

- L. Comments and materials submitted during the hearing.

The MPCA PowerPoint presentation “Amendments to Beneficial Use Designations” dated February 16, 2023.



# AMENDMENTS TO BENEFICIAL USE DESIGNATIONS

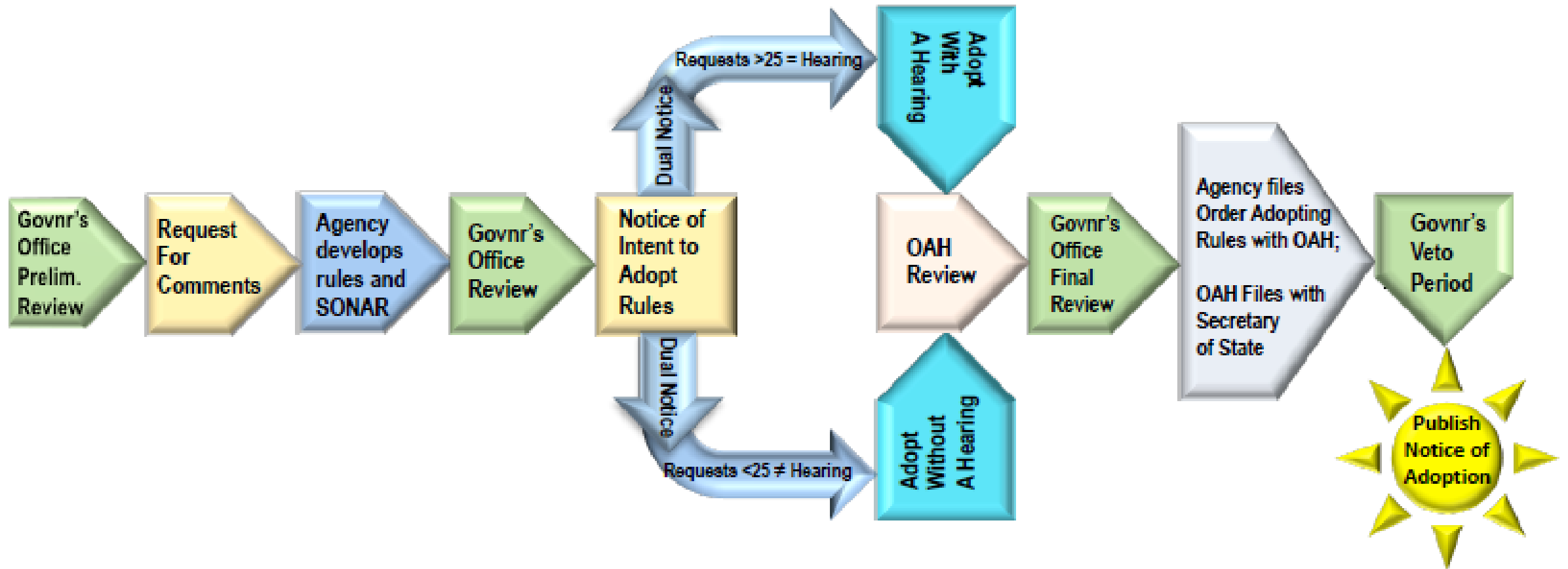
## SETTING AQUATIC LIFE USES BASED ON BIOLOGICAL POTENTIAL

<https://www.pca.state.mn.us/get-engaged/use-designations-for-some-stream-reaches>

# PRESENTATION OUTLINE

- 1) Rule amendment process and schedule
- 2) Statutory authority
- 3) Overview of water quality standards
- 4) Overview of rule amendments
- 5) Review of beneficial uses
- 6) Public participation and stakeholder involvement

# RULEMAKING PROCESS



# RULE SCHEDULE

Task	Date(s)
Notice of Hearing comment period	December 12 – February 3, 2023
Public Hearing	February 16, 2023
Post-hearing comment period ends	March 8, 2023
Rebuttal period ends	March 15, 2023
Administrative Law Judge Report	Within 30 days of the close of the record, unless extended
Notice of Adopted Rules Published in State Register	Summer 2023
EPA Review and Approval	Fall 2023

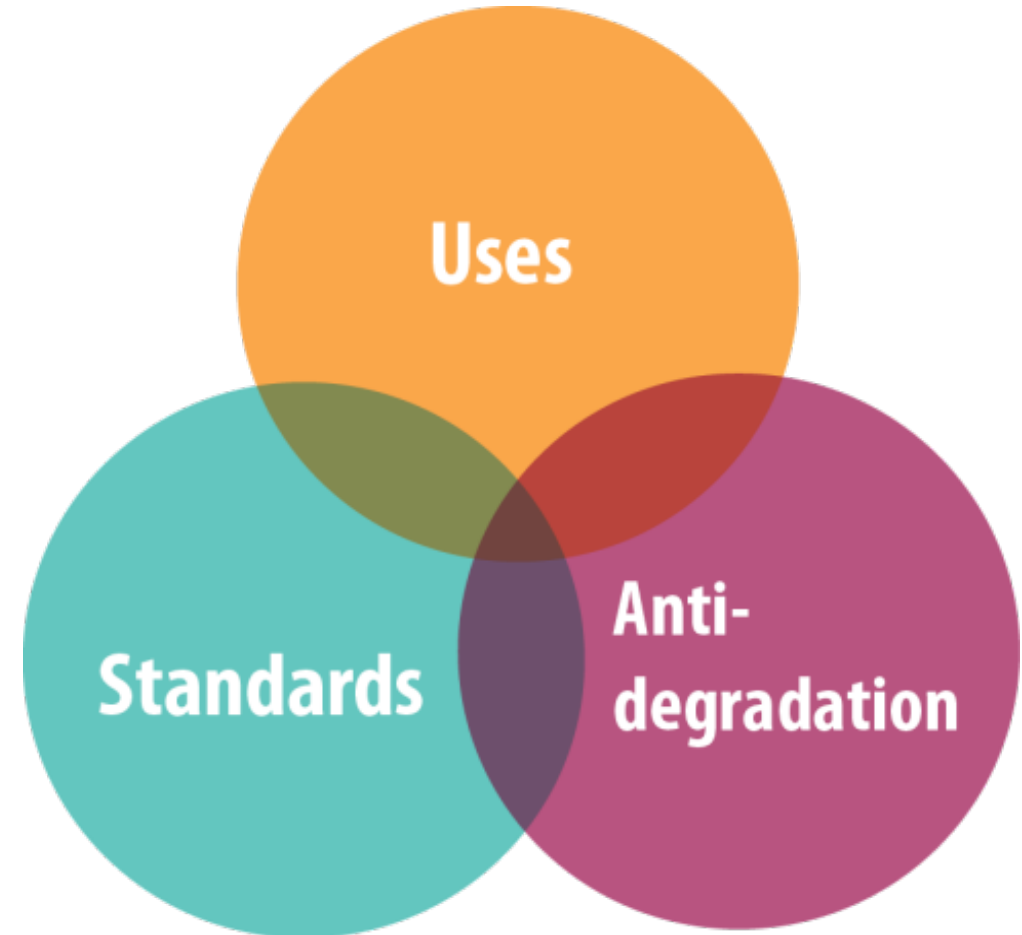
# STATUTORY AUTHORITY

- Clean Water Act requires states to establish water quality standards (33 USC § 1313)
- Minnesota Statutory Authority:
  - Minn. Stat. § 115.44: MPCA authority to classify waters of the state
  - Minn. Stat. § 115.03: MPCA authority to establish/alter standards for any water of the state and to perform all acts necessary to participate in delegated Clean Water Act programs (e.g., NPDES/permitting)

# WATER QUALITY STANDARDS

## Address three key questions:

- What and who are we protecting?
- What conditions are protective?
- How do we maintain high water quality?





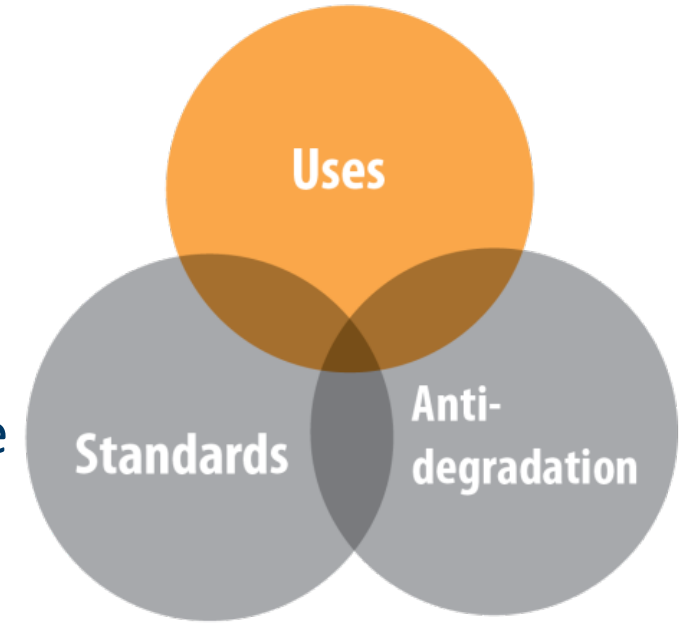
# BENEFICIAL USES

One of the most important beneficial uses in Minnesota which protects fish, insects, mussels, plants, and ecosystem services they provide



Seven use classes in MN Rules\*:

- Class 1: Drinking water
- Class 2: **Aquatic life** and recreation
- Class 3: Industrial use and cooling
- Class 4: Agricultural and wildlife use
- Class 5: Aesthetics and navigation
- Class 6: Other uses
- Class 7: Limited resource value



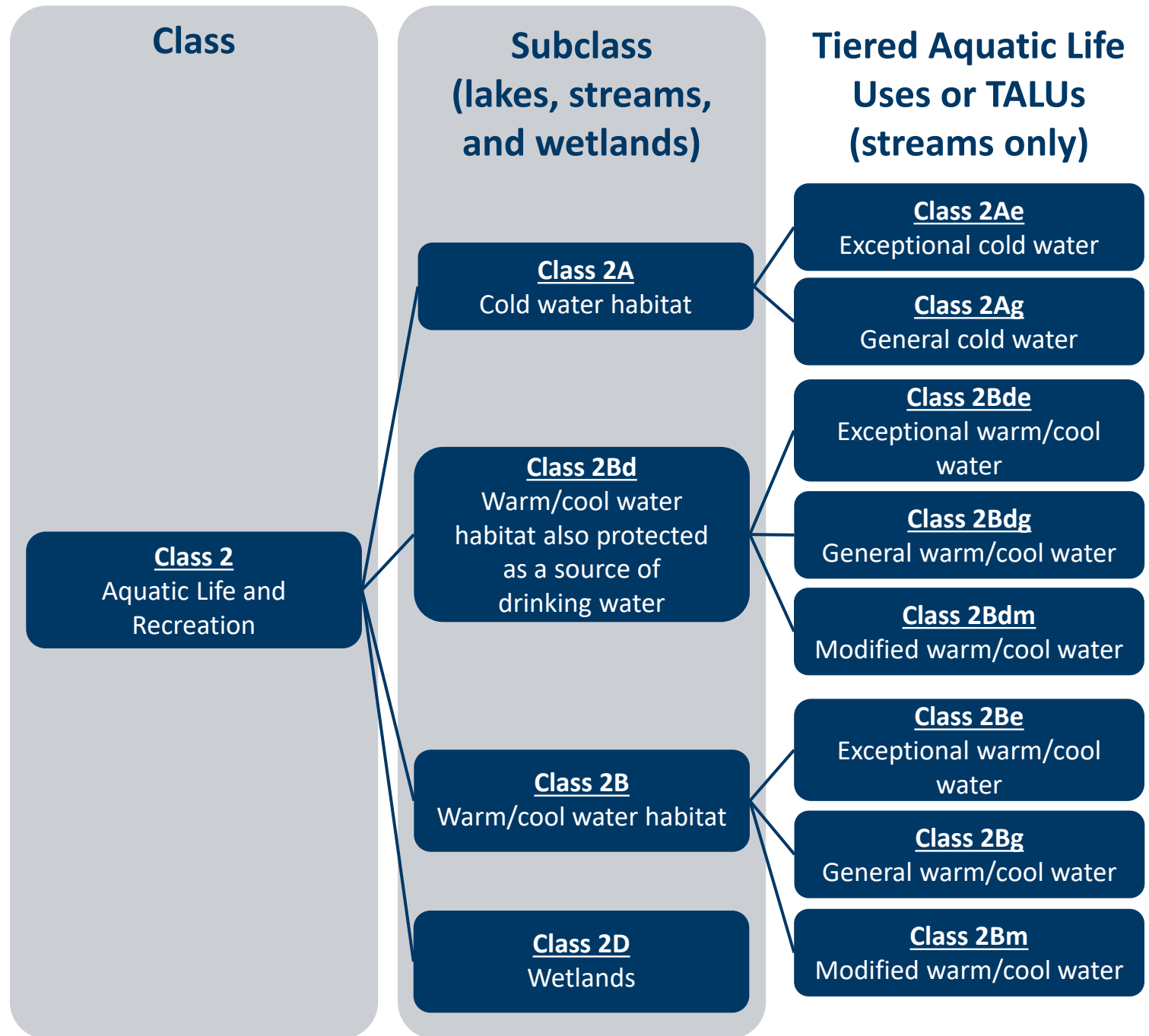


# CLASS 2

States may adopt sub-categories of a use and set the appropriate criteria to reflect varying needs of such sub-categories of uses, for instance, to differentiate between cold water and warm water fisheries.

40 CFR § 131.10 (c)

- Class 2 is divided into subclasses based on natural habitat types
- Streams are divided into Tiered Aquatic Life Uses (TALUs) based on biological potential




# OVERVIEW OF RULE AMENDMENTS

## Designation of aquatic life uses based on biological potential


Use Designations

June 2019

**Amendments to Aquatic Life (Class 2)  
Use Designations**



**m** MINNESOTA POLLUTION CONTROL AGENCY



# OVERVIEW OF RULE AMENDMENTS

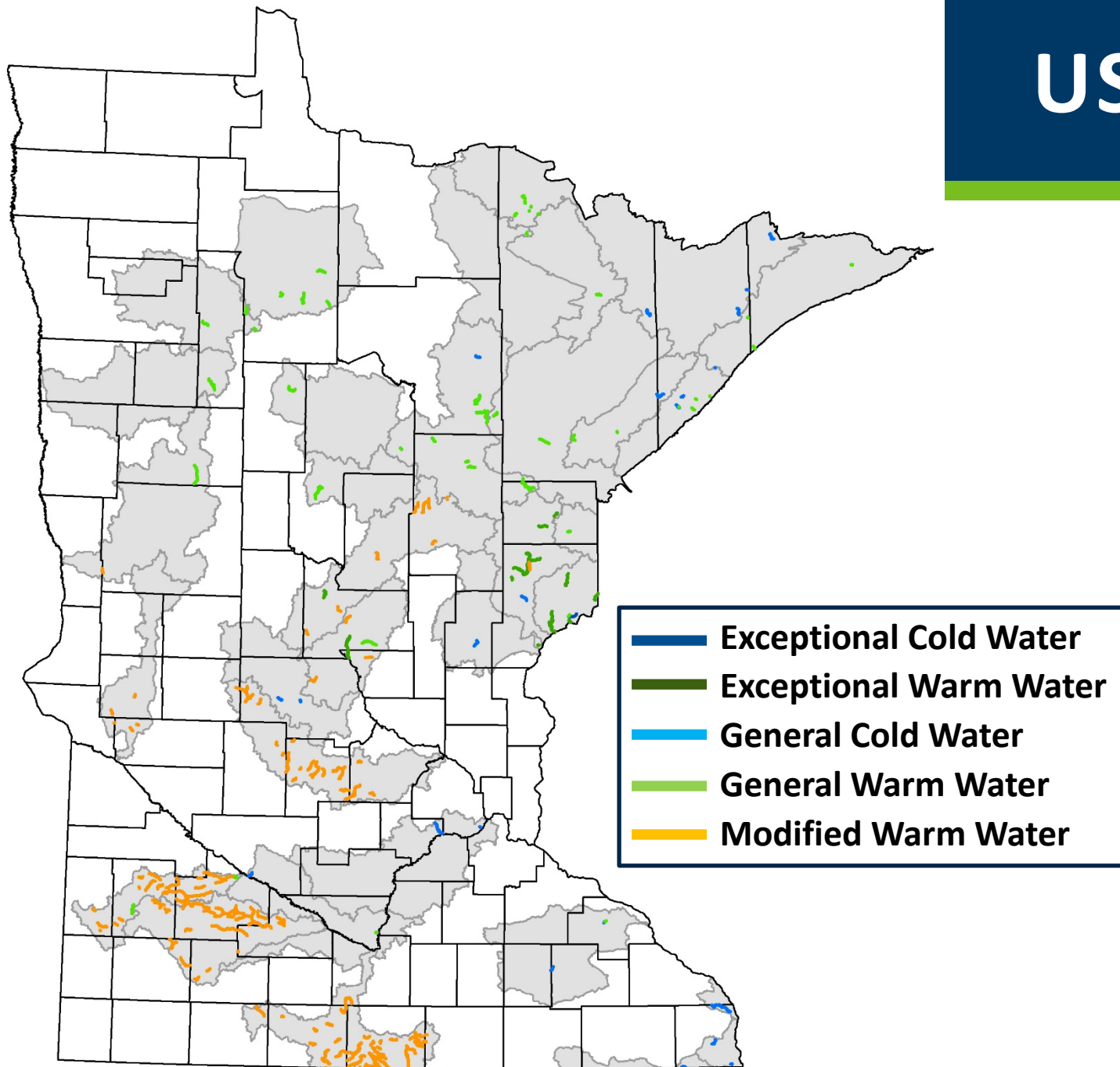
## Designation of aquatic life uses based on biological potential

- The rule includes 232 use designations
- Use designations were triggered by MPCA monitoring and DNR rule changes
- The use designations will be adopted in Minn. R. 7050.0470 (documents incorporated by reference)

Current use	Proposed use	# of stream reaches
2Ag	2Ae	1
2Ag*	2Bdg	23
2Ag	2Bdg	43
2Bg	2Ag	25
2Bg	2Be	17
2Bg	2Bm	123

\* Not designated trout waters

# USE DESIGNATIONS



The 232 proposed use designations can be divided into two types:

- 1) Cold and warm water designations based on **natural** water body type
- 2) Tiered aquatic life use (TALU) designations based on biological **potential**





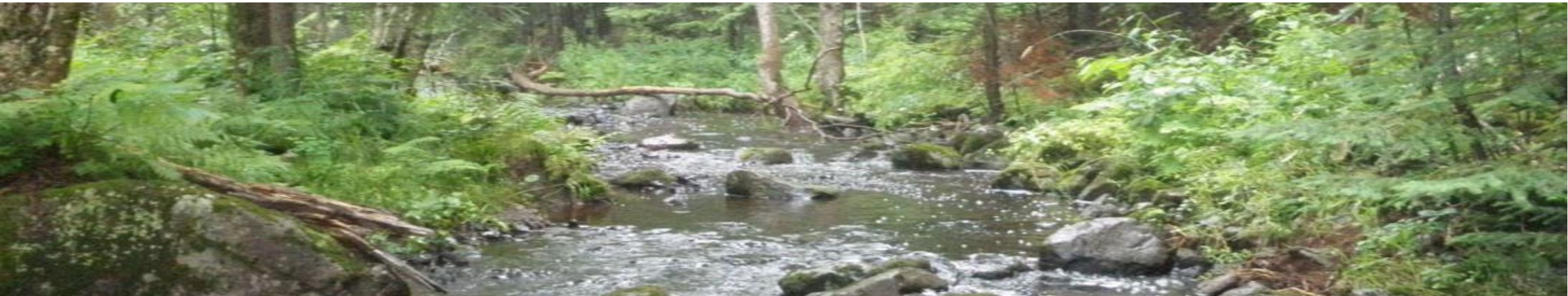
# WARM AND COLD WATER HABITAT REVIEWS

**Accurate designation of thermal habitat types**



# COLD AND WARM WATER HABITATS

- The thermal habitat designation is based on the biological communities they support or should support
- Thermal designations need to be correct because biological assessment tools are different for cold and warm/cool water habitats





# THERMAL HABITAT REVIEW PROCESS

- Historical and contemporary data reviewed:
  - MPCA biomonitoring data (fish and macroinvertebrates)
  - Temperature data
  - DNR data (biology, temperature, stocking records, creel surveys, etc.)
- Discussions with DNR



# TIERED AQUATIC LIFE USES (TALU)

**Beneficial use goals based on biological potential**

# BEFORE TALU: ONE-SIZE-FITS-ALL USES



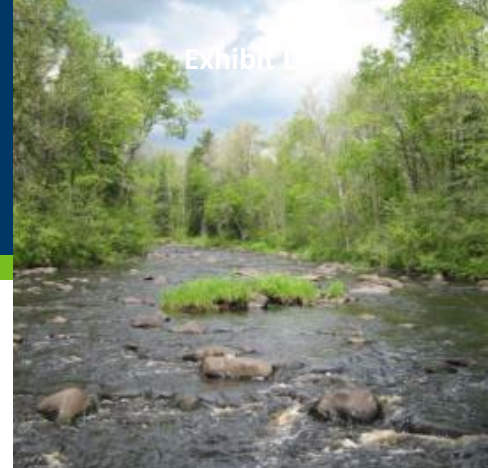
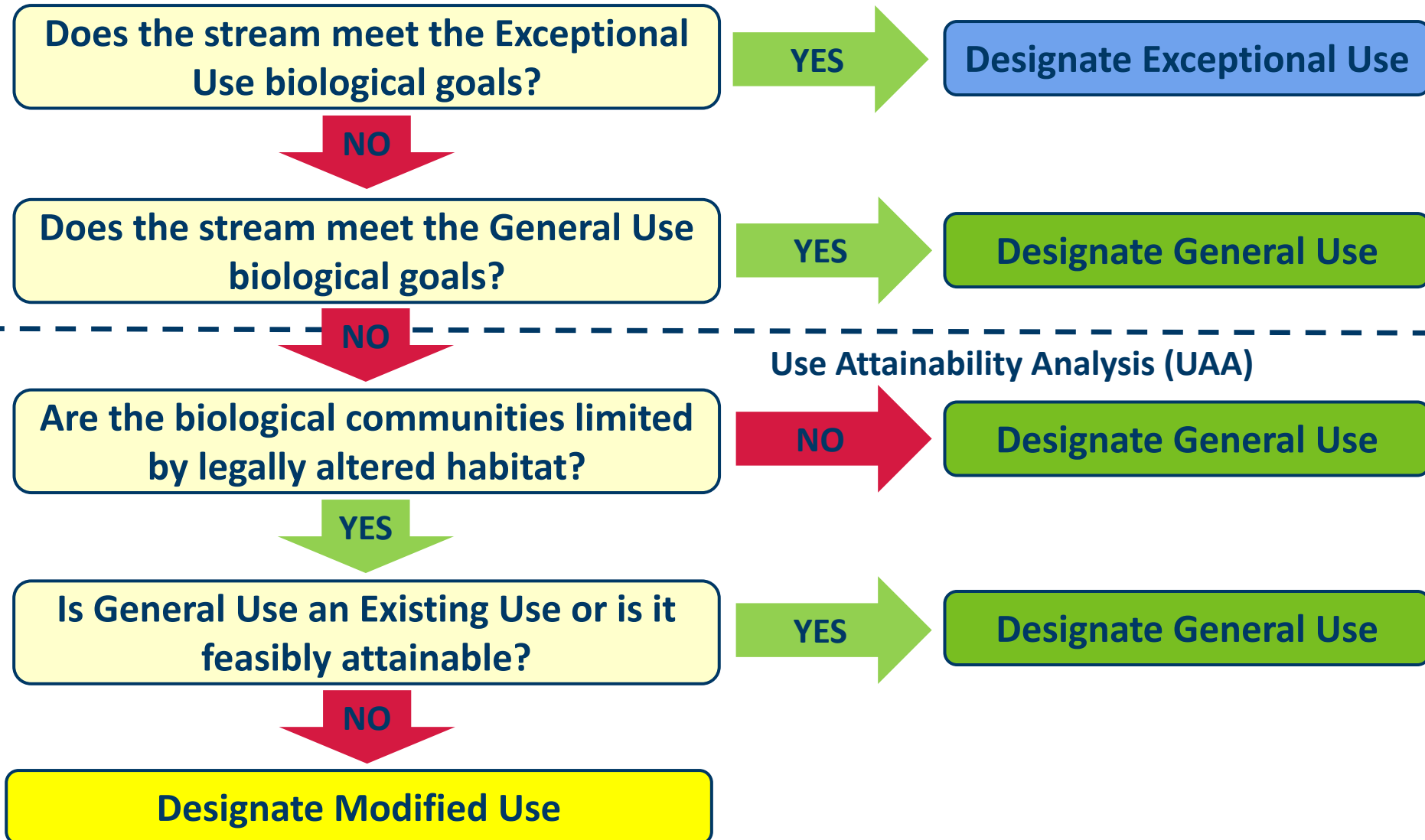
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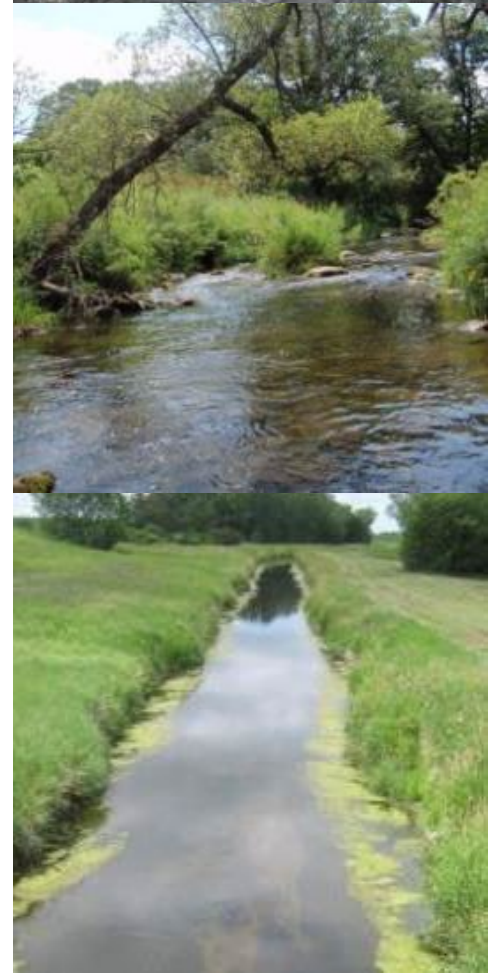
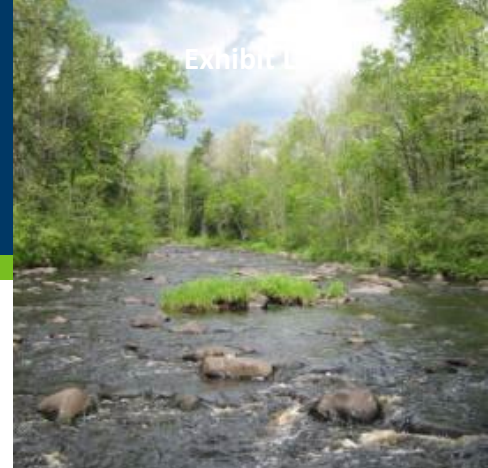


# DETERMINING TIERED USES

EXHIBIT L



# DETERMINING TIERED USES





# THE PROPOSED AMENDMENTS:

- **WILL** result in more accurate and representative aquatic life use designations;
- **WILL** document uses to provide protection from “backsliding”;
- **WILL** provide protections for high quality waters;
- **WILL** set appropriate goals for waters affected by legal historical impacts;
- **DO NOT** change numeric or narrative standards or antidegradation rules;
- **DO NOT** designate any use class other than Class 2 [although Class 2A designations carry with them Class 1B];
- **DO NOT** remove the Class 1 (drinking water) designation from any waters;
- **DO NOT** create prohibitions on maintaining waters for drainage under Minn. Stat. § 103E; and
- **DO NOT** remove existing or feasibly attainable beneficial uses.

# COMMENTS RECEIVED ON PROPOSED RULE AMENDMENTS

Exhibit L

Summary of comments received (request for comments, triennial review, and notice of hearing on proposed rule):

- 1) General support for need to review and make changes to use designations
- 2) Specific requests to clarify use designations and additional information
- 3) Concerns with:
  - Technical information is generally not sufficient
  - Need for coordination with other agencies and Tribes

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# CONTACTS