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**WICOLA**

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March 15, 2017

Administrative Law Judge James R. Mortenson  
Minnesota Office of Administrative Hearings  
600 North Robert Street  
St. Paul, MN 55101

RE: *In the Matter of the Proposed Amendments to Minnesota Rules, Chapters 7050 and 7052, relating to Tiered Aquatic Life Uses (TALU) and Modification of Class 2 Beneficial Use Designations; Revisor's ID Number RD4237*  
OAH Docket No. 5-9003-33998

Dear Judge Mortenson,

Thank you for providing an opportunity to comment on the Minnesota Pollution Control Agency (MPCA) proposed Tiered Aquatic Life Uses (TALU) rules though March 17, 2017.

**WICOLA and the White Iron Chain of Lakes**

The following comments are submitted by the board of the White Iron Chain of Lakes Association (hereinafter WICOLA). WICOLA is an area non-profit organization of about 200 property owner households on the White Iron Chain of Lakes, including White Iron, Farm, South Farm, Garden, and the Kawishiwi River flowing through these lakes (hereinafter WICOL) immediately upstream of the Boundary Water Canoe Area Wilderness (BWCAW) with entry at Fall Lake. WICOLA also includes property owners immediately downstream on Fall Lake and upstream on Birch Lake. WICOL includes lakes in both Lake and St. Louis Counties in the vicinity of Ely, Minnesota. As potentially affected property owners, WICOLA obviously considers our membership to be major stakeholders in any proposed action potentially affecting water quality in the Watershed of the BWCAW.

**BWCAW Waters Are “Exceptional Use Waters”**

WICOLA's primary concern is the MPCA's proposal to presume (by using a general default classification) that all streams in the Boundary Waters Canoe Area Wilderness are “General Use,” rather than “Exceptional Use” waters (unless some future evaluation shows an exceptional

habitat at that time). We strongly support retaining the current classification of Minnesota waters, especially the BWCAW, with demonstrated exceptional aquatic habitat as “Exceptional Use” waters.

Minnesota waters are regulated by federal delegation under the Clean Water Act. BWCAW waters are designated “Exceptional Use” under the delegated federal guidelines (Minnesota Rules 7050.0180). Exceptional Use waters are also subject to the parallel protection of non-degradation standards (Minnesota Rules 7050.0180).

We strongly support retaining the current classification of Minnesota waters, especially the BWCAW, with demonstrated exceptional aquatic habitat as “Exceptional Use” waters. The MPCA proposal would violate the standards embodied in the Clean Water Act and the State regulations delegated by EPA.

The MPCA proposal would be a major step backward from the current designation and would lead to endless fact finding and litigation to restore the “Exceptional” designation. If MPCA truly believes the BWCAW contains General Use waters, then let them conduct the necessary analyses to prove that point. The burden of proof should be on MPCA to provide empirical evidence supporting any change in designation. The proposal as it stands is clearly a subterfuge seeking to allow MPCA to consider the waters of the BWCAW however it chooses in assessing potential impacts on those waters.

We note further that waters in the White Iron Chain, while not “Exceptional Use”, are designated Class 1 (1C) waters indicating water is fit for human consumption with minimal treatment. Any change in classification for WICOL waters would directly affect (the properties owned by) our membership as well as potentially affecting the BWCAW.

We note finally that discharges are prohibited upstream of Outstanding Natural Resource Value Waters if the discharge would lead to a “deterioration in the quality” of the downstream Outstanding Natural Resource Value water (Minnesota Regulations 7050.0180 Subp. 9). Any change in WICOL classification would place the waters potentially in violation of Subp. 9.

For the several reasons described above, no changes should be made in classification of the waters of the White Iron Chain of Lakes.

#### **“Modified Use” Waters**

The MPCA provisions allowing reclassification of waters as “Modified Use” waters will reduce their protection under the Clean Water Act. Under existing law and practice, when Minnesota waters are impaired due to poor fish or macroinvertebrate assessments, they are listed as impaired waters. A plan is then made to study and restore those waters under Section 303(d) of the Clean Water Act. Adopting the “Modified Use” classification, even if pollution as well as channeling of streams contributed to low biological assessment, degradation would be retained forever, rather than remediated.

### **Downgrading of 109 Streams to “Modified Use” Waters**

MPCA’s proposed downgrading of 109 streams to “Modified Use” waters should be rejected by the Administrative Law Judge, pending more thorough public notice and appropriate documentation that a use attainability analysis has been done on individual waters in compliance with Clean Water Act requirements.

The only disclosure in the notice is on page 5, which says, “the MPCA is proposing to reclassify 141 stream reaches from the existing General Use to either Exceptional or Modified Use.”

MPCA did not say that the vast majority of these reclassifications, 109 out of the 141, would be downgraded from “General Use” to “Modified Use.” The MPCA did not list the waters proposed to be downgraded so WICOLA is unable to determine the effect on WICOL of the proposed reclassification.

In addition, MPCA’s 109 reclassifications to “Modified Use” do not meet the requirements to downgrade waters. The proposed downgrading provides no individual review of whether streams could be individually improved through best practices or through natural restoration over time.

The proposed reclassifications for “Modified Use” in this proceeding should be rejected by the Administrative Law Judge without preventing MPCA from proposing them again after a more transparent and individual review and notice to the public and special notice to communities affected by stream reclassification.

Sincerely,



Teresa K Sagen  
President  
White Iron Chain of Lakes Association Board of Directors