108	27
Unnamed to MNR	35	109	27	36	109	27
Seven Mile Creek (SMC)	33	110	27	12	109	27
Unnamed to SMC	10	109	27	10	109	27
*Robarts Creek	31	111	26	4	110	26
Barney Fry Creek	24	111	27	10	111	26
Unnamed to MNR	4	111	26	3	111	26

### C. WETLANDS

The following are wetlands:

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
52-1 : Unnamed	16	110	26
52-2 : Spring Lake	12	108	27
52-6 : Unnamed	8,17,18	110	27
52-12: Zwinggi Lake	3;33,34	110;111	27
*52-15: Sand Lake	17,18,19,20	111	27
52-16: Unnamed	18,19	111	27
52-18: Unnamed	20,21	111	27
52-20: Annexstad Lake	29	111	27
52-21: Haack Lake	34	111	27
52-26: Unnamed	9	109	28

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
52-35: Unnamed	2	109	29
52-40: Unnamed	27	110	29
52-41: Unnamed	30	110	29
52-44: Unnamed	14,23	110	30
52-47: Unnamed	1,2	110	31
52-48: Unnamed	3;34,35	110;111	31
52-51: Unnamed	2	111	33
52-53: Unnamed	29,32	110	29
52-54: Unnamed	28	110	29
52-55: Unnamed	2	109	28
52-57: Unnamed	29,30,31,32	110	29
*52-62: Unnamed	27,28	110	30
52-63: Unnamed	1	108	27

\*This is corrected from a previous typographic and/or cartographic error

**Bulletin No. 25**

**DIVISION OF WATERS, SOILS, AND MINERALS**

**MINNESOTA CONSERVATION DEPARTMENT**

# **AN INVENTORY OF MINNESOTA LAKES**

Prepared by the staff of the Waters Section,  
Division of Waters, Soils, and Minerals.

**St. Paul, Minnesota**

**1968**



# AN INVENTORY OF MINNESOTA LAKES

In this report all lakes, 10 acres or more in area, are listed. It includes the lakes along the borders of the state which are partly in Minnesota and partly in adjoining states or Canada. Reservoirs

and artificial impoundments for improvement of wildlife habitat and for other recreational purposes are also included.

## Names

It is not unusual to find two or more names applied to the same lake on different maps. Variations in spelling are also not uncommon. In determining the names to be used in this publication, official names and spellings established by decisions of the U.S. Board on Geographic Names or of the Minnesota Geographic Board have been used wherever such decisions have been made. In

other cases, all reliable sources of information such as maps, official documents and historical publications have been consulted. Where multiple names occur, the official or selected name only is used in the county lists. Alternate names are however included in the alphabetical list at the end of the volume.

## Numbers

For identification and data processing purposes every lake in the list has been assigned a number. The first part of this number identifies the county. A lake in more than one county is assigned a number in the county which contains the largest part

of the lake. Its name also appears, with the same identification number, in the lists for the other counties involved. In the summaries showing the total number of lakes the lake is counted only in the county in which it is numbered.

## Determination of Areas

Most of the lake areas were obtained by measurements made of aerial photographs. Table 1 lists the dates of aerial photographs used in determining lake areas. In a few instances aerial photos were not available for portions of counties. In these counties U.S. Geological Survey topographic maps and U.S. Forest Service and other planimetric maps were used. Lake areas were checked by reference to topographic maps throughout the state, even when aerial photographs were available. Some of the aerial photographs used in preparing

these quadrangle maps are on file with the Division of Waters, Soils and Minerals.

Areas of federal reservoirs were obtained from records of the U.S. Corps of Engineers. Areas of lakes on the Canada-Minnesota border were obtained by planimetering charts of Minnesota-Ontario border lakes, prepared by the U.S. Lake Survey in 1945 and 1950.

## Meandered Lakes

The meandered area of a lake includes all the portion of property lying within the meander lines shown on plats made by the United States General Land Office. A meander line is a series of courses and distances to delineate the area of a body of water. It is not a boundary line but may be considered to be the limit of taxation. It did enable the General Land Office to plot fractional sections and compute their areas. The instructions governing the Land Office survey stated that all lakes, ponds and bayous with an area of 25 acres or more were

to be meandered, but this policy was varied at the discretion of the surveyors. The Gazetteer of Meandered Lakes of Minnesota, published in 1928 by the State Department of Drainage and Waters, listed 4,480 meandered lakes in Minnesota, including meandered boundary waters. This list was completed from the original township plats prepared by the United States General Land Office.

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# NICOLLET COUNTY (52)

Number of lakes ..... 51  
 Lake area, acres. .... 17,014

Nicollet County lake basins were formed by the irregular deposition of glacial till in ground moraine. The resulting lakes are shallow and many of them have been severely affected by artificial drainage systems. There are four large lakes in the county:

Ident. no.	Name	Area, acres
52-34	Swan	9,346
52-23	Middle	2,186
52-13	Timber	974
52-9	Goose	713

## Lakes classified by area

	Area in acres												Total
	10 to 25	25 to 50	50 to 75	75 to 100	100 to 125	125 to 150	150 to 200	200 to 500	500 to 1000	1000 to 2500	2500 to 5000	5000 and more	
Number listed. ....	23	2	7	2	2	4	3	4	2	1	0	1	51
Number affected by drainage or dry. ....	10	2	6	2	2	3	1	4	2	0	0	0	32

Ident. number	Name	Range	Township	Location Section	Area in Acres	Mean- dered	Remarks
52-1	.....	26	110	16	12	...	
52-2	Spring	27	108	12	12	...	Affected by C.D. 24.
52-3	.....	27	109	15,20	58	...	
52-4	Rogers	27	110	3	13	...	Affected by C.D. 13.
52-5	Fox	27	110	8,9,16,17	105	x	
52-6	.....	27	110	8,17,18	56	x	Affected by C.D. 52.
52-7	Overson	27	110	9	23	...	
52-8	Erickson	27	110	9,10	62	x	Affected by C.D. 31.
52-9	Goose	27	110	15,16,22,23,26,27	713	x	Affected by C.D. 6 and 13.
52-10	Oak Leaf	27	110	25	181	x	
52-11	.....	27	110	28,29	228	...	Affected by C.D. 13.
52-12	Zwinggi	27	110,111	3,33,34	57	x	Affected by C.D. 31.
52-13	Timber	27	110,111	4-9;31-33	974	x	Affected by C.D. 7, 31 and 52.
52-14	.....	27	111	7,18	136	...	Affected by ditch.
52-15	Sand	27	111	17,18,20	70	...	
52-16	.....	27	111	18,19	18	...	Affected by ditch.
52-17	.....	27	111	19	12	...	
52-18	.....	27	111	20,21	21	...	
52-19	Nelson	27	111	27,28,34	62	x	Affected by C.D. 75.
52-20	Annexstad	27	111	29	20	...	

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# Definition of public waters

**Public waters are designated as such to indicate which lakes, wetlands, and watercourses over which DNR Waters has regulatory jurisdiction. The statutory definition of public waters includes public waters and public waters wetlands.**

## Minnesota Statute 103G.005, Subdivision 15

### 1. *Public Waters* means:

- a. water basins assigned a shoreline management classification by the commissioner, under sections 103F.201 to 103F.221, except wetlands less than 80 acres in size that are classified as natural environment lakes;
  - b. waters of the state which have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;
  - c. meandered lakes, excluding lakes that have been legally drained;
  - d. water basins previously designated by the commissioner for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;
  - e. water basins designated as scientific and natural areas under Section 84.033;
  - f. water basins located within and totally surrounded by publicly owned lands;
  - g. water basins where the State of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;
  - h. water basins where there is publicly owned and controlled access that is intended to provide for public access to the water basin;
  - i. natural and altered watercourses with a total drainage area greater than 2 square miles in area;
  - j. natural and altered watercourses designated by the commissioner as trout streams; and
  - k. public waters wetlands, unless the statute expressly states otherwise.
2. Public waters are **not** determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream or water that was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

## Minnesota Statute 103G.005, Subdivision 15a

### 1. *Public Waters Wetlands* means:

**All types 3, 4, and 5 wetlands as defined in United States Fish and Wildlife Service (USFWS) Circular No. 39 (1971 edition), not included within the definition of public waters, that are ten (10) or more acres in size in unincorporated areas or 2.5 acres or more in incorporated areas.**



# Water law basics

Excerpts from Questions and Answers about Water Laws in Minnesota, 2006.

## Who owns the bed of a lake, marsh, or stream?

When a water basin or watercourse is "navigable" under the federal test, the State of Minnesota owns the bed below the natural ordinary low water level (see: Lamprey v. State, 52 Minn. 1981, 53 NW 1139 [1893]; 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 NW 2d 657 [1947]). If a court has found that a lake is non-navigable and meandered, the shoreland owners own the bed of a lake in severalty (see: Schmidt v. Marschel., 211 Minn 543, NW 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.

Also see: Pardon Me Myth! - Who Owns the Lake Bed? PDF

## What are riparian rights?

Riparian rights are property rights arising from owning shoreland. 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; to such other uses as water bodies are normally put (see: Sanborn v. People's Ice Co. 82 Minn 43, 84 NW 641 [1900] and Lamprey v. State, 52 Minn 181, 53 NW 1139 [1883]). The riparian owner has the right to make use of the lake over its entire surface (see: Johnson v. Seifert 257 Minn 159, 100 NW 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 interfere with the riparian rights of others (see: Petraborg v. Zontelli, 217 Minn 536, 15 NW 2d 174 [1944]). They cannot dike off and drain, or fence off, their part of the waterbody (see: Johnson v. Seifert). 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 Statute 609.74).

## What are public rights?

Where the public is a riparian landowner, such as a public road abutting the water or at a public access, the public has riparian rights (see: Flynn v. Beisel, 257 Minn. 531, 102 N.W. 2d 284 [1960].).

## Additional information

Minnesota case law has established that a public road abutting a body of water gives the public riparian rights to the water. Riparian rights exist whether or not the lake is navigable or public and regardless of who owns the bed. Riparians are entitled to exercise their rights over the entire surface of the lake. One riparian cannot keep others from using all of the lake. Where access to a "wetland" is available from a public road,



## 2008 Minnesota Statutes

### 103A.201 REGULATORY POLICY.

Subdivision 1. **Policy.** To conserve and use water resources of the state in the best interests of its people, and to promote the public health, safety, and welfare, it is the policy of the state that:

- (1) subject to existing rights, public waters are subject to the control of the state;
- (2) the state, to the extent provided by law, shall control the appropriation and use of waters of the state; and
- (3) the state shall control and supervise activity that changes or will change the course, current, or cross section of public waters, including the construction, reconstruction, repair, removal, abandonment, alteration, or the transfer of ownership of dams, reservoirs, control structures, and waterway obstructions in public waters.

Subd. 2. **Wetlands findings; public interest.** (a) Wetlands identified in the state under section 103G.005, subdivision 19, do not:

- (1) grant the public additional or greater right of access to the wetlands;
- (2) diminish the right of ownership or usage of the beds underlying the wetlands, except as otherwise provided by law;
- (3) affect state law forbidding trespass on private lands; and
- (4) require the commissioner to acquire access to the wetlands.

(b) The legislature finds that the wetlands of Minnesota provide public value by conserving surface waters, maintaining and improving water quality, preserving wildlife habitat, providing recreational opportunities, reducing runoff, providing for floodwater retention, reducing stream sedimentation, contributing to improved subsurface moisture, helping moderate climatic change, and enhancing the natural beauty of the landscape, and are important to comprehensive water management, and that it is in the public interest to:

- (1) achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;
- (2) increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;
- (3) avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; and
- (4) replace wetland values where avoidance of activity is not feasible and prudent.

**History:** 1990 c 391 art 1 s 2; 1991 c 354 art 1 s 2

→ DOES NOT APPLY TO UNNAMED S2-1.  
SEE REVERSE



**Subd. 19. Wetlands.** (a) "Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

- (1) have a predominance of hydric soils;
- (2) are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- (3) under normal circumstances support a prevalence of such vegetation.

(b) For the purposes of regulation under this chapter, the term wetlands does not include public waters wetlands as defined in subdivision 15a.