

TRANSCRIPT OF PROCEEDINGS
MINNESOTA POLLUTION CONTROL AGENCY

RULE MAKING HEARING

Central Lakes College
501 West College Drive
Brainerd, Minnesota 56401

October 30th, 2017
Commencing at 4:00 p.m.

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Appearances:

Honorable Judge LauraSue Schlatter

Minnesota Pollution Control Agency Members

present:

- Ms. Shannon Lotthammer
- Ms. Adonis Neblett
- Ms. Carol Nankivel

1 P-R-O-C-E-E-D-I-N-G-S

2
3 THE COURT: We're going to get
4 started now. My name is LauraSue Schlatter
5 and I'm an administrative law judge with the
6 Minnesota Office of Administrative Hearings.

7 I thank all of you for taking
8 the time to be here today to participate in
9 the public rule making process in this
10 important matter of public concern.

11 Before we go further, I do want
12 to let you know that, pursuant to Minnesota
13 Rule 1400.8000, as the presiding judge, I
14 have the authority to the ban the use of
15 cameras during this hearing proceeding and I
16 am going to do that at this time.

17 So, no cameras will be allowed
18 to be used during the proceeding. That
19 includes cell phone cameras. So, members of
20 the audience, including media, are ordered to
21 turn off your cell phones and put your cell
22 phones away.

23 Any unauthorized use of cell
24 phones as cameras or the use of any other
25 cameras will result in sanctions, including

1 individuals being barred from these
2 proceedings, meaning the hearing.

3 I will tell you that I am using
4 my phone, but I'm using it only as a timer.
5 I won't be taking a picture.

6 So, today is October 30, 2017.
7 It's 4:00 p.m. and we're here for a public
8 hearing in the matter of the proposed rules
9 of Minnesota Pollution Control Agency
10 amending the Sulfate Water Quality Standard
11 Applicable to Wild Rice and identification of
12 Wild Rice Waters.

13 It's Minnesota Rules parts
14 7050.0130, 7050.0220, 7050.0224, 7050.0470,
15 7050.0471, 7053.0135, 7053.0205 and
16 7053.0406. This matter will be referred to
17 as O88 Docket Number 80 -- 9003 -- 34519.

18 Please put this docket number
19 in the subject line of any correspondence or
20 comments you submit to my office so that your
21 comments get properly routed to me.

22 I am going to repeat the number
23 that's 80 -- 9003 -- 34519 and I'll repeat it
24 again before I am done with my part of the
25 speaking this evening. Also for your

1 information, the Revisor of Statutes number
2 for the Rule is RD4324A.

3 For those of who might need
4 them during the course of the hearing, there
5 are rest rooms out the back and kind of
6 around the curve to the right, before you hit
7 the exit doors.

8 The Office of Administrative
9 Hearings is independent of the Minnesota
10 Pollution Control Agency, which is the agency
11 that is proposing to adopt the rules that are
12 the subject of today's hearing.

13 It's also independent of all of
14 the groups and individuals who are
15 participating in the hearing this evening.
16 The role of our office is to provide hearings
17 that are fair to all of the participants in
18 this process.

19 The Legislature directs, in
20 Chapter 14 of Minnesota Statutes, that rule
21 making hearings be conducted so that members
22 of the public can be heard as part of the
23 rule making process.

24 And I'm here to ensure that
25 there is procedural fairness, to ensure that

1 we are courteous to each other so that all
2 interested parties can be heard and to draw
3 out information from as many voices as
4 possible.

5 I want to assure everybody that
6 I am interested in everything that you have
7 to say, that I am listening carefully and
8 that I want to make sure that everybody who
9 wants to speak has an opportunity to speak
10 and to be heard.

11 An underlying assumption of
12 this process is that we rely on the wisdom of
13 the group. Thus, we are grateful that you
14 are contributing your thoughts, experience
15 and expertise to the formation of these
16 substantive rules.

17 There is a handout on the table
18 that's entitled 08H Rule Hearing Procedures
19 and I'm talking about the table that's just
20 outside the entrance to the room.

21 If you don't have a copy,
22 please take a moment to pick one up because
23 it describes the procedures that were set up
24 by the Legislature for hearings like this.

25 But, I'm going to go ahead and

1 describe to you the highlights of those
2 procedures now. So, I'm going to take about
3 probably 15 more minutes with the things that
4 I have to say.

5 The Department, then, is going
6 to have a presentation and they will take
7 probably about a half hour to 35 minutes with
8 their presentation altogether. So that your
9 opportunity to make comments, I just to warn
10 you about this, won't start until about five
11 o'clock.

12 These things that we are saying
13 are important. They are important
14 information for you to get, but I don't want
15 you to, um -- I just want to warn you that it
16 will be a little bit of time before you have
17 an opportunity to make your comments,
18 although your comments are really the most
19 important part of this evening.

20 So, this hearing is a part of a
21 process by which rules are adopted under the
22 Minnesota Administrative Procedure Act.
23 During this rule making proceeding, the MPCA
24 is required to do three things.

25 It's required to document its

1 statutory authority to adopt a proposed
2 rule. It's required to demonstrate that it
3 has fulfilled all relevant substantive legal
4 and procedural requirements of the law.

5 And it's required to
6 demonstrate the need for and reasonableness
7 of each portion of the proposed rules with an
8 affirmative presentation of facts. Those are
9 the three big issues I am required to review
10 as part of the proceeding.

11 Some of you are here to express
12 your thoughts or views on various rules and
13 that's going to be helpful to the MPCA and to
14 me, as well as to the process.

15 You do need to understand that
16 my job is not to rewrite the rules based upon
17 the views of the participants or to select
18 one set of proposed rules over another set of
19 proposed rules.

20 As long as the MPCA's rules, I
21 find, are reasonable. In other words, I
22 can't substitute one set of reasonable rules
23 for another set of reasonable rules.

24 The question that is facing me
25 is whether the statutory requirements are met

1 for rule making and those are the statutory
2 require requirements that I just read to
3 you.

4 Whether the Agency has
5 documented its statutory authority for the
6 rule making. Whether it has documented that
7 it has fulfilled all the legal and procedural
8 requirements and whether it has demonstrated
9 the need for and reasonableness of each
10 portion of the proposed rules.

11 So, tonight what we're going to
12 be doing is this: After I complete my
13 introductory remarks about the hearing
14 procedures, I will introduce Mr. Neblett, who
15 is here from the MPCA, and he will introduce
16 the rest of the MPCA panel.

17 And Mr. Neblett will submit the
18 exhibits, which is to include -- actually,
19 the exhibits are already included in the
20 hearing record. They were introduced in the
21 first public hearing that we had, which was a
22 week ago today.

23 But Mr. Neblett will summarize
24 the exhibits so that everyone has an idea of
25 what the MPCA has put into the hearing record

1 up to this point.

2 And the exhibits are, I think,
3 out on the table outside this hearing room
4 and you're free to take a look at those
5 exhibits at any time. Please leave them
6 here. They are not for you to take away.

7 However, they're all provided
8 to the public. They're available online and
9 you can look at them on the MPCA's website,
10 as well as on the Office of Administrative
11 Hearings's website.

12 And you can find information
13 also on that table about how to find those
14 websites and... And look at all of the
15 exhibits and all of the other documents
16 related to this hearing proceeding.

17 After Mr. Neblett reviews all
18 of the hearing exhibits, the MPCA will make
19 an oral presentation of the proposed rule
20 amendments and the reason for and the need
21 for them.

22 Then, most of the hearing time
23 is allotted for statements and questions from
24 members of the public and that's really the
25 reason we are here today.

1 In order to make sure we have
2 an accurate record of the number of people
3 attending the hearing, I am asking that
4 everyone sign the register located on the
5 registration table outside these... The doors
6 at the back.

7 If you wish to speak or to
8 submit a written statement today, you're
9 required under the law to sign the register.

10 If you wish to speak, please place a
11 checkmark in the appropriate column on the
12 hearing register so that we know that you
13 want to speak.

14 If anyone who wishes to speak
15 or ask questions is under any time
16 constraints today, please let Carol, who is
17 over by that hearing register, Carol
18 Nankivel, let her know and she'll give me
19 that information.

20 I will make sure, if I possibly
21 can and so far I have always been able to do
22 this, I think, that you speak. I'll bump you
23 to the head of the line, if I need to, to
24 make sure that you speak within any time
25 constraints that you have.

1 Other than that, I'm going to
2 call you, generally, in the order that's
3 listed on the hearing register. When your
4 name is called, please come up to the table
5 here in front of... In front of us so that I
6 can hear you and the court reporter can hear
7 you and the Agency folks can hear you.

8 Do speak into the microphone so
9 that everybody else can hear you clearly.
10 When you begin, please state and spell your
11 name, give your address or at least the town
12 that you come from.

13 And, if you're representing
14 anyone other than yourself, identify the
15 group or the interests you represent, if
16 any. I expect that we will have time for
17 everyone to be heard, but it is helpful if
18 you organize your remarks and focus on the
19 highlights of what you are interested in.

20 I also encourage you to enter
21 any written comments that you have, if you
22 have put your comments in writing, to enter
23 them into the record as an exhibit this
24 evening.

25 You can do that by just

1 bringing them up to the table after you have
2 made your comments, I'll mark them as an
3 exhibit and they will be filed online. If
4 you have something that you want to put in
5 writing, but you don't want to give it to me
6 today, you can submit written comments to me
7 after the hearing.

8 I want to ensure that everyone
9 has time to speak and that everyone wants to
10 be heard is heard. Given the number of
11 people so far that I'm aware of that want to
12 speak today, I am guessing that everyone will
13 have eight minutes to speak.

14 That may change if a lot more
15 people sign up, but I am thinking it will be
16 about eight minutes, so just about
17 approximate that when you are preparing your
18 remarks.

19 I'm not allowing people to cede
20 their time to someone else. So, your time is
21 your time and you can't give it to someone
22 else. If everyone who wants to speak gets a
23 turn and we still have time left, you're
24 welcome to come back and speak again.

25 And if you decide that you

1 prefer to attend a different public hearing,
2 just so you know, there will be one public
3 hearing following today's hearing and that is
4 this Thursday, November 2nd, we will be
5 having a final public hearing from... Again,
6 from 4:00 to 9:00.

7 It will be originating in St.
8 Paul at the Pollution Control Agency offices,
9 but it will have video links to Detroit
10 Lakes, Duluth, Mankato, Marshall and
11 Rochester, so you could be connected through
12 to that... To the, um... To that hearing
13 through any of those links... Links at any of
14 those places.

15 And you can find copies of the
16 hearing schedule, with all this information,
17 at the table outside. I also want to caution
18 you that I will not allow people who have
19 already spoken at a hearing to speak at
20 another hearing, unless all of the people at
21 the later hearing who want to be heard have
22 had a chance to speak.

23 Again, I am trying to be fair,
24 to make sure everybody gets a chance to
25 talk. This is really a fairly informal

1 process. Again, I'm here to ensure that we
2 are courteous to each other and the process
3 runs smoothly.

4 So, as you make your comments,
5 please keep these things in mind. A rule
6 hearing is similar to a legislative hearing
7 or a meeting of a local board or a city
8 council. A speaker may ask questions of the
9 Agency panel.

10 I might ask you questions. The
11 Agency panel might ask you questions or
12 someone else here can ask a speaker
13 questions. So, know that if you speak,
14 someone might ask you questions and you can
15 ask someone else questions.

16 Because this isn't a court
17 hearing, you aren't required to make your
18 point by asking questions. And the most
19 direct way to make your point is often to
20 just say what you think and I had invite you,
21 whenever possible, to just go ahead and do
22 that.

23 But, again, you're welcome to
24 ask questions if you want and... And
25 that's... That's absolutely fine. It will be

1 most helpful to me, if you can, to be
2 specific in your comments and to tell me
3 which rules or rule parts you support or
4 object to and why.

5 The record that we make today
6 may be reviewed by others later and we also
7 want to be sure that the matter you are
8 addressing is also clear to them. So, there
9 are a couple of things that I want to remind
10 you about.

11 This hearing is being
12 transcribed by a court reporter. He is
13 sitting next to me right here (indicating).
14 And because we want the record to be
15 accurate, it's important, when you are
16 speaking, to remember to speak slowly,
17 clearly and loud enough to be heard.

18 You make think you're speaking
19 slowly. Almost nobody does. (Laughing). I
20 think I'm speaking slowly. Okay? But you
21 probably want to slow down. I'm just telling
22 almost all of you that you want to slow
23 down.

24 Make all statements and
25 responses audible, as opposed to a nod of the

1 head or a gesture. That's not going to be
2 able to be something that's going to be taken
3 down by the court reporter.

4 And please spell all proper
5 names and technical terms the first time you
6 use them. If you use an acronym, please say
7 what that stands for. And please, only one
8 person speak at a time.

9 The court reporter can only
10 take down what one person is saying at a
11 time. It's possible that I may speak...
12 Interrupt a speaker from time to time to ask
13 for spelling or some other question if
14 something is unclear to me.

15 I apologize in advance and I
16 ask you not to take offense. I'm not doing
17 it to distract you or to disrespect you, but
18 just to ensure that we have an accurate
19 record of what you are saying and to make
20 sure that I understand what you are saying.

21 Because, in the end, it's going
22 to be important to me that I understand what
23 you're saying when I go back to write my
24 report. If you have a written copy, again,
25 of your remarks that you can leave here as an

1 exhibit, please do that. It's helpful to me
2 and it's helpful for the court reporter.

3 Now I want to talk a little bit
4 about the written comment period. Section
5 14.15, Subdivision 1 of Minnesota Statutes
6 provides that the Administrative Law Judge
7 may, by order, keep the hearing record open
8 for up to 20 days after the end of the public
9 hearing.

10 I have issued that Order in
11 this case. And so, the comment period is
12 extended for 20 days from close... Excuse me
13 (coughing), from the close of the final
14 public hearing on November 2nd, 2017.

15 So, that means that, after the
16 close of the November 2nd, 2017 hearing,
17 there will be 20 calendar days in which you
18 can submit written comments. So, you have
19 until November 22nd, 2017, at 4:30 p.m., to
20 get your written comments submitted.

21 That's the close of business,
22 for us, on the day before Thanksgiving. I
23 refer you to the handout for the address to
24 send your comments to be sure that I receive
25 them.

1 You can send them by mail, you
2 can fax them or you can e-file them on our
3 rule comment website. But, however you get
4 them to me, one of those three ways, they
5 have to be there by 4:30 p.m. on November
6 22nd, 2017 or I won't be able to consider
7 them.

8 Our office will post all of the
9 comments we receive on our... On our rule
10 making website for everyone to review. The
11 MPCA also has a rule making website and their
12 website is linked to ours and our is linked
13 to theirs so you can go back and forth freely
14 between the two.

15 Again, I'm going to give you
16 our Docket Number. It is 80 -- 9003 --
17 34519. Put that in the subject line of any
18 comments you make so that your comments get
19 directed to me and not misdirected to another
20 judge or another rule hearing matter.

21 After the November 22nd, 2017
22 deadline, there will be a five-working-day
23 rebuttal period. And that applies, that's
24 the rebuttal, to anything that was filed by
25 that November 22nd, 2017 deadline.

1 So, the five-day rebuttal
2 period is meant for comment on... Or in
3 response to those original comments and it's
4 not to introduce new matters.

5 If the comments that come in
6 during that five-day period are new matters,
7 I won't consider them. Because there's a
8 holiday in there, the rebuttal period won't
9 open until after Thanksgiving.

10 We'll begin accepting rebuttal
11 comments for posting on Monday, November
12 27th, 2017 and we'll continue to accept
13 through Friday, December 1st, 2017 at 4:30
14 p.m..

15 And again, remember the
16 rebuttal comments can only respond to
17 comments which have been submitted by the end
18 of the day on November 22nd, 2017. Are there
19 any questions about that?

20 (No response).

21 THE COURT: Okay. After
22 December 1st, 2017, I will repair... Prepare
23 a report that contains my conclusions about
24 whether the MPCA has met its statutory
25 burdens in this matter.

1 First and foremost, I will
2 focus on whether the Agency has documented
3 its authority to enact the rules, whether the
4 Agency has fulfilled all the required
5 procedures and whether the Agency has
6 demonstrated the need for and reasonableness
7 of each portion of the proposed rules.

8 You can expect my report
9 approximately 30 days after the last comment
10 deadline, unless an extension become
11 necessary. If you want to receive a copy of
12 my report, please indicate that on the
13 sign-in sheet.

14 If you provide an e-mail
15 address, we'll e-mail you. We'll see that
16 you receive the report... Receive notice when
17 the report is available and will make sure
18 that you obtain a copy.

19 The handout that I mentioned
20 goes into more detail about the process and
21 contains the address information that you
22 will need to submit written comments. Please
23 keep a copy of that.

24 Again, one more time, I'm going
25 to give you the docket number to put into the

1 subject line of your correspondence or e-mail
2 or e-filing and that's 80 -- 9003 -- 34519.
3 So, before we proceed any further, are there
4 any questions about the procedures or what
5 we're going to be doing today?

6 THE WITNESS: Could you repeat
7 that docket number just a little slower?

8 THE COURT: Sure.
9 80 -- 9003 -- 34519.

10 THE WITNESS: Thank you.

11 THE COURT: You're welcome.
12 Anything else?

13 (No response).

14 THE COURT: Okay. I'm sorry.
15 I didn't look over that way (indicating).
16 Kind of a funny room. Okay. Mr. Neblett.
17 So, I should introduce.

18 Adonis Neblett is the General
19 Counsel with the Minnesota Pollution Control
20 Agency and he is going to do the next piece
21 of the hearing now.

22 MR. NEBLETT: Good afternoon.
23 My name is Adonis Neblett. I am General
24 Counsel with the Minnesota Pollution Control
25 Agency. My first name is spelled A-D-O-N-I-S

1 and my last name is spelled N-E-B-L-E-T-T.

2 I'm here on behalf of the
3 Agency in this rule making proceeding in
4 which we are proposing to amend the Sulfate
5 Water Quality Standard Applicable to Wild
6 Rice and identification of Wild Rice Waters
7 in Minnesota Rule Chapters 7050 and 7053.

8 First, I would like to identify
9 members of the rule making team that are
10 present here today. Shannon Lotthammer, is
11 the Division Director in the Environmental
12 Analysis and Outcomes Division.

13 She is sitting immediately to
14 my right and will be making the principal
15 presentation for the Agency. Also present
16 are Catherine Neuschler, Section Manager of
17 the Water Assessment Section.

18 Ed Swain, Research Scientist,
19 Environmental Analysis and Groundwater
20 Services Unit; Gerald Blaha, Research
21 Scientist, Water Quality Standards Unit and
22 Phil Monson, Research Scientist in the Water
23 Quality Standards Units.

24 And lastly, Carol Nankivel,
25 Rule Coordinator in the Agency's Rules Unit.

1 As previously noted, we have a number of
2 exhibits that were entered into the record at
3 the first of these series of hearings and I
4 am going to identify those exhibits that were
5 entered for you.

6 And I'll be reading from a list
7 that I have. That list also appears in these
8 notebooks that are available at the table
9 over here (indicating). And additionally,
10 that list would also be available on our
11 website.

12 So, you certainly are welcome
13 to write down what I'm reading to you, but
14 you can also avail yourself of it through
15 those other sources.

16 The purpose of the exhibits is
17 to document that the Agency has the legal
18 authority to adopt these rules, to
19 demonstrate that we have fulfilled our legal
20 and regulatory obligations, procedural
21 obligations, with respect to promulgating
22 these rules.

23 And lastly, to establish the
24 need and reasonableness of our rules. The
25 exhibits that have been entered, I will

1 identify, basically, by alphabet. MPCA
2 Exhibits A through L. And I'll now begin to
3 tell you what those documents are.

4 Exhibit A was the Request for
5 Comments published in the State Register,
6 dated October 26, 2015.

7 Exhibit B was a Petition for
8 Rule Making, submitted by the Minnesota
9 Chamber of Commerce on December 17th, 2010
10 and the Memorandum in Support of Minnesota
11 Chamber of Commerce Petition for Rule Making,
12 dated December 6th, 2010.

13 Exhibit C, the rules as
14 proposed, including Revisor's approval, dated
15 July 24, 2017. Exhibit D comes in three
16 parts. Exhibit D is the Statement of Need
17 and Reasonableness, including the Statement
18 itself and two supporting exhibits or
19 attachments, attachment.

20 The first attachment contains
21 Sonar Exhibits 1 through 21. The second
22 contains Sonar Exhibits 22 through 46.
23 Exhibit E is the Transmittal Letter and
24 Certificate of Mailing the Statement of Need
25 and Reasonableness to Legislative Reference

1 Library, dated August 21st, 2017.

2 Exhibit F is the Notice of
3 Hearing as published in the August 21st, 2017
4 State Register and posted on the MPCA's web
5 pages. And Notice of Additional Hearing as
6 posted in the September 18th, 2017 State
7 Register and posted on the MPCA web pages.

8 Exhibit G is the Certificate of
9 Mailing the Notice of Hearing through the
10 rule making mailing list and accuracy of the
11 mailing list, dated August 21st, 2017.

12 The Certificate of Mailing the
13 Notice of Additional Hearing to the rule
14 making mailing list and a certificate of
15 accuracy of the mailing list for providing
16 notice of additional hearing, dated September
17 28, 2017.

18 Exhibit H is two parts.
19 Exhibit H is the Certificate of Giving
20 Additional Notice, comprising Exhibit H1,
21 which is the Certificate of Providing
22 Additional Notice of the August 21st, 2017
23 Notice of Hearing.

24 Exhibit H2 is the Certificate
25 of Providing Additional Notice of the

1 September 18, 2017 Notice of Hearing
2 additional date and location.

3 Exhibit I are comprised of
4 written comments received during the
5 prehearing comment period and are found at
6 the Minnesota Office of Administrative
7 Hearings website.

8 Exhibit J is really a place
9 holder. It's for approval to admit text from
10 the State Register. That was not applicable,
11 so there was no actual document there.

12 Exhibit K is comprised of four
13 documents. Exhibit K are documents or
14 evidence to show compliance with any law or
15 rule which the Agency is required to follow
16 in adopting the rules.

17 Exhibit K1 is the... Are the
18 notices to Legislative chairs and minority
19 leaders, as required by Minnesota Statute
20 Section 14.116, dated August 21st, 2017 and
21 September 18, 2017 respectively.

22 Exhibit K2, Notice to
23 Department of Agriculture, as required by
24 Minnesota Statute Section 14.111, dated July
25 19, 2017.

1 Exhibit K3 is the notice to and
2 acknowledged by Minnesota Manage Budget, as
3 required by Minnesota Statute 14.131.

4 Exhibit K4 are the notices sent
5 to the governing body of each municipality
6 bordering or through which affected waters
7 for which standards are sought to be adopted,
8 as required by Minnesota Statute Section
9 115.44, Subdivision 7.

10 The MPCA provides the required
11 notification for the August 21st, 2017 and
12 September 18th, 2017 notices.

13 Lastly, there are a number of
14 exhibits submitted during this hearing and
15 they are Exhibit L, which are comprised of
16 Exhibits L1 and L9.

17 The number of these -- excuse
18 me. A number of these are peer-reviewed
19 technical articles and, if you have a desire
20 to peruse or see a copy of those documents,
21 please contact the Agency and a copy will be
22 provided.

23 Exhibit L1 is an article by
24 Bolton and Menk, 2017, entitled Analyzing
25 Alternatives for Sulfate Treatment in

1 Municipal Wastewater, Part 1, Feasibility
2 Alternative Review.

3 Exhibit L2 is an article by Ned
4 Ng, et al, 2017, Modeling Hydrologic Controls
5 on Sulfur Processes in Sulfate-Impacted
6 Wetland and Stream Sediments.

7 Exhibit L3 is by Myrbo, et al,
8 2017, entitled Sulfide Generated by Sulfate
9 Reduction is a Primary Controller of the
10 Occurrence of Wild Rice in Shallow Aquatic
11 Ecosystems.

12 Exhibit L4, by Pullman, et al,
13 2017, is entitled the Evolution of Sulfide in
14 Shallow Aquatic Ecosystems Sediments and
15 Analysis of the Roles of Sulfate, Organic
16 Carbon, Iron and Feedback Constraints Using
17 Structural Equation Modeling.

18 Exhibit L5, by Mrybo, et al,
19 2017, is entitled Increase in Nutrients,
20 Mercury and Methylmercury as a Consequence of
21 Elevated Sulfate Reduction to Sulfide in
22 Experimental Wetland Mesocosms.

23 Exhibit L6 is the errata
24 correcting minor errors to the sonar and
25 attachments to the sonar.

1 Exhibit L7 is a copy of the
2 slide presentation that you will see here
3 today.

4 Exhibit L8 is an article by
5 Moyle, 1975, entitled Review of Relationship
6 of Wild Rice to Sulfate Concentrations of
7 Water.

8 And Exhibit L9 is the MPCA's
9 changes to the specific Water Identification
10 Numbers.

11 That concludes the
12 identification of the exhibits that were
13 previously entered into the record and we
14 will now, at this time, look to Ms.
15 Lotthammer for her presentation.

16 But, I just want to make a note
17 to you that we are... Have various
18 individuals present. You may ask questions.
19 Some of those questions we may be readily
20 able to answer.

21 If we're not readily able to
22 answer here, we will refer to appropriate
23 documents and the like provide and provide a
24 considered response in our written response
25 to come. Your Honor?

1 THE COURT: You may proceed.

2 Thank you.

3 MS. LOTTHAMMER: Thank you,
4 Your Honor. And thank you all for being here
5 this afternoon. My name is Shannon
6 Lotthammer, S-H-A-N-N-O-N, last name
7 L-O-T-T-H-A-M-M-E-R.

8 And I will be providing a brief
9 presentation about the proposed rules before
10 the comment period or before the discussion
11 begins. This presentation is intended to
12 highlight aspects of the rule proposal.

13 All of the details of the rule
14 proposal can be found in the exhibits that
15 Adonis just spoke about, particularly the
16 Statement of Need and Reasonableness and the
17 technical support documents.

18 So, this rule making proposal
19 came about as a result of questions arising
20 about the existing sulfate standard that was
21 adopted back in 1973.

22 These questions pointed to a
23 need to better understand the effects of
24 sulfate and other substances on wild rice and
25 also to clarify the application of the

1 existing standard.

2 And the kinds of things that
3 needed clarity were both how and when sulfate
4 impacts wild rice and then also where and how
5 the standard applies specifically.

6 Throughout this effort, the goals of the
7 Pollution Control Agency have included first
8 and foremost to protect wild rice
9 production.

10 That's why the standard was
11 adopted in the first place back in 1973 and
12 that is the goal of this particular water
13 quality standard.

14 The second is to incorporate
15 new scientific findings that have come to
16 light in recent years through research that
17 the Pollution Control Agency has sponsored
18 and also work that has been completed by
19 other scientists and other sponsored
20 studies.

21 Then, thirdly, we need to
22 reduce uncertainty and add clarity around the
23 application of the standard. And finally, to
24 avoid unnecessary regulatory impacts. I'll
25 talk about this a little bit later in the

1 presentation.

2 One of the challenges of a
3 pollutant like sulfate is that it is
4 currently very difficult to treat for and so
5 we want to make sure that we're requiring
6 reductions where it's needed to benefit wild
7 rice and we're not requiring reductions where
8 it's not needed, because then those are
9 dollars that can't be used in other
10 environmental benefits.

11 So, before outlining the
12 elements of this particular proposal, it's
13 helpful to talk just a little bit about water
14 quality standards in general. Water quality
15 standards are fundamental tools of the
16 Federal Clean Water Act.

17 And under the Federal Clean
18 Water Act, states are required... States and
19 authorized Indian tribes are required to
20 adopt water quality standards and those
21 standards are subject to review and approval
22 at the Federal level in the form of the
23 Environmental Protection Agency.

24 A water quality standard is,
25 basically, a number or a statement that

1 describes the conditions that are needed in
2 order to be maintained or avoided in a water
3 body to protect for specific beneficial
4 uses.

5 And beneficial uses are,
6 basically, ways in which Minnesotans expect
7 to and want to use the waters of our state.
8 So, things like swimming or... Or supporting
9 healthy aquatic life so we can fish and eat
10 the fish.

11 Or drinking water in some
12 cases. Or in the case of this particular
13 standard, it's wild rice production. Or
14 more, specifically, harvest and use of the
15 wild rice grain as a food source for humans
16 and wildlife.

17 So, water quality standards, a
18 number or a statement of conditions to
19 protect that beneficial use. And standards
20 apply in the water body itself. So, it's the
21 conditions that need to be maintained or
22 avoided in that water body.

23 That's different than permit
24 requirements and I'll talk a little bit
25 towards the end of the presentation about

1 that difference. It's just important to note
2 that the standard is applicable in that water
3 body where that beneficial use exists.

4 And standards are developed
5 based on what science and environmental
6 understanding tells us about those
7 conditions, that are needed or that need to
8 be avoided, to protect that beneficial use.

9 So, it's a science-based
10 process to determine what our water quality
11 standard needs to be or to determine
12 revisions to a water quality standard. So,
13 the Pollution Control Agency first adopted a
14 water quality standard to protect wild rice
15 from sulfate impacts back in 1973.

16 And that adoption was based on
17 studies that were done in Minnesota waters,
18 primarily Minnesota lakes, that looked at the
19 presence of different types of aquatic plants
20 in Minnesota lakes and different chemical
21 constituents, primarily sulfate.

22 And what those studies found is
23 that wild rice tends to grow where sulfate
24 concentrations are lower in Minnesota lakes.

25 You can see in the map, the

1 colors of the map represent different sulfate
2 concentrations, with the blue colors being
3 lower concentrations and then moving towards
4 the red color, which is higher concentrations
5 of sulfate in the water.

6 And the dots are places where
7 the Department of Natural Resources has
8 either seen or received record of wild rice
9 being present. And you can see that those
10 dots tend to be in places with lower sulfate
11 concentrations.

12 That was the basis for the
13 original standard that was adopted. And the
14 current -- and that is still the standard
15 today and it's ten milligrams per liter of
16 sulfate.

17 It applies to water used for
18 production of wild rice during periods when
19 the rice may be damaged by high... Or
20 susceptible to damage by high sulfate
21 levels. So, in recent years, questions have
22 come up regarding the application of that
23 particular standard.

24 Questions have come up like,
25 okay, we understand that sulfate... Or wild

1 rice tends to grow where sulfate is lower.

2 But, there are examples of wild rice stands
3 in waters with higher sulfate concentrations,
4 in the 20s, 30s, 40s, even up to hundreds of
5 milligrams per liter of sulfate.

6 So, that's one question that
7 has come up is what's going on there. We
8 understand that general relationship, or we
9 did since 1973, but what's the mechanism for
10 that relationship?

11 Another question that has come
12 up is when exactly is wild rice susceptible
13 to damage? Is it just during the growing
14 season? Is it during over wintering when the
15 seeds are in the sediment? There is an
16 interest and a need to have more information
17 about that.

18 So, back in 2010, when these
19 questions coming up, the Pollution Control
20 Agency first reviewed the scientific
21 literature to see if there was any new
22 information available that could help us
23 answer some of these questions and clarify
24 some of these issues that were arising.

25 And what we found was there

1 just wasn't any new information that would
2 help with these questions. Fortunately, in
3 2011, the State Legislature provided funding
4 to the Agency from the Clean Water, Land and
5 Legacy Amendment, that constitutional
6 amendment that created the Clean Water Fund.

7 And that funding, then, was
8 provided to undertake studies to better
9 understand the effects of sulfate and other
10 substances on wild rice.

11 The Legislature also required
12 the Agency to convene an advisory committee
13 to provide advice to the Agency during the
14 first design of the studies, the execution of
15 the studies, the data analysis and then the
16 subsequent rule making.

17 And the legislation also
18 required the Agency to enter into rule making
19 once the studies were complete. There has
20 been subsequent legislation, then, requiring
21 that the rule making be completed by January
22 15th of 2019 and that's this rule making that
23 we have underway right now.

24 One more thing about the
25 advisory committee. It was required by

1 statute, and also something that the Agency
2 very much supported, that that advisory
3 committee be constituted of by a broad range
4 of interests.

5 So, folks from... That
6 represent municipalities, those that
7 represent industries, hand harvesters of wild
8 rice, tribal representatives, environmental
9 groups and also members or... Or a
10 representative from the, um... The patty rice
11 or the cultivated wild rice industry, as
12 well.

13 So, that group was an
14 advice-giving group. It wasn't a consensus
15 group, recognizing that there were very broad
16 opinions and expertise and, um... And
17 expectations as a member of that group.

18 There were also researchers
19 that were a part of that group, as well. So
20 this, then, embarks the Agency on the process
21 of gathering new information and reviewing
22 existing information and mining the
23 scientific literature some more, since new
24 studies came out since 2010.

25 And then analyzing the

1 information that was gathered, going through
2 a peer review process, where the Agency
3 actually worked with a third party to impanel
4 a peer review group of seven independent
5 scientists from across the U.S. and,
6 actually, a couple of international
7 scientists that provided input to questions
8 about the initial analysis.

9 The Agency, then, further
10 refined the analysis with input from the
11 advisory group and other interested parties
12 and that led us, then, to the point of this
13 rule proposal that you see before you today.

14 So, before I get a little bit
15 more into the proposal itself, I want to talk
16 just a bit about that study that the Agency
17 that the sponsored and just a little more
18 about the steps that have gotten us here.

19 So, again, the goal of the
20 study was to enhance the understanding of the
21 effects of sulfate on wild rice and to inform
22 the update... Or actually, evaluation of the
23 standards to see if additional updates were
24 necessary.

25 So, the Agency started by

1 developing a protocol, a research protocol
2 for the study, working with researchers and
3 interested parties to get their feedback.

4 And that led us, then, to four avenues of
5 investigation that were part of the study.

6 There were laboratory
7 experiments, also known as hydroponic
8 experiments, where wild rice was grown in the
9 laboratory, wild rice seedlings were grown,
10 at different concentrations of both sulfate
11 and sulfide.

12 Because that hypothesis going
13 in was that sulfate was indirectly impacting
14 wild rice through the formation of sulfide.
15 So, both of those chemicals were looked at in
16 the lab.

17 Then there were outdoor
18 container experiments, otherwise known as
19 mesocosms, where wild rice and... Was grown
20 in sediment from a wild rice lake in big
21 containers and that were outside and grown at
22 different concentrations of sulfate.

23 And chemical measurements and
24 measurements about the health of the plants,
25 the wild rice plants, were measured over

1 successive years.

2 There was also an extensive
3 field survey where crews from the University
4 of Minnesota, that conducted this research,
5 went out to lakes and streams in Minnesota
6 and measured a lot of different chemical
7 constituents, some physical constituents and
8 then also the presence and... Or absence and
9 density of wild rice at those sites.

10 And finally, there were
11 sediment experiments, where sediment was
12 brought into the laboratory and dosed with
13 different concentrations of sulfate, as the
14 measurement of the sulfate in the water and
15 in the sediment and the sulfide, as well, was
16 tracked over time with and without additional
17 sulfate.

18 Again, throughout this time,
19 the advisory committee met to provide input
20 and ask questions and make suggestions to the
21 Agency.

22 And then that, then, was
23 followed up with... Or through this process,
24 there was independent scientific peer review
25 in the form of a panel.

1 And then, there was the
2 literature review. There were other studies
3 that were done that the Agency also reviewed
4 and incorporated into its analysis.

5 And then a series of papers
6 were... Were actually prepared, that Adonis
7 referenced earlier, that have since been
8 accepted for publication in peer-reviewed
9 scientific journals, so that provided another
10 round of peer review.

11 Next, I'll turn to the rule
12 proposal itself. And the proposal has four
13 main comments. The first two are about
14 setting the protective levels of sulfate and
15 sulfide for protecting wild rice production.

16 The third involves identifying
17 about 1300 lakes, rivers and streams as wild
18 rice waters that have that beneficial use
19 and, therefore, are subject to the
20 standards.

21 And then, the fourth part of
22 the proposal involves some specific elements
23 of implementing the standard to add that
24 clarity that is missing from the current
25 standard.

1 So, the first component is to
2 clarify what, specifically, is impacting wild
3 rice and how much is too much. And the
4 hypothesis that we started with, and that was
5 confirmed by the research that was done, is
6 that when oxygen is low in a mucky
7 environment, like the sediments where wild
8 rice grows, there is bacteria that live in
9 that sediment.

10 Since there's not oxygen
11 available to breathe, they turn to other
12 chemicals. And one of the chemicals that
13 they turn to is sulfate. And so, those
14 bacteria essentially breathe in the sulfate
15 and, in that process, turn the sulfate into
16 sulfide.

17 And while we know that sulfate
18 itself isn't, typically, a very toxic
19 chemical. Note the drinking water standard
20 for sulfate is 250 milligrams per liter,
21 compared to the current ten milligrams per
22 liter sulfate standard for wild rice.

23 We do know that sulfide is very
24 toxic to living organisms, including people,
25 animals and plants. So, it's that sulfide

1 that is causing the problem where wild rice
2 is growing.

3 Because what we also found from
4 the field data is there is statistically
5 significant control that sulfide exerts on
6 wild rice presence and density.

7 So, where there is more
8 sulfide, there is less dense wild rice and
9 less probability that wild rice is there in a
10 particular lake or stream. So, based on that
11 relationship and based on that understanding,
12 we analyzed the field data in particular to
13 identify what a protective level of sulfide
14 would be.

15 And that analysis, then, was
16 supported by the additional analytical data
17 and additional lines of evidence and it's
18 fully discussed in the Statement of Need and
19 Reasonableness and the Technical Support
20 Document.

21 But, based on that analysis,
22 the proposal is to establish a protective
23 sulfide level at 120 micrograms per liter or
24 part per billion in the sediment where wild
25 rice grows.

1 Now, this doesn't mean that
2 there is... That that's a bright line that
3 above 120 micrograms per liter there is no
4 wild rice and below that, there is lots of
5 wild rice.

6 Because we're looking to set a
7 protective level and it's based on looking at
8 the probability that wild rice will be
9 present. So, above 120 micrograms per
10 liters, there is a lower chance, a lower
11 probability, that wild rice will be present
12 in those particular water bodies.

13 And the other element that we
14 found is that, if wild rice is present, it's
15 typically at a lower density. So, not as
16 thick. Maybe not as likely to persist over
17 time.

18 So, that's the first part of
19 the rule proposal is to establish the
20 protective sulfide level. Then, the next
21 thing that we need to think about, then, is,
22 well, what's controlling the sulfide levels
23 in the sediment where wild rice is growing?

24 And what we found through the
25 data analysis is that there are three

1 variables that equally control the level of
2 sulfide that shows up in the sediment where
3 wild rice grows.

4 Those are sulfate in the water
5 column, which makes sense because that's
6 where the sulfur molecules is coming from.
7 It's defusing down into the sediment. The
8 other two variables are total extractable
9 iron in the sediment and total organic carbon
10 in the sediment.

11 And the importance of those two
12 variables has to do with the fact that it's
13 bacteria and chemical reactions that are
14 converting the sulfate into sulfide.

15 Because carbon is the food that
16 bacteria use to grow. So, the more carbon
17 you have in the sediment, the more bacteria
18 you can support in the sediment and the more
19 quickly sulfate can be transferred into
20 sulfide by those bacteria doing their thing
21 in the sediment.

22 On the flipside, iron,
23 particularly total extractable iron, is in a
24 form that readily binds with sulfide as it...
25 As it exists in that core water, which is the

1 water in between the sediment particles where
2 the wild rice is growing.

3 So, the more extractable iron
4 you have, the more opportunity there is for
5 that to bind with the sulfide and pull it out
6 of solution and, basically, make it not able
7 to interact with the wild rice and cause
8 problems.

9 So, what we learned from is,
10 then, we need to understand, not just the
11 sulfate in the water column, but also the
12 total extractable iron and the total organic
13 carbon in the sediment to understand how much
14 sulfide is building up.

15 And what that allows us to do,
16 then, is to, if we know the amount of total
17 extractable iron and the total organic carbon
18 in the sediment, we know we need to stay at
19 or below 120 per micrograms per liter.

20 That's the proposed protective
21 level of sulfide. If we measure those two
22 iron... The iron and the carbon and then,
23 basically, sulfur the sulfate, that will tell
24 us how much sulfate can be in the water and
25 still maintain the sulfide in the sediment at

1 or below that protective level.

2 The reason why we have to
3 measure or why we're proposing to measure the
4 iron and the carbon is because there's great
5 variability from one water body to the next
6 as far as how much iron and how much carbon
7 is in that sediment.

8 So, often, when we're
9 developing water quality standards, there's
10 general patterns in the environment. And we
11 can make some assumptions about how much of a
12 particular chemical constituent is in a
13 particular water body and so we don't
14 actually have to measure it.

15 If we can kind of get a group
16 of water bodies, get a general sense for
17 what's there and, if it's not very variable
18 from one water body to the next, then we can
19 make some assumptions and kind of simplify
20 the approach.

21 In the case, though, of iron
22 and carbon in the sediment of wild rice
23 waters, there's not a general pattern. It's
24 not like lakes tend to have the same level
25 and rivers tend to have a different level or

1 maybe lakes in the northeastern part of the
2 state are similar and ones in the central
3 part of the state are similar.

4 When it comes down to it, you
5 can have two lakes that are right next to
6 each other and have very ditch levels of iron
7 and carbon in the sediment where the wild
8 rice is growing.

9 So, that's why the Agency is
10 proposing to establish the... The sulfate
11 standard based on measuring the iron and the
12 carbon in the sediment and then applying that
13 120 micrograms per liter of protective level
14 and calculating the level of sulfate that
15 will protect the wild rice.

16 There is also an alternate
17 proposal included in the rule making packet,
18 which is to directly measure the sulfide
19 level and then determine the numeric standard
20 from that.

21 And all of the details about
22 this, again, are included in the Statement of
23 Need and Reasonableness and the Technical
24 Support Document. There's some handouts that
25 have kind of some... Some shorthand or short

1 descriptions of this approach, as well.

2 So, there are some additional
3 details about the numeric standard that are
4 included in the proposal. The first is the
5 procedures for sediment in core water
6 sampling, which we're proposing to
7 incorporate by reference into the rule.

8 So, essentially, make those
9 procedures the same as rule language. They
10 just aren't laid out in a way that are very
11 conducive to rule language itself.

12 But, they are proposed to be
13 incorporated by reference so that everybody
14 knows what information needs to be collected
15 to determine the sulfate standard for a
16 particular water body and how that
17 information and how that data would be
18 treated, so how that calculation would
19 occur.

20 There is also proposed in the
21 rule three components for the water quality
22 standard and the first I already talked
23 about, which is the magnitude of the
24 standard.

25 So, how are we proposing to

1 establish the numeric sulfate standard for
2 each wild rice water. The second element of
3 the standard is the duration of the
4 standard.

5 And that's the time period over
6 which you evaluate a pollutant concentration
7 when determining whether or not the standard
8 is being achieved. And the Pollution Control
9 Agency is proposing an annual average as the
10 duration of the standard and the reason for
11 that is included in those supporting
12 documents.

13 And then, the third part of the
14 standard is the frequency or how often the
15 standard can be exceeded and still be
16 protective of the thing that you're trying to
17 protect, in this case harvesting use of the
18 wild rice grain as a food source for humans
19 and wildlife, that beneficial use.

20 And the PCA is proposing a one
21 in ten-year frequency as the frequency for
22 the standard. So, the third part of the rule
23 proposal, then, is to identify the wild rice
24 waters or the waters where that beneficial
25 use is in existence and, therefore, the

1 standard is applicable to those particular
2 waters.

3 In the current rule language
4 that beneficial use, water use for production
5 of wild rice, is specified, but the water
6 bodies are not identified. And so, it's
7 currently a case-by-case evaluation to
8 determine if a particular water body has that
9 beneficial use.

10 Which, as you can imagine,
11 takes time and adds uncertainty, both for the
12 Agency and for anybody that's interested in
13 whether or not a standard applies... Or this
14 standard applies to a particular water body.

15 So, the PCA is proposing not to
16 change the beneficial use for proposing to
17 maintain the same beneficial use, but to
18 update the language to wild rice waters,
19 instead of water used for production of wild
20 rice or, more specifically, Class 4D wild
21 rice waters, which is a part of the rule that
22 this is about.

23 And then, to specifically
24 identify those waters where this beneficial
25 use is in existing use in the rule itself, to

1 add clarity about where this standard
2 specifically applies.

3 The date that's referenced
4 there is a date from the Federal Clean Water
5 Act. And basically, what the Federal Clean
6 Water Act says if a use... A beneficial use
7 is existing or has existed since that date,
8 then it needs to be protected.

9 So, the proposal includes lists
10 of proposed wild rice waters in the rule
11 language itself. And then the Agency has
12 developed a more user-friendly interactive
13 web search tool for folks to be able to look
14 to see what water bodies we're proposing as
15 wild rice waters.

16 And the Statement of Need and
17 Reasonableness explains how we determined
18 that particular water bodies had that
19 beneficial use so that we can propose them as
20 wild rice waters.

21 Now, because not a -- because
22 there's not a comprehensive inventory of wild
23 rice in Minnesota. We're getting better and
24 better information, but there still isn't a
25 statewide inventory.

1 We also had to think about how
2 to add waters as wild rice waters in the
3 future, if and when new information becomes
4 available, as we expect that there will be
5 new additional information that comes to
6 light.

7 So, what we're proposing is
8 that waters would be added as Class 4D wild
9 rice waters through a rule making process
10 just like this. So, if we have new
11 information to suggest that additional waters
12 need to be included, we would go through a
13 rule proposal process.

14 This then allows that
15 reasonableness to be demonstrated during the
16 rule making so that existence of the
17 beneficial use to be demonstrated and it
18 provides access, then, and transparency to
19 anybody that's interested to participate in
20 the rule making, to ask questions about the
21 proposals and to make sure that there is good
22 understanding and clarity.

23 We intend to be inclusive about
24 the types of information that we'll accept to
25 support adding waters and that's specified in

1 the proposed rule language, fully recognizing
2 that typical western science or agency
3 reports aren't the only way that information
4 is gathered and passed along and we want to
5 be respectful of that.

6 And we also intend to regularly
7 solicit new information in order to determine
8 if additional waters need to be added in the
9 future.

10 So, finally, the rule proposal
11 and the supporting documents include
12 information about implementing the rule. And
13 before I talk a little bit about that
14 information, I think it's important to just
15 talk about what I mean by implementation.

16 I mentioned before that water
17 quality standards apply in the water body
18 that has the beneficial use that's being
19 protected. There are different ways, then,
20 that water quality standards get
21 implemented.

22 One way is by kind of
23 monitoring to see if those standards are
24 being met or not and, if they're not being
25 met, to take steps to protect and restore.

1 Another way is that when the
2 Agency is evaluating permits that require a
3 permit from the Agency under the Federal
4 Clean Water Act, we need to evaluate whether
5 or not those permits or those dischargers
6 have the potential to create a problem with
7 the water quality standard in a downstream
8 receiving water.

9 And if a permitted facility
10 does have that potential, we need to put
11 restrictions into that permit in order to
12 assure that that water quality standard is
13 protected.

14 Those permit requirements,
15 while they're related to the water quality
16 standard, they're not the same thing as the
17 water quality standard. They're two
18 different things.

19 And we often get questions
20 about, you know, where does cost come into
21 play. I mentioned earlier that current
22 technology for treating sulfate is extremely
23 expensive and it has some additional
24 downsides associated with it in the... In
25 energy use and also disposal costs of the

1 concentrate.

2 When we're adopting water
3 quality standards, though, what we're focused
4 on is what does the environmental science
5 tell us is necessary to protect that
6 beneficial use.

7 And in that case, cost doesn't
8 come into play. Because whether it's
9 expensive or inexpensive to treat for a
10 pollutant, it doesn't change how it affects
11 the environment.

12 How it affects the environment
13 is independent of the cost questions. That
14 doesn't mean that cost isn't important,
15 though. And it's in setting permit
16 requirements that costs come into play.

17 Because when the Agency is
18 evaluating the need for permit restrictions
19 and then -- so, the Agency evaluates the need
20 for permit restrictions and then, if
21 restrictions are needed, the Agency does have
22 tools to use under the Clean Water Act and
23 under State law and State rules to consider
24 things like feasibility and costs.

25 So, the standard is about

1 setting the goal about where we need to get
2 to. And then, things like permit
3 requirements can take into account how
4 quickly we can get there given cost
5 considerations, technical feasibility, things
6 like that.

7 And not all facilities have the
8 potential to impact a downstream receiving
9 water or a standard in that receiving water,
10 as well.

11 Some of the tools that we have,
12 though, if the facility does have the
13 potential to impact the standard and needs to
14 reduce the amount of pollutant, but can't
15 afford to right now, there are things like
16 variances, which are temporary changes to the
17 water quality standard.

18 They need to be reviewed on a
19 regular basis because the premise is that
20 technology changes and economics change and
21 something that's not affordable or not
22 feasible, right now may be five years from
23 now or 15 years from now.

24 Those are tools that we can
25 use. Also things like schedules of

1 compliance, which to provide time for
2 facilities to put new practices in place in
3 order to... To address a particular
4 pollutant.

5 So, the rule proposal includes
6 details on how we evaluate facilities or
7 facility discharges to see if there is that
8 potential to impact that downstream receiving
9 water. That's called an effluent review.

10 And then, also, given that
11 treatment technology is expensive, we do
12 anticipate that variances are likely to be a
13 tool that we'll need to employ, at least in a
14 short term.

15 So, the rule includes some
16 additional information about variances,
17 including a proposal to waive the application
18 fee for variances that are applied for by
19 publicly-owned treatment facilities.

20 Also, one thing that's
21 important to note is that that... That
22 implementing this standard will require data
23 gathering, as implementing any standard
24 does.

25 And the Agency will be

1 prioritizing that data gathering based on the
2 potential for impact of downstream receiving
3 waters. So, the kinds of information that
4 we'll need to collect is that sediment,
5 organic carbon and extractable iron data.

6 Facilities will need to collect
7 and measure the amount of sulfate that's in
8 their discharge and then there is also the
9 need for the Agency to measure sulfate in
10 those receiving waters, as well.

11 And kind of the time line for
12 that is further laid out in the Statement of
13 Need and Reasonableness.

14 So, there is a lot of
15 supporting information that provides context
16 and details for this proposed standards
17 revision, including a regulatory analysis,
18 which is a required part of the Statement of
19 Need and Reasonableness, where the Agency
20 needs to identify who will benefit and who
21 will bear the cost of the proposed revisions
22 to the standard.

23 And also what are the costs and
24 consequences of adopting and not adopting the
25 proposal and options for mitigating those

1 costs. And that's all in that Statement of
2 Need and Reasonableness.

3 We also have a separate project
4 underway, funded by the Legislative Citizen
5 Commission on Minnesota Resources, to get
6 further into the details of implementing and
7 considering sulfate treatments. So, what are
8 the options? What are the costs? What might
9 that look like?

10 That's intended to inform
11 implementation of the standard. It's not
12 about actually setting the standard, because
13 setting the standard or evaluating the
14 standard is based on that environmental
15 science.

16 So, in summary, I'd just like
17 to emphasize that, you know, we know that
18 wild rice is important ecologically,
19 economically and spiritually in Minnesota.
20 We heard from... For example, from tribal
21 communities and individuals from Indian
22 tribes about that spiritual component.

23 Which, not being a tribal
24 member, I know I can't fully appreciate, but
25 I've learned a lot about that from through

1 this process. And we've heard from
2 Minnesotans, in general, about how important
3 wild rice is to them.

4 We know that the sulfate
5 standard that was adopted in 1973 needs
6 updating to reflect the new science that has
7 been established in the last decade and also
8 to enhance clarity so that it can be more
9 effectively implemented.

10 This rule-making proposal
11 reflects purity of science and it reflects
12 the fact that if sulfate is indirectly
13 impacting wild rice by increasing sulfide
14 concentrations, but that rate of increase is
15 affected by other environmental variables
16 that are different, naturally different, from
17 one lake and stream to the next.

18 So, the proposal tailors the
19 standard to the environmental conditions,
20 which is particularly important in this kind
21 of a situation, where we have a very
22 sensitive resource that's incredibly
23 important to Minnesota and Minnesotans and we
24 also have a pollutant that is currently very
25 difficult to deal with.

1 There's not a lot of treatment
2 technology options. The ones that are there
3 are very expensive. There is research that's
4 underway to develop more options for treating
5 and removing sulfate, but that research still
6 is in the development stage.

7 And then, finally, I'd just
8 like to mention that the Agency is extremely
9 grateful to everyone who has participated in
10 this process through the years, by adding...
11 Providing their comments, asking their
12 questions.

13 You know, contributing ideas
14 and suggestions and feedback and hard
15 questions. We really have learned a lot and
16 gained a lot from all that have participated
17 and are also learning a lot through these
18 administrative hearings, as well. So, thank
19 you very much.

20 THE COURT: Thank you. Okay.
21 So, we're ready to start with public
22 comments. And the first person I have on the
23 list right now is Mr. Good.

24 THE WITNESS: Your Honor. Hi.
25 My name is Dennis Good. I live on Dark Lake

1 in St. Louis County and the Dark River about
2 90 feet from my back door.

3 And if you look on good maps
4 that track waterfall out of the Minntac
5 tailings basin, you'll see that we're... I
6 think we're a defacto extension of the
7 Minntac tailings basin.

8 I have been involved in these
9 issues... This, plus the mercury issues, for
10 17 years now. Since 2001. Through all the
11 schedules of compliance, the written
12 agreements, the verbal agreements, U.S. Steel
13 Minntac has reneged on every one.

14 And this concerns the sulfate
15 issues and mercury issues. I won't go
16 through the time line. I didn't bring my
17 comments that I... I sent them about a month
18 ago. But, I have got a time line since 2001
19 that shows this.

20 What I know to be true. This
21 flexible standard is going to turn out to be
22 no standard at all. Because variances will
23 be routinely given and everybody will plead
24 poverty and nobody will do anything.

25 Nobody has done anything, uh...

1 This has been... That 2011 study that was
2 brought up. Uh, that valid -- that's my
3 phone. Sorry.

4 REPORTER'S NOTE: Whereupon, a
5 discussion is conducted off
6 the record.

7 THE WITNESS: I'll shut it
8 off. It validated the ten milligram
9 standard. As the, uh -- I didn't get the
10 peer review because that study was yanked off
11 the PCA's website.

12 They said it didn't matter
13 whether sulfides or sulfates are the
14 problem. Sulfates are the one thing that has
15 to be controlled.

16 And the other thing I'd like to
17 talk about, too, is since mercury was brought
18 up in one of the exhibits, sulfates play a
19 crucial, indispensable role in converting
20 elemental mercury to methylmercury. And Dark
21 Lake on the Dark River has some of the
22 highest levels of methylmercury in the
23 state.

24 But, PCA, all the regulatory
25 agencies, do not want to talk about this.

1 It's just -- and sulfates, I'd like to ask,
2 if methylmercury was considered as part of
3 this standard, what would the standard have
4 to be, then, to control them.

5 I've heard that they -- I've
6 heard they said -- because there was a
7 meeting in Duluth a few years ago. And, "Oh,
8 well, you know, it's... Sulfates are an
9 issue, but it's not the only issue." Trying
10 to find out what the issue is.

11 Well, I have... I have heard
12 nothing. I have heard nothing and read
13 nothing. I don't think they really want to
14 deal with this, because, if they do find out
15 what the issue, whatever it is, is, then
16 they'll have to deal with it.

17 They will have to do something
18 about it and I don't think they want to do
19 that. We're here because this is happening
20 because Minntac U.S. Steel does not want to
21 clean up the tailings basin. Ever.

22 And Number 2 is they don't want
23 the Dark River and Dark Lake to be part of
24 that wild rice waters list. It's not on
25 there now. And that's because sulfate

1 levels, the 2014 numbers I have, runs between
2 900 and 1100 milligrams per liter.

3 Four miles from the tailings
4 basin, at Sherwin Anderson Road, it's... I
5 think it's between -- right around 800
6 milligrams per liter. I think about another
7 five miles, on County Road 65, it's between 3
8 and 400, I believe.

9 So, you can see why we'll never
10 wind up on a wild rice waters list with
11 numbers like that. Even though there is --
12 oh, I can think of half a dozen places on
13 that river, and the lake, where wild rice
14 would grow. So, that's... Those are my
15 comments.

16 THE COURT: Thank you.

17 THE WITNESS: Thank you, Your
18 Honor.

19 THE COURT: Does anybody have
20 any questions or comments for Mr. Good?

21 (No response).

22 THE COURT: Okay.
23 Representative Ecklund.

24 THE WITNESS: Thank you, Your
25 Honor. Good evening. I am State

1 Representative Rob Ecklund, R-O-B,
2 E-C-K-L-U-N-D. I live at 4647 Highway 11,
3 International Falls, Minnesota 56649.

4 I represent District 3A in
5 northeast Minnesota and this proposed rule
6 has negative impact on the majority of my
7 district.

8 For several years, the State
9 Legislature has acted to address the
10 important issues arising from Minnesota's
11 obsolete water quality standards to protect
12 wild rice.

13 The Legislature has enacted
14 laws providing the MCA... MPCA time and
15 resources -- I know I've got to slow down.
16 To carry scientific and economic analysis to
17 modernize the rule.

18 With the goal of understanding
19 the standards to be science based and
20 ecologically and economically justified. As
21 a result, we are deeply concerned that the
22 MPCA still released a draft rule based on
23 science that had significant research flaws
24 and did not take into consideration all of
25 the information available, particularly from

1 communities, municipalities and industry that
2 represent a wide swath of northern
3 Minnesota.

4 Respectfully request that you
5 return the proposed rule to the MPCA so that
6 the standard may be revised to address these
7 important issues.

8 The MPCA staff is well aware of
9 these cost concerns attributed to this
10 proposed rule. To make matters worse, the
11 MPCA has publicly acknowledged that, even
12 with these huge expenditures, that they do
13 not know if the treated discharges will
14 result in healthier wild rice.

15 Minnesota law requires that the
16 MPCA complete an analysis of costs complying
17 with its proposed rule before proceeding.

18 It was mentioned earlier that
19 the MPCA requested and received \$180,000 from
20 the Legislative Citizens Commission on
21 Minnesota resources, to analyze wastewater
22 treatment alternatives, to inform the
23 development and implementation of wild rice,
24 sulfate and other water quality standards.
25 That analysis will be complete in May --

1 THE COURT: -- slow down a
2 little. Thank you.

3 THE WITNESS: That analysis
4 will be complete in May of 2018. During the
5 2017 legislative session, we extended the
6 deadline, in law, for completion of new wild
7 rice standards to January of 2019.

8 So that the MPCA would use the
9 results of that project. Potentially
10 impacted cities asked the MPCA's Commissioner
11 Stein, directly, to complete that analysis
12 before starting the rule making process.

13 It appears that the MPCA
14 Commissioner has chosen to ignore our
15 Legislative action and the cities' requests
16 and is proceeded... And is proceeding to rule
17 making before completing the analysis that
18 the Legislature funded.

19 According to the MPCAs own peer
20 review group, led by scientists and experts
21 in their field of study, whose sole charge is
22 to review the science before the MPCA, this
23 standard and supporting science is inaccurate
24 and not reputable.

25 The error rate of the proposed

1 MPCA equation is approximately 15 to 20
2 percent. We are concerned that the major
3 employers on the Iron Range would take
4 millions of dollars to comply, when the error
5 rate is so high.

6 We encourage to redo their
7 research and propose a standard that will
8 protect wild rice and is justifiable in their
9 cost structure.

10 If you talk to the local ricers
11 that I represent, they will tell you that
12 rice growth and healthy stands depend on many
13 things, from water depth to cattail growth to
14 heat and amount of rainfall.

15 They will even tell you where
16 to rice and where not to, depending on how
17 the rice tastes. The Iron Range delegation,
18 of which I am a member, believes that this
19 rule needs to be returned to MPCA because it
20 is not ready for implementation. Thank you.

21 THE COURT: Thank you. Does
22 anyone have questions or comments for
23 Representative Ecklund?

24 (No response).

25 THE COURT: Thank you.

1 THE WITNESS: Thank you.

2 THE COURT: Mr. Stauber.

3 THE WITNESS: Thank you, Your
4 Honor. My name is St. Louis County
5 Commissioner Pete Stauber, S-T-A-U-B-E-R. I
6 live at 5078 West Arrowhead Road in
7 Hermantown, Minnesota 55811.

8 Your Honor, I am a county
9 commissioner and tonight I will be
10 delivering to you, and reading to you, a
11 letter signed by four St. Louis County
12 commissioners, which is the majority on our
13 board.

14 Commissioners Keith Nelson,
15 Commissioners Tom Roccabena, Commissioners
16 Michael Jubavich and myself, Commissioner
17 Pete Stauber.

18 We are writing to express our
19 grave concerns regarding your upcoming
20 decision on a proposed new Minnesota sulfate
21 water quality standard, designed to protect
22 wild rice. Minnesota is the only state with
23 its own sulfide slash sulfide standard and
24 this puts us in a unique and rather unenviable
25 position.

1 Failure to adjust the proposed
2 standard to be reasonable and science-based
3 will result in devastating financial impacts
4 to cities and businesses throughout
5 Minnesota, especially on St. Louis County's
6 economically distressed Iron Range.

7 We ask who would want that to
8 happen? As you know, our standard of ten
9 milligrams per liter dates back to 1973, but
10 it was never imposed.

11 Recently, and only after a few
12 parochial interest groups started pressing
13 the MPCA to enforce it, did people fully
14 understand and realize the old standard was
15 obsolete and fundamentally flawed.

16 This is why we find the sudden
17 rush to judgment on a new standard puzzling,
18 especially in light of this previous
19 experience. The MPCA's rule making process
20 should always be science-based and inclusive
21 of all available research.

22 Unfortunately, this wasn't the
23 case here. In fact, significant concerns
24 were voiced about the process used to set the
25 new standard.

1 For example, your own
2 MPCA-organized peer review panel criticized
3 much of the toxicity testing and research,
4 the very basis by which most of the proposed
5 new standard was determined. Despite the
6 peer review concerns, however, the testing
7 and research was already done.

8 So, apparently, it just fell on
9 deaf ears. How incredibly disappointing. In
10 addition, there were other important factors
11 which were also completely missed or ignored,
12 which shouldn't have, including several known
13 wild rice stressors, such as water depth,
14 water clarity, fluctuations in hydrology,
15 invasive species and shoreland development.

16 Without their full inclusion
17 and a thorough analysis of these other
18 important factors, Minnesotans have no choice
19 but to conclude the proposed new standard is
20 simply fundamentally flawed. Thank you for
21 accepting our comments.

22 Our county and its 200,000
23 citizens are counting on the MPCA to listen
24 to us before making a final decision. We
25 need to protect wild rice by establishing a

1 water quality standard that is based on
2 modern science and that actually protects
3 rice.

4 We also need to protect the
5 jobs of thousands of hard-working Minnesotans
6 whose livelihood and future depends on a
7 reasonable, fair, new water quality
8 standard. Thank you, Your Honor.

9 THE COURT: Thank you. Are
10 there any questions for Commissioner
11 Stauber? Or comments?

12 (No response).

13 THE COURT: Okay. Thank you.
14 And I will mark this as Exhibit 1025.

15 REPORTER'S NOTE: Whereupon,
16 Exhibit Number 1025 was marked
17 for identification.

18 THE COURT: I started with
19 1,000 for public hearing incidents.

20 REPORTER'S NOTE: Whereupon, a
21 discussion is conducted off
22 the record.

23 THE COURT: Okay. Mr.
24 Hawkins?

25 (Indicating).

1 THE COURT: Thank you. This
2 will be Exhibit 1026.

3 REPORTER'S NOTE: Whereupon,
4 Exhibit Number 1026 was marked
5 for identification.

6 THE WITNESS: Thank you, Your
7 Honor. I'm Douglas Hawkins, D-O-U-G-L-A-S,
8 H-A-W-K-I-N-S. I am a meritus professor and
9 former chair of applied statistics,
10 University of Minnesota Twin Cities,
11 currently living in Arizona, 10222 East South
12 Wind Lane, in Scottsdale, 85262.

13 And I'm talking on behalf of a
14 group concerned with water discharge
15 sciences. My comments relate to the
16 statistical support documents referred to on
17 the website.

18 Your Honor, we're here to
19 protect wild rice. My first key point is the
20 proposed sulfate standard doesn't do that.

21 It does not differentiate between water
22 bodies that do and do not contain wild rice.

23 You could, as well, roll that
24 die. If it becomes up one or two, said water
25 body is clean. If it comes up three, four,

1 five or six, said water body is suspect.
2 Equally likely for there to be wild rice
3 there.

4 Now it's not because the MPCA
5 did a bad job with their modeling. The fact
6 of the matter is that there is no
7 relationship between sulfate, TOC and iron
8 and the presence or absence of wild rice.

9 I have looked several ways for
10 differences between those two groups and
11 these three were -- and there really aren't
12 any. If we turn to sulfide, sulfide is
13 somewhat predictive of the presence or
14 absence of wild rice.

15 Statistically significant, not
16 really strong. It explains ten percent of
17 the variability in the presence or absence of
18 wild rice. Now, it may be the most powerful
19 of the three factors looked at at MPCA, but
20 it is still a small player.

21 Ninety percent of the
22 variability is still there. Now, the MPCA
23 assessment found quite (inaudible) behavior
24 for the sulfate standard. But the reason for
25 that is that they're not predicting wild

1 rice.

2 They're predicting sulfide.

3 We're not here to look after sulfide. We are
4 here to look after wild rice. When you take
5 the sulfide, the monkey in the middle, out of
6 the picture, the association just goes away.

7 A final point... A few points I
8 want to make. All of these analyzed items,
9 the sulfides, sulfate, sulfide, the TOC and
10 the iron vary substantially from time to time
11 within a body... Within a water body.

12 The variability within a water
13 body is comparable to that between water
14 bodies. So, these chemistries are rapidly
15 moving forward. Sulfate, TOC and iron are
16 statistically significant predictors of
17 sulfide, but they're not very accurate.

18 Most of the variability in
19 sulfide is still there even after you do the
20 prediction. So, I think these are
21 fundamental difficulties with the analyzes
22 that are being carried out, with the
23 conclusions.

24 Final comment and this, I
25 think, is one I'll mention briefly because

1 others have covered it more effectively, in
2 more depth. The proposed standard of 120 is
3 not well supported by the data. There is a
4 wide range of cutoffs on sulfide, which will
5 just trade off with specificity, more or less
6 on a one-for-one basis.

7 So, this number is no line in
8 the sand. I am concerned that the sulfate
9 standard is going to lead to a lot of time
10 spent on wild goose chases, looking for
11 problems where there aren't any and ignoring
12 problems where there are.

13 Lakes or water bodies that have
14 low sulfide and no wild rice. And the effort
15 spent on enforcing the standard might better
16 be spent on looking into the more fundamental
17 issues of why wild rice is or is not there.
18 Not on a water-body-by-water-body basis.

19 Thank you.

20 THE COURT: Thank you. I have
21 a couple of questions. One, you said that
22 you represented a group of people. Is there
23 any formal name to that group or is it a... A
24 loose association --

25 THE WITNESS: Well, Your Honor

1 I --

2 THE COURT: -- of people?

3 THE WITNESS: The people that
4 asked me to come are essentially iron
5 mining. These are people that I have worked
6 with before.

7 THE COURT: Okay.

8 THE WITNESS: And they told me
9 that they... There are others interested with
10 them in this problem.

11 THE COURT: Okay. And then, my
12 other question was are you speaking against
13 the existing standard, as well, then?

14 THE WITNESS: Um...

15 THE COURT: Or are you not...
16 Are not --

17 THE WITNESS: -- yes.

18 THE COURT: Okay.

19 THE WITNESS: If sulfate
20 doesn't have anything to tell us in these
21 water bodies, then it doesn't have anything
22 to tell us.

23 THE COURT: Okay. I was just
24 trying to clarify based on your remarks.
25 Does anyone else have any questions or

1 comments for... Is it Dr. Hawkins?

2 THE WITNESS: Yes.

3 (No response).

4 REPORTER'S NOTE: Whereupon, a
5 discussion is conducted off
6 the record.

7 THE COURT: Okay. Thank you
8 very much. We are going to take a ten-minute
9 break. Give everybody a chance to stretch a
10 little bit and the court reporter a chance to
11 rest his hands. So, I will call you back in
12 ten minutes, which by my clock would be 20
13 minutes to 6:00.

14 REPORTER'S NOTE: Whereupon,
15 a short recess is taken.

16 THE COURT: We are going to
17 start again now. So, please come back and
18 take your seats. And the next person up is
19 Mister... Luck, is it? Luke?

20 REPORTER'S NOTE: Whereupon, a
21 discussion is conducted off
22 the record.

23 THE COURT: Okay. So, we're
24 back on the record. Welcome.

25 THE WITNESS: Thank you, Your

1 Honor. My name is Representative Dale
2 Lueck. Dale is D-A-L-E. Lueck is
3 L-U-E-C-K. I live at 37489 295th Street,
4 Aitkin, Minnesota.

5 I represent House District 10B,
6 which is all of Aitkin County and a vast
7 majority of rural Crow Wing County. We
8 happen to just be sitting just outside of
9 where my district starts, which is just
10 beyond Brainerd's city limits.

11 I serve on the environmental
12 and natural resources finance committee. I
13 also serve on a subcommittee, mining,
14 forestry and tourism, which is a part of that
15 house committee.

16 I am a member of the
17 agriculture policy committee in the House of
18 Representatives. Also a member of the
19 capital investment committee in the House of
20 Representatives Your Honor, the reason I
21 mentioned that is because that provides a
22 perspective of how this rule, um... And
23 the... And the, uh... Broad impact this rule
24 could have.

25 From a capital investment

1 committee, which is bonding, we dedicate a
2 huge amount of dollars every other year to
3 maintain and upgrade our waste disposal
4 plants for our small, fairly small cities and
5 large cities throughout Minnesota.

6 While I recognize we do
7 standards based on science, I can say
8 conclusively that it looks like, if we
9 adopted this standard as is, we are going to
10 create a huge, maybe in the billion dollar
11 level cost, that will be put upon the
12 citizens of Minnesota.

13 From an agriculture standpoint,
14 I also farm in my spare time and have
15 relatives that, for a couple decades, raised
16 a vast amount of domestic wild rice and
17 processed it for wholesale use.

18 The agronomy involved in
19 growing wild rice in the patty is a little
20 bit different from what happens in the lake,
21 but the basis is very similar.

22 I think we're probably on the
23 right track, general track, with how we're
24 looking at this, but I don't think we've
25 accepted and found all the science available

1 yet to be able to effectively promulgate this
2 standard.

3 So, I would just say, point
4 blank, we're premature. I believe the agency
5 is ahead of themselves and that we need to
6 slow down a little bit.

7 The Legislature very
8 specifically provided additional time for the
9 Agency to make sure they get this right.
10 Because, looking forward, we anticipate to
11 really enforce this rule once we get the
12 right rule in place.

13 So, we want to do it right.
14 Unlike the old rule, which basically has
15 never been enforced, you know, we do intend
16 to fully protect wild rice. But, we've got
17 to make sure we do it right.

18 I would just simply want to
19 attest and support Representative Rob
20 Becklin's comments. I am also part of the
21 Iron Range delegation. My service there
22 precedes his by a couple years.

23 And I can say that the Agency
24 has worked a good many years on this and we
25 made progress. But, again, I just want to

1 reiterate, when you slow this down, we have
2 still got plenty of time.

3 We have got things that are in
4 process yet, that we haven't even received
5 the final date on, but we're here trying to
6 jam a rule into place that I think is
7 premature.

8 So, with that, I would like to
9 submit a... Some written comments here.
10 They're a little more succinct than my public
11 comments here, but I want to thank you for
12 your time and just urge that we send the rule
13 back and that we take another look at it.
14 There is more work to be done on this, Your
15 Honor.

16 THE COURT: Thank you,
17 Representative Lueck. Does anybody have any
18 questions? Or comments?

19 (No response).

20 THE COURT: Okay. And I will
21 mark this as Exhibit 1027. 1,027.

22 REPORTER'S NOTE: Whereupon,
23 Exhibit Number 1027 was marked
24 for identification.

25 THE COURT: Ms. Corneya.

1 THE WITNESS: My name is
2 Barbara Corneya. That's B-A-R-B-A-R-A,
3 C-O-U-R-N-E-Y-A. I live at 1388 Shadey Wood
4 Shores Drive Northwest, Pine River,
5 Minnesota. I am a member of the board of the
6 Pine River Watershed Alliance. However, I
7 represent myself here today.

8 Wild rice does not grow well in
9 waters with higher sulfate levels. We have
10 accomplished that today. The existing
11 standard limits sulfate discharges to a flat
12 limit of ten milligrams per liter, which
13 seems to have been working since we have lots
14 of wild rice in our rivers and streams and
15 our lakes.

16 The proposal before us would
17 replace this with a complicated formula,
18 based on the unique characteristics of
19 individual lakes and streams. There are
20 several problems with this proposal, two of
21 which I'd like to highlight here.

22 First, 1300 lakes and streams
23 have been identified as containing wild rice
24 beds. The actual number is likely far
25 greater as it is generally accepted that not

1 all wild rice lakes and streams have been
2 identified to date.

3 That means that custom
4 standards would only be applied to those
5 bodies of water already identified. This
6 could result in many wild rice lakes and
7 streams not being regulated at all.

8 Second, the new standards would
9 dictate that an individual lake or stream
10 should not have more than 120 micrograms of
11 sulfides per liter.

12 Given that current reductions
13 in fines for environmental protection, it's
14 very hard for me to believe that 1300 bodies
15 of water could even receive an analysis of
16 the existing sulfide level in a timely
17 manner.

18 And even if they were
19 successful in determining the existing
20 sulfide level, it would then be necessary to
21 individually calculate how much sulfate that
22 body of water could handle in discharge water
23 to maintain the proper sulfide level.

24 How much often that testing
25 have to happen to confirm that the right

1 formula had been applied and that sulfide
2 levels were still acceptable? Wouldn't this
3 be a moving target? Is it really workable?

4 Further complicating matters
5 appears to be the fact that the impacts of
6 carbon and iron in the sediments are not
7 agreed upon.

8 There's disputes in that area.
9 Overall, this sure sounds like a chemistry
10 experiment destined to fail in the protection
11 of wild rice. Minnesota's wild rice crop is
12 far too important to get this wrong.

13 THE COURT: Thank you. Are
14 there questions for Ms. Corneya?

15 (No response).

16 THE COURT: Okay. Thank you.

17 THE WITNESS: And I apologize
18 for some of the handwritten changes. I
19 learned some things here today, so I wanted
20 to make some changes.

21 THE COURT: That's fine.
22 Thank you.

23 THE WITNESS: (Indicating).

24 THE COURT: So, this is Exhibit
25 1028.

1 REPORTER'S NOTE: Whereupon,
2 Exhibit Number 1028 was marked
3 for identification.

4 THE COURT: Mister... Mr.
5 Bettendorf. And if you could just hold on
6 for one second. Finishing a note. Okay.
7 Thank you.

8 THE WITNESS: Thank you, Your
9 Honor. My name is Gerard Bettendorf.
10 G-E-R-A-R-D. B-E-T-T-E-N-D-O-R-F. I live at
11 310 Birch Drive, Box 476, Foley, Minnesota
12 56329. I am the Mayor of the City of Foley
13 and that's who I am representing.

14 We are located within 25 miles
15 of a wild rice waters and wanted to comment
16 on the proposal because of the potential
17 future impact on our community.

18 The City of Foley takes great
19 pride in the work we do to protect
20 Minnesota's waters through our wastewater
21 facility. As stewards of our community's
22 natural and financial resources, we want to
23 make sure, that when we invest taxpayer money
24 in keeping Minnesota's waters clean, that the
25 investment is required by reasonable

1 regulations.

2 The potential costs to the
3 municipalities of this proposed rule should
4 not be understated. We have seen preliminary
5 cost estimates, showing cities could be
6 forced to spend tens of millions of dollars
7 to meet this standard.

8 Such costs would place an undue
9 hardship on our community and many other
10 communities. The MPCA acknowledges the cost
11 that our cities may face as a result of this
12 rule and acknowledges that municipalities
13 will likely need to seek variances.

14 We appreciate that proposed
15 rule would waive the variance fee for
16 municipalities. But, the need for variances
17 is evidence that the standard is
18 unreasonable.

19 Further, the granting of a
20 variance is not guaranteed, must be approved
21 by the EPA and merely delays costs. We
22 understand this rule affects the discharges
23 from wastewater facilities.

24 We are also curious what other
25 sources the PCA has looked at as a

1 contributing factor to this problem. Have
2 they been identified? And what are you doing
3 about their potential contribution?

4 In closing, this proposed rule
5 has the potential for a devastating economic
6 impact on Foley and many other communities
7 throughout the State of Minnesota. The
8 question before you is whether it is
9 reasonable. I'd like to thank you for your
10 time.

11 THE COURT: Thank you. And I
12 do have a clarifying question for you, as
13 well. When you talk about the cost being
14 tens of millions of dollars. Are you talking
15 about for your particular community? Or are
16 you talking about for number -- so, yeah.
17 Could you clarify that for me?

18 THE WITNESS: Well, yeah.
19 Basically, it would be like it's -- you're
20 talking a rough estimate that we have looked
21 at is probably like around 15 million dollars
22 it would cost us to build a new plant.

23 Now, we are not the only ones
24 that would wind up with having to build
25 plants and... And this would put a real

1 economic hardship on a lot of cities.
2 Especially smaller ones like ours.

3 THE COURT: Okay. Thank you.
4 Are there any questions for Mr. Bettendorf?

5 (No response).

6 THE COURT: Thank you. And
7 this is Exhibit 1029.

8 REPORTER'S NOTE: Whereupon,
9 Exhibit Number 1029 was marked
10 for identification.

11
12 REPORTER'S NOTE: Whereupon, a
13 discussion is conducted off
14 the record.

15 THE COURT: Mr. Larson. Go
16 ahead.

17 THE WITNESS: Oh. Thank you,
18 Your Honor. My name is Peder, P-E-D-E-R,
19 Larson, L-A-R-S-O-N. I'm from the Larkin,
20 L-A-R-K-I-N, Hoffman, H-O-F-F-M-A-N, Law
21 Firm. I am here representing United States
22 Steel.

23 And Your Honor, I did to make
24 one just clarification for Dr. Hawkins. You
25 asked him who he was representing and he said

1 taconite companies.

2 I wanted to clarify that the
3 taconite companies and Minnesota Power have
4 all cooperated that consortium or that loose
5 coalition that... That he described before.
6 So, I just wanted to clarify that for the
7 record.

8 THE COURT: Thank you.

9 THE WITNESS: So, Your Honor,
10 I'm here to talk about procedural issues and,
11 particularly, about the Clean Water Act
12 requirements, the Minnesota Administrative
13 Procedure Act, your Standard of Review and,
14 in particular since it's come up already
15 tonight, the PCA's consideration of costs.

16 My comments relate to your
17 standard of review in 1400.2100 and whether
18 the PCA is adopting this rule in compliance
19 with the procedural require... Requirements
20 of that chapter and --

21 THE COURT: -- could you slow
22 down just a little bit?

23 THE WITNESS: Sure.

24 THE COURT: Thank you.

25 THE WITNESS: The compliance of

1 that chapter, Chapter 14. My comments relate
2 to Minnesota Statute 14.131, Sonar
3 Requirements. Specifically, Number 3,
4 related to the determination of whether there
5 are less costly methods or less intrusive
6 methods for achieving the purpose of the
7 proposed rule.

8 Number 4, whether there are
9 alternative methods for achievement of
10 purpose of the proposed rule that were
11 seriously considered and why they were
12 rejected and, of course, the probable costs
13 of the complying with the proposed rule.
14 You've heard about that already.

15 As a preliminary matter, I
16 would note for you Minnesota Statutes 115.44,
17 subdivision 6, that requires the PCA, when
18 they are adopting altering, modifying
19 standards of water quality to do those
20 actions in compliance with Chapter 14.

21 The PCA is making four
22 decisions here. First is to delete the
23 current ten milligram per liter sulfate
24 standard and the related language. They are
25 proposing new rule language establishing a

1 Class 4D classification.

2 They're establishing new water
3 quality criteria of 120 micrograms per liter
4 of sulfide. And they're designating waters.
5 My comments relate to those last three.

6 The Agency could have, in their
7 proposal, have deleted the ten milligram per
8 liter standard under the Clean Water Act and
9 been left with their language in 7050.0224,
10 subdivision 1, which is the narrative
11 standard that you're probably familiar with.

12 It's the wild rice is an
13 aquatic plant and resource and it relates to
14 the WR waters. That's perfectly acceptable
15 under the Clean Water Act. The Clean Water
16 Act doesn't require the Agency to do anything
17 else.

18 They have made the decision,
19 though, as a policy matter to pursue these
20 other decisions. The Clean Water Act does
21 not require them to take those actions. The
22 Clean Water Act does require some actions
23 that must be taken.

24 But the Agency, here, is
25 talking about a subcategory of the use. The

1 Agency has discretion in deciding whether to
2 establish that in how they act. Because they
3 have that discretion, it's a state law issue
4 and they have to comply with the
5 Administrative Procedure Act.

6 The reason I am bringing that
7 up is that Chapter 14 requires an analysis of
8 the probable costs of complying with the
9 proposed rule. You've heard from the Agency
10 and this is a quote, I believe, I haven't
11 looked at the transcript, "In water quality
12 standards setting, we are not allowed to
13 consider costs."

14 In the Sonar, at Page 165, the
15 Agency says, "It's important to note that
16 providing additional detail regarding cost
17 estimates would not change the proposed rule
18 revisions." They also state later that there
19 will be ample opportunity later, on Page 165,
20 to consider costs.

21 Your Honor, they are required
22 to consider costs now under the APA. They're
23 required to comply with the APA in doing
24 their work here. And there is no provision
25 in the Clean Water Act that allows them to

1 violate the APA.

2 In fact, they have to supply
3 with it. There is some discussion of the
4 LCCMR grant that was discussed tonight. You
5 have heard my discussion about that
6 \$180,000. I just want to note the actual
7 session law that describes how the Agency is
8 supposed to use that amount of money.

9 And it's true that they're
10 supposed to use that money to inform
11 implementation of the wild rice sulfate
12 standard, but the actual language says and
13 this is the Legislative language for the
14 appropriation: "It is to be used to inform
15 the development and implementation of wild
16 rice, sulfate and other water quality
17 standards."

18 That's what that language was
19 appropriated for. It was appropriated to
20 help them in implementation, but it,
21 specifically, also appropriated to inform the
22 development of water quality standards.

23 We are waiting for a report in
24 2018, May, as to the result of that
25 appropriation. I wanted to make clear that

1 that's actually what the law says and, you
2 know, my clients and others have told you, in
3 many ways, that that report should be done
4 before the PCA proceeds.

5 Finally, I just want to give
6 you a cost statement from the Agency and if
7 the Agency isn't considering cost, then this
8 is what they describe in the Agency's Sonar
9 that they are not considering and it relates
10 to capital costs and operations and
11 maintenance costs.

12 This is from 183 of the Sonar.
13 It says, "Evaporation and crystallization of
14 high capital costs. The primary driver of
15 that is concentrate management.

16 Upwards of 50 percent of the
17 total operation and maintenance costs are
18 energy costs. And regarding membrane
19 treatments at significant secondary costs,
20 such as high energy requirements leading to
21 significantly high carbon emissions and other
22 things."

23 It talks about that, "If the
24 extra energy associated with the evaporation
25 and crystallization comes from burning fossil

1 fuels, it could worsen the carbon footprint
2 of the facility and possibly require
3 upgrading of the power plant to a larger
4 power capacity."

5 I'm giving you these examples
6 because, under the APA, believe these have to
7 be considered. I know you are familiar with
8 the cost of carbon. I have been involved in
9 a recent activity on changing mandatory
10 categories for environmental review.

11 A lot of people believe every
12 EAW should require an analysis of carbon
13 impacts and climate change impacts. The
14 Agency is suggesting, by not considering
15 costs, that they don't have to take those
16 into account here.

17 And to reiterate, this -- we
18 understand the statements about when the
19 Agency should consider costs and how they do
20 their scientific work.

21 And that's not what I'm talking
22 about here as much as I am talking about the
23 policy decision to go beyond eliminating the
24 ten, to go beyond the current narrative
25 standard and adopt this new language.

1 I am not here to suggest that
2 they couldn't provide you information on
3 costs and other factors to support that.
4 But, I am here to say that they have to
5 comply with that requirement in the APA.

6 And finally, if I have anymore
7 time, I'll just note that there are other
8 provisions of the Administrative Procedure
9 Act that are required in the APA regarding
10 what I stated before.

11 They have to look at
12 alternatives to meet the State's purpose.
13 This is a state agency looking to protect
14 wild rice. They are acting on behalf of the
15 administration.

16 They should have in their Sonar
17 a description of other options to protect
18 wild rice, outside of simply a water quality
19 standard for sulfate.

20 They have chosen not to include
21 those alternatives in their sonar or analyze
22 them. So, with that, we're clearly going to
23 provide you with a lot of written
24 information. I'm going to give you different
25 case law references.

1 I do have a couple questions
2 for them and it really relates to Page 145 of
3 the Sonar, related to the... It's referred to
4 the second class of people affected by the
5 rule revision are those who want to enjoy the
6 beneficial use of the water quality standards
7 to protect fishing, swimming, boating.

8 On Page 43 of the Sonar, the
9 PCA states, "The wild rice sulfate standard,
10 generally, and in these rule provisions
11 specifically, only have an impact on wild
12 rice where it grows in water bodies that are
13 impacted by sulfate discharges."

14 The APA requires that, when the
15 agency provides a sonar, they have to state
16 how the evidence rationally relates to the
17 choice of actions taken. Their benefits
18 description describe a whole lot of benefits
19 about wild rice.

20 What they don't do is describe
21 how regulation of discharges will affect that
22 enjoyment. They have a lot of very good
23 information, generally, in wild rice. But,
24 they don't have information on particularly
25 how many acres they're looking at that are at

1 risk here.

2 How many acres will be better
3 protected if they adopt the standard. And
4 the benefits were described generally. I
5 suggest to you the benefits described will be
6 enjoyed regardless of this rule.

7 Because this rule will affect
8 only waters that are impacted by discharges.
9 And I expect the Agency's information, and
10 I'd like to know the answer to that, would
11 show that a small percentage of wild rice in
12 Minnesota would actually be affected by a
13 discharge.

14 THE COURT: Are there questions
15 for Mr. Larson? I guess, specifically, I
16 want to make sure that the Agency understands
17 his question?

18 (No response).

19 THE COURT: Regardless of
20 whether you're going to answer it right now.
21 I'm assuming you're not going to answer it
22 right now, but... But I want to make sure you
23 understand it.

24 MS. LOTTHAMMER: Your Honor, I
25 believe I understand the question. And you

1 are right, we would need to consider the
2 question and respond in writing so that we
3 can fully consider it and provide a thorough
4 response.

5 THE WITNESS: Your Honor, would
6 you prefer that I send the e-mail... An
7 e-mail to them requesting an answer to the
8 question? Is that sufficient? I have it in
9 writing, but I don't want to give you all my
10 notes here.

11 THE COURT: I would prefer that
12 you actually file it so that it could be
13 publicly available because other people may
14 have comments --

15 THE WITNESS: Okay.

16 THE COURT: -- regarding it, as
17 well. So I'd like to give anybody who wants
18 an opportunity to respond.

19 THE WITNESS: I'd be happy to.
20 I can clarify here, if you don't mind.

21 THE COURT: Sure.

22 THE WITNESS: So, based on
23 current discharges subject to an MPDS permit,
24 what's the acreage of wild rice... Enlisted
25 wild waters, where it grows in water bodies

1 that are impacted by sulfate discharges?

2 And I understand you might have
3 to estimate that. And then, how does that
4 acreage compare to the acreage of wild rice
5 growing in other wild rice waters, that are
6 proposed for listing but aren't impacted by a
7 discharge?

8 THE COURT: Okay?

9 MS. LOTTHAMMER: (Nodding).

10 THE COURT: Any other questions
11 or comments for Mr. Larson?

12 (No response).

13 THE COURT: Thank you.

14 THE WITNESS: Thank you.

15 THE COURT: Okay.

16 Representative Heintzeman. You may proceed.

17 Thanks.

18 THE WITNESS: All right. Thank
19 you, Your Honor. I really appreciate the
20 opportunity. My name is Josh Heintzeman,
21 J-O-S-H. Heintzeman is H-E-I-N-T-Z-E-M-A-N.

22 First of all, I just want to
23 thank you again for the opportunity. And
24 I'll be as brief as I can be. Representative
25 Lueck mentioned his district, Aitkin County

1 and almost... Or more... Possibly more than
2 two-thirds of Crow Wing County.

3 I represent the cities of
4 Brainerd, Baxter, Pequot and then all the way
5 up on to Jenkins. So, we're sitting in my
6 district here at Central Lakes College.

7 He also mentioned a number of
8 committees he works on, one being the
9 environment committee in the House of
10 Representatives. I'm serving as the vice
11 chair of that committee.

12 I also serve as the House
13 member who is chair of the LCCMR. Previously
14 to the Legislature, I was a watershed
15 district manager and have worked on lots of
16 issues relevant to water.

17 The reason that I wanted to
18 come up and speak was, Number 1, to not go
19 over each and every one of the issues that
20 Representative Ecklund and Representative
21 Lueck mentioned, but I would echo them.

22 Is to, I think, point out a
23 very relevant concern that I have and many
24 others have, as well. And that would be that
25 the process proposed to give a variance, so

1 to speak, to some cities. That's probably
2 not the right word, but an exception in
3 regard to their water treatment facilities,
4 that that process could become political.

5 Just like the process that has
6 led us to this discussion tonight. And that
7 is the great concern to me, great concern to
8 numerous other folks and I would hope that we
9 would take that... Um, to heart. We would
10 consider potential difficulties that that
11 could create. That concludes my comments.

12 THE COURT: Thank you. Are
13 there any questions for Representative
14 Heintzeman? Or comments?

15 (No response).

16 THE COURT: Okay. Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: Larry... Is it
19 Wannebo?

20 THE WITNESS: Thank you,
21 Your... (coughing), Your Honor. Good
22 evening. Larry Wannebo, last name spelled
23 W-A-N-N-E-B-O. It's Norwegian. 39911 County
24 Road 66, Manhattan Beach, Minnesota 56442. I
25 am not a wild ricer.

1 I did serve, however, on the
2 Pine River Watershed Alliance when it was
3 first formed some 15 years ago. And I am a
4 Minnesota master naturalist, which is a DNR
5 and University of Minnesota program. I
6 really enjoy wild rice.

7 I have a number of friends that
8 gift it to us. And in your -- I have a
9 couple questions and it will be a mix of
10 questions and discussion.

11 But, in the various site
12 testing that you did, I am understanding that
13 there is a difference between wild rice and
14 patty-grown wild rice, so I'm curious about
15 your analysis of the substrate that it was
16 grown in and wondered, though, if that
17 analysis went on to any of the nutritional
18 value and the chemical value of the grain
19 itself?

20 MS. LOTTHAMMER: No. We didn't
21 analyze the nutritional or chemical value of
22 the grain.

23 THE WITNESS: Would that seem
24 to be another step that certainly should be
25 taken? After all, it's imbibed by humans and

1 ducks and other creators. Would that seem to
2 be a logical thing to look at in this process
3 as going forward?

4 MS. LOTTHAMMER: Sorry.
5 Microphone challenged, I guess. So, that
6 is... Is certainly a comment that we can
7 respond to during the... The response to
8 comments period. But, I don't think we're in
9 a position to respond to that right now.

10 THE WITNESS: Thank you. And
11 I'm curious about the source of the sulfate.
12 Are there some specific industry entities
13 that have pushed for this standard change and
14 for this investigation? Specific industries
15 and by name, company name, and what is their
16 product?

17 MS. LOTTHAMMER: So, the need
18 for further clarifying the existing standard
19 was one that was identified by the Pollution
20 Control Agency back in 2010 when questions
21 were coming up about this particular
22 standard.

23 We did receive a petition for
24 rule making from the Minnesota Chamber of
25 Commerce on behalf of the members of the

1 chamber of commerce asking for rule making,
2 as well. But, the Agency had identified this
3 as something that... That we needed to
4 further look at.

5 THE WITNESS: Okay. So, the
6 effort, thus far, has been driven by jobs,
7 jobs, jobs and not necessarily by
8 environmental entities that said we need to
9 hook at these standards.

10 And that's just a rhetorical
11 question, a comment, that I... That I'm
12 making. It seems like a very small part of
13 the state and a very highly regarded resource
14 here, very special to Minnesota, as you
15 know.

16 It seems like a very large risk
17 to take on a very limited resource, a very
18 special natural resource here in our state.
19 The threat, as I understand it, comes
20 primarily from mining.

21 And kind of a question that I
22 would add to that is that the, uh... This
23 discharge or this sulfate that comes out of
24 the mining entity, are there other chemicals
25 that are mixed in with that, that may end up

1 in those local water resources then as part
2 of that discharge?

3 And how would you identify the
4 other chemicals that an industry may say are
5 proprietary (sic) or, you know, that are
6 secret, how would you identify other
7 contaminants that may be linked or bonded to
8 that sulfate?

9 MS. LOTTHAMMER: So, you're
10 question, I think, speaks to how we evaluate
11 discharges in general?

12 THE WITNESS: (Indicating).

13 MS. LOTTHAMMER: Basically,
14 when... When there is a permitting situation
15 where... Where there is a discharge that is
16 required to be permitted under state or
17 Federal rule, we require the permittee to...
18 Or the project proposer of the discharge, to
19 describe the nature of what's being proposed
20 and the chemical constituencies of the
21 discharge.

22 And that requires data, either
23 data that's submitted during a proposal or if
24 like there is new standards that are
25 developed, we'll... We'll include monitoring

1 requirements in the... The permitting process
2 so that we understand what is in the
3 affluent.

4 THE WITNESS: Are they allowed
5 to say that there are some things there that
6 we... We are not going to disclose? I
7 understand that's happening in the... In the
8 mining industry or in the pipeline oil
9 industry.

10 I'm curious if that also would
11 happen in the mining industry to say it's a
12 proprietary chemical. It's a trade secret
13 and we're not going to tell you.

14 MS. LOTTAMMER: That's
15 something that we would need to respond to in
16 writing since we don't have any of our permit
17 evaluation staff here today that would be
18 able to speak to that.

19 THE WITNESS: Okay. Certainly,
20 that's --

21 THE COURT: -- hold on.

22 THE WITNESS: Oh, I'm sorry.

23 THE COURT: Mr. Neblett, were
24 you going to add to that? You looked like
25 you were, but you don't have to certainly.

1 MR. NEBLETT: I was just going
2 to say that under the Data Practices Act, an
3 individual company can request trade secret
4 protection for the data they submit. We
5 would then have to evaluate whether that's a
6 valid claim. And if it is, then we would
7 have to honor that.

8 THE WITNESS: Okay. I think my
9 other concern here comes to that monitoring
10 and the evaluation, the ongoing investigation
11 and so forth.

12 You know, over the years, we've
13 even our legislators and they drive a lot of
14 this, as you have heard three of them speak
15 here this evening. And they can run hot and
16 cold.

17 They have restricted funding.
18 They have affected budgets. So, they, uh...
19 First, they'll lower the standards on
20 something. And then the PCA or other
21 entities will have good intentions of
22 staffing enough and adequately trained people
23 to enforce it.

24 And then, in the next biennium
25 or whatever, the Legislature will come along

1 and they will tighten down the funding that
2 was necessary for the enforcement that they
3 approved in the previous session.

4 And as a citizen here and as a
5 rice eater, that... That really bothers me
6 that they will, uh... They could do that here
7 again. I sort of liked -- I definitely liked
8 what Dr. Hopkins said, that maybe there are
9 some unknowns here that we... We need to look
10 at and maybe things aren't connected and
11 clear as the PCA thought they were
12 initially.

13 So, I guess that's, uh...
14 That's my only comment, other than our waters
15 and our wild rice resources are our most
16 valuable assets here and everything that the
17 PCA can do to protect them going into the
18 next hundred years would be appreciated.
19 Thank you.

20 THE COURT: Thank you. Are
21 there any other questions or comments for Mr.
22 Wannebo?

23 (No response).

24 THE COURT: Okay. Thank you.
25 Mister... Mr. Maysasich?

1 THE WITNESS: Hand this to you
2 right now, Judge (indicating). You get a
3 gold star for pronunciation of that name.

4 THE COURT: I think you said it
5 the other night.

6 THE WITNESS: A lot of people
7 stumble through it. Your Honor, MPCA staff
8 and those attending, I thank you all for this
9 opportunity to provide oral testimony on
10 MPCA's proposed revisions to the existing
11 sulfate standard to protect wild rice.

12 My name is Joseph Michael
13 Mayasich. I will spell the last name,
14 M-A-Y-A-S-I-C-H. My academic background,
15 Bachelor of Science aquatic biology, Master
16 of Science biology, Ph.D. Boughten.

17 My professional career focuses
18 on regulatory affairs and the scientific
19 discipline of ecotoxicology. I am testifying
20 as a member of the wild rice standard study
21 advisory committee.

22 I'm representing Minnesota
23 wastewater treatment plants. That's plural.
24 My testimony is structured around three
25 fundamental themes, which are purposely

1 presented as a sequence.

2 Theme 1. You get what you pay
3 for. Page 13, Section C of Sonar summarizes
4 the legislative mandate which appropriated 1
5 and a half million dollars. Those funds,
6 there was a stipulation as to how to spend
7 them with respect to time.

8 One million dollars the first
9 year, 500,000 dollars the second year, for
10 the studies. Now, MPCA staff are to be
11 positively recognized and commended for
12 mobilizing resources, managing the logistics
13 to complete multiple studies in approximately
14 two years.

15 They did an excellent job.
16 Now, all of that effort yielded typical
17 scientific findings. One, it is sulfide, not
18 sulfate, that is the substance of concern to
19 wild rice.

20 Two, it is the sediment, not
21 the water column, that is the environmental
22 media of concern. Three, iron inhibits and
23 total organic carbon stimulates sulfide
24 toxicity.

25 These breakthrough findings

1 benchmark the clear scientific paradigm.
2 Shift. The paradigm shift represented...
3 Represents, to this date, a red flag, time
4 out moment. That should have been
5 appreciated and leveraged by the MPCA
6 Commissioner.

7 This was truly a unique and
8 complex technical issue that undoubtedly
9 would have unprecedented regulatory
10 implementations.

11 Theme 2. Haste makes waste.
12 Identifying the data needed to make a sound
13 regulatory decision on a substance of concern
14 is a core tenant of the United States
15 Environmental Protection Agency, which I'll
16 refer to as EPA.

17 The EPA has developed, uses and
18 encourages the use of a well-defined data
19 quality objectives process as a planning
20 tool. I will now read from the forward of
21 the associated guidance document.

22 The full copy is with your
23 package that I gave to you. "The U.S.
24 Environmental Protection Agency has developed
25 the data quality objectives, DQO, process as

1 the Agency's recommended planning process
2 when environmental data are used to select
3 between two alternatives or derive an
4 estimate of contamination.

5 The DQO process is used to
6 develop performance and acceptance criteria
7 for data quality objectives that clarify
8 study objectives, to find the appropriate
9 type of data."

10 And I'm going to emphasize this
11 last phrase, "and specify tolerable levels of
12 potential decision errors that will be used
13 as the basis for establishing the quality and
14 quantity of data needed to support
15 decisions."

16 The point here is that that
17 guidance was and still is available. It's
18 available from the Federal agency that the
19 MPCA must be interact with and must answer
20 to.

21 Now, this DQO process is to be
22 applied to what's referred to as a project
23 life cycle. There is a diagram in your
24 materials there.

25 For complex projects that seek

1 to address multiple questions with multiple
2 studies, like this sulfate wild rice project
3 does. Resolution of one key question leads
4 to and informs the next.

5 In these cases, the DQO process
6 can be used repeatedly, systematically and
7 interactively throughout a multiphase project
8 cycle. And I have a diagram in yours also
9 that shows how this works.

10 It's like three snail shells.
11 One feeding into the other. And I have
12 labeled those Hydroponics, Container Studies,
13 Field Study. The one that's not included is
14 some of the lab work we did with
15 environmental (inuadible), but that wasn't
16 accomplished.

17 Anyway, what I have just
18 briefly explained is the right way. Now,
19 with the backdrop of the right way and the
20 benefit, I admit, of some 20:20 hindsight,
21 here are the shortcomings of what has
22 unfortunately occurred with regard to the
23 recent efforts to inform the sulfate
24 standard.

25 The absolutely critical initial

1 first step: State the problem. It was never
2 taken. Therefore, every phase of the sulfate
3 wild rice project life cycle is jeopardized
4 with respect to meeting data quality
5 objectives.

6 The phases of the project life
7 cycle were not thoroughly planned or
8 systematically completed, sequentially, from
9 the most basic through the most complex.
10 They were essentially started
11 simultaneously.

12 Everything started. Therefore,
13 the data generated by the sulfate wild rice
14 project life cycle are not sufficiently
15 integrated or cohesive to quantitatively
16 support the Sonar.

17 These shortcomings occurred
18 because no prudent actions were ever taken in
19 response to the clearly evident scientific
20 paradigm shift that I had mentioned earlier.

21 These shortcomings have also
22 occurred by default, to some extent, from an
23 anxious research work environment and a
24 rigidly time-dependent funding.

25 Theme 3. Two wrongs don't make

1 a right. The previously covered two themes
2 underpin two egregious outcomes. The
3 promulgation of the ten milligram per liter
4 sulfate standard. Dr. Boyle's fieldwork did
5 not assess sulfide, nor did it characterize
6 sediment for iron or TOC.

7 Therefore, the initial sulfate
8 standard is now clearly scientifically
9 untenable. This is fully correctable by
10 sunsetting the ten milligram per liter
11 sulfate standard.

12 The proposed rules
13 reasonableness, now this is the second
14 outcome, is equivocal. The genesis and
15 conduct of the studies underpinning the all
16 important Technical Support Document, the
17 TSD, were devoid of a DQ... Data quality
18 objective process, similar to the EPA's.

19 At this juncture, neither a
20 pathway nor a time line for correction of
21 this outcome can be envisioned. Uncertainty
22 now abounds. Uncertainty is... Is
23 universally undesirable to Minnesotans and to
24 wild rice.

25 So, we're facing two pivotal

1 questions here. Should more money and time
2 be dedicated to further refine this
3 equation-based standard for sulfate? The
4 other question?

5 Is there a substantiated need
6 for a sulfate standard, given the conspicuous
7 absence of objective, scientifically sound
8 evidence that discharged... Discharged
9 sulfate adversely affects wild rice.

10 Now I'm compelled to glorify
11 instead of demonize sulfate. It's been
12 demonized at almost every one of these
13 hearings. Well, I am going to glorify it.
14 And sulfide.

15 So, I've got one sentence
16 left. We need to remember that everything
17 living requires the ubiquitous sulfur-based
18 ions and their sulfur essence. And I have
19 included for you a sulfur cycle, natural
20 cycle. That's in your materials. Well
21 known. Thank you.

22 THE COURT: Thank you. Are
23 there any questions or comments?

24 (No response).

25 MS. LOTTHAMMER: No. Thank

1 you.

2 THE COURT: Thank you. Thank
3 you very much.

4 THE WITNESS: You're welcome.
5 Thank you all.

6 THE COURT: Ms. Bohren? Do I
7 have the name right?

8 THE WITNESS: A few attachments
9 I'm going to reference, so I'll just hand
10 that to you.

11 THE COURT: Thank you. And so
12 the last exhibit, by the way, was 1030 and
13 this will be 1031.

14 REPORTER'S NOTE: Whereupon,
15 Exhibit Number 1031 was marked
16 for identification.

17 THE WITNESS: Well, thank you.
18 I'd like to express my appreciation for the
19 opportunity to provide oral comments on the
20 proposed sulfate standard.

21 My name is Marianne Bohren.
22 Marianne is M-A-R-I-A-N-N-E. Bohren is
23 B-O-H-R-E-N. I live in Cloquet, Minnesota.
24 My educational background, I have a Bachelor
25 of Science in chemistry and a Masters of

1 business administration.

2 I serve as the executive
3 director of the Western Lake Superior
4 Sanitary District and have held this role since
5 2008. And I am testifying on behalf of the
6 Western Lake Superior Sanitary District.

7 Which, hence forth, I will
8 refer to as WLSSD. I have provided in the
9 materials just a little summary of who we
10 are. And we are a regional wastewater
11 facility, created by state statute in the
12 1970s.

13 We serve a 530 square mile
14 area. We serve 17 customers and four major
15 industries. Our plant itself is located in
16 Duluth, Minnesota.

17 And I think the thing that is
18 most important to point out is our customer
19 base does not include the mines and we are
20 not located on the Iron Range.

21 I think in the testimony that's
22 been given, there has been a lot of attention
23 that this is an iron mining issue versus wild
24 rice. It is not.

25 It is much broader than that

1 and its impact also includes wastewater
2 treatment facilities, such as we what have in
3 Duluth, Minnesota. With the uncertainty
4 surrounding the proposed sulfate rule, WLSSD
5 has extended resources and time to evaluate
6 what are the impacts on our proposed plant in
7 Duluth, Minnesota.

8 And my comments are based on
9 the evaluation that we have done on cost and
10 I will give you some exact numbers and they
11 are included in your attachment.

12 And also our experience with
13 the MPCA in both the permitting and variance
14 process. So, point Number 1. The need for
15 and reasonableness of the rule have not been
16 properly considered or establish.

17 Presently, the only
18 commercially available technology with the
19 potential to treat for sulfate in wastewater
20 is membrane treatment. And I do have a
21 reference in what I have handed to you that
22 comes from the technical document that is
23 currently underway by the MPCA.

24 Membrane treatment is, in fact,
25 building an additional treatment plant at the

1 end of an existing wastewater treatment
2 facility. Very few wastewater plants in the
3 U.S. have implemented this technology.

4 No one, and I want to emphasize
5 no one, has installed this technology to
6 reduce sulfate levels. The environmental
7 drawbacks for membrane filtration are
8 considerable and include dramatic increases
9 in electrical requirements.

10 For the Western Lake Superior
11 Sanitary District, who treats 40 million
12 gallons of wastewater each and every day, the
13 estimated electrical increase is 600
14 percent. There has a mention of the carbon
15 footprint and the impact of that? 600
16 percent.

17 Our annual electrical needs at
18 present are 24 million kilowatt hours per
19 year. A membrane treatment plant sized to be
20 acceptable to our discharge would increase
21 that electrical demand by 146 million
22 kilowatt hours.

23 In addition, membrane treatment
24 utilizes significant quantities of hazardous
25 chemicals to prevent fouling in the

1 filtration system, which is a major technical
2 challenge. The salts removed from the
3 process need to be dried, expended and
4 properly disposed of, raising serious solid
5 waste disposal questions.

6 Finally, key ions are removed
7 in the membrane filtration process, resulting
8 in discharge which can be toxic to aquatic
9 life. Finally, and I think this is the most
10 important, is the cost of installing and
11 operating membrane filtration is
12 prohibitive.

13 For WLSSD, the capital required
14 to construct membrane filtration is estimated
15 at 500 million dollars. You've heard a lot
16 of numbers that say it's going to cost the
17 State a billion dollars. I will tell you,
18 for a facility our size, it is 500 million
19 dollars.

20 Annual operating cost to run
21 this system would more than double our
22 current operating costs. I have attached to
23 the testimony three attachments which
24 summarize the impact this would have on the
25 WLSSD customers.

1 I am going to talk about the
2 City of Duluth, specifically. Attachment A,
3 which you have there, looks at the 2018 WLSSD
4 budgeted charges to customers, as compared to
5 the estimated 2018 charges to WLSSD customers
6 should we have a membrane treatment system up
7 and operating.

8 The average increase for our
9 municipal and industrial customers is in
10 excess of... In excess of 180 percent. In
11 dollars and cents, the City of Duluth, as an
12 example, would see annual WLSSD charges
13 increase from the current 9 million to a
14 projected 26 million.

15 For our forest products
16 customers, which (inaudible), and U.S.G.,
17 these costs are similar, significantly
18 risking the continued operations of these
19 vital businesses.

20 Should the cost increase drive
21 the large industrial customers out of
22 business, municipalities, such as City of
23 Duluth, would see their annual WLSSD charge
24 increased even further.

25 Presently, the average resident

1 in the City of Duluth pays 40 dollars per
2 month in sewer charges. Should WLSSD be
3 required to install membrane filtration, the
4 City of Duluth residents would see their
5 monthly sewer bill grow 75 dollars per month,
6 which is Attachment B.

7 If the change resulted in large
8 industrial customers going out of business,
9 the City of Duluth residents' charge would
10 grow to 144 dollars per month, nearly in four
11 times the current rate. While these costs
12 are overwhelming, they are not unique to
13 WLSSD.

14 All facilities requiring
15 membrane filtration would incur similar costs
16 proportionate to their size. Clearly, this
17 is not reasonable for the customers of WLSSD
18 and for other communities, industries and
19 municipalities that would be impacted by this
20 rule.

21 Point Number 2. The MPCA
22 implementation of the proposed rule will
23 result in wide utilization of site-specific
24 variances, given the limited technology
25 available and the considerable cost of

1 implementing this technology.

2 The granting of a variance is a
3 long, complicated process. We know. We have
4 a variance. The time and effort required to
5 obtain a variance is unpredictable and can
6 take several years.

7 And an application for a
8 variance is not a guarantee. The variance
9 process does not address situations where
10 several variances may be needed due to
11 significant and long-term technological
12 challenges, as in the case in treating
13 wastewater for sulfate.

14 A five-year MPDS permit with an
15 associated variance can expire far in advance
16 of the new variance being approved. When a
17 variance expires, the permittee is considered
18 out of compliance, even if the new variance
19 is eventually granted.

20 Variances are not considered
21 retroactive. The review and granting of a
22 variance is not under the sole control of the
23 MPCA. And state variances must be approved
24 by the U.S. EPA Region 5, adding more time
25 and uncertainty.

1 The MPCA should not be
2 proceeding with rule making for which they
3 anticipate granting variances as a standard
4 implementation practice.

5 This will put significant
6 strain on MPCA's staff resources and create
7 significant uncertainty for regulated
8 entities and stakeholders.

9 The fact that implementation of
10 this rule depends so heavily on the use of
11 variances raises serious doubts about the
12 fundamental reasonableness of the MPCA's
13 approach.

14 In conclusion, I am reminded of
15 the wise words of a fellow colleague who
16 managed a large research and development
17 facility. When he was asked to address a
18 challenge, he would always state: "It can be
19 done quickly, it can be done cheaply or it
20 can be done correctly. Pick two."

21 The MCA is to be commended for
22 the sincere effort they have put into this
23 rule making effort. However, the time and
24 resources provided by the State of Minnesota
25 have been inadequate.

1 The rule being proposed raises
2 significant technical, ecological and
3 economic questions which must be addressed
4 prior to moving forward.

5 The WLSSD will be submitting
6 written comments by November 22nd and will
7 include additional detail in regard to our
8 cost study and technical concerns. Thank
9 you.

10 THE COURT: Thank you. Does
11 anybody have questions for Ms. Bohren?

12 (No response).

13 THE COURT: Thank you. And I'm
14 going to mark your handout. This is 1032.

15 REPORTER'S NOTE: Whereupon,
16 Exhibit Number 1032 was marked
17 for identification.

18 THE COURT: So I have -- are
19 there additional speakers? Okay. Have I
20 missed anybody? Is there anybody who signed
21 up to speak who I have not called? You
22 signed up to speak and I just haven't called
23 you?

24 THE WITNESS: (Indicating).

25 THE COURT: Okay. Please come

1 on up.

2 REPORTER'S NOTE: Whereupon, a
3 discussion is conducted off
4 the record.

5 THE WITNESS: Good evening,
6 Your Honor. My name is Kurt, K-U-R-T,
7 Anderson, A-N-D-E-R-S-O-N. I am the director
8 of environmental and land management for
9 Minnesota Power.

10 THE COURT: So, Mister, I am
11 just going to interrupt you for a second
12 because I don't remember seeing your name
13 here. Oh, there you are (indicating). Go
14 ahead.

15 THE WITNESS: Your Honor, my
16 testimony in St. Paul last week, I stated
17 this was a complicated issue and that you
18 would receive multiple viewpoints on the
19 technical merits and faults over the course
20 of this rule making.

21 I think we have all seen that
22 play out over the past week. And we have
23 seen just how important wild rice is to the
24 people of Minnesota.

25 One of the reasons this is

1 complicated, Your Honor, is this is actually
2 two standards, not one. The MPCA's proposed
3 approach to move away from the current water
4 column base ten parts per million sulfate
5 standard is one part.

6 It's actually quite
7 straightforward and that was the original
8 intent of this rule making effort. The
9 second standard, the sulfide-based proposal,
10 represents a policy decision the MPCA has
11 made to regulate (inaudible) in the
12 sediment.

13 This standard is incredibly
14 complex and very problematic. I will address
15 both issues in my comments today, as well as
16 in my written testimony. The first standard
17 deals with sulfate in the water column and
18 how it may impact wild rice.

19 We have an existing ten parts
20 per million standard, which the MPCA has
21 proposed should no longer be implemented.

22 Your Honor, as a lifelong
23 resident of northern Minnesota, a
24 professional scientist and a wild rice
25 harvester, here are the things that I would

1 like to see before we move towards removing
2 any protections for wild rice.

3 First, I would say like to see
4 evidence in a controlled environment showing
5 sulfate is not toxic to wild rice until
6 levels are far above ten parts per million
7 sulfate. We have that.

8 And I would like to submit into
9 evidence the pastor report from the
10 hydroponic study at UMD, showing no impact at
11 1,600 milligrams per liter, as well as the
12 (inaudible) for the et al research paper
13 showing no impacts until sulfate levels reach
14 at least 5,000 milligrams per liter.

15 Please note I am not proposing
16 moving with the sulfate limit to those
17 levels. I'm simply stating that these
18 reports both show it takes significantly, 160
19 to 500 times more sulfate to cause an impact
20 to wild rice.

21 But, that wouldn't be enough
22 for me, Your Honor. I'd also like to see
23 field search that shows that wild rice can
24 thrive in waters that contain excess of ten
25 parts per million sulfate.

1 I'd like to see it in multiple
2 water bodies and I'd like to see it over the
3 course of several years. We also have that
4 information, Your Honor.

5 And I will also be submitting a
6 summary table showing wild rice growing in
7 dense stands at up to 80 times higher sulfate
8 limits than the existing ten part per million
9 standard.

10 The information we have on
11 sulfate in wild rice is rigorous, provides a
12 high degree of certainty and it's along
13 multiple lines of evidence.

14 I'm satisfied, as both a
15 scientist and a resident of northern
16 Minnesota, that it is safe to move away from
17 the existing ten parts per million standard
18 and I fully support the decision by the MPCA
19 to remove that part of the standard.

20 This was a solid first stop.
21 However, we now reach a point that a pivotal
22 policy decision was made by the MPCA. And
23 this is not a step. This was a leap. As you
24 have heard from numerous parties, this policy
25 decision and the resulting rule making could

1 have tremendous impacts if it proceeds as
2 currently proposed.

3 So, before we take this leap,
4 here is what I would like to see and like us
5 to understand. First, do we have a clear
6 indication that sulfate from a wastewater
7 discharge actually reaches a sediment and
8 creates sulfide?

9 This is the most fundamental
10 question there is. And what we have seen,
11 Your Honor, is that there is no guarantee
12 that sulfate from a discharge actually goes
13 into the sediment.

14 Groundwater up (inaudible) can
15 mean that this is not a simple one-way street
16 the MPCA has proposed. That sulfate could
17 actually be moving in the opposite
18 direction.

19 Assuming it is a simple one-way
20 street is just unreasonable. When we think
21 about this and all the issues that arise from
22 trying to set a sediment-based standard, we
23 begin to see why these sediment quality
24 standards are just not applied in the state
25 or most others.

1 And even if it was that simple,
2 Your Honor, if sulfate always went into the
3 sediment and created sulfide according to
4 their equation, there are huge gaps in our
5 understanding and our knowledge.

6 We don't know the most basic of
7 toxicology questions, which is how is sulfide
8 affecting wild rice. Is it the young rice
9 seedlings? Is there tissue damage? Is there
10 nutrient deficiencies?

11 We don't know any of this. It
12 remains unanswered. But, even if we were to
13 proceed as the MPCA is proposing with the
14 assumption that setting a sulfide level at
15 120 parts per billion is protective, we still
16 don't know why wild rice does not respond to
17 sulfide in the laboratory until levels are
18 approximately 30 times higher than their
19 protective limit.

20 I will also be submitting into
21 evidence... Or into the record the pastor
22 hydroponic study, which shows no impact to
23 wild rice, this is an MPCA funded research,
24 until levels each over 3,000 parts per
25 billion.

1 And I will also be submitting
2 the (inaudible) for the et al 2015 paper
3 showing no impact at a similar levels 3,100
4 parts per billion.

5 In closing, Your Honor, we
6 don't have the evidence on the (inaudible)
7 transfer of sulfate. We don't know that it
8 creates sulfide in the sediment. We do know
9 that there is not an eminent risk to wild
10 rice from sulfide.

11 We see that with both
12 laboratory and field data. We don't need to
13 rush into this. We don't need to make this
14 huge leap right now. We need time to figure
15 this out and to do this right.

16 And while I am not suggesting
17 that we have satisfied the information we
18 need to regulate sulfide in the sediment, if
19 we are going to move in that direction, we
20 need to take a more measured approach.

21 We don't need to take that big
22 of a leap and there are smaller steps that we
23 can take, including the independent
24 (inaudible) of TSD, the Rambo equation, which
25 still sets a very conservative, very

1 protective limit for sulfide, as we seek to
2 further advance our knowledge and make sure
3 that we wisely protect this resource. Thank
4 you, Your Honor.

5 THE COURT: Are there questions
6 or comments for Mr. Anderson?

7 (No response).

8 THE COURT: Thank you. You may
9 be seated. Well, I have, um... Are these --
10 these are different -- is this one document
11 or several documents? I'm trying to look at
12 whether to mark them differently.

13 THE WITNESS: It's a
14 compilation of documents, Your Honor. I do
15 have written comments that I will be
16 submitting that will include the same
17 information. I wanted to highlight that
18 particular... Those particular pieces of
19 information.

20 THE COURT: Okay. I think I'm
21 going to mark them as one exhibit. And so,
22 this will be 1033.

23 REPORTER'S NOTE: Whereupon,
24 Exhibit Number 1033 was marked
25 for identification.

1 THE COURT: Okay. And I have
2 another person.

3 REPORTER'S NOTE: Whereupon, a
4 discussion is conducted off
5 the record.

6 THE COURT: So this is
7 Nicolette...

8 THE WITNESS: Slagle.

9 THE COURT: Slagle. Thank you.

10 THE WITNESS: Nicolette
11 Shagle. I'm with honor the earth. I'm their
12 research director.

13 THE COURT: Okay. And if you
14 could just spell your name for the record.
15 Thank you, Ms. Slagle.

16 THE WITNESS: It's
17 N-I-C-O-L-E-T-T-E, S-L-A-G-L-E. Thank you
18 for giving me some time to speak. I'm sorry
19 I'm a little bit late. I wanted to get here
20 earlier. As I mentioned, I are work with
21 honor the earth and I have been working with
22 them for the last two years.

23 My primary area of research and
24 focus of the last two years has been the
25 Enbridge Line 3 battle. But, a lot of the

1 research and data that I have collected is
2 also relevant to sulfate standards and
3 protection of wild rice in this area.

4 A few of the things I do, I
5 would like to mention, is that my background
6 is in both community and economic development
7 and environmental engineering. And I would
8 just like to start with the fact that, you
9 know, wild rice is a treaty-protected
10 resource.

11 It's specifically mentioned in
12 the treaties with the Ojibwe people and the
13 United States Federal Government as a
14 treaty-protected resource.

15 And since the timing of those
16 treaties, approximately 70 percent of the
17 wild rice stands have been destroyed or
18 diminished in this state.

19 And as far as out my
20 understanding of this sulfide standard
21 hearing, we are looking at the potential
22 destruction of more of those Mahnomen
23 stands.

24 We are also looking at
25 protection... Potential destruction of those

1 Mahnomen stands through the Line 3 project.
2 And as was mentioned at the hearing the other
3 day at Fond du Lac, these processes right
4 now, the Line 3 hearings and this process are
5 going on at the same time.

6 And a lot of the tribes and
7 tribal communities are already stressed out
8 enough dealing with the Line 3 hearing
9 process.

10 And it's also difficult to them
11 also deal with this process, that further
12 impacts the wild rice stands. Going through
13 some of the summaries of this rule making
14 process, I have some further questions, which
15 include... (coughing), part of this process
16 includes creating standards for each
17 individual rice stand.

18 But, as far as my information
19 goes, is that most of these rice stands
20 haven't even been adequately mapped by the
21 MPCA, according to tribal governments and
22 tribal members.

23 So, I'm just wondering how, if
24 we don't even have a good assessment of where
25 these stands are, how are we going to go

1 through and individually protect each one
2 individually?

3 Along with this piecemeal
4 approach of setting standards for individual
5 rice stands, I wonder why we are looking at
6 science based on breaking down these Mahnomen
7 stands into their individual parts and not
8 looking at this as a systemwide approach.

9 Because the only way that we're
10 going to protect our environment and not
11 completely destroy this vital resource is by
12 looking at everything at a systems level.

13 So, that includes looking at
14 the potential impact of the Line 3 project on
15 these rice stands and looking at the
16 potential impact of these tribal communities
17 to be able to have access to their
18 treaty-protected resource.

19 So, if we look again at that
20 number of 70 percent of the wild rice stands
21 have been destroyed since the signing of the
22 treaties, we can also look at traditional
23 harvest patterns and traditional harvest
24 amounts.

25 And there is this estimate at

1 about 95 pounds per person to be able to
2 harvest and live using traditional --
3 harvesting practices and traditional
4 economies, which was based off of the sale
5 and barter of wild rice. 95 pounds works out
6 to be about five acres of wild rice.

7 You need about five acres of
8 wild rice to get 95 pounds of finished rice.
9 If we then look at the number of existing
10 acreage in Minnesota, there's about 72,000
11 acres of wild rice stands, based on the
12 MPCA's data.

13 If we look at, then, the tribal
14 populations in Minnesota, with just the
15 enrolled members on White Earth, you would
16 need over 100,000 acres of wild rice stands
17 for every member of White Earth Nation to
18 harvest rice at the tradition... Established
19 traditional harvests.

20 We don't even have 100,000
21 acres of wild rice. And White Earth is not
22 the only Ojibwe community in this state. So,
23 how are we going to allow further destruction
24 of this... Of this plant that is vital to the
25 Ojibwe, the Anishinaabe people, to exist as a

1 people?

2 I would also like to ask a
3 question on your ability to enforce these
4 standards. My understanding is that the
5 across-the-board standard that you have now
6 is not... Is not a... Is not enforced.

7 And as far as I know, your
8 staff numbers are not actually to the point
9 that, if you're making a more complicated
10 process for enforcing the standard, how are
11 you going to be able to then enforce that
12 standard with the existing amount of staff
13 you have now?

14 Are you going to hire
15 additional staff to enforce a standard that's
16 even more complicated than the existing
17 standard that you have that you're not
18 enforcing?

19 One more question I have is
20 regarding the variances and how they can be
21 reviewed periodically so they can be adjusted
22 as economic conditions change. And I am
23 wondering whose economic conditions may
24 change?

25 Are we talking about if the

1 companies that are applying for these
2 wastewater permits economic standards change,
3 that they no longer have to pay for their
4 variances, so then there is going to be these
5 wastewater ponds that are sitting and
6 potentially and leaking contaminants into the
7 environment and who is going to be paying for
8 the cleanup of these areas?

9 We already have so many tailing
10 ponds in this state. Are we just going to
11 continue to add to that and wait for our
12 children and our grandchildren to figure out
13 how to clean up this mess that we're making
14 for everyone?

15 And finally, I just really do
16 wonder how do these... How does your science
17 that you've used to come up with these
18 metrics mesh with tribal and indigenous
19 science and looking at things from a systems
20 perspective?

21 THE COURT: Thank you. Are
22 there any questions or comments for Ms.
23 Slagle or did you want to respond?

24 MS. LOTTHAMMER: Just a
25 comment, Judge Schlatter. I just want to

1 acknowledge your questions and they are
2 excellent questions and we will definitely
3 respond to them. But, we want to do that
4 with due consideration, so we'll respond in
5 writing.

6 THE WITNESS: Thank you.

7 THE COURT: Thank you. Thank
8 you very much. Okay.

9 REPORTER'S NOTE: Whereupon, a
10 discussion is conducted off
11 the record.

12 THE COURT: We have had one
13 more person, um... John Wayne? Is he in the
14 room? Mr. Wayne? Okay. Well, why don't we
15 do this.

16 Why don't we take a ten-minute
17 break and, if he is here, we will take his
18 testimony in ten minutes. Which, by my
19 watch, would be at 7:10 p.m.. Thank you.

20 REPORTER'S NOTE: Whereupon,
21 a short recess is taken.

22 THE COURT: Mr. Wayne.

23 THE WITNESS: Sorry. Sorry
24 about it earlier. I was just gathering
25 information.

1 THE COURT: Oh, that's okay.
2 It was a good time for a break. If you could
3 just, then, tell us your name and where you
4 live and whether you're representing anybody
5 or here on your own behalf.

6 THE WITNESS: My name is John
7 Wayne. And I'm from (inaudible) honor the
8 earth. And that's about all you should know
9 about me.

10 One thing I want to ask is
11 about you guys. Where are you guys all
12 from? You know. You guys from here? This
13 state? You guys know the history about the
14 wild rice and what it means to all these
15 great people of this land? You know, our
16 ancestors.

17 Did you know that, you know --
18 I know you guys are just looking at the money
19 when these kinds of things come up and that's
20 kind of sad, but that's okay. We pray for
21 you guys.

22 But, you know, why are you
23 going to put a resource, a culturally
24 resource, at risk just to benefit you guys
25 own pocket? You know. That resource

1 is destroyed, where will your descendants do
2 to -- there will be nothing left and be
3 extinct.

4 It's because you guys all want
5 profit. You've got to think there's more
6 than you guys, that's yourself. But you guys
7 could be everything in this moment and make
8 the right decision, using your common sense.
9 As I like to say at these public commentary
10 hearings.

11 So, a lot of you guys, you
12 know, lack it and that kind of sucks. And
13 I'm sorry that how blunt I am, but I'm your
14 guys's, you know, reality check bring you
15 guys out of your world and think that what
16 you're doing is okay because it's wrong.

17 Sure, it doesn't affect you
18 guys, but it doesn't mean you have to destroy
19 it for someone else. You know? What if
20 somebody came into your guys's home and
21 something of value that you liked and just
22 took it away because it didn't affect them.
23 You know.

24 I don't care about you guys's
25 so-called science that has all the supporting

1 evidence about how it's, you know, okay for
2 the earth. You know, it's not going to
3 affect or kill anybody, but sure it's going
4 to affect all -- affect all these plants,
5 this wild rice. You know.

6 They're alive, too. They have
7 a voice, too. And what did they ever do?
8 Except grow and feed people for centuries.
9 And that's fact. You guys all talk about
10 facts.

11 What about all the facts that
12 are reality? What happened when your
13 theories do go wrong and the risks of all the
14 things you guys are doing do happen and all
15 that's destroyed?

16 But, you guys aren't concerned
17 about it because it... I suppose it doesn't
18 affect you guys. You've got to think about
19 that. So, we're in a time of life where you
20 have to start putting life over this money
21 and this profit.

22 I don't know you guys
23 individually. But, don't be known for this.
24 There's other ways for you guys to make
25 money. And this isn't one way. I'm speaking

1 to you like a human, saying, "Hey. Wake
2 up."

3 Look off those screens and see
4 what's happening before it's too late and you
5 end up being that guy that ruins it for
6 everyone and nobody wants to be that guy.
7 You guys have a good day and think about what
8 you're truly being a part of.

9 THE COURT: Thank you.

10 REPORTER'S NOTE: Whereupon, a
11 discussion is conducted off
12 the record.

13 THE COURT: Ms. Ronnquist?

14 THE WITNESS: Good evening,
15 Your Honor.

16 THE COURT: Good evening. So,
17 could you tell us your name and spell it so
18 the court reporter has it?

19 THE WITNESS: My name is Lisa
20 Morgan Ronnquist, L-I-S-A. Morgan,
21 M-O-R-G-A-N. Ronnquist, R-O-N-N-Q-U-I-S-T.

22 THE COURT: Thank you. Go
23 ahead.

24 THE WITNESS: Okay. I'm not
25 here with any organization or anything. I am

1 here for my grandchildren and my
2 grandchildren and for everybody's children
3 and grandchildren that are coming up.

4 I'm a water protector in my...
5 In my culture, for my people, and I pray for
6 the water every day. And I... The wild rice
7 is a big part of our food and I would like to
8 share with yous (sic) that, you know, that
9 wild rice is going to save you people one
10 day. It is.

11 You know why? Because the
12 creator sent our people here to where the
13 food floats on the water... Or grows on the
14 water, that is. And that's the wild rice.
15 That's the Mahnomen. That's what's going to
16 save people.

17 That's what's going to save
18 your people. Your plastic cards aren't going
19 to stay there very long. That satellite's
20 not going to stay up there. What are yous
21 (sic) going all to do when yous wake up one
22 day and go to use your plastic and it all
23 goes to zeros?

24 That's what your President
25 Trumps is... Trump is fixing for yous because

1 North Korea could take that satellite out
2 anytime. What are you going to do when you
3 don't have them thousands of dollars to pay
4 for your cars, to pay for your luxuries that
5 you're used to?

6 And you don't have no water to
7 drink because it's all poisoned. It's won't
8 -- it's not going -- it's going to be a
9 hard, hard life and that's the way it's
10 going. But, you know, we're trying to help
11 ourselves, our grandchildren, our great
12 grandchildren, everybody coming up behind
13 us.

14 Because you kill the water, you
15 kill us all. Babies come from water. They
16 live in that water for nine months. If they
17 don't have enough water in that little bag of
18 skin that they're growing in, they die.

19 That's how very important water
20 is. And that's why we're doing at... What we
21 do and we try to do it in a good way. So,
22 I'm sorry if everybody gets angry and
23 agitated.

24 Well, how do you think we feel
25 as a people? You know? We're fighting here

1 with nothing. We don't have money. We don't
2 care if we don't have -- we don't give a --
3 we don't care about money, because money is
4 not going to save us.

5 If that's all we were about, we
6 would have probably been dead by now. You
7 know? But, we're here to survive. We're
8 survivors. And we're trying to help you
9 people, like we did when them ships came
10 here.

11 But you just tried to
12 annihilate us then by poisoning us, but it
13 didn't work. We're the Anishinaabe people.
14 We were given that name for one reason. But
15 I'm not going to tell you that reason.

16 You guys will figure it out
17 yourself. It will all come to you one day.
18 But, that's all I have to say is please don't
19 kill the wild rice or anything. Our water.
20 Every... Life. That's all I got to say.

21 THE COURT: Thank you. Is
22 there anybody in the room who hasn't spoken,
23 whose name I have missed?

24 (Indicating).

25 THE COURT: Did you want to

1 speak?

2 THE WITNESS: (Indicating).

3 Yes.

4 THE COURT: Do you need to get
5 a drink of water first?

6 THE WITNESS: (Laughing).

7 THE COURT: And is your name
8 here?

9 THE WITNESS: It's on the
10 list. Yes.

11 THE COURT: It is on the list?
12 Okay. So, you will tell us your name and...
13 I think I know your name.

14 THE WITNESS: My name is Tania
15 Aubid. T-A-N-I-A. Last name A-U-B-I-D:
16 (Speaking in native language). Forgive me
17 for speaking the Ojibwe... Or not the Ojibwe
18 language, but the English language.

19 I just wanted to let you know
20 when we were talking about the water quality
21 standards up in Fond du Lac, I wanted to
22 elaborate a little bit more of what was going
23 on... What is going on and what had gone on.

24 I had a niece who was pregnant
25 about a year and a half ago. And from what

1 I... From what I am gathering is that from
2 where she lives, she lives next to the St.
3 Louis River that way, um... She had... She
4 had, had experienced a pregnancy.

5 And with that pregnancy,
6 shortly after he was born, he was born too
7 early. He was like about nine weeks too
8 early. And he was born without a brain.

9 And we attribute that to what
10 had... What she had been ingesting and things
11 like and from what the water quality
12 standards are, we believe that it could be
13 then.

14 Also, in history... Back in
15 history, this was a 19... I believe it was
16 1910 Whiting letter and I can't remember who
17 signed it right now.

18 THE COURT: Can you say again
19 what that was?

20 THE WITNESS: The 1910 Whiting
21 letter.

22 THE COURT: Thank you.

23 THE WITNESS: That letter
24 reaffirmed our inherent rights as to who
25 controls the water. And as far as I know,

1 the Anishinaabe people control that water by
2 that letter that was sent to us.

3 And like back in the day when
4 us all first started registering, I believe
5 it was a 2.3, back in the day, from one when
6 my elders were talking about it.

7 And I think that was back in, I
8 believe, 1930... Late 1930s, early 1940s when
9 they started taking the measurements. It
10 went from a 2.3 to a 2.7, up to a 4.3, to the
11 7.2 and then up to a ten, to what it is
12 today.

13 And I'm going to demand that we
14 go back to that water quality standard of
15 2.3. As an Anishanaabe woman of this land, I
16 am also the first daughter of the... Of a war
17 chief for the southern Ojibwe.

18 Like I had stated before with
19 another corporation, with these corporations
20 demanding that they keep coming through,
21 demanding that they start doing desecration
22 of the lands and desecration of the waters,
23 the animals, the fish, the marine life.

24 The way I see it and the way
25 things have been running lately with this

1 proposal to go up some more on the water
2 quality numbers, I declare that as an act of
3 war by these corporations. The Anishinaabe
4 people have gone through so much.

5 And by what the people both had
6 stated, during the doctrine of discovery, we
7 were not discovered. We have been here. I
8 have to remind people that they are the
9 sitters on our lands.

10 And the visitors, they don't
11 walk into your house and start rearranging
12 things within what you agree to or what you
13 don't want to do. Visitors we've had to deal
14 with all our lives and we have seen what the
15 doctrine of discovery has done and what that
16 means.

17 And that means by terminating
18 us by genocidal acts. And this water quality
19 standard is a genocidal act when it goes up
20 even further. No longer do I want to see
21 these babies born without brains or any other
22 anomalies that happens to them when they are
23 born.

24 With the mom... Or what the mom
25 is ingesting. When I was pregnant myself, I

1 couldn't even eat two fish a month because of
2 the contamination of the mercury at that time
3 and other things that are floating through
4 the fish.

5 And that got me to thinking,
6 okay, why do we have to do this? Why do we
7 have to accept it? And as an Anishinaabe
8 from this land, telling you visitors you've
9 got to quit.

10 Maybe it might be time to go
11 back to the original homelands where yours
12 came from. Like I said before, I am the
13 first daughter of a war chief for the
14 southern Ojibwe tribes.

15 And I declare an act of war is
16 being done when you raise the standards of
17 the water quality. I demand that they go
18 back down to a 2.3 when they first started...
19 When they first started registering them.
20 (Speaking in native language).

21 THE COURT: Mii gwech. Thank
22 you. Is there anybody else who has not
23 spoken who would like to speak?

24 (Indicating).

25 THE COURT: You do?

1 THE WITNESS: I've spoken
2 before.

3 THE COURT: That's okay.
4 Everybody else here has either spoken or...
5 And is your name on the list tonight?

6 THE WITNESS: No.

7 THE COURT: Okay. I will add
8 it.

9 THE WITNESS: My name is --

10 THE COURT: -- please, be
11 seated so we can hear you in the microphone.

12 THE WITNESS: My name is
13 Nokomis from the (inaudible).

14 THE COURT: Nokomis. If you
15 could please spell your name for the court
16 reporter.

17 THE WITNESS: N-O-K-O-M-I-S.

18 THE COURT: Thank you.

19 THE WITNESS: So, there's a few
20 things I wanted to speak on that Tania has
21 alluded to or discussed about the endangered
22 species. So, we're talking about water
23 sulfide standards in variances for the
24 Mahnomen.

25 But, again, what does that grow

1 in but water? And so, therefore, it would
2 only make sense that, if it's poisoned, it
3 would become an endangered species; correct?
4 Or can you guys fix it? So, if you're
5 poisoning our waters at whatever standards
6 you're looking at, can you fix that?

7 MS. LOTTHAMMER: So, I'm not
8 sure -- well, I mean, the intent of the
9 standard is to protect the wild rice, not
10 so -- so that it's not harmed.

11 THE WITNESS: (Indicating).
12 Right. But, that's the question. So,
13 right. If we poison the water, can you fix
14 it? So, whatever standards we're looking
15 at? 2.8, 7.3, ten and now we're looking at
16 like 7.8; right? (Coughing). Excuse me.
17 So, it doesn't matter; right? Either way.

18 If we can't fix the poisoned
19 water, then it will only stand to be an
20 endangered species; right? I that -- no? Am
21 I confused here?

22 MR. NEBLETT: I wouldn't say
23 that you are confused. The way you present
24 the question, it's a difficult question for
25 us to respond to.

1 So, I hear your question and I
2 can acknowledge your question. But, the way
3 it's presented is not one that I am capable
4 of answering confidently.

5 THE WITNESS: Okay. So, we
6 also talked about genocide, which goes hand
7 in hand with the endangered species. Right.
8 And as you know, we're not indigenous
9 people. There's not many of us that are very
10 scientific; right?

11 We don't know the parts per
12 million or the micro or... You know? We
13 understand that poison is poison. It's just
14 that simple. And when you poison your food,
15 is that good?

16 And it's really just that
17 simple... United Nations declaration on the
18 rights of indigenous peoples. Have we looked
19 at that and are we familiar with that? No?
20 I'm thinking, Yes. So, just some concerns,
21 comments, thoughts, trying to put this all
22 together. You know?

23 I'm going from hearing to
24 hearing and they all kind of run together,
25 pipelines and wild rice, when it all just

1 boils down to protecting our food and water.
2 So, mii gwech. I appreciate you being here
3 and taking this time to listen.

4 THE COURT: Mii gwech. Thank
5 you. Is there anybody else who hasn't spoken
6 who was to speak? Okay. The hearing has
7 been noticed to last until nine o'clock and
8 it is now 7:30.

9 So, I will be here, the agency
10 people will be here and the court reporter
11 will be here until 9:00. We're going to go
12 into recess now.

13 And if people arrive who want
14 to speak between now and about ten to 9:00 or
15 so, or quarter to 9:00, then we'll be
16 available to come back and take testimony.
17 But, at this time, we're going to go into
18 recess. Thank you. We are off the record.

19 REPORTER'S NOTE: Whereupon,
20 a short recess is taken.

21 THE COURT: I'm going to go
22 back on the record here in just a minute.
23 One second here while I get my... Okay. We
24 are back on the record and we have a witness
25 who would like to make some comments.

1 So, if you could introduce
2 yourself and spell your name and let us know
3 where you're from and if you are representing
4 anybody. Go ahead.

5 THE WITNESS: (Speaking in
6 native language). My name is Rana and I am a
7 Native American. I spell my name R-A-N-A,
8 K-R-K-A-R-A-Y-A.

9 THE COURT: Thank you.

10 THE WITNESS: I am here today
11 because water is life and I am the water and
12 the water is me. As a woman, we are an
13 extension of (inaudible) or mother earth. We
14 carry that same water.

15 And whatever attack that she is
16 under, we are, as well. I feel that, as a
17 woman, deeply in my heart and my soul, that
18 she is being raped every single day by these
19 corporations for profit. They dig her up.
20 And they... They poison our waters in the
21 process.

22 Her veins, what gives live to
23 all living beings on this planet, the rock
24 life, the plant life, the trees. Children.
25 Children are sacred. Children carry that

1 ancient wisdom from our ancestors. They are
2 worthy of clean water.

3 These little women that are
4 going to grow up, they are worthy of clean
5 water in their wombs. Why must we be
6 fighting for this still in 2017?

7 We have been under attack from
8 ongoing genocide for 500 years and we're
9 still fighting to be seen, to be heard. And
10 sometimes it's quite tiring because it seems
11 like, no matter how many amount of meetings,
12 court hearings, you know, gatherings, you
13 guys have made up your mind.

14 You know, you guys don't honor
15 life. You guys honor Federal reserve notes.
16 You know, but just like you guys have made
17 your decision, we have made our decision,
18 too, and we're going to stand strong until
19 the very end.

20 You know, we're going to fight
21 just our... As our ancestors did. Our
22 ancestors literally fought and died so that
23 we can be here today.

24 And how could I look them in
25 the eyes, once I make it to the spirit world

1 again, and say that I didn't live up to what
2 we were supposed to do and be a warrior for
3 our people?

4 For our water, for our land.
5 Because when we're under attack, you're
6 supposed to stand up. We have been standing
7 up. Standing Rock woke the sleeping giant.
8 We ain't never going back to sleep.

9 You know? We have strong
10 warriors everywhere and we're all standing
11 up. We're all spread across the world. And
12 it's a beautiful thing. You know, as we
13 drove over here for a couple of hours.

14 I'm not from Minnesota. This
15 is my first time coming to Minnesota,
16 actually, and as we took that ride, I was
17 just in awe of just the majestic trees. You
18 know.

19 The water. She's alive. She
20 has a spirit. She has a memory. She
21 nurtures us. And I thought to myself how can
22 someone be so sick to the point where they're
23 willing to destroy all of what the creator
24 has gifted us for Federal reserve notes. You
25 know?

1 For a fancy room full of
2 guitars, like someone mentioned last time.
3 You know, like counsel wars room. You know,
4 he destroys a sacred burial sites, the tree
5 land. For what? For him to have another
6 fancy guitar?

7 That's white privilege right
8 there. The fact that he'll never have to
9 deal with that clean water once those
10 pipelines leak, because they always leak.
11 It's not a question of whether will they leak
12 or not. It's inevitable.

13 I'm from Chicago and we just
14 had an oil spill last week. A mysterious oil
15 spill, they're calling it. They don't know
16 where it comes from. Oh, wait. There might
17 be a pipeline nearby. How else would that
18 oil seep into our sacred water? You know.

19 Those employees had to run
20 there to rescue those geese, those birds,
21 those animals that were covered in oil.
22 That's sad. They can't defend themselves.
23 They can't speak for their own.

24 So, this is why we stand up for
25 them, for the two-legged, for the

1 four-legged, for the winged. They have done
2 nothing wrong. We have done nothing wrong.
3 We just want to live at peace the way we did
4 before the settlers invaded our land.

5 We were at one with the land.
6 We had that connection with the land. We
7 know that we take care of her and she takes
8 care of us. You know? And then, they came
9 and they destroyed everything and they
10 haven't stopped.

11 And as I said before, it
12 hurts. You know? But, what else is new?
13 You know. This is America. It was built on
14 the genocide of the Native Americans all the
15 African Americans. So... But, anyway, what
16 I -- I don't know.

17 I have so many things to say.
18 I think of one topic, then go to the other.
19 But, what I really want to say is that how
20 can you guys go home and look at your
21 children, the kids in your lives and just
22 know that you're contributing to the
23 genocide, to the poisoning of their waters?

24 Because one day they will wake
25 up and ask us for water. And that fresh cup

1 of water won't be available. And that
2 Coca-Cola? It won't keep us hydrated for
3 long.

4 Those iPhones? They wouldn't
5 feed us. Those fancy cars? They won't
6 nurture us. All that will be irrelevant. It
7 is irrelevant. We just need to come to
8 that. We just need to connect with that.
9 You know?

10 Nature comes first. She is a
11 living entity. We talk about respecting
12 woman and, uh... And our mothers, but we
13 forget about the mothers... About the mother
14 of all mothers (speaking in native
15 language).

16 That's who we really should be
17 thinking of, because we are exploiting her.
18 Taking her resources every single day, every
19 moment of our lives. And when do we give
20 back? When she's so strong, she will always
21 keep fighting.

22 She will always be here. But
23 we won't. Our children won't. And so that's
24 what we are here for. Because they are
25 worthy of clean water. Of a good life. You

1 know. These pipelines, they don't only
2 poison our water.

3 They, uh... With pipelines come
4 pipeline workers, who are set up in man
5 camps. You know, they temporarily live
6 there. And they bring violence to the
7 communities and the reservations nearby.
8 They bring drugs.

9 They bring alcohol. They bring
10 sex trafficking. You know, Duluth is known
11 for the highest number of sex trafficking.
12 And it's always our native women. Our native
13 children.

14 I have aunties tell me that
15 they witnessed three year-old babies, three
16 year-old boys running out of man camps,
17 bleeding. Why is that still a thing? We
18 just want you guys to understand that this
19 needs to stop.

20 We don't want this in our
21 communities. This is not the way we lived
22 before. This is what the white man has
23 brought us. You know, a native woman and
24 children go missing every day and murdered.

25 On Facebook, scroll down my

1 news feed. Every day, several new woman are
2 missing. And what does the system do about
3 it? Nothing. Because, to them, we're not
4 worthy of it.

5 We're not human beings. We can
6 just be another missing number. Life goes
7 on. It's just business for them. But, yet,
8 who thinks about them and their families that
9 are still mourning them.

10 And the women that are to
11 come. Because it hasn't stopped. You know.
12 The colonizers like to call us merciless
13 Indian savages. And I'll be damn proud of
14 that name.

15 I'd rather be a merciless
16 Indian savage any day than to be a civilized
17 person because civilization has only brought
18 the destruction of the natives. (native
19 language). The division and conquer of our
20 people. And so, that's all I have to say.
21 So, you all think about that. Water is life.

22 THE COURT: Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: Is there anybody
25 else?

1 (Indicating).

2 THE COURT: Did you sign up on
3 the sheet?

4 THE WITNESS: (Indicating).
5 It's on there, but I didn't put it on -- it
6 was a mistake. Do you want me to?

7 THE COURT: I can just check
8 that off.

9 THE WITNESS: My name is Gasina
10 Sapawin.

11 THE COURT: I see it.

12 THE WITNESS: G-A-S-I-N-A,
13 S-A-P-A-W-I-N.

14 THE COURT: And before you
15 start, I just want to... I want to remind you
16 and I understand that these things are very
17 closely linked, the pipeline and the rice
18 rules.

19 But, I do want to remind you
20 that this hearing is about the rice rules and
21 there is nothing that either I can decide or
22 the --

23 THE WITNESS: I know --

24 THE COURT: -- or the MPCA --
25 just let me finish and then you can... You

1 can talk. Or that this Agency can do about
2 the pipeline. I do understand that they're
3 very closely linked, because the pipe line is
4 going to -- they're both about the water and
5 about the rice.

6 THE WITNESS: (Indicating).

7 THE COURT: So, I do understand
8 that. But, just so you understand.

9 THE WITNESS: Did I say I
10 didn't understand it? (Laughing).

11 THE COURT: No.

12 THE WITNESS: Okay.
13 (Laughing).

14 THE COURT: Because Rana was
15 talking about --

16 THE WITNESS: Oh.

17 THE COURT: -- the pipeline --

18 THE WITNESS: I have other
19 things --

20 THE COURT: I just wanted to --

21 THE WITNESS: -- anything to do
22 with the pipeline.

23 THE COURT: So, I just wanted
24 to make that clear because I didn't know if
25 you were together.

1 THE WITNESS: No.

2 THE COURT: So, go ahead
3 whatever it is you wanted to say.

4 THE WITNESS: (Speaking in
5 native language). My name is Gasina
6 Sapawin. I am from the Shy River (inaudible)
7 reservation. I live --

8 THE COURT: -- a little
9 slower.

10 THE WITNESS: I live near
11 Cloquet, Minnesota. And what I came here to
12 say is I can only speak on your levels about
13 standards. Okay. So we're all here about
14 the standard that has been brought back from
15 1973 to protect the wild rice and water.

16 But, when it comes to the
17 mining that companies continue to do around
18 Minnesota or around water reservoirs or even
19 water aquifers, underground water aquifers,
20 so on and so forth.

21 When we -- when they mine we
22 shouldn't have any standards for them. Do
23 you see what I'm saying? Like take a job,
24 right? There's an employee who was a serial
25 rapist, right?

1 And he comes to go get a job
2 where there's multiple women... Or he might
3 be even a serial killer. And... Who has
4 submitted crimes, offensive crimes, over and
5 over and over and over, and now he's up for a
6 position, right?

7 And this job has standards,
8 right? For you to get the position. Well,
9 there wouldn't be any doubt in my mind that I
10 would basically tell that serial rapist or
11 whatever, just flat out, no, you can't have
12 the job.

13 I mean, it's the same thing
14 that goes with these companies, right? That
15 are proposing permits and trying to go
16 through people or agencies like yourself, the
17 pollution control agency, to try to have
18 their permits pass by your standards.

19 Now, if we didn't have a
20 standard, or basically just told them no, we
21 wouldn't have to be going through this
22 process. I mean, you see what they're doing
23 to the wild rice you.

24 You guys had to come up with
25 standards for them, (laughing), you know?

1 But why not just tell them no? Why even have
2 a standard? I mean, why can't you just take
3 with a flick of your pen say, okay, I know
4 that this is for, you know, to bring that old
5 standard back in.

6 But, that would just -- I mean,
7 isn't that kind of like enabling a habit like
8 an addiction, you know? I mean, we're all
9 about the wild rice. We're all about the
10 water.

11 And I've been reading what you
12 guys have been proposing and everything, but
13 we're at a time in our lives right now where
14 there should just be yes or no to extraction,
15 not any type of regulatory processes that
16 they have to go through.

17 Or even public comment
18 hearings. Or even these types of hearings.
19 Or even the evidentiary hearing. I mean, you
20 name it throughout the whole regulatory
21 process. We shouldn't even have to go
22 through that, when the facts are all there.

23 And we should just say no to
24 extraction completely. I mean... I mean,
25 that's why we're all here really. We just

1 want you to understand that, you know. It's
2 not -- I get that you were trying to point
3 out, you know, they come both hand in hand
4 and like we don't understand why we're here,
5 but no, we get it.

6 It's just that it's places like
7 here where we need to start -- where we have
8 not had our voices here, or in this setting,
9 for decades. Because (inaudible) notice
10 people just don't give a shit.

11 But now we're waking up to
12 this. And so we're going to make our
13 presence known here. And we understand
14 fully, but we just want you to understand
15 fully, too, you know.

16 Like, we've been ignored for a
17 very long time. I mean, we've been stripped
18 of everything. And when it comes to mining,
19 I mean, it should be no question in anybody's
20 mind just to have them layoff this earth.

21 Have every company, corporation
22 who's trying to extract from this earth not
23 live by any standard and just live with --
24 and stay the hell away from our land and our
25 water.

1 Because it's getting tiring
2 now. I mean, this is an ongoing fight that
3 we've been fighting for centuries. And newer
4 fights are coming, too. I mean, we're trying
5 to hit everyplace. You aren't the only
6 agency that we spoke to in the last month.
7 I'm tired; I'm drained.

8 You know, we don't get paid for
9 doing any of this, but that's how much our
10 water and our wild rice means to us. And we
11 just want good people like yourself to
12 realize and understand the positions that
13 you're in.

14 Because I'm not in your
15 position, but you guys have a lot more power
16 than I do sometimes. Because we have already
17 shown you now, our voice can only go so far
18 before we get handcuffs on us.

19 So, when you go through with
20 this process, keep us in mind, please. And
21 maybe even open your jobs up to with the
22 flick of your pen trying to save everything,
23 what little we have left, in our water and
24 our wild rice.

25 And our land and our trees,

1 anything that you have in your power, please,
2 with the flick of your pen try to preserve
3 it. Thank you.

4 THE COURT: Thank you. Is
5 there anybody else wants to speak?

6 (No response).

7 THE COURT: Okay. Then I'm
8 going to adjourn the hearing, because it's
9 ten to 9:00 so I think if people aren't here
10 yet they probably aren't planning on coming.

11 So, we're going to adjourn the
12 hearing now. And we will be reconvening on
13 Thursday in St. Paul with links to vary
14 locations, so... I want to thank you all for
15 coming and for sharing your thoughts
16 tonight. Thank you. We're adjourned.

17 (Whereupon, the hearing
18 terminated at 8:50 p.m.)
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21
22
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24
25

1 STATE OF MINNESOTA)

2) SS.

3 COUNTY OF CASS)

4

5 I, Nathan D. Engen do hereby certify
6 that the foregoing transcript in the matter
7 of the Minnesota Pollution Control Agency
8 Rule Making Hearing is true, correct and
9 accurate:

10 That said transcript was prepared under
11 my direction and control from my stenographic
12 shorthand notes taken on the 30th day of
13 October, 2017.

14 That I am not related to any of the
15 parties in this matter, nor am I interested
16 in the outcome of this action.

17

18 Witness my hand and seal this 8th day of
19 November, 2017

20

21

22

23

24

25

Nathan D. Engen