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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Amending the
Sulfate Water Quality Standard Applicable to Wild Rice
and Identification of Wild Rice Waters, Minnesota
Rules parts 7050.0130, 7050.0220, 7050.0224, 7050.0470,
7053.0135, 7053.0205, and 7053.0406; Revisor's ID
Number 4324.

PUBLIC HEARING
OAH DOCKET NUMBER 80-9003-34519

The above-entitled matter came on for
hearing before the Honorable Laurasue Schlatter, at
520 Lafayette Road, St. Paul, Minnesota, on the 2nd
day of November, 2017, before Kelly L. Brede, Court
Reporter and Notary Public in and for the County of
Anoka, State of Minnesota, commencing at approximately
4:00 p.m.

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A P P E A R A N C E S

HEARING OFFICER:

LAURASUE SCHLATTER,
ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
St. Paul, Minnesota 55164-0620

laurasue.schlatter@state.mn.us

ON BEHALF OF THE MINNESOTA POLLUTION CONTROL AGENCY:

ADONIS A. NEBLETT, Attorney at Law
General Counsel

SHANNON LOTTHAMMER, Division Director
Environmental Analysis and Outcomes

CATHERINE NEUSCHLER, Section Manager
(Appearing via videoconference)
Water Assessment

EDWARD SWAIN, Research Scientist
Environment Analysis and Groundwater Services

GERALD BLAHA, Research Scientist
Water Quality Standards

DAN OLSON, RANDY HUKREIDE, LEE GANSKE,
and PAUL HOFF
(Appearing via videoconference)

MINNESOTA POLLUTION CONTROL AGENCY
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

adonis.neblett@state.mn.us

*The Original is in the possession of
Judge Laurasue Schlatter.*

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

2 JUDGE SCHLATTER: Good afternoon,
3 everybody. My name is Laurasue Schlatter, and I'm an
4 administrative law judge with the Office of
5 Administrative Hearings.

6 I thank all of you for taking the time to
7 be here today to participate in the public rulemaking
8 process on this important matter of public concern,
9 and I want to acknowledge that I am speaking from a
10 hearing room in St. Paul at the offices of the
11 Minnesota Pollution Control Agency.

12 We do have -- we're connected via
13 technology -- I'll just make that a capital "T,"
14 Technology, and not get into the details of it -- with
15 offices and people who are participating in
16 Detroit Lakes, in Duluth, in Mankato, in Marshall, and
17 Rochester.

18 So we will be -- I'm speaking to all of
19 you out there, and I expect that we'll be hearing from
20 some of you out there as well during the course of
21 this hearing, even though, at this point, I can't see
22 you. At various points during the hearing, we will be
23 seeing you, and I hope that at this point you are able
24 to see me.

25 I do want to note that Minnesota Rules

1 1400.8000 permits me, as the presiding judge, to ban
2 the use of cameras in the hearing room during the
3 course of this preceding. I have done that during all
4 the rulemaking proceedings in this case, and I am
5 doing that in this hearing today as well.

6 So it is my order that no cameras are
7 allowed during these proceedings, obviously with the
8 exception of the camera that we're using in order to
9 connect it with the other locations. It does include
10 cell phone cameras. Members of the audience,
11 including media, are hereby ordered to take out cell
12 phones, turn them off, and please put them away.

13 Any unauthorized use of cell phones as
14 cameras or the use of any other cameras will result in
15 sanctions, including individuals who violate this
16 order from being -- in being barred from the remainder
17 of this hearing.

18 So today is November 2, 2017, and it's
19 approximately 4:10 p.m. -- I'm sorry -- yes, 4:10 p.m.
20 We're here for a public hearing in the matter of the
21 proposed rules of the Minnesota Pollution Control
22 Agency amending the sulfate water quality standard
23 applicable to wild rice and identification of wild
24 rice waters.

25 This involves Minnesota Rule parts

1 7050.0130, 7050.0220, 7050.0224, 7050.0470, 7050.0471,
2 7053.0135, 7053.0205, and 7053.0406.

3 This matter will be referred to as OAH
4 Docket Number -- or Office of Administrative Hearings
5 Docket Number 80-9003-34519. Please put the docket
6 number in the subject line of any correspondence or
7 comments you submit to my office so that it can be
8 properly routed to me.

9 I'm going to repeat that number again:
10 It's 80-9003-34519. Also, for your information, the
11 Revisor of Statutes number for this rule is RD4324A.
12 That's RD4324A.

13 The Office of Administrative Hearings is
14 independent of the Minnesota Pollution Control Agency,
15 which is the agency that's proposing to adopt the
16 rules that are the subject of today's hearing, as well
17 as the groups or individuals who are participating
18 today in the hearing.

19 The role of our office is to provide
20 hearings like this that are fair to all of the
21 participants. The legislature directs, in Minnesota
22 Chapter 14, that -- Minnesota Statutes Chapter 14 --
23 that rulemaking hearings be conducted so that members
24 of the public can be heard as part of the rulemaking
25 process.

1 I'm here to ensure that there is
2 procedural fairness, to ensure that we're courteous to
3 each other so that all interested parties can be
4 heard, and to draw out information from as many voices
5 as possible.

6 I want to ensure all of you, those of you
7 here in St. Paul as well as those of you at the remote
8 locations, that's I am interested in everything that
9 each of you has to say, and that my main goal today is
10 to make sure that I have the opportunity and that the
11 agency has the opportunity to hear from everybody who
12 wants to speak today.

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

18 There is a handout on the table which is
19 outside this hearing room -- and I'm sure the
20 facilitators in each of your locations can show you
21 where the handouts are located -- but the handout is
22 entitled "OAH Rule Hearing Procedures."

23 If you don't have a copy, please take a
24 moment to pick one up because it describes the
25 procedures which are set up by legislature for

1 hearings like this. I'm going to take a few minutes
2 and cover some of the highlights of those procedures
3 now.

4 So this hearing is a part of a process by
5 which rules are adopted under the Minnesota
6 Administrative Procedures Act. During the rulemaking
7 procedure, the Minnesota Pollution Control Agency is
8 required to do three things.

9 First, it has to document its statutory
10 authority to adopt the proposed rules.

11 Second, it has to demonstrate that it has
12 fulfilled all relevant substantive legal and
13 procedural requirements of the law.

14 And third, it has to demonstrate the need
15 for and reasonableness of each portion of the proposed
16 rules with an affirmative presentation of facts.

17 Those are the three big issues I'm
18 required to review as part of this proceeding.

19 Now, some of you I know are here to
20 express your thoughts or views on various rules, which
21 will be helpful to the MPCA and to me and to this
22 overall process. I need you to keep in mind that my
23 job is not to rewrite the rules based upon the views
24 of the participants, or to select one set of proposed
25 rules over another set of proposed rules. My job is

1 simply to ensure that the statutory requirements are
2 met for rulemaking.

3 And I'm going to review those statutory
4 requirements one more time: It is that the MPCA has
5 to document its statutory authority to adopt the
6 proposed rules, to demonstrate that it's fulfilled all
7 relevant legal and procedural requirements of the law,
8 and to demonstrate the need for and reasonableness of
9 each portion of the proposed rules with an affirmative
10 presentation of the facts.

11 So the roadmap for this hearing will be as
12 follows: After I complete my introductory remarks
13 about the hearing procedures, I'm going to introduce
14 the panel that's here from the MPCA, and the MPCA will
15 then submit the exhibits that have been included in
16 the hearing records.

17 And these exhibits were first introduced
18 and admitted to the hearing record at our first
19 hearing, which was on October 30th. So that was about
20 a week and a half ago, our first public hearing. The
21 MPCA offered those exhibits and they were admitted
22 into the hearing record at that time.

23 But Mr. Neblett is going to summarize the
24 exhibits so that everyone now has some idea of what is
25 in the record, and at each location, including this

1 one, the exhibits are available for you to look at on
2 the premises. There are hard copies.

3 Here they're, again, on the table outside
4 the door. They're in big, white notebooks, and there
5 are multiple copies of them. And at the remote
6 locations, check with your facilitator to see where
7 they are.

8 You're free to look at the exhibits at
9 your individual locations. They're not to go away
10 with you. They are available online at the MPCA's
11 website and at the Office of Administrative Hearings'
12 website. So those two websites are connected to one
13 another. If you find one, you can find the other one,
14 and in either place, you can find the hearing
15 exhibits.

16 If you need help getting access to them,
17 if, for some reason, getting them online doesn't work
18 for you, please contact the MPCA staff and they can
19 help you with getting access to exhibits.

20 After the MPCA staff tells you about the
21 hearing exhibits, they will make an oral presentation
22 about the proposed rule amendments, the reasonableness
23 of them, and the need for them.

24 That all is going to take us until about
25 5:00, but the rest of the hearing time has been

1 allotted for statements and questions from members of
2 the public, and that is the key reason that we're here
3 today.

4 In order to make sure that we have an
5 accurate record of the number of people attending the
6 hearing, I do ask that everyone in each location sign
7 the hearing register which is located on the
8 registration table at your location.

9 If you wish to speak or to submit a
10 written statement today, you are required by the law
11 to sign the hearing register. And if you wish to
12 speak, please place a checkmark in the appropriate
13 column on the hearing register.

14 If anyone who wishes to speak or ask
15 questions is under time constraints, please let the
16 facilitator in your location know and that information
17 will be relayed to me, and I will make sure that we
18 hear from you within your time constraints, if at all
19 possible.

20 I generally have been able to accommodate
21 people and get them heard within their time
22 constraints. Just know that we will be starting to
23 hear testimony from people, hear people speak,
24 starting just around 5:00.

25 So the way I'm going to hear from people

1 today is -- with people in all of these various
2 locations, my plan is, once I know how many people we
3 have altogether who want to speak, I'm probably going
4 to give people about five minutes -- maybe a little
5 more, depending on how many people we have total --
6 but each person will have about five minutes to speak.

7 And we're going to start with
8 Detroit Lakes, and just work around. My plan is to
9 hear from two people from each location, and we'll go
10 from Detroit Lakes to Duluth to Mankato, Marshall,
11 Rochester, and then we'll hear from people here in
12 this hearing room.

13 And then we'll keep going back and --
14 making that loop so that we have an opportunity to
15 hear from a couple of the people from each location
16 until we've heard from everybody who wants to speak.

17 The exception to that, again, will be to
18 accommodate people who have time constraints, or
19 possibly if there are people who are doing some kind
20 of media presentation, we may wind up going in a
21 slightly different order.

22 So the other thing, I guess, I do need you
23 to do is if you have a media presentation, make sure
24 you tell the facilitator in your hearing location that
25 you do, and we will need to work that into our

1 schedule here.

2 When your name is called, please come up
3 to the place -- in St. Paul, please come up to this
4 podium. In the individual hearing locations, is there
5 a specific place where the people are going to be
6 going? Do they have a place that's designated to go
7 to speak? Or their facilitator will show them where
8 they need to go to speak, so go to where the
9 facilitator directs you.

10 And you need to state your name, spell
11 your name. You need to speak loudly and clearly so
12 that I can hear you and the court reporter can hear
13 you and so that everybody in all the other locations
14 can hear you. Remember, you're talking to people in
15 one, two, three, four, five, six -- seven different
16 places.

17 I do have a court reporter sitting next to
18 me, and the court reporter and I both, especially,
19 need to hear you very clearly. I'm going to give you
20 some instructions in a few minutes about how to speak
21 so that we are sure that the court reporter gets
22 everything that you are saying into the record.

23 So when you begin, please state and spell
24 your name, give your address -- or if you don't want
25 to state your full address publicly, please state at

1 least the town you come from -- and if you are here on
2 behalf of a group or -- an interest group or an
3 official group, please state the group or interest
4 that you are representing. Or if you're here on your
5 own behalf, state that you are here on your own
6 behalf.

7 I do expect to have time for everyone to
8 be heard, but it is helpful if you organize your
9 remarks and focus on the highlights of them. You can
10 enter any written comments as exhibits into the record
11 of this matter, if you find that helpful. We find it
12 helpful if you do that. You can also submit written
13 comments to me after the hearing.

14 If you are here in St. Paul and you want
15 to enter either your written comments or some other
16 document into the record today, after you speak, just
17 bring that exhibit up to me and I will mark it and it
18 will go into the record.

19 If you're at a remote location, please
20 bring that exhibit to the facilitator who is at your
21 remote location, and we will take care of getting that
22 exhibit marked and into the record. And it will --
23 all of these exhibits will be posted online as part of
24 the rulemaking record so everybody who is interested
25 will be able to see the exhibits that you provide for

1 us today.

2 I want to be sure, again, that everyone
3 has the time to speak and that everyone who wants to
4 be heard is heard. And again, depending on the total
5 number of time -- of people we have, I'm going to
6 place a time limit.

7 I'm going to start at five minutes; it may
8 be that I'll able to allow more time, depending on our
9 total number of people. I do want to say that I don't
10 allow people to cede their time to someone else, so if
11 you're here with a friend who doesn't want to speak,
12 that person can't donate their time to you.

13 If, however, everyone who wants to speak
14 gets their chance and we have time left, we can give
15 people a chance to come back and speak again. If
16 you've already spoken at a public hearing in this
17 matter, I will not let you speak until everybody else
18 who has not spoken has had a chance.

19 Again, my main goal here is to make sure
20 that everybody who wants to be heard has a chance.
21 Once everybody who wants to be heard has that chance,
22 then I'm happy to be hear from you again.

23 Just so you know, we've had a number of
24 hearings already. We started last Monday,
25 October 30th, here in St. Paul. Then we were -- I'm

1 sorry -- October 23rd, here in St. Paul, then
2 October 24th, we were in Virginia; October 25th, we
3 were in Bemidji; October 26th, we were in Cloquet; and
4 October 30th, we were in Brainerd.

5 So this is our last public hearing in this
6 matter, but we've had quite a few them, and we've
7 heard from pretty close to 100 different witnesses so
8 far.

9 This is a fairly informal process, and
10 again, I'm here to ensure that we are courteous to
11 each other and that the process runs smoothly. So as
12 you make your comments, please keep these things in
13 mind: A rule hearing is similar to a legislative
14 hearing or a meeting of a local board or a city
15 council.

16 Any speaker may ask questions of the
17 agency panel. The agency panel may ask you questions.
18 I may ask you questions. Other persons at the hearing
19 may ask you questions. So know that if you come up
20 and make comments, someone might ask you a question,
21 but, also, that you can ask others questions.

22 I do want to let you know that the agency
23 panel is not required to answer your questions at the
24 hearing. They often will, if they can, but sometimes
25 they will choose to tell you they are going to answer

1 your questions in writing during the written-comment
2 period, and that's allowed; that's fine.

3 Because this is not like a court hearing,
4 you don't need to make your points by asking
5 questions. Often, the most direct way to make your
6 views known is simply to state them directly. And I
7 encourage you to do that, to go directly to the point,
8 if that's what you want to do and that feels like the
9 easiest way to do it.

10 It is most helpful to me, if you can, if
11 you can be specific in your comments. Tell me which
12 rules or rule parts you support or which you object to
13 and why. I also want you to remember that the record
14 that we make today may be reviewed by others later,
15 and we want to make sure that the matters that you are
16 addressing are clear to them.

17 And again, in terms of the court reporter,
18 because we must keep an accurate record, it's
19 important when you are speaking to remember the
20 following things: Speak clearly, slowly, and loud
21 enough to be heard.

22 I speak pretty slowly most of the time.
23 Most of you who aren't used to speaking publicly speak
24 fast, and especially if you're nervous, you speak
25 really fast. And if you're reading from a document,

1 you speak really, really fast, so slow down. The
2 court reporter will really appreciate it if you slow
3 down.

4 Make all statements and responses audible
5 as opposed to a nod of the head or a gesture. Please
6 spell all proper names and technical terms the first
7 time you use them, and explain what acronyms stand
8 for. And especially remember this: Only one person
9 speak at a time.

10 The court reporter cannot take down what
11 two different people are saying at a time, so if
12 someone is asking you a question or if you're
13 answering a question, wait until the other person is
14 finished, and one person speak at a time.

15 I might interrupt a speaker from time to
16 time to ask for a spelling or some other question, if
17 something is unclear to me. I want to make sure that
18 the record is clear. I apologize in advance, and I
19 ask you not to take offense. I am not doing it to
20 distract you or to disrespect you, but to ensure that
21 we have an accurate record of what you are saying.

22 Again, if you have a written copy of your
23 remarks that you can leave here as an exhibit, please
24 do so. That's helpful to me and to the court
25 reporter.

1 Now I want to say a few things about the
2 written-comment period. Minnesota Statute,
3 Section 14.15, Subdivision 1, provides that an
4 administrative law judge may, by order, keep the
5 hearing record open for up to 20 days after the end of
6 the public hearing.

7 In this case, I have issued that order, so
8 the comment period is extended for 20 days from the
9 close of the final public hearing, which is today,
10 November 2, 2017.

11 So that means that after the close of this
12 hearing, there will be 20 calendar days in which you
13 can submit written comments; thus you have until
14 November 22, 2017, at 4:30 p.m. to submit written
15 comments. That's the end of business on the day
16 before Thanksgiving.

17 I refer you to the handout for the address
18 to send your comments, to be sure that I receive them.
19 You can send them by fax or mail or you can e-file
20 them on our rule-comment website, but they have to be
21 received by 4:30 p.m. on November 22, 2017. If
22 they're late, we will not consider them.

23 Our office will post all the comments we
24 receive on our rulemaking website for everyone to
25 review. And again, the MPCA's website is linked to

1 our website, so if you have that bookmarked already,
2 you can go to the MPCA's website and, then, connect
3 directly to ours.

4 And one more time, I'm going to give you
5 our docket number. It is: 80-9003-34519. Put that
6 in the subject line of any comments you make so that
7 your comments are directed to me and doesn't get
8 misdirected to some other judge or some other
9 rulemaking proceeding and get lost.

10 After November 22, 2017, there will be a
11 five-working-day rebuttal period for anything that was
12 filed by 4:30 p.m. on November 22, 2017. That
13 five-day period is meant for comment on the comments
14 and is not allowed for introduction of any new
15 matters.

16 Because there's a holiday in there, the
17 rebuttal period will not open until after
18 Thanksgiving. We will begin accepting rebuttal
19 comments for posting on Monday, November 27, 2017, and
20 will continue to accept rebuttal comments through
21 Friday, December 1, 2017, at 4:30 p.m. Again, the
22 rebuttal comments can only respond to comments that
23 were submitted by the end of the day on November 22,
24 2017.

25 Are there any questions, here or at any of

1 the other locations, about the written-comment period
2 or the dates and deadlines I've just given you? Okay.
3 All right.

4 After December 1, 2017, I will prepare a
5 report that contains my conclusion about whether the
6 MPCA has met its statutory burdens in this matter.
7 First and foremost, I will focus on whether the agency
8 has documented its authority to enact the rules,
9 whether its fulfilled all the required procedures, and
10 whether the agency has demonstrated the need and
11 reasonableness for each portion of the rules.

12 You can expect my report approximately
13 30 days after the last comment deadline, unless an
14 extension becomes necessary. If you want a copy of my
15 report, please indicate that on the sign-in sheet. If
16 you provide an e-mail address, we'll e-mail you and
17 see that you receive notice when the report is
18 available and get you a copy of the report.

19 The handout that I mentioned goes into
20 more detail about the process and contains the
21 important address information that you will need to
22 submit written comments. Please keep a copy of that
23 for your records. And, one more time, I'm going to
24 give you the OAH docket number so that I am sure to
25 receive your comments. It is: 80-9003-34519.

1 And before we go any further, are there
2 any questions about the procedures or what we're doing
3 today or anything I've said so far? Okay. All right.

4 With that, then, I'm going to introduce
5 Adonis Neblett from the Minnesota Pollution Control
6 Agency.

7 Mr. Neblett, would you like to introduce
8 the rest of the agency staff?

9 MR. NEBLETT: Yes. Thank you, Your
10 Honor. First, for the record, my name is
11 Adonis Neblett. I'm the general counsel at the
12 Minnesota Pollution Control Agency. My first name is
13 spelled A-D-O-N-I-S; my last name is spelled
14 N-E-B-L-E-T-T.

15 I'm here on behalf of the agency in this
16 rulemaking proceeding in which we are proposing to
17 amend the sulfate water quality standard applicable to
18 wild rice and identification of wild rice waters in
19 Minnesota Rule, Chapters 7050 and 7053.

20 If I may, I'd like to identify the other
21 members of the rulemaking team, some of whom are
22 present at the St. Paul location, some of whom are
23 present at one of the remote locations.

24 Immediately to my left is
25 Shannon Lotthammer, division director in the

1 Environmental Analysis and Outcomes Division. Shannon
2 will be making our principal presentation.

3 To her right is Ed Swain, research
4 scientist in the Environment Analysis and Groundwater
5 Services unit, and at the end of the table is
6 Gerald Blaha, research scientist in the Water Quality
7 Standards unit.

8 Also, there's Catherine Neuschler, section
9 manager, Water Assessment section;

10 Elizabeth Kaufenberg, research scientist in the
11 Effluent Limits unit; Patricia Engelking,
12 Environmental Analysis and Groundwater Services unit;
13 Phil Monson, research scientist in the Water Quality
14 Standards unit; Scott Kyser, engineer in the Effluent
15 Limits unit; carol Nankivel, rule coordinator in the
16 agency Rules unit; and also Deborah Klooz, paralegal,
17 Legal Services unit.

18 As the -- as Judge Schlatter has
19 indicated, we have previously entered into the record
20 a number of exhibits. Those exhibits are identified
21 alphabetically as MPCA Exhibits A through L. I will
22 provide a brief description or identification of the
23 exhibits.

24 Copies are available for perusal, as
25 mentioned, here, at this location, on the table

1 outside. And at the various locations, I believe that
2 the PCA staff person there can direct you to that.

3 The purpose of the exhibits is to document
4 that the agency has the legal authority to adopt these
5 rules, to demonstrate that we have fulfilled all legal
6 and procedural requirements for adopting the rules,
7 and to demonstrate the need and reasonableness of the
8 rules.

9 MPCA Exhibit A is the Request for Comments
10 published in the *State Register* dated October 26,
11 2015.

12 Exhibit B is the Petition for Rulemaking
13 submitted by the Minnesota Chamber of Commerce on
14 December 7, 2010, and Memorandum in Support of the
15 Minnesota Chamber of Commerce Petition for Rulemaking,
16 dated December 6, 2010.

17 Exhibit C is Rules as Proposed, including
18 Revisor's approval, dated July 24, 2017.

19 Exhibit D is the Statement of Need and
20 Reasonableness, dated July 17. This includes the
21 accompanying exhibits, which are provided in two
22 separate notebooks: One notebook contains SONAR
23 Exhibits 1 through 21; the other contains SONAR
24 Exhibits 22 through 46.

25 Exhibit E is the transmittal letter and

1 Certificate of Mailing, the Statement of Need and
2 Reasonableness to Legislative Reference Library, dated
3 August 21, 2017.

4 Exhibit F, the Notice of Hearing, as
5 published in the August 21, 2017, *State Register* and
6 posted on the MPCA web pages; and Notice of Additional
7 Hearing, as published in the September 18, 2017,
8 *State Register* and also posted on the MPCA web pages.

9 Exhibit G is a Certificate of Mailing the
10 Notice of Hearing to the Rulemaking Mailing List and
11 Accuracy of the Mailing List, dated August 21, 2017; a
12 Certificate of Mailing the Notice of Additional
13 Hearing to the Rulemaking Mailing List and a
14 Certificate of Accuracy of the Mailing List for
15 Providing Notice of Additional Hearing, dated
16 September 18, 2017.

17 Exhibit H comes in two parts. It's a
18 Certificate of Giving Additional Notices. Exhibit H.1
19 is the Certificate of Providing Additional Notice to
20 the August -- of Providing Additional Notice of the
21 August 21, 2017, Notice of Hearing; Exhibit H.2 is the
22 Certificate of Providing Additional Notice of the
23 September 18, 2017, Notice of Hearing, Additional
24 Date/Location.

25 Exhibit I is the written comments received

1 during the prehearing comment period, and those are
2 available for review on the Office of Administrative
3 Hearings website.

4 Exhibit J is a placeholder for approval to
5 omit text from the *State Register*, but that was not
6 applicable. No text was so omitted, so that --
7 there's no actual exhibit there.

8 Exhibit K is comprised of four exhibits,
9 K1 through K4. These are any other documents or
10 evidence to show compliance with any other law or rule
11 which the agency is required to follow in adopting the
12 rule.

13 Exhibit K.1: Notices to legislative
14 chairs and minority leaders, as required by Minnesota
15 Statute, Section 14.116, dated August 21, 2017, and
16 September 18, 2017, respectively.

17 Exhibit K.2: Notice to Department of
18 Agriculture, as required by Minnesota Statute,
19 Section 14.111, dated July 19, 2017.

20 Exhibit K.3: Notice to and acknowledged
21 by Minnesota Management and Budget, as required by
22 Minnesota Statute 14.131.

23 Exhibit K.4: Notices sent to "the
24 governing body of each municipality bordering or
25 through which affected waters for which standards are

1 sought to be adopted flow," as required by Minnesota
2 Statute, Section 115.44, Subdivision 7. The MPCA
3 provided the required notification for the August 21,
4 2017, and the September 18, 2017, notices.

5 Exhibit L is comprised of Exhibits L1
6 through L9. These are additional materials submitted
7 by the agency at this hearing. Some of these are
8 peer-reviews technical articles, and copies of those
9 technical -- those articles can be obtained by request
10 to the MPCA.

11 Exhibit L.1 is an article by
12 Bolton & Menk, 2017, entitled, "Analyzing Alternatives
13 for Sulfate Treatment in Municipal Wastewater, Part I:
14 Feasibility Alternative Review."

15 Exhibit L.2, by Ng., et al., 2017,
16 entitled, "Modeling hydrologic controls on sulfur
17 processes in sulfate-impacted wetland and stream
18 sediments."

19 Exhibit L.3 is an article by Myrbo,
20 et al., 2017, entitled, "Sulfide generated by sulfate
21 reduction is a primary controller of the occurrence of
22 wild rice in shallow aquatic ecosystems."

23 Exhibit L.4, by Pollman, et al., 2017, is
24 entitled, "The evolution of sulfide in shallow aquatic
25 ecosystem sediments - an analysis of the roles of

1 sulfate, organic carbon, iron, and feedback
2 constraints using structural equation modeling."

3 Exhibit L.5, by Myrbo, et al., 2017,
4 entitled, "Increase in nutrients, mercury, and
5 methylmercury as a consequence of elevated sulfate
6 reduction to sulfide in experimental wetland
7 mesocosms."

8 Exhibit L.6 is errata correcting minor
9 errors to the SONAR and attachments to the SONAR.

10 Exhibit L.7 is the presentation that -- or
11 the slide presentation that Ms. Lotthammer will be
12 providing.

13 Exhibit L.8 is an article by Moyle, 1975,
14 entitled, "Review of Relationship of Wild Rice to
15 Sulfate Concentration of Waters."

16 Exhibit L.9 is the MPCA changes to
17 specific Water Identification Numbers.

18 Those are the documents -- exhibits that
19 have been previously entered into the record, and,
20 Your Honor, if you would like, Ms. Lotthammer would be
21 prepared to provide her presentation. That,
22 otherwise, concludes my summary of the documents.

23 JUDGE SCHLATTER: You may proceed.

24 Thank you.

25 MS. LOTTHAMMER: Thank you, Your

1 Honor, and thank you all for being here this afternoon
2 and evening.

3 My name is Shannon Lotthammer, spelled
4 S-H-A-N-N-O-N, L-O-T-T-H-A-M-M-E-R, and I'm the
5 director of the Environmental Analysis and Outcomes
6 Division here at the Pollution Control Agency, which
7 includes our Standards Development and Revision Group
8 as well as air and water quality monitoring and
9 support for our air-and-water-quality-permitting
10 activities as well.

11 So the presentation that I'll be giving
12 this afternoon is intended to highlight aspects of the
13 rule proposal that's before you. And all of the
14 details of this proposal can be found in the
15 supporting documents that Adonis just referred to,
16 particularly the Statement of Need and Reasonableness,
17 and the attachments to that, and the Technical Support
18 Document.

19 (A slide presentation was played at this
20 time.)

21 So I'll be covering some main themes, both
22 why the agency is proposing to revise the existing
23 sulfate standard, some background information, and
24 then the details -- or at least an overview of the
25 proposal itself.

1 So this rulemaking proposal came about as
2 a result of questions arising about the existing
3 sulfate standard to protect wild rice.

4 These questions pointed to a need to
5 better understand both the effects of sulfate on wild
6 rice and provide greater clarity about the standard
7 itself, both in how and when sulfate causes a problem
8 for wild rice, and also where and how the standard
9 applies to water bodies in Minnesota.

10 Throughout this effort, the Pollution
11 Control Agency had a handful of key goals in mind:
12 The first and foremost was to protect wild rice
13 production, which is the intent of the original
14 standard and the proposed revisions to the standard;
15 to incorporate new scientific findings that have come
16 to light, particularly in the last ten years; to
17 reduce uncertainty and add clarity to the
18 implementation of the standard; and then, finally, to
19 avoid unnecessary regulatory impacts.

20 In the case of sulfate, which is the
21 pollutant that we're talking about here, the current
22 treatment technology to address sulfate is very
23 expensive, so there's a particular interest in
24 ensuring that we are only reducing sulfate where it's
25 necessary to protect wild rice, and not where it isn't

1 necessary to protect wild rice.

2 Before outlining the elements of the
3 proposal, it's helpful to talk a little bit about the
4 nature of water quality standards themselves.

5 Water quality standards are fundamental
6 tools of the Federal Clean Water Act, and it's the
7 responsibility of states and authorized Indian tribes
8 to adopt water quality standards that are applicable
9 to their waters.

10 At the federal level, the federal
11 government retains oversight authority over that
12 process in the form of the Environmental Protection
13 Agency.

14 The water quality standard is basically
15 the number or the statement of the condition that is
16 needed in a water body to protect a specific use of
17 that water body, and we refer to that, in the -- at
18 the Pollution Control Agency and under the Clean Water
19 Act, as the "beneficial use."

20 So examples of beneficial use are:
21 Swimming, being able to eat the fish from a particular
22 water body, having a healthy aquatic community, and,
23 in this case, wild rice production, or, more
24 specifically, harvest and use of wild rice grains as a
25 food source for humans and wildlife.

1 So the other thing about water quality
2 standards is that the water quality standards apply in
3 the water body itself, so again, this is what is
4 needed to be attained or maintained in a lake or a
5 stream or a wetland to be protective of that
6 beneficial use.

7 So water quality standards are based on
8 the environmental science and what research tells us
9 is the necessary conditions to create or maintain or
10 avoid in order to be protective of that beneficial
11 use.

12 So the next slide talks about the existing
13 wild rice sulfate standard, then. And the Pollution
14 Control Agency first adopted a standard to protect
15 wild rice from sulfate impacts back in 1973, and that
16 standard adoption was based on studies that were done
17 in Minnesota lakes that showed that wild rice tended
18 to grow in water bodies with lower concentrations of
19 sulfate.

20 So the map that you see before you is a
21 map that shows sulfate concentrations -- those are the
22 colors on the map -- from lower concentrations, in
23 blue; to higher concentrations, in red.

24 And then the dots on the map show where
25 wild rice has been identified, or reported to be

1 occurring, to the Minnesota Department of Natural
2 Resources, and you can see that those dots tend to
3 occur in the areas with lower sulfate concentrations.

4 So that led to the adoption of the
5 standard, following the administrative procedures of
6 the time and approved by the Environmental Protection
7 Agency. And that existing standard is 10 milligrams
8 per liter of sulfate, and applies to water used for
9 production of wild rice, and it applies during periods
10 when the rice may be susceptible to damage by high
11 sulfate levels.

12 So the next slide, then, articulates the
13 need for the wild rice review and study that has --
14 that the agency has undertaken in recent years,
15 because in recent years, questions have come up about
16 the standard adopted in 1973.

17 Most questions were things like, Okay. We
18 know that wild rice tends to grow in areas with lower
19 sulfate concentrations, but you can find stands of
20 wild rice -- even extensive stands of wild rice -- in
21 water bodies with higher sulfate concentrations. It's
22 less frequent, but it does occur.

23 Also, questions were coming up about:
24 When exactly is wild rice susceptible to damage by
25 high sulfate? The assumption had been that it was

1 during the growing season, but questions were arising
2 about whether or not that was exactly the case.

3 So to try to provide some clarity about
4 these questions, the Pollution Control Agency first
5 undertook a scientific literature review in 2010 to
6 see if there was any additional information that could
7 help clarify this specific standard, and what we found
8 was there really wasn't any new information that was
9 applicable.

10 Fortunately, in 2011, the Minnesota
11 legislature provided the agency with funding to
12 undertake a study to better understand the effects of
13 sulfate and other substances on wild rice, and that
14 funding was provided from the Clean Water, Land, and
15 Legacy Amendment -- the Constitutional amendment --
16 that was adopted in 2008.

17 The legislature also directed the agency
18 to establish an advisory committee to provide feedback
19 on the design of the studies and the execution and
20 analysis of the studies, and then any subsequent
21 rulemaking.

22 And that advisory committee was
23 comprised of a wide range of interested parties and
24 partners and groups, including tribal representatives,
25 representatives of municipalities, of industry groups,

1 researchers in the field of wild rice and ecology,
2 hand harvesters of wild rice, the Cultivated Wild Rice
3 Council was represented, and environmental groups,
4 among other interested parties.

5 The legislature also directed the agency
6 to initiate rulemaking upon completion of the study to
7 provide clarity to this particular standard, and
8 subsequent legislation passed, after 2011, requires
9 that that rulemaking be completed by January 15th of
10 2019.

11 So this embarked the Pollution Control
12 Agency on a process of gathering new information and
13 reviewing existing information, then analyzing that
14 information, going through an independent scientific
15 peer review process, where the agency worked with an
16 independent third party to impanel a group of seven
17 scientists from, actually, across the U.S. and a
18 couple of international scientists, to provide
19 feedback to us on our initial analysis of the study
20 information.

21 Then, based on that feedback and also
22 feedback from the advisory committee and other
23 researchers and interested parties, we revised that
24 analysis and continued to kind of refine that
25 approach, and then, ultimately, leading to the rule

1 proposal that is in front of you today.

2 So just a little bit more, in the next
3 slide, about the wild rice study and analysis. Again,
4 the goal was to enhance the understanding of the
5 effects of sulfate on wild rice and to informed
6 evaluation of the standard.

7 So the agency developed a research or
8 study protocol that had an initial hypothesis that was
9 a part of that protocol, and then developed four key
10 avenues of investigation, and this was with input from
11 the advisory committee and the scientific community as
12 well.

13 So that included laboratory or hydroponic
14 experiments where wild rice seeds were grown in the
15 laboratory at different concentrations of sulfate and
16 sulfide, and measurements made about any impacts on
17 that.

18 There were outdoor container experiments
19 where sediment from a wild rice lake, and then wild
20 rice itself, was grown in containers that were outside
21 in large tubs that were then treated with different
22 levels of sulfate and then measured for the chemistry
23 in the water and the sediment and endpoints of the
24 wild rice, including growth and seed production, and
25 things like that, and those experiments extended over

1 a number of years.

2 Then, an extensive field survey that
3 involved crews from the University of Minnesota, that
4 we contracted with, to go out to water bodies in
5 Minnesota and measure the chemistry of the water and
6 the sediment, some physical properties, and then the
7 presence and absence and density of wild rice.

8 And finally, some sediment experiments
9 where sediment was brought into the laboratory,
10 treated with different levels of sulfate in the
11 overlying water, and then the changes to that sediment
12 chemistry measured, both while the sulfate was in the
13 overlying water, and when that was removed as well.

14 So throughout this process, we received
15 input and feedback and questions and guidance from the
16 advisory committee. There was a wide range of
17 feedback. This wasn't a consensus group, but really
18 intended to get a broad spectrum of suggestions and
19 questions and input.

20 And we also provided information, via our
21 website and other updates, to interested parties that
22 were kind of following along while this was going on.

23 Now, I mentioned that led to the
24 independent scientific peer review, ongoing literature
25 review and analysis, and then, ultimately, the

1 preparation of a number of scientific papers that have
2 since been accepted for publication in peer-reviewed
3 scientific journals.

4 So next, on the next slide, I will now
5 turn to an overview of the rule proposal itself, the
6 proposal to revise the rule, and there's four main
7 components of the proposal that I'll outline.

8 The first two have to do with addressing
9 the toxic effect on wild rice by sulfate, which is
10 actually an indirect effect that is related to
11 sulfide. Then the proposal also identifies about
12 1300 lakes, rivers, and streams as water bodies that
13 have that beneficial use of harvest and use of the
14 wild rice grain as a food source, and therefore are
15 proposed to be subject to the standard.

16 And then the fourth part of the proposal
17 talks a little bit about some implementation details
18 of applying the standard going forward.

19 MS. KUSKIE: One moment.

20 MS. LOTHAMMER: Okay. So I'm just
21 pausing as we get caught up on the presentation.

22 So the next slide, then, is about the
23 first part of the rule proposal, which is to clarify
24 what specifically is impacting wild rice and how much
25 of that is too much, and this is with respect to

1 sulfate and sulfide, so investigating that existing
2 standard.

3 Our hypothesis going into the study, and
4 that has been borne out by the results from the study,
5 is that when oxygen is low in a mucky environment
6 where wild rice grows, there's bacteria that live in
7 that environment, and those bacteria don't have oxygen
8 to breathe, but they can use other chemicals instead,
9 and one of the chemicals that they use is sulfate.

10 And in the process of using that sulfate
11 as their oxygen source, they transfer it -- or -- they
12 can transform it from sulfate into sulfide. And we
13 know that sulfate itself doesn't tend to be all that
14 toxic, directly, to people or organisms. Some folks
15 have noted the fact that the -- that the drinking
16 water standard for sulfate is 250 milligrams per liter
17 compared to the 10 milligrams per liter existing
18 standard for wild rice.

19 But what we do know is that sulfide is
20 very toxic to living things, including humans and
21 animals and plants as well.

22 And what we found, through the analysis of
23 the data, is that the sulfide in the sediment --
24 actually, it's in the pore water, the water that's in
25 between the sediment particles where the wild rice is

1 growing -- it actually affects the wild rice presence
2 and wild rice density in Minnesota water bodies.

3 So this, then, led to that analysis of the
4 field data that the agency performed and an effort to
5 identify a protective level of sulfide, so we used the
6 field data to, really, establish that level, and that
7 was corroborated by additional data analysis from some
8 of the other lines of evidence, and the details of
9 that are listed on the Statement of Need and
10 Reasonableness, and in the Technical Support Document.

11 So the rule proposal involves establishing
12 a proposed protective sulfide level of 120 micrograms
13 per liter in the sediment of wild rice waters.

14 So the next slide, then, is -- we're
15 talking about sulfide, but what about sulfate?
16 Because what we need to do, after establishing the
17 protective level of sulfide, is to understand what
18 affects the amount of sulfide that is found in the
19 sediment where wild rice is growing.

20 And what we found, through analyzing the
21 data that was gathered, is that there's three
22 variables that exert relatively equal control over the
23 level of sulfate in the sediment -- or the level of
24 sulfide -- excuse me -- in the sediment.

25 And those are: Sulfate in the water

1 column, dissolved -- or totaled organic carbon in the
2 sediment, and reactive iron in the sediment. And the
3 sulfate kind of makes sense, because that's the -- the
4 source of sulfur that the bacteria are using, then, to
5 convert into sulfide.

6 Where the iron and the carbon come, is
7 that the carbon is a food source for those bacteria,
8 so the more carbon you have in the sediment, the more
9 bacteria you can have and the more efficiently, then,
10 they can translate that sulfate into sulfide.

11 On the flip side, iron can actually react
12 with sulfide and bind it up so that it gets pulled out
13 of that sediment pore water. So the more iron you
14 have, the less efficient a water body is at
15 translating from sulfate into sulfide.

16 And what we found is that while sulfate is
17 a chemical that can be affected by human activity,
18 iron and carbon are really naturally variable in the
19 sediments where wild rice grows and in the
20 sediments -- in the sediments that we measured, and
21 it's the sulfate that's affected by that human
22 activity.

23 So the proposal, then, is to recognize
24 that there's variability in the levels of iron and
25 carbon in the sediment, and that there's not a general

1 pattern of that variability. Often when we're
2 developing water quality standards, we can find that
3 there's a general pattern where, maybe, lakes are
4 similar and streams are similar, or lakes in the
5 northeast part of the state are alike, in the central
6 part of the state, they're more alike.

7 In the case of iron and carbon, we found
8 that two water bodies right next to each other can
9 have very different levels of iron and carbon in the
10 sediment, so we can't make general assumptions and be
11 very precise in the approach that we're taking.

12 And that's why what we're proposing is for
13 the primary option of determining how much sulfate can
14 be in the water column and be protective of wild
15 rice -- so setting that numeric sulfate standard -- is
16 to measure the iron and the carbon in the sediment.

17 And then, fortunately, we've been able to
18 develop a solid relationship between iron, carbon,
19 sulfide, and sulfate so that we know we need to stay
20 below 120 micrograms per liter of sulfide. We measure
21 the iron in the carbon. We can put that into the
22 equation, then, and solve for the sulfate to determine
23 the numeric sulfate level.

24 We're also proposing an alternate option
25 that allows for directly measuring that pore water

1 sulfide and then establishing the sulfate standard for
2 that particular water body that is going to be
3 protective of that sulfide level and keep it at or
4 below the 120 micrograms per liter.

5 So in the next slide, we do have some
6 additional details about the numeric standard that are
7 included in the proposal. That includes the proposal
8 to adopt, by reference, procedures for the sediment
9 and the pore water sampling.

10 So those would be incorporated into the
11 rule and have the force of the rule language so that
12 everyone knows how the sampling would need to occur to
13 sample for iron and carbon and, in some cases, pore
14 water sulfide, and then how that data would be
15 considered in establishing the numeric sulfate
16 standard for a given wild rice water.

17 The proposal also addresses the three key
18 components of water quality standards. Those are
19 magnitude, duration, and frequency.

20 And I already spoke about magnitude.
21 That's establishing the numeric sulfate standard --
22 the number -- or how much of the pollutant can be
23 there and still protect that beneficial use.

24 The second part is the duration, which is
25 the time period over which you evaluate a pollutant

1 concentration to be sure that you're protecting that
2 beneficial use. And the Pollution Control Agency is
3 proposing an annual average as the duration of the
4 standard.

5 And then the third part is the frequency,
6 which is: How often can a standard be exceeded and
7 still be protective of that beneficial use. And in
8 that case, the Pollution Control Agency is proposing a
9 one-in-ten-year frequency.

10 And the SONAR and the Technological
11 Support document layout the -- more details about
12 that, and then the need for and reasonableness of the
13 PCA's proposal for that approach.

14 So the next slide, then, talks about the
15 third part of the rule proposal, which is identifying,
16 specifically, where the standard applies.

17 So the proposal by the Pollution Control
18 Agency is to not change the beneficial use -- so
19 maintain that beneficial use of the wild rice
20 production or harvest and use of the grain as a food
21 source -- but to really update the language. "Water
22 use for production of wild rice" is a mouthful; it's
23 not all that easy to say. We'd like to update that to
24 a more simple "Class 4D wild rice waters."

25 And then the Pollution Control Agency is

1 proposing to specifically identify where that
2 beneficial use exists -- so the waters that have that
3 beneficial use as an existing use in our water quality
4 standards -- to provide clarity about where that
5 standard applies.

6 Right now, it's a case-by-case
7 determination to determine if a particular water body
8 has that beneficial use, so the intent here is to add
9 clarity about applicability of the standard.

10 And the date of November 28th of 1975 is a
11 date that comes from the Clean Water Act. And
12 basically, the Federal Clean Water Act says that if a
13 water body has a beneficial use or has had a
14 beneficial use in existence since that date, that use
15 needs to be protected.

16 So if we have data to show that the wild
17 rice beneficial use existed in a water body anytime
18 since then, even if it has been harmed since then, if
19 we have information to show that it had been there,
20 then we need to be protective of that, so that's what
21 that means.

22 So the agency is proposing to specifically
23 identify those water bodies in Minnesota rules, and
24 then to ease -- in communication and searching, and
25 things like that, we've developed a database web tool

1 that can search that -- those proposed wild rice
2 waters.

3 Now, on the next slide, because there's
4 not a comprehensive inventory of wild rice in
5 Minnesota, we also had to think about how to add
6 waters based on new information coming to light -- so
7 as we get new information or additional information
8 about particular water bodies -- to help us make that
9 determination if that beneficial use is an existing
10 use.

11 So what we're proposing is that waters
12 would be added through rulemaking. So in the future,
13 we would go through a rulemaking process, like this
14 process, in order to add additional waters to the rule
15 as wild rice waters.

16 And the intent of that, is that allows the
17 reasonableness of making that beneficial-use
18 determination to really be demonstrated and discussed
19 during the rulemaking process so the agency would need
20 to put forth why it believes that that beneficial use
21 is an existing use, folks can ask questions, provide
22 comments, provide additional information, just like
23 through this process.

24 And we intend to be very inclusive about
25 the types of information that we'll consider in

1 supporting adding additional waters, recognizing that
2 Western-science, agency-driven reports are not the
3 only places that have reliable information to -- to
4 think about or consider about wild rice. And we also
5 note, in the Statement of Need and Reasonableness, our
6 intent to regularly solicit new information to
7 consider adding waters in the future.

8 So the last part of the proposal has to do
9 with implementation. And before I talk just a little
10 bit about that on this next slide, I'd like to
11 emphasize a couple of points.

12 First of all, when I'm talking about
13 "implementation," what I mean there is, once a
14 standard is adopted, how that standard gets considered
15 in other processes, like permitting or thinking about
16 total-maximum-daily-load studies, and things like
17 that.

18 And it's important to understand that a
19 water quality standard is not the same thing as a
20 permit requirement, for example. The water quality
21 standard establishes the goal in the water body, so:
22 What are we trying to achieve in order to be
23 protective of a particular beneficial use?

24 In this case, how much sulfate can be in
25 the water body to maintain sulfide at or below

1 120 micrograms per liter to protect wild rice harvest
2 and use of the grain?

3 When it comes to permits, permits are
4 where facility requirements come into play, and those
5 can include considerations like costs and timeline and
6 feasibility considerations, because when we're
7 establishing standards, costs are certainly something
8 we need to talk about.

9 It's a requirement of the Administrative
10 Procedures Act that we do an analysis of the
11 regulatory implications of a proposed rule or rule
12 revision, but under the Clean Water Act, cost is not a
13 factor that can determine or adjust a water quality
14 standard.

15 The standard needs to be based on what the
16 environmental science is telling us is needed to
17 protect the beneficial use from the pollutant that is
18 being considered.

19 But, of course, costs are very important,
20 and they certainly are a consideration when you're
21 thinking about upgrading wastewater treatment
22 facilities, for example, or installing a new type of
23 industry.

24 And so it's important to understand that
25 when we review those types of projects, not all

1 facilities have the potential to impact a beneficial
2 use, so we go through a process to analyze that.

3 And then if a facility does have the
4 potential to impact a beneficial use but there's not
5 cost-effective treatment technology -- in other words,
6 if achieving the permit restrictions necessary to
7 protect that would result in widespread economic or
8 social impacts -- there are tools that the agency has
9 available in the permitting process, under both the
10 federal Clean Water Act and the state statutes, to
11 address that: Things like variances and, also,
12 schedules of compliance.

13 So the next slide just speaks to the fact
14 that the proposal includes some details on
15 effluent-limit reviews -- so that analysis of
16 permitting -- and then also provides additional
17 details on variances, because the agency recognizes
18 that current treatment technology for sulfate is very
19 expensive in, probably, most, if not all, cases.

20 For municipalities, at least, it may be
21 prohibitively expensive at the current time, and so
22 variances are a tool that the agency will need to
23 consider.

24 Now, variances don't mean that facilities
25 don't need to do anything. They still need to take

1 steps that are achievable and are possible, with the
2 current economic situation, to make things better.

3 And then the idea is that variances do
4 need to be reviewed over time. They also need to be
5 approved by the federal Environmental Protection
6 Agency, with the thought that economic situations
7 change, technology advances. Something that can't be
8 afforded right now, maybe can be afforded in the
9 future because of -- of either new technology or new
10 situations.

11 The Statement of Need and Reasonableness
12 also speaks to the way that the agency is proposing to
13 gather data to establish the protective sulfate -- or
14 the numeric sulfate standard for water bodies,
15 recognizing that that will take some time, and the
16 agency is intending to prioritize that work based on
17 the potential for impact and also our monitoring and
18 permitting schedules.

19 So finally, I'd like to point out that
20 there is a lot of supporting information that provides
21 context and details for the proposed standards
22 revision.

23 That includes, again, the Statement of
24 Need and Reasonableness, the TSD, the Regulatory
25 Analysis that I already mentioned, and I do also have

1 a separate, but related, project underway that was
2 funded by the Legislative Citizen Commission on
3 Minnesota Resources to fund future implementation of
4 the standard.

5 So in summary, we know that wild rice is
6 important ecologically, economically, and spiritually
7 in Minnesota. It's particularly spiritually important
8 to our Native American communities. We've heard a lot
9 of voices from Minnesotans, including tribal members,
10 about the importance of this resource.

11 We also know that the sulfate standard
12 that was adopted in 1973 needs updating to reflect new
13 science and also to enhance the clarity of that
14 standard.

15 This rulemaking proposal reflects the
16 latest peer-reviewed science. It's about setting the
17 goal for protecting wild rice, and it also tailors the
18 standard to the environmental conditions that are
19 naturally found within wild rice waters, which is
20 particularly important, given that sulfate treatment
21 is currently very expensive, so to make sure that
22 we're being very protective of this very important
23 resource and that we're not overly treating or overly
24 reducing where we don't need to, to protect this
25 resource.

1 And last, but most importantly, the
2 Pollution Control Agency is very grateful to all of
3 those that have participated in the process to this
4 point, and also in the public hearings, for sharing
5 your expertise, your questions, your -- your
6 suggestions, and your critiques, and we really
7 appreciate all of the information that we've received.

8 Thank you.

9 JUDGE SCHLATTER: Thank you. Thank
10 you.

11 And I'm wondering if I have some
12 information about how many people we have at the
13 various locations? Okay. Just take one minute here
14 while I see what we've got in terms of people who want
15 to speak.

16 MS. KUSKIE: Two in Rochester. Oh,
17 I'm sorry. Not speaking. Two guests in Rochester;
18 not speaking.

19 JUDGE SCHLATTER: Oh, okay.

20 Well, we've got, at this point, not a lot
21 of speakers and plenty of time, so I think we can give
22 our speakers, probably, ten minutes and have plenty of
23 time.

24 So we're going to start in -- there is
25 only one person who has a time constraint, and even

1 though it's a while from now, I'm just going to start
2 with that person, just to make sure that we get to
3 her.

4 So we're not going to start in
5 Detroit Lakes, even though I said we were. We're
6 going to start in St. Paul with Ms. Shaw.

7 So, Ms. Shaw, if you can make sure that
8 you spell -- state your name, spell it for the record,
9 and let us know whether you are here on anyone's
10 behalf.

11 MS. SHAW: Okay. My name is
12 Michelle, M-I-C-H-E-L-L-E; Shaw, S-H-A-W.

13 JUDGE SCHLATTER: Hold on just one
14 second. Are we okay --

15 MS. KUSKIE: Yep.

16 JUDGE SCHLATTER: -- with
17 proceeding?

18 MS. KUSKIE: Yep.

19 JUDGE SCHLATTER: Okay. Go ahead.
20 I just wanted to make sure everybody at every place
21 can see. Thank you.

22 MS. SHAW: I live in Minneapolis. I
23 do have my address at the bottom of my statement,
24 which I'll turn in, and I'm not here on anyone's
25 behalf but my own.

1 Are those all the things I needed to --
2 JUDGE SCHLATTER: I think that's it.
3 Thank you.

4 MS. SHAW: Okay.

5 If it's true that the Minnesota Pollution
6 Control Agency was created in 1967 to protect our
7 state's water, land, and air years before the
8 Environmental Protection Agency was created, then we
9 owe it to ourselves to get this decision right.

10 In fact, if the MPCA has been a model for
11 other states in regards to protecting the environment,
12 then let's make this decision a model for them too.

13 As one of the core values on the PCA's
14 website, it states that you, "measure success by the
15 environmental and public health outcomes achieved."

16 How would allowing higher percentages of
17 sulfate into wild rice waters achieve an environmental
18 outcome? And how would allowing higher percentages of
19 sulfate achieve a public health outcome?

20 I have to believe that these outcomes are
21 supposed to help the environment and have positive
22 effects on our public health. Are these the questions
23 that guide your decisions? If so, then we must keep
24 the sulfate standard and enforce it.

25 I'm not someone who studies this for a

1 living, nor do I get paid to be here. Up until last
2 Thursday's hearing, I had no idea that we had a
3 sulfate standard in the state of Minnesota for wild
4 rice waters. I didn't even know what a sulfate
5 standard was.

6 So for an educator like myself who is
7 constantly questioning the world around me, I had to
8 go home and learn as much as I could, because there is
9 no way I could fight against something I didn't
10 understand.

11 In 1994, I was at multiple rallies to keep
12 nuclear waste out of the Mississippi River. And now,
13 24 years later, we're still debating how much
14 pollution is acceptable for our waters.

15 When the standard for sulfate was set in
16 1973, the research showed that allowing more pollution
17 would be detrimental to the growing of wild rice. For
18 years and years, the standard was not enforced, but if
19 my tax dollars are supporting the MPCA, then I want
20 this standard enforced, starting now. And I want to
21 know why it wasn't being enforced in the past.

22 Was spending suddenly cut? Were jobs
23 eliminated? If our wild rice wasn't being protected
24 with one simple standard, then how is it that the MPCA
25 is suddenly going to be able to monitor an equation

1 where every single wild rice stand is going to have a
2 different acceptable amount of pollution?

3 I just don't see how the desired goal of
4 being more effective and efficient is possible when
5 there are so many factors involved in each wild rice
6 stand's equation.

7 So why don't we do this: Instead of
8 allowing more pollution in our Minnesota waters, let's
9 choose to enforce the protection this taxpayer-funded
10 agency put in place over 50 years ago. In fact, why
11 aren't we debating the merits of eliminating the
12 pollution altogether?

13 As a Minnesotan, I don't understand why we
14 are allowing large corporations to determine how much
15 they can pollute our waters and surrounding food
16 sources. I don't understand why we aren't making them
17 clean up their mess, and I don't understand why we are
18 putting these companies' profits above the values we
19 hold dear as Minnesotans.

20 What it really comes down to is this for
21 me: Who is the PCA changing the sulfate standard for?

22 I also don't understand why it's bad to
23 charge customers higher prices for products that
24 created the pollution to begin with. Someone has to
25 take responsibility for cleaning up, right?

1 We need to get in the mindset that there
2 are consequences to the production of anything, and
3 companies have the responsibility to fix the negative
4 impacts, or they shouldn't cause them in the first
5 place.

6 Let's think about it this way: Imagine
7 you live in a community where a company promises to
8 bring lots of jobs to your area, good salaries too.
9 The company will be around for generations to come,
10 they say, so you apply and get a job.

11 For years, you're happy working there,
12 until one day, when you find out that this company has
13 been polluting the land that all the farmers in your
14 town have been depending on for their livelihoods.

15 They've been losing 10 to 20 percent of
16 the crops and the net worth of those crops due to the
17 pollution, and those losses will continue. Plus, the
18 government will not subsidize them, for a number of
19 reasons. What do you do?

20 Do you stand idly by and allow their
21 livelihoods to be destroyed? Or do you stand up and
22 demand that something be done to protect them, the
23 land, and the water? Do you really want a business
24 like that in your town if they aren't willing to take
25 responsibility for the problems they have caused their

1 fellow community members?

2 What about having your chamber of commerce
3 recruit businesses that are sustainable, provide
4 good-paying jobs, and show they care about the needs
5 of your community? As someone who grew up in rural
6 Minnesota, I know exactly what I'd do.

7 What about the essential role of wild
8 rice, or "manoomin," in this debate? On page 133 of
9 the Statement of Need and Reasonableness, you cited
10 this passage from Vennum's 1988 book, *Wild Rice and*
11 *the Ojibway People*, "Wild rice, called 'manoomin' in
12 the Ojibway language, once played a central role in
13 tribal life. It was endowed with spiritual attributes
14 and its discovery was recounted in legends.

15 "It was used ceremonially, as well as for
16 food, and its harvest promoted social interaction in
17 late summer each year. Consequently, many Ojibway
18 viewed the commercial exploitation of this resource by
19 non-Indians as an ultimate desecration. According to
20 my sources, manoomin is just as important to the
21 Anishinaabe today."

22 Although the farming of wild rice looks
23 different than the farmers -- farming we're used to,
24 it's still farming. Protect our state grain and the
25 farmers who spend their lives harvesting it. Choose

1 our land, air, and water, and cultural heritage over
2 the profits of big business.

3 Keep the standard you have now or
4 eliminate the allowance of sulfate altogether. Maybe
5 then the MPCA will finally earn the status of the
6 model government agency it was always meant to be.

7 JUDGE SCHLATTER: Thank you.

8 Are there any questions or comments for
9 Ms. Shaw? Any from remote locations? Okay. Thank
10 you.

11 And let's go to -- do we have someone in
12 Detroit Lakes? We do have someone in Detroit Lakes?
13 Okay.

14 MR. OLSON: We have -- this is Dan,
15 the facilitator here. We have Vernell Roberts from
16 the city of Detroit Lakes who would like to speak.

17 JUDGE SCHLATTER: Okay. Mr. -- is
18 it Roberts?

19 MR. ROBERTS: Yes.

20 JUDGE SCHLATTER: Okay. Would you
21 go ahead, please, then, and start by giving us your
22 name and spelling it and letting us know whether you
23 are representing anyone. Thank you.

24 MR. ROBERTS: Yes. Vernell Roberts,
25 V-E-R-N-E-L-L, R-O-B-E-R-T-S, Detroit Lakes Public

1 Utilities and the City of Detroit lakes.

2 JUDGE SCHLATTER: Okay. Thank you.
3 You can go ahead. I'm going to remind you right now
4 to speak a little more slowly. Thank you.

5 MR. ROBERTS: Very good. I will do
6 that. Thank you, Your Honor.

7 I'm the general manager for Detroit Lakes
8 Public Utilities which is located within 25 miles of
9 wild rice waters, and I wanted to comment on the
10 proposal because of the potential future impact on our
11 community.

12 The City of Detroit Lakes takes great
13 pride in the work we do to protect Minnesota's waters
14 through our wastewater facility. As stewards of our
15 community's natural and financial resources, we want
16 to make sure that when we invest taxpayers' and
17 ratepayers' money in keeping Minnesota's waters clean,
18 that the investment is required by reasonable
19 regulations based on sound science.

20 Detroit Lakes has worked closely with the
21 MPCA on several issues over the last five years to
22 become a leader in environmental stewardship for the
23 lakes in our area. Through a good working
24 relationship with the MPCA, we have navigated through
25 lower limits placed upon us in a compliant schedule.

1 During the compliant-schedule process, we
2 had several discussions with the MPCA on providing us
3 early and clear guidance so we could plan, design, and
4 build a facility to meet future requirements, while
5 providing water preservation for the next generation.

6 We have completed facilities and design
7 plans and submitted those plans to the MPCA, and they
8 have approved those plans. We recently solicited bids
9 for a new high-quality wastewater treatment facility
10 and are set to award a construction contract on
11 November 14 for a \$31.4 million wastewater treatment
12 facility.

13 The cost of this facility is forcing our
14 residents to pay for treatment that exceeds the
15 affordability threshold for our community. While we
16 thank the MPCA for its work on updating the sulfide
17 standards -- sulfate standards, we must keep in mind
18 the extreme costs some of us are experiencing in
19 meeting these ever-evolving standards, standards that
20 have evolved and may be imposed upon us after taking
21 great lengths and diligent study and design to meet
22 the requirements placed upon us in a compliant
23 schedule.

24 We are investing literally millions of
25 dollars to meet targets, goals, and requirements that

1 are constantly changing. This makes it impossible to
2 plan, design, and build facilities that have any hope
3 of meeting standards that live through a normal
4 five-year permitting cycle.

5 We're seeing our facilities face changes
6 so rapidly that even before we start construction, we
7 are faced with a new set of limits that these
8 facilities can no longer meet, while spending millions
9 of dollars to chase unattainable certainty in
10 standards.

11 Now, we agree the standard needs to be
12 updated. We're concerned that the new sulfate rule
13 proposed by the MPCA is built on a series of overly
14 conservative assumptions, incomplete analysis,
15 resulting in a standard that is more restrictive than
16 necessary to protect wild rice.

17 Detroit Lakes discharge will travel
18 through a series of 5 lakes, through a 15-mile-long
19 river system that is impacted by many other natural
20 activities that impact the sulfate levels of the lake
21 in question. However, as a regulative entity, we
22 often carry the sole burden of such proposed
23 regulations.

24 The methodologies proposed by the MPCA
25 takes little of the other factors in question in

1 solving the sulfate issue and places all the
2 regulatory burden on the citizens of our community.
3 The potential cost for municipalities of this proposed
4 rule should not be understated.

5 We are disappointed that the agency is
6 pushing forward with this rule when there is currently
7 a study underway to look at those costs in more
8 detail. We have seen preliminary cost estimates
9 showing we could be forced to spend tens of millions
10 of dollars to meet this standard. This is on top of
11 the 31 million we are already forced to spend on these
12 extremely low limits.

13 Such costs puts additional undue hardship
14 on a community such as Detroit Lakes. That is why it
15 is unreasonable for MPCA to run on so many
16 overconservative assumptions from science that is
17 still so new and underdeveloped.

18 The MPCA acknowledges that cost that our
19 city may face as a result of this rule and
20 acknowledges that municipalities will likely need to
21 seek variances. We appreciate that the proposed rule
22 will waive the variance fee for municipalities.

23 However, recent negotiations regarding
24 other recently imposed regulations shows that getting
25 a variance is easy in theory, but in all reality, it

1 may not be a suitable solution to other parties
2 invested in seeing these regulations come to fruition.

3 Further, the granting of a variance is not
4 guaranteed. It must be approved by the EPA and merely
5 delays the cost. Therefore, the potential
6 availability of a variance does not make the use of
7 overly conservative assumptions any more reasonable.

8 Thank you for your time and consideration,
9 Your Honor.

10 JUDGE SCHLATTER: Thank you,
11 Mr. Roberts. Do you have any exhibits that you would
12 like to have introduced with your statement?

13 MR. OLSON: You could scan it.

14 MR. ROBERTS: We'll scan this and
15 send this, and we'll provide additional comments
16 before the end of the closing period.

17 JUDGE SCHLATTER: Okay. So I will
18 make your hearing exhibit -- just for the record, your
19 hearing exhibit today will be numbered 1035.

20 (Exhibit Number 1035 was marked for
21 identification.)

22 MR. ROBERTS: Thank you, Your Honor.
23 Local MPCA staff has that in their possession.

24 JUDGE SCHLATTER: Okay. Thank you,
25 and thank you for your statement.

1 Are there any questions or comments for
2 Mr. Roberts? All right. Okay. Thank you.

3 And do we have -- as far as I know, we
4 have nobody in any of the other remote locations at
5 this time; is that correct?

6 MS. KUSKIE: Give me one second.
7 Some of them might be on mute.

8 MR. HUKREIDE: Your Honor, this is
9 Randy Hukreide in the Marshall office. We did have a
10 person that just showed up that would like to speak.

11 JUDGE SCHLATTER: Actually, we are
12 right at the time for a break. So what I'm going to
13 do is take a ten-minute break so that our court
14 reporter can have a break, people can stand and
15 stretch for a couple of minutes.

16 And then, the person in Marshall, can I
17 have that person's name?

18 MR. HUKREIDE: Yes. It's
19 Chris Swedzinski. That's S-W-E-D-Z-I-N-S-K-I.

20 JUDGE SCHLATTER: Okay.
21 Mr. Swedzinski will be the next person to go, and that
22 will be at 5:40. And we're going to be off the record
23 for ten minutes. Thank you.

24 (At this time a short break was taken
25 from 5:32 p.m. to 5:44 p.m.)

1 JUDGE SCHLATTER: So I think we are
2 connected now with Marshall and Mr. Swedzinski.

3 MR. SWEDZINSKI: Yes. Thank you,
4 Your Honor.

5 I'm Chris Swedzinski; I'm the chair of the
6 Mining, Forestry, and Tourism Committee at the State
7 House up in St. Paul. I farm down here in southwest
8 Minnesota, and I run a small welding business.

9 And, you know, I just wanted to come in
10 and just really -- just talk about my concern about
11 this proposed rule and, really, it's effect on the
12 economic vitality of the northeast, with the potential
13 with the mines and the job opportunities, the economic
14 growth that that has there, but also just for cities
15 as well, you know, the added cost.

16 We heard from Detroit Lakes. I'm just
17 very concerned, you know, about that. You know, we
18 put -- the legislature, this last year, put an
19 extension so that they could really -- MPCA could go
20 through the process of really finding out what is the
21 true economic impact of this potential rule.

22 And, you know, I think we found just that,
23 you know, instead of waiting for that, instead of
24 really finding what the brass tacks -- what's the real
25 cost to taxpayers, what's the cost of that to private

1 business, we're not going to see that, and that's
2 exceptionally concerning.

3 I think we have some rough estimates that
4 it's going to be over \$1 billion to -- just for a
5 water infrastructure. And, you know, I know myself,
6 the potential-only treatment is reverse osmosis, and
7 my wife and I put reverse osmosis in our house, and
8 just for us, for our single-family home, it was over
9 \$2,300.

10 And, you know, you look, with the Wild
11 Rice Council -- you know, wild rice is exceptionally
12 plentiful. As a farmer, my concern for agricultural
13 vitality is exceptionally -- I -- I'm very much
14 concerned about that.

15 When visiting with those folks in -- I
16 think it was -- in March of '17, there was an MPCA
17 official saying, "If this rule was enforced and this
18 would move forward, would it make any real difference
19 on the production of wild rice?" From what that
20 person said, it really didn't sound like it was going
21 to make much of a difference.

22 In talking with the folks in the field,
23 when it comes to the production and the harvest, it
24 doesn't. And that's exceptionally concerning to me.

25 You know, I personally -- if it was -- if

1 I had to wish a wish -- and one, maybe, that you could
2 grant -- that any rule that would be proposed when it
3 comes to this -- whether it be effect to the mines,
4 effect to the city through MPCA -- anything over
5 \$10,000, I think, should come to the legislature.

6 We're having these meetings across the
7 state. I'm joining with the Marshall -- I appreciate
8 that opportunity. I appreciate the staff here in the
9 office for making this happen and having the door open
10 for me.

11 But really, you know, it's that discussion
12 of ideas that's so important, and that's what we're
13 doing here tonight. But really, that's what the
14 legislature's job is to do, is to look at these
15 things, look at the -- the potential impact, and there
16 are just too many big questions laying out there:
17 What's the impact for jobs? What's the impact for
18 taxpayers?

19 And even the -- the in -- the few facts
20 that we have found, that it's just going to not really
21 affect wild rice the way they think it will.

22 Really, I just ask you to -- to simply
23 ban -- you know, banish this rule; don't allow it to
24 move forward. There needs to be a lot more
25 conversation. There needs to be a lot more studies.

1 And, quite frankly, the potential impact on jobs,
2 especially in the northeast, could just be devastating
3 for the opportunities that those people need to be
4 able to enjoy.

5 We all want to protect the environment.
6 We all want it to be factual in the way it happens.
7 You know? And I understand there's a big push with
8 this, and I just appreciate your opportunity to hear.
9 I'd be open to any questions.

10 But with so many unknown costs and such a
11 dramatic impact on major industry of small towns and
12 small business across our state, really, I just -- I
13 don't think there's -- I don't think this should see
14 the light of day, so thank you.

15 JUDGE SCHLATTER: Thank you.

16 Are there any questions for
17 Representative Swedzinski? Any questions? Comments?

18 MR. SWEDZINSKI: I have a tough -- I
19 have a tough time with my last name too, sometimes.

20 JUDGE SCHLATTER: Okay. Thank you
21 very much for you your comments.

22 And do we have anybody else at remote
23 locations at this time?

24 MR. GANSKE: There is no one here in
25 Mankato.

1 JUDGE SCHLATTER: Okay. Well, we do
2 have some folks in St. Paul, so I think we're going to
3 continue with the comments in St. Paul, and then we
4 will go back. After we've taken our comments from
5 St. Paul, we'll go back and see if other folks have
6 shown up in any of the remote locations who wish to
7 speak.

8 So I'm going to look now at the list of
9 folks in St. Paul, and, Ms. Maccabee, I know you're on
10 the list, but you're going to go to the end of the
11 list because you have spoken at other hearings.

12 So my first -- the first person is
13 Elizabeth -- is it Wefel?

14 MS. WEFEL: Yes.

15 JUDGE SCHLATTER: That was just
16 luck.

17 MS. WEFEL: Thank you, Your Honor,
18 and thank you for the opportunity to comment on the
19 proposed amendment to the Wild Rice Sulfate Rule.

20 My name is Elizabeth Wefel. That's
21 E-L-I-Z-A-B-E-T-H, W-E-F-E-L. I'm an attorney with
22 Flaherty & Hood, and I make the following comments on
23 behalf of the Minnesota Environmental Science and
24 Economic Review Board, MESERP, for short. This is a
25 joint-power organization of wastewater professionals

1 from 45 greater-Minnesota cities, public utility
2 commissions, and sanitary sewer districts.

3 MESERP has worked since 1997 to ensure
4 that regulations affecting wastewater treatment are
5 reasonable and based on sound science. Protecting the
6 quality of Minnesota water is at the core of what our
7 members do every day, and they are among those who
8 will be most affected by this rule. In fact, I think
9 you just heard from one of our members,
10 Vernell Roberts, in Detroit Lakes.

11 Our members will do what needs to be done
12 to protect Minnesota's waters, but as you've heard,
13 removing sulfate is extremely expensive. Our cities
14 do not have limitless resources, and to truly protect
15 the environment, we need to deploy those resources
16 where they are most needed.

17 We have several concerns that I will
18 discuss in more detail, but our overarching issue is
19 that the rule is based on overly conservative
20 assumptions that are not grounded in the scientific
21 evidence.

22 Such an approach may result in permanent
23 limits that are more protective than necessary and
24 require multimillion-dollar investments to protect
25 wild rice waters from sulfate in places where there is

1 no threat to that wild rice.

2 Before delving into our concerns, I will
3 point out that we do agree that the rule needs
4 updating, and that the current 10-milligram-per-liter
5 standard should be removed and replaced because it is
6 not well-supported by what we know now.

7 Our first concern is that there is not a
8 rational relationship between the overly conservative
9 assumptions in the rule and the underlying evidence.
10 The Minnesota Supreme Court has recognized that
11 examining the rule requires a searching and careful
12 inquiry of the record that includes looking at how the
13 evidence rationally connects with the rule.

14 Our written comments will delve more
15 deeply into specific instances where this has not
16 happened, but we're concerned about problems
17 particularly with the magnitude, frequency, duration
18 criteria.

19 JUDGE SCHLATTER: Could you just --

20 MS. WEFEL: Sorry.

21 JUDGE SCHLATTER: -- slow down a
22 little bit?

23 MS. WEFEL: Sure.

24 JUDGE SCHLATTER: Thank you.

25 MS. WEFEL: Used to be a college

1 debater.

2 We're concerned about problems in a number
3 of areas, including the magnitude, frequency, and
4 duration criteria. I'm going to use the duration as
5 an example today.

6 The proposed standard uses an annual
7 average for the sulfate criterion. The duration for
8 the criterion depends upon how long it takes for
9 sulfide to adversely affect wild rice waters.

10 In the one-year exposure test discussed in
11 the SONAR, there were no adverse effects on plant
12 biomass in any test concentration, even with sulfate
13 concentrations ranging up to eight times higher than
14 the proposed criterion.

15 Without evidence of adverse effects within
16 one year, there is no rational basis for this
17 criterion, and it should be rejected as arbitrary.
18 The evidence, instead, dictates a multiyear duration.
19 And, as I mentioned, in our -- in our written
20 comments, we'll delve more deeply into it, but that's
21 an example of kind of where our concerns come from.

22 Our second concern -- and I think you've
23 heard this from several people -- is the cost
24 analysis. The Minnesota Administrative Procedures Act
25 requires that the MPCA put forth a reasonable effort

1 to comply with Chapter 14 requirements. Those
2 requirements include an analysis of the cost to
3 proposed regulations to municipalities.

4 We do not believe that this has happened.
5 A cost and feasibility analysis regarding municipal
6 treatment -- I think you've heard this by now -- you
7 know, it's going to be done in May 2018. We believe
8 that that needs to be part of the record, going
9 forward. It's not, and it's not reasonable to move
10 forward in that situation, where the time to finish
11 the rulemaking has been extended.

12 This does lead to our third area of
13 concern: The variance area. You know, as you've
14 probably heard, that the agency has signaled that
15 they're likely to, you know, be looking at variances
16 for municipalities because of the concerns about
17 expense.

18 We are very appreciative of a willingness
19 to waive the fees for the municipal variances. I
20 think that's very important, but we -- we are very
21 concerned about -- in the rule, there's a -- they
22 incorporate, by reference, the Interim Economic
23 Guidance for Water Quality Standards workbook.

24 This -- this guidance document is several
25 decades old; it's outdated. It fails to consider some

1 critical factors, in that it hasn't gone through a lot
2 of vetting in this rulemaking process. You know,
3 overall, we have a short window to review this entire
4 proposed rule, and that's where our attention right
5 now is primarily focused on, is looking at the rule
6 itself.

7 This doesn't give us sufficient time to
8 delve into this highly technical document, thus we ask
9 that it not be incorporated, by reference, into the
10 rule, and instead, that a stakeholder group looks at
11 this issue separately.

12 We also want to caution against looking at
13 the availability of variances as a justification for
14 overly conservative assumptions in the rules. I think
15 it's been made clear that variances are not
16 guaranteed, they're subject to challenge, and they're
17 only a temporary solution.

18 In summary, our members recognize the
19 importance of protecting Minnesota's wild rice waters,
20 but we believe that this rule goes beyond what is
21 justified by the underlying evidence, which could
22 result in great expense to our communities throughout
23 the state.

24 Therefore, we ask that you reject the
25 current approach and direct the agency to take an

1 approach that better reflects the underlying science.
2 Thank you.

3 JUDGE SCHLATTER: Thank you. And
4 did you have anything you wanted to leave today, or
5 are you just going to --

6 MS. WEFEL: We're going to submit --

7 JUDGE SCHLATTER: -- file --

8 MS. WEFEL: -- but I can leave my
9 comments, if you like.

10 JUDGE SCHLATTER: Thank you, I
11 would. You can bring them on up. Thank you.

12 MS. WEFEL: Thank you.

13 JUDGE SCHLATTER: Thanks.

14 So this is Exhibit -- I lost my
15 stickers -- 1036.

16 (Exhibit Number 1036 was marked for
17 identification.)

18 JUDGE SCHLATTER: So the next person
19 is not -- so the next person, actually, I have, is
20 Mr. Peterson. One minute. Okay.

21 MR. PETERSON: Thank you, Your
22 Honor. My name is Bradley Peterson, B-R-A-D-L-E-Y,
23 P-E-T-E-R-S-O-N, and I am here today on behalf of the
24 Coalition of Greater Minnesota Cities, also known as
25 the CGMC, which represents over 90 cities in rural

1 Minnesota in every corner of the state.

2 By our analysis, at least 21 of our
3 members would be impacted by this rule, which is why
4 we're here today. Many of the comments that I was
5 going to make have been, largely, made, either by
6 Mr. Roberts in Detroit Lakes, who I think put things
7 very well, or Ms. Wefel, as well as
8 Representative Swedzinski.

9 So in the interest of economy, I will try
10 to summarize, from my notes, some of where I agree
11 with what they've said, and then other things, so if
12 my presentation is a little choppy, I apologize.

13 JUDGE SCHLATTER: That's okay.

14 MR. PETERSON: First off, as
15 Ms. Wefel noted, cities throughout the state play an
16 important part in protecting Minnesota's waters, and
17 that's a responsibility that they take very seriously.

18 Our cities are very committed to water
19 quality, but also, as Mr. Roberts noted, are also
20 stewards of their financial resources, which is why
21 both the rule, in its current and amended form, it is
22 essential that whatever standard is developed is no
23 more restrictive than is necessary to protect wild
24 rice.

25 As Representative Swedzinski pointed out,

1 we're very concerned that this is going forward before
2 a legislatively directed study on cost has been
3 completed, because, as has been noted, that is a very
4 important component of this discussion.

5 We also are concerned that the proposed
6 standard relies on overly conservative assumptions and
7 incomplete analysis.

8 Ms. Wefel noted the duration period. We
9 would add to that the -- for instance, the sequence
10 frequency of once-in-ten-year average, and we will be
11 expanding on some of these concerns in written
12 comments. But that highlights why it's so important
13 to get it right, because of the potential cost.

14 To the issue of cost, the MPCA and the
15 SONAR document has acknowledged that the type of
16 treatment required is extremely complicated and very,
17 very expensive for each community.

18 As has been noted, preliminarily
19 engineering estimates in many communities show that it
20 would likely cost into the tens of millions of dollars
21 per system in order to upgrade to account for the new
22 wild rice standard.

23 Also, as noted in the SONAR -- and this, I
24 don't believe, has been noted yet -- the annual
25 operating costs once that system is in place are

1 significant in terms of the operation, disposal, and
2 the energy required to treat for sulfate.

3 Further -- and this has not been noted
4 yet -- the MPCA notes, in the SONAR, the challenge
5 related to the personnel to run these facilities.

6 To quote from the SONAR, "The highest
7 classification of wastewater operator would be
8 required for these technologies. Minnesota currently
9 suffers from a lack of qualified wastewater operators.
10 Attracting, retaining, and funding qualified
11 wastewater operators would be a significant hurdle for
12 Minnesota wastewater plants."

13 This is a challenge that we should not,
14 cannot underestimate when making this decision.

15 Finally, moving on to the issue of
16 variances, it has been noted that part of the
17 implementation strategy appears to be to offer
18 variances.

19 We appreciate the rule provision that
20 would waive the fee for variances, as this process can
21 be very expensive just to get in the door for
22 communities, but as has also been noted, applying for
23 a variance is by no means a slam dunk in terms of
24 getting a variance.

25 And, of course, there is also other actors

1 at play beyond the MPCA, including the Environmental
2 Protection Agency, at the federal level, as well as
3 outside third parties that also may challenge the
4 variance. Also, these variances are not permanent.

5 When it comes to the U.S. EPA's Interim
6 Economic Guidance for Water Quality Standards, we
7 agree that this two-decade-old document is highly
8 technical, very complicated, and may not account for
9 all of the critical economic factors that come into
10 play when communities are going through this process.

11 And because of the limited time period
12 with which there is to evaluate not only the
13 complicated scientific rule, but also this complicated
14 other document, there's not enough time for
15 communities to do both.

16 And so we would echo those calls that have
17 already been made to remove that from the rule and
18 create a stakeholder process to get the documented
19 process that would be responsive to Minnesota's needs.

20 In closing, this proposed rule has the
21 potential for significant economic impact on cities
22 throughout the state. We believe that when a rule is
23 based on overly conservative assumptions that lead to
24 greater restrictions than necessary, it is not
25 reasonable.

1 It is also -- we would like to note that,
2 like I said, we will be elaborating further in written
3 comments. I appreciate and thank you for your time
4 and consideration.

5 JUDGE SCHLATTER: Thank you.

6 Any questions or comments for this
7 witness? Okay. Thank you.

8 Mr. Merritt.

9 MR. MERRITT: Judge, my name is
10 Grant Merritt, and it's M-E-R-R-I-T-T. I live in
11 New Hope, 8124 40th Avenue North, and sitting here in
12 the audience, I was just thinking: I started activity
13 in the environment 50 years ago this month. I got
14 involved in the reserve mining case, and I brought
15 along one of my proudest achievements. Three law
16 students from the University of Minnesota wrote this
17 book, *Superior Pollutor* (indicating).

18 And the reason I brought it is that it
19 hails a description of John Moyle -- Dr. John Moyle,
20 who is the PhD aquatic biologist who recommended the
21 standard, 10-parts-per-million, for us at the PCA in
22 1973.

23 At that time, I was two years into my job
24 as the director here -- executive director of the PCA,
25 and I don't think that the choice of Dr. Moyle had

1 anything to do with what is in this book, about his
2 participation in the 1947 hearings on reserve mining,
3 because in the book, it points out that he just did a
4 terrible job.

5 He said, among other things, "The taconite
6 tannings of reserve mining on Lake Superior would have
7 no substantial adverse effects on the lake." And
8 there's a lot of -- more specifics that I won't read
9 here, but I will read how his testimony at those
10 hearings was made without his having conducted any
11 test other than the primitive settling model test.

12 So I don't think we had that book in mind,
13 although it was published the previous October, when
14 we hired Dr. Moyle. And he did a good job. He had
15 the background, as I recall, of having studied sulfate
16 in plants for some time, as an aquatic biologist.

17 So it's kind of ironic. It sort of
18 exemplifies the -- the DNR. On the one hand, they are
19 promoting mining, by the Constitution; and they're
20 also protecting natural resources. And I mention that
21 simply because the Moyle standard has been used here
22 now for all these years, since 1950 -- '73, and I
23 think it's a good standard.

24 It's, of course, not been enforced until
25 recently, which is unfortunate. I don't know why, but

1 it was really never enforced until the last several
2 years. As I understand it, it's now in some of the
3 permits that have been issued in the last couple of
4 years.

5 But the other point that I want to make is
6 that the handout that I looked at back here talks
7 about protecting wild rice from excess sulfide. It
8 says, "The only way to modify an existing standard is
9 through a rulemaking process that demonstrates a
10 scientific basis for the proposed changes."

11 The other irony is that we're here today
12 because of political science. The tough Iron Rangers
13 came down, descended on the governor, saying, "We
14 can't have this 10-part-per-million sulfide standard,"
15 and then, of course, that got over here to the PCA.
16 And then the legislature appropriated the 1.5 million
17 that we've heard about here today, and so, added to
18 more traditional sciences, the political science.

19 So that gives further basis for adopting
20 the amended standard. And with regard to that, I'm no
21 expert on what they've done, but I am impressed that
22 the scientists that -- some of them, I've met, the
23 last couple years -- that have studied how we can
24 determine what waters should be protected and how to
25 protect them.

1 And all of the specifics that we've heard
2 this afternoon impressed me, so I, as an individual --
3 I don't represent anybody here besides myself -- I
4 think that the standard that's being proposed by the
5 PCA ought to be adopted.

6 And I think the PCA has done a good job,
7 although it's hard to understand why the '73 standard
8 wasn't enforced earlier, but that probably reflects
9 politics as well. Thank you.

10 JUDGE SCHLATTER: I want to make
11 sure I'm clear on this: So you are supporting the
12 proposed standards?

13 MR. MERRITT: Yes, I am.

14 JUDGE SCHLATTER: Okay.

15 Does anybody have any questions for
16 Mr. Merritt, or comments?

17 Okay. Thank you very much.

18 MR. MERRITT: Thank you.

19 JUDGE SCHLATTER: Thank you very
20 much for your testimony -- oh. No? Okay. I thought
21 somebody did, but, no, he doesn't. Okay. Thank you.

22 MR. SPITZER: Well, I have a
23 question about something else.

24 JUDGE SCHLATTER: You have a
25 question about something else?

1 MR. SPITZER: Yeah. I didn't say I
2 wanted to speak, but I thought of questions, so now I
3 do.

4 JUDGE SCHLATTER: Okay. We can add
5 you to the speakers list, but let me check in with the
6 other locations first and see whether they have
7 questions or whether other people there want to
8 testify, and then we'll come back.

9 Are you signed up on the list at all?

10 MR. SPITZER: Yeah, I should be. I
11 signed in.

12 JUDGE SCHLATTER: Why don't you tell
13 me your name.

14 MR. SPITZER: Alex Spitzer.

15 JUDGE SCHLATTER: Okay. And --
16 okay. And you have testified before --

17 MR. SPITZER: Yes, yes.

18 JUDGE SCHLATTER: -- which is fine.
19 I'm recognizing your name.

20 MR. SPITZER: I will go last.

21 JUDGE SCHLATTER: Do we have people
22 at any of the locations who wanted to speak? Nope?
23 Okay.

24 So Ms. Maccabee, actually, did sign up --
25 or -- indicated that she wanted to ask some questions

1 first, so I'll have her go first and then you can go
2 after she does.

3 Ms. Maccabee.

4 MS. MACCABEE: Your Honor, my name
5 is Paula Maccabee, and it's M-A-C-C-A-B-E-E, and I
6 live in St. Paul, and I am the advocacy director and
7 counsel for Water Legacy, and most of what I've
8 learned about wild rice has been since working with
9 them.

10 I have some documents. They're all
11 documents the Pollution Control Agency has seen at
12 some time. I will share them with you and with them,
13 just so that you know what I'm talking about, if
14 that's all right with you?

15 Okay. Here's the first document that I'd
16 like to show you.

17 JUDGE SCHLATTER: So do you want
18 these to be made part of the record as hearing
19 exhibits today?

20 MS. MACCABEE: Your Honor, I'm going
21 to include all these documents in my written
22 submission, so I don't know if it's necessary or not.

23 JUDGE SCHLATTER: We'll wait --

24 MS. MACCABEE: It's your call, I
25 think, Your Honor. Okay?

1 JUDGE SCHLATTER: We'll wait, then,
2 so they don't get posted twice, if that's okay with
3 you agency folks? We'll just wait for the -- I mean,
4 you're welcome to share them with us now, but I'm not
5 going to make them hearing exhibits because then
6 they'll have to get posted twice, and we are trying
7 not to do that.

8 MS. MACCABEE: Thank you, Your
9 Honor.

10 JUDGE SCHLATTER: Thank you for
11 sharing them now, and we'll wait for the written
12 submission for posting.

13 MS. MACCABEE: Would it be better if
14 I gave them all to you now, or do them when the time
15 comes?

16 JUDGE SCHLATTER: Sure. Why don't
17 you bring them all up now. Thank you.

18 MS. MACCABEE: Did I give you two
19 copies of one of them? I apologize. Yes.

20 JUDGE SCHLATTER: I'm not sure.

21 MS. MACCABEE: I know that the PCA
22 staff have said they'd like to be inclusive about
23 future rulemaking.

24 Am I correct that you solicited -- I'm
25 just -- I'm asking, generally, to the PCA, and you can

1 decide -- that you solicited requests for information
2 in 2013 to identify the wild rice waters?

3 JUDGE SCHLATTER: Ms. Lotthammer?

4 MS. LOTTHAMMER: Yes, I believe that
5 was the date. I would actually have to look back at
6 my records to verify, but I know that we did ask for
7 information about wild rice waters or about wild rice
8 in waters a couple different times.

9 MS. MACCABEE: And that's how you
10 got the list of the 1300, or so, waters that are
11 proposed to be listed in the rule?

12 MS. LOTTHAMMER: No. Actually, that
13 was a combination of things: The information that we
14 solicited, as well as reviewing the DNR report, other
15 information that was available. So it was -- it was
16 broader than that request.

17 MS. MACCABEE: Okay. And on the
18 Hearing Exhibit Number 1 is a list of waters that was
19 provided to members of the Wild Rice Advisory
20 Committee, which I served on, which was the discussion
21 at the time, about which waters would be included.

22 And just to clarify, let me know if I've
23 got this right, that waters that are labeled as "DL"
24 are ones that were, at the time, proposed to be
25 listed, and then there are waters in there at the

1 top -- because I sorted, reserve alphabetically --
2 that are "II," and those are waters where the PCA got
3 information, but they -- they determined that the
4 information was insufficient to list the wild rice
5 waters.

6 Is that okay -- correct so far?

7 MS. LOTTHAMMER: It might be
8 splitting hairs a little bit, but just to be clear, we
9 weren't proposing anything at the time. We were still
10 in the process of developing the proposals, so that
11 was kind of an initial draft, as we were pulling
12 information together.

13 But we didn't have a final proposal or
14 even a draft proposed rule at that time.

15 MS. MACCABEE: And at that time, the
16 ones that you were considering putting on the list of
17 wild rice waters were the ones label "DL"; is that
18 correct?

19 MS. LOTTHAMMER: Yes, that's
20 correct.

21 MS. MACCABEE: And the ones that, at
22 that point, you were determined -- you were
23 considering keeping off the list are the ones that are
24 labeled "II"?

25 MS. LOTTHAMMER: I would

1 characterize it a little differently. I would say
2 that at that point, we didn't have sufficient
3 information to determine if the beneficial use was an
4 existing use. That was the "II."

5 MS. MACCABEE: And at that time,
6 my -- just looking at that -- that spreadsheet I got
7 from the PCA, there were about 960 wild rice waters
8 that were determined not to be put on the list, or
9 that were -- or at that point you thought were -- had
10 insufficient information to be on the list, including
11 about 950 water bodies that the DNR had provided
12 information that they were water bodies with wild
13 rice.

14 Is that approximately the right number?

15 MS. LOTTHAMMER: I'd have to review
16 it.

17 MS. MACCABEE: I left the numbers on
18 the side of the page so that you could count them up.
19 There should be about 950 or 960 lines of orange
20 stuff.

21 MR. NEBLETT: If I may?

22 JUDGE SCHLATTER: Sure. Go ahead,
23 Mr. Neblett.

24 MR. NEBLETT: The beginning, I
25 believe, was indicated that it's not necessary to ask

1 questions in order to make a point, and I'm hearing a
2 number of questions and -- but welcome your comment.

3 MS. MACCABEE: I actually have
4 questions. I want to make sure I understand this.

5 I want to understand that at the time, you
6 were recommending these 960-or-so waters, that the DNR
7 had come forward with, not be on the list?

8 And then to follow that up, how many of
9 them have you put on the list since January of 2017?

10 MS. LOTTHAMMER: So that's
11 information that I don't have at, you know, this --
12 the specific numbers available right now. We can
13 certainly respond to that in writing during the
14 response-to-comments period.

15 MR. NEBLETT: And to your other
16 questions also.

17 MS. LOTTHAMMER: Yeah. And during
18 the response-to-comments, we can also elaborate on the
19 information, the Statement of Need and Reasonableness,
20 and how we considered the DNR information as well as
21 other information sources.

22 MS. MACCABEE: So you -- are you
23 going -- you're going to give us information of -- on
24 the -- comparing the list of waters that were released
25 to the advisory committee in January 2017, how many

1 more have you put on that were on that DNR list?

2 MS. LOTTHAMMER: Sure, we can.

3 MS. MACCABEE: Okay. Now, am I
4 correct that under the MPCA proposal, that any water
5 that isn't listed in the rule would have no sulfate
6 limit at all to protect wild rice?

7 MS. LOTTHAMMER: So the proposal is
8 that the -- the standard is applicable to the water
9 bodies that are specifically identified in rule. So
10 until we have information to identify a water body as
11 having that beneficial use as an existing use and
12 adopting it into the rule, the standard would not be
13 applicable.

14 MS. MACCABEE: So if somebody
15 would -- a discharger was up for a permit and somebody
16 come in front of the PCA and said, "I know this wild
17 rice -- this water body. My dad used to rice here,"
18 whatever evidence they brought forth -- they found
19 some surveys, aerial photographs -- that even if that
20 evidence was presented, the Pollution Control Agency
21 wouldn't be allowed to consider it in setting the
22 limits on sulfate?

23 MS. LOTTHAMMER: So we've actually
24 thought about that particular scenario, and I think
25 that that's something that would be appropriate for us

1 to respond to in writing so that we can fully kind of
2 consider that and lay out our thinking on that.

3 MS. MACCABEE: I'm -- I'm -- I'm not
4 disputing that you had a reason for it, but just, as
5 the rule is written, if that happened, the Pollution
6 Control Agency would not be able to set a limit;
7 correct?

8 MS. LOTTHAMMER: Again, I'd like to
9 respond to that in writing so that we can lay out how
10 we think a process like that would play out.

11 MS. MACCABEE: Just -- I -- I mean,
12 we have to make comments before I get something in
13 writing.

14 Reading the rule, everyone I've talked to
15 says they think that this would not apply, that there
16 would be no way, unless there was another rulemaking
17 process, to protect that body of water, so that's
18 something that's either -- you know, I'm not saying
19 you have no reason for it. I'm just trying to make
20 sure I understand. Does the rule mean what it says,
21 which is: Until another rulemaking happened, there
22 wouldn't be any protection?

23 MS. LOTTHAMMER: Again, I do
24 understand the question. I am not in a -- in a
25 position to respond to that now because I want to be

1 able to lay out the thinking and the logic behind how
2 we think that would play out, but we definitely will
3 in our response to comments.

4 MS. MACCABEE: Is there anything in
5 your Statement of Reasonableness? I mean, I read it,
6 and that's what it seems to suggest.

7 Is there anything that suggests that there
8 would be an option to provide evidence in a rulemaking
9 process and -- not at a rulemaking -- in the
10 permitting process? Is there anything there? If you
11 could just, you know, let us know where it is in the
12 SONAR.

13 I mean, I didn't -- I didn't -- I -- I --
14 this is the impression I got from reading the SONAR
15 also.

16 MS. LOTTHAMMER: So the Statement of
17 Need and Reasonableness focuses on the need for and
18 the reasonableness of the rulemaking proposal. What I
19 hear you asking is a reasonable -- I understand the
20 implementation question, and we will respond to that
21 in our response-to-comments.

22 MS. MACCABEE: Is this an answer
23 that is known to the PCA at this point, what that rule
24 means? Because it says in the rule that there are no
25 other wild rice waters other than the ones listed.

1 Does it mean something other than what it
2 says?

3 MR. NEBLETT: We welcome your
4 questions, and we will respond to your questions in
5 writing during the end of the comment period.

6 MS. MACCABEE: I'm sorry --

7 JUDGE SCHLATTER: Ms. Maccabee --

8 MS. MACCABEE: -- I'll go on.

9 JUDGE SCHLATTER: -- I understand
10 that you're frustrated. The agency isn't required to
11 answer, and I think they, at this point, have made a
12 decision that they -- they can't answer beyond what
13 they've already said. So, yeah. Let's move on.

14 MS. MACCABEE: At least -- and
15 according to the rule, is it correct that the only way
16 that an additional wild rice water could be given that
17 protection is if it were added in formal rulemaking,
18 like -- like this proceeding here?

19 MS. LOTTHAMMER: Yes. So the
20 proposal is that a water body would be identified as a
21 wild rice water body through rulemaking. So, yes.

22 MS. MACCABEE: Now, I read in the --
23 the rule of the SONAR, the Technical Support Document,
24 but I didn't see any specific criteria of which the
25 PCA used to identify -- to decide that certain lakes

1 and streams didn't have sufficient information, such
2 as the ones listed by the DNR.

3 Is there a place where it says a list of
4 specific criteria that were used in making that
5 decision?

6 MR. NEBLETT: The way you
7 phrased your -- presented your question, I can tell
8 you that the rule contains indications of the type of
9 evidence that is needed to demonstrate what we would
10 consider in determining whether the use exists.

11 MS. MACCABEE: Is that the same
12 evidence that was used to determine the initial list
13 of 1300 wild rice waters?

14 MS. LOTTHAMMER: Yes. So the
15 Statement of Need and Reasonableness goes through, at
16 some length, the information that the agency looked at
17 and considered in identifying the list of proposed
18 wild rice waters.

19 And then for each of the wild rice waters,
20 there's an attachment that identifies that water and
21 what specific information -- because not all the
22 sources of information were available for every wild
23 rice water that was being proposed.

24 So the Statement of Need and
25 Reasonableness walks through how we considered that

1 information, and then which information was available
2 for each of those proposed waters.

3 MS. MACCABEE: Is the same evidence
4 that is listed in the rule for new waters, is that
5 the -- is that the criteria that you used in listing
6 these first 1300?

7 MS. LOTTHAMMER: I'm -- I'm a little
8 confused by that question. I mean, basically, the
9 criteria is: Is the beneficial use an existing use?
10 So is there evidence to show harvest and use of the
11 grain for humans and wildlife?

12 There's different information available
13 for different water bodies, so we look at all of the
14 information that's available to make that
15 determination on an individual basis for each of those
16 water bodies.

17 MS. MACCABEE: For wildlife, was
18 there some kind of sense about how big or dense or
19 lush the area had to be in order to be used by
20 wildlife?

21 MS. LOTTHAMMER: So we looked at the
22 potential for having kind of more of a quantitative
23 measure, and that was very challenging, because, you
24 know, if you look at area, there can be less-dense
25 wild rice over a larger area. If you look at just

1 density, that's a challenge as well.

2 And so it really was an individual
3 decision for each of those -- those water bodies. We
4 did not establish a hard-and-fast sort of criteria
5 that were exclusionary. It was that -- that
6 individual consideration.

7 So one of the things that we did look at
8 was acreage, and if there was at least two acres, that
9 was evidence to include a water body on the wild
10 rice -- the list of proposed waters with the under --
11 with the expectation that that would be enough to
12 either attract harvesters or attract wildlife.

13 Having less than two acres didn't
14 necessarily mean that a water body was not proposed as
15 a wild rice water. We looked at additional evidence
16 that was available then beyond that acreage
17 information, and that -- that is laid out in more
18 depth in the Statement of Need and Reasonableness.

19 MS. MACCABEE: And how did you look
20 at a situation where the wild rice was sparse now, but
21 there was evidence that there had been deterioration
22 of that water body?

23 MS. LOTTHAMMER: So where we had
24 information, we -- we absolutely considered that. So,
25 you know, there are at least -- one example that comes

1 to mind where there's currently not much, if any, rice
2 at a particular water body but there was documentation
3 from different types of reports that suggested that --
4 or that demonstrated that in past years, there was
5 more wild rice, and so that water body was proposed as
6 a wild rice water.

7 MS. MACCABEE: But you would agree
8 that if there was sparse rice but an evidence of
9 decline, that that would be an appropriate water body
10 to list.

11 MS. LOTTHAMMER: And that -- that is
12 identified in the SONAR, so it's based on the
13 information that we have available and our ability to
14 both review that at the Pollution Control Agency, and
15 make that information available through the rulemaking
16 process.

17 MS. MACCABEE: Okay. Let's just
18 turn here to Exhibit Number 2, and that's the
19 published article -- which I'm sure you're familiar
20 with it -- that was published in the peer review
21 journal this year.

22 Am I correct that the PCA reviewed drafts
23 and made suggestions before the article was published?

24 MS. LOTTHAMMER: So at this point, I
25 think, if you have specific questions that -- that --

1 you know, about the proposal, we would appreciate
2 hearing them, but we're going to respond in writing to
3 questions, rather than -- because that allows us the
4 time to consider them and look back at our information
5 in our SONAR and our Technical Support Document.

6 MS. MACCABEE: So in other words, if
7 I want to ask further questions, might as well ask
8 them in writing because you're not going to provide
9 answers? Is that -- you know -- not going to provide
10 answers in realtime? So, I mean, if I have questions,
11 I could just submit them in writing? Is that what
12 you're suggesting?

13 MR. NEBLETT: Yes. Or if you
14 have -- yes. Or if you have comment, we welcome your
15 comment.

16 MS. MACCABEE: Did the -- I have --
17 I'll -- just a couple of questions, and then -- I
18 think I -- you know, if we're going to, just, not get
19 responses today, I think I'll -- it's not a good use
20 of your time, Your Honor, to ask questions if they're
21 not going to respond.

22 JUDGE SCHLATTER: Okay. You have no
23 further comments, then?

24 MS. MACCABEE: I -- I -- if I had --
25 my comments, I could submit by the end of the comment

1 period. I really wanted to ask some questions in
2 order to be able to make comments that were more
3 knowledgeable, and if that's -- and that was really
4 the benefit of asking the questions, was to get some
5 answers so that my comments submitted and -- you know,
6 by end of the comment period, would include any
7 additional information I was able to learn.

8 JUDGE SCHLATTER: Let's go off the
9 record for a minute.

10 (A discussion was held off the record.)

11 JUDGE SCHLATTER: Okay. We are back
12 on the record.

13 Is there anybody in -- and, Mr. Spitzer,
14 I'm not -- you will be next, but I'm just curious: Is
15 there anybody in other locations who wants to make any
16 comments? Okay.

17 Mr. Spitzer.

18 MR. SPITZER: Testing, testing.

19 JUDGE SCHLATTER: You can pull that
20 mic up. There you go.

21 MR. SPITZER: Thank you, ma'am.

22 JUDGE SCHLATTER: Yep.

23 MR. SPITZER: So in their
24 presentation --

25 JUDGE SCHLATTER: Could you give me

1 your name and spell it for the record, please.

2 MR. SPITZER: For sure. My name is
3 Alex, A-L-E-X; Spitzer, S-P-I-T-Z-E-R.

4 JUDGE SCHLATTER: Go ahead.

5 MR. SPITZER: So in the
6 presentation, you said you'll look closely at the iron
7 and carbon and see its relationship.

8 So I was wondering: What, if any, there
9 are, other chemicals or conditions -- like
10 precipitation or temperature -- that might also affect
11 the sulfate-sulfide relationship or just the
12 relationship with wild rice?

13 MR. SWAIN: Mr. Spitzer, I'll try to
14 answer your questions.

15 My name is Edward Swain, E-D-W-A-R-D,
16 S-W-A-I-N. I'm a research scientist here at the
17 Pollution Control Agency. You're asking if other
18 variables affect how iron and organic carbon affect
19 the sulfide; is that correct?

20 MR. SPITZER: Not the -- not how the
21 carbon and iron are affected. How the sulfide -- or
22 sulfate to sulfide -- if -- well, it could also be,
23 actually, if it affects how iron -- maybe it makes
24 iron less effective at stopping it, or maybe it makes
25 wild rice more susceptible. I don't know.

1 MR. SWAIN: Right. Most of our
2 information on these questions comes from our
3 extensive field survey that was conducted over three
4 years, where we sampled several hundred sites and
5 looked statistically at the relationships between
6 65 variables that were measured in the field.

7 And sulfide was statistically correlated
8 with some of the other variables, and we teased apart
9 whether there was cause and effect -- that other
10 variables were causing the sulfide to behave
11 differently -- or whether it was sheer correlation,
12 where they were both varying because of the same
13 process.

14 And this is all described in one of the
15 peer-reviewed scientific papers that's one of the
16 exhibits. And if you wanted to see it yourself, I
17 could make it available to you.

18 We can't post the peer-reviewed papers on
19 our website because of copyright issues, but if any
20 individual wanted to see them, I could be contacted --
21 or anybody -- any person here at the PCA could be
22 contacted, and we would get the paper to you.

23 But the conclusion of that peer-reviewed
24 paper is that the only variable affecting the sulfide
25 are the iron and the organic carbon and the sulfate

1 from the overlying water.

2 We've looked for evidence that temperature
3 was affecting it, which was a reasonable thing to look
4 at because temperature affects biological processes,
5 but temperature was not statistically related to the
6 production of sulfide, and we couldn't identify any
7 other variable that was important either.

8 MR. SPITZER: Okay. Thank you.

9 JUDGE SCHLATTER: Mr. Swain, which
10 of the papers was that that you were referring to?

11 MR. SWAIN: It's Myrbo, et al., with
12 the title, "Sulfide generated by sulfate reduction as
13 the primary controller of occurrence of wild rice."
14 It is L.3.

15 JUDGE SCHLATTER: Thank you.

16 MR. SPITZER: Thank you.

17 JUDGE SCHLATTER: Is there anybody
18 else -- I'm sorry -- did anybody have any questions or
19 comments for Mr. Spitzer? Okay.

20 Do we have anybody else at this point who
21 wants to make a comment or ask questions? Anybody in
22 remote locations?

23 MS. KUSKIE: Nope.

24 JUDGE SCHLATTER: Ms. Maccabee, have
25 you had a chance to think about how you want to

1 proceed? I'm not saying you can't come up here and
2 ask all the questions you want.

3 MS. MACCABEE: Thank you, Your
4 Honor.

5 JUDGE SCHLATTER: I hope you
6 understand that.

7 MS. MACCABEE: I think that --
8 because they --

9 JUDGE SCHLATTER: Can you just come
10 up here so that you can be heard? I'm sorry.

11 MS. MACCABEE: Thank you, Your
12 Honor. I think I'm finished answering -- asking my
13 questions.

14 JUDGE SCHLATTER: Okay. Thank you.

15 Okay. At this point, then, I think what
16 I'm going do is put the hearing in recess. The
17 hearing is noticed to go until 9:00, and so people may
18 show up, or some of you here, or elsewhere, may decide
19 that you want to say something at some time between
20 now and 9:00.

21 So we're going to be in recess, but not
22 adjourned. And I ask -- the necessary staff and the
23 court reporter and I will be here in the vicinity, and
24 as soon as I am informed that somebody wants to speak,
25 we will gather together again and go back on the

1 record.

2 But for now, we're going to go off the
3 record and be in recess until someone else wants to
4 make a comment. Okay? Thank you all. We are off the
5 record for now.

6 (At this time the hearing was in recess
7 from 6:40 p.m. to 8:40 p.m.)

8 JUDGE SCHLATTER: We are on the
9 record. It is 8:40 p.m. We haven't seen anybody new
10 in any of the locations since I went off the record,
11 which was probably --

12 UNIDENTIFIED SPEAKER: 6:40.

13 JUDGE SCHLATTER: -- 6:40, two hours
14 ago. So given that, I'm going to adjourn this hearing
15 now. So we're adjourned. Thank you all.

16 (At this time the proceedings were
17 adjourned at 8:41 p.m.)

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