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November 30, 2020

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Samuel R. Strong, Secretary, Red Lake Band of Chippewa Indians

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Dear Minnesota Indian Affairs Council,

I am thankful that in these unprecedented times that we can still connect with and see one another. I also appreciate the opportunity to have open and candid discussions with matters of utmost importance to you and your communities. At the last MIAC meeting on November 10<sup>th</sup>, Grand Portage Secretary-Treasurer April McCormick asked that the MPCA provide, in writing, information on how the agency sees that the planned Class 3 and 4 water quality standards rulemaking complies with the Clean Water Act – including wild rice. The following provides a response to that request and includes quotations from the draft Statement of Need and Reasonableness developed in support of the rulemaking.

Our understanding is that there are outstanding concerns about compliance with the Clean Water Act, particularly the removal of numeric standards and protection of water quality necessary to support the other beneficial use classes in Minnesota's water quality standards. Specifically we have heard concerns about the effect of salty pollutants on aquatic life and on wild rice.

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The Clean Water Act ([40 CFR § 131.11](#)) requires states to adopt water quality standards that protect the beneficial uses for each use classification. The specified use and the related criteria or standard are fundamentally paired. The water quality standards developed for Class 3 and 4 only ensure that the intended designated use is protected (i.e., industrial consumption, irrigation, livestock or wildlife). A water quality standard in one class does not protect for a designated use in another class. [Minn. R. 7050.0140](#) and [40 CFR § 131.10](#) intentionally require distinct designated uses to ensure that tailored water quality protections are developed that are specific only to the designated use.

We understand that there are concerns that the removal of the existing Class 3 and 4A numeric standards will result in increases of the levels of pollutants of concern – such as specific conductance and sulfates – in Minnesota’s waters. The MPCA has stated throughout development of the rule that we do not expect that the rule changes will result in increases in the pollutants at issue from permitted point sources, because of the detailed implementation procedures for the proposed narrative Class 3 and Class 4A water quality standards. (see SONAR Section 5.G.) Minnesota rules require the protection of downstream uses. In addition, in response to your comments the MPCA has developed methods for generating permit conditions for the Class 2 narrative biological standard, to ensure that aquatic life is protected.

Again, thank you for your engagement and discussion around the Minnesota Pollution Control Agency’s upcoming Class 3 and 4 water quality standards revisions. We have sincerely appreciated the thoughtful input that Tribal staff have provided throughout the rulemaking process. As we have shared in recent conversations with Tribal leaders, comments from Tribal staff specifically helped shape the robust implementation procedures designed to protect downstream waters and aquatic life.

Finally, in regards to wild rice, evaluation of past rulemakings shows that the numeric class 4A standards were established to protect crops that are irrigated, not wild rice. It does not appear that the specific numeric values established in the general Class 4A water quality standards are critical to the protection of wild rice. When the MPCA was working to amend the wild rice sulfate standard, multiple studies were conducted to look at the pollutants that might impact wild rice health and growth. In one (Myrbo et al., 2017), “potential wild rice habitat was characterized for 64 chemical and physical variables in over 100 sites spanning a relatively steep climatic and geological gradient in Minnesota.” Specific conductance was one of these variables. It was not shown to be correlated with wild rice presence or absence.

While the wild rice sulfate rule revisions were not completed, the Administrative Law Judge specifically found “that the MPCA presented sufficient evidence to demonstrate that there is an adequate scientific basis to conclude that the proposed equation-based sulfate standard is supported by peer-reviewed science and is needed and reasonable.” As we have communicated, the MPCA is interested in working with Tribal partners on a holistic approach to protecting and restoring wild rice and is not changing the standard in this rulemaking.

In addition to the information from extensive wild rice studies, MPCA scientists have investigated Minnesota wetland plant response to salinity stressors: conductivity, chloride, and sulfate. The work shows that “aquatic plants are sensitive to specific conductance, chloride and sulfate and their response should be considered in development of any aquatic life salinity related criteria or standards development”. Draft benchmark values for specific conductance and wild rice line up closely with those developed for the Class 2 biological narrative previously discussed. The MPCA therefore finds that the

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implementation procedures there will provide appropriate interim protection for wild rice until the MPCA considers the response of wetland plants to these pollutants. We welcome and appreciate any feedback as the MPCA proceeds in future rulemakings to develop aquatic life based water quality standards.

I hope the information provided answers the question as to how the agency sees that the planned Class 3 and 4 water quality standards rulemaking complies with the Clean Water Act – including wild rice. I believe the work of the team on this project upholds our mission to protect the environment and human health. While we have a disagreement with the path forward on the Class 3 and 4 rulemaking, I hope we can also continue to support and strengthen our shared goals and identify new opportunities for collaboration. If there are additional questions or information needed, please feel free to reach out to Katrina Kessler at [Katrina.kessler@state.mn.us](mailto:Katrina.kessler@state.mn.us).

Sincerely,

A handwritten signature in blue ink that reads "Laura Bishop". The signature is fluid and cursive, with the first name "Laura" and last name "Bishop" clearly distinguishable.

Laura Bishop  
Commissioner

Cc:

Shannon Geshick, Executive Director, Minnesota Indian Affairs Council

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