



Minnesota Trout Unlimited  
John P. Lenczewski  
Executive Director  
P.O. Box 845  
Chanhassen, MN 55317  
612.670.1629  
jlenczewski@comcast.net

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*Sent via electronic mail*

Tom Landwehr  
Commissioner  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155

*Re: Proposed Special Water Appropriation Permit No. 2012-XXX to Lutsen  
Mountains Corporation*

Dear Commissioner Landwehr:

Thank you for providing the public this opportunity to provide comments concerning the Department of Natural Resources' proposal to issue yet another temporary water appropriation permit to Lutsen Mountains Corporation to withdraw surface waters from the Poplar River. While we are encouraged that the DNR has sought public comment, we are very disappointed that special treatment for LMC is even getting serious consideration.

We are strongly opposed to the DNR issuing this proposed permit. Our specific comments on the legality and appropriateness of the proposed issuance of another special exemption and permit for LMC are contained in the separate letter of November 4, 2011 being submitted by the Minnesota Center for Environmental Advocacy on behalf MCEA, Minnesota Trout Unlimited, and others.

We now write separately to convey our deep disappointment and concern over the agency's decision to invoke Minn. Stat. § 103G.285, subd. 1, and with a number of public statements offered as rationale for this course of action. We are not unduly surprised that LMC has again sought to garner special favors predicated on its unsubstantiated claims of "hardship" and vague promises to secure an alternate water supply for snowmaking operations. We realize that the DNR finds itself in a very challenging position and that it believes that some type of temporary exemption for LMC is necessary to avoid more drastic outcomes. However, we are surprised that Minn. Stat. § 103G.285, subd. 1 was so

quickly invoked without apparent investigation by the DNR of claimed business impacts and that a core principle of environmental protect was trampled in the process.

***Reasons offered for “just cause”.***

The “just cause” (i.e., the alleged reason why the existing permit’s minimum flow protection of 15 cfs is not “reasonable, practical, or in the public interest”) offered by the DNR is “the potential economic impacts to the local community, the low numbers of trout present in the affected reach of river, and the likelihood that some trout mortality will occur, whether [the Corporation] temporarily appropriates water or not.” While we object to citing the diminished trout population (which is likely a result of years of excessive and illegal withdrawals from the river) as reason to permit even more damaging withdrawals, we find the last justification particularly troubling.

The DNR seems to be saying that because low flow conditions this fall are likely to lead to *some* trout mortality, *therefore* the most minimal environmental protections designed to prevent catastrophic losses or complete extirpation should also be thrown aside. We find this way of approaching basic resources protections very troubling. The whole point of minimum flows, and other minimum protections, is to prevent outright loss of a public resource, precisely when conditions are most dire. One does not have to long ponder the implications of this approach to realize how it undermines not just all environmental regulations, but the principles behind our fish and game laws. If the same approach is extended to our game and fish laws they too will be rendered meaningless. According to this view we should permit unlimited harvest of deer whenever the almanac predicts a harsh winter. We urge the DNR to reconsider whether the reasons stated for the waiver accurately convey the message which the agency wants to send to the public.

***If another permit is issued, it must first be improved.***

While we strongly disagree that any additional permit should be issued to LMC, if the DNR nonetheless proceeds to issue the proposed permit, it must be more narrowly tailored to reduce the level of damage to the fishery, other aquatic life, and the public.

LMC appears to at last have accepted the fact that the Poplar River is not an appropriate long term water source for its desired snowmaking. In one of LMC’s public relations appeals aimed at eliciting letters of support from skiers, LMC indicates, “Lutsen Mountains is pursuing a pipeline from Lake Superior that would eliminate the need to withdraw water from the river.” This is very welcome news. The DNR has expressed a desire for LMC to commit to this switch. The permit itself presents is a key opportunity to obtain and memorialize such a commitment by LMC. This opportunity must not be wasted.

In response to a question of what assurance is there that LMC will find a new water source, the DNR states, “The DNR will be working closely with LMC to find an alternate water source, and to identify suitable sources of funding assistance.” Yet the DNR has already been doing this for nearly a decade, which very poor results. Rather than merely

express this wish, the DNR has the means to make a written commitment by LMC a condition for obtaining this special privilege. The temporary permit should also be restricted to November and December, the two months which LMC has repeatedly stated it most desires to make artificial snow, and indeed when approximately 75% of its annual snowmaking is typically done. January to March is likely the most critical time period for the fishery, when the greatest danger of complete or nearly complete freeze out typically exists. Consequently, the temporary permit should expire on December 31, 2011, and not extend past the peak snowmaking season and into January 2012 or beyond. A timetable for taking the typical steps in implementing a straight-forward construction project such as this can be included in the permit. What is needed now are not more years of talk, but a construction timetable and action in 2012 by LMC. The permit is the best vehicle to obtain these now.

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We realize that the DNR is under strong pressures to grant special treatment to LMC. We urge you not to issue another permit, but instead enforce the existing one and its very minimal protections. We welcome the opportunity to meet with you, as well as LMC, to find a workable, permit solution to this problem. Please do not hesitate to contact me if you need any clarification of our position.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John P. Lenczewski". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

John P. Lenczewski  
MNTU Executive Director