

STATE OF MINNESOTA
IN SUPREME COURT

A20-1592

Court of Appeals

Anderson, J.

In the Matter of: Petition of MCEA for
Commencement of an Environmental
Assessment Worksheet.

Filed: September 28, 2022
Office of Appellate Courts

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S Y L L A B U S

Assuming without deciding that the public waters inventory, maintained under Minn. Stat. § 103G.201 (2020), is a final and exhaustive compilation of public waters, the inventory is not conclusive as to the classification of the upper reach of Limbo Creek. The court of appeals, therefore, did not err in applying the statutory definition of “public waters” in Minn. Stat. § 103G.005, subd. 15 (2020), to determine whether the upper reach of Limbo Creek is a public water.

Affirmed.

O P I N I O N

ANDERSON, Justice.

This appeal poses the question of whether the classification of waters as “public water” is based on the statutory definition of “public waters” in Minn. Stat. § 103G.005,

subd. 15 (2020), or the “public waters inventory” that the Department of Natural Resources maintains under Minn. Stat. § 103G.201 (2020). This question comes to us regarding the upper reach of Limbo Creek in Renville County and whether it is a public water for purposes of environmental review under the Minnesota Environmental Policy Act, Minn. Stat. §§ 116D.01–.11 (2020). A group of landowners petitioned the Renville County Board of Commissioners for improvements to Renville County Ditch 77, which would affect the upper reach of Limbo Creek. Environmental organizations requested that the County complete an environmental assessment worksheet, asserting that the upper reach of Limbo Creek is a public water for which environmental review is required. The County denied the request for environmental review, finding that the upper reach of Limbo Creek is not a public water because it does not appear on the public waters inventory list for Renville County. The court of appeals reversed and remanded, concluding that the statutory definition of “public waters” controls, not the inventory. The court of appeals also concluded that the record lacks substantial evidence to support any determination that the upper reach of Limbo Creek is not a public water under the statutory definition.

Because of the unique facts of this dispute surrounding the inventory’s designation for the upper reach of Limbo Creek, we do not reach the broad issue presented here. Instead, we hold that, even assuming without deciding that the public waters inventory is generally conclusive as to the classification of public waters, the inventory is not conclusive as to whether the upper reach of Limbo Creek is a public water. Therefore, the statutory definition of “public waters” controls, and we affirm the decision of the court of appeals to remand for preparation of a mandatory environmental assessment worksheet.

FACTS

This appeal involves the designation and protection of Minnesota’s public waters and is informed by the history of public waters regulations in Minnesota. Accordingly, we discuss the history of public waters regulation in Minnesota and the creation of the public waters inventory in the State, as well as the public waters inventory process in Renville County, before detailing the facts surrounding the County’s denial of environmental review for the proposed County Ditch 77 improvement project.

Public waters regulation in Minnesota

Minnesota has held the State’s waters “in trust for the people” since admission to the United States in 1858. *State v. Longyear Holding Co.*, 29 N.W.2d 657, 669–70 (Minn. 1947). The State has been defining and protecting public waters since 1867. *In re Application of Christenson*, 417 N.W.2d 607, 609 (Minn. 1987). When a water is found to be a public water, it is subject to increased environmental protection, conservation, and regulation by the State. *Id.* And the State has exercised consistent regulatory authority over public waters since at least 1937, when Minnesota established “a permit system for the use and appropriation of the State’s waters” and assigned responsibility for supervising the system to what is now the Minnesota Department of Natural Resources (DNR). *Id.*

In 1976, the Minnesota Legislature passed a law requiring the DNR to conduct an inventory of all waters subject to state regulation. *Id.* at 608; Act of Mar. 25, 1976, ch. 83, § 8, 1976 Minn. Laws 209, 212–14 (repealed 1990). Before the 1976 inventory, “there had been no systematic inventory of the state’s waterbodies,” and the DNR or the courts made classifications on a case-by-case basis. *Christenson*, 417 N.W.2d at 608. “This ad hoc

approach to regulation resulted in uncertainty, unknowing violations, and costly and time-consuming litigation.” *Id.*

The Legislature passed another inventory law in 1979. Act of May 25, 1979, ch. 199, 1979 Minn. Laws 334, 336–37 (repealed 1990). The purpose of the inventory laws was to “identify, count, list and map the state’s waterbodies according to specific statutory standards.” *Christenson*, 417 N.W.2d at 608. The law provided an objective definition of public waters, which included “[a]ll natural and altered natural watercourses with a total drainage area greater than two square miles.” Minn. Stat. § 105.37, subd. 14(i) (1980). The law also set up procedures for public notice of proposed classifications, county and public participation, and appeals in contested cases.¹ Minn. Stat. § 105.391, subd. 1 (1980) (repealed 1990).

The inventory process culminated in the creation of a public waters inventory that consisted of final lists and maps of public waters for each county. The 1979 inventory law required the DNR to “publish a list of the waters determined to be public waters” for each

¹ The 1979 inventory law laid out the process as follows: the DNR sent “a list and map of the waters which [it] ha[d] preliminarily designated as public waters” to each county for a 90-day review and comment period, during which the county held at least one public informational meeting. Minn. Stat. § 105.391, subd. 1 (1980) (repealed 1990). The county then sent a response to the DNR, “listing any waters” whose designation the county contested. *Id.* Within 30 days of receiving the county’s response, the DNR notified the county as to which recommendations it rejected or accepted and “revis[ed] the list and map to reflect the recommendations” agreed upon. *Id.* Next, the DNR filed “the revised list and map” with the county recorder and published the list and map in the official county newspaper to invite challenges via petition for hearing. *Id.* A hearings unit composed of three appointed members conducted the hearings and issued findings of fact, conclusions, and an order. *Id.* Orders could be appealed to the district court as the decision of an agency in a contested case. *Id.* After completion of a contested case, the DNR “publish[ed] a list of the waters determined to be public waters.” *Id.*

Minnesota county after completion of the process. *Id.* The DNR also published a final map of the waters determined to be public waters for each county. The DNR stated in the publication of the final lists that the lists were to be used “in conjunction with” the public waters maps, and internal DNR procedures regarding the inventory mandated that “the map must be proofed against the list for errors and inconsistencies.” Thus, the inventory consisted of both a list and a map of public waters for each county that were meant to mirror each other.

The inventory process led to the classification of “approximately 29,000 lakes, rivers and wetlands comprising nearly five million acres” after almost a decade of DNR designations, contested public hearings, and appeals. *Christenson*, 417 N.W.2d at 608. By the late 1980s, the DNR had completed notice and hearing procedures in all Minnesota counties, but courts continued to resolve appeals after that date. *Id.*

In 1990, the Legislature repealed, recodified, and updated the statutes codifying the State’s water law, including public water law and the inventory. Act of Apr. 6, 1990, ch. 391, 1990 Minn. Laws 354, 638–89. Notably, the Legislature made no changes to the definition of public waters, merely recodifying it in Minn. Stat. § 103G.005, subd. 15 (1990). Act of Apr. 6, 1990, ch. 391, art. 7, § 2, 1990 Minn. Laws at 640. But the Legislature repealed the inventory statute and passed a new inventory statute, codified at Minn. Stat. § 103G.201 (1990). Act of Apr. 6, 1990, ch. 391, art. 7, § 13, 1990 Minn. Laws at 644. The statute required the DNR to “prepare a public waters inventory map” for each county, showing the waters designated as public waters in the 1979 inventory process. Minn. Stat. § 103G.201 (1990).

In 2005, the Legislature amended section 103G.201 to give the DNR authority to “revise the public waters inventory map and list of each county” to correct errors in the original inventory. Act of June 3, 2005, ch. 138, § 1, 2005 Minn. Laws 1167, 1168 (codified as amended at Minn. Stat. § 103G.201(e)(2)(i) (2020)). The current statute directs the DNR Commissioner to “maintain a public waters inventory map of each county” that shows the waters designated as public waters during the 1979 inventory process. Minn. Stat. § 103G.201(a) (2020). The current statute refers only to the inventory *map*, not the inventory *list*. Minn. Stat. § 103G.201 (2020).

Renville County inventory process

In Renville County, the process of creating the public waters inventory map and list followed the 1979 statutory scheme. The process initially lasted from 1979 to 1985. Recent developments, however, have led to an attempt by the DNR to correct alleged errors in the original process in Renville County using its error-correcting authority under Minn. Stat. § 103G.201(e)(2)(i) (2020).

The original inventory process began with the DNR completing the first preliminary draft of the inventory for Renville County in August 1979, which consisted of a map and a list, as required by statute. *See* Minn. Stat. § 105.391, subd. 1 (1980) (repealed 1990). The August 1979 preliminary draft included the entire reach of Limbo Creek—labeled as “Limbo Creek (CD #145)”²—on both the inventory list and map. Limbo Creek is a

² “CD 145” references Renville County Ditch 145, which was still subject to a permit approval process in 1979 and was not yet an established public ditch. CD 145 would have converted most of Limbo Creek (including the upper reach) into a public ditch, but CD 145

watercourse with a 9,335-acre watershed in Renville County.³ Only the upper reach of Limbo Creek is at issue here.

The DNR completed another preliminary draft of the inventory in February 1980. This preliminary draft appears only as a list in the record, with no accompanying map. The February 1980 preliminary draft listed “Limbo Creek” without reference to CD 145 and included *only the lower reach of Limbo Creek*. The DNR removed all references to public ditches in the updated list and altered or removed all but one of the watercourses that referenced public ditches in the August 1979 preliminary inventory list.⁴ This action resulted in only the lower reach of Limbo Creek being included on the inventory list from

never became a public ditch because the project ended in 1982 after the failure to obtain a permit.

³ Limbo Creek, which begins in Ericson Township and outlets into the Minnesota River at Hawk Creek Township, consists of an upper reach and a lower reach. The upper reach of Limbo Creek starts in section 31 of Ericson Township 116 and ends in section 22 of Hawk Creek Township 115. The lower reach of Limbo Creek starts in section 22 and ends in section 34 of Hawk Creek Township 115.

⁴ There is some evidence that removal of public ditches that also fit the definition of public waters from the inventory list was part of the DNR’s internal procedure during the original inventory process, done in response to overlapping permitting requirements for public waters that also meet the definition of public ditches. *See In re Improper Inclusion of Certain Water Courses within Pub. Waters Inventory Maps for 71 Cntys.*, No. A17-0904, 2018 WL 1902441, at *1–2 (Minn. App. Apr. 23, 2018). Internal DNR memorandum instructed staff members to map all public waters, compare those waters with identified public ditches, and remove the public waters that were also public ditches from the inventory *list*, but ultimately include the public waters that were also public ditches on the final inventory *map*. This practice, however, was not mandated by statute; the law simply instructed the DNR to classify waters fitting the statutory definition and designate them on both a *list and map*. Minn. Stat. § 105.391, subd. 1 (1980) (repealed 1990).

February 1980 onward; the upper reach of Limbo Creek was no longer included on versions of the inventory list after that date.

The County submitted comments to the DNR on the preliminary inventory draft in April 1980, rejecting all watercourses designated by the DNR as public waters except the Minnesota River.⁵ In June 1980, the DNR published in the state register notice of a hearing on the Renville County public waters designations. The hearing notice contained a list of the contested public waters. That list did not include the upper reach of Limbo Creek. The Renville County Public Hearings Unit held a hearing in July 1980 on the contested public waters and later issued its decision, classifying as public waters only a few of the contested waters.

The DNR appealed the decision of the Hearings Unit to the Renville County District Court. In May 1985, the DNR and the County reached a settlement. The district court entered an order (the 1985 district court order) adopting the settlement, which designated as public many watercourses from the June 1980 hearing notice, including the lower reach of Limbo Creek. The 1985 district court order stated that all other watercourses *listed in the June 1980 hearing notice* are not public waters. Although the order affirmatively decided whether certain waters were or were not public waters, the decision was specifically limited to the waters listed on the June 1980 hearing notice, not all waters in

⁵ The timing of the County's response to the DNR preliminary inventory draft suggests that the County responded to the February 1980 preliminary inventory list made by the DNR, not the August 1979 preliminary inventory map and list. *See* Minn. Stat. § 105.391, subd. 1 (requiring counties to review the DNR preliminary inventory designations within 90 days).

the County. As noted previously, the June 1980 hearing list did *not* include the upper reach of Limbo Creek.

In August 1985, following the conclusion of the inventory process in Renville County, the DNR published the final inventory list and map. Both the inventory list and map designated the lower reach of Limbo Creek as a public water. The upper reach of Limbo Creek did not appear on the inventory list. But the upper reach of Limbo Creek did appear on the inventory *map* as a heavy-dashed line, which is a combination of the symbols for public waters and public ditches. Although the upper reach of Limbo Creek had been removed from the inventory *list* in February 1980, the record shows that the upper reach of Limbo Creek was included as a public water on both versions of the inventory *map*—the August 1979 preliminary draft and the August 1985 final version.

In 2017, the DNR issued an order addressing a subset of watercourses that had been mapped as heavy-dashed lines on the inventory maps. *See In re Improper Inclusion of Certain Water Courses within Pub. Waters Inventory Maps for 71 Cntys.*, 2018 WL 1902441, at *1. The order found that these watercourses had been mapped as heavy-dashed lines because the DNR believed at the time that those watercourses were part of public ditch systems that also met the statutory definition of public waters. *Id.* The order removed those watercourses from the inventory map because their lack of inclusion on the inventory list caused concern that landowners may not have received notice of the designation. *Id.* at 1–2. Although the upper reach of Limbo Creek was mapped as a heavy-dashed line on the inventory map and was not on the inventory list, the DNR did not include it in its 2017 order removing these watercourses from the inventory map.

In March 2019, respondents Minnesota Center for Environmental Advocacy and Protecting Public Waters (MCEA) filed a petition asking the DNR to use its error-correcting authority to classify the upper reach of Limbo Creek as a public water on the inventory list and map. In its petition, MCEA asserted that the upper reach of Limbo Creek had been removed from the inventory map by the 2017 DNR order.⁶ On August 10, 2020, the DNR issued a public notice of intent to “make corrections to the Public Waters Inventory by returning” the upper reach of Limbo Creek and several other watercourses in Renville County to the inventory, opening the proposal for a public comment period.⁷ The DNR has taken no further public action on MCEA’s petition, besides extending the public comment period to end on November 30, 2020. *Id.*

The County Ditch 77 project

The history of public waters regulation and the inventory in Renville County became relevant when appellants Alice A. Zimmer, Revocable Trust, et al. (Proposers)

⁶ The 2017 DNR order did not list the upper reach of Limbo Creek as one of the watercourses to be removed from the inventory. MCEA asserted that the upper reach of Limbo Creek had been removed from the inventory, however, because on the buffer protection map—which maps public waters on the inventory subject to buffer protection zones, *see* Minn. Stat. § 103F.48 (2020)—the DNR at the time labeled the upper reach of Limbo Creek as a “Public Water watercourse remov[ed] per Commissioner’s [2017] Order.” *See generally* DNR Buffer Map, MN DEP’T OF NAT. RES., <http://arcgis.dnr.state.mn.us/gis/buffersviewer/> (last visited July 27, 2022) [opinion attachment].

⁷ The August 2020 notice is the subject of ongoing litigation in a separate action in Renville County District Court. *Renville Cnty. v. Minn. Dep’t of Nat. Res. Comm’r*, 65-CV-20-164 (Renville Cnty. Dist. Ct. filed Nov. 3, 2020). The DNR also incorrectly stated in this notice that the upper reach of Limbo Creek had been removed from the inventory map in 2017 and proposed that it “be returned” to the inventory list and map.

filed a petition with appellant Renville County Board of Commissioners⁸ (the County) to improve the drainage system in Hawk Creek Township, County Ditch 77. The petition sought to extend the ditch further downstream by cleaning and doing channel modification on a section of the upper reach of Limbo Creek, into which the ditch currently drains. The project would remove sediment to restore the effectiveness of the drainage system that has served farms in Renville County for over a century and extend the ditch into the upper reach of Limbo Creek.

In June 2017, the DNR submitted a preliminary advisory report on the project, which stated that the upper reach of Limbo Creek is not a public water. Over the next couple of years, the County engineer refined the project and coordinated with various agencies to acquire the necessary permits to move the project forward. But after the DNR received the petition from MCEA to “return” the upper reach of Limbo Creek to the inventory list and map, the DNR requested that the County postpone any decision on the ditch project to provide the opportunity for the DNR to determine the Limbo Creek inventory proposal. The DNR then opened the Limbo Creek inventory proposal for notice and comment on August 10, 2020, stating in its notice that the upper reach of Limbo Creek meets the statutory definition of a public water.

Eleven days after the DNR opened the notice and comment period, the County engineer filed the final engineering report for the project, stating that the upper reach of Limbo Creek is not a public water. The DNR submitted its final advisory report for the

⁸ The Renville County Board of Commissioners serves as the drainage authority for Renville County under the drainage code, Minn. Stat. §§ 103E.005–.812 (2020).

project the next month. *See* Minn. Stat. § 103E.301 (2020). The DNR report explained that the upper reach of Limbo Creek was in the process of being added to the inventory and explained the confusion in its original classification because of a concurrent public ditch petition that never came to fruition. According to the DNR report, because the upper reach of Limbo Creek meets the statutory definition of a public water, the upper reach of Limbo Creek is a public water. *See* Minn. Stat. § 103G.005, subd. 15.

On October 15, 2020, MCEA petitioned the County for a mandatory, or in the alternative, a discretionary environmental assessment worksheet (EAW) on the ditch project. An EAW is a document that sets out “the basic facts necessary to determine whether an environmental impact statement is required for a proposed action.” Minn. Stat. § 116D.04, subd. 1a(c) (2020). Claiming that the upper reach of Limbo Creek is a public water, MCEA asserted that the project requires an EAW because the project “will change or diminish the course, current, or cross-section of . . . [a] public water.” Minn. R. 4410.4300, subp. 27(A) (2021).

On October 27, 2020, the County held a final hearing on the ditch project and considered the EAW petition, which resulted in a continuance. On November 2, 2020, the DNR sent the County another letter, reiterating its position that the upper reach of Limbo Creek is a public water.

On November 3, 2020, the County denied the EAW petition after finding that the upper reach of Limbo Creek is not a public water. The County determined that the upper reach of Limbo Creek is not a public water because it is not on the inventory list, and that the dashed lines on the inventory map show a public ditch in the upper reach of Limbo

Creek. Thus, the County concluded that the project did not meet the threshold for a mandatory EAW, and it denied a discretionary EAW. In the same proceeding, the County approved the ditch project.⁹

MCEA filed a certiorari appeal in the court of appeals, challenging the County's decision denying MCEA's petition for a mandatory and discretionary EAW. The court of appeals reversed and remanded for the County to prepare a mandatory EAW. *In re Petition of MCEA for Commencement of an Env't Assessment Worksheet*, 967 N.W.2d 425, 427 (Minn. App. 2021). The court of appeals concluded that the absence of the upper reach of Limbo Creek from the inventory list does not conclusively establish that the watercourse is not a public water under Minn. Stat. § 103G.005, subd. 15(a). *In re Petition of MCEA*, 967 N.W.2d at 430–31. Further, the court of appeals also concluded that “the record lacks substantial evidence to support any determination that the upper reach of Limbo Creek is not a public water” under the statutory definition. *Id.* at 434. Because the court of appeals concluded that the County must complete a mandatory EAW, it did not address the County's denial of the discretionary EAW. *Id.* at 427 n.1.

The County and Proposers filed petitions for review, asserting that the court of appeals erred when it failed to hold that the inventory was a final, binding, and exhaustive list of public waters in the State that met the definition under section 103G.005, subdivision 15. They asserted that the absence of a water on the inventory was

⁹ The County's decision to approve the ditch project is the subject of current litigation in a separate action in Renville County District Court. *Protecting Pub. Waters v. Renville Cnty. Bd. of Comm'rs*, No. 65-CV-21-41 (Renville Cnty. Dist. Ct. filed Feb. 23, 2021).

determinative of the public waters classification of that water. Neither petition for review challenged the decision of the court of appeals that the County lacked substantial evidence to find that the upper reach of Limbo Creek was not a public water under the statutory definition.

ANALYSIS

The narrow question presented in this case is whether the County must complete a mandatory EAW for the County Ditch 77 project affecting Limbo Creek. Administrative rules promulgated under the Minnesota Environmental Policy Act (MEPA) require the completion of a mandatory EAW when a project “will change or diminish the course, current, or cross-section of one acre or more of any *public water*” Minn. R. 4410.4300, subp. 27(A) (emphasis added). According to the parties, the need for a mandatory EAW turns on whether the upper reach of Limbo Creek is a public water; the parties only dispute the meaning of “public water,” and not any other part of the mandatory EAW rule. It is this narrow dispute that gives rise to the broader question presented by this dispute as to what classification of waters as “public water” controls. MCEA asks us to hold that the statutory definition of “public waters” in Minnesota Statutes section 103G.005, subdivision 15, governs. In contrast, the County and Proposers argue that the inventory governs what is a public water. They thus maintain that the upper reach of Limbo Creek is not a public water because it is not included in the Renville County inventory list.

We review certiorari appeals of agency decisions without deference to the review conducted by the district court or appellate court, but with “substantial deference to the agency’s decision.” *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of*

Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006). “Agency decisions are reversed when they reflect an error of law, the findings are arbitrary and capricious, or the findings are unsupported by substantial evidence.” *Id.* Although we accord deference to agency decisions, the interpretation of statutes and administrative regulations is a legal question, which we review *de novo*. *In re Reissuance of an NPDES/SDS Permit to U.S. Steel Corp.*, 954 N.W.2d 572, 576 (Minn. 2021). We do not defer to an agency’s interpretation of a statute when the statute is unambiguous. *Id.*

Although we provided a broad overview of public waters regulation in the prior section, we now turn to the specific statutory and rules provisions at issue. Rule 4410.4300 (2021) outlines the mandatory EAW categories under MEPA. The rule provides that “[a]n EAW must be prepared for projects that meet or exceed the threshold” under subpart 27 “[f]or projects that will change . . . the course . . . of one acre or more of any public water.” Minn. R. 4410.4300, subps. 1, 27(A). The dispute here focuses on whether the upper reach of Limbo Creek is a “public water.” MEPA rules provide that “‘[p]ublic waters’ has the meaning given in Minnesota Statutes, section 103G.005.” Minn. R. 4410.0200, subp. 69 (2021). Additionally, the Legislature designated section 103G.005 as the generally applicable statutory definition of “public waters.” Minn. Stat. § 645.44, subd. 8a (2020) (providing that, “unless another intention clearly appears,” the term “‘[p]ublic waters’ means public waters as defined in section 103G.005, subdivision 15”).

Section 103G.005, in turn, defines “public waters” in subdivision 15(a)(1)–(11). As relevant here, a water can fit the definition based on physical characteristics—such as “natural and altered watercourses with a total drainage area greater than two square miles,”

Minn. Stat. § 103G.005, subd. 15(a)(9)—or based on a previous classification—such as “waters of the state that have been finally determined to be public waters . . . by a court of competent jurisdiction,” *id.*, subd. 15(a)(2). Notably, none of the provisions defining “public waters” reference the inventory, the 1979 inventory law, or the current inventory statute, section 103G.201. *See* Minn. Stat. § 103G.005, subd. 15(a).¹⁰

It is against this legal backdrop that MCEA makes its argument that because the definition of “public waters” in section 103G.005, subdivision 15, does not reference the inventory, the definition of “public waters” is completely independent of the inventory. It contends that when statutes or rules refer to “public waters,” either generally or under the statutory definition, the inventory does not apply. *See, e.g.*, Minn. Stat. § 103E.005, subd. 26 (2020) (stating that “[p]ublic waters,” for the purposes of the Drainage Code, “has the meaning given in section 103G.005, subdivision 15”).

The County and Proposers, by contrast, argue that the statutory definition of public waters is never decisive because it is dependent on the inventory list, which conclusively classified all public waters in Minnesota. They assert that non-inclusion on the inventory list—as is the case for the upper reach of Limbo Creek—definitively shows that a water is

¹⁰ In contrast, some provisions in section 103G.005, subdivision 15(a), cross-reference other statutes—for example, subdivision 15(a)(5) defines “public waters” to include “water basins designated as scientific and natural areas under section 84.033.” Additionally, subdivision 15f of section 103G.005 cross-references the inventory statute, section 103G.201, in defining shoreland protection zones as zones “300 feet from the ordinary high-water level of a watercourse identified by the public waters inventory under section 103G.201.” Minn. Stat. § 103G.005, subd. 15f(2)(ii). Further, the Legislature has explicitly defined “public waters” in other contexts as those waters on the inventory. *See, e.g.*, Minn. Stat. § 103F.48(i) (2020) (defining “public waters” for the purpose of the buffer zone law as those “that are on the public waters inventory as provided in section 103G.201”).

not a public water. They further note that section 103G.201(a) requires the DNR Commissioner to maintain “a public waters inventory map” showing the waters of the State designated as public under the 1979 inventory law. The County and Proposers contend that this incorporation of the 1979 inventory procedures into section 103G.201 supports their claim that the inventory governs public waters classifications. Because the 1979 inventory law created a mandatory process for the designation of public waters on the inventory using the statutory definition of public waters (now found in section 103G.005, subdivision 15), the County and Proposers claim that the inventory definitively identified all public waters in the State that meet the statutory definition.

The County and Proposers are correct, in as much as they assert that the upper reach of Limbo Creek does not appear on the Renville County inventory *list* and observe that section 103G.201 explicitly references the 1979 law requiring publication of public waters lists.¹¹ Although included on an August 1979 preliminary draft of the Renville County inventory list, the upper reach of Limbo Creek was likely removed from the preliminary inventory list *before* the DNR shared it with the County.¹² No public hearing was held on

¹¹ Because it was excluded from the list, the upper reach of Limbo Creek may not have undergone the full “public waters inventory and classification procedures” set forth in the 1979 inventory law and required by section 103G.201(a). *See In re Improper Inclusion*, 2018 WL 1902441, at *1–2 (noting that the omission of certain public waters from the inventory lists may have prevented interested landowners from receiving notice of a “public water” designation on their land).

¹² That the upper reach of Limbo Creek was removed before sharing the inventory list with the County refutes the County and Proposers’ assertion that the upper reach of Limbo Creek was intentionally removed because it was determined not to be a public water. This assertion is also refuted by the inclusion of the upper reach of Limbo Creek on the final

the classification of the upper reach of Limbo Creek because it was not listed on the hearing notice, and the Renville County District Court did not consider the upper reach of Limbo Creek when issuing the 1985 order adopting the settlement between the DNR and the County as to which waters would be included on the final inventory list.¹³

But even if we assume without deciding that the Legislature intended the inventory to govern as to which waters in the State are public waters, the inventory does not conclusively establish the classification of the upper reach of Limbo Creek. Although the upper reach of Limbo Creek does not appear on the Renville County inventory *list* (which the County and Proposers claim is dispositive), the upper reach of Limbo Creek does appear on the Renville County inventory *map*. And section 103G.201(a)—the statutory basis for the County and Proposers’ position—directs the DNR to “maintain a public waters inventory *map* of each county that shows the waters of this State that are designated as

inventory map as a public water. Had it been removed because the DNR determined that it was not a public water, there would be no reason for the DNR to then include it as a public water on the final inventory map.

¹³ The County and Proposers rely heavily on the 1985 district court order, arguing that it is a final and binding judgment as to which waters in Renville County are public waters and which are not public waters. The 1985 district court order affirmatively found that certain waters identified on the June 1980 hearing notice are public waters, listed them by name, and specified that all other waters *listed in the June 1980 hearing notice* are not public waters. Thus, the order concerned only the waters listed on the June 1980 hearing notice, not *all waters* in the County. For that reason, we cannot treat the 1985 district court order as a final and binding judgment as to the public water status of *all waters* in Renville County. Specifically, the 1985 district court order is not a final and binding judgment as to the classification of the upper reach of Limbo Creek because the upper reach of Limbo Creek was not listed in the June 1980 hearing notice.

public waters” under the inventory. (Emphasis added.) Section 103G.201(a) does not explicitly reference the inventory *list*.

On the inventory map for Renville County, the upper reach of Limbo Creek appears as a public water by its designation with a heavy-dashed line. The map legend notes that a heavy-dashed line is a dual designation, meaning that the upper reach of Limbo Creek is a protected public watercourse (heavy line) in addition to being managed by a drainage authority as a public ditch (dashed line).¹⁴ The County determined that the heavy-dashed line meant that the upper reach of Limbo Creek was *only* a public ditch. This determination is incorrect; if the upper reach of Limbo Creek was *only* a public ditch, the map would have used a dashed line, not a heavy-dashed line.¹⁵

Thus, the inventory map designates the upper reach of Limbo Creek as a public ditch *and* a public water. The DNR determined that the upper reach of Limbo Creek is an altered

¹⁴ Renville County Public Waters Inventory Map, MN DEP’T OF NAT. RES., https://files.dnr.state.mn.us/waters/watermgmt_section/pwi/RENV1OF1.pdf (last visited July 27, 2022) [opinion attachment]. Limbo Creek is represented in the separate section of the map appearing at the bottom left of the page. The upper reach of Limbo Creek is visible in section 22 of Hawk Creek Township 115, just north of the Minnesota River and south of Highway 212, where the line changes from a solid, heavy line, to a heavy-dashed line. The upper reach of Limbo Creek then extends northeast and crosses Highway 212 just west of Sacred Heart. It is here that the upper reach of Limbo Creek is also shown on the main map, where it extends northeast into section 31 of Ericson Township 116.

¹⁵ The designation of the upper reach of Limbo Creek as a public ditch is not accurate because the Army Corps of Engineers blocked the effort to establish a public ditch in the upper reach of Limbo Creek, resulting in the dismissal of the public ditch petition in the 1980s. But even if the County insists that we rely on section 103G.201 to determine the classification of waters, that statute directs us to the inventory *map*. The map shows—by the dashed line—a public ditch in this reach of Limbo Creek. It also shows that this reach of Limbo Creek is a public water, because the dashed line is heavy and dark.

or natural watercourse 40 years ago. Since correcting its preliminary report, the DNR has repeatedly informed the County that it considers the upper reach of Limbo Creek to be “an altered natural watercourse” that meets the statutory definition of a public water.

This dissonance between the upper reach of Limbo Creek’s exclusion as a public water on the inventory list, but inclusion as a public water on the inventory map, precludes us from answering the broader question presented in the County’s and Proposers’ petitions for review as to whether the absence of a water from the inventory list conclusively establishes that the water is not a public water. We need not decide that issue here because the absence of the upper reach of Limbo Creek from the inventory list, given the presence of the creek’s upper reach on the inventory map, is not determinative. The complicated history of the upper reach of Limbo Creek and the lack of clarity in the official classifications make it impossible to rely on the inventory *alone* for the proper classification of the upper reach of Limbo Creek. We conclude, therefore, that the court of appeals did not err by relying on the statutory definition of “public waters” in section 103G.005, subdivision 15(a)—and not on the absence of the water from the inventory list—to determine whether the upper reach of Limbo Creek is a public water.

In affirming the court of appeals’ reliance on the statutory definition of “public waters” in this case, we make special note that the MEPA regulations specify that the phrase “ ‘[p]ublic waters’ has the meaning given in Minnesota Statutes, section 103G.005.” Minn. R. 4410.0200, subp. 69. We also note that section 645.44 provides that section 103G.005 applies when any statute uses the phrase “public waters” “unless another intention clearly appears.” Minn. Stat. § 645.44, subs. 1, 8a. And as the court of appeals

stressed, nothing in section 103G.005 “makes qualifying as a ‘public water’ dependent on a water’s inclusion on the DNR’s [inventory] list or map.” *In re Petition of MCEA*, 967 N.W.2d at 431.

Nonetheless, we do not reach the broader question of whether the absence of other waters from the inventory under section 103G.201 dictates generally that those waters are not “public waters” for purposes of environmental review under MEPA. We also do not address whether, in general, the statutory definition or the inventory applies when determining the public waters classification of a water, given the significant consequences that the parties and amici have raised. It is the duty of the Legislature to clarify the relationship between the inventory and the statutory definition of public waters.

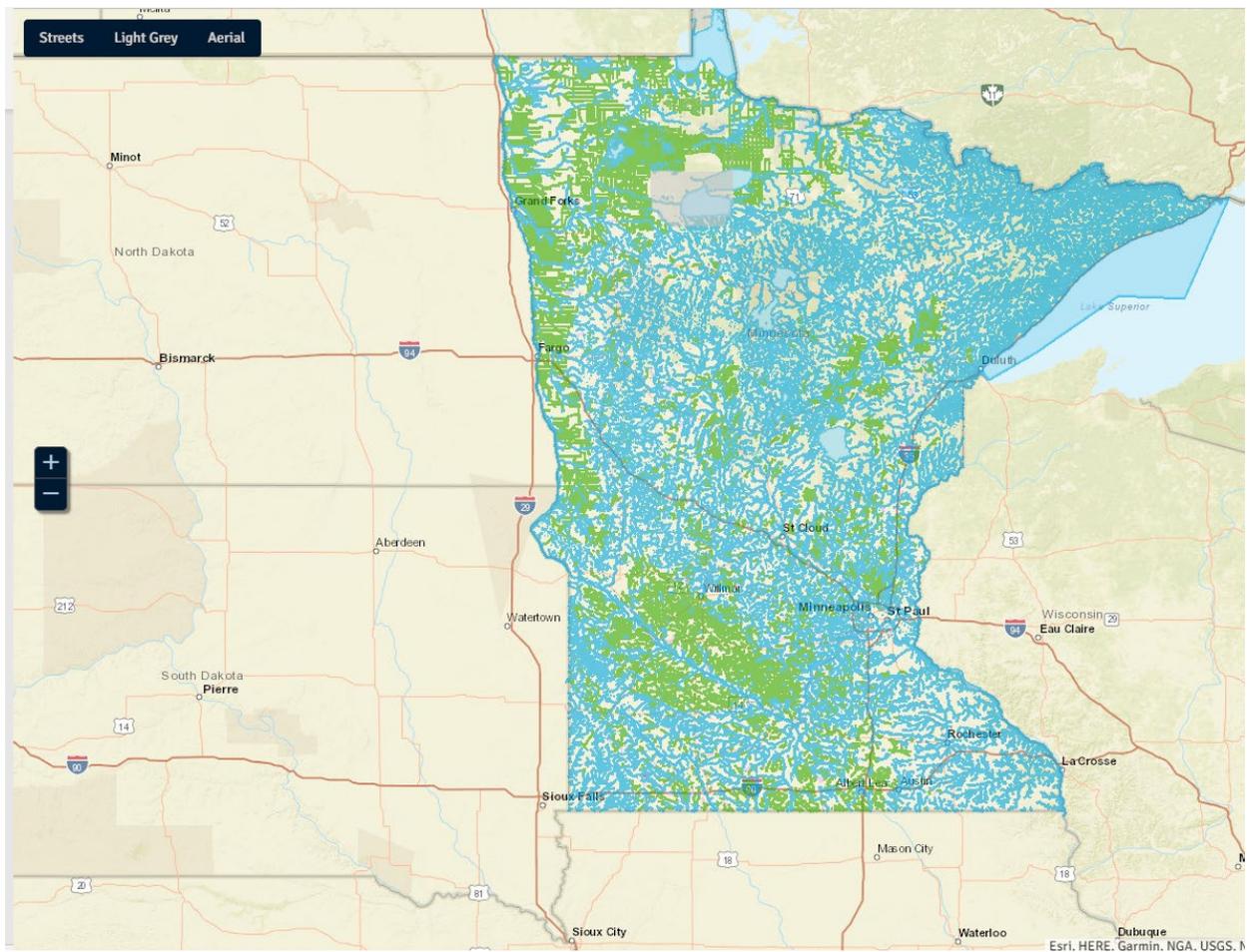
Finally, the County and Proposers argue that, even under the definition of “public waters” in section 103G.005, the upper reach of Limbo Creek is not a public water. The court of appeals concluded that the County’s “determination that the upper reach of Limbo Creek is not a public water is not supported by substantial evidence.” *Id.* at 433. The court of appeals also concluded that the record supported the “repeated declaration[s]” by the DNR “that the upper reach is in fact a public water” under the statutory definition. *Id.* Neither the County nor the Proposers challenged these conclusions in their petitions for review. They challenged only the decision of the court of appeals that the inventory is not determinative of public water status in later regulatory decisions that rely on a public waters classification. Because we generally do not address issues that are not raised in the petition for review, we hold that the County and Proposers forfeited the argument that the court of appeals erred in holding that the County lacked substantial evidence to find that the upper

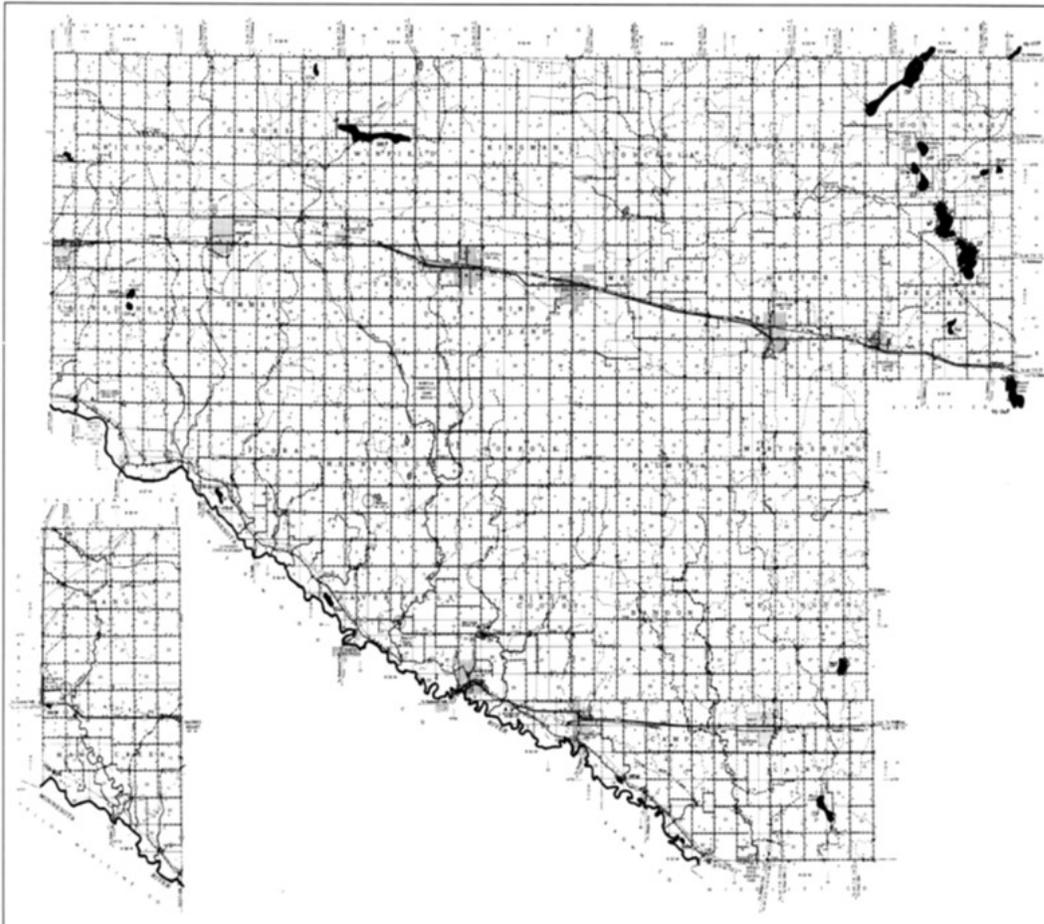
reach of Limbo Creek is not a public water under the statutory definition. *See In re GlaxoSmithKline PLC*, 699 N.W.2d 749, 757 (Minn. 2005).

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.





**PROTECTED
WATERS
AND
WETLANDS**

**RENVILLE
COUNTY
MINNESOTA**

SHEET 1 of 1



LEGEND

Protected Waters:
 - Rivers are identified with a number and the letter "R"
 - Watercourses are identified with a three, dark line
 - Public ditches are identified with a dashed line

Protected Wetlands:
 - Identified with a number and the letter "W"

This map is intended for use with a separate design system. The boundaries of the protected water bodies shown on this map are printed as accurately as possible, consistent with the map scale, but are not guaranteed. A protected water body boundary coincides with the ordinary high water mark of the water body as defined in Minnesota Statutes, Section 105.07 and as determined through DNR field-measured water marks.

Protected waters and wetlands are subject to Minnesota Statutes, Section 105.42, which requires that a permit be obtained before making any alteration in the course, current or cross section of these waters. Contact the DNR office in your area for further information.

Trespass
 The designation and mapping of protected waters or wetlands does not create a public right of access to the water. Please respect the property of others.

Water Bank
 Wetland owners may be eligible for compensation for preservation of protected wetlands. Contact the DNR office in your area for further information.

SCALE: 1/4" = 1 MILE

