



DATE: March 8, 2023
TO: House Environment and Natural Resources Finance and Policy
FROM: Joy Anderson, Supervising Attorney, Minnesota Center for Environmental Advocacy
RE: HF 1873 (Kozlowski) Water Appropriations

Chair Hansen and Members of the Committee:

Thank you for your service to the people of Minnesota and for the opportunity to testify in support of HR 1873, which modifies the state's enforcement authority to address unlawful water appropriations. Minnesota Center for Environmental Advocacy (MCEA) is a nonprofit organization with almost 50 years of experience using law and science to protect Minnesota's environment and the health of its people.

MCEA supports HF 1873 because it provides the Department of Natural Resources (DNR) with reasonable and necessary enforcement authority to penalize water permit users who unlawfully withdraw water over the limits of their permit.

Currently, DNR's enforcement authority is inadequate to appropriately penalize permit holders who flout permit limits. Even when users repeatedly and intentionally withdraw millions of gallons of water beyond their allowances, and even when those withdrawals could cause other wells to run dry or destroy ecosystems that depend on groundwater, DNR has little authority to stop such actions.

Under current law, even in the case of a "severe potential for harm," DNR is allowed only to assess a few thousand dollars in penalties, and those penalties must be forgiven as soon as the user stops pumping in excess of its permit—regardless of the harm the pumping has already caused. This is inconsistent with other agencies' enforcement authority. The Minnesota Pollution Control Agency, for example, has statutory authority to issue penalties that are not forgiven for repeated or serious violations. Unsurprisingly, DNR's weak authority has proven insufficient to deter permit holders from overdrawing their allowances.

Last year, in the midst of a drought, nearly 800 Minnesota farmers collectively pumped an astounding 6.5 billion gallons of water more than their permits allowed. That is enough to supply approximately 180,000 Minnesotans with water for an entire year. Nearly a quarter of this excessive pumping was on farms owned or operated by a single company, potato-growing giant R.D. Offutt Co. But DNR admitted that these permit violators—even R.D. Offutt, which overdrew nearly 1.5 billion gallons of water—are unlikely to face any fines or other consequences. Many did not even need to pay ordinary costs for the excess water they used.¹

In another example, one user was fined eight times for pumping water for irrigation without a water appropriation permit in 2014. However, because the total cost of all the citations was only \$3,100, much less than the financial benefit of using the water, the violator simply paid the

¹ Greg Stanley, *Fighting drought, potato farmers in northern Minnesota overdrew their water permits by tens of millions of gallons*, Star Tribune (Feb. 18, 2023), <https://www.startribune.com/drought-potato-farmers-in-minnesota-overdrew-water-permits-by-tens-millions-gallons-r-d-offutt/600252769/>.

citations and continued the illegal water usage.² DNR did not have sufficient tools to stop this flagrantly unlawful behavior.

HF 1873 provides DNR with additional authority that will allow it to adequately oversee water appropriations by permit holders. It explicitly grants DNR the authority to conduct investigations and to require permit holders to make reports, monitor water use, and conduct tests. It also allows DNR to assess administrative penalties up to \$40,000 for permit violations, which DNR may decide not to forgive in the case of repeated or serious violations. In certain cases, it allows the state to bring a suit for civil penalties that may include compensation for the state's costs in remediating the damage caused by the violation. These are reasonable and practical powers, which will help DNR stop permit holders from overdrawing their permits.

Concerns about appropriation of water are likely to become more prominent in our state in the near future. Though Minnesota is the Land of 10,000 Lakes, our water resources are not infinite. Climate change already is making droughts more frequent, longer, and more severe. Much of the west and south of our state continues to be in a drought, the most severe in Minnesota since at least 1988.³ While climate change may cause more frequent extreme rain events, heavy rain events can be of limited use in recharging groundwater, as the large volume of water encourages runoff, not infiltration. As water becomes a more limited resource, DNR will need sufficient authority to ensure that bad actors are not unlawfully taking more than their fair share of our state's water. For all of these reasons, we strongly urge you to support the proposed bill. Thank you,

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² Greg Stanley, *DNR: Blaine operated wells without a permit, leaving some homeowners without water*, Star Tribune (Dec. 31, 2022), <https://www.startribune.com/dnr-blaine-operated-wells-without-a-permit-leaving-some-homeowners-without-water/600239895/?refresh=true>.

³ DNR, *Drought in Minnesota*, <https://www.dnr.state.mn.us/climate/drought/index.html>.