

Minnesota Navigability Report

Summary

In Minnesota, the public can use navigable waters that it can access legally for recreational purposes to includes boating and fishing.

State Test of Navigability

Minnesota provides that a body of water is navigable so long as it was navigable-in-fact at the time of Minnesota's admission to the union in 1858.¹ Minnesota courts have held that navigable-in-fact includes a capacity for being put to public use for activities such as sailing, roving, fishing, and fowling and for domestic or agricultural uses² and that recreation use suffices.³ But more recent decisions have adopted the federal navigability test, by which waters are "navigable in fact when they are used, or are susceptible of use, in their ordinary and natural condition, as highways for commerce; that ordinary and natural conditions refer to volume of water, the gradients, and the regularity of flow; and that a waterway otherwise suitable for navigation is not barred from that classification merely because artificial aids must make the highway suitable for use before commercial navigation may be undertaken."⁴ Thus, capacity for recreational use alone may no longer suffice for navigability. Floating logs and timber down a stream in substantial quantities at proper seasons is sufficient to establish navigability.⁵

Designated navigable waterways in Minnesota include: Big Fork River, Bois De Sioux River, Kawishiwi River, Kettle River, Little Fork River, Minnesota River, Mississippi River and Headwaters Reservoirs, Pigeon River, Pike River, Rainy River, Red River of the North, Red Lake River, Rum River, Snake River, St. Croix River, St. Louis River, Vermillion River, and the streams of the International Boundary Waters.

Extent of Public Rights in Navigable and Non-Navigable Rivers

Minnesota recognizes the common-law public trust doctrine to define property rights in navigable waters, entrusting them to the state for public use rather than allowing riparian owners to assert a private property interest.⁶ The doctrine as first explained in Minnesota in 1893 in *Lamprey v. Metcalf* remains applicable today,⁷ and holds that the "State takes title to the navigable waters and their beds in trust for the public," and "[u]nder accepted principles of

¹ *Youngstown Mines Corp. v. Prout*, 124 N.W.2d 328, 341 (Minn. 1963); *see also* *State by Burnquist v. Bollenbach*, 63 N.W.2d 278, 287-88 (Minn. 1954); *Lamprey v. Metcalf*, 53 N.W. 1139, 1143 (Minn. 1893).

² *Lamprey*, 53 N.W. at 1143-44.

³ *Id.* at 1144 ("[S]o long as these lakes are capable of use for boating, even for pleasure, they are navigable."). But *see* *Bollenbach*, 63 N.W.2d at 289-90 (suggesting that only capacity for commercial use suffices for navigability).

⁴ *E.g.*, *State v. Adams*, 89 N.W. 661, 665-66 (Minn. 1957).

⁵ *Minnesota Canal & Power Co. v. Koochiching Co.*, 107 N.W. 405, 409 (Minn. 1906).

⁶ *White Bear Lake Restoration Ass'n ex rel. State v. Minnesota Dep't of Nat. Res.*, 947 N.W.3d 373, 385 (Minn. 2020) (citing *Lamprey*, 53 N.W. at 1143).

⁷ *Id.* (citing *Lamprey*, 53 N.W. at 1143).

federalism, the States retain residual power to determine the scope of the public trust over waters within their borders.”⁸

Minnesota owns navigable waters and the lands under them for public use, as trustee for the public.⁹ On navigable waters, “[t]he riparian owner’ title extends to the low-water mark [and the] state owns the bed of navigable waters below the low-water mark in trust for the people for public uses.¹⁰

Public use comprehends not only navigation by watercraft for commercial purposes, but the use for the ordinary purposes of life, such as boating, fowling, skating, bathing, and removing ice in non-commercial quantities.¹¹ A person who has legally gained access to a public water body may use its entire surface for recreation, such as boating, swimming, or fishing.¹²

Minnesota statute defines “public waters” broadly, to include, among other things: waters designated as public or navigable by a court; meandered lakes, excluding lakes that have been legally drained; water basins located within and totally surrounded by publicly owned lands; water basins where 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; water basins where there is a publicly owned and controlled access that is intended to provide for public access to the water basin; and natural and altered watercourses with a total drainage area greater than two square miles.¹³ That waters are designated by statute as public, however, does not indicate who had title to the underlying land, nor does public status depend on the waters being navigable-in-fact or susceptible for use in commerce.¹⁴ Though, waters designated as navigable are public.¹⁵

Formerly, case law had held that the distinction between public and private waters rested upon whether navigable.¹⁶ Thus, public rights on public waters were effectively limited to navigable-in-fact waters. With Minnesota statute now defining public waters more broadly than just navigable waters,¹⁷ it is likely that the same public rights that courts have discussed as applying on navigable waters would also apply on public waters, but this congruence has not been expressly stated.

⁸ *Id.* (quoting *PPL Montana, LLC v. Montana*, 565 U.S. 576, 604 (2012)).

⁹ *Pratt v. State, Dep’t of Natural Resources*, 309 N.W.2d 767 (Minn. 1981); *Nelson v. De Long*, 7 N.W.2d 342, 346 (Minn. 1942).

¹⁰ *E.g.*, *Reads Landing Campers Ass’n, Inc. v. Township of Pepin*, 546 N.W.2d 10, 13 (Minn. 1996). Earlier cases held that the state owned to the high-water mark. *E.g.*, *Schmidt v. Marschel*, 2 N.W.2d 121, 123 (Minn. 1942).

¹¹ *E.g.*, *Nelson*, 7 N.W.2d at 346; *Sandborn v. People’s Ice Co.*, 84 N.W. 641, 642 (Minn. 1900).

¹² *Cf. Bartlett v. Stalker Lake Sportsmen’s Club*, 168 N.W.2d 356, 360 (Minn. 1969).

¹³ Minn. Stat. § 103G.005 Subd. 15(a) (2021).

¹⁴ *Id.* § 103G.005 Subd. 15(b).

¹⁵ Minn. Stat. § 103G.005 Subd. 15(a)(2).

¹⁶ *Nelson*, 7 N.W.2d at 346; see also *Youngstown Mines Corp.*, 124 N.W.2d at 341.

¹⁷ Minn. Stat. § 103G.005 Subd. 15(a).

The right to moorage is included in the right to navigation, but presumably only to the low-water mark that delineates the boundary between state and private ownership.¹⁸

The public can legally access public waters via public property, but cannot enter upon private property in order to gain access to public waters without first obtaining the verbal or written permission from a landowner.¹⁹ Individuals entering private property to access public waters without permission from the landowner are trespassing and may be prosecuted under the state trespass laws.

Miscellaneous

Minnesota has created the Public Water Inventory, a list of waters that have been declared subject to the public trust. The list is available at http://www.dnr.state.mn.us/waters/watermgmt_section/pwi/maps.html. Additional information about boating and fishing in Minnesota can be found on the state's Department of Natural Resources website at <https://www.dnr.state.mn.us/recreation/index.html>.

¹⁸ *Winans v. Northern States Power Co.*, 196 N.W. 811, 813 (Minn. 1924). In *Winans*, the court spoke of the right to moor as one of the public's rights in navigable rivers that extends to all parts of the stream to the high-water mark. But subsequent court decisions stated that the boundary of state ownership is the low-water mark. *E.g.*, *Reads Landing Campers Ass'n*, 546 N.W.2d at 13.

¹⁹ *Cf.* *Bartlett*, 168 N.W.2d at 360; *Winans*, 196 N.W. at 813; *see also* Letter by Assistant Attorney General of Minnesota, dated April 1, 1931, states that "no person has the right to go over private property to get to a stream or to walk along the water's edge for any purpose without the permission of the landowner."