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January 9, 2018

Via Email and U.S. Mail

Tom Landwehr, Commissioner
Minnesota Department of Natural Resources
500 Lafayette Road
Saint Paul, Minnesota 55155

Re: Objections to Lake Calhoun Name Change

Dear Commissioner Landwehr:

I represent Save Lake Calhoun an association which opposes the name change of Lake Calhoun to Bde Maka Ska. It is our understanding that your office is presently reviewing the process by which the Hennepin County Board of Commissioners has recommended the name change; however, you must reject the application because the county process was fatally flawed.

First, under Minnesota Statute § 83A.05, the Board has no authority to recommend the name change if the name has been used for over 40 years. There is no dispute that the name of the lake has been Lake Calhoun for over 40 years. Notably, the Hennepin County Board of Commissioner's resolution made no finding of fact regarding this basic fact.¹ Second, the majority of the homeowners in the immediate vicinity of Lake Calhoun, who would be mostly affected by the name change are opposed to the renaming of Lake Calhoun. This does not take into consideration the number of businesses, associations, and other groups who have adopted the name of the Lake Calhoun to their respective economic welfare and trade-mark recognition. We note that you have before you a petition with 318 signatures of 334 Lake Calhoun homeowners that would be immediately affected by the name change who stand in opposition to that proposition. The same petition was submitted to the Board of Commissioner who ignored the opposition. Furthermore, the West Calhoun Neighborhood Association voted not to support the name change. While it might be the prerogative of the majority of the Board in a 4-3 vote to recommend the name change, the basis of the name change cannot ignore the opposition as the supporters have no similar support nor connection to the Lake as an adverse impact to their respective identity to the area whether economic, as a property owner, or otherwise. Third, the

¹ Hennepin Cty Bd of Comm. Resolution 17-0489.

resolution gives no factual basis for the change of name. The resolution provides no rationale as to why the name change would be in anyone's best interests. *See e.g.* § 83A.07, subd. 1.

We also understand that in the past you have relied upon Minnesota Statute § 83A.02(3) as authority to change the name of lakes. However, the statute only allows the change of lake names "with the end in view of eliminating, as far as possible, duplication of names within the state." While another lake named "Calhoun" exists in Kandiyohi County, there is little confusion or need to eliminate the duplication. As you know, Minnesota has a number of lakes with duplicate names: Alice (2); Anderson (2); Andrew (2); Ann (5); Augusta (8); Ball Club (2) Bass (9); Bear (4); Beauty (2) Beaver (2); Bento (2) ; Big (7—two of which are in the same county); Big Moose (2); Birch (8); Caribou (3); Cascade (3); Cedar (7); Clear (11); and Clearwater (3). These are only a few examples. In short, there is no confusion about duplicative names as there is a history of duplicative names in our State.

Under Minnesota Statute § 83A.02(1), the authority of the Commissioner regarding the determination of the correct and most appropriate names of lakes has already been accomplished as this provision relates to the initial naming of lakes. Moreover, § 83A.02 provides for the general duties of the Commissioner; as such, the exercise of that authority, while not subject to chapter 14 and section 14.386 (procedure for adopting exempt rules), must satisfy every statutory section and subsection of chapter 83A. Therefore, because the legislature limited the authority regarding the naming of lakes under § 83A.05 to exclude those lake names which had existed more than 40 years, the Hennepin County Board of Commissioners has no authority to pass the resolution as it has recommended. Since the resolution itself is procedurally flawed, you should not consider the recommendation as valid.

As there is no statutory process to change the name of a lake that has had the same name for over 40 years, to suggest the use of § 83A.05, subd. 2 as an applicable process would be contrary to legislative intent. Moreover, there is no evidence that the Hennepin County Board of Commissioners, via its resolution, followed that procedure or the procedure outlined under § 83A.06, subd. 3. While public hearings were held, the resolution—the only legal document before you—fails to reflect what procedure was followed and under what authority. If a name change is not authorized under §83.05 for a lake name in existence for over 40 years, no announced *published* process was followed. Did the petitioners give a bond to the county attorney conditioned on the full payment of the reasonable expenses incurred by the attorney for the proceeding? § 83A.06, subd. 3. Was the notice published for at least three weeks in the county's official newspaper? § 83A., subd. 4(1). Was the notice of hearing *served* on the commissioner of natural resources? § 83A.06, subd. 4(2). Was the notice *personally served* on the president of the County Board? § 83A.06, subd. 4(3).

Additionally, the DNR even if it claims authority under § 83A.02, subd. 1, the DNR cannot use that authority in this instance because that is not the process Hennepin County followed in this case. There is evidence that Lake Calhoun was not named after the Senator and

war general, but a different Calhoun. Also, public tax dollars have already been spent on name change signs impermissibly “jumping the gun” on the DNR’s exclusive authority to approve a name change if any.

In short, the process of the Hennepin County Board of Commissioners was fatally flawed. Under statutory law, it had no authority or jurisdiction to entertain the change of name of Lake Calhoun, a name associated with that body of water for over 150 years. Moreover, chapter 83A does not provide the explicit statutory authority to the Commissioner to exercise and approve the requested name change. Had the legislature sought to give that authority to the Commissioner for a lake that has had its name for more than 40 years, it would have done so. Here, the legislature did not.

The Hennepin County Board of Commissioners has not, through Resolution 17-0489 provided to you, a supportable process or reason that would suggest a name change for Lake Calhoun would be in the best interests of the county. In addition, because the County Board did not have jurisdiction to recommend a name change and in consideration of the lack of statutory procedural support for the process the County engaged in to reach a 4-3 vote on the resolution, the resolution itself representing the County’s decision is fatally flawed. Under the law, you must reject the resolution.

Thank you for your consideration of my clients’ view on this important matter.

Very truly yours,



Erick G. Kaardal

EGK/mg

cc: Hennepin County Board Chair Jan Callison
Hennepin County Attorney Michael Freeman

10.D. 17-0489

Request a final recommendation on changing the name of Lake Calhoun - offered by Commissioner McLaughlin
BE IT RESOLVED, that after following the process outlined in Minn. Stat. §§ 83A.05-.07, including a public hearing, the Hennepin County Board of Commissioners recommends that the Minnesota Department of Natural Resources take the steps necessary to change the name of Lake Calhoun, Minnesota Public Water No. 27-31, located in Sections 4 and 5 of Township 28 North, Range 24 West; and in Sections 32 and 33 of Township 29 North, Range 24 West, in the City of Minneapolis, to Bde Maka Ska; and

BE IT FURTHER RESOLVED, that the Hennepin County Board of Commissioners directs the County Auditor to communicate this resolution to the Minnesota Department of Natural Resources and to take other administrative steps necessary to change the name of Lake Calhoun.

ADOPTED

Commissioner Callison offered an amendment to the Resolution. A roll call was taken and the amendment did not pass. The votes were as follows: 3 Yeas: Callison, Johnson, Opat, 4 Nays. Commissioner Peter McLaughlin moved to adopt the Resolution, seconded by Commissioner Marion Greene. A roll call was taken and the Resolution was approved - 4 Yeas 3 Nays: Callison, Johnson, Opat

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Mary Gynild, of the City of Minneapolis, County of Hennepin, State of Minnesota, being affirmed on oath, says that on the 9th day of January, 2018 she served the following:

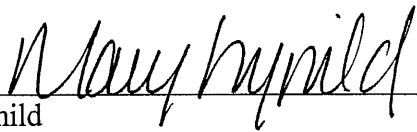
- 1. Letter to Commissioner Tom Landwehr – Objections to Lake Calhoun Name Change;

on the following persons, by E-Mail, a true and correct copy thereof, and directed to the following at their last known e-mail address and by U.S. Mail, a true and correct copy thereof, enclosed in an envelope postage pre-paid, and directed to the following at their last known address:

Tom Landwehr, Commissioner
Minnesota Department of Natural Resources
500 Lafayette Road
Saint Paul, Minnesota 55155
tom.landwehr@state.mn.us
commissioner.dnr@state.mn.us

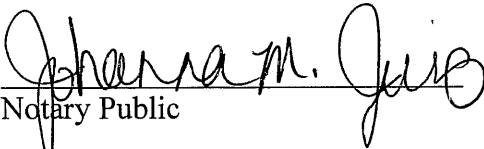
Hennepin County Attorney
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Hennepin County Board Chair Jan Callison
Board of County Commissioners
Hennepin County Government Center
300 South Sixth Street, Suite A2400
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janis.callison@hennepin.us



Mary Gynild

Subscribed and affirmed to before me
this 9th day of January, 2018.



Notary Public

