

Who Owns Your Bottom?

by Tom Beaver

It's a lovely, clear morning on Pine Acres Hill overlooking Lower Cullen. The lake is so still the ribbon of pines along the Paul Bunyan Trail are flawlessly mirrored in our lake's edge. Have you noticed how often we refer to the bodies of state waters with a possessive pronoun? It's true; but just whose is the "ours"?

Russ Schultz, DNR Water Resource Hydrologist, and I take a trip to Becker, MN once a month to serve on the Minnesota Lakes Association (MLA) Water Quality Committee. During the three hour round trip I keep him awake by probing his hydro mind, and the topic of the April outing was bottoms--- lake bottoms, that is.

Russ informed me that all lakes and rivers are "waters of the State", making them all public property; but, all public waters cannot be reached by the public because some are surrounded by private land. This is why many cities and states with coastal waters created a public shoreline.

In 1969 the State Legislature charged the DNR with creating laws that govern shoreline development. These rules became the Shoreline Management Act, and all counties were charged with adopting them by 1972. By 1976 communities were also required to adopt the Act. Uncontrolled commercial and private development like Breezy Point triggered a 1980s legislative committee to revisit the Shoreland Management Act, and there was a rules update in 1989. The provisions of this Act are still a work in progress, as more and more lake "cabins" become up-sized and called year-round homes.

In the early 1800s the U.S. government established a public

lands survey. This survey of public lands established ranges, townships, and sections along latitude and longitude coordinates. The engineers conducting these surveys were instructed to follow the shoreline around substantial bodies of water. Thus, the lake was "meandered" and the lake bottom became public land. On the other hand, when these map makers came to a smaller body of water they surveyed across the water, giving the shoreland property owners ownership of the lake bottom (eg. the ponds in the SE quadrant of Highways 107 and 371). According to information in the DNR microfiche records, the three Cullens were meandered. This straight line versus meandered surveying was left to the discretion of the engineers and was not based on precise dimensions of a water body.

We now know that the public has a right to use all surface waters, hence public accesses, as well as the lake bottoms on meandered lakes like the Cullens. However, can an angler walk the shoreline to fish or a duck hunter park his/her blind in front of an Upper Cullen home? Here the waters become a bit gray. A rule of thumb is if the waters are able to be waded through, they should be respected as part of private property. Yet, in some undeveloped wilderness shoreline, the landowner may not object to hunting or fishing near shore. However, the hunter or angler must be sure to check with the landowner before assuming this to be true.

Rice Creek (also known as Cullen Brook), which empties into Upper Cullen, was not meandered; thus, the bottom belongs to the land owners on both sides. In some areas, public land claims ownership to the stream bed, technically meaning you can walk or float where the stream is public.

Well, what if your boat gets stuck in the channel between lakes? The narrows between Middle and Lower Cullen and

between Lower Cullen and the Paul Bunyan Trail have become the most controversial, because private land on both sides is managed to the edge of the shoreline with houses or resort units in close proximity. With a meandered shallow connection between two larger bodies of water, the navigator may have the right to assist his/her craft from the lake bottom. The channels between the Cullen Lakes are natural and thus subject to change from year to year. The DNR, the Army Corps of Engineers, and the vast majority of Cullen lakeshore owners have no interest in maintaining a navigational route through all the Cullen Lakes. If you choose to own a vessel that will not comfortably pass through the natural channels of public waters that connect our three lakes, then you also have chosen to keep your vessel on its native sea.