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STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE PROPOSED RULES AMENDING THE
SULFATE WATER QUALITY STANDARD APPLICABLE TO WILD
RICE AND IDENTIFICATION OF WILD RICE WATERS,
MINNESOTA RULES PARTS 7050.0220, 7050.0224,
7050.0470, 7053.0135, 7053.0205 AND 7053.0406;
REVISOR'S ID NUMBER 4324.

PUBLIC HEARING

OAH DOCKET NUMBER: 80-9003-34519

Time: 4:00 p.m.
Date: October 25, 2017
Place: Beaux Arts Ballroom
Bemidji State University
Bemidji, Minnesota

Hearing Officer: LAURASUE SCHLATTER
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
St. Paul, Minnesota 55164-0620

Reporter: Lorna D. Jacobson
Court Reporter/Notary Public
Bemidji, Minnesota

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2

1 APPEARANCES

2

3 ON BEHALF OF MINNESOTA POLLUTION CONTROL AGENCY:

4 MS. SHANNON LOTTHAMMER, Division Director,

5 Environmental Analysis and Outcomes Division;

6 MS. CATHERINE NEUSCHLER, Section Manager,

7 Environmental Analysis and Outcomes Division,

8 Water Assessment Section;

9 MR. EDWARD SWAIN, Research Scientist,

10 Environmental Analysis and Outcomes Division,

11 Water Assessment Section;

12 MR. GERALD BLAHA, Research Scientist,

13 Environmental Analysis and Outcomes Division,

14 Water Assessment Section;

15 MS. PATRICIA ENGELKING, Project Manager,

16 Environmental Analysis and Outcomes Division,

17 Water Assessment Section;

18 MR. PHIL MONSON, Research Scientist,

19 Environmental Analysis and Outcomes Division,

20 Water Assessment Section;

21 MS. CAROL NANKIVEL, Rule Coordinator,

22 Resource Management and Assistance;

23 MR. ADONIS NEBLETT, General Counsel, Legal

24 Services Division.

25

4

1 Today is October 25th, 2017.

2 It's 4:00 p.m. and we are here for a public hearing

3 in the matter of the proposed rules of the

4 Minnesota Pollution Control Agency amending the

5 sulfate water quality standard -- sulfate water

6 quality standard applicable to wild rice and

7 identification of wild rice waters.

8 Minnesota Rules Part 7050.0130,

9 7050.0220, 7050.0224, 7050.0470, 7050.0471,

10 7053.0135, 7053.0205 and 7053.0406. This matter

11 will be referred to as OAH Docket Number

12 80-9003-34519. Please put this docket number in

13 the subject line of any correspondence or comments

14 you submit to my office so that it can be properly

15 routed to me. Also, for your information, the

16 revisor's statute number for the rule is RD4324A.

17 And for your information, if you

18 need them, there are restrooms on the other side of

19 this wall to my right, and you can go out the back

20 or the front door and around the corner to find

21 those restrooms.

22 The Office of Administrative

23 Hearings is independent of the Minnesota Pollution

24 Control Agency, which is the agency that is

25 proposing to adopt the rules that are the subject

3

1

2 JUDGE SCHLATTER: Good

3 afternoon, everybody. My name is

4 Laurasue Schlatter and I'm an administrative law

5 judge with the State Office of Administrative

6 Hearings.

7 I thank all of you for taking the

8 time to be here today to participate in the public

9 rulemaking process on this important matter of

10 public concern.

11 Before we go further with the

12 rulemaking proceeding this afternoon, I do want to

13 notify you that pursuant to Minnesota Rule

14 1400.8000, as the presiding judge in this matter, I

15 have the authority to ban use of cameras in the

16 hearing room during the course of the hearing. It

17 is my order that no cameras will be allowed during

18 these proceedings; that includes cell phone

19 cameras. Members of the audience, including media,

20 are hereby ordered to take out your cell phones,

21 turn them off and they are to be put away. Any

22 unauthorized use of cell phones as cameras or the

23 use of any other cameras will result in

24 sanctions, including individuals being barred from

25 these proceedings.

5

1 of today's hearing, as well as the groups or

2 individuals who are participating in the hearing.

3 The role of our office is to provide hearings that

4 are fair to all of the participants.

5 The legislation that directs this

6 is Chapter 14 of the Minnesota Statutes, is that

7 rulemaking hearings be conducted so that members of

8 the public can be heard as part of the rulemaking

9 process.

10 I'm here to ensure that there is

11 procedural fairness and to ensure that we are

12 courteous to each other so that all interested

13 parties can be heard, and to draw out the

14 information from as many voices as possible. I

15 want to assure each of you that I am interested in

16 everything that you have to say today, and I want

17 to make sure that everyone who wants to speak has

18 an opportunity to be heard.

19 An underlying assumption of the

20 process is that we rely on the wisdom of the group.

21 Thus, we are grateful that you're contributing your

22 thoughts, experience and expertise to the formation

23 of substantive rule.

24 There is a handout on the table

25 entitled "OAH Hearing Procedures," and I'm talking

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1 about the table over here to my right, and --
2 outside in the lobby. Okay. So, there's a handout
3 on the table in the lobby entitled "OAH Rule
4 Hearing Procedures." If you don't have a copy,
5 please take a moment to pick one up. That
6 describes the procedures that are set up by the
7 legislature for hearings like this. I'm going to
8 cover some of the highlights of those procedures
9 now.

10 So, this hearing is part of the
11 process by which rules are adopted under the
12 Minnesota Administrative Procedures Act. During
13 the rulemaking procedure -- proceeding, the
14 Minnesota Pollution Control Agency, or MPCA, is
15 required to do three things: It has to document
16 its statutory authority to adopt the proposed
17 rules; it has to demonstrate that it has fulfilled
18 all relevant legal and procedural requirements of
19 the law; and it has to demonstrate the need for and
20 reasonableness of each portion of the proposed
21 rules, with an affirmative presentation of facts.

22 So, those are the three big
23 issues I'm required to review as part of this
24 proceeding. I know that some of you are here to
25 express your thoughts and views regarding various

1 rules; and those thoughts will be helpful to both
2 the MPCA, to the process, and to me.

3 You need to understand that my
4 job is not to rewrite the rules based upon the
5 views of participants or to select one set of
6 proposed rules over another set of proposed rules
7 because I happen to think that your proposed set is
8 something that I like better than what the MPCA has
9 proposed. My job is to ensure that the statutory
10 requirements for rulemaking have been met. And in
11 terms of the content of the rules, that really has
12 to do with whether the Agency has demonstrated the
13 need for and reasonableness of each portion of the
14 proposed rule with an affirmative presentation of
15 the facts.

16 In terms of how we proceed in
17 this hearing, after I complete my introductory
18 remarks about the hearing procedures, I'm going to
19 introduce the panel that's here from the MPCA.
20 Actually, Mr. Neblett is going to introduce the
21 panel; I'm going to introduce Mr. Neblett. And
22 next Mr. Neblett will submit the exhibits, or will
23 tell you about the exhibits that have already been
24 submitted that is included in the hearing record.
25 Those exhibits were formally submitted at the first

1 rule hearing that we held in St. Paul on Monday of
2 this week.

3 The MPCA will summarize the
4 exhibits so that everyone has some idea of what is
5 already in the hearing record. And you're welcome
6 to take a look at those exhibits, which are on that
7 table to my right in this room. Please leave them
8 in the room. They're not meant to leave with you.
9 If you want to look at copies at your leisure away
10 from this room, they have all been posted online.
11 You can go to the MPCA's website, you can go to the
12 Office of Administrative Hearings' website, either
13 place, as those two websites are connected; and you
14 can find copies of all of the hearing exhibits at
15 either website.

16 After Mr. Neblett talks about the
17 hearing exhibits, the MPCA will make an oral
18 presentation of the proposed rule amendment and the
19 reasonableness and need for those rules. And then
20 the remainder and the majority of the hearing time
21 has been allotted for statements and questions from
22 members of the public. And that's really the key
23 reason we're here today.

24 In order to make sure that we
25 have an accurate record of the number of people

1 attending the hearing, I ask that everyone sign a
2 hearing register that's located at the registration
3 table in the lobby. If you wish to speak or to
4 submit a written statement today, you're required
5 by law to sign the hearing register. If you wish
6 to speak, please place a checkmark in the
7 appropriate column on the hearing register, then
8 we'll know that you want to speak. If anyone who
9 wishes to speak or ask questions is under a
10 time constraint today, please let Carol Nankivel,
11 who is, I think, in the lobby in red, know what
12 your time constraints are, and she will relay that
13 information to me and I will do my very best to
14 accommodate your time constraints. Otherwise, I
15 will call you, generally, in the order listed on
16 the hearing register.

17 When your name is called, please
18 come up to the podium here in front, so that I can
19 hear you, and speak clearly into the microphone so
20 that everybody else in the room can hear you, and
21 make sure that you speak clearly so that the court
22 reporter, who is sitting here to my left, can hear
23 you.

24 When you begin, please state and
25 spell your name, give your address. Or if you're

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1 not wanting to give your full address, please at
2 least state the town that you come from. And if
3 you're here on behalf of a group or some official
4 organization, please state who you represent.

5 Given the number of people here
6 tonight so far, I don't think there will be a
7 problem with everybody being heard. It will still
8 be helpful if you organize your remarks and focus
9 on the highlights of those remarks.

10 I also encourage you to enter any
11 written comments as exhibits into the record in
12 this matter. Otherwise, you're welcome to submit
13 written comments into the record after the hearing.
14 And I'll talk more about that in a few minutes.

15 I do want to ensure that everyone
16 has time to speak and that everyone who wants to be
17 heard is heard. Again, given the number of people
18 here at this time, I don't anticipate a problem. I
19 am going to ask that you limit your remarks right
20 now to ten minutes. Once we've gotten through --
21 and right now we only have one person who is signed
22 up to speak. I anticipate that there will be more,
23 and people who haven't signed who are here and
24 haven't signed up to speak, I will also offer you
25 an opportunity to speak, even if you haven't signed

1 don't know whether this hearing is going to get
2 busier. But if you did attend another hearing I
3 will give people who have not yet had a chance to
4 speak, an opportunity to speak before I have people
5 who are returning speak.

6 This is a fairly informal
7 process. I'm here to ensure that we are courteous
8 to each other and the process runs smoothly.

9 So, as you make your comments,
10 please keep these things in mind: A rule hearing
11 is similar to a legislature hearing or a meeting of
12 a local board or city council; a speaker may ask
13 questions of the Agency panel and is also able to
14 be questioned by an Agency panel, by me or by other
15 persons present at the hearing. Because this is
16 not like a court hearing, you don't have to make
17 your points by asking questions. You can simply
18 state what your views are; and oftentimes, the
19 easiest way to get your point across is to simply
20 state your views and go directly to the point.

21 It will be most helpful to me if
22 you can be specific in your comments, tell me which
23 rules or rule parts you support or object to, and
24 why. Also, remember that the record that we make
25 today may be reviewed by others later, and we want

1 up. And we'll see how it goes with that.

2 If you want more time and
3 everyone who wants to has had an opportunity to
4 speak, I'm happy to give you more time to speak.
5 My first priority is to make sure that everyone who
6 is in the room has at least one chance; and after
7 that, we'll go back and give people additional
8 chances as long as everyone has had one chance to
9 speak.

10 For your information, we have
11 some additional hearing dates coming up. Tomorrow
12 we will be at the Fond du Lac Tribal Community
13 College from 3:00 to 7:00 p.m. On Monday we'll be
14 in Brainerd at the Central Lakes Community College,
15 and on Thursday, November 2nd, we will be back in
16 St. Paul at the MPCA offices from 4:00 to 9:00
17 p.m., and we'll have video links on that date to
18 Detroit Lakes, Duluth, Mankato, Marshall and
19 Rochester. So, if you're interested in attending
20 any of those hearings you're welcome to do so.

21 You can find a copy of the
22 hearing schedule with all that information on the
23 table outside.

24 I do want to caution you again,
25 our earlier hearings have been quite busy, and I

1 to make sure that the matter that you are
2 addressing is also clear to those people who review
3 the record later.

4 I remind you again that this
5 hearing is being transcribed by the court reporter.
6 And because we want to keep an accurate record,
7 it's important when speaking, to remember to speak
8 clearly, slowly and loud enough to be heard, to
9 make all of your statements and responses audible.
10 So, a nod of the head, a gesture is not audible.
11 Make sure that you state everything out loud so the
12 court reporter can write it down. Please spell
13 proper names and technical terms the first time you
14 use them. If you're using an acronym, please, the
15 first time you use it, say what it stands for. And
16 only one person can speak at a time. Please don't
17 talk over anyone else. The court reporter can only
18 write down what one person is saying at a time.

19 It's possible that I will
20 interrupt a speaker from time to time to ask for
21 spellings or some other question if something is
22 unclear to me. I apologize in advance and ask you
23 not to take offense. I'm not doing it to
24 disrespect or distract you, but to ensure that we
25 have an accurate copy of what -- excuse me --

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1 accurate record of what you are saying.
 2 Again, if you have a written copy
 3 of your remarks that you can leave here as an
 4 exhibit, please do so, that will be helpful. Feel
 5 free -- I know it's a little awkward with the
 6 steps, but feel free to come up to the table and
 7 give me your -- a copy of your remarks or any
 8 other exhibits you want to leave with me. I will
 9 mark it with an exhibit number and we'll have it
 10 for the record. It will be posted electronically,
 11 along with all of the other remarks and written
 12 comments that have been posted on our website.

13 Okay. I want to review the
 14 schedule for the written comment period. Minnesota
 15 Statute Section 14.15, Subdivision 1, provides that
 16 the State administrative law judge may, by order,
 17 keep the hearing record open for up to 20 days
 18 after the end of the public hearing. I am issuing
 19 that order now. The comment period shall be
 20 extended for 20 days from the close of the final
 21 public hearing on November 2nd, 2017. This means
 22 that after the close of the November 2nd, 2017,
 23 hearing there will be 20 calendar days in which you
 24 can submit written comments. That means that you
 25 have until November 22nd, 2017, at 4:30 p.m., to

1 submit comments. At the end of the business day,
 2 the day before Thanksgiving, you've got to have
 3 your comments in.

4 I refer you to the handout for
 5 the address to send your comments to, to be sure
 6 that I receive them. You can send them by mail,
 7 you can fax them or you can e-file them on our rule
 8 comment website. But in any event, they have to in
 9 our office by 4:30 p.m. on November 22nd, 2017, to
 10 be considered.

11 Our office will post all
 12 comments we receive on our website -- on our
 13 rulemaking website for everybody to review. And
 14 again, our rulemaking website and the MPCA's
 15 rulemaking website are linked to one another at
 16 this point.

17 And, please, one more time, our
 18 OAH Docket Number 80-9003-34519, should be in the
 19 subject line of any comments that you make so that
 20 your comment gets directed to me, and not
 21 misdirected to another judge or another rule file.

22 After the comment period closes
 23 on November 22nd there will be a five-day --
 24 five-working day rebuttal period for anything that
 25 is filed by the end of the comment period. That

1 five-day period is meant for people to respond to
 2 the comments, but not to introduce new matters.
 3 Because there's a holiday in there, the rebuttal
 4 period will not open until after Thanksgiving. So,
 5 we'll begin accepting rebuttal comments for posting
 6 on Monday, November 27, 2017, and we will continue
 7 to accept rebuttal comments through Friday,
 8 December 1st, 2017, at 4:30 p.m. And again,
 9 remember, the rebuttal comments can only respond to
 10 comments that have been submitted during the
 11 comment period, which ended on November 22nd, 2017.
 12 New matters will not be considered.

13 After December 1st, 2017, I will
 14 prepare a report that contains my conclusions about
 15 whether the MPCA has met its statutory burden in
 16 this matter. First and foremost, I will focus on
 17 whether the Agency has documented its authority to
 18 amend the rules, whether the Agency has fulfilled
 19 all the required procedures and whether the Agency
 20 has demonstrated the need and reasonableness for
 21 each portion of the proposed rules.

22 You can expect my report
 23 approximately 30 days after the last comment
 24 online, unless an extension is necessary. If you
 25 want to receive a copy of my report, please

1 indicate that on the sign-in sheet. If you provide
 2 an email address, we will email you. We'll see
 3 that you receive notice that the report is
 4 available and we'll let you know how to get a copy.
 5 We will ensure that it gets to you and we're eager
 6 for you to have a copy of my report.

7 The handout that I mentioned
 8 earlier telling about the process contains the
 9 important address information you will need to
 10 submit written comments. Please keep a copy of
 11 that. Again, one more time, I'm going to give you
 12 the docket number to put that in the subject line
 13 of your correspondence or email. The docket number
 14 is 80-9003-34519.

15 Before we begin today, are there
 16 any questions about the procedures or what we're
 17 doing here today?

(No response)

21 JUDGE SCHLATTER: Okay. With
 22 that, I am going to introduce then, Mr. Neblett,
 23 from the Minnesota Pollution Control Agency, and
 24 invite him to introduce the rest of the Agency
 25 staff.

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1
2 MR. NEBLETT: Thank you,
3 Judge Schlatter.
4 Good afternoon. My name is
5 Adonis Neblett. That's spelled A-d-o-n-i-s, last
6 name, N-e-b-l-e-t-t.
7 I'm the general counsel of the
8 Minnesota Pollution Control Agency. I'm here on
9 behalf of the Agency in this rulemaking proceeding
10 in which we are proposing to amend the sulfate
11 water quality standard applicable to wild rice and
12 the identification of wild rice waters in
13 Minnesota, Rule Chapters 7050 and 7053.
14 I'd like to identify the members
15 of the rulemaking team that are present here today.
16 One will be making our rule presentation, and some
17 may be called upon to answer or respond to the
18 questions you may have as they are capable.
19 First, immediately to my right is
20 Shannon Lotthammer. She's the Divisional Director
21 of the Environmental Analysis and Outcomes
22 Division, and she will be making the principal
23 presentation. Also, Catherine Neuschler, Section
24 Manager of the Water Assessment Section; Ed Swain,
25 Research Scientist, Environmental Analysis in the

1 Groundwater Services Section; Gerald Blaha,
2 Resource Scientist, Water Quality Standards Unit;
3 Patricia Engelking, Project Manager in the
4 Environmental Analysis and Groundwater Services
5 Unit; and Carol Nankivel, Rule Coordinator in the
6 Agency's Rules Unit; and Phil Monson, Research
7 Scientist for the Water Quality Standards Unit.
8 Now, as indicated, we've
9 previously entered into the record a number of
10 exhibits. I would like to take the time to
11 identify those exhibits for you, so you're aware of
12 what has been previously entered. We have provided
13 these exhibits today and we believe that they
14 document that the Agency has the authority to adopt
15 the rules that are proposed and demonstrate that we
16 have fulfilled all of our legal obligations and
17 procedural requirements for promulgating the rules
18 and to demonstrate the need and reasonableness of
19 the rules.
20 Those exhibits are identified --
21 I've identified them as MPCA Exhibits A through L.
22 They may be renumbered in the -- by the
23 Administrative Law Judge as different types of
24 hearing exhibits. But I will refer to them as by
25 alphabetical -- or alphabetically, as "A" through

1 "L."
2 The first exhibit, Exhibit A, is
3 a Request for Comments published in the State
4 Register and dated October 26, 2015.
5 Exhibit B is the Petition for
6 Rulemaking submitted by the Minnesota Chamber of
7 Commerce on December 17, 2010, and the Memorandum
8 of Support from the Minnesota Chamber of Commerce
9 Petition for Rulemaking dated December 6, 2010.
10 Exhibit C are the Rules as
11 Proposed, including Revisor's approval, dated
12 July 24, 2017.
13 Exhibit D is the Statement of
14 Need and Reasonableness, dated July 17, 2017. It
15 also includes attachments -- two attachments in
16 the form of subject notebooks. Those, one contains
17 SONAR Exhibits 1 through 21, the second notebook
18 contains SONAR Exhibits 22 through 46.
19 Exhibit E, the transmittal
20 letter, Certificate of Mailing, the Statement of
21 Need and Reasonableness to Legislative Reference
22 Library dated August 21st, 2017.
23 Exhibit F, the Notice of Hearing,
24 as published in the August 21st, 2017, State
25 Register, and posted on the MPCA web pages, and

1 Notice of Additional Hearings, as published in the
2 September 18, 2017, State Register and posted on
3 the MPCA web page.
4 Exhibit G is the Certificate of
5 Mailing the Notice of Hearing to the Rulemaking
6 Mailing List and Accuracy of the Mailing List,
7 dated August 21st, 2017; the Certificate of Mailing
8 the Notice of Additional Hearings to the Rulemaking
9 Mailing List and Certificate of Accuracy of the
10 Mailing List for Providing Notice of Additional
11 Hearing, dated September 18, 2017.
12 Exhibit H are comprised of -- is
13 comprised of two Certificates of Giving/Providing
14 Notice.
15 On Page 1 is a Certificate for
16 Providing Additional Notice to the August 21st,
17 2017, Notice of Hearing. Page 2 is the Certificate
18 of Providing Additional Notice of the
19 September 18th, 2017, Notice of Additional
20 Date/Location.
21 Exhibit I are the written
22 comments received during the pre-hearing comment
23 period posted on the Office of Administrative
24 Hearings' website.
25 The Exhibit J is a placeholder

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1 for approval to omit text from the State Register.
 2 That is not applicable; no such approval was
 3 required.
 4 Exhibit K is comprised of four
 5 exhibits, K1 through K4. These are other documents
 6 or evidence that show compliance with other laws or
 7 rules which the Agency is required to follow in
 8 adopting this rule.
 9 K1 is Notices to Legislative
 10 Chairs and Minority Leaders, as required by
 11 Minnesota Statute, Section 14.116, dated
 12 August 21st, 2017, and September 18, 2017,
 13 respectively.
 14 K2 is the Notice to the
 15 Department of Agriculture, as required by Minnesota
 16 Statute, Section 14.111, dated July 16, 2017.
 17 K3 is the Notice to and
 18 Acknowledgement by the Minnesota Management and
 19 Budget, as required by Minnesota Statutes 14.131.
 20 K4, Notices sent to the governing
 21 body of each municipality bordering or through
 22 which affected waters for which standards are
 23 sought to be adopted flow, as required by Minnesota
 24 Statute, Section 115.44, Subdivision 7. The MPCA
 25 provided the required notification for the

1 August 21st, 2017, and September 18, 2017,
 2 notices.
 3 Exhibit L are additional
 4 documents submitted at the hearing. Those
 5 documents are comprised of Exhibits L1 through L9.
 6 A number of these are peer-review articles, copies
 7 of which may be obtained by request from the
 8 Pollution Control Agency.
 9 The L1 is an article by Bolton &
 10 Menk, 2017, entitled, "Analyzing Alternatives for
 11 Sulfate Treatment in Municipal Wastewater, Part 1,
 12 Feasibility Alternative Review."
 13 Exhibit L2, an article by Ng,
 14 et al, 2017, entitled, "Modeling Hydrologic
 15 Controls on Sulfur Processes in Sulfate-Impacted
 16 Wetland and Stream Sediments."
 17 L3 is an article by Myrbo, et al,
 18 2017; and it is entitled, "Sulfide Generated by
 19 Sulfate Reduction in a Primary Controller --" "is
 20 a Primary Controller of the Occurrence of Wild Rice
 21 in Shallow Aquatic Ecosystems."
 22 L4 is an article by Pollman,
 23 et al, 2017, entitled, "The Evolution of Sulfide in
 24 Shallow Aquatic Ecosystem Sediments - an Analysis
 25 of the Roles of Sulfate, Organic Carbon, Iron and

1 Feedback Constraints, Using Structural Equation
 2 Modeling." That is the title of the article.
 3 Exhibit L5, by Myrbo, et al,
 4 2017, entitled, "Increase in Nutrients, Mercury and
 5 Methylmercury as a Consequence of Elevated Sulfate
 6 Reduction to Sulfide in Experimental Wetland
 7 Mescocosms."
 8 L6 is the errata correcting minor
 9 errors in the SONAR and attachments to the SONAR.
 10 L7 is the Minnesota Pollution
 11 Control Agency presentation that was originally
 12 given on October 23 and will be presented here,
 13 also.
 14 L8 is an article by John Moyle,
 15 1975, entitled, "Review of Relationship of Wild
 16 Rice to Sulfate Concentrations of Waters."
 17 Exhibit L9 is the MPCA changes to
 18 specific water identification numbers, also
 19 referred to as WIDs.
 20 Those are the exhibits that have
 21 been previously entered into the record. I think
 22 we will now be able to turn to Shannon Lotthammer
 23 and her presentation at her leisure. But before we
 24 do that, one remark I'd like to make is we will do
 25 our best to answer questions that you may have as

1 we are able to do so here. There may be questions
 2 that you may ask that we cannot formulate an
 3 appropriate response to as we sit here. And we
 4 will certainly give due attention to your questions
 5 and our response to comments.
 6 JUDGE SCHLATTER: You may
 7 proceed, Ms. Lotthammer.
 8
 9 MS. LOTTHAMMER: Thank you,
 10 Your Honor. And thank you to all of you for an
 11 opportunity to be here and for your participation
 12 in this process.
 13 So, again, my name is
 14 Shannon Lotthammer, S-h-a-n-n-o-n,
 15 L-o-t-t-h-a-m-m-e-r. And I'm the director of the
 16 division at the Minnesota Pollution Control Agency
 17 that, among other things, establishes and revises
 18 water quality standards. We also do things like
 19 water quality and air quality monitoring and
 20 support for our permitting program, as well.
 21 So, this presentation is
 22 intended to highlight aspects of the rule proposal
 23 that we bring today. And all of this can be found
 24 both in the proposed rule language, itself, and
 25 then in the supporting documents that Mr. Neblett

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1 just referenced; particularly, the Statement of
2 Need and Reasonableness and its attachments and
3 technical support documents and the attachments to
4 that, as well, and then the technical papers that
5 Mr. Neblett just mentioned.

6 So, this evening my intention is
7 to basically provide some information about why the
8 Pollution Control Agency is proposing to revise the
9 existing sulfate standards that affect wild rice
10 and some background on water quality standards,
11 in general, and the existing standard in
12 particular, and then an overview of the Pollution
13 Control Agency's proposal and some implications of
14 the proposed revision, followed by just some
15 general comments.

16 So, the first question is: Why
17 is the MPCA proposing this particular revision?

18 This rulemaking proposal came
19 about as a result of the questions arising about
20 the existing standard. Those questions really
21 pointed to a need for better clarity and
22 understanding about both the affect of sulfate on
23 wild rice and how and when sulfate causes a
24 problem; and then also, the applicability of the
25 existing standard, for both when and where and how

1 the standard applies. So, throughout this effort,
2 the Pollution Control Agency has been guided by
3 some key goals: First and foremost, to protect
4 wild rice production, or otherwise harvest and the
5 use of the wild rice streams, document the
6 wildlife, which is the use or the beneficial aspect
7 of the wild rice that is being protected by the
8 existing and the proposed standard. And I'll talk
9 about that a little bit more in the upcoming
10 slides. Also important is to incorporate new
11 scientific findings that have come to light in the
12 last years about sulfate and other substances like
13 sulfide on wild rice. Third, to reduce uncertainty
14 and add clarity about the existing standard and
15 application going forward. And then fourth, to
16 avoid unnecessary regulatory impact. And this is
17 particularly important with a pollutant like
18 sulfate, which is very difficult to treat for, it's
19 very expensive to treat for. There are some
20 secondary issues with treating for sulfate, such as
21 the (unintelligible).

22 So, we wanted to be sure to be
23 as precise and accurate as possible with the
24 environmental impact, so that where we need to
25 reduce sulfate to protect wild rice that we do that

1 to the best of our ability. And then, but where we
2 don't need to do that, that that cost isn't
3 incurred.

4 So, before outlining the elements
5 of the proposal it's helpful to talk just a little
6 bit about the nature of the water quality
7 standards, themselves.

8 The water quality standards are
9 fundamental tools under the Federal Clean Water
10 Act. And there needs to be a number or a statement
11 that's intended to protect a specific aspect of
12 water resources. So, and that's typically referred
13 to as the beneficial use. So, for example, we have
14 water quality standards that protect for swimming,
15 we have water quality standards that protect for
16 healthy aquatic communities in our lakes and
17 streams. So, the intent is to adopt water quality
18 standards that are nearest the standards that we
19 are trying to accomplish, or where we have the
20 environmental science, the specific numbers that
21 are protective of the conditions necessary to
22 support those uses that we're trying to protect.
23 And Minnesotans are concerned about and value in
24 our water resources.

25 So, in this case, that

1 beneficial use is wild rice production, or more
2 specifically, harvest and use of the wild rice by
3 humans and wildlife.

4 Water quality standards apply to
5 the water body, itself. So, again, it's the
6 conditions that need to be achieved in that water
7 body to protect that beneficial use. And the
8 standards under the Federal Clean Water Act are
9 adopted by State or Federally authorized tribes,
10 with the oversight of the Federal government, in
11 the form of the Environmental Protection Agency.
12 So, for Minnesota we're responsible at the
13 Pollution Control Agency, for adopting water
14 quality standards and revising them and then we
15 submit those to the Environmental Protection Agency
16 on the Federal level for their final approval for
17 that rulemaking effort and that standard effort to
18 be completed.

19 And again, water quality
20 standards are based on what in our understanding
21 of the environment and environmental science
22 demonstrates is needed to protect that beneficial
23 use from particular or specific types of
24 pollution.

25 So, the existing wild rice

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1 sulfate standard then, was first adopted by the
2 Pollution Control Agency following the
3 administrative processes at that time and approved
4 by the Federal Environmental Protection Agency back
5 in 1973. And that was based on studies that were
6 done in Minnesota water bodies that showed that
7 wild rice tends to grow in water bodies that have
8 lower sulfate concentration.

9 The map that you see before you
10 shows the colors across the state of Minnesota.
11 Those correspond to sulfate levels in Minnesota
12 water bodies. So, the blue and the lighter green
13 color are lower sulfate concentrations, and then it
14 goes all the way to the red, which are higher
15 sulfate concentrations. And the dots represent
16 places where wild rice has been documented or
17 demonstrated or spoken about were occurring. And
18 you can see that those dots tend to occur where
19 there's lower levels of sulfate in the water.

20 So, this led to the adoption
21 then, of the standard in 1973. But since then, in
22 recent years, questions have come up about the
23 standard, itself. Questions like, "Why does wild
24 rice grow in some water bodies that still have
25 higher sulfate levels?" And you can see that in

1 committee to guide the study, itself, and the data
2 analysis and then also to provide input on any
3 rulemaking that followed from those studies. And
4 the legislature also directed the Agency to
5 initiate rulemaking upon completion of the study to
6 change these standards, as warranted based on the
7 additional scientific information.

8 There was subsequent legislation
9 that has been passed that has provided a deadline
10 for this rulemaking, establishing January 15th of
11 2019 as that deadline. So, this effort then, and
12 this direction from the legislature embarked the
13 Pollution Control Agency on our process of
14 gathering data and information and reviewing the
15 existing information, going through what's called
16 scientific proof, the use of developing some
17 preliminary analyses and then actually having a
18 panel of seven independent scientists, who works as
19 a third party to impanel the document peer review
20 to give us preliminary feedback on that analysis.
21 We made revisions then, based on that analysis; and
22 that moved us into the position of having a
23 proposal that we could then move forward with a
24 rulemaking proposal.

25 So, this next slide provides a

1 this map. There are still some dots in
2 areas with higher sulfate levels, even though the
3 locations tend to be where there's lower levels.
4 Also, when exactly is wild rice susceptible to
5 damage by high sulfate levels, which was an element
6 of the standard that was adopted back in 1973.

7 In light of these questions
8 coming forward, the Pollution Control Agency
9 undertook a literature review of the scientific
10 literature and available information in
11 2010 to see if there was information available to
12 help clarify these questions and potentially revise
13 the water quality standard as needed or applicable
14 to the rulemaking process. And what we found is
15 that there just really wasn't much new information
16 available to help and guide our thinking and
17 evolution on this standard. So, fortunately, the
18 Minnesota legislature in 2011 provided funding to
19 the Agency through the Clean Water & Land Legacy
20 Constitutional Amendment, through the Clean Water
21 Fund, to undertake studies to better understand the
22 effects of sulfate and other substances on wild
23 rice.

24 At that time, the legislature
25 also directed the Agency to form an advisory

1 little bit more information about the activities
2 that led up to the rule proposal, itself. So,
3 again, the goals of the studies that the Agency
4 undertook were to enhance understanding of the
5 effect of sulfate on wild rice and to inform any
6 standard evaluation and subsequent revision.

7 The advisory committee that I
8 mentioned provided discussion and input throughout
9 the process. That committee was made up of a lot
10 of different interests in this particular topic.
11 So, there were tribal representatives, there were
12 representatives of industry groups, environmental
13 groups, there were citizens that are harvesters of
14 wild rice that participated, researchers and
15 technical experts and municipal representatives, as
16 well. So, it was a large group with a myriad of
17 perspectives and expertise. And all of those
18 voices helped provide input to the Agency. We also
19 kept the public -- the interest of the public
20 advised of our work through having a web list -- or
21 an email list that we would periodically provide
22 information to. And then we also tried to post all
23 the information on our website, too. So, that was
24 the nature of the process, and moving forward.

25 That advisory committee was very

1 much a core group that provided a lot of the
2 insight and expertise.

3 So, the key avenues of
4 investigation then, were four different types of
5 experiments.

6 The first group was laboratory
7 experiments, or otherwise known as hydroponic
8 experiments, where wild rice was grown -- rice
9 seedlings were grown in the laboratory at different
10 sulfate and sulfide concentrations. The Pollution
11 Control Agency sponsored some hydroponic studies,
12 and there was also work that was done by a
13 laboratory through the sponsorship of the Minnesota
14 Chamber of Commerce.

15 So, there was additional
16 information gathered by other parties, as well,
17 that helped us along in this project.

18 The second line of
19 investigations were outdoor container experiments,
20 or mesocosms, as we refer to them as. Basically,
21 they were tubs of sediments from Minnesota wild
22 lakes that were grown outdoors with wild rice in
23 them at different sulfate concentrations over
24 multiple years to see what happened within a year
25 and then following years, to both the chemistry and

1 also, the wild rice plants in those tubs.

2 There were filterings where a
3 number of Minnesota water bodies were extensively
4 monitored for the chemistry, the physical
5 characteristics, and wild rice density. And all
6 of that information helped to form this proposal.

7 And then finally, there were
8 sediment experiments where some seedlings were
9 taken to the laboratory and treated with different
10 sulfate levels and then seeing how the sulfide in
11 the sediment changed over time, both with and
12 without the introduction of sulfate.

13 Again, it went to the advisory
14 committee and then the ongoing analysis and
15 peer-review process and then also, this led to a
16 number of scientific journal articles that were
17 prepared, and then also put through the scientific
18 journal of the peer-review process for publication
19 in the scientific journals. Some of those have now
20 been published, some have been accepted for
21 publication and should be published at any moment
22 now.

23 So, next I'll turn to the rule
24 proposal, itself. And the rule proposal has four
25 key components to it. First is studying the

1 protected level of sulfide. And I'll talk about
2 that in the next slide. But basically, the
3 hypothesis going into this study and confirmed in
4 the study is that sulfate is not directly toxic to
5 wild rice plants, but that sulfate contributes to
6 the sulfide in the sediment being elevated, and
7 that's what's having the impact on wild rice.

8 So, the second part of the rule
9 proposal then, is relating that sulfide enrichment
10 in the sediment to the sulfate concentration in the
11 body waters.

12 The third part of the proposal
13 identifies about 1300 Minnesota lakes and streams
14 as wild rice waters that are subject to the
15 standard.

16 And then the fourth peer group
17 proposal specifies the implementation in detail.
18 So, when the standard is adopted in its place, then
19 applying that standard through regulatory review
20 processes and taking the next step in the work that
21 the Pollution Control Agency and others are doing.

22 So, the first part of that rule
23 proposal is establishing the type of sulfide level.
24 Again, I mentioned that what we've learned is that
25 when oxygen is low in mucky environments where wild

1 rice grows, there's still bacteria that lives in
2 those environments. Because there isn't oxygen for
3 them to breathe, they turn to other chemicals. And
4 one of the chemicals they use is sulfate, which has
5 oxygen as a part of it. So, essentially, those
6 bacteria breathe that sulfate and in that process,
7 they create sulfide. So, they move the sulfate
8 into sulfide. And while sulfate generally is not
9 all that toxic of a chemical, the sulfate standards
10 for people that drink water, the sulfate is
11 250 milligrams per liter, compared to the 10
12 milligrams per liter sulfate standard for wild
13 rice.

14 What we know is that sulfide is
15 very toxic to people and to organisms, and
16 including to aquatic plants. And what we've seen
17 with the data analysis, the data that is collected
18 and analyzed, is that that sulfide in the
19 sediment-poor waters where is wild rice is growing,
20 it significantly affects the wild rice presence and
21 also, wild rice density. So, by analyzing the data
22 collected, particularly the data collected from
23 Minnesota lakes and streams through the field
24 study, we've been able to identify a protective
25 level of sulfide that's essentially below that

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1 protected level of sulfide that we're proposing is
2 120 micrograms per liter. Or the better way to say
3 it is, above that protective level of sulfide
4 there's a decrease in the probability of wild rice
5 being present in that certain water body, and
6 there's also a decrease in the lushness or the
7 density of the wild rice that is present when wild
8 rice is present.

9 So, to prevent this, the EPA is
10 proposing to identify the sulfide level of
11 120 micrograms per liter.

12 So, in the next study we learned
13 to -- or turned to, well, if sulfide in the
14 sediment is the problem, then what is controlling
15 that sulfide buildup in the sediment?

16 And what we've found through the
17 data analysis is that there are three variables
18 that are essentially equally controlling sulfide in
19 our environment.

20 Those are sulfates in the
21 surface water, which makes sense, because that's
22 where the molecules are coming from, and then
23 under -- and carbon in the form of total
24 extractable iron and total organic carbon in the
25 sediments where the wild rice is growing. And the

1 the Agency has been able to use the data that's
2 been collected to show and demonstrate a
3 mathematical relationship between iron and carbon
4 and sulfate and sulfide. And so, going forward
5 then, by measuring the amount of iron and the
6 amount of carbon in the sediment, knowing that we
7 need to stay at or below 120 micrograms per liter.
8 That way, we can calculate how much sulfate is in
9 a particular water body and be protective of the
10 wild rice to keep that sulfide number at or below
11 that 120 micrograms.

12 An alternate approach that we're
13 also proposing as part of the rulemaking is to
14 directly measure the sulfide levels and then use
15 that information to establish the protective
16 sulfate.

17 Additional information that we're
18 including or proposing to include in the rule is
19 procedures for sediment and for water sampling and
20 for incorporating those into the records, which
21 means that they become as effective as the ruling,
22 so that there's clarity on how to do the
23 monitoring, what information needs to be reflected
24 out of the samples, how the calculations would
25 occur.

1 iron and the carbon take a little bit of
2 explaining, but basically, what is happening is
3 that carbon is a food source for the bacteria, and
4 that translates sulfate into sulfide. So, the more
5 carbon that's available in the sediment, then the
6 more opportunity there is for those bacteria to
7 grow, and that's the process where sulfate can be
8 converted to sulfide.

9 On the flip side, iron, and
10 particularly reactive iron in the sediment is
11 available to bind with sulfide when it's produced,
12 and that pulls the sulfide out of the solution so
13 it's not available to cause problems with the wild
14 rice.

15 So, what we're proposing then,
16 is to account for the fact that depending on the
17 iron levels and carbon levels in the sediment
18 where wild rice is growing, that really tells us
19 how efficiently the sulfate is converted into
20 sulfide.

21 So, we're proposing then, to set
22 the sulfate number for each wild rice water to keep
23 that sulfide level below 120 micrograms per liter.
24 And the primary way that we're proposing to
25 establish that sulfate number is by the fact that

1 We're also proposing to specify
2 not just the magnitude of the standard, but two
3 other important components of the water quality
4 standard. The magnitude is how much sulfate can be
5 in the water and not build up sulfide to a level
6 that's not acceptable for wild rice. The second
7 piece is the duration, which is the time period
8 over which evaluates each concentration, to be sure
9 that they're being protected at that magnitude.
10 The Agency is proposing an annual average of the
11 duration.

12 Then the third component is the
13 frequency, which is how often a standard can be
14 exceeded and still be protective of that beneficial
15 use, or the wild rice production. And the Agency
16 is proposing a one-in-ten-year frequency for that
17 action to maintain protection for wild rice. And
18 the Statement of Need and Reasonableness and the
19 technical support documents go into a lot more
20 detail about the basis for those proposals.

21 So, the third key component of
22 the rule proposal then, is identifying those water
23 bodies where that wild rice beneficial use is
24 present. Right now it's a case-by-case
25 determination; those water bodies have not been

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1 specifically identified on a list or in a ruling
2 anywhere.

3 The Agency is proposing to
4 maintain the same beneficial use that was adopted
5 in the 1973 standard, which is that -- so that's
6 intended to remain the same; to protect the harvest
7 and use of the grain as a food source of wildlife
8 and humans, but to add clarity to the rule by
9 specifically identifying in the rule document where
10 the water and which water bodies have that
11 beneficial use.

12 So, the rule language, as
13 proposed, has a list of water bodies by lake name
14 and by county and by rate number. So, if folks
15 are interested in searching for a particular water
16 body or area, you can go on our website and take a
17 look at that.

18 Now, because there's not a
19 comprehensive inventory of wild rice waters in
20 Minnesota, we also had to think about what would we
21 do as more information becomes available about the
22 presence and location of wild rice in Minnesota.
23 So, to address that, what we're proposing is that
24 waters would be added as Class 4, and new
25 rulemaking in the future as additional information

1 comes to light. And that goes for the
2 reasonableness of that beneficial use could be
3 demonstrated as part of that rulemaking process and
4 for folks to ask questions and go through a process
5 like this when additional wild rice waters are
6 proposed to be included in the rule as having that
7 beneficial use.

8 One thing I should mention is
9 that under the Clean Water Act, basically, that if
10 the beneficial use isn't an existing use, then that
11 water quality standard is applicable and
12 continues and goes to a date in the Federal Clean
13 Water Act of November 28 of 1975. So, if that use
14 is either currently existing or has existed since
15 then, then that beneficial use is established and
16 that standard is applicable.

17 The Agency wants to be inclusive
18 about the types of information that we use to
19 support adding additional waters, recognizing that
20 there are hosts of information other than the kind
21 of typical western science agency that also can be
22 reliable sources of information. So, we speak to
23 that in both the rule and in the Statement of Need
24 and Reasonableness. And we will regularly ask for
25 new information so that we can consider adding

1 additional waters as the information becomes
2 available going forward.

3 So, the last part of the
4 rulemaking proposal has to do with implementing the
5 rule and applying it into the future. And before I
6 get into that, I just want to talk a little bit
7 about implementation. And it's important for this
8 rulemaking to understand that water quality
9 standards are not the same thing as permit
10 requirements or permit limitations. The water
11 quality standard is intended to establish a goal
12 for what it is that we need to achieve in the water
13 body to protect the beneficial use from a specific
14 chemical or specific condition of concern. So, in
15 this case, the goal is for protecting wild rice
16 from sulfate and sulfide.

17 Permit limits then, are actually,
18 when we have a regulated facility that discharges
19 to a water body, there are in some cases then, we
20 need to restrict the amount of fluid that could be
21 in that discharge and still be protective of the
22 water quality standard. And that's the permit
23 limits. And one important thing to think about is
24 that when we develop water quality standards under
25 the Clean Water Act, we actually are not able to

1 consider cost and the cost of treatment or the
2 feasibility of treatment in establishing the
3 standard, because we're setting out a goal based
4 on what the environmental science tells us is
5 necessary to protect the beneficial use. But,
6 of course, cost and technical feasibility and
7 available treatment are really important
8 considerations when we're talking about
9 wastewater treatment and whether it's municipal
10 or industrial. And it's in the permitting process
11 where those feasibility considerations come into
12 play. So, while we have a water quality standard
13 as a goal, if we're in a situation where the
14 facility is not able to treat to meet the needs of
15 that standard right now, either because there's not
16 technology available, or because the cost would be
17 prohibitively expensive, there are tools that can
18 be used under the Clean Water Act to recognize that
19 feasibility. Those tools do require an application
20 process, they require review. And those tools
21 are -- need to be periodically reviewed over time
22 to recognize the fact that the economics change as
23 technology changes and technology advances. And
24 so, something that we can't accomplish right now,
25 we might be able to accomplish five years from

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1 now or ten years from now as technology improves,
2 and we can then start to deal with the issues
3 that maybe we aren't able to fully address right
4 now.

5 We do field checks to get as far
6 as we can, even in the present moment, with source
7 reduction or trying to address the chemical as much
8 as is feasible or economically possible today and
9 then look to the future and review going forward to
10 achieve that going forward.

11 So, the rule proposal includes
12 some details about how to consider discharges when
13 they're being evaluated to determine if reductions
14 are needed to be protective of the standard; things
15 like the corporate flow to consider and details
16 about how to think about wild rice in certain
17 areas. There's also additional details on
18 variances included in this proposal because
19 treatment technology is currently limited and quite
20 expensive. And then supporting information in the
21 proposal also notes that it takes some time to
22 reflect the data that's in it to evaluate to first
23 establish specific numeric sulfate standards for
24 wild rice waters, and then to evaluate the
25 discharge to wild rice waters, to determine if

1 reductions are needed. And the Agency had to
2 prioritize that data collection based on actual
3 impact to wild rice waters. And then also, things
4 like pollution of our sampling -- samples; and then
5 also, the resources available on the environmental
6 impact.

7 So, the last thing I'd like to
8 point out is that the rule proposal has a lot of
9 supporting information, the Statement of Need and
10 Reasonableness and the technical support documents
11 that I mentioned. Those provide the basis for the
12 proposal. There's also a regulatory analysis which
13 are a required part of the Statement of Need and
14 Reasonableness. That includes a cost analysis.
15 So, even though we can't adjust the standard based
16 on cost, we do need to present information about
17 what the cost of implementing the standard would
18 be, so that that information is available for those
19 that are interested in this matter, and it's also
20 information that needs to be considered with the
21 implementation going forward.

22 And then we also have a separate
23 but related project underway to inform future
24 municipal permitting, with a grant that was
25 provided by the Legislative Citizen's Commission on

1 Minnesota Resources. Some of the preliminary
2 information for that report is included in the
3 Statement of Need and Reasonableness.

4 So, in summary, I'd like to
5 emphasize that we know that wild rice is important
6 economically, ecologically and spiritually in
7 Minnesota. We've heard the voices of the
8 tribal representatives, for example. I'm not in a
9 tribal group, so I know I can't fully appreciate
10 the spiritual importance of wild rice to
11 Minnesota's Native American population. But, we
12 have heard that and have learned a lot from the
13 folks that have participated in the process and
14 shared their comments on heritage. We've also
15 heard about the concerns about the sulfate standard
16 as it currently stands, the fact that those need to
17 be updated to better reflect the new science and to
18 enhance the clarity.

19 So, the rulemaking proposal
20 reflects the latest science, and it also tailors
21 the standards and environmental conditions that are
22 encountered in Minnesota. This was particularly
23 important in this case, given the importance of
24 wild rice, and also, the cost of sulfate treatment
25 with the challenges that we have right now with the

1 technology available to remove sulfate. That's
2 something that we've also heard throughout this
3 process.

4 And finally, I just want to state
5 that the Pollution Control Agency is very grateful
6 for all that have shared their expertise, their
7 critiques, their questions and their perspectives
8 throughout this effort, both as we've been going
9 through the data collection and analysis and
10 developing a proposal, and then attending this
11 public meeting, as well.

12 So, thank you very much.
13 JUDGE SCHLATTER: Thank you,
14 Ms. Lotthammer.

15 I have grabbed the sign-in sheet
16 here, and we have some people who want to speak.

17 (Off the record discussion.)

18 JUDGE SCHLATTER: We're going to
19 take a five-minute break for our court reporter.

20 (Whereupon a short recess was had.)

21 JUDGE SCHLATTER: We'll go on the

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1 record.

2 And, Mr. Chester, if you could
3 come up to the podium here, that would be great.

4 Start by giving us your name and
5 where you live and whether you're representing
6 anyone, and spelling your name for the record, as
7 well.

8
9 GREG CHESTER: My name is
10 Greg Chester, spelled G-r-e-g, C-h-e-s-t-e-r.
11 I'm from Cass Lake, Minnesota. I'm representing
12 myself.

13 And the two areas of interest are
14 the hunting, fishing and gathering rights which the
15 Ojibwe people retained in the treaties with us
16 going back to 1784, all the way to the present.
17 And we've guaranteed as a nation to protect those
18 hunting, gathering, fishing rights.

19 Second area is the watershed and
20 Lake Superior, which I have a tremendous fondness
21 for. It's a great series of rivers, and the lake
22 is just spectacular. Any threat to that is very,
23 very troubling.

24 With the Ojibwe people, we
25 guaranteed that they can hunt, fish and gather,

1 inches of rain at a clip, ten inches of rain, and
2 sometimes 14 inches of rain, and down in Houston it
3 was over 50 inches of rain, I don't believe they
4 will be able to retain that kind of rainfall. We
5 just don't know what's going to be happening in the
6 future. And if these toxic chemicals get out into
7 the general area, it's going to cause havoc.

8 And this is just one mine that
9 they're talking about. There's another, I'm told,
10 in the Bad River area and there are others up in
11 Canada that they're talking about. And how many of
12 these are we going to -- it's like how many guns
13 are we going to point at the head of Lake Superior;
14 and also, a whole chain of lakes, all five of the
15 great lakes.

16 Some of the finest water, fresh
17 water in the world; the envy of the world. And if
18 we're threatening that, we're not very mature
19 people.

20 Thank you.
21 JUDGE SCHLATTER: Thank you,
22 Mr. Chester. Before you leave, does anyone have
23 any questions for Mr. Chester, or comments?

24
25 (No response)

1 contiguous within their territory throughout the
2 state of Minnesota. And if we infringe upon that,
3 if we poison the water, poison the animals, the
4 plants, the wild rice, kill off the wild rice, we
5 break our side of the treaty and the treaty becomes
6 null and void and we lose whatever rights they have
7 granted to us. And it's a contract; it's a simple
8 contract. So, we must, you know, maintain our side
9 of it.

10 The other thing is the
11 Lake Superior. I've seen what has happened to
12 Lake Erie. It's a huge lake, but yet, a big part
13 of it is polluted. I've seen the beauty of the
14 water in Lake Superior, the way it's coming up on
15 the pristine beaches. And it's just like watching
16 the ocean, only it's fresh water and it's beautiful
17 water, delicious water. And I'd hate to have that
18 threatened.

19 I hear that they're going to be
20 building dams, proper dams to retain the toxic
21 wastes that are going to be emanating from the
22 mine. This is not iron ore mines; this is a very
23 different system. And with the -- even if they are
24 kept in that compound, with the amount of the
25 change in our climate where we're getting five

1
2 JUDGE SCHLATTER: Okay. Thank
3 you very much.

4 GREG CHESTER: You're welcome.
5 JUDGE SCHLATTER: Senator
6 Eichorn?

7
8 JUSTIN EICHORN: Thank you,
9 Your Honor, for the opportunity to testify today.
10 My name is Justin Eichorn, J-u-s-t-i-n,
11 E-i-c-h-o-r-n. And I'm here today as the state
12 senator for District 5, representing the people of
13 District 5. And I'm here today -- may I go?

14
15 (Off the record discussion.)

16
17 JUSTIN EICHORN: Thank you for
18 allowing me the time to testify today. My name is
19 Justin Eichorn, and I'm the Minnesota State Senator
20 for District 5. I represent Minnesotans in Cass,
21 Beltrami, Hubbard and Itasca counties.

22 I share the concerns of many of
23 my constituents about the proposed standards and
24 the impact it could have on the communities, as
25 well as the state as a whole. I love living in

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1 Northern Minnesota and I value our strong heritage
2 and mining industries, timber industries, our
3 beautiful forests, lakes, rivers and our wild rice,
4 and so do the people I represent.

5 We have a long and storied
6 history of taking care of our natural resources and
7 being good stewards of the environment for future
8 generations. I know we can have both clean water
9 and viable resources in our areas. Unfortunately,
10 this proposed standard puts that in jeopardy. It
11 has an error rate of up to 20%. And we don't
12 budget with a plus or minus 20% error rate, and
13 we shouldn't use it as a water quality standard,
14 either.

15 Additionally, there's no proof
16 that this standard will do anything to increase the
17 amount of wild rice in Minnesota. While we don't
18 have a good idea of what the standard will actually
19 do to protect wild rice, we do know that there will
20 be great associated costs and put the economic
21 future of communities in Northern Minnesota in
22 jeopardy.

23 In other communities that have
24 implemented the reverse osmosis system, which has
25 been stated is the only viable option to take some

1 of the sulfates and sulfides out of the water,
2 there's been an increase of an average of about
3 \$160 per month to the average individual's water
4 bill. And I'm here to say that my constituents,
5 and the hard-working people of Northern Minnesota
6 shouldn't have to pay, nor have the ability to pay
7 an extra \$2,000 a year, so that Minneapolis
8 environmentalists can feel good about themselves
9 when they buy a bag of wild rice from Whole Foods.

10 I'm here to speak for the
11 miners, the loggers, the forestry people, the
12 people in my district, people in the tourism
13 industries and the every-day people of Cass,
14 Beltrami, Hubbard and Itasca counties. And I'm
15 asking that the PCA reconsider its proposal and to
16 say that I will do everything in my power as a
17 legislator to make sure that the bad science never
18 goes into effect.

19 And that's the end of the
20 prepared statement that I had, and that's the
21 statement that I'll be submitting to your office
22 electronically. But since we have some additional
23 time, there are a few other points I would like to
24 make if that's okay.

25 JUDGE SCHLATTER: Sure.

1 MS. LOTTHAMMER: I'd appreciate
2 it if you would speak more slowly.

3 JUSTIN EICHORN: Sure. I can do
4 that.

5 In fact, I'm actually going to
6 start out with one question for the PCA that didn't
7 get answered in one of my committee hearings.

8 We talked a little bit about
9 variances, and you had mentioned them, as well.
10 How many variances has the MPCA given out in total?
11 And how many of those went to municipalities?
12 Because that's what the larger argument is, you
13 heard the former gentleman speak about mining.
14 Mining is obviously a very huge concern, but
15 there's a larger concern of this proposal, as well.

16 While she's looking for that, I
17 don't mind continuing. We can circle back to that
18 when she finds it. That's fine, if that's what you
19 prefer.

20 JUDGE SCHLATTER: Okay. Go
21 ahead.

22 JUSTIN EICHORN: The proposed
23 rule has created many concerns for people in my
24 district in Northern Minnesota, as a whole. Again,
25 it's uncertain whether wild rice will be any more

1 abundant if the proposed rule is implemented. In a
2 March meeting in Northeastern Minnesota, an MPCA
3 official was asked if the new standard and the
4 investments made to comply with the standard would
5 result in more abundant wild rice. The MPCA
6 official said that based on the research there may
7 be no benefit to wild rice, whatsoever.

8 Did you find the answer to my
9 question?

10 Go ahead.

11 MS. LOTTHAMMER: So, this is what
12 I found in answer to your question. What I have
13 is the numbers of variances that the Agency has
14 granted from 1971 to 2014. We haven't updated it
15 for the last couple of years. We had --

16 JUDGE SCHLATTER: Can I just
17 ask -- I think Senator Eichorn asked specifically
18 about variances issued to municipalities.

19 Is that what you're --

20 JUSTIN EICHORN: How many
21 variances were offered to municipalities, if you
22 have that data?

23 JUDGE SCHLATTER: So, if you can
24 break that down. I don't know whether you can.

25 MS. LOTTHAMMER: Yes. So, I

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1 just wrote that down. The Agency has issued 33
2 variances during that period; and 24 of them were
3 for municipal-based water treatment facilities.
4 Not all of those variances are currently in
5 existence, because what has happened in many of
6 those cases, subsequent advances in treatment
7 technology has resulted in the facilities being
8 able to meet those standards. So, while variances
9 had been in place, they weren't needed in some
10 cases going forward.

11 JUSTIN EICHORN: Okay. Thank
12 you.

13 There's only one real treatment
14 option that we spoke about earlier, which is a
15 reverse osmosis system, which is costly to
16 install and operate. And in addition to the
17 expense of the monthly bills, there's extensive
18 ongoing operational costs. Again, those dramatic
19 costs to the average homeowner can be as high as
20 \$160 a month. This proposal harms the industries
21 in Northern Minnesota, the timber industries,
22 mining industries, and so on. The proposed rule
23 could have a cost of over \$1 billion collectively,
24 to wastewater treatment infrastructure-type
25 facilities in greater Minnesota. The proposed

1 here.

2 One of the key concerns of the
3 research on sulfate, the initial hypothesis was
4 that sulfate was to cause wild rice plants to
5 decline. However, the original testing
6 demonstrated that sulfate, in and of itself, does
7 not impede wild rice growth below 2500 milligrams
8 per liter. So, then the MPCA then theorized that
9 sulfates did, in fact, affect wild rice growth.

10 In a lawsuit that was in response
11 to the Agency's developing and drafting the
12 equation to regulate sulfide discharges that hinges
13 on the protective sulfide value of 120 micrograms
14 per liter, the University of Minnesota sulfide
15 toxicity testing was greatly criticized by MPCA
16 organized peer-review panels. One of the concerns
17 is that the original study used a laboratory
18 condition that would never occur in nature. The
19 panel recommended seven improvements to make sure
20 the research be repeated.

21 The panel found that the
22 concentrations of sulfate and sulfide that impeded
23 the growth of wild rice through laboratory toxicity
24 tests do not exist in the majority of Minnesota
25 waters.

1 standard predicts the wrong outcome, as I mentioned
2 before, about 20% of the time; and again, we feel
3 that that's an unacceptable rate.

4 So, how did we get here?

5 As we mentioned before, the
6 MPCA, in 1973, the Agency publicized that the
7 sulfate standard was ten milligrams per liter
8 related to wild rice. That's based on field
9 observations that stated that wild rice is
10 generally absent when sulfate levels were greater
11 than ten milligrams per liter, and that included
12 sulfate level concentrations. For comparison, the
13 city of Virginia drinking water, which actually
14 comes from an abandoned mine pit, is 60 milligrams
15 per liter. The EPA set the drinking water standard
16 for taste and odor at 250 milligrams per liter.
17 Sandhills, which is a drinking water you can buy at
18 the store, 450 milligrams per liter.

19 The State did fund, you know, the
20 research to be done by the PCA. But we also asked
21 the director of the PCA to take the time to get it
22 right. We really want the PCA to also finish an
23 economic study before any rule is put in place, so
24 that the legislature can also take a look at that
25 and understand the full circle of what's going on

1 In 2013 the Minnesota Chamber of
2 Commerce conducted an independent research in four
3 environmental labs at DL that are regularly used in
4 the creation of new government-issued standards, to
5 correct deficiencies, identified MPCA's research
6 during the peer review. And this research focused
7 not only on sulfates, but also, on sulfides. And
8 the results demonstrated that sulfide does not
9 impact the wild rice concentration until 12,800
10 micrograms per liter. The most sensitive end point
11 was not affected by sulfide concentrations below
12 1,600 micrograms per liter.

13 Again, the error rate of almost
14 20% is very concerning. A reduction in that error
15 rate would mean that the equation would more
16 closely represent the field studies, in order to
17 reduce the error rate to approximately 4%.
18 In that DL research they were able to tweak the
19 formula so that it could get down closer to that 4%
20 error rate.

21 Based on that, that's one thing
22 that's very concerning for us in the legislature
23 and many others in my district. And we want to get
24 this right. If we're going to have a standard it
25 needs to be based on sound science; it needs to be

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1 able to be peer-reviewed and it needs to be right.
2 And when we're talking about a 20% error rate,
3 that's scary for the municipalities and industries
4 in this area.

5 So, going forward, again, I would
6 like to ask the PCA to back off and go back to the
7 drawing board. We need to make sure we get this
8 right.

9 And that's kind of where I'm
10 going to end it there. I'm going to be around for
11 a little bit if people have questions for me. But
12 I appreciate the time from you again today, and
13 thank you very much.

14 JUDGE SCHLATTER: Thank you. Are
15 there any questions or comments for him now?

16

17 (No response)

18

19 JUDGE SCHLATTER: Okay. Thank
20 you.

21 JUSTIN EICHORN: Thank you.

22 MR. NEBLETT: Your Honor, may we
23 make a responsive comment?

24 JUDGE SCHLATTER: Sure. Go
25 ahead.

1 important, given the fact that of the 1300 water
2 bodies that we were told we had wild rice waters,
3 only about 25% of them actually have dischargers
4 upstream of those wild rice waters; and not all of
5 those dischargers are likely to be impacting the
6 wild rice. That's one of the benefits of the
7 proposal of measuring those environmental
8 conditions to make sure that we're being as precise
9 as possible on the sulfate level that's necessary.

10 So, for the 75% of those wild
11 rice waters, establishing that standard is about
12 protecting those wild rice waters so that we can
13 make good decisions going forward about where to
14 put the potentially new discharges we can think
15 about waters that are less sensitive to sulfate and
16 sulfate discharge and make sure that we're using
17 that environmental information to be able to make
18 those decisions.

19 So, I recognize there's a concern
20 about the discharges that are currently present and
21 the implications of sulfate treatment. But I do
22 just want to point out that standards are about
23 protecting as much or more about restoring. And as
24 you noted, there are other factors that affect wild
25 rice, some of which aren't conducive to water

1 MS. LOTTHAMMER: Thank you,
2 Your Honor.

3 So, I just wanted to take the
4 opportunity, if possible, to respond to the
5 question that's come up in several different
6 studies about that, whether or not this proposed
7 standard would have any benefit and that it would
8 have resulted in an increase in wild rice. And
9 just, I want to clarify that.

10 The intent of the water quality
11 standard is to protect the beneficial use. It
12 isn't necessarily to restore the beneficial use,
13 but to establish what level is protective of the
14 beneficial use. So, when questions are asked of
15 the Agency staff about whether adoption of the
16 standard will result in more wild rice, it's
17 actually a difficult question for us to respond to,
18 in kind of that moment, without a lot of
19 explanation, because it really depends on whether
20 or not we have a situation where the wild rice has
21 declined because of sulfides or sulfate impact,
22 and then subsequently, the standard will help
23 reduce that sulfate level so that the wild rice can
24 be restored.

25 I think this is particularly

1 quality standards. But in cases where we have
2 sulfide and sulfate causing a problem, this
3 standard is intended to make sure that sulfate and
4 sulfide aren't a barrier to restoration. And also,
5 for those 75% of the waters, that it doesn't become
6 a problem in the future.

7 JUDGE SCHLATTER: Thank you.
8 Any questions or comments in
9 response?

10

11 (No response)

12

13 JUDGE SCHLATTER: Okay.
14 Miss Plouff?

15

16 ABBIE PLOUFF: Hello. My name
17 is Abbie Plouff, A-b-b-i-e, P-l-o-u-f-f. And I'm
18 with the Minnesota Environmental Partnership.
19 May I continue?

20 JUDGE SCHLATTER: Yes.

21 ABBIE PLOUFF: All right. Thank
22 you, Your Honor.

23 I'm a program coordinator with
24 the Minnesota Environmental Partnership. We are a
25 partnership of over 70 organizations working on a

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1 diverse range of environmental issues throughout
 2 the state of Minnesota.
 3 Now is not the time to change
 4 the standard and lower protections for wild rice.
 5 The existing standard for sulfate pollution at the
 6 10 milligrams per liter is needed to protect
 7 wild rice. If this grain is further degraded in
 8 Minnesota, it will have a disproportionately
 9 negative impact on tribal communities and low
 10 income families who depend on wild rice for
 11 food.
 12 I understand the focus of this
 13 hearing is on the impact of wild rice by elevated
 14 sulfate levels. However, we cannot in good
 15 conscience discuss allowable sulfate levels,
 16 without also discussing how elevated sulfate
 17 levels can accelerate the release of toxic mercury
 18 into the food chain and pose a critical human
 19 health threat.
 20 Recently concluded research by a
 21 University of Minnesota research team verified that
 22 excess sulfate in the water leads to increased
 23 amounts of mercury, meaning there will be a greater
 24 micellization of mercury in fish and throughout the
 25 food chain. There are bacteria in these waters

1 that feed on sulfate; and in the process of feeding
 2 on sulfate, the methylmate inorganic mercury
 3 converts it into methylmercury. So, it needs
 4 organic rich lakes and stream beds. If there's
 5 more sulfate available for bacteria, there will be
 6 a higher rate of conversion of inorganic mercury
 7 into methylmercury.
 8 Methylmercury is a potent
 9 neurotoxic harming the developing brain of fetuses,
 10 infants and children in Minnesota. According to
 11 the Department of Health survey, one in 10 infants
 12 born in the Northeastern Minnesota region are
 13 already born with unsafe mercury levels.
 14 This, again, disproportionately
 15 impacts low income families and in tribal
 16 communities, who fish and hunt to provide food for
 17 their families.
 18 The answer to this problem is to
 19 reduce the sulfate levels in our water in Northeast
 20 Minnesota. However, the proposed standard
 21 significantly restricts the number of wild rice
 22 bodies -- wild rice water bodies, excuse me -- that
 23 would be protected. In a letter from May 25th of
 24 this year, the Minnesota Native American Council
 25 stated concerns about the MPCA's proposal, stating

1 that rules -- that its rule changes err on the side
 2 of exclusiveness in designating wild rice waters,
 3 leaving hundreds of waters with existing wild rice
 4 use unprotected.
 5 The proposed sulfate standard
 6 will reduce protection for wild rice in Minnesota,
 7 negatively affect tribal communities and low income
 8 families who depend on the rice for food and
 9 disproportionately eat the fish contaminated with
 10 mercury in this region.
 11 This is an issue of environmental
 12 protection. We need to protect our wild rice
 13 water and the health of Minnesotans.
 14 Thank you.
 15 JUDGE SCHLATTER: Thank you.
 16 Are there questions or comments
 17 for Ms. Plouff?
 18
 19 (No response)
 20
 21 JUDGE SCHLATTER: Okay. Thank
 22 you.
 23 ABBIE PLOUFF: I will submit my
 24 testimony to the online portal, as well.
 25 JUDGE SCHLATTER: Okay. Thank

1 you very much. Thank you.
 2 Ms. Hedeem?
 3
 4 FLORENCE HEDEEN: I am
 5 Florence Hedeem, F-l-o-o-r-e-n-c-e, Hedeem,
 6 H-e-d-e-e-n, from Park Rapids, Minnesota. And I'm
 7 here just as a concerned person. I had a couple of
 8 questions that I wanted to ask first, if I may,
 9 please.
 10 How -- why was this initiated?
 11 Who was behind initiating the study to change the
 12 standard for sulfide or sulfate?
 13 MS. LOTHAMMER: Thank you.
 14 This was something that the
 15 Minnesota Pollution Control Agency recognized as a
 16 need to further understand and clarify the standard
 17 back in 2010. At the same time, there was a
 18 petition for rulemaking that was submitted by the
 19 Minnesota Chamber of Commerce, and then the
 20 legislature also in 2011, directed the Agency to
 21 clarify the application of the standard at a
 22 minimum, and then if the research that was funded
 23 by the legislature provided a basis for making
 24 revisions to the standard, then to make those
 25 revisions.

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1 But the Pollution Control Agency
2 definitely recommended that there are a lot of good
3 questions about the standard, and we were
4 interested in learning more and clarifying that as
5 we could.

6 FLORENCE HEDEEN: Thank you.
7 What indications are there that,
8 for instance, climate change, which affects very
9 much the water temperatures, how does that impact
10 this whole thing?

11 SHANNON LOTTHAMMER: So, that's
12 something that we may be better served to respond
13 to in writing so we can go a little bit more
14 indepth. But what I can point to, just kind
15 generally, is that temperature was actually one of
16 the other factors that we saw that was
17 significantly correlated with the presence and
18 absence of wild rice. But not with the sulfate and
19 sulfide interaction. And I'm looking over at our
20 research scientist, Ed Swain, who led our analysis,
21 to make sure that I'm stating that correctly. And
22 he said, "Yes."

23 So, there is a significant
24 relationship of temperature, but it's independent
25 of the sulfate and sulfide.

1 FLORENCE HEDEEN: Thank you.

2 I also was wondering if actual
3 field studies were done as you were determining
4 levels of sulfate and sulfide as it's coming up.

5 MS. LOTTHAMMER: Yes. So, one of
6 the lines of investigation was field research. The
7 Agency contracted with a research crew from the
8 University of Minnesota/St. Paul; and that was the
9 group that led the field research. So, they went
10 out and sampled -- I can't give you the exact
11 number, but lakes and streams across Minnesota.
12 And it was that field data that actually was the
13 primary data that we used to establish the proposed
14 sulfide level of 120 micrograms per liter. And
15 then there were other lines of investigation that
16 also corroborated that or that was investigated in
17 sort of conjunction with that, to see if that
18 field data made any sense in comparison to other
19 data.

20 FLORENCE HEDEEN: Thank you.

21 I guess I stand here thinking to
22 the seventh generation; thinking about the impact
23 of what we do now and the impact on the seventh
24 generation. This is a Native American concept that
25 I truly believe. We can't be living just for

1 JUDGE SCHLATTER: Can you say in
2 what way the temperature correlated? In other
3 words, does it increase, or decrease? Does it
4 hurt, or help the wild rice?

5 MS. LOTTHAMMER: If I can direct
6 that to Ed Swain.

7 JUDGE SCHLATTER: Sure.

8
9 EDWARD SWAIN: My name is
10 Edward Swain, E-d-w-a-r-d, S-w-a-i-n. I'm a
11 research scientist for the Pollution Control
12 Agency.

13 You asked about climate change --

14 FLORENCE HEDEEN: Of water -- the
15 increasing temperature of our waters.

16 EDWARD SWAIN: Okay. Our
17 research found that as temperatures of a water body
18 rose, the probability of observing wild rice went
19 down significantly. And the DNR wrote an article
20 about this, also, which agreed with our analysis.

21 FLORENCE HEDEEN: Independent of
22 the sulfide issue?

23 EDWARD SWAIN: Yes. That's what
24 Shannon said. Statistically, with temperature and
25 sulfide acting independently.

1 today.

2 I was very pleased to see that
3 the economic impact was not as much in
4 consideration as the impact on the issue -- on the
5 issue of wild rice, itself. That's good. But we
6 hear, even with our legislator who spoke to us,
7 that that is a very big concern. And for me, it
8 has to take a way back seat, because we don't know
9 how what we are doing now will affect the seventh
10 generation, the more we change the things that are
11 happening.

12 And I really appreciate your
13 time, and thank you.

14 JUDGE SCHLATTER: Thank you.

15 Are there any questions for
16 Ms. Hedeem, or comments?

17 (No response)

18 JUDGE SCHLATTER: Thank you very
19 much.

20 Mr. Beranek, you're next on my
21 list, but I'm going to skip over you because you
22 have already spoken. But I'll make sure that I get
23 back to you.
24
25

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1 Mr. Paulson?

2

3 WILLIAM PAULSON: I'm

4 William Paulson, W-i-l-l-i-a-m, P-a-u-l-s-o-n. I

5 represent the cultural Anishinabe and the

6 descendants of the '85 treaty.

7 JUDGE SCHLATTER: Cultural

8 Anishinabe -- and you spoke a little quickly. The

9 cultural Anishinabe, and who else?

10 WILLIAM PAULSON: I'm sorry?

11 JUDGE SCHLATTER: You spoke a

12 little bit quickly there. The cultural Anishinabe

13 and who else?

14 WILLIAM PAULSON: Cultural

15 Anishinabe and the descendants of the '85 treaty.

16 JUDGE SCHLATTER: Thank you.

17 WILLIAM PAULSON. Thank you. I'm

18 a little deaf, too, so I know what that's like.

19 I do have some concerns about the

20 attempt to raise the amount of sulfide that is

21 allowed into the rivers, and stuff. Basically,

22 because what I'm seeing is an overall loss of our

23 wild rice beds in the states of Minnesota,

24 Wisconsin and Michigan. I've been over to as far

25 as lower Michigan, trying to replant wild rice into

1 those chemically poisoned waters over there,

2 without any success.

3 Any time that we attempt to play

4 with the environment it causes distress.

5 Currently, looking at the rice that we gather from

6 our rivers, one of the things that I saw was that

7 we're looking at (unintelligible).

8 My concern is that when we're

9 talking about climate control and stuff like that,

10 what we're seeing here and in the area that I live

11 currently on White Earth, is that I have a small

12 creek or river going past my property; I own 24

13 acres on White Earth. And this year, due to the

14 drought conditions in Minnesota, it is the first

15 year that I can remember -- and I'm 57 years old --

16 56 -- 57 in the coming year, it's the first year

17 I've ever seen this river not flow.

18 I foresee this happening more and

19 more over the state of Minnesota, and the climate

20 change is an issue with the global warning. So,

21 yes; even though warmer waters may not affect the

22 sulfides and help it turning into sulfate, I do

23 believe that water flow will be restricted as the

24 warmer weather comes; and that will make conditions

25 more difficult for the wild rice.

1 Back in the 1970s, 1975 -- I'm

2 just going to take a year out of there -- we had

3 almost 12,500 wild rice permits in the state of

4 Minnesota. And more recently, four years ago, we

5 only had 1200.

6 My job in my community is that I

7 teach culture and I prepare young people to go out

8 and harvest wild rice. I teach nutrition basics of

9 it; I teach getting back to our main food system

10 with the Anishinabe, and that's how we control

11 diabetes and cancer, by getting away from GMO

12 products.

13 I firmly request that we don't

14 increase levels as we go forward, but we look at

15 new technology to find different ways to make this

16 profitable with the mines and stuff at the levels

17 that we have.

18 I have yet to see one of these

19 mines create a profit. I don't know that when

20 we're looking at money and stuff like that -- and

21 I understand the job situation over on the

22 Iron Range, and stuff like that; we do need new

23 jobs. But we should look at renewable energy.

24 I'm really concerned about our

25 people and how we're inviting our health issues. I

1 do teach herbal medicine, also. I've seen over and

2 over and over that as we restore our food systems

3 back to the natural way -- that uses wild rice,

4 venison, berries, and stuff like that -- that our

5 people are becoming healthy again. And we need to

6 consider all of that into all of this as we move

7 forward.

8 Honestly, that's all I have.

9 Thank you.

10 JUDGE SCHLATTER: Thank you.

11 Are there any questions or

12 comments for Mr. Paulson?

13

14 (No response)

15

16 JUDGE SCHLATTER: Thank you very

17 much.

18 Mr. Struss?

19

20 (Off the record discussion.)

21

22 ANDREW STRUSS: My name is

23 Andrew Struss, A-n-d-r-e-w, S-t-r-u-s-s. I'm a

24 concerned citizen. I was born here in Minnesota,

25 and I have recently obtained a residence here in

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1 Northern Minnesota. I have some concerns, as well
2 as the agencies here, about the expensive clean-up
3 that they continuously use as one of the factors to
4 determine whether or not to raise the rate. And I
5 think we should wait for technology.

6 JUDGE SCHLATTER: Could you
7 please get the mike a little closer to you?

8 ANDREW STRUSS: Yes.

9 JUDGE SCHLATTER: That's much
10 better. Thank you.

11 ANDREW STRUSS: I think we should
12 wait for technology to advance so that these
13 clean-up efforts can be more economically feasible
14 and that they can streamline the process. So, at
15 this time, I think we should defer and at least err
16 on the side of caution and we should wait for
17 technology, or until we have a more financially
18 reasonable method to take care of the
19 contamination.

20 Some other things I want to talk
21 about, the pristine waters that we have here in
22 Minnesota. It's not that we're comparing our water
23 to a bottling plant or to another city that may get
24 their municipal water from an old abandoned mine,
25 but we have pristine water, which means we have the

1 best water in the world. And it's our intention to
2 keep it that way, so it's not that we are trying to
3 compromise or make adjustments so they can make an
4 economic gain for a brief period of time, that in
5 the long term, the way things are, we could see
6 lakes in contamination, we could see 500 years of
7 damage. One major catastrophe can spoil this
8 entire region. And I think it's one of the -- one
9 instance could ruin this beautiful part of the
10 earth that people come from all over the world to
11 see. This is one of the places that inspire people
12 and they are touched by the nature, and to be able
13 to come and embrace that, and many find
14 spirituality here in this source of nature. And I
15 encourage everyone in their spiritual development.
16 I think that nothing should stand in the way of an
17 individual's spiritual development.

18 So, to have access to these
19 sacred places -- and I believe that as someone
20 mentioned the treaties before, I'll just touch on
21 that a jurisdictional challenge should also be
22 raised that perhaps the Department of State, or as
23 a foreign, sovereign nation, that perhaps there
24 should be an outside agency also involved.

25 Some of these other things like

1 this acid mining drainage, I'm concerned that there
2 will be, you know, passive and latent effects that
3 will also inhibit our wild rice and our ecosystem,
4 and that's something that really concerns me,
5 because the sulfate that may be absorbed
6 (unintelligible), and these contaminants are in
7 the food chain. It's in the food chain that we
8 inherently ingest and second-hand absorb them.

9 So, the mercury and the sulfide,
10 these are things that are a serious health concern.
11 And lowering the Ph level of the water by sulfuric
12 acid and these things leaching into the
13 groundwater, the lowering the Ph could then acidify
14 and create a toxic environment for our native
15 species. And a lot of us here, we moved here so
16 that we could live off the fat of the land, because
17 there's such an abundance here. You can't drive
18 along the highway without swerving to miss a deer.
19 And what we have here, and the fat of the land,
20 this is God's country. We've been given a Garden
21 of Eden; we have berries and forests and fields and
22 lakes. We have a ton of abundance here, and it
23 would be shortsighted to squander our future
24 generations of prosperity, because that's what we
25 truly have here is abundance and prosperity; we

1 could actualize this, realize this.

2 We could feed everyone here and
3 we could clothe everyone and we could make sure
4 that all of their suffering traditions, you know,
5 of cold, of hunger and thirst, we could help
6 eliminate the sufferings of our people. So, let's
7 think about the greater good of our people; not the
8 economic gain for the state.

9 I'm not trying to detract from
10 the need for economics and to provide these
11 services. But I do think that there are other ways
12 that we can finance these operations. It's going
13 to be a plus for our tourism and for our
14 livelihood. I mean, there is roughly 150,000
15 people that come here annually to come in and
16 unplug in nature, to escape Babylon, if you will.
17 And we want this sanctuary; this is our refuge;
18 this is where we seek peace. So, if we could be
19 free from the industrial hazards, we could be free
20 from all of the toxic contaminants, it's our
21 intention is to keep not only the water, but the
22 earth and all of the vibrant diversity that we have
23 here and keep it healthy. And to compromise our
24 water standard is only going to jeopardize this.

25 So, I think it's important that

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1 we hold to the standard and that we don't waver,
 2 and that we put the burden on the requesting
 3 agencies that they provide a more cost-effective
 4 way to deal with the contamination and treatment,
 5 because I'm afraid that the aftermath when they're
 6 done and they are done with their mining, that we
 7 Minnesotans will be left to clean up the mess; and
 8 it will be a great burden to the taxpayers and
 9 to our livelihood here.

10 So, with that being said,
 11 wilderness characteristics is often a term that,
 12 for instance, boundary waters have been thrown
 13 around, to be free from society and civilization,
 14 or at least free from the signs of human pollution
 15 would be acceptable. But I think there are other
 16 secondary latent things that when we talk about
 17 geochemistry, the water chemistry that we need to
 18 think about as these things are breaking
 19 down and there's oxidation reductions, there may
 20 be toxic types of environments created or there
 21 could be secondary reactions that while we're
 22 looking at the direct contamination, there may be
 23 further geochemical reactions that could cause
 24 more contamination down the river. And I'm curious
 25 to think how much of the water could be

1 contaminated in a single event, you know, like
 2 we've seen with water contamination in other states
 3 that have allowed this type of mining. I'm really
 4 concerned that -- how much acid mining drainage in
 5 a single event, how much would it take to
 6 completely destroy our watershed of life. And
 7 that's a scary thought.

8 I don't want to see any part of
 9 this green, lush garden we have, is filled with
 10 wildlife. And I can't re-emphasize to jeopardize
 11 all that wildlife is very short-sighted. And I
 12 encourage you all to maintain the standard.

13 And thank you.
 14 JUDGE SCHLATTER: Thank you.
 15 Any questions?
 16
 17 (No response)

18 JUDGE SCHLATTER: Thank you.
 19 Ms. Paulson? Ashley Paulson?
 20 WILLIAM PAULSON: I'd like my
 21 daughter to speak. She didn't check the box.
 22 JUDGE SCHLATTER: In fact, she
 23 didn't check the box. I just imagined it.
 24 Mr. Lempson?
 25

1
 2 GARRETT LEMPSON: Thank you,
 3 Your Honor. I'm Garrett Lempson. That's
 4 G-a-r-r-e-t-t, L-e-m-p-s-o-n.

5 I have a question for you folks
 6 here, and that is kind of a hypothetical, and that
 7 is going off of Mr. Struss (unintelligible). What
 8 is the potential danger for the watershed of having
 9 sulfide mining in very close proximity --

10 JUDGE SCHLATTER: Could you just
 11 slow down a little bit?
 12 I do want to ask, are you here on
 13 behalf of yourself?
 14 GARRETT LEMPSON: I'm a here on
 15 behalf of myself as a concerned citizen.
 16 JUDGE SCHLATTER: Okay. Thank
 17 you. Go ahead.

18 GARRETT LEMPSON: My question to
 19 you guys is the potential danger of having sulfide
 20 mining in proximity to Lake Superior and the
 21 potential damage it might cause to 10% of the
 22 world's fresh surface water.

23 MS. LOTTHAMMER: So, that's not a
 24 question that I am in a position to respond to,
 25 because we're really talking about the water

1 quality standard. We know that for permitting and
 2 things like that, those are considerations that
 3 need to be considered in the permitting process and
 4 environmental process. But it's not something that
 5 I am a part of with this proceeding and this
 6 standard.

7 MR. LEMPSON: Thank you.
 8 JUDGE SCHLATTER: Thank you.
 9 Any questions or comments?
 10
 11 (No response)

12 JUDGE SCHLATTER: Okay. Thank
 13 you.
 14 Representative Bliss?
 15
 16 MATT BLISS: Hello. My name is
 17 Matt Bliss, M-a-t-t, B-l-i-s-s. I'm the state
 18 representative for District 5A, which includes the
 19 cites of Bemidji, Walker and Hackensack.
 20 I'm here today to question the
 21 MPCA wild rice sulfate standard revisions. I
 22 remain committed to protecting our environment,
 23 including our wild rice beds. But we must do it
 24 based on sound science and in a reasonable manner.
 25

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1 It's been wildly reported that
2 this is a bumper crop this year of wild rice, and
3 that's great news. I have a lot of friends that
4 harvest wild rice.

5 But it leads to the question:
6 What problem are we trying to fix, and at what
7 cost?

8 The proposed new wild rice
9 sulfate standard would likely lead to hundreds of
10 municipalities and businesses being out of
11 compliance; and therefore, required to upgrade
12 treatment equipment, which is incredibly
13 costly. I've heard testimony that it's over a
14 billion dollars. These devastating costs will
15 bring hardships to small cities in Minnesota, cause
16 harmful utility bill increases for families and
17 over-burden the mom-and-pop businesses that are the
18 backbone of our local economy.

19 JUDGE SCHLATTER: Could you pull
20 the microphone a little closer or step closer to
21 the microphone? Thank you. Some of are having
22 trouble hearing you.

23 MATT BLISS: I'm sorry.

24 JUDGE SCHLATTER: Thank you.

25 MATT BLISS: Further, I'm puzzled

1 JUDGE SCHLATTER: Thank you.
2 Any questions or comments for
3 Representative Bliss?

4 (No response)

5 JUDGE SCHLATTER: Okay. Let me
6 take a second here to look at my list and see where
7 we are.

8 (Off the record discussion.)

9 JUDGE SCHLATTER: Okay.

10 Mr. Tobey?
11 Again, make sure you speak into
12 the microphone.

13 CLIFF TOBEY: Thank you,
14 Your Honor. Cliff Tobey. That's C-l-i-f-f,
15 T-o-b-e-y. I'm the president of the
16 US Steelworkers, Local 2660-Keetac, which is a
17 US Steel mine in Keewatin, Minnesota. And I'm
18 also representing, besides my members, I feel
19 I'm also representing the other miners on the
20 Iron Range.

1 at the timing of the rollout of this standard.
2 The MPCA spent \$180,000 from the Legislative
3 Citizens Commission on Minnesota Resources to
4 analyze wastewater treatment alternatives. This
5 was to form the development and implementation of a
6 wild rice, sulfate and other water quality
7 standards. That analysis will be completed in
8 May of 2018. To accommodate the receipt of that
9 information, the legislature moved the deadline for
10 the completion of the new wild rice standard to
11 January of 2019, so the MPCA could utilize those
12 results of that study to further inform the
13 rulemaking decision. Instead, they went ahead
14 without those results. Yes, the MPCA may have some
15 reasons why they think this is okay. But to us
16 people up here, it simply makes no sense to rush
17 ahead without that information.

18 In closing, Minnesotans support
19 common-sense solutions to problems. But in the
20 case of this new sulfate standard, it appears we
21 have a solution, potentially, a very expensive
22 solution looking for a problem; the problem that
23 doesn't seem to exist. Let's do the common-sense
24 thing and send this proposal back to the MPCA.

25 Thank you.

1 Thank you for the opportunity to
2 testify today. I'm here today to testify for the
3 proposed elimination of the sulfate standard
4 currently on the books, and against the sulfide
5 standard that is being proposed.

6 I've been involved with this
7 issue in one form or another since the
8 environmental community dug up this old, what I
9 feel is a non-science based, not-enforced standard
10 in their quest to stop the proposed PolyMet copper
11 mine being proposed on the eastern end of the
12 Iron Range.

13 All of the -- most of the people
14 testifying before you -- and I understand the
15 importance of wild rice, and I do want to protect
16 it. But in watching this issue evolve, I find it
17 hard to believe that wild rice is really what's
18 driving this issue.

19 I was involved when this issue
20 was at its infancy; and being driven through the
21 DFL party as a way to stop PolyMet. And I was
22 appointed to the committee to deal with the DFL
23 with the task of finding common ground. And
24 throughout this process I was told by the people
25 pushing this issue that they knew that the iron

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1 mines that they refer to us, were fine; they were
2 not an issue; we were not polluting; we were fine.
3 But then this new technique for copper sulfide
4 mining was different, and when you hear it, it will
5 harm the environment; so, therefore, they needed to
6 stop it.

7 We worked to a common ground in
8 this case, but in the end there was just no
9 resolution. And later the issue became the DFL
10 platform anti-copper mining and was voted down in
11 the process.

12 There's two copper mines
13 that almost made it through the process, and as
14 ironic as it might sound, and because they claimed
15 they just discharged a minute amount of water,
16 compared to what we do at the iron ore mine,
17 they were able to design their plant, at great
18 expense, to discharge -- to meet the sulfide
19 standard, which I find ironic. So, I assumed these
20 groups would move on to their next strategy to stop
21 PolyMet. Imagine my surprise, apparently, the
22 groups pushing this agenda weren't satisfied with
23 the responsible mining we'd been doing up here for
24 130 years; and as I expected, their real intent was
25 just shutting down all of the mining.

1 I'm a third generation miner on
2 the Iron Range, and although I don't harvest wild
3 rice, I do see abundant wild rice stands as I
4 travel on the Iron Range. I see it for sale. And,
5 yes; I even see large stands of it that don't even
6 get processed or harvested and just go to seed.

7 The MPCA has finally recognized
8 after all these years that sulfate standard on the
9 books was without merit based on their studies, but
10 I think it's evident, based on the research by the
11 different labs that have weighed in on the issue,
12 the fact that no other state even has a wild rice
13 standard; and frankly, by the MPCA's own report,
14 that this science is too flawed.

15 They give you all types of
16 scientific equations, statistics and theory, but at
17 the end of the day, not one person can say that
18 this standard will improve -- protect and improve
19 wild rice. They go as far as to put standards not
20 just on the water that we use in the process,
21 which, by the way, we just use the water; we don't
22 add a bunch of chemicals to it or anything like
23 that. We simply use the water, we run it through a
24 system where it goes through hundreds and hundreds
25 of yards of sand, and it comes out basically

1 filtered. But, they're not only trying to be
2 regulating that water, but in many instances, the
3 water that we're talking about here is water that
4 may just have ran off of rainwater or whatever into
5 pits, and we have to move that water in order to
6 mine those areas. So, I want you to think about
7 that for a second. We're taking naturally
8 occurring water, we're going to be forced to spend
9 hundreds of millions of dollars to filter that
10 water into water that's way more pure than even
11 bottled water, and then we're going to be releasing
12 it back into a natural body. That's how really
13 ridiculous this whole thing has gotten to be.

14 If this isn't a solution looking
15 for a problem, I'm not sure what is. But I'm sure
16 that this is what people are referring when they
17 talk about burdensome and unnecessary regulation.

18 In closing, I ask you to look
19 past emotions involved in this issue and just
20 decide this case based upon the facts.

21 I always believed over the years,
22 and I still do, that agencies like the MPCA attempt
23 to do what's right. But after seeing all the facts
24 on this particular issue, I think it's clear that
25 if we're going to be forced to spend huge amounts

1 of money to bring it up to a standard, then at
2 least the basic science behind that standard should
3 be done right and that the majority of the
4 scientific community should agree on it.

5 So, Your Honor, in closing, the
6 need for this case was based upon a belief; a
7 belief that the sulfate standard needed to be
8 looked at, because it had come from 1973 science;
9 and many people didn't believe that it was correct.

10 I believed once the MPCA
11 determined that this sulfate standard did not do as
12 designed because it didn't protect the rice, the
13 Agency should have moved to eliminate the rule and
14 this issue should have been over. The fact that
15 the MPCA went ahead looking for a way to protect
16 wild rice, when, to my knowledge, there was never a
17 need based upon a lack of wild rice or any belief
18 that these waters -- I think Shannon said 75% of
19 this water doesn't even have a discharge going into
20 it -- I don't believe there was ever a need.

21 And again, I believe that that
22 just shows that this is a solution to a
23 non-existing problem, and that the need and
24 reasonableness just wasn't there.

25 Also, I just wanted to point out

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1 I think it really is telling when we've had a
2 number of speakers here today that actually spoke
3 about the PolyMet mining and they talked about
4 sulfide mining, which is not what we do in the
5 mines in the area; it's not what we've done for
6 130 years. I heard one gentleman here talk about
7 acid mining. I don't even know if PolyMet is acid
8 mining. I think that's something that we used to
9 do a long time ago. I think that just goes to show
10 the misinformation that's out there, the scare
11 tactics that are being used to try and scare people
12 into believing that these mines that have been up
13 there for 130 years, these water discharges off of
14 these different municipalities and other businesses
15 are somehow changed or somehow, something has
16 evolved and somehow, now we're destroying the wild
17 rice. That's not the case. It was never the case.
18 This whole thing was political right from the
19 beginning.

20 And I thank you guys very much
21 for letting me testify here today.

22 JUDGE SCHLATTER: Thank you.

23 Are there any -- Mr. Paulson, did
24 you have a question?

25 WILLIAM PAULSON: Do you want me

1 to go up there, or can I ask from here?

2 JUDGE SCHLATTER: We do have
3 that microphone set up.

4 Is your question for Mr. Tobey?
5 Or for the panel?

6 WILLIAM PAULSON: Right here?
7 William Paulson.

8 You testified that you see wild
9 rice in abundance in the mining area. One of the
10 things you stated was that you're being required to
11 test the water in the mining area, in the waters as
12 you mine. That's not -- is it true that that is not
13 a natural run-off? That that is water that is --
14 has been developed by mining?

15 CLIFF TOBEY: I didn't say
16 testing; we would have to be treating the water.
17 So, we would be taking this water that is sitting
18 in a pit, whether it's a manmade pit or whether
19 it's just a pit that happened to be there that had
20 never been mined before. But, because the water
21 runs through the rock and all that, that's
22 oftentimes where the sulfate comes from, we would
23 be required to run that through reverse osmosis
24 down to a point where it's way more pure than this
25 drinking water. And then without even using that

1 water, we would be pumping it out into the next
2 stream or the next -- wherever this water is
3 permitted to go.

4 WILLIAM PAULSON: My next
5 question is, do you disagree with the 1973 study
6 that said sulfides do limit the growth of wild rice
7 when wild rice is exposed to sulfide?

8 CLIFF TOBEY: I absolutely
9 totally disagree with that study. That study
10 was -- it was actually done in the late Thirties
11 and early Forties. And the guy actually drove
12 around the state of Minnesota looking at wild rice
13 stands and testing for sulfate in the water. And I
14 think the MPCA's research showed that sulfate does
15 not affect the wild rice. But the guy that did the
16 research in 1930 was testing for sulfate; not for
17 sulfide. And there's many things that play into
18 whether or not it has any effect or whether it
19 comes from sulfide, like --

20 WILLIAM PAULSON: We maybe need
21 more research on that.

22 CLIFF TOBEY: Absolutely.

23 WILLIAM PAULSON: My last
24 question is, as they stated before, only 25% of the
25 1300 wild rice areas out there would be affected by

1 discharges at this time. But do you feel that we
2 should walk forward on this as if all 1300 lakes or
3 wild rice areas were being affected? Because when
4 we set a standard, we're setting a standard all the
5 way across Minnesota.

6 CLIFF TOBEY: I don't know how we
7 set standard at 25 times higher on this amount of
8 lakes if we only enforce it on 25% of the lakes.
9 If this standard really is a standard that's going
10 to save wild rice, then the state of Minnesota
11 ought to be opening its checkbook and they ought to
12 be treating every ounce of water in all those 1300
13 lakes, as far as I'm concerned. But I don't think
14 you're going to see that. I don't think this issue
15 was ever about the wild rice.

16 WILLIAM PAULSON: And I'm only
17 into it because of the cultural aspects and the
18 treatment aspects of the wild rice, because when
19 it's endangering our way of life, then we have to
20 look at what that means to the families in the
21 Anishinabe area.

22 CLIFF TOBEY: I'll add just one
23 last thing, my friend.

24 We actually have been talking to
25 a lot of the people involved up on the Iron Range.

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1 And what we've been talking about is the
2 possibility of putting together a committee to go
3 around and try to improve the wild rice stands, to
4 go around and bring back wild rice stands that may
5 have died that there may be places where there is
6 no --

7 WILLIAM PAULSON: We do have
8 that.

9 CLIFF TOBEY: And that's
10 something that we can work together on, my friend.
11 But that goes, you know, that's a different thing
12 for another time.

13 WILLIAM PAULSON: I appreciate
14 that.

15 JUDGE SCHLATTER: Thank you both
16 very much.

17 Did you have anything you wanted
18 to say on that?

19 MS. LOTHAMMER: Yes, Your Honor.
20 If I could just clarify one
21 element of the Pollution Control Agency's finding.
22 It's not a question. I just wanted to clarify the
23 Agency's proposal about sulfate and sulfide.

24 What we've found, and that's
25 reflected in the proposal, is that sulfate doesn't

1 the record. And we do have another speaker signed
2 up, Mary Owen. Mary?

3 If you could speak as slowly as
4 you can, and speak into the microphone, so everyone
5 can hear you.

6
7 MARY OWEN: So, my name is
8 Mary Owen. I'm a Native American physician and I
9 work for the Cass Lake Indian Health Services and
10 the University of Minnesota. I'm not speaking for
11 either of those agencies.

12 JUDGE SCHLATTER: Okay. Could
13 you just slow down? Thank you.

14 MARY OWEN: I'm not from here, so
15 I speak faster.

16 In any case, I am a physician and
17 I work for the Cass Lake Band of -- the Cass Lake
18 Hospital; and again, I'm not speaking for either
19 the University or the hospital. I'm speaking as a
20 Native person who has taken care of Native people
21 for 15 years now.

22 I'm not sure if you're aware of
23 this or not, but Native Americans in this state do
24 suffer a life expectancy ten years less than that
25 of the white people or the average population.

1 directly impact wild rice. The sulfate is one of
2 the three variables that control the concentration
3 of sulfide in the sediment, and it's that sulfide
4 that's impacting wild rice. So, sulfate indirectly
5 impacts wild rice because of the contribution of
6 the sulfide does directly. And that's essentially
7 a hypothesis that we started with back when the
8 study was first being formulated in 2010 and 2011.
9 Actually, in 2011, we developed a study protocol
10 that included input from research groups; and also,
11 a wild rice advisory committee. And one of the
12 main hypotheses of that protocol which led to the
13 research that the Agency sponsored was that sulfate
14 wasn't directly impacting wild rice, but it was
15 indirectly contributing to the sulfide, which was
16 causing an impact on wild rice.

17 JUDGE SCHLATTER: Thank you.

18 We're going to take a ten-minute
19 break now and give our court reporter a chance to
20 rest her hands and we can all stretch our legs.
21 So, we will come back at 6:25.

22 (Whereupon a short recess was had.)

23 JUDGE SCHLATTER: We are back on

1 In taking care of people, and
2 the literature that I have reviewed it's clear that
3 Native people do better when they're allowed to
4 follow their culture. It helps improve many
5 different facets of their health.

6 Part of their culture is growing
7 wild rice. It's incredibly important to people
8 here. They have just been able to, like many
9 Native Americans, regain part of their culture.
10 More and more people are partaking. Any threat to
11 this piece of culture is a threat, I believe, to
12 the health of Native people.

13 Again, we have a ten-year life
14 expectancy less in the state. Suicide rates are
15 through the roof in our community. Depression is
16 up. I'd say, 75% of the patients I see have
17 anxiety or depression. Both of which are
18 significantly improved by participation in their
19 Native culture. So, I believe, if anything, these
20 laws are or these rules are not nearly stringent
21 enough in the fact that companies come and say that
22 they can't afford to do their business because of
23 these laws, makes me crazy. Pardon me. I'm not
24 speaking for any official agency, so I can be
25 crazy. This is not okay. If you can't afford to

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1 do your business, then maybe you need to think
2 about doing another business. Please don't take my
3 car, or whatever people do. But that's what I have
4 to say. For the lives of the people that I care
5 about, the reason that I work, please consider
6 maintaining these rules.

7 Thank you.

8 JUDGE SCHLATTER: Thank you.

9 Does anybody have any questions
10 or comments for Dr. Owen?

11
12 (No response)

13
14 JUDGE SCHLATTER: Okay. Thank
15 you.

16 So, is there anybody in the room
17 who has not signed up to speak, but who has decided
18 that they want to speak?

19 Okay. Mr. Beranek, I think
20 you're on.

21
22 (Off the record discussion.)

23
24 ROB BERANEK: I could speak for
25 several hours if you let me.

1 So, with those statements,
2 Your Honor, I want to build on some of my comments
3 from Monday regarding 7050.0224, Subpart 5, Item 5,
4 or in the rule of the toxic sulfide threshold as
5 being proposed at 120 micrograms per liter.

6 Last night there was some
7 testimony by a woman by the name of Meaghan Blair.
8 She was a hydrogeologist. And off of that
9 testimony there was some dialogue which me and
10 another gentleman, Joe Metsa, and as well as
11 Ed Swain. And in the midst of that dialogue, I
12 think I had two take-aways. One was the Ng paper
13 that was published this year.

14 While focused on the second
15 creek and looking at the groundwater level in
16 that particular creek, what I took away from the
17 dialogue last night during testimony was that
18 those streams or any hydraulic systems were
19 actually the predominant system in Minnesota.
20 As I was reflecting on it, it reminded me of
21 several meetings -- I don't know myself,
22 personally, but as a member of the advisory
23 committee, we had some comments about the
24 experiments done that is in the ecocosm; and also,
25 the purpose of the study.

1 Thank you, Your Honor. I'm
2 Rob Beranek. The last name is spelled
3 B-e-r-a-n-e-k. I represent Cleveland-Cliffs,
4 Incorporated. Your Honor, I do have an exhibit to
5 enter.

6 JUDGE SCHLATTER: Okay. I will
7 mark it. It's Exhibit 1016, if you're wondering.

8 ROB BERANEK: Thank you. By way
9 of background, I have a bachelor's in physics and a
10 master's of environmental science. I've spent a
11 long time in the nonprofit world. I'm recently
12 director of some environmental educational
13 facilities where we work to connect young children
14 to nature, which, one of them was focused on going
15 to Detroit, and lower Michigan. I also spent part
16 of my career leading backtrack troops in
17 Yellowstone, and I have about a 1/32nd link back to
18 the Ojibwe tribe. So, I wanted to make sure I come
19 here and that you understand the balance with
20 respect to what I try to bring.

21 With that, I hope all the
22 professionals at the PCA know that we're engaged in
23 a healthy dialogue on where the reasonable solution
24 rests on establishing a toxic sulfate/sulfide
25 threshold.

1 And at this point, I'll refer
2 back to the summary table in the technical support
3 document on Page 34. That's Figure 1-2. That's
4 the figure that shows the weight of evidence that
5 was --

6 JUDGE SCHLATTER: I'm going to go
7 grab it. Hang on a minute.

8 ROB BERANEK: -- the comment of
9 the experimental design for the mesocosm study with
10 regards to the tubs being placed in the ground, and
11 it was -- some of the comments about the wild rice
12 sulfate advisory committee wanted to observe that
13 because the wild rice was placed in a tub it
14 isolated the rice from the environment and did not
15 have a facet of what most wild rice experiences in
16 the environment. Also, you had commented that some
17 of the earlier experimental designs also didn't
18 appropriately account for good drainage conditions
19 from the annual flushing of nutrients down through
20 the ecosystem.

21 I think each and every one of the
22 studies done, both mesocosms and hydroponics in the
23 labs, the hydroponic study, the field study all
24 gave us a very important perspective into the
25 toxicity resulting in sulfide on wild rice. But

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1 the dialogue last night made me think that perhaps
2 too much weight was placed on the mesocosm study in
3 this figure, 1-2, and that in our written comments
4 as we detail out through the alternative chain
5 point analysis that I mentioned on Monday for the
6 establishment of the water at 120 micrograms per
7 liter threshold on the field study, and Mike Bock
8 also testified regarding the chain point analysis
9 of 120, the Ng study of 2017, I think, lends some
10 credence to our criticism of the experimental
11 design mesocosm; and therefore, I think that
12 experimental design should be in the results of the
13 mesocosm study, or looked at as an
14 ultra-conservative value, an isolated system
15 without mitigating the effects of the outgoing
16 nutrients.

17 Further, moving on to the
18 PCA hydroponics.
19 JUDGE SCHLATTER: What was that
20 last thing?

21 ROB BERANEK: The PCA
22 hydroponics, which is also on Figure 1-2.
23 Although I have a masters in
24 environmental science, as with all fields, I'm sure
25 if you were a lawyer and someone at a party asked

1 Exhibit 1016 to the Agency in May of 2017, we chose
2 the most conservative EC10 that we felt represented
3 the data. And that's, I believe, the 963
4 micrograms per liter. So, we took the lowest of
5 that value to be basically, ultra-conservative. In
6 that exhibit, Ramboll also did EC10 tests on that
7 Pastor study, and then we also looked at some
8 additional analysis that you might know, Ed. As
9 you're looking back on this I'm sure you know
10 better than I, but my note said there was a
11 meta-analysis performed post-study for the PCA by
12 Pastor. And the value that is in the exhibit of
13 300 micrograms per liter is an alternative toxic
14 sulfide threshold to evaluate. It was an
15 alternative to the EC10 value that Pastor had
16 developed.

17 Lastly, I'll bore you with a few
18 more sulfide values that have come out of the
19 fourth study. In the design of that study we took
20 the recommendations from the peer-review panel that
21 the PCA convened. That peer-review panel, I
22 remember there being, I think, seven very pivotal
23 recommendations they had on how the last studies
24 could be improved. One of them, in particular, was
25 that we should directly measure sulfide in the

1 you for State advice you'd probably inform them
2 that State law is not your specialty, I'll be up
3 front with you, I'm not an ecologist nor am I a
4 statistician, but that's why we retain experts to
5 help us. I've come to appreciate the EC10s, which
6 are the concentration figures discussed in
7 1-2, are not a solid point that is, you know,
8 popped into a computer and it pops out and you can
9 grab that and put it onto a graph. As detailed in
10 the exhibit that I submitted, that's now
11 Exhibit 1016, pertains to some experts that looked
12 at the tests that were used for several of the
13 studies, but most notably, the Pastor's hydroponics
14 study. And I've come to appreciate that EC10s are
15 actually a curve-fitting exercise. And through the
16 curve-fitting the statistician can use their
17 professional judgment on which curve to pick. And
18 it's from that curve, the EC10 value is
19 established.

20 On the environmental lab study,
21 on that study we saw values ranging from 946
22 micrograms per liter sulfide all the way up to
23 4,050 micrograms per liter of sulfide. That's a
24 four times range value.

25 When we submitted

1 regions of the wild rice plant in the hydroponic
2 study. What that would do is redistinguish the
3 fourth study, the Pastor study. And you'll see
4 that on that support document, that 1-2, the
5 technical support document, that the sulfide
6 thresholds for the Pastor study walked through
7 either the initial sulfide concentration, the
8 nominal sulfide concentration, but also, the
9 average. One of the problems with that
10 experimental design -- or the two main problems
11 with the experimental design, one is that the
12 entire plant was exposed to the sulfide, the green
13 parts of the plant, but also, due to the design,
14 the sulfide level in the hydroponics could not be
15 maintained throughout the duration of the -- I
16 believe the head of sulfide periodically.

17 The advantage of the fourth study
18 is that we were able to keep the sulfide value
19 constant. So, in my professional opinion, that
20 means that the results of the fourth study had a
21 more reliable determination of what the toxic
22 sulfide threshold was, because we were able to hold
23 that sulfide value constant.

24 The other thing that we did,
25 based on recommendations of the purity panel, was

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1 that we buried the iron in the solution that plants
2 were exposed to. And we did an ultra low iron
3 value, an average iron value that we felt would
4 represent the majority of the systems in Minnesota,
5 and the higher iron values you see in lakes that
6 had, you know, high concentrations of iron.

7 I'll give you some of what we
8 saw as results. These are IC25s, so they're a
9 little different than EC10s, but take it for
10 whatever they're worth. At the low iron value we
11 saw on IC25 of 3,900 micrograms per liter of
12 sulfide, at the IC25, or the average iron, we saw a
13 toxic sulfide threshold of 7,800, and the IC25 iron
14 we saw a toxic sulfide threshold of 9,800
15 micrograms.

16 As part of a healthy debate,
17 I've had several conversations with Ed Swain, and
18 I'll reiterate here because I think you deserve to
19 hear it. My read of the technical support document
20 on why the four results at 963 were discounted or
21 given a low weight was the -- or is the hypothesis
22 that the green part of the plant was exposed to
23 air. That was actually based on one of the
24 peer-review panel recommendations. And so,
25 therefore, we've incorporated it into our design

1 and the green portions of the plant were not
2 exposed to the sulfide. We could not find a way to
3 actually create a high sulfide layer in the lab
4 that had water above it. We tried with a nitrogen
5 blanket. We also looked at some ways to have oil
6 to separate them. Regardless, it didn't work. It
7 was exceptionally hard to do. So, the hypothesis
8 that the green parts of the plant have extra oxygen
9 and the oxygen comes down to the root zone and may
10 be the toxic effects of the sulfide. It's an
11 interesting hypothesis. I'm not persuaded because
12 we didn't have the measurement of the sulfide. And
13 we in the study have that sulfide value throughout
14 the entire duration of the study of the root zone.
15 I think that they gave a fact guide anywhere beyond
16 the nanometer range of the root zone actually was
17 impacting the overall concentration of the root
18 zone in that sulfide monitoring that we had put in
19 place at the root zone.

20 Two last comments. We did
21 also -- my notes on this are bad. I believe it's
22 the PCA mesocosom study. Rather than running a
23 EC10, we had run what's called a "NOEC," no
24 observed effect concentration.

25 JUDGE SCHLATTER: I missed that.

1 ROB BERANEK: NOEC, no observed
2 effect concentration.

3 And we came up with a value of
4 3,060 micrograms per liter sulfide. And as a
5 couple of other commenters have mentioned before,
6 the lushness of the rice beds (unintelligible) had
7 a maximum observed sulfide concentration of 1,370
8 micrograms per liter.

9 So, in summary, based on
10 Exhibit 1016 and your patience of listening to me
11 rattle off toxic sulfide thresholds, that we find
12 that the 7050.0224, Subpart 5, Item 5, what the
13 PCA is proposing of a toxic sulfide threshold of
14 120 micrograms per liter is found to be not
15 reasonable, and that they're given an opportunity
16 to reconsider that value.

17 JUDGE SCHLATTER: Thank you.
18 Are there questions or comments
19 for Mr. Beranek?

20 MS. LOTHAMMER: No comments,
21 Your Honor. I wish to say that we definitely will
22 respond to the comments provided and the written
23 comment. But it's going to take, you know, more
24 analysis. But we want to respond in total.

25 So, thank you very much for the

1 comments and we appreciate it.

2 JUDGE SCHLATTER: Thank you.
3 We have a person who didn't sign
4 in.

5 Ms. Neville?

6
7 MELINDA NEVILLE: Thank you,
8 Your Honor.

9 My name is Melinda,
10 M-e-l-i-n-d-a, last name, Neville, N-e-v-i-l-l-e.

11 I come tonight representing
12 myself, as a Minnesotan, as a geochemist and as an
13 educator.

14 After reading the newly published
15 studies by Myrbo, Pollman and others, I want to
16 commend the Agency and scientists who have worked
17 towards this proposed standard.

18 It is my educated and
19 professional opinion that using a wild rice water
20 body specific equation is Number 1, and an
21 improvement upon the current standard for
22 protecting wild rice.

23 Number 2, result in designating
24 waters that may not suitable for any discharge.

25 And Number 3, it's not overly

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1 protective of wild rice waters that do not have
 2 geochemical conditions for wild rice that have been
 3 damaged by sulfide. In fact, MPCA has more or less
 4 threaded the needle with this proposed change.
 5 I've heard politicians who
 6 misrepresent the statistics. I have heard industry
 7 representatives who have sued the MPCA over their
 8 ruling, offer a Minnesota Chamber of Commerce
 9 funded study that begs the question of peer review,
 10 and of impartiality. So, while I did not intend to
 11 speak this evening, and instead, I was planning on
 12 listening, I felt that it was important to
 13 acknowledge the work that has been done, the
 14 thoroughness of the studies that have just recently
 15 been published and the long-term, six-year record
 16 that I have just started to digest, myself.
 17 I did have one question for the
 18 panel. I haven't yet found a good answer as to
 19 whether the traditional ecological knowledge of our
 20 local tribal communities would be valid in
 21 identifying the previous extent of wild rice waters
 22 prior to 1975.
 23 If you know that wild rice was
 24 there 100 years ago, as opposed to 30 or 40, would
 25 that be sufficient to protect further waters that

1 may not be in the original 1300?
 2 MS. LOTTHAMMER: Thank you,
 3 Your Honor. And thank you for the question.
 4 That fact alone would be
 5 sufficient, and that's because of our understanding
 6 of the provisions of the Federal Clean Water Act.
 7 What this speaks to is something that's known as
 8 the existing use provisions of the Clean Water Act,
 9 which were established in 1975, and that's where
 10 that date comes from. Basically, the Clean Water
 11 Act says that any use that is an existing use must
 12 be maintained. So, that is why we use that 1975
 13 deadline -- or timeline, because that's when that
 14 provision went into the Clean Water Act.
 15 MELINDA NEVILLE: So, as a
 16 follow-up, then, perhaps the historical harvesting
 17 area for our local tribes then, would not follow
 18 that standard, what standard would they follow?
 19 Would it be a Class 2?
 20 MS. LOTTHAMMER: So, to your
 21 question, they wouldn't -- it wouldn't be
 22 necessarily a Class 2 standard that's focused on
 23 wild rice. We do have what are called
 24 anti-degradation provisions that are part of our
 25 water quality rules, required under the Clean Water

1 Act, which require that any new or expanded
 2 discharge be evaluated to see, especially if it
 3 discharges into waters that are under the standard,
 4 or discharges in general, to try to avoid or
 5 minimize any increase in pollution as much as
 6 possible. It's still allowable, but we would look
 7 to see if there's alternatives that would help
 8 avoid or minimize the impact. So, that we would
 9 need to look at that a little bit more to give a
 10 more thorough response.
 11 MELINDA NEVILLE: Thank you.
 12 JUDGE SCHLATTER: Thank you.
 13 Are there any questions or
 14 comments for Ms. Neville?
 15 (No response)
 16 JUDGE SCHLATTER: Thank you very
 17 much.
 18 (Off the record discussion.)
 19 JUDGE SCHLATTER: Is there
 20 anybody in the room who has not spoken who would
 21 like to speak?
 22
 23
 24
 25

1 (No response)
 2
 3 JUDGE SCHLATTER: And is there
 4 anybody in the room who has spoken already and
 5 would like to speak again?
 6
 7 (No response)
 8
 9 JUDGE SCHLATTER: Okay. Does the
 10 Agency have any comments you want to make at this
 11 time?
 12 MR. NEBLETT: No.
 13 MS. LOTTHAMMER: No.
 14 JUDGE SCHLATTER: Okay. Well,
 15 it's 7:00 o'clock and this hearing is called and is
 16 posted to last until 9:00. So, we will be here
 17 until 9:00, and so we're going to stay here. I'm
 18 going to turn off my microphone and you can feel
 19 free to talk amongst yourselves. I'm not
 20 adjourning the hearing, but we are at recess at
 21 this time.
 22 Off the record.
 23
 24 (Off the record discussion.)
 25

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1
2 (Whereupon a short recess was had.)
3
4 JUDGE SCHLATTER: Mr. Paulson?
5 Please state your name again for
6 the record.
7 WILLIAM PAULSON: Thank you,
8 Your Honor. William Paulson, W-i-l-l-i-a-m,
9 P-a-u-l-s-o-n.
10 Thank you for allowing me to
11 comment one more time.
12 There was a comment earlier I
13 just want to re-address it. One of the things that
14 was commented on, and I'd like to reiterate on the
15 record how important wild rice is culturally.
16 When he looked at the area up
17 here, it was suggested that he'd been on the roads
18 up there for a long time while he was mining and
19 stuff, and he could see wild rice growing, and
20 stuff, and the fact that there is nobody on our
21 team out there that's sitting out there and going
22 to seed wild rice and stuff. We already know that
23 growing wild rice requires self-seeding or
24 promulgating.
25 What I realized afterwards is

1 that, I don't know if the Court is aware of it,
2 that recently, within the last two years it has
3 just now been established in the state of Minnesota
4 that members of the tribal nations that are around
5 Minnesota do not require a State permit to harvest
6 wild rice anymore. That's a recent development.
7 Prior to that, it would be a hindrance to the
8 people of the reservations to harvest wild rice in
9 their homeland, as established on the reservation
10 and have to go outside to get a permit to harvest
11 wild rice off the reservation. It's just now been
12 established that we don't need a separate permit;
13 that our treaty rights are somewhat established.
14 And we want it to stay that way, because they have
15 allowed us to harvest wild rice in the state of
16 Minnesota on public waters, but they have not yet
17 realized that we can also hunt and fish.
18 So, it is a concern of the
19 Native Americans here in Minnesota that we are
20 part of this process; that we're not only
21 protecting the heritage and the future of our
22 generations to come. That is one concern that
23 I wanted to bring in. As for up into the Arrowhead
24 area and stuff, I'm reiterating that there are a
25 pristine areas, and it seems like we go up into

1 that Arrowhead area, and stuff, that it really is
2 about the iron in the ground. When the iron
3 content is higher, it definitely changes the
4 toxicity of the sulfide and the sulfates in the
5 mineral system. And I don't know of any way to
6 regulate it or to test it or to control it, except
7 by each individual watershed.
8 That's all, Your Honor. Thank
9 you.
10 JUDGE SCHLATTER: Thank you.
11 Are there any additional comments
12 or questions for Mr. Paulson?
13
14 (No response)
15
16 JUDGE SCHLATTER: Thank you. And
17 then we are back in recess and off the record.
18
19 (Whereupon a short recess was had.)
20
21 JUDGE SCHLATTER: We are back on
22 the record. We have another speaker.
23 You may proceed.
24
25 (Off the record discussion.)

1
2 JUDGE SCHLATTER: You may
3 proceed.
4
5 SUSAN KEDZIE: My name is
6 Susan Kedzie, K-e-d-z-i-e. And I have a cold
7 that's affecting my throat, so I apologize. I just
8 found out about this very -- like, within the last
9 ten minutes and I rushed here, so I didn't have a
10 lot of thoughts prepared for this; just to tell you
11 that in the past I have been a plant ecologist with
12 a master's degree in plant ecology. And I
13 previously worked at the Leech Lake Reservation as
14 a plant ecologist in the native species program for
15 a year.
16 I was in employment there during
17 the period of time when this was something that was
18 kind of coming down the pipe. And I did not remain
19 working there, so I hadn't followed this particular
20 piece of news for quite some time. But my
21 concerns, at the time, were that Native American
22 persons in this part of the country are facing a
23 lot of unusual stressors. And I'm concerned that
24 we don't really know enough about the impact to
25 nutrients in the environment under climate change.

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1 So, when you combine these two stressors together,
2 what is the effect on the healthy wild rice
3 population, as well as other aquatic plants and the
4 interactions between plants and micro organisms and
5 aquatic organisms.

6 So, I feel this is something that
7 we need to be considering; not just as in terms of
8 whether we should throw out the old standard and
9 look at a new one, but really assess the long-term
10 health of our ecosystem. I could list a bunch of
11 things if I had had time to prepare. One of the
12 other things that came to mind that I'm passionate
13 about is the invasive species that will be
14 impacting the ability of ours to attenuate
15 floods and control damage through the floods.

16 Losing those species will
17 definitely trigger a cascade of ecological changes
18 within the aquatic system. And I think it's
19 important to be looking at multiple factors. You
20 cannot isolate this question down to will sulfide
21 have an impact on rice under perfect lab
22 conditions. We need to be looking at this
23 holistically. And I think that looking at that, we
24 continue to tend to isolate this problem and we
25 look at it in the lab and you think we can

1 vision is bioptic, and I fear we're not leaving a
2 very good legacy for our children.

3 That's all.

4 JUDGE SCHLATTER: I do want to
5 tell you that because you weren't here earlier, you
6 wouldn't have heard me talk about the opportunity
7 for making written comments. And I appreciate what
8 you have just said. If you want to make written
9 comments, there is an opportunity to do that until
10 November 22nd. And I think there are -- there's
11 information out on the hall table outside about how
12 to do that. You can make comments to me in
13 writing, by faxing it to me, posting it online or
14 sending it via US mail. I have to receive the
15 initial comments by November 22nd, by the end of
16 business at 4:30 p.m., and then there will be a
17 five-day rebuttal period which will go from
18 November 27th to December 1st, where people can
19 address comments that were made during that initial
20 period that goes until November 22nd. So, feel
21 free to put something to me in writing. I am
22 listening. I've listened to all the comments that
23 have been made tonight, and we've had the prior
24 couple of hearings. We also have a public hearing
25 tomorrow at Fond du Lac Tribal Community College

1 juxtapose those conditions into the real world, and
2 lo and behold, we're not really matching it with
3 the environment at all. And I would encourage the
4 people that are making these decisions to err on
5 the side of caution, to err on the side of
6 humanity, to err on the side of sovereign rights of
7 the traditional tribes who are using these
8 resources for traditional purposes; and also, I
9 would like for people that are involved with this
10 decisionmaking process to evaluate whether
11 increasing sulfide would, in fact, make conditions
12 preferable to a whole other host of invasive
13 species.

14 So, that's kind of what I wanted
15 to say in a nutshell.

16 The other thing is that I am very
17 frustrated, I'm very -- I think it's an honor to
18 have my freedom of speech, but I am often wondering
19 how much good it does when corporate entities seem
20 to be making use of the -- using the judicial
21 system that's more and more in favor of their
22 gains, other than the people. And we don't have a
23 constitution that protects our resources. Other
24 countries have been bold enough to do that. We
25 haven't done that, and probably won't, because our

1 from 3:00 to 7:00; next Monday in Brainerd from
2 4:00 to 9:00 at the -- I forget where it is --
3 Central Lakes College; and again, on November 2nd.
4 The schedule is out there. On November 2nd, the
5 hearing will be originating in St. Paul, but there
6 will be ITV -- or, actually, WebEx uplinks to, I
7 think, six or seven different locations around the
8 state. So, you will have some other opportunities
9 if any of those work for you, to participate in
10 another hearing.

11 SUSAN KEDZIE: I appreciate that.
12 I'm currently in the middle of a book launch. If I
13 have a chance to write a few things down, I
14 probably will try to do that. I don't know what
15 further venues I might visit. But, I do know that
16 there are a lot of impassioned people; people that
17 can't be here.

18 I have an elder that -- he's my
19 adopted Native American father and he's bound at
20 home; he doesn't have any access. He's a wild
21 ricker. He wouldn't be able to come here and
22 participate. But I know he would say there are
23 many people who feel very strongly about this issue
24 and don't have any way to share it with you, or
25 they don't find out about it until it's too late to

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1 come, and feel like the steamroller just keeps
 2 rolling. So, I hope you can get through that.
 3 There are many people that -- especially elderly --
 4 the elders in the community.
 5 Thank you.
 6 JUDGE SCHLATTER: Thank you.
 7 Does anyone else have any
 8 comments they want to say to Ms. Kedzie?
 9
 10 (No response)
 11
 12 JUDGE SCHLATTER: Thank you very
 13 much.
 14 Is there anybody else that has a
 15 come in in the last few minutes who wants to add
 16 their name to the speaker list?
 17
 18 (Off the record discussion.)
 19
 20 LISA BOULAY: My name is
 21 Lisa, L-i-s-a, last name, Boulay, B-o-u-l-a-y.
 22 JUDGE SCHLATTER: Could you tell
 23 us where you live -- the town is good enough -- and
 24 whether you're here on behalf of yourself or anyone
 25 else.

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1 *****
 2
 3 (Whereupon at 8:47 o'clock p.m.,
 4 this hearing was concluded.)
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1 LISA BOULAY: I live in Bemidji
 2 and I'm here on behalf of myself. And all I would
 3 like to say is the people who need to be listened
 4 to here are the tribes. They have the expertise in
 5 the wild rice; and listen to them. We need to
 6 protect it.
 7 That's all I wanted say is,
 8 listen to the tribes.
 9 Thank you.
 10 JUDGE SCHLATTER: Thank you.
 11 Off the record.
 12
 13 (Off the record discussion.)
 14
 15 JUDGE SCHLATTER: We are in
 16 recess again and off the record.
 17
 18 (Whereupon a short recess was had.)
 19
 20 JUDGE SCHLATTER: I'm going to
 21 adjourn the hearing. The time is 8:47 p.m., and no
 22 one has arrived since about 7:30. We will close
 23 this hearing and reconvene in Cloquet tomorrow at
 24 3:00 o'clock.
 25

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1
 2 STATE OF MINNESOTA)
 3) SS:
 4 COUNTY OF BELTRAMI)
 5
 6 REPORTER'S CERTIFICATE
 7
 8 I, Lorna D. Jacobson, a Registered
 9 Professional Reporter and Notary Public in and for
 10 the County of Beltrami and State of Minnesota, do
 11 hereby certify that I reported the foregoing
 12 hearing at the time and place hereinbefore stated;
 13
 14 THAT the hearing was thereafter under my
 15 direction transcribed into computer-assisted
 16 transcription, and is a true record of the hearing
 17 to the best of my ability;
 18
 19 THAT I am not a relative or employee or
 20 attorney or counsel of any of the parties, and have
 21 no interest in the outcome of this action;
 22
 23 THAT I am not financially interested in the
 24 action and have no contract with the parties,
 25 attorneys, or persons with an interest in the
 action that affects or has a substantial tendency
 to affect my impartiality;
 26
 27 WITNESS MY HAND AND SEAL this 1st day
 28 of November, 2017.
 29
 30 (S) _____
 31 Lorna D. Jacobson, Notary Public
 32 Registered Professional Reporter
 33
 34
 35