UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

RECEIVED
JUL 26 2016
MPCA COMMISSIONERS OFFICE

JUL 19 2016

REPLY TO THE ATTENTION OF:

WQ-16J

Rebecca J. Flood, Assistant Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN, 55155-4194

Dear Ms. Flood:

Thank you for your letter of December 28, 2015, submitting Minnesota's site-specific eutrophication water quality standards (WQS) for Spring Lake in Scott County, Minnesota. Consistent with section 303(c) of the Clean Water Act (CWA) and federal regulations at 40 CFR 131.21, the U.S. Environmental Protection Agency is required to review and approve or disapprove new and revised state WQS. Pursuant to section 303(c) of the CWA and federal regulations at 40 CFR 131.21, EPA has reviewed the information submitted in support of the new or revised standards and hereby approves the standards subject to completion of section 7 consultation under the Endangered Species Act (ESA), as described below.

As required under section 7 of the ESA and federal regulations at 50 CFR Part 402, EPA evaluated whether approval of these standards would affect federally-listed threatened or endangered species or designated critical habitat. As described in the biological evaluation, EPA determined that the action may affect, but is not likely to adversely affect, one or more listed aquatic, aquatic-dependent, or wetland species. Further, EPA determined that the action will not destroy or adversely modify designated critical habitat.

To date, EPA has initiated, but not completed, consultation with U.S. Fish and Wildlife Service on the new or revised standards. EPA has determined that this approval action does not violate section 7(d) of the ESA, which prohibits irreversible or irretrievable commitments of resources that have the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives. EPA concluded, as described in the record, that there will not be impacts of concern during the interim period until consultation is completed.

If your staff has any questions regarding this approval, please contact Robie Anson of my staff at (312) 886-1502.

Sincerely,

Tinka G. Hyde

Tinka G. Hyde
Director, Water Division

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EPA's Review of the Minnesota Pollution Control Agency
Request for Approval of Site-Specific Water Quality Standards
Spring Lake, Scott County, Minnesota
Under Section 303(c) of the Clean Water Act
WQSTS # MN2016-660

Date: JUL 19 2016

I. Summary

A. Date Received by EPA: January 5, 2016

B. Submittal History:

On January 5, 2016, EPA received from the Minnesota Pollution Control Agency (MPCA) a request for approval of a site-specific revision to water quality standards (WQS) for Spring Lake, Scott County, Minnesota. This submittal included: (1) a conveyance letter from Rebecca J. Flood, Assistant Commissioner of MPCA, to Tinka Hyde, Water Division Director of EPA Region 5, dated December 28, 2015; (2) a legal certification documenting that Minnesota's site-specific WQS were duly adopted in accordance with all applicable State laws and procedures, from Adonis A. Neblett, General Counsel of MPCA, to Tinka Hyde, dated December 23, 2015; (3) a Findings of Fact document, signed by MPCA Commissioner John Linc Stine, dated December 17, 2015; (4) MPCA notes taken during a public meeting held on April 4, 2015 to discuss the proposed site-specific WQS for Spring Lake; (5) a PowerPoint presentation given by Chris Zadak, of MPCA, at the April 4, 2015 public meeting to discuss the proposed site-specific WQS for Spring Lake; (6) public notice and request for comment on the proposed site-specific WQS for Spring Lake, dated April 6, 2015; (7) public comments received on MPCA's proposed site-specific WQS for Spring Lake, and MPCA's responses to those comments; and (8) a document entitled "Spring Lake Site-Specific Eutrophication Standard Justification: Public Notice Draft," dated March 2015.

C. Documents Considered in EPA's Review:

- a conveyance letter from Rebecca J. Flood, Assistant Commissioner of MPCA, to Tinka Hyde, Water Division Director of EPA Region 5, dated December 28, 2015;
- a legal certification documenting that Minnesota's site-specific WQS were duly adopted in accordance with all applicable State laws and procedures, from Adonis A. Neblett, General Counsel of MPCA, to Tinka Hyde, dated December 23, 2015;
- a Findings of Fact document, signed by MPCA Commissioner John Linc Stine, dated December 17, 2015;
- MPCA notes taken during a public meeting held on April 4, 2015 to discuss the proposed site-specific WQS for Spring Lake;
- a PowerPoint presentation given by Chris Zadak, of MPCA, at the April 4, 2015 public meeting to discuss the proposed site-specific WQS for Spring Lake;

- public notice and request for comment on the proposed site-specific WQS for Spring Lake, dated April 6, 2015;
- public comments received on MPCA's proposed site-specific WQS for Spring Lake, and MPCA's responses to those comments;
- document entitled "Spring Lake Site-Specific Eutrophication Standard Justification: Public Notice Draft," dated March 2015;
- an EPA memorandum entitled "Establishing Site Specific Aquatic Life Criteria Equal to Natural Background," from Tudor T. Davies, Director of EPA's Office of Science and Technology, to Water Management Division Directors, Regions 1 – 10 and State and Tribal Water Quality Management Program Directors, dated November 5, 1997;
- "Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs," published by EPA and dated April 2000;
- MPCA's proposed 2014 Clean Water Act (CWA) section 303(d) list of impaired waters;
- an e-mail from Matthew Gluckman, of EPA, to Robie Anson, of EPA, documenting the status of phosphorus TMDLs for Spring Lake and Upper Prior Lake, dated May 31, 2016; and
- an e-mail from Chris Zadak, of MPCA, to Robie Anson regarding efforts to revise approved total maximum daily loads (TMDLs) for Spring Lake and Upper Prior Lake based on the natural conditions-based eutrophication criteria that MPCA adopted for Spring Lake, dated June 1, 2016.

D. Description of Action:

In 2008, MPCA adopted and EPA approved ecoregional eutrophication standards (total phosphorus (TP), chlorophyll-a, and Secchi depth (SD)) to protect aquatic life and recreation in Minnesota's lakes, shallow lakes and reservoirs. Spring Lake, a lake in Scott County (and the North Central Hardwood Forest (NCHF) ecoregion), is a popular site for recreation but has historically suffered from algal blooms and diminished water clarity due to excessive phosphorus loading. As a result of these water quality impacts, Spring Lake has been listed as impaired on Minnesota's CWA section 303(d) list of impaired waters since 2002. In an effort to restore water quality to levels meeting WQS, in 2011 MPCA completed (and EPA approved) a TMDL for phosphorus in Spring Lake. This TMDL was based upon the NCHF TP endpoint of 40 µg/L.

After approval of the TMDL, the Prior Lake-Spring Lake Watershed District contracted with the St. Croix Watershed Research Station/Science Museum of Minnesota to conduct a study of the pre-European TP concentration in Spring Lake. During the study, the investigators took a paleolimnological core, dated layers in the core, and examined the algal assemblage in the pre-European portion of the sample to estimate the TP concentration under natural, pre-disturbance conditions. The study identified a natural background TP concentration of 60 ± 5 µg/L. Concomitant analysis of algal pigments in sediment samples confirmed naturally elevated levels of TP. MPCA used statewide regression equations characterizing the relationships between TP and chlorophyll-a and chlorophyll-a and SD to predict the values of chlorophyll-a and SD in the presence of an ambient TP concentration of 60 µg/L. At a TP concentration of 60 µg/L, MPCA's regression models predict a chlorophyll-a concentration of 22.8 µg/L and a SD of 1.2 m. MPCA chose to adopt more stringent chlorophyll-a and SD eutrophication endpoints for Spring Lake (20 µg/L and ≥ 1.4 m, respectively).

E. Basis of Action:

Minnesota's Administrative Rules at 7050.0220 and 7050.0222 include ecoregional eutrophication WQS for lakes, including Spring Lake. In the case of the NCHF ecoregion, where Spring Lake is located, these ecoregional eutrophication WQS are comprised of the following endpoints: TP of 40 µg/L, chlorophyll-a of 14 µg/L, and SD of ≥ 1.4 m. Subp. 7 of Minnesota's Administrative Rules at 7050.0220 states that the WQS in 7050.0220 "are subject to review and modification as applied to a specific surface water body, reach, or segment," and that "[i]f site-specific information is available that shows that a site-specific modification is more appropriate than the statewide or ecoregion standard for a particular water body, reach, or segment, the site-specific information shall be applied." In reviewing site-specific information gained from the Spring Lake paleolimnological core study described above, MPCA determined that a site-specific standard is more appropriate for Spring Lake than the ecoregional eutrophication standard. More specifically, MPCA concluded that available information indicates that the natural background TP concentration in Spring Lake exceeds 40 µg/L and that a natural background-based TP endpoint of 60 µg/L is more appropriate than the ecoregional endpoint. MPCA also determined that the natural background chlorophyll-a exceeds 14 µg/L and that a natural background-based chlorophyll-a endpoint of 20 µg/L is more appropriate than the ecoregional endpoint.

MPCA accepted public comments on its proposal to adopt site-specific eutrophication WQS for Spring Lake between April 6, 2015 and May 5, 2015. On April 14, 2015, MPCA held a public meeting (as a separate portion of the Prior Lake-Spring Lake Watershed District monthly meeting). On December 17, 2015, after completing review of comments received from the public on the site-specific WQS, MPCA Commissioner John Linc Stine adopted the site-specific WQS and submitted them for EPA review and approval.

II. Areas Affected

The site-specific WQS adopted by MPCA apply only to Spring Lake in Scott County, Minnesota. The site-specific WQS set a different goal condition for the Lake than the ecoregional WQS; the new goal reflects pre-European natural conditions.

III. EPA's Review of MPCA's Site-Specific WQS

WQS requirements of CWA sections 101(a)(2) and 303(c)(2) are implemented through federal regulations contained in 40 CFR 131. 40 CFR 131.21 requires EPA to review and approve or disapprove state-adopted WQS. In making this determination, EPA must consider requirements specified at 40 CFR 131.5(a).

A. Whether the State has Adopted Water Uses which are Consistent with the Requirements of the CWA (40 CFR 131.5(a)(1)):

Section 101(a)(2) of the CWA identifies the national interim goal of achieving by July 1, 1983, "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water" (hereafter collectively referred to as "the uses specified in section 101(a)(2)"), wherever attainable. Section 303 of the CWA requires states to adopt WQS for waters of the United States within their respective jurisdictions. Section 303(c) of the CWA requires, among other things, that state WQS include the designated use or uses to be made of the waters and water quality criteria based upon such uses. Section 303(c)(2)(A) of the CWA requires that WQS "protect the public health or welfare, enhance the quality of water and serve the purposes" of the CWA. EPA's regulations at 40 CFR. 131.2 explain that:

> "Serve the purposes of the Act" (as defined in sections 101(a)(2) and 303(c) of the Act) means that water quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value of [*sic*] public water supplies, propagation of fish, shellfish, and wildlife, recreation in and on the water, and agricultural, industrial, and other purposes including navigation.

EPA's regulations at 40 CFR 131 interpret and implement sections 101(a)(2) and 303(c)(2)(A) of the CWA through a requirement that WQS include the uses specified in section 101(a)(2) of the CWA, unless those uses have been shown to be unattainable, in which case a state can adopt subcategories of the uses specified in section 101(a)(2) that require less stringent criteria. *See* 40 CFR 131.5(a)(4), 131.6(a), and 131.100), and 131.20(a); *see also Idaho Mining Association v. Browner*, 90 F. Supp. 2d 1078, 1092 (D. Idaho 2000). 40 CFR 131.10(g) provides that a state may remove a designated use if, among other things, "the [s]tate can demonstrate that attaining the designated use is not feasible because [among other things] (1) Naturally occurring pollutant concentrations prevent the attainment of the use."

EPA determined in 2008 that Minnesota's Class 2 use designation for Spring Lake, and the eutrophication endpoints of TP of 40 µg/L, chlorophyll-a of 14 µg/L, and SD of ≥1.4 m to protect that use, were consistent with the requirements of the CWA. In adopting the site-specific WQS for Spring Lake, Minnesota performed "a structured scientific assessment of the factors affecting the attainment" (40 CFR 131.3(g) (definition of "Use attainability analysis")) of Minnesota's Class 2 recreational and aquatic life use designations and the TP and chlorophyll-a endpoints necessary to protect those uses, using the paleolimnological data discussed in greater detail in section III.D. The paleolimnological data demonstrate that, due to naturally-occurring pollutant concentrations, Spring Lake is not capable of attaining the TP endpoint of 40 µg/L and chlorophyll-a endpoint of 14 µg/L necessary to protect the 2008 Class 2 use designation for Spring Lake. Minnesota's replacement of those endpoints with site-specific values for TP of 60 µg/L and chlorophyll-a of 20 µg/L, reflecting the levels attainable in light of Spring Lake's naturally-occurring pollutant concentrations, effectively constituted a use removal in accordance with 40 CFR 131.10(g)(1). Because the site-specific TP and chlorophyll-a endpoint values reflect the highest levels of water quality that are attainable in light of Spring Lake's naturally-occurring pollutant concentrations, Minnesota's site-specific WQS for Spring Lake reflect the "highest attainable use" as defined at 40 CFR 131.3(m).

Because Minnesota performed a structured, scientific assessment of the factors affecting attainment of the uses and criteria for Spring Lake, demonstrated that naturally-occurring pollutant concentrations prevent attainment of the WQS necessary to protect the Class 2 use, and adopted site-specific WQS that reflect the lowest TP and chlorophyll-a levels (and highest water quality) attainable in light of Spring Lake's naturally-occurring pollutant concentrations, Minnesota's adoption of the site-specific WQS for Spring Lake is consistent with the requirements of the CWA.

B. Whether the State has Adopted Criteria that Protect the Designated Use (40 CFR 131.5(a)(2)):

40 CFR 131.11 provides that "[s]tates must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use." As described above in section III.A., the recreational and aquatic life designated uses embodied in the site-specific WQS for Spring Lake reflect the highest attainable condition that can be attained, in light of Spring Lake's naturally-occurring TP and chlorophyll-a concentrations. Because the recreational and aquatic life uses embodied in the site-specific WQS for Spring Lake are based upon the highest attainable condition that can be attained, in light of Spring Lake's naturally-occurring pollutant concentrations (a conclusion which is supported by the sound scientific rationale provided by the paleolimnological data discussed in greater detail in section III.D), (a) there is a sound scientific rationale for establishing the TP and chlorophyll-a endpoints based upon those naturally-occurring TP and chlorophyll-a levels and (b) those criteria are protective of the recreational and aquatic life uses.

C. Whether the State has Followed its Legal Procedures for Revising or Adopting Standards (40 CFR 131.5(a)(3)):

Adonis Neblett, MPCA's General Counsel, certified that the site-specific WQS were duly adopted in accordance with all applicable Minnesota law and procedures in a statement dated December 23, 2015. This statement was included in MPCA's submittal.

D. Whether the State Standards Which Do Not Include the Uses Specified in Section 101(a)(2) of the Act are Based on Appropriate Technical and Scientific Data and Analyses (40 C FR 131.5(a)):

According to documentation submitted by MPCA, the St. Croix Watershed Research Station/Science Museum of Minnesota collected a lake sediment core to estimate pre-European TP concentrations in Spring Lake. The team dated sediment layers using radioisotopic techniques, analyzed layers for fossil algal material, including diatoms, and, finally, used information on the algal community to infer the natural TP concentration. The team also conducted an independent analysis of algal pigments in sediment and found that the data suggest that Spring Lake was dominated by cyanobacteria prior to European settlement and disturbance associated with agricultural activity. The report produced by the investigators argue that this is further evidence that Spring Lake was historically nutrient-rich. The work performed by the

St. Croix Watershed Research Station/Science Museum of Minnesota provides a sound scientific rationale for concluding that, due to naturally-occurring pollutant concentrations, Spring Lake is not capable of attaining the TP endpoint of 40 µg/L and chlorophyll-a endpoint of 14 µg/L necessary to protect the 2008 Class 2 use designation for Spring Lake. *See also* "Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs," published by EPA in April 2000, which identifies paleolimnological reconstruction using diatoms and/or other types of algae as an appropriate method for identifying reference conditions. That work also provides a sound scientific rationale for concluding that Minnesota's replacement of those endpoints with site-specific endpoints for TP of 60 µg/L and chlorophyll-a of 20 µg/L reflects the highest level of water quality attainable in light of Spring Lake's naturally-occurring pollutant concentrations. Minnesota's site-specific WQS for Spring Lake, therefore, are based on appropriate technical and scientific data and analysis.

E. Whether the State submission meets the requirements included in 40 C FR 131.6 and, for Great Lakes States, the requirements of 40 CFR Part 132 (40 CFR 131.5(a)(5)):

As described below, Minnesota's submission meets the requirements included 40 CFR 131.6. Because Spring Lake is not in the Great Lakes basin, it is not necessary to evaluate Minnesota's submittal against the requirements of 40 CFR 132.

1. Requirements of 40 CFR 131.6:

As described below, the State's submission satisfies the requirements of 40 CFR Part 131.6.

(a) Use designations consistent with the provisions of section 101(a)(2) and 303(c)(2) of the Act (40 CFR 131.6(a)):

As described above in sections III.A. and III.D. of this document, EPA concludes that Minnesota's submission includes use designations consistent with the CWA.

(b) Methods used and analyses conducted to support WQS revisions (40 CFR 131.6(b)):

The summary in section I.C. of this document includes numerous documents submitted by Minnesota describing the methods it used and analyses it conducted to support development of the site-specific WQS. EPA, therefore, concludes that the State satisfied the submission requirements of 40 CFR 131.6(b).

(c) Water quality criteria sufficient to protect the designated uses (40 CFR 131.6(c)):

As described above in section III.B. of this document, EPA concludes that Minnesota's submission includes criteria necessary to protect the use, as modified by the site-specific WQS.

(d) An antidegradation policy consistent with §131.12 (40 CFR 131.6(d)):

The site-specific WQS do not affect Minnesota's existing antidegradation policy or its implementation and so this submission requirement is not relevant to EPA's review of the revised WQS.

(e) Certification by the State Attorney General or other appropriate legal authority within the State that the WQS were duly adopted pursuant to State law (40 CFR 131.6(e)):

The State satisfied this requirement by submitting a December 23, 2015 certification by Adonis Neblett, MPCA's General Counsel, that the WQS was duly adopted pursuant to Minnesota law.

(f) General information which will aid the Agency in determining the adequacy of the scientific basis of the standards which do not include uses specified in section 101(a)(2) of the Act, as well as information on general policies of State standards to which their application and implementation apply (40 CFR 131.6(f)):

The summary in Section I.C. of this document includes numerous documents with information submitted by the State which aided EPA in determining the adequacy of the scientific basis of the site-specific WQS. EPA, therefore, concludes that the State satisfied the submission requirements of 40 CFR 131.6(f).

F. Whether the State's Water Quality Standards provide for the Attainment and Maintenance of the Water Quality Standards of Downstream Waters (40 CFR 131.10(b)):

Spring Lake flows into Upper Prior Lake, which, according to Minnesota's WQS, must meet the following ecoregional eutrophication endpoints: TP of 40 µg/L, chlorophyll-a of 14 µg/L, and SD of $\geq$ 1.4 m. Despite EPA approval of phosphorus TMDLs for both lakes in 2011, Spring Lake and Upper Prior Lake remain impaired due to elevated nutrient concentrations, according to MPCA's proposed 2014 CWA section 303(d) list of impaired waters. [1]

In its approved phosphorus TMDL for Upper Prior Lake, MPCA identified load reductions necessary to meet WQS in Upper Prior Lake assuming that Spring Lake would, after implementation of its phosphorus TMDL, meet Minnesota's approved ecoregional eutrophication endpoints. Since MPCA adopted higher, natural background-based TP and chlorophyll-a endpoints for Spring Lake, the TP load entering Upper Prior Lake from Spring Lake may be higher than it would have been if Spring Lake were able to attain ecoregional eutrophication endpoints. A commenter raised this issue during the public comment period, and MPCA addressed it in its submission to EPA. Specifically, MPCA committed to revising the approved phosphorus TMDL for Upper Prior Lake. In an e-mail dated June 1, 2016, Chris Zadak provided more specific information. In his e-mail, Mr. Zadak stated:

[1] As of June 3, 2016, MPCA's 2014 proposed impaired waters list is the most recent publicly available impaired waters list for Minnesota.

> The plan is to revise the TMDLs for both Spring Lake and the lake it drains to, Upper Prior Lake.... [B]ecause there will be a higher allowable load coming [into Upper Prior Lake from Spring Lake]...we'll have to reduce other allocations to accommodate that.
>
> The [plan] is to start those revisions this fall and include those TMDLS [*sic*] with several other TMDLs that are being done as part of our Lower Minnesota River watershed project...which is projected to be finalized in late [2018]. Prior to that we'll seek EPA preliminary review, as we always do, and put these out for public notice (again, sometime in [2018]). They'll then be re-submitted for final EPA approval.

Federal TMDL regulations at 40 CFR 130.7(c)(1) state that "TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical WQS with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality." At the time that MPCA finalized and EPA approved the TMDLs for Spring Lake and Upper Prior Lake, the TMDLs were based upon Minnesota's applicable numeric eutrophication WQS. MPCA's plan to revise its approved TMDLs based upon revised WQS for Spring Lake is consistent with the federal requirement that TMDLs be established at levels necessary to attain applicable WQS. Because a TMDL serves as a planning tool for restoration activities designed to result in attainment of WQS, after the revised TMDLs are fully implemented, it is EPA's expectation that both Spring Lake and Upper Prior Lake will achieve water quality consistent with the requirements outlined in Minnesota's WQS. In the interim, it is EPA's expectation that MPCA will continue to implement measures to reduce loads of phosphorus to both Spring Lake and Upper Prior Lake, and that these actions will result in improved water quality that is closer to that necessary to attain Minnesota's WQS.

G. EPA Action on Minnesota's Site-Specific WQS for Spring Lake:

For the reasons described above, EPA concludes that the site-specific WQS for Spring Lake are consistent with the requirements of the CWA and 40 CFR 131. EPA, therefore, approves Minnesota's site-specific WQS for Spring Lake.

IV. Endangered Species Act (ESA) Section 7 Evaluation

Consistent with section 7 of the ESA and federal regulations at 50 CFR Part 402, EPA is required to consult with the U.S. Fish and Wildlife Service (FWS) on any action taken by EPA that may affect federally-listed threatened and/or endangered species or their designated critical habitat. Actions are considered to have the potential to affect listed species if listed species are present in the action area.

According to the FWS section 7 consultation assistance webpage (accessed May 27, 2016), northern long-eared bat (*Myotis septentrionalis*) is present in Scott County, Minnesota. The northern long-eared bat is an aquatic-dependent organism and, therefore, the bat is potentially present in the action area and it is theoretically possible that EPA's approval of the site-specific

eutrophication WQS for Spring Lake could impact the bat.

Section 7(a)(2) requires that federal agencies, in consultation with the FWS, ensure that their actions are not likely to jeopardize the existence of federally-listed species or result in the adverse modification of designated critical habitat of such species. Upon initiation of consultation, section 7(d) of the ESA prohibits irreversible or irretrievable commitments of resources that have the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives which would not violate section 7(a)(2) of the ESA.

EPA's approval decision does not foreclose either the formulation by the FWS, or the implementation by EPA, of any alternatives that might be determined in the consultation to be needed to comply with section 7(a)(2). By approving the WQS "subject to the results of consultation under section 7(a)(2) of the Endangered Species Act," EPA has explicitly stated that it retains its discretion to take appropriate action if the consultation identifies deficiencies in the WQS requiring remedial action by EPA. EPA retains the full range of options available under section 303(c) for ensuring WQS are environmentally protective. EPA can, for example, work with Minnesota to ensure that Minnesota revises its WQS as needed to ensure listed species' protection, initiate rulemaking to promulgate federal WQS to supersede Minnesota's WQS or, in appropriate circumstances, change EPA's approval to a disapproval.

As further described in the biological evaluation, EPA believes that it is highly unlikely that the FWS will conclude that Minnesota's site-specific eutrophication WQS violate section 7(a)(2), since the WQS set TP, chlorophyll-a, and SD at pre-European, undisturbed natural background levels.

V. Tribal Consultation Requirements

On May 4, 2011, EPA issued the "EPA Policy on Consultation and Coordination with Indian Tribes" to address Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." The EPA Tribal Consultation Policy states that "EPA's policy is to consult on a government-to-government basis with federally recognized tribes when EPA actions and decisions may affect tribal interests."

EPA determined that the Shakopee Mdewakanton Sioux Community owns land in the vicinity of Spring Lake and that it was appropriate to invite consultation. Prior to formally inviting the Tribe into consultation, EPA met with Stan Ellison, Director of the Tribe's Land & Natural Resources Department, to describe Minnesota's revisions to its WQS. Mr. Ellison recommended sending a consultation invitation letter to the Tribal Chair.

On May 4, 2016, EPA sent a consultation invitation letter to Chairman Charles Vig inviting the Shakopee Mdewakanton Sioux Community into consultation on Minnesota's site-specific WQS for Spring Lake. In a letter dated June 1, 2016, Chairman Vig indicated that the "science...appears to be accurate and reliable and supports the change to...standards for phosphorus and chlorophyll in Spring Lake." The letter further indicated that the Shakopee "Community agrees with the data based site specific approach to nutrient standards" and

concluded that "no additional consultation is needed."