

Land O' Fewer Lakes?

Large Minnesota Lakes Almost Lose Clean Water Protections

Fiasco Illustrates Need for Congress to Pass Clean Water Restoration Act

Recently, two large lakes in Minnesota nearly lost their protection against pollution under the federal Clean Water Act, a direct result of two split U.S. Supreme Court decisions, ambiguous policy directives issued by the Environmental Protection Agency and the U.S. Army Corps of Engineers, and field staff trying to apply them all. Although the initial decisions to drop Clean Water Act protections were overturned -- one by EPA and Corps headquarters together, one by EPA alone -- the cases underscore the threat to the health and safety of Minnesota's waters and waters nationwide as polluters and developers try to shrink the scope of the federal law. To remove the threat posed to the Nation's waters, Congress must act now to pass the Clean Water Restoration Act (H.R. 2421/S. 1870).

What Kinds of Water Bodies Are at Risk if Congress Does Not Act?

Boyer Lake is a 310-acre lake in Becker County, Minnesota, about 35 miles east of the North Dakota border off of Highway 10. According to Minnesota's Department of Natural Resources (DNR), "northern pike, largemouth bass, walleye, and panfish are all popular targets of anglers on this lake," and the DNR stocks the lake with walleye (including, in 2005, with over 400,000 walleye fry). There is a public boat ramp built on the northwest shore and additional boat access from the highway. The DNR website touts, "Boyer is a relatively scenic lake in prairie country with several small islands, bays, and peninsulas."



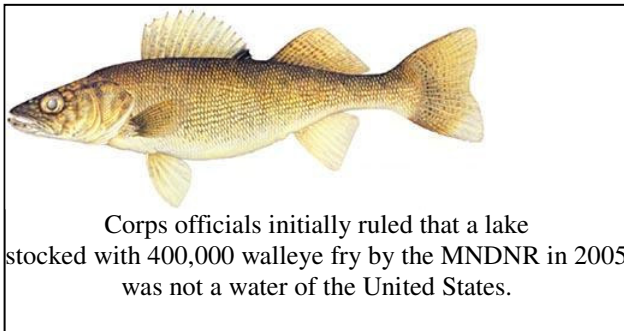
Bah Lakes, a 70-acre lake, is located about 75 miles northwest of Minneapolis on the border between Grant and Douglas counties. The lake is usually covered with up to 10-feet of water. Canoeing, as well as bird-watching, cross-country skiing, hiking, hunting, and snow shoeing are some of the activities reportedly enjoyed in, on, and around the lake. There is public access to the lake from County Road 19, along which there is room for pullouts and parking. Ducks Unlimited is working to implement a conservation easement to preserve habitat around Bah Lakes. Several hotels, resorts, and campgrounds exist in the nearby area.

Despite the use of these waters by boaters, the local office of the Corps of Engineers initially concluded that each of these lakes is an "isolated, non jurisdictional water with no substantial connection to interstate (or foreign) commerce." This determination would have removed Clean Water Act protection for these two lakes, meaning that the Act would no longer constrain polluters from discharging into, or even destroying, nearly 400 acres of Minnesota's fresh water lakes.

These misguided determinations were ultimately reversed, keeping Clean Water Act protections in place. One decision, Boyer Lake, was overturned by officials in EPA and Corps headquarters. In the case of Bah Lakes, however, the Corps would not endorse EPA's ruling that that water was still protected by the Clean Water Act.



Congress Must Act Now to Protect All Waters



Corps officials initially ruled that a lake stocked with 400,000 walleye fry by the MNDNR in 2005 was not a water of the United States.

The fact that federal officials first concluded that such large and productive bodies of water were not covered by the Clean Water Act shows that the threat to so-called "isolated" waters is significant. These examples – particularly the fact that Corps headquarters would not even have overturned the Bah Lakes determination – indicate that some regulatory officials misunderstand what the Clean Water Act

still protects, or simply lack the commitment to fully implement the law, or both.

In recent years, the scope of the Clean Water Act has been under constant attack from industrial polluters and developers seeking to exclude waters of the United States from protection. Muddled decisions from the U.S. Supreme Court in Clean Water Act cases, coupled with guidance documents from the U.S. Environmental Protection Agency and the Corps of Engineers have added to the problem. Lakes, headwater and seasonal streams, and wetlands across the country could potentially lose Clean Water Act protection if the law is not restored.

When Congress passed the Clean Water Act over 35 years ago, it intended to protect all of America's waters from pollution, destruction and degradation. Today, the Clean Water Act can be restored to its former strength through legislation pending in both houses of Congress. **The Clean Water Restoration Act, H.R. 2421 and S. 1870, would reaffirm and clarify Congress' intent to protect all waters of the United States** and put an end to uncertainty and more legal wrangling over what streams, lakes, rivers and wetlands are protected.



Copies of the documents overturning the initial Corps' determinations can be found at the links below:

Boyer Lake memo – [http://www.usace.army.mil/cw/cecwo/reg/cwa_guide/TNW MVP-2007-1497.pdf](http://www.usace.army.mil/cw/cecwo/reg/cwa_guide/TNW_MVP-2007-1497.pdf)

Bah Lakes memo – http://www.usace.army.mil/cw/cecwo/reg/cwa_guide/BahLakeEPA_memo2007-04488.pdf

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