



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, December 16, 2020

Agenda Item

Item 5. A. - New Business

Prepared By

Linda Loomis, Administrator

Summary

Len Kremer, David Minge, Ted Suss and Don Arnosti asked for time on the December meeting agenda. They will be speaking on behalf of the Friends of the Minnesota Valley and the Izaak Walton League.

They want to request the Board consider joining them in efforts to manage drainage in the Minnesota River Basin. The Board discussed this at the October Board of Managers meeting after a request was made that the LMRWD join a petition to request an EAW be prepared for a drainage project in Yellow Medicine County. At that time, the Board asked staff to look at the issue and make a recommendation. Staff has discussed this but does not have a recommendation yet. Lisa Frenette and I have been working with Representative Paul Torkelson to determine what the State can do.

The most recent controversy is surrounding a project in Renville County which will impact Limbo Creek. There are questions about the status of LIMBO Creek, in that it currently is not listed as a public water on the DNR's public water inventory. The DNR is in the process of listing as such, however, the Renville County Board of Commissioners has approved the drainage project.

The Limbo Creek project was on the agenda at the December 7th meeting of the Legislative Subcommittee on Water Policy. There have also been quite a few articles in the West Central Tribune. The most recent article is attached.

Attachments

West Central Tribune "Limbo Creek Controversy in Renville County going to court, state Capitol" by Tom Cherveney dated December 11, 2020.

Recommended Action

No recommendations

Limbo Creek controversy in Renville County going to court, state Capitol

A joint House and Senate subcommittee on Minnesota Water Policy dove into the Limbo Creek controversy in Renville County. Three of the lawmakers indicated they want to bring debate over the state's Public Waters Inventory to the Legislature this coming session. Those who testified called for protecting the last free flowing waterway in the county.

Written By: Tom Cherveney | Dec 11th 2020 - 6am.



Tom Kalahar, retired from a career with the Renville County Soil and Water Conservation District, stands along Limbo Creek just upstream of its outlet to the Minnesota River in this photo from last summer. Kalahar was among those who testified Monday about Limbo Creek and the Public Waters Inventory to a joint state House and Senate subcommittee on Minnesota Water Policy. Tom Cherveney / West Central Tribune file photo

ST. PAUL — Debate over the fate of Limbo Creek in Renville County is headed not only to the courts, but to the state Capitol as well.

The legislative [Subcommittee on Minnesota Water Policy](#), which includes members from both the state House and Senate, took a look at how a project that aims to open a channel into the creek in western Renville County has charged a debate on how the state manages its public waters.

“I think we revealed how controversial and complicated this issue is,” said Rep. Paul Torkelson, R-Hanska, a subcommittee member, as its members during a meeting Monday heard testimony on Limbo Creek and the state’s [Public Waters Inventory](#).



Rep. Paul Torkelson

for reestablishing Rep. Torkelson urged the DNR to “put the brakes” on a process to return some 640 miles of waterways in 70 counties to the Public Waters Inventory. He wants the Legislature to review the process now underway in the upcoming legislative session.

The Public Waters Inventory provides maps so that riparian landowners know whether their property is adjacent to public waters or drainage systems. Different restrictions can apply for activities in public waters versus public drainage systems.

The lawmaker said he wants to take a “deep dive into how this Public Waters Inventory was established originally and why there are so many errors on it and what is the proper process the inventory properly.”

The Minnesota Department of Natural Resources is proposing to [return Limbo Creek](#) and three other small watercourses in Renville County and one in Pope County to the Public Waters Inventory. They are the first in a pilot project to return waters that were removed from the Public Waters Inventory in 2017 by an order of the DNR commissioner, according to Steven Colvin, the DNR’s division director for ecology and water resources.

As part of the process to develop maps for the new buffer requirements, the DNR realized that these waterways had been mistakenly identified as being part of public drainage systems in the early 1980s when the Public Waters Inventory was developed, Colvin told the subcommittee. As a result of the mistaken identification, landowners were never properly notified that they were public waters.

The 2015 buffer legislation requires a 50-foot buffer along public waterways and a 16.5-foot buffer along public drainage systems.

State statute gives the DNR commissioner the authority to correct errors in the Public Waters Inventory, and this pilot project is a step toward doing so, according to Colvin.

“The DNR is committed to a thoughtful and transparent process to return water course segments to the Public Waters Inventory if they meet the state definition of public waters,” he said during his testimony.

Torkelson was joined by two subcommittee members, Sen. Michael Goggin, R-Red Wing, and Rep. Josh Heintzeman, R-Nisswa, in voicing their concerns about the process and their desire for its review in the Legislature.

Committee Co-Chair Sen. Bill Weber, R-Luverne, said from the onset that the subcommittee would make no decisions, pointing out that the matter is now in litigation. The Renville County Drainage Authority recently approved a project by landowners on County Ditch 77 to open a channel into Limbo Creek to improve the outlet of the system.

The [Minnesota Center For Environmental Advocacy](#) and the DNR are challenging the project. The DNR maintains that the channel project needs its approval for work conducted in a public waterway.

“Public waters in Minnesota are held in trust for the people for the ordinary purposes of life,” Elise Larson, senior staff attorney and water program director for the Minnesota Center For Environmental Advocacy, told the subcommittee. She told committee members they need to remember “what is at stake if public water protections are undermined.”

Larson said the DNR is providing “an unprecedented level of due process” in offering landowners in the affected watershed 109 days to comment on its intentions to correct an error and return Limbo Creek to the Public Waters Inventory.

She pointed out that Renville County’s water plan adopted in 2013 specifically called for protecting Limbo Creek.

Larson told the legislators that a state statute provides the DNR the authority to correct the Public Waters Inventory. “The public has never gone to the Legislature to correct errors in the inventory,” she said.

[Read more stories about Limbo Creek](#)

It’s also clear that Limbo Creek meets all the definitions of a public water, including the one pertinent to the legal challenge here: “Limbo Creek has never been part of Renville County’s public drainage system,” she said.

The Minnesota Center For Environmental Advocacy attorney was joined by representatives from environmental organizations and others who testified in support of returning Limbo Creek to the Public Waters Inventory.

Thomas Kalahar, retired from the Renville County Soil and Water Conservation District, told committee members that Limbo Creek was mistakenly listed as County Ditch 145 when the inventory was developed. Landowners in the watershed never approved the creation of County Ditch 145, and it never was part of the county’s drainage system. Limbo Creek is now the only free-flowing waterway remaining in the county, he and others told the subcommittee.

Former Congressman [David Minge](#), representing the Izaak Walton League in Minnesota, told the subcommittee that the DNR is faced with the difficult task of representing downstream residents affected by drainage. He said that the League is among the organizations supporting its decision to return this waterway to the Public Waters Inventory.



Renville County has approved a petition by County Ditch 77 landowners to extend this open channel in Limbo Creek for the Ditch 77 outlet, which is covered by sediment. Tom Cherveny / West Central Tribune file photo