

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

PUBLIC HEARING

PROPOSED AMENDMENTS TO RULES

GOVERNING WATER QUALITY STANDARDS

MINNESOTA RULES CHAPTERS 7050 AND 7053

OAH DOCKET NO. 8-9003-37102

REVISOR NO. 4335

The Public Hearing in the above-entitled matter came on for hearing before Eric L. Lipman, Administrative Law Judge, taken before Marcia L. Menth, a Notary Public in and for the County of Wright, State of Minnesota, taken on the 4th day of February, 2021, via webex, commencing at approximately 2:00 p.m.

KIRBY KENNEDY & ASSOCIATES
952-922-1955

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

APPEARING VIA WEBEX ON BEHALF OF MINNESOTA POLLUTION CONTROL AGENCY:

JEAN COLEMAN - Attorney for MPCA

SCOTT KYSER, PE - Research Scientist - MPCA

CLAUDIA HOCHSTEIN - Host

*The original is in the possession of
Administrative Law Judge Eric L. Lipman.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

AGENCY COMMENT:	PAGE
JEAN COLEMAN	28
SCOTT KYSER, PE	32
PUBLIC COMMENT:	
ERIC MORRISON	52 and 214
APRIL MCCORMICK	57 and 239
DEBBIE ALLERT	68
JOHN PAULSON	73
RANDEL HANSON	76
KRISTI PURSELL	81
JANET KEOUGH	84
JO HABERMAN	88
PAULA MACCABEE	90 and 230
JACI CHRISTENSON	95
ANN COHEN	97
LINDA HERRON	104
BOB TAMMEN	106
BRUCE JOHNSON	108
SARA SIETSEMA	113
NANCY SCHULDT	119
PEDER OTTERSON	124
BRIAN ROSSOW	128
KAREN JOHNSON	132
DON ARNOSTI	138
GARRIE HUISENGA	144
MAUREEN JOHNSON	147
TESS DORNFELD	151
LYNN ANDERSON	154
GRETEL LEE	158
ELIZABETH WEFEL	164
KEVIN STRAUSS	166 and 235
ROB BERANEK	172
IAN HEDBERG	177
CHRIS KNOPF	180
MARGARET SARACINO	184
STEPHANIE DIGBY	189
JOHN LENCZEWSKI	192
RICKY DeFOE	197
JAMI GAITHER	202
RENEE KEEZER	208
DAWN GOODWIN	210
AWANIIKWE	211
ANNA MARIE YILNIEMI	216
ELIZABETH JAAKOLA	222
NANCY BEAULIEU	225

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

2 THE JUDGE: The hour of 2:00 has
3 arrived. I want to thank you one and all for joining us
4 for a public hearing on the proposed amendments to rules
5 governing water quality standards. These standards are
6 found in Minnesota Rules Chapters Number 7050 and 7053.

7 This matter is otherwise known by its
8 OAH Docket Number 8-9003-37102. Again, that number is
9 important, so if you do have a pencil handy,
10 8-9003-37102. Also, another important number to have is
11 the Revisor's number. This matter is also Revisor's
12 Number 4335, 4335. Next slide, Ms. Hochstein.

13 My name is Eric Lipman, I'm an
14 administrative law judge with the Minnesota Office of
15 Administrative Hearings. Our office is independent of
16 the Minnesota Pollution Control Agency and the other
17 parties to this proceeding.

18 Our purpose in a rulemaking
19 proceeding like this is to provide hearing services and
20 hearing management services in a way that hopefully is
21 fair to all of the parties.

22 I'm here as part of a set of larger
23 regulatory controls made by the Minnesota legislature to
24 ensure the fairness of this process and to make sure
25 that we are able to access the wisdom of the group.

1 Because the legislature's hope and
2 expectation that there will be a better substantive
3 result at the end of the day with respect to water
4 quality standards in particular and rulemaking in
5 general is if we leverage the wisdom of all Minnesotans.

6 So, to make sure that that happens
7 and that people are treated courteously and fairly, they
8 have an administrative law judge like me manage the
9 public hearing process and to permit a space, neighbor
10 to neighbor, to submit comments. With that, next slide,
11 Ms. Hochstein.

12 As all of that suggests, your
13 participation in the rulemaking process is really
14 essential, and not only for fair public policy, but
15 really thoughtful public policy.

16 Again, as I said, the Minnesota
17 Administrative Procedure Act starts with the phrase,
18 "And the expectation of the legislature that better
19 substantive results in the conduct of state government
20 will follow," if we have hearings just like this and the
21 public comment process that will follow.

22 So, we're very eager to set aside
23 this time for folks to be heard. And also, like I say,
24 the 20 days of written comments that will follow this
25 process. I'll describe in detail all about that.

1 But know that at least in the time
2 being as I'm explaining the process how grateful we are
3 that we have nearly 100 participants already today that
4 are tuning in and here to participate and ask questions
5 about the matter of vital public importance. Next
6 slide.

7 I know that folks make comments for
8 lots of different reasons, but there are three key
9 issues for this public hearing and why we're gathered
10 here today. Again, so I'm going to allow folks to
11 develop their comments as they well see fit.

12 Mindful that I might not be the
13 audience, but if you're aiming your comments at me and
14 the public hearing process and the report that I will
15 write after all of the comments have been submitted, my
16 report and what I'm focused on in this proceeding are
17 three key questions, the big three.

18 Namely, does the agency have the
19 legal authority to adopt the rules that they proposed.
20 Two, has the agency fulfilled all of the legal and
21 procedural requirements that they need to do under
22 Chapter 14 and also the specific delegations of
23 authority for them, have they fulfilled all of those
24 prerequisites in order to be able to promulgate the
25 rules.

1 Because we have an executive branch
2 agency, the Minnesota Pollution Control Agency, that's
3 actually exercising a delegation of legislative power to
4 create new rules. And as part of that conditioning of
5 the delegation the legislature said they had to go about
6 it in a particular way.

7 If they've missed a step, and that's
8 a comment that you can offer, we certainly want to know
9 about it. So, again, has the agency fulfilled all of
10 the legal and procedural requirements needed to
11 promulgate these rules.

12 And then last among them, but
13 certainly most important and probably where we'll get
14 most of the comment in the hearing today and thereafter
15 is has the MPCA demonstrated a need and a reasonableness
16 of each of the portions of the proposed rule.

17 It may well be that the MPCA has
18 offered a particular approach to water quality standards
19 in Minnesota that you wouldn't favor, but that's not
20 necessarily the question. It might not be what I would
21 favor or author if I was promulgating the rules.

22 The delegation was made from the
23 legislature to the MPCA. And my question of them will
24 be have they acted as a reasonable person would act with
25 that delegation. Have they offered and promulgated

1 administrative rules that a reasonable person would
2 choose.

3 We don't allow the MPCA or any other
4 executive branch agency to act unreasonably, that's not
5 what Minnesotans do. So, we have this process to make
6 sure that the selections among the wide variety of
7 choices that they could have made, that the ones that
8 they actually ended up with are reasonable. Next slide.

9 Let me tell you about the road map
10 for today. My remarks, talking about how we're going to
11 do the process and the objectives of the process, then
12 followed by the presentation by the agency panel,
13 they're going to propose certain exhibits.

14 And all of them have been posted to
15 their rulemaking webpage in advance of this hearing.
16 Because they had to make an affirmative presentation of
17 facts that their choices are reasonable.

18 So, they have a number of exhibits, a
19 number of documents that they're going to formally put
20 into the record in support of their claims that their
21 choices are reasonable.

22 And then, it's the key piece of why
23 we're having a public hearing, we're going to have an
24 opportunity for public questions and comments. This is
25 exactly why we've called this meeting here today because

1 we're eager to hear from you.

2 My remarks are going to be a little
3 bit longer post-pandemic because of the peace time
4 emergency and because we're doing this as part of a
5 webex, as opposed to if we were to have this hearing and
6 there wasn't a public health emergency and the pandemic.

7 Why? Because in the old days before
8 the pandemic we used to hand out a sheet, two-sided,
9 that was very detailed about the process. I can't reach
10 each of you with a sheet that says all about the
11 process.

12 So, I'm going to take a little bit
13 longer than I ordinarily would, I hope you'll hang with
14 me, to explain some of the key procedures so that you
15 can participate in full, in every way that you possibly
16 can because we're very eager for that. Next slide.

17 The agency panel will be Ms. Jean
18 Coleman, the legal counsel for the MPCA, and Scott
19 Kyser, who is a senior engineer and a lead scientist in
20 the MPCA.

21 Also part of the agency panel playing
22 supportive roles, they may or may not make a
23 presentation, they're not planning to as of this moment,
24 but they might in a who-wants-to-be-a-millionaire sort
25 of way be one of the friends that are phoned by

1 Ms. Coleman or Mr. Kyser during the question and answer
2 period.

3 So, that's Ms. Hochstein, who is
4 certainly managing the chat function and managing the
5 roster of speakers; Bill Cole, who's the supervisor of
6 the water quality standards unit at MPCA; and Catherine
7 Neuschler, who's also the water assessment section
8 manager of the MPCA.

9 They've been deeply involved in the
10 development of these rules and may well have subject
11 matter expertise beyond either Ms. Coleman or Mr. Kyser.
12 And they're standing by and waiting in the wings as part
13 of the agency panel in case there's a detailed question
14 or place where they can be most helpful. Next slide.

15 As I suggested before, all of the
16 agency exhibits for this hearing are available for you
17 to view. There's the URL, that's the URL for the
18 rulemaking page. I've tried to make it a little simpler
19 by giving you a customized URL below that,
20 tinyurl.com/MPCA-7050, which is the first of the
21 chapters that are being proposed for modification in
22 this rule.

23 I thought that that might be a little
24 easier to type. Both of them work to get you to the
25 rulemaking page. And all of the materials that are

1 going to be introduced to our record today are available
2 for your inspection wherever you like, whenever you
3 like, from wherever there might be an Internet
4 connection on the globe.

5 We're eager to hear from you. And
6 it's an important thorough and detailed record. We want
7 you to have access to it and command it. Next slide.

8 The ways you can comment, we'll be
9 taking oral comments from stakeholders and interested
10 persons at this hearing. Much more importantly, there's
11 written comments electronically, by mail or by fax.

12 Electronically, write directly to my
13 office at Minnesotaoah.grandicus.com and there's a
14 discussion page where we're asking folks who just want
15 to type in electronically their comment. Again, that's
16 safer during the pandemic and widely accessible to folks
17 who have a computer. And you can also attach documents
18 to that, which is very handy.

19 By U.S. mail at our post office box
20 or by fax at the number listed below, we're very eager
21 to hear from you. And all of these are certainly open
22 to you 24 by 7. The most important, of course, is the
23 written comment period, but we'll get started with
24 shorter presentations during the public hearing. Next
25 slide.

1 As I suggested, e-comments is the
2 preferred method of submitting comments, it's real time,
3 it's certainly safe during the public health emergency.
4 It allows the agency to check in with the development of
5 comments as the process occurs, really very helpful.

6 We know that there is and sensitive
7 to digital divide issues, so we've left open other ways
8 to be able to access and participate. We realize not
9 everybody has easy or reliable access to the Internet.

10 But if you are lucky enough to be one
11 of those folks and can help us in the comment process,
12 we're delighted to hear from you. And e-comments is
13 certainly the easiest and best. Next slide.

14 If you want to present oral comments
15 today in the webex, you just send to MPCA collaboration
16 a note in the chat function on the side of the webex and
17 type a message. Claudia and her team will be manning
18 that chat to get a roster of folks who'd like to be
19 recognized to speak.

20 We'll take them in order. And
21 Claudia will unmute folks as their turn is to speak so
22 that we can try to minimize the amount of ambient noise.
23 Just because somebody's doing day care or serving dinner
24 or whatever and also participating in part of the
25 hearing.

1 We don't necessarily want those
2 noises interrupting the public hearing. So, we're
3 unmuting folks and taking folks who will be making oral
4 comments one at a time.

5 By telephone, again, if you're not
6 participating my webex, that's okay, too. Just press
7 the star key and 3 or send an email to Claudia and
8 she'll put you in the queue by way of telephone.

9 There's an integration in the webex
10 platform, we can take your comments and you can
11 participate just by telephone, not necessarily needing a
12 computer to do that. The next slide, please.

13 For those folks who are presenting
14 oral comments I'd ask that you turn on your video by
15 clicking the video icon. Again, because our process
16 relies upon the wisdom of the group my objective is to
17 try and hear from as many different voices and as wide a
18 number of voices as possible.

19 And to do that I'd like to ask folks
20 kindly to limit your initial comments, the first time
21 that you speak, to around five minutes. You can feel
22 free to hit the highlights.

23 Mindful that there's a 20-day comment
24 period that follows this hearing and you can write in as
25 much detail, hundreds, thousands of pages and it all

1 counts. You don't necessarily have to say it in this
2 public hearing for us to focus upon.

3 What you can do is neighbor to
4 neighbor hit the highlights, the key themes that you
5 want us to focus on or a key question or two that you'd
6 like the agency to answer.

7 Mindful that there is a completely
8 brilliant, important needed, really quite excellent
9 point on your side of the question, they're just in line
10 behind you.

11 So, we don't want to have a loss of
12 the wisdom of the group by some members of the group
13 being excluded because one member of the group talks for
14 a little longer than he or she should.

15 Again, my objective is to try and
16 reach as many voices as possible at least once and then
17 I'm glad to hear from folks in a little longer time in
18 subsequent rounds. We'll, again, be developing a roster
19 of folks and we're going to try to get in as many voices
20 as possible.

21 My personal record in a setting like
22 this is seven rounds of comments. We're scheduled to go
23 until 8:00 and I promise to you that I'll be the last
24 one to leave. If there's folks who are interested in
25 being recognized, we want to hear from you, we just want

1 to try to hear from as many people as possible.

2 And again, somebody that has a
3 comment that you want into this record is in line behind
4 you and we certainly want to hear from them as possible.

5 The, also, key point I want to raise
6 during this process is we have a certified court
7 reporter who's participating and making a transcript of
8 our proceeding.

9 And so that we fairly and humanely
10 treat our dutiful court reporter, we're going to be
11 breaking in 90-minute slots so as to give her a chance
12 to rest her hands for a few minutes. The webex
13 connection will continue, we'll maintain the webex
14 connection. I'm not going anywhere, I'm going to stay
15 here.

16 And after that standing recess, she's
17 had a chance to rest, we'll return for another 90-minute
18 slot and we'll go until everyone who wants to say
19 something has had the chance to say something, or 8:00,
20 whatever comes first. Okay?

21 So, again, we want to hear from you.
22 If you have an oral comment we've set out several hours
23 to do just that. Next slide.

24 Important emphasis, obviously after
25 our public hearing you can e-comment, send things in by

1 mail or by fax. And you don't necessarily have to have
2 been part of the proceedings today.

3 If there's someone you see tomorrow
4 in the line at Cub or HyVee or goes to your church group
5 or is in Cub Scouts with your kids and they had
6 something to contribute that you think we should know
7 about water quality standards, you can tell them to
8 write in.

9 And until the end of the 20-day
10 comment period it's as if they were part of this public
11 hearing. You don't have to be here to win, just like
12 some of the better lotteries.

13 This is a great process because tune
14 in if you can, ask a question if you can participate.
15 You don't have to be here to win. Next slide.

16 With respect to the best kinds of
17 oral comments, really helpful for the clarity of our
18 record and the understanding of our court reporter that
19 you state and spell your first and last name. I'll try
20 to remember to ask everybody to do that.

21 If you're appearing on behalf of an
22 association or organization and you're willing to share
23 that detail with us as well, that's really very helpful.
24 I've probably broken this rule horribly already, it's
25 important that folks speak slowly, clearly and loud

1 enough to be heard.

2 Obviously because we have a court
3 reporter only the statements that you make that are
4 audible are subject to being transcribed. We want to
5 make a complete record. So, the idea that you can speak
6 slowly, clearly and loudly is very important.

7 If you have written remarks, that's
8 great. My only admonition is that people tend to read
9 written remarks way, way faster than they actually talk
10 in conversation. Okay?

11 It's a habit, it's what I do all the
12 time, it's completely understandable. But again, for
13 clarity of our record, if you have some written remarks
14 that you want to read, you're not all that comfortable
15 with extemporaneous public speaking, that's fine, too.

16 We're eager to hear from you or eager
17 to hear what you've written out. Just go at a pace that
18 seems unnaturally slow to you because it will be just
19 the perfect speed for everyone in this hearing that's
20 listening and particularly for our court reporter.

21 If you've got special terms of art or
22 names or technical terms, and I'm certain that's going
23 to occur today on the discussion of water quality
24 standards, really very helpful for everyone's
25 understanding that the first time that you use a special

1 acronym that you let us know what it is, just so that
2 everybody is involved in this conversation.

3 Again, this is a public hearing. In
4 the best Minnesota traditions we are talking neighbor to
5 neighbor, just as if we were at the library board
6 meeting, just as if we would all come together at city
7 council. Next slide.

8 The big three, most helpful for our
9 process today, whether the agency has the legal
10 authority to adopt these rules, whether they've complied
11 with all of the legal and procedural requirements for
12 promulgating a rule, and whether the ones that they
13 selected are needed and reasonable.

14 If you have particular changes that
15 you'd like to make on the Revisor Draft 4335, you have a
16 particular page in mind or other kind of word changes or
17 suggestions, a couple of comments.

18 Certainly if you can obviously make
19 those page and lines in written form and include it in
20 the e-comment process, that's excellent and most
21 helpful. Also, during the hearing if you can point to
22 particular rule numbers so that staff can follow along,
23 really very helpful.

24 Also, again, if you're suggesting
25 changes to the people who are tasked of the rule that

1 you would like to see, particularly a verb or term
2 changes, really very helpful that you get that in if you
3 can at the earliest possible moment.

4 Again, you have 20 calendar days
5 following this public hearing to make any kind of
6 comments or suggestions or revisions that you'd like.

7 But again, as a practical matter, if
8 you want the attention of MPCA staff, you want the best
9 opportunity to persuade them that your word choices are
10 good and solid and the right ones, better to give them
11 as many of those 20 calendar days to think about that
12 and to kick those ideas around in the process.

13 So, there's no time like the present,
14 particularly if you have textual changes that you'd like
15 to make to get those in, really very helpful.

16 Again, you're legally entitled to
17 wait until the last minute on the 20th calendar day, but
18 it's not necessarily a good idea. If you've got a great
19 idea, we want to hear it early and it really does help
20 the process. Next slide.

21 It is a legal proceeding, and so,
22 very important like any other kind of courtroom
23 proceeding, it's important that we are respectful of the
24 other speakers, reasonable time limits, trying not to
25 interrupt and clap, show signs of support or derision,

1 any of those kinds of things.

2 And to listen for the instruction
3 from our court reporter, if she's not understanding she
4 may well interject and ask folks to repeat something or
5 slow down or I might interject in that way to ask folks
6 to slow down.

7 As best we can with the dignity and
8 decorum and importance of this proceeding because it's
9 really a critically important set of questions that
10 we're considering today, we're going to try to talk
11 neighbor to neighbor.

12 We're going to try to talk as if we
13 weren't physically separated in our different locations.
14 We're going to really try as best we can to talk as
15 Minnesotans.

16 Mindful at the end of the day, this
17 is a statutory and regulatory process and we're going to
18 give it the dignity and solemnity that it well deserves.
19 Next slide.

20 If you want to submit an e-comment,
21 right there at that particular link. And all of these
22 URLs, the Internet links will be on the MPCA's
23 rulemaking page. You can also get to them by our
24 agency's website, mn.gov/oah, there's a specific
25 e-comment site.

1 We've dedicated a page exactly for
2 MPCA to collect all of these comments so you can see in
3 real time at your convenience the other things that have
4 been said and also contribute to the wisdom of the
5 group. Next slide.

6 It's very easy to do the e-comments
7 page, all we need is a valid email address, you can make
8 your own password. We just want an email address to
9 know that it's assigned to a genuine person.

10 We're eager for anyone on the globe
11 who has a view about this to share with us their best
12 thinking, but we discriminate harshly against robots and
13 folks that don't, in fact, exist. So, we only want a
14 genuine human stakeholder to participate in this
15 process.

16 So, we have the small screening
17 barrier of an email address. Once you get a
18 confirmatory email, you're in and you can comment to
19 your heart's delight and we hope that you will. Next
20 slide.

21 This gives you a look at what our
22 discussion page looks like to comment on the proposed
23 rules. After you get that confirmation email you'll get
24 a link right to the discussion page and you can start
25 right in. Next slide.

1 Again, here's a screen shot of the
2 page that we have developed. And thankfully people have
3 already started by submitting comments. Whatever is
4 next convenient for you we're eager to hear from you.
5 Next slide.

6 You just hit the -- on the comments
7 page, you just view topic and you can see all of the
8 dialogue and comments that have been submitted. It
9 might take a little bit of scrolling because we do think
10 that there will be a significant amount of public
11 comment, but again, we're eager to hear from you. Next
12 slide.

13 You just put in your name and add any
14 attachments that you like, it can be as simple as see my
15 attached letter, here's the letter or here are my
16 detailed comments, here is a scholarly article, a
17 peer-reviewed article that we'd like you to focus on
18 that supports my point and I'm attaching it, that kind
19 of thing.

20 Very robust and scaleable to the kind
21 of comments that you'd like to make, attach, click and
22 post and you're part of our process. Next slide.

23 Here's the key point, we're going to
24 be saying this a lot during our proceedings. The
25 initial comment period closes at 4:30 p.m. on wednesday,

1 the 24th of February, 2021. That's 20 calendar days
2 from today. It's the maximum that the statutes and
3 rules allow.

4 This is a really important question,
5 we set out the comment period 20 days, but we can't go
6 beyond the statutory maximum for the comment period.
7 So, there is a hard deadline.

8 If you've got comments and you can
9 send them in, please don't wait until the 24th because
10 the risk increases that something will go wrong, that
11 some click isn't made, that the postman gets busy or
12 it's inclement weather like today and we don't receive
13 your comments until after the 4:30 deadline.

14 They have to be received at this
15 office. So, if you've got a comment, put it in early in
16 the process and make sure you can see it posted on
17 e-comments, that kind of thing. Send it in to us early
18 because if it's after 4:30 p.m. on Wednesday the 24th of
19 2021, it's late and will be set aside and not
20 considered.

21 No sense in writing a comment that we
22 need to hear that policymakers need to consider and
23 review and have it excluded, there's no sadder tragedy
24 than that. So, please, send it in, be mindful of the
25 deadlines.

1 And after the close of that initial
2 comment period we'll have a rebuttal period and I'll
3 talk a little bit about that. Next slide.

4 After the initial comment period
5 closes on February 24, we'll have a five working day
6 rebuttal period that will close at 4:30 p.m. on the
7 following Wednesday, March 3, 2021. The time for
8 rebuttal is 4:30 p.m. on Wednesday, March 3, 2021.

9 The rebuttal is to really respond to
10 things that you don't think are accurate or true or
11 important in the things that other people have said.
12 It's not a time to make new arguments or raise new
13 matters.

14 You're really just in a responsive
15 role that X commentator said Y thing and Y thing is not
16 either important or accurate or true and shouldn't be
17 followed, that kind of response time.

18 That response is really very
19 important and we give an additional five working days
20 for that to happen. But again, like with the initial
21 comment period, that rebuttal period closes at exactly
22 4:30 on the OAH clocks on Wednesday, March 3, 2021.

23 So, again, if you have rebuttal
24 comments, we're delighted and thrilled and eager to hear
25 from you, but you really have to get it in before that

1 4:30 deadline. If it's on the other side of that
2 deadline it's excluded and won't be considered. That
3 would really be bad. Next slide.

4 After all that process I'll issue a
5 report, it will be 30 days from the close of our record
6 after the close of that rebuttal period. Unless in the
7 rare circumstance, and it's not probably here, that the
8 chief judge grants an extension.

9 There is a possibility that an
10 extension might be granted, usually they're very limited
11 because of some unforeseen occurrence happens, the chief
12 judge does have that power.

13 In most of the cases in -- that we do
14 in rulemaking, within 30 days of the close of the
15 record, I'll issue a report, a findings of fact and
16 conclusions about those big three questions that we
17 talked about earlier, do they have the authority to
18 issue the rules, have they followed the legal and
19 procedural requirements to promulgate rules, and among
20 the various choices that they have, are the ones that
21 the MPCA is proposing or may well modify through
22 comments and then proposing, are they needed and
23 reasonable.

24 You can find those on our website,
25 I've given the URL for our website. It might be a

1 little easier to type out tinyurl.com/oah-archive, we've
2 made a customized URL to give you fewer key strokes to
3 make it a little simpler.

4 And because there isn't any nonpublic
5 data in a rulemaking report, that report will be issued
6 and posted to our website on the day that I sign it.

7 So, you can roughly pencil in 30 days
8 from March 3 for a release of the report. And we hope
9 that you'll tune in and keep in touch so that you can
10 see what we've written and the record that we've
11 developed together. Next slide.

12 Just a short reminder about
13 lobbyists. We're going to hear from everybody and folks
14 who work for pay for a lobbyist principal. There's a
15 special disclosure requirement for them.

16 Because that's a rare occurrence I'll
17 just make the notation, lobbyists, you know who you are.
18 And at the Campaign Finance and Public Disclosure Board
19 the requirements of your disclosures and updating your
20 disclosures to the Board are all detailed at that site.

21 I'm not going to go into additional
22 detail, but we make that reminder that if you are, in
23 fact, appearing on behalf of a lobbyist principal for
24 pay, there's special rules that apply to you. Next
25 slide.

1 And so now, without further adieu,
2 we're going to turn it over to the agency panel. I'm
3 grateful for folks' time and attention and we're looking
4 very forward to hearing from you as part of this public
5 hearing.

6 I will just note that on or about
7 3:30, which is about an hour from now, we'll be having a
8 short standing recess wherever we are in the process to
9 give our court reporter their 90-minute break.

10 And then, it will be just a short
11 standing recess and we'll resume about 15 minutes after
12 that, just to give folks a preview of what's coming down
13 the pipe.

14 With that, Ms. Coleman, did you want
15 to start off with remarks on behalf of the agency panel?

16 JEAN COLEMAN: Thank you, Judge
17 Lipman. I have an administrative question first.
18 Claudia Hochstein, who is, as you know, wrangling all of
19 the sign-ups, would like to show the roster to you.

20 Would you prefer to see that now or
21 after my remarks or after the agency presentation?

22 THE JUDGE: As always, with
23 Ms. Hochstein's convenience.

24 JEAN COLEMAN: Then I think she would
25 prefer to do that now. So, if we could shift to Claudia

1 for a moment.

2 CLAUDIA HOCHSTEIN: Megan, can you
3 please change me to presenter? Okay. We have a wide
4 range of people who would like to comment, so I'm just
5 going to go ahead and show the list here.

6 Is everyone -- I believe that
7 everyone should be seeing the roster right now.
8 Currently there are 27 people on this list. So, up
9 first would be Eric Morrison, then Secretary/Treasurer
10 of Grand Portage April McCormick, Dr. Deb Allert, John
11 Paulson and then Randel Hanson.

12 If you are -- if you'd like to know
13 where you are on the list, if you didn't see this or you
14 believe you signed up, but you are not showing up on
15 this list, please send a chat message to MPCA
16 collaboration.

17 THE JUDGE: It's an excellent start,
18 I'm so grateful for that. And we're, of course,
19 convened here because we're eager to hear from you after
20 the agency's presentation. Thank you so much.
21 Ms. Coleman?

22 CLAUDIA HOCHSTEIN: Sorry, I have to
23 unmute her. Okay.

24 JEAN COLEMAN: Thank you again, Judge
25 Lipman. My name is Jean Coleman, that is spelled

1 J-e-a-n, C-o-l-l-e-m-a-n. And I'm the staff attorney with
2 the Minnesota Pollution Control Agency.

3 And the Minnesota Pollution Control
4 Agency will be referred to often as MPCA. The MPCA has
5 an address at 520 Lafayette Road North, St. Paul,
6 Minnesota, ZIP code 55155. I am appearing in this rule
7 proceeding on behalf of the Minnesota Pollution Control
8 Agency.

9 As you stated, Judge Lipman, the MPCA
10 is proposing amendments to rules governing water quality
11 standards, specifically Class 3 and Class 4 use
12 designations.

13 Before a presentation by Mr. Kyser I
14 would like to submit into the hearing record the hearing
15 exhibits, which were delivered to you electronically
16 prior to the hearing and which are also, as you noted,
17 posted on the agency's website.

18 The purpose of these documents is to
19 first, as you stated, document the legal authority of
20 the MPCA to adopt the proposed rule amendments.

21 Also, to demonstrate the agency has
22 fulfilled all relevant, legal and procedural
23 requirements for promulgating this rule. And finally,
24 to demonstrate that each portion of the rule -- proposed
25 rule is needed and is reasonable.

1 I would like to quickly review the
2 exhibits and relate each exhibit to one of these three
3 purposes I just mentioned.

4 Exhibit C, maybe the most important,
5 which contains the text of the proposed rule amendments.
6 Exhibit D, similarly important, contains the statement
7 of need and reasonableness, which we will refer to as
8 the SONAR, S-O-N-A-R, that was published with the rule.

9 The SONAR documents the statutory
10 authority of the Minnesota Pollution Control Agency to
11 adopt the proposed rule. The MPCA has legal authority
12 to promulgate and revise water quality rules and water
13 quality standards under Minnesota Statutes Section
14 115.03, Subdivision 1, and Minnesota Statutes 115.44.

15 The SONAR in Exhibit D also
16 demonstrates that each portion of the proposed rule is
17 needed and is reasonable. The SONAR includes both a
18 general description of why the rule is needed and
19 reasonable and detailed descriptions of why each
20 proposed rule part is needed and reasonable.

21 Many of the other exhibits
22 demonstrates that the agency has fulfilled all relevant,
23 legal and procedural requirements. These include
24 Exhibit A1, the initial request for comments that
25 started the formal rulemaking process; Exhibit C, the

1 Minnesota Revisor's approval of the proposed rule;
2 Exhibit E, the certificate verifying submission of the
3 SONAR to the legislative reference library; Exhibit F,
4 the notice of hearing and supplemental notice of hearing
5 as mailed, as posted electronically on the MPCA webpage
6 and as published in the state register.

7 Exhibit G is the certificate of
8 mailing the notice of hearing as supplemental notice of
9 hearing and their certificate of accuracy of the mailing
10 list. Exhibit H is the certificate of additional notice
11 and evidence of implementation of our -- implementation
12 of the additional notice of plan.

13 Exhibit K provides evidence of
14 compliance with requirements to notify legislators, the
15 Department of Agriculture and municipalities.

16 Also in Exhibit K is the approval by
17 the Commissioner of Management and Budget of the
18 agency's fiscal analysis of the impact of the rules and
19 the certificate of mailing notice to those persons who
20 requested that a hearing be held.

21 Exhibit L includes a copy of the
22 slides from the presentation that Mr. Kyser will be
23 making today. And Exhibit M is a letter from you, Judge
24 Lipman, received by MPCA on January 26th raising two
25 issues for the MPCA to address at this hearing or during

1 the post-hearing comments response period.

2 Your Honor has all the exhibits. Now
3 Mr. Kyser will make a presentation outlining the
4 proposed rule amendments and summarizing the need for
5 and reasonableness of the proposed rule amendment. The
6 presentation will take about 30 minutes.

7 THE JUDGE: Thank you so much,
8 Ms. Coleman. The exhibits are received. Mr. Kyser?

9 SCOTT KYSER: All right. Can you
10 guys hear me? Thank you, Judge Lipman. I'm going to be
11 doing the agency presentation.

12 So, my name is Scott Kyser, that's
13 S-c-o-t-t, K-y-s-e-r, and I'm here today to talk about
14 the proposed Class 3 and 4 water quality standards
15 rulemaking that we are having a hearing about right now.
16 Next slide, please.

17 So, just a reminder, I think
18 everyone's mic is automatically muted, but if it's not,
19 mute it. This presentation is being recorded. Next
20 slide.

21 So, today I'm going to be talking
22 about what is a water quality standard, give some
23 background on the water quality rulemaking and then I'm
24 going to talk about the current standards that we have
25 in rule, the current Class 3 and 4 standards, and then

1 I'm going to give an overview of the MPCA's proposal.

2 And I'm the person doing the
3 presenting today, but I am -- this presentation and
4 product is the result of many people's efforts and I am
5 just the face presenting today. So, thanks to everyone
6 who helped out with the rulemaking. Next slide.

7 So, what is a water quality standard?
8 A water quality standard is the protective goal for a
9 water body. Water quality standards apply in the water
10 body. So, they apply in the water of the state. And
11 they are established by the State of Minnesota and
12 subject to federal review. Next slide.

13 So, to get into more detail on water
14 quality standards I'm using this ben diagram here. So,
15 you can see at the intersection of these three concepts
16 of beneficial uses, criteria and antidegradation exists
17 water quality standards.

18 So, all three of these concepts are
19 critical in developing a water quality standard. So,
20 I'm going to start by describing what a beneficial use
21 is. So, that is the orange, pinkish circle.

22 So, beneficial use is the goal that
23 you are trying to protect the water for. So, that could
24 be you're trying to protect the water for aquatic life
25 or irrigation or industrial consumption or human health.

1 And then, paired with the beneficial
2 use is the criteria. A criteria can be numeric, it can
3 be a number such as for the Class 2B aquatic life
4 chloride standard, it's less than 230 milligrams per
5 liter.

6 Or it could be a narrative statement,
7 for example, no acute toxicity. And both are
8 appropriate when describing criteria.

9 Another critical concept in water
10 quality standards is antidegradation. That's part of
11 the Clean Water Act in Minnesota Rule that talks about
12 how you ensure that existing water quality is protected.

13 This rulemaking is not an
14 antidegradation rulemaking and we are focusing on the
15 two circles highlighted in red there, the beneficial
16 uses and criteria and the way they interact, the way
17 they are paired. Next slide, please.

18 So, when talking about water quality
19 standards it's important to understand that water
20 quality standards only protect the beneficial use. So,
21 here I am using a road lane metaphor to describe how
22 water quality standards are developed and how they can
23 protect water.

24 So, for example, when protecting
25 aquatic life, the aquatic life criteria only protects

1 the aquatic life beneficial use. When developing
2 irrigation criteria, irrigation criteria only protects
3 the irrigation beneficial use.

4 And they don't mix and match, that's
5 why I'm using those double white lines there, they do
6 not cross lines. And the reason that the two -- I'm
7 using those double white lines is because the science
8 necessary to protect aquatic life, to protect a trout is
9 very different than the science necessary to protect
10 irrigation.

11 A farmer irrigating corn needs a
12 different type of science than aquatic life would. And
13 you can't mix and match those sciences when developing
14 water quality standards.

15 I will also say that in Minnesota a
16 water can be protected by many beneficial uses. So,
17 water quality -- water can be protected for aquatic life
18 and industrial consumption and irrigation and livestock
19 all at the same time.

20 But when developing specific criteria
21 that protects a beneficial use you need to consider only
22 that beneficial use and not think about how these other
23 standards interact with that beneficial use. Next
24 slide.

25 So, this rulemaking contains both

1 numeric and narrative standard criteria and I want to
2 describe them. So, numeric and narrative criteria are
3 equally protective. A narrative criteria is a statement
4 defining the acceptable conditions in a water body.

5 So, it's a set of words that describe
6 what we want the water to be. The narrative criteria
7 are useful in case-by-case situations when a
8 one-size-fits-all approach is not appropriate due to the
9 variability of the protective needs of the water.

10 Numeric criteria are what in the
11 public imagination is more thought of -- more comes to
12 mind when thinking about water quality standards.

13 Numeric criteria are the intersection of these three
14 concepts here, magnitude, duration, and frequency.

15 So, a numeric criteria is not just a
16 magnitude, it is not just less than 230 milligrams per
17 liter in the case of chloride, it actually combines
18 these three factors.

19 So, the aquatic life chloride
20 criteria is less than 230 milligrams per liter over a
21 four-day average duration, not to be exceeded with the
22 frequency of once every three years. So, criteria needs
23 all three of those parts defined.

24 The last thing I'll say about them is
25 that these two narrative and numeric criteria are

1 equally protective and they complement each other.

2 Numeric criteria are an expression of
3 the narrative goals of the water quality standard. And
4 numeric criteria help protect narrative standards as
5 well when developing water quality standards. Next
6 slide.

7 Another thing I want to mention,
8 introducing water quality standards is the difference
9 between limits and standards. Limits and standards are
10 not the same thing. Limits protect standards.

11 So, limits apply in a wastewater
12 permit. A limit or an effluent limitation is a
13 condition that describes the amount of pollutant a given
14 wastewater plant can discharge. They apply in the
15 National Pollutant Discharge Elimination System permit.

16 So, an example might be a discharger
17 shall discharge no more than one milligram per liter
18 phosphorus. And limits are always calculated as a
19 function of standards, they ensure that water quality
20 standards are met in the stream.

21 So, limits are a function or a result
22 of the standards, not the other way around. And
23 standards apply in water bodies. Every limit decision
24 MPCA ever makes is subject to public comment during the
25 issuance or re-issuance of that wastewater permit.

1 Every water quality standard change
2 MPCA makes is subject to comment during the rulemaking
3 hearing, like we are going through right now. Next
4 slide.

5 Another concept that is important in
6 this rulemaking is the concept of narrative translators.
7 And narrative translators protect narrative standards.
8 So, narrative translators turn narrative standards into
9 numeric wastewater permit limits. They are a widely
10 used concept in wastewater permitting.

11 For example, the State of Michigan
12 uses narrative translators to include phosphorus limits
13 in over 340 unique wastewater permits in their state.
14 MPCA uses narrative translators frequently to ensure
15 that receding waters do not experience acute or chronic
16 toxicity.

17 So, to summarize, narrative
18 translators are an important way to turn the narrative
19 goals of a water quality standard into enforceable
20 numeric wastewater limits in permits. Next slide.

21 So, now I'm going to describe the
22 existing Class 3 and 4 standards. So, the existing
23 Class 3 and 4 standards is a part of language in rule
24 that describes the beneficial use, the goals for the
25 water body and the water quality goals, so the criteria

1 to protect those beneficial uses.

2 The standards contain narrative and
3 numeric standards. They range across these four
4 bulleted beneficial uses.

5 So, we have Class 3, an industrial
6 consumption beneficial use; Class 4A, irrigation
7 beneficial use; Class 4B, livestock and wildlife
8 beneficial use; and Class 3D and 4C are wetland
9 standards protecting in the case of 3D, industrial
10 consumption, and Class 4C, irrigation, livestock and
11 wildlife.

12 And these Class 3 and 4 standards
13 entered into Minnesota rule in 1967. So, they predate
14 the Clean Water Act. And they are based on outdated
15 1967 science and outdated rule language and they need a
16 touch-up.

17 Limits based on these standards are
18 in wastewater permits, but critical components necessary
19 to implement these water quality standards in wastewater
20 permits are not defined in rule. And that has made it
21 hard for the agency to enforce these standards to their
22 fullest extent. Next slide.

23 I would also like to point out that
24 this rulemaking is the result of substantial public
25 participation and tribal nation engagement. This

1 rulemaking started way back in 2009.

2 Since 2009 there have been three
3 separate requests for comments on these proposed water
4 quality standards. We have engaged with the University
5 of Minnesota to perform a standard review. We've gone
6 through the scientific peer review process. We have
7 considered and responded to comments throughout that
8 period, engaged in surveys.

9 So, each one of those gray boxes you
10 can think of as a substantial amount of staff time whose
11 product is the final rulemaking package that was
12 submitted in late 2020 that we are having a hearing
13 about today. Next slide, please.

14 So, now I'm going to go over a
15 summarized proposed rule revision. So, to summarize, we
16 are attempting to update the Class 3 and 4 water quality
17 standards with modern science and modern rule language.

18 We are trying to develop robust
19 wastewater implementation procedures that are tailored
20 to protect site specific conditions necessary to protect
21 the beneficial use. And one thing I would like to point
22 out is that we are not removing any beneficial uses from
23 a water of the state in this rulemaking.

24 So, in Minnesota right now, every
25 water of the state is protected by default under rule as

1 a Class 3 and 4 water. And with this rulemaking every
2 single water will remain protected as a Class 3 and 4
3 water of the state. Next slide.

4 So, I'm going to start by going into
5 the specifics of each major component of our rule. So,
6 the first component is the Class 3 industrial
7 consumption water quality standards.

8 The Class 3 industrial consumption
9 standards are appropriative standards. These standards
10 are about defining the amount of pollution that can be
11 in the water, such that an industry can take that water
12 out of and use it in their industrial processes without
13 severe corrosion or scaling.

14 So, it's about what industry needs
15 for their industrial processes. And one of the key
16 assumptions or important things to think about with the
17 Class 3 standards is that industries expect to treat the
18 water to meet their needs.

19 So, industries are able to treat
20 waters to meet their specific needs. To give an example
21 of that, the two industries that bookend the water
22 quality needs in Minnesota are the gravel pit industry
23 and the circuit board manufacturing industry.

24 So, a gravel pit, they do not need a
25 high quality to successfully -- for their water quality

1 needs, any quality water will do for them.

2 Whereas, a circuit board manufacturer
3 needs a water quality that is so pure that it does not
4 exist in nature. They employ really impressive water
5 treatment technologies that remove all possible
6 impurities from the water.

7 So, clearly there is a huge range of
8 water quality needs for industries in Minnesota. And
9 industries expect and are able to treat water to meet
10 their needs.

11 So, to summarize what the major
12 changes we are making to the Class 3 industrial
13 consumption standards, we are planning to remove all
14 numeric standards for this benefit.

15 We are planning to maintain and
16 clarify and remove ambiguous language related to the
17 Class 3 narrative standards. We are condensing the
18 unneeded Class 3 to 4D water quality standards
19 subclasses into a single class.

20 And we are developing implementation
21 procedures and incorporating those procedures alongside
22 this -- into rule alongside this rulemaking. Next
23 slide.

24 So, the next set of water quality
25 standards we are proposing to change are the Class 4A

1 irrigation standards. These again are appropriative
2 standards, they are -- define the water quality that an
3 irrigator needs in order to successfully apply it to
4 their crops and have their crops grow.

5 So, it's about how much pollution a
6 given irrigator needs to successfully grow their crops.
7 And irrigators have a wide variety of water quality
8 needs based on critical local factors.

9 So, different crops have different
10 sensitivities, different soils have different amounts of
11 salts in them naturally or different drainage
12 conditions. And all of those complex factors interact
13 such that there's a wide variety of water quality needs
14 that irrigators have.

15 So, to summarize the changes we are
16 making to the Class 4A beneficial use -- or water
17 quality standards, we are removing the numeric standards
18 related to bicarbonate, pH, specific conductance, and
19 total dissolved salts.

20 We are keeping the numeric standards
21 for boron and wild rice sulfate. We are defining the
22 duration and frequency applicable to the numeric boron
23 standard, but we are leaving the wild rice sulfate
24 standard unchanged.

25 Also, we are maintaining and

1 clarifying and removing ambiguous language related to
2 the Class 4A narrative standards. And we have also
3 developed a narrative translator process to ensure that
4 these water quality standards are protected in waters of
5 the state in Minnesota. Next slide.

6 The third set of water quality
7 standards we are changing are the Class 4B livestock and
8 wildlife watering standard. These standards ensure that
9 waters can be used for livestock and wildlife watering.

10 So, these standards apply -- as of
11 right now apply to every water of the state and they
12 will continue to apply to every water of the state.

13 And we are introducing new water
14 quality -- new numeric criteria to protect the livestock
15 and watering beneficial use. And you can see those new
16 values highlighted in red.

17 I'd like to point out that this will
18 be the first nitrate and sulfate water quality standards
19 applicable to every water of the state.

20 And that these numbers ensure that
21 the most sensitive livestock and wildlife watering use
22 is protected, which is ruminants or multi-chambered
23 mammals like moose or cow eating a high carbohydrate
24 sulfur diet at concentrated feed operations are able to
25 drink the water and not experience harm.

1 So, I would also like to point out
2 that not only are we proposing magnitude, for example,
3 the total dissolved solids standard will be 3,000
4 milligrams per liter, we're also defining a duration and
5 frequency for all of those magnitudes, such that we will
6 be able to more easily implement these standards in
7 wastewater permits as limits if need be. Next slide.

8 Another change we are making is with
9 regards to Class 3D and 4C wetland standards. The
10 current 3D and 4C narrative wetland standards were not
11 developed to protect the Class 3 and 4 beneficial uses.

12 So, those standards were developed
13 really to protect aquatic life in wetlands. And we feel
14 that those Class 3D and 4C wetland standards are best
15 moved to the Class 2D aquatic life wetland standards.

16 So, these are narrative standards.
17 We plan to move them from the 3D beneficial use and 4C
18 beneficial use into the Class 2D aquatic life beneficial
19 use. And the overall effect of that is that the level
20 of wetland protection will remain unchanged.

21 And, Judge Lipman, you submitted a
22 comment to us with regards to the total sediment solids,
23 wetland standards. And that is a great comment, it's a
24 complex one and we are not prepared to fully answer your
25 question today. And we will do so by the end of the

1 comment period. Thank you. Next slide.

2 The last thing I'd like to talk
3 about, major part of our rule is what we call standard
4 implementation. So, this is how we translate narrative
5 standards into enforceable wastewater permit limits.

6 We have developed narrative
7 translators to ensure that the Class 3 industrial
8 consumption and Class 4A irrigation beneficial use are
9 protected. Both of those translators use site specific
10 data to ensure that water quality is protected for
11 specific users as they exist on the landscape.

12 And we have defined some of those key
13 methods and parameters needed to develop wastewater
14 limits protective of the standards and rules.

15 So, if you can see it here, I have an
16 image of some of the data sets that go into our Class 4A
17 irrigation standard. The point of this image is just to
18 point out that, for example, in Minnesota there's many
19 varied crops grown across the landscape.

20 And there are data sets that we can
21 leverage so that we can make site specific decisions
22 tailored to protect water quality needs for a specific
23 irrigator.

24 And the last thing I'll say on this,
25 Judge Lipman, you also submitted a comment on these

1 Class 3 and 4A water quality standards in your letter to
2 us. In response to your comment we would like to
3 incorporate these translators as of the effective date
4 of the rule.

5 So, for those of you that don't
6 understand what that means, what that means is we were
7 planning to incorporate these translators as a
8 reference, meaning that we could change them at will as
9 we were going forward.

10 But if we incorporate them as of an
11 effective date that means that we are locked into using
12 those narrative translators as of the effective date of
13 rule.

14 And we can only change those
15 translators upon going through a rulemaking. So, we
16 would like to incorporate these translators as of the
17 effective date of the rule. All right. Next slide.

18 One thing I would also like to
19 mention is MPCA has received many comments that the
20 Class 3 and 4 standards are an essential backstop that
21 provide essential aquatic life protections.

22 I'd like to point out, if we go back
23 to that road lane metaphor, that the Clean Water Act
24 does not allow nonaquatic life standards to also protect
25 aquatic life.

1 So, you can see highlighted there in
2 the box section of language from 40 CFR 131.11(a)1, it
3 talks about what states must do to adopt water quality
4 criteria. And it states that states must adopt water
5 criteria that protect the designated use.

6 So, there's a singular designated
7 criteria and a singular designated use and they must be
8 paired, that is what the statute said.

9 And the reason for that is what I
10 mentioned before, that the science necessary to protect
11 a specific designated use using a criteria, for example,
12 the science to protect aquatic life is not the same
13 science that is needed to protect the irrigation.

14 And it's important that you don't mix
15 and match those science when developing water quality
16 standards.

17 I will also say that the MPCA is
18 considering all the available scientific information on
19 the best way to develop water quality standards to
20 protect aquatic life, especially for the parameters of
21 chloride, sulfate and hardness.

22 We do not have a final answer yet,
23 but we are reviewing all of the available scientific
24 information that we can find. Next slide.

25 I'd also like to point out that this

1 rule does not change the wild rice sulfate standard.
2 The 10 milligram per liter wild rice sulfate standard is
3 within the Class 4A beneficial use.

4 We initiated this rulemaking back in
5 2009 around the same time we initiated the wild rice
6 sulfate rulemaking. And we always intended any changes
7 to wild rice sulfate standard and other Class 4A
8 standards to be separate. So, this rulemaking does not
9 change the 10 milligram per liter wild rice sulfate
10 standard. Next slide.

11 The last thing I'll say, this is my
12 last slide, is that this rule proposal also contains
13 substantial amount of supporting information.

14 There is a statement of need and
15 reasonableness, a technical support document, a summary
16 of our peer review, talking about the scientific basis
17 of the proposal. We also have a regulatory analysis
18 that talks about issues of cost and benefit, costs and
19 consequences of adopting and not adopting the rule.

20 So, there is much to read. It is all
21 available on our website and we appreciate any comments
22 that anyone might have upon what we have written.

23 Just a last note, I just want to
24 point out that under the federal Clean Water Act cost
25 analysis is not a determinant in establishing water

1 quality standards.

2 We didn't pick and choose how these
3 standards were developed based on cost, that's not
4 something we considered. We only considered science.
5 But cost information is critical when implementing
6 standards in wastewater permits.

7 In wastewater permitting, cost comes
8 up, not in a water quality standard rulemaking. All
9 right. Next slide.

10 I would like to thank everyone for
11 hearing my presentation and I would also like to thank
12 all of the people who contributed to this rulemaking.
13 Thank you very much.

14 THE JUDGE: Thank you so much,
15 Mr. Kyser. Has the agency panel concluded? Actually, I
16 think we're going to continue on if you don't mind,
17 Ms. Hochstein. Can you give us the next three
18 commentators that are in the queue?

19 CLAUDIA HOCHSTEIN: Yes, I am going
20 to go ahead and as promised just show the whole roster
21 again. One moment.

22 THE JUDGE: Okay.

23 CLAUDIA HOCHSTEIN: Okay. The top
24 three -- are you getting --

25 THE JUDGE: Yes.

1 CLAUDIA HOCHSTEIN: Okay. The top
2 three, it will be Eric Morrison, then
3 Secretary/Treasurer April McCormick and then Dr. Deb
4 Allert. You can see the whole list here. I will
5 continue showing the top five as an ongoing basis in the
6 chat.

7 Let me get back to the presentation
8 here or just to the slides. And I will -- I've spelled
9 it wrong on the roster, I'm sorry. Judge Lipman, do you
10 want me to unmute Mr. Morrison now?

11 THE JUDGE: Yes, that would be
12 helpful.

13 CLAUDIA HOCHSTEIN: Okay.

14 THE JUDGE: So, Mr. Morrison, if you
15 could state and spell your name for our record when
16 you're unmuted. And to the extent that you could make
17 initial comments of about five minutes, really very
18 helpful.

19 We're trying to get in a bunch of
20 folks before the bottom of the hour when we have our
21 court reporter break. I'm eager to hear from you.
22 Mr. Morrison?

23 CLAUDIA HOCHSTEIN: Mr. Morrison, I
24 requested that you unmute yourself, I'll need you to do
25 that. I'll try again. You should be able to unmute

1 yourself now.

2 THE JUDGE: The controls are at the
3 bottom of the screen.

4 CLAUDIA HOCHSTEIN: Mr. Morrison,
5 you're still not unmuted. Okay, there we go.

6 ERIC MORRISON: Thank you for your
7 patience. And thank you very much for the opportunity
8 to speak today. My name is Eric Morrison, that's
9 E-r-i-c, M-o-r-r-i-s-o-n.

10 THE JUDGE: What should we know?

11 ERIC MORRISON: Thank you. Well, I'm
12 a chemist, I have a Ph.D. from Penn State and I've
13 worked in the industry for 35 years, including 3M and
14 Ecolab.

15 I'm the author or contributor to 58
16 U.S. patents and 25 scientific publications, including
17 several that are on the topic of water quality as it
18 relates to industrial use.

19 So, that's the background from which
20 I'm speaking. And I want to put forth my recommendation
21 that these rule changes be rejected.

22 And the reason is that in many cases
23 they really are unreasonable and they are not forward
24 looking, they're very shortsighted.

25 I know that there's been a shift in

1 sources of industrial and agricultural irrigation water
2 from surface to ground, but that practice itself is
3 really temporary, it's not sustainable.

4 And we've had a 15-foot drop in the
5 level of the aquifer with Prairie du Chien aquifer,
6 Jordan aquifer that covers most of the southern part of
7 our state. And also that it's ground water pumping that
8 caused all the problems in White Bear Lake.

9 So, I know Mr. Kyser makes a point
10 that's valid, that there's the double white line, so you
11 can't change lanes. We really have to consider what is
12 discharged here on a basis of industrial and
13 agricultural wastewater.

14 It's not going to change lanes
15 perhaps, but downstream it is going to be relevant to
16 uses including recreation and wildlife. So, in a world
17 where clean water is becoming really precious, it's
18 really shortsighted.

19 And it is unreasonable to turn water
20 that's on the surface in lakes and streams back to what
21 it was a century ago, which is really valued for
22 carrying waste away from industrial dischargers, rather
23 than being a source of clean water for other people.

24 The MPCA is claiming that this is a
25 tailored approach. I don't think that's correct. It's

1 really more about loosening the restraints so that
2 wastewater can be discharged without treatment.

3 And it says in the SONAR several
4 places in most cases that no new effluent limits are
5 expected. That's unreasonable.

6 I'm going to talk about the chloride
7 standard now. To remove that chloride limit will
8 increase lead leaching from anywhere downstream,
9 industry or in people's homes, where there's lead pipes
10 and plumbing or soldered plumbing. I don't think that
11 the MPCA has fulfilled their statutory duty to say that
12 that's reasonable.

13 Also, I want to point out that there
14 are 42 cities in Minnesota that get their drinking water
15 from surface water. And this increase in chloride is
16 putting all those people at risk.

17 We talked a little bit about sulfate
18 and disruption to wild rice. Unrestrained dumping of
19 sulfate as anticipated with these rule changes will
20 cause destruction of wild rice.

21 Sulfate has another really big
22 problem that we really have to think about, and that is
23 that it puts mercury into fish.

24 So, I will say that I know that
25 removing the ceiling on conductivity levels to keep

1 downstream species from going extinct in those waters
2 are not what we're here about today, but I think that
3 it's unreasonable to just disregard that totally out of
4 hand. And partly because it tells those downstream
5 environments that really supports all uses of water.

6 So, these changes are really set up
7 to accommodate polluters rather than protect the
8 environment and any downstream users, whether industry
9 or agriculture.

10 An example of how those effluent
11 limits are being set in this proposed change is the
12 projected limit for sulfate for Cliffs Erie wetland
13 discharges up near Babbitt would be 950 milligrams per
14 liter.

15 And that's on the basis that the
16 maximum concentration at that particular discharge site,
17 the maximum concentration that there's ever been has
18 been 847 milligrams per liter.

19 So, it really accommodates what would
20 be the worst amount of pollution, given that we're not
21 going to attempt to treat the water in any case.

22 That 950 milligram per liter limit is
23 95 times the concentration that kills wild rice. And it
24 is about 200 times the concentration of sulfate that
25 promotes contamination in fish.

1 So, I believe that not just because
2 this is really a very temporary trend, this use of
3 ground water, I think it's because we need to protect
4 all clean water.

5 We don't want to return to the way we
6 think about water as being that it's the most useful
7 when it's carrying away waste. We want to protect clean
8 water where it's really going to be a much more short
9 supply.

10 THE JUDGE: Mr. Morrison, I'm just
11 wondering if you might have concluding thoughts, mindful
12 just for this initial round. We'll have other rounds
13 where you can participate and we have the comment
14 period. I'm just wondering if you have concluding
15 thoughts for this round?

16 ERIC MORRISON: Thank you, Judge
17 Lipman, I'll just conclude by saying these rules should
18 be protective of industry, of agriculture, but also they
19 should envision that there's going to be further uses.

20 And these rules shouldn't be set
21 according to what dischargers will discharge without
22 mitigation, they should be set to what's protective.
23 Thank you.

24 THE JUDGE: Thank you so much,
25 Dr. Morrison, we're very grateful for your time and

1 contribution to our record. With that, we're going to
2 hear from Treasurer McCormick, if her line can be
3 unmuted.

4 And following Treasurer McCormick
5 will be Dr. Deb Allert. Madam Treasurer? If you could
6 state and spell your name for our record?

7 APRIL MCCORMICK: Good afternoon. My
8 name is April McCormick, A-p-r-i-l, M-c-C-o-r-m-i-c-k.

9 THE JUDGE: Thank you so much. What
10 should we know?

11 APRIL MCCORMICK: I have the
12 privilege of speaking today not only on behalf of my
13 tribe, the Grand Portage Band of Lake Superior Chippewa,
14 but I also have the extreme honor from a great majority
15 of other tribes in the state, both Ojibwe and Dakota.

16 These are Bois Forte Band of
17 Chippewa, Fond Du Lac Band of Lake Superior Chippewa,
18 Leech Lake Band of Ojibwe, Lower Sioux Indian Community,
19 Mille Lacs Band of Ojibwe, the Minnesota Chippewa Tribe,
20 Prairie Island Indian Community, the Red Lake Nation,
21 Shakopee Mdewakanton Sioux Community, and White Earth
22 Nation.

23 These and other tribes may also offer
24 separate comments today and we will also be offering
25 written comments after the hearing. For the purpose of

1 these comments, when I say "we" I mean all of these
2 tribal governments standing together as a coalition
3 today.

4 And as such I would just request as
5 much time as I can to relay this message because I am
6 speaking on their behalf.

7 So, on behalf of nearly 50,000 tribal
8 members we are here to support clean water and to oppose
9 MPCA's proposed changes to Class 3 industrial
10 consumption and Class 4 agricultural and wildlife use
11 water quality standards.

12 In a nutshell, MPCA is asking for
13 permission to move away from current best practices,
14 which is an existing concrete numeric limits for
15 pollutants in these waters, and going towards outdated
16 and underprotected narrative standards.

17 MPCA will then translate those
18 narrative standards into subjective water body specific
19 numeric limits where the agency presumably at the behest
20 of the permittee determines necessary.

21 Among the other dangers of these
22 rules they promise to subject Minnesota's irreplaceable
23 wild rice waters to further degradation. In 2018 the
24 OAH rejected another proposed MPCA rule change that
25 would have replaced the 10 milligram per liter wild rice

1 sulfate standard for a far weaker standard.

2 As in 2018 MPCA cannot establish a
3 need for, nor the reasonableness of these proposed
4 rules. The proposed changes are contrary to law and
5 science and they benefit no one but large industrial
6 dischargers who seek to avoid regulation.

7 These changes are not necessary even
8 for municipal dischargers for whom there is a variance
9 process that is already in place. And we are fully in
10 support of making those processes work better for
11 municipalities if needed.

12 The additional pollution these
13 changes will permit will increase burdens on
14 municipalities and taxpayers who too often end up
15 bearing the burden of paying for the cleanup costs for
16 irresponsible industrial dischargers.

17 You can look at the recent example of
18 Chisholm, Pool, Keene, and Great Scott townships whom
19 taconite mining operations recently passed down expenses
20 for a new wastewater treatment system of approximately
21 21 million to treat mercury pollution.

22 To put it plainly, these proposed
23 rules will operate to the detriment of basically
24 everyone but industrial dischargers. For impacts on
25 Minnesota's native citizens will be particularly severe

1 and contrary to MPCA's environmental justice mission.

2 We are asking you to disprove MPCA's
3 proposed Class 3 and 4 rules in their entirety. First,
4 the State's proposed changes to water quality standards
5 have to comply with the Clean Water Act.

6 Protecting existing uses or uses for
7 waters prior to 1975 is the floor of the Clean Water
8 Act. Wild rice waters are both an existing use and
9 designated use. But through these changes MPCA is
10 attempting to change designated uses without proper use
11 attainability analysis.

12 Moreover, these changes will impair
13 existing uses, including our precious wild rice waters.
14 This is entirely contrary to law.

15 In particular, these regulations say,
16 "In designating uses of a water body and the appropriate
17 criteria for those uses, the State shall take into
18 consideration the water quality standards of downstream
19 waters and shall assure that its water quality standards
20 provide for the attainment and maintenance of water
21 quality standards of downstream waters."

22 In other words, if a state wishes to
23 change some aspect of water quality that will apply
24 upstream, it must make sure that the change does not
25 make impairments downstream.

1 Under federal regulations the state's
2 water quality standards must also be sufficiently
3 protected. States must adopt those water quality
4 criteria that protect the designated use.

5 Such criteria must be based on sound
6 scientific rationale and must contain the sufficient
7 parameters or constituents to protect this designated
8 use. For water with multiple use designations the
9 criteria shall support the most sensitive use.

10 In other words, the State has to
11 fully justify a proposed change and show that it is
12 still protective of the most sensitive use. Here, to
13 put it generously, the MPCA has not done the leg work to
14 justify its proposed rule changes. And the tribes have
15 long pointed this out to no avail.

16 For example, in the Statement of Need
17 and Reasonableness, or SONAR, references to tribal's
18 comments asking for additional support and substantial
19 analysis beyond what is currently in the technical
20 support document, demonstrating that the proposed
21 revisions will not negatively impact existing uses of
22 any affected waters.

23 MPCA's response, which is a bait and
24 switch, the agency says only that the proposed rules
25 have been written so that they will still apply to all

1 currently designated Class 3 and 4 waters. But that was
2 not the question.

3 The question was, where is the
4 required showing that this proposed change will not
5 impair downstream waters that may or may not have the
6 same use class or be sensitive. None appears in this
7 record.

8 Shockingly, MPCA elsewhere actually
9 admits that it has not assessed "any of the narrative or
10 numeric water quality standards that exist for Class 3
11 and 4 beneficial uses." The agency says that it has
12 chosen to focus on drinking water and aquatic
13 consumption uses only due to "limited resources."

14 MPCA cites no authority for ignoring
15 such a huge portion of its mandate. Moreover, the
16 admission means that the agency has just plainly
17 acknowledged that it has not even tried to do the
18 required analysis to justify this rulemaking.

19 To put it less generously, MPCA has a
20 reason for refusing to answer the tribe's question and
21 for failing to do the analysis, but it is not a good
22 one. MPCA knows that the results of a full analysis of
23 impacts would not only support the proposed rule change,
24 but it hopes that it can push it through this OAH and
25 then the EPA for approval anyway.

1 THE JUDGE: If you can start to
2 conclude I would be grateful. Mindful that we're almost
3 up to a hard break. So, concluding thoughts from you?

4 APRIL MCCORMICK: Well, I absolutely
5 respect your request and I'm speaking on behalf of ten
6 of the 11 tribes in the state of Minnesota, so I will do
7 my best.

8 THE JUDGE: Please.

9 APRIL MCCORMICK: MPCA, in essence,
10 is moving from concrete numeric standards to a narrative
11 standard that requires the development of additional
12 procedural stops through a translator.

13 By these means the agency is then
14 able to come up with a subjective and likely less
15 protective numeric standard for each specific water body
16 based upon specific conditions when a discharger is
17 (inaudible). I know that this is popular with
18 industrial large dischargers.

19 In fact, there is already a
20 significant body of research that shows the impacts of
21 these loosened standards will be detrimental to
22 downstream waters. A major issue is that these changes
23 increase the allowable concentrations of salts that can
24 be discharged into the water.

25 And while MPCA has looked at some of

1 the industrial and cultural uses, the impacts of
2 increased salty discharges, it has ignored others, as
3 well as failing to review the impacts of this rule
4 changing on waters with existing impairments.

5 This is despite years of tribal
6 comments asking MPCA to do so. The proposed rule simply
7 lacks any meaningful analysis of the potential of these
8 salty discharges to hurt or harm more sensitive
9 beneficial uses. This is a fatal flaw.

10 Again, particularly insidious is the
11 mere total absence of review for the impacts of the
12 proposed rule changes on the state's sensitive wild rice
13 waters.

14 And this is the most important I want
15 you to hear. Manoomin, seen wild rice, is a spiritual
16 food, it is sacred to our people. It is a sacred gift
17 from the creator. Seen manoomin is part of our
18 migration stories.

19 To come to a place where the food
20 that grows naturally upon the waters, it is so special.
21 That is the first foods an infant is fed because of its
22 soft, pliable texture and nutrient density. It's a part
23 of our ceremonies and our meals at community gatherings.

24 wild rice is inherently a part of who
25 we are as an original people, Anishinaabe, Dakota. But

1 we will take up our responsibility to protect it from
2 further degradation and risk of food scarcity.

3 Further, wild rice waters are
4 protected under Class 4A and the rules include the
5 unique narrative and antidegradation and numeric
6 standards.

7 MPCA has flatly claimed that this
8 rulemaking will not change the wild rice sulfate
9 standard. And this is the end of the agency's inquiry,
10 but this is not the analysis.

11 First of all, the Class 4 criteria
12 apply to wild rice waters, too. There's no
13 justification for excluding wild rice water from the
14 rest of the Class 4 analysis.

15 Second, the wild rice narrative and
16 antidegradation standard mandates that the quality of
17 these waters in aquatic habitat necessary to support the
18 promulgation and maintenance of wild rice plant species
19 must not be materially degraded.

20 The agency simply refused to either
21 acknowledge or conduct any analysis on the potential of
22 this rule to change the result of an impairment or
23 degradation of the wild rice waters.

24 THE JUDGE: Final thoughts?

25 APRIL MCCORMICK: Let's see. This is

1 what we hope for, the MPCA will finally genuinely
2 collaborate with us.

3 That MPCA will actually read our
4 comments, our decades of field research and our
5 federally approved water quality standards explaining
6 how we effectively implement the 10 milligram per liter
7 wild rice sulfate standard in our reservation waters.

8 And that MPCA will look squarely and
9 honestly at its own data and that it will collaborate
10 with us at the earliest stages of rulemaking, not after
11 they've already decided what our interests are.

12 That we will have to stop using our
13 very limited tribal resources for litigation with this
14 agency just to get it to follow state and federal law
15 and its own regulations. We will file a copy of both of
16 these comments, including more detailed ones, in the
17 upcoming days.

18 For all these reasons, we as tribal
19 leaders and Minnesotans ask you to disprove of MPCA's
20 proposed Class 3 and 4 rules in their entirety. (Native
21 language spoken). Thank you.

22 THE JUDGE: Thank you so much, Madam
23 Treasurer, we're so grateful for your time and
24 thoughtful comments. Eager to hear additional detail
25 through the comment period, not only from yourself, but

1 from all the tribes that you represent.

2 Mindful that we're at the 90-minute
3 point and our court reporter, Marcia, has been dutifully
4 typing. We're going to have a recess until 3:47 central
5 standard time, 3:47 central standard time.

6 The webex connection will continue,
7 but you'll want to hear from Dr. Deb Allert when we
8 return. I guess I would ask of Ms. Allert to have a
9 14-minute break so that she's ready and able to be
10 unmuted so we can have an on time departure at precisely
11 3:47 this afternoon.

12 So, we're going to take a brief
13 intermission. We're in recess.

14 (At this time a brief recess was taken
15 from 3:32 p.m. until 3:47 p.m.)

16 THE JUDGE: Ms. Coleman or
17 Ms. Hochstein, are we ready to hear from Dr. Allert?

18 CLAUDIA HOCHSTEIN: I have requested
19 that she unmute and it looks like she's unmuted. So,
20 yes, we are. And, Megan, if you could stop sharing the
21 screen, please.

22 THE JUDGE: Dr. Allert, if you
23 wouldn't mind, you can use the video if you want or not,
24 as you see fit, but if you could state your name and
25 spell your name for our record.

1 DEBBIE ALLERT: My name is
2 Dr. Debbie, D-e-b-b-i-e, Allert, A-l-l-e-r-t.

3 THE JUDGE: Thank you kindly. What
4 should we know?

5 DEBBIE ALLERT: I am today speaking
6 as a private citizen, but I am a retired family
7 physician. I practiced in Two Harbors for 27 years. I
8 am the previous president of the Lake Superior Chapter
9 of the Minnesota Academy of Family Physicians.

10 The Minnesota Academy of Family
11 Physicians is the largest medical specialty in
12 Minnesota, representing over 3,100 family physicians,
13 residents and students.

14 Minnesota Academy of Family
15 Physicians has worked in collaboration with other
16 Minnesota medical professional organizations, including
17 the Minnesota Medical Association, the Minnesota Public
18 Health Association, and the Minnesota Nurses
19 Association, all told representing over 30,000 medical
20 and health professionals to express concerns about the
21 effects on human health from proposed copper-nickel
22 mining in Northern Minnesota.

23 Particularly concerned about how
24 sulfate discharge from mining increases methylmercury
25 contamination of fish with devastating toxic effects

1 with developing brains of fetuses, infants and children.

2 Understand that the MPCA in these
3 rules is proposing to remove the numeric quality
4 standard for total dissolved salts and replace it with a
5 weaker standard.

6 MPCA is proposing to remove the
7 standard for specific conductivity, which is a general
8 measure for ions in the water. Scientists say that even
9 with the MPCA's proposed sulfate standard of 600 parts
10 per million, removing existing standards for salts and
11 conductivity will allow for more sulfate discharge.

12 Additional sulfate will increase
13 mercury in the waters and mercury methylation that
14 concentrates in the food chain. Methylmercury is the
15 highly toxic form of mercury.

16 As part of MPCA's research into
17 sulfates, Dr. Amy Myrbo studied the effect of sulfates
18 in experiments. When sulfate was added to water in
19 concentrations of 100 and 300 parts per million,
20 chemical reactions of the sulfate in sediments released
21 mercury into the water.

22 In fact, mercury levels doubled.
23 Even more troubling, adding sulfate of 300 parts per
24 million increased the amount of methylmercury six-fold.
25 High levels of sulfate discharge will load more mercury

1 into lakes and streams.

2 Surface waters at the point of
3 discharge or further downstream will be at the sweet
4 spot to increase production of organic methylmercury.
5 Methylmercury in water bioaccumulates in the food chain.
6 And human beings are at the top of the food chain.

7 Mercury in fish meat cannot be
8 eliminated by either cleaning or cooking. Mercury is a
9 potent neurotoxin whose negative effects on our nerves
10 and brains and cannot be reversed.

11 Fetuses, infants and children are
12 most vulnerable to toxic methylmercury effects. They
13 are four or five times more sensitive to the adverse
14 effects of methylmercury exposure than adults. Even at
15 the lower levels of exposure that can result from eating
16 mercury contaminated fish.

17 Methylmercury ingestion results in
18 lower intelligence, poor concentration, poor memory,
19 speech and language disorders and decrease in visual
20 spatial skills.

21 In 2011 the Minnesota Department of
22 Health did a study of more than 1,400 newborn infants.
23 In the Lake Superior region of Minnesota they found that
24 one out of every ten infants were born with unsafe
25 mercury levels. The threshold they used for an unsafe

1 mercury level was what the medical literature correlates
2 with reduction in IQ.

3 As with many other environmental
4 toxins the burdens are not equally shared across
5 society. Communities who rely on fish for substance,
6 including low-income families in rural communities and
7 tribal members, for whom eating fish is integral to
8 culture, as well as subsistence, are disproportionately
9 harmed by methylmercury toxicity.

10 And the infants and children in these
11 communities are most likely to be harmed. Mercury
12 contaminated fish and excessive discharge of sulfate
13 from taconite mines are current threats to public health
14 and environmental justice that requires our attention.

15 Copper-nickel mines in sulfide ores
16 are now making their way through the permitting process
17 and the courts. The level of sulfate and major ion
18 pollution from sulfide mines is yet more serious than
19 existing pollution.

20 It is incomprehensible that the MPCA
21 would propose at this time to deregulate ion pollution
22 and allow more discharge of sulfate. We urge you to
23 reject the proposed rule changes to remove existing
24 numeric water quality standards.

25 Changing the existing rules is both

1 unreasonable and dangerous. Minnesota should be taking
2 every step to reduce devastating neurotoxic mercury, not
3 deregulating pollution to put more infants and children
4 at risk. Thank you.

5 THE JUDGE: Thank you, Dr. Allert,
6 grateful for your time and testimony. I'm just
7 wondering if you had a written copy that you would be
8 willing to share with Ms. Hochstein?

9 There were some audio issues and I
10 would like to be able to remit that to the court
11 reporter, Marcia, so that she can check it against the
12 pieces in the recording that she has, just to make sure
13 that we have a complete and as accurate record as
14 possible. Is that something you could do, Dr. Allert?

15 DEBBIE ALLERT: Absolutely, if she
16 could just send me the link that I would need to send
17 that to, I can do that.

18 THE JUDGE: Sure. It's on the
19 slides, it's Claudia Hochstein's email address. And if
20 you could remit that to her, we'll make sure the court
21 reporter gets it.

22 DEBBIE ALLERT: Thank you.

23 THE JUDGE: Thank you so much,
24 Dr. Allert, for your time and very thoughtful comments
25 and contributions to our record. In the roster we have

1 John Paulson, then Randel Harrison, Kristi Pursell and
2 Janet Keough and Joe Haberman.

3 So, for the next roughly 40 minutes
4 or so, that's where we're looking. And we're eager to
5 hear from all of them.

6 So, to the extent folks can just give
7 an initial cut of about five minutes, just like
8 Dr. Allert did, we'll get to hear from everybody in this
9 process. Mr. Paulson?

10 JOHN PAULSON: Thank you, sir. My
11 name is John Paulson, J-o-h-n, P-a-u-l-s-o-n.

12 THE JUDGE: What should we know?

13 JOHN PAULSON: Thank you, Judge
14 Lipman, for the opportunity to comment on the proposed
15 amendments to the rules governing the Class 3 and 4
16 water quality standards.

17 I'm the project environmental and
18 regulatory manager for the City of Hutchinson. We own
19 and operate a wastewater treatment facility and hold the
20 National Pollutant Discharge Elimination System and
21 State Disposal System permit. The following comments
22 are on behalf of the City of Hutchinson.

23 THE JUDGE: Just a little slower,
24 Mr. Paulson, but we're grateful that you are
25 participating.

1 JOHN PAULSON: Thank you, sir. It
2 has been a long-standing priority of many stakeholders,
3 including many cities, to seek updates and revisions to
4 Class 3 and 4 water quality standards.

5 Many stakeholders agree that the
6 current standards are outdated. Continued use of these
7 standards will likely include limits in City permits
8 that can cause unnecessary burdens and expenses.

9 More recently the MPCA completed
10 updates to scientific work to propose alternative
11 standards that can protect the environment and address
12 our existing concerns.

13 Hutchinson is one of roughly 100
14 cities throughout the state that could receive a
15 potentially costly environmentally unnecessary effluent
16 limit in its permit based on existing standards.

17 As a result, strongly support the
18 MPCA's proposed updates though these standards.
19 Updating the standards now is critical to ensure that
20 MPCA can renew and re-issue our city's wastewater
21 discharge permit without having to include permit limits
22 based on outdated standards.

23 Based on our review of MPCA's
24 proposed amendments to the Class 3 and 4 water quality
25 standards we are supportive of the standards for the

1 following changes.

2 We support the change to the Class 3
3 industrial use and 4A irrigation use standards changing
4 from numeric standards to narrative standards. This
5 change is needed and reasonable and is supported by the
6 updated science that has been recently completed.

7 It will also allow MPCA needed
8 flexibility to implement these standards in city permits
9 in a manner that ensures environmental protection and
10 reduces unnecessary costs and economic harm for cities
11 such as ours by using the narrative translator process
12 tailored toward the downstream receiving waters.

13 We're supportive of the proposed
14 narrative translator processes developed for both the
15 Class 3 and 4A standards. This process allows for
16 tailored site specific approach for permit limits and
17 water protection that many municipalities have long
18 requested.

19 That said, we request that the MPCA
20 cannot change the narrative translator process without
21 seeking review and comment from the public first.

22 We are concerned about MPCA's
23 proposal to adopt guidance about how to implement the
24 state's aquatic life narrative standards as part of this
25 rulemaking. This issue is outside the scope of the

1 rulemaking.

2 It impacts multiple cities and is not
3 something that was previously presented to cities or
4 groups representing cities. This effort should be
5 completed by a separate rulemaking process.

6 On behalf of my city I urge and
7 totally support the MPCA to continue their important
8 efforts to update the standards to ensure that our city
9 and so many others will be regulated based on the best
10 available science.

11 Thank you again for the opportunity
12 to testify. Judge Lipman, we appreciate the work that
13 MPCA has put into this effort and we will be working to
14 provide more detailed comments by the end of the public
15 comment period. Thank you, sir.

16 THE JUDGE: Thank you so much,
17 Mr. Paulson, appreciate your time and thoughtful
18 contributions to our record and likewise your
19 willingness, as others, to put in further written
20 comments. With that, Mr. Randel Harrison?

21 RANDEL HANSON: Yes, yes.

22 THE JUDGE: Mr. Harrison, if you
23 wouldn't mind stating and spelling your name for our
24 record?

25 RANDEL HANSON: Yes, my name is

1 Dr. Randel Hanson, R-a-n-d-e-l, H-a-n-s-o-n.

2 THE JUDGE: Thank you so much,
3 Dr. Hanson. What should we know?

4 RANDEL HANSON: I grew up on a small
5 farm in western Minnesota in Lac qui Parle County and
6 retain close engagement with many friends and family who
7 farm there presently.

8 Over the past 15 years I've engaged
9 in teaching research and implementation of the kind of
10 smaller scale farming that is appropriate for the
11 western Lake Superior region.

12 I founded and directed for a decade
13 the UMD land lab at the University of Minnesota on the
14 former northeast agricultural experimental station that
15 was open from 1912 to 1976.

16 And more recently I founded and
17 co-directed the Eco-Entrepreneurship Program at Lake
18 Superior College, which is devoted to providing
19 agronomic business and marketing skills to our students
20 for successful farms and local food-related businesses.

21 I've also held the endowed Chair in
22 agricultural systems at the Minnesota Institute for
23 Sustainable Agriculture and served as a resident fellow
24 at the institute on the environment at the University of
25 Minnesota. And I'm also a member of Minnesota Farmers

1 Union and Sustainable Farming Association.

2 At any rate, I talk about that just
3 to frame my comments here because what I've seen over
4 the last 15 years is a very significant expansion of
5 regenerative organic certified and noncertified organic
6 practice farms in our western Lake Superior region in
7 response to the growing demand on the part of consumers
8 for healthier locally sourced foods.

9 Young people are purchasing
10 farmsteads to launch new farms at record rates in our
11 region, contributing to the communities in both social
12 and economic ways.

13 And politicians and policymakers see
14 small scale agriculture in our region, Northeast
15 Minnesota, as an important nonpartisan development for
16 all of the health, economic and social benefits that it
17 brings.

18 Agriculture in the northeastern
19 corner of Minnesota is unique in relation to the types
20 of row crop agriculture practiced in southern, central
21 and western Minnesota.

22 Indeed, our landscapes aren't fitted
23 for the large scale equipment typically found in those
24 regions and instead we're welcoming the boom of farms
25 producing vegetables, fruits and animals with a mix of

1 perennials and annuals that befit our landscape and the
2 regenerative practices so prized by many in our region.

3 Small scale farmers use a variety of
4 ecosystem services, including surface and ground water
5 for their crops. Accordingly, given my experience, I am
6 very concerned about the proposed MPCA changes.

7 To begin with, it appears that the
8 MPCA has not considered the irrigation needs of hundreds
9 of small scale farmers in our region. As far as I can
10 tell there's been very little engagement with farmers in
11 our region at all. Surely more research and public
12 engagement is wise in terms of consulting with them for
13 input.

14 As far as I can tell the explanations
15 regarding the threat for changing the Class 4A standards
16 for irrigation to allow a 1500 microsiemens per
17 centimeter conductivity benchmark would pose a very real
18 threat to many of the crops growing in our region.

19 In fact, the University of Minnesota
20 has pointed out that many fruits and vegetables commonly
21 grown in Minnesota, raspberries, strawberries, apples,
22 beans, carrots, lettuce, peppers, onions, et cetera,
23 just to name a few, would be harmed by that benchmark
24 level in irrigation water.

25 And strawberries, raspberries,

1 apples, beans and carrots are some of the most important
2 crops grown in our Northeastern Minnesota.

3 Indeed, as the MPCA documents point
4 out, if a downstream appropriator doesn't have a
5 sensitive crop, the proposed rule would use a 3,000
6 conductivity benchmark to decide if it's likely the
7 upstream discharger would need any effluent limit at
8 all.

9 Additionally, the concept of
10 averaging out pollution and pollutants may mean that
11 when a farmer is using this surface water during a
12 drought, for example, salts would not be diluted.

13 And given the kind of increased
14 tapastic weather we've been experiencing over the past
15 two decades, periods of droughts and heavy rains are
16 increasingly frequent.

17 In some, I'm very disappointed in the
18 manner in which the public input thus far from farmers
19 in our region has seemingly been not included at all.

20 Likewise, I would be very happy,
21 given my background and my relations in organizations
22 with farmers and other food producers, to assist in the
23 facilitation of such comment and engagement.

24 But the bottom line is that any
25 proposed rule change related to ionic pollutants must

1 surely be rejected presently given the backdrop of the
2 rising needs, uses and human health and ecological
3 integrity of farmers and eaters in the western Lake
4 Superior region.

5 And I thank you and we'll submit
6 these and longer comments by the 24th of February.

7 THE JUDGE: We're very grateful,
8 Dr. Hanson. During your remarks you made reference with
9 respect to a 15 micro, there was a glitch in the sound,
10 standard. Can you give me that 15 micro --

11 RANDEL HANSON: Sorry. Yes, it's in
12 the document, it's a 1500 microsiemens per centimeter,
13 conductivity benchmark.

14 THE JUDGE: Microsiemens,
15 s-i-e-m-e-n-s?

16 RANDEL HANSON: Yes.

17 THE JUDGE: Thank you kindly for your
18 generous and very thoughtful contributions to our
19 record, grateful for your time and looking forward to
20 your remarks by the 24th.

21 Our next witness is Kristi Pursell
22 and she'll be followed by Janet Keough and Jo Haberman.
23 Ms. Pursell, if you would state and spell your name for
24 our record.

25 KRISTI PURSELL: Good afternoon, my

1 name is Kristi Pursell, K-r-i-s-t-i, P-u-r-s-e-l-l.

2 THE JUDGE: What should we know?

3 KRISTI PURSELL: I am a Minnesotan
4 through and through. I was born and raised in Olmsted
5 County in Southeastern Minnesota. I've had the
6 privilege and opportunity to live in Cass County, Cook
7 County, Lake County, Hennepin County. I currently
8 reside in Rice County back in Southeastern Minnesota.

9 And I'm executive director of a clean
10 water nonprofit, the Cannon River Watershed Partnership.
11 We go by our initials, CRWP, most of the time.

12 Cannon River Watershed Partnership
13 has been around for more than 30 years. We are a
14 community driven membership based organization of more
15 than 400 households in our watershed.

16 Through our humble nonprofit
17 organization we have worked to protect and preserve
18 precious fresh water in Southeastern Minnesota for our
19 30 years.

20 We feel the need to weigh in because
21 we believe MPCA's proposed rules would weaken water
22 quality standards that will harm fish, wild rice,
23 wildlife habitats, treaty protected tribal resources,
24 many species of concern, opportunities for recreation,
25 sustainable farms, businesses that depend on clean

1 water, human health, and environmental justice across
2 our great state.

3 This region also has had quite a boom
4 of small scale organic regenerative farmers who do not
5 have irrigation permits. We've also had to in our part
6 of the state really look at what ethanol processing
7 would do to our water, soil and human health.

8 And when we look at the proposed
9 changes, that is a concern for us regarding ethanol
10 production in this part of the state. But we stand in
11 solidarity with the tribes and folks from all across the
12 state who have concerns.

13 We believe that MPCA's role as a
14 state agency should be in further protecting our waters
15 and encourage that entity to set more stringent limits
16 to protect clean water, fish and health based on
17 science.

18 We will be submitting further
19 comments. And I thank you for your consideration and
20 your time.

21 THE JUDGE: Grateful, Ms. Pursell, on
22 behalf of your association and others and certainly
23 yourself and for your kind and thoughtful contributions
24 to the record and look forward, likewise, to receiving
25 your initial comments by February 24.

1 With that, Ms. Keough, if you could
2 unmute yourself and state and spell your name for our
3 record.

4 JANET KEOUGH: Your Honor, my name is
5 Janet Keough, J-a-n-e-t, K-e-o-u-g-h.

6 THE JUDGE: What should we know?

7 JANET KEOUGH: I live in a rural area
8 north of Duluth. I am a wetland ecologist with a Ph.D.
9 in aquatic science from the University of Wisconsin.

10 I'm retired after a 30-year career in
11 wetland and aquatic research in ecosystems in Minnesota,
12 across the Great Lakes and many other parts of the U.S.
13 I am a past president of the Society of Wetland
14 Scientists, which is an international society for all
15 wetland scientists.

16 I want to address the need and
17 reasonableness of the proposed rule change today. As a
18 research aquatic scientist I'm very concerned about the
19 proposal to replace the numeric water quality standards
20 for ionic chemicals with weak narrative standards for
21 Class 3 and 4 waters.

22 The proposed change would eliminate
23 numeric standards for chloride, hardness, pH,
24 bicarbonates, total salinity, specific conductance,
25 total dissolved salts, sodium and sulfates for streams,

1 rivers and lakes.

2 In Northeast Minnesota where I live
3 all of our water comes through granitic bedrock and from
4 rain. This means that our waterways are very, very low
5 in all of those ionic components. In other words, it's
6 very soft water.

7 Our ecosystems, and in this case, our
8 wildlife, fish, amphibians all adapted to low chemical
9 content in the water. Larval fish and amphibians depend
10 on clean water in our lakes, streams and rivers to
11 develop.

12 We all have to remember that
13 amphibians, such as frogs, toads and salamanders must
14 lay their eggs in water. And the tadpole larvae can
15 spend up to a year or more in the lake or pond or stream
16 where they hatch, exposing them to conditions in the
17 water.

18 And the aquatic insects they need are
19 also sensitive to all of these chemicals. Discharges
20 containing any of these chemicals, especially at the
21 limits we're talking about for the changes, tend to
22 decimate the wildlife and fish and receiving waters.

23 Narrative standards are nearly
24 impossible to measure, monitor and enforce. As I
25 understand it, the Class 3 standard would only apply to

1 severe folly and corrosion, a situation far beyond the
2 survival of aquatic life.

3 The proposed Class 4 standard is
4 especially troubling as this standard should be
5 protective of wildlife, including fish, amphibian and
6 their food web and the other wildlife that depend upon
7 them.

8 The proposed standard likens wildlife
9 to livestock with no regard for the special sensitivity
10 of larval fish, amphibians or the insects they feed upon
11 to thrive.

12 The proposed effect on allowing a
13 higher sulfate standard is especially troubling as
14 higher levels of sulfate in nutrient release and massive
15 algal blooms, as well as the release of toxic forms of
16 mercury and biomagnification across the entire food
17 chain, right up to humans, who consume fish.

18 From the SONAR the MPCA acknowledges
19 that most discharges would not even be subject to any
20 requirement limits using the narrative standard and
21 translators. So, this proposal literally opens the
22 flood gates of pollution into our waters.

23 Effects of the proposed deregulation
24 on amphibians is of special concern to me as a
25 scientist. There have been very few studies on the

1 effects of salts and conductivity or of the other
2 chemical constituents on larval or adult frogs,
3 salamanders or related aquatic animals.

4 Amphibians, especially their eggs in
5 larval forms are very, very sensitive to water
6 chemistry. But there have been far, far too many
7 studies to help us know whether amphibians can adapt to
8 higher ionic saltier water, especially here in Northeast
9 Minnesota.

10 We know also that nutrient
11 eutrophication reduces oxygen in water and eliminates
12 aquatic animals. We have several designated threatened
13 endangered amphibians and aquatic reptiles in Minnesota
14 which we must protect, northern cricket frog, Blanding's
15 turtle, wood turtle, spotted salamander, the Great
16 Plains toad, and the four-toed salamander, also the mud
17 puppy.

18 Many of these inhabit aquatic
19 ecosystems in Northeast Minnesota where these proposed
20 deregulated chemicals would have their greatest effect.
21 There are a number of endangered muscles here that must
22 also have clean water for their entire life cycle.

23 The proposed changes to the Class 3
24 and 4 standards go against the Clean Water Act and
25 threaten endangered species protections.

1 I'm closing here now to say that
2 these changes in the Class 3 and 4 standards would
3 literally deregulate these chemicals in most cases.

4 I'm very concerned that discharges of
5 these chemicals with no real or feasible numeric
6 standards and no monitoring and enforcement would cause
7 great impact to our ecosystems and the whole food chain
8 that people appreciate and in many cases depend upon.

9 In closing, I would ask you to
10 reject, disapprove all of the MPCA's proposed changes to
11 remove numeric standards for salts and ionic pollutants
12 from Class 3 and 4 waters. There is simply no science
13 supporting these changes, and from a clean water
14 perspective, no justification.

15 There's no need for the changes, nor
16 are the changes reasonable. And so, thank you very much
17 for the opportunity to share my perspectives.

18 THE JUDGE: We're so grateful for
19 your time and very thoughtful comments, Dr. Keough, and
20 appreciate your contributions to our record.

21 Okay. Next up is Jo Haberman.
22 Ms. Haberman, if you wouldn't mind stating and spelling
23 your name for our record.

24 JO HABERMAN: It's Jo, J-o, Haberman,
25 H-a-b-e-r-m-a-n.

1 THE JUDGE: Thank you so much,
2 Ms. Haberman. What should we know?

3 JO HABERMAN: I care extremely deeply
4 about clean water and water quality standards here in
5 Northern Minnesota where I live, as well as all around
6 our state. I oppose the MPCA's proposed water quality
7 standards rule revisions and believe they should be
8 rejected.

9 MPCA's proposed water quality
10 standards rules revision would weaken or eliminate
11 numeric criteria for conventional pollutants, such as
12 specific conductance, total dissolved solids and
13 sulfates. And, therefore, would not meet the purposes
14 of the Clean Water Act and would not protect the waters
15 of our state.

16 I ask the MPCA to publicly post
17 answers to the following questions as soon as possible
18 so the public can review the agency's answers well
19 before February 23rd of this year.

20 First question: If MPCA makes these
21 changes what would the extent of impact be on fish and
22 all other aquatic life?

23 Question two: Where would this
24 proposal allow water pollution that our existing
25 standards prevent?

1 And the third question: How would
2 current or future permits be weakened by the proposed
3 changes, including the suspended PolyMet water permit?
4 Thank you, Judge.

5 THE JUDGE: Thank you so much,
6 Ms. Haberman, appreciate your time and contributions and
7 very thoughtful questions for our record.

8 With that, Ms. Maccabee, Counselor,
9 you're up next, if you wouldn't mind stating and
10 spelling your name for our record.

11 PAULA MACCABEE: Yes, Your Honor. My
12 name is Paula Maccabee. And Maccabee is
13 M-a-c-c-a-b-e-e.

14 THE JUDGE: What should we know,
15 Counselor?

16 PAULA MACCABEE: First, for the
17 record, I serve as Water Legacy's advocacy director and
18 counsel. And Water Legacy is a nonprofit that has been
19 working since 2009 to protect water quality.

20 From our perspective MPCA's proposed
21 Class 3 and 4 rules would remove numeric water quality
22 standards for salts and major ions. For some of these
23 chemicals there would be no other standard left in
24 Minnesota. For other chemicals, MPCA would leave a
25 weaker standard.

1 And MPCA would also narrow the
2 narrative descriptions of uses and require translators
3 to implement its new narrative standards. The new
4 narrative standards sound like unenforceable discretion.

5 But it gets worse because MPCA's
6 narrative standards for Class 3 and 4A would require no
7 effluent limits at all for any existing discharger.

8 The Class 3 rules would boil down to
9 a calcium test for severe scaling at a downstream intake
10 pipe. As a result, MPCA admits on Page 110 of the SONAR
11 that there will be no new hardness effluent limitations.
12 Some facilities that would previously have needed a
13 hardness limit will not need one.

14 Next, MPCA's Class 4A rules would
15 boil down to a weak conductant and sodium test diluted
16 at a downstream intake pipe.

17 MPCA also admits that applying its
18 translator for irrigation, and this is on Page 110 of
19 the SONAR, no NPDES discharger, that's any discharger of
20 the permit, would receive a specific conductance
21 effluent limit. And no NPDES discharger would receive a
22 sodium limit in a permit.

23 According to MPCA's rules, MPCA will
24 also have no discretion to set effluent limits if they
25 weren't required by these translators. So, MPCA's

1 proposed rules deregulate pollution. These rules will
2 actually be one size fits all. And that size will be no
3 pollution limits.

4 Next, MPCA's proposed rules are
5 illegal. Under the Clean Water Act water quality
6 standards apply to all waters of the United States.
7 Right now all Minnesota lakes, streams and wetlands are
8 designated for Class 3 and 4 uses.

9 So, the existing numeric standards
10 apply to more than 12,000 lakes, 100,000 miles of
11 streams and 9.3 million acres of wetlands. Neither the
12 Clean Water Act nor Minnesota law authorize privatizing
13 water to cover only intake pipes for large
14 appropriators.

15 This is actually how MPCA's rules
16 would work since effluent limits would only be set if
17 there was something amiss at the location of an intake
18 pipe for a large appropriator.

19 Now, the Clean Water Act prohibits
20 states from removing existing designated uses from any
21 surface water. Uses apply to water bodies and water
22 bodies do not have white lines between one technical
23 class and another.

24 An existing use is if a water body
25 met the standard at any time since November 28, 1975.

1 And those existing designated uses can't be removed.

2 Now, even if pollution has happened
3 and a water body has been grossly polluted all the time
4 since 1975, a designated use can't be removed without a
5 detailed use attainability analysis, called a UAA, for
6 that specific water. Now, MPCA hasn't done a UAA for a
7 single body of water.

8 Its proposed rules are a way to
9 circumvent that requirement and, in fact, remove water
10 quality from tens of thousands of water that are
11 designated to be used for industrial use, agricultural
12 use, wildlife use, and Class 2 aquatic use. MPCA's
13 proposed rules are illegal because they violate the
14 Clean Water Act.

15 Next, MPCA's proposed rules are also
16 unreasonable and harmful. Pollution deregulated by the
17 MPCA's proposed rules would not "ensure environmental
18 protection," as Mr. Paulson suggested was a goal that
19 all of us had. In fact, the rules would impose hardness
20 and corrosion on both downstream businesses and
21 downstream community water systems.

22 They would prevent the use of surface
23 water to grow fruit and vegetables, as Dr. Hanson
24 explained, deprive wildlife of food and habitat,
25 jeopardize the survival of endangered species, degrade

1 wild rice and kill aquatic insects and fish.

2 Harmful ecosystem impacts of
3 increased sulfate would release mercury, phosphorus and
4 nitrogen from sediments, thus increasing mercury
5 methylation downstream, as Dr. Allert mentioned.

6 As a result, in addition to toxic
7 mercury contamination of fish, clear waters will be
8 described by algae blooms, affecting anything that
9 drinks from them and animals that try and live in them.

10 MPCA's proposed pollution
11 deregulation rules are illegal, unreasonable and
12 devastatingly harmful. They're also unfair.

13 In 2004 U.S. Steel wanted to siphon
14 its salts and hardness pollution from the Minntac
15 tailings pool into public waters in order to avoid
16 scaling corrosion and three million dollars a year in
17 its own operating costs caused by its own pollution.

18 But then MPCA concluded that
19 siphoning pollution would harm wetlands, fish, wild
20 rice, wildlife, including amphibian eggs, and would hurt
21 local economies.

22 Like the Minntac siphon project,
23 today's rules to remove numeric water quality standards
24 would benefit a few polluters at the expense of all
25 other uses of water. That is neither fair, nor

1 reasonable, nor needed.

2 MPCA's rules must be rejected in its
3 entirety. And we will, on behalf of Water Legacy,
4 provide detailed comments.

5 I would also like to say at the end
6 when everybody else has talked, we have a list of
7 questions we would like to ask MPCA. And we would not
8 impose further on your time at this point.

9 THE JUDGE: Counsel, we're very
10 grateful for your time and thoughtful contributions and
11 your courtesies to the people in line behind you. If
12 you'll hang with us I'll be glad to recognize you for
13 another round and for you putting those questions into
14 the record. Thank you so much, Counselor.

15 Our next witness is Jaci Christenson
16 and following her will be Anna Cohen. Ms. Christenson,
17 if you could state and spell your name for our record.

18 JACI CHRISTENSON: It's Jaci
19 Christenson, J-a-c-i, C-h-r-i-s-t-e-n-s-o-n. Good
20 evening on this iconic Minnesota winter afternoon.

21 I have had limited time for the real
22 technical research like Paula has covered in preparation
23 for the MPCA rule change to the water district permits
24 for good reason. I've been trying to stop the impacts
25 from the Line 3 debacle where the MPCA issued permits to

1 pollute our water with tar sands oil.

2 Before you move forward with these
3 rule changes I implore every one of you to take a trip
4 up north along the Line 3 route of destruction to see
5 just firsthand how the decisions you make impact the
6 people and the places that you're charged to protect.

7 It's immediately obvious that there
8 are numerous concerns around these rule changes. You're
9 removing and weakening our protections and you're
10 violating treaties and not upholding Executive Order
11 1924, which affirms, and I quote, "Government to
12 government relationship between the state of Minnesota
13 and Minnesota tribal nations providing for consultation,
14 coordination and cooperation."

15 This rule change should never have
16 made it past the first consideration, which is the first
17 people and their inherent rights.

18 From Page 183 of the Statement of
19 Need and Reasonableness, quoting, "Grand Portage and the
20 Great Lakes Indian Fish and Wildlife Commission do not
21 support the change from numeric to narrative standards
22 proposed for Class 3 and Class 4A."

23 They see narrative standards as less
24 protective and less enforceable. Fond Du Lac commented
25 that the MPCA has a history of not enforcing narrative

1 or numeric standards and that the replacement of numeric
2 standards with narrative standards is not scientifically
3 defensible.

4 These rule changes are unreasonable.
5 This should be the end of the story right here, but
6 instead you push forward. There's no denying the
7 privilege that is represented in the MPCA staff. How do
8 you justify this blatant racism and corporate capture
9 evident throughout this process?

10 Have courage. Use your privilege and
11 strengthen rather than weaken our protections. Take
12 time to listen to the voices of our youth in Northern
13 Minnesota who are as we gather here today risking
14 everything, locking themselves to equipment for our
15 water and for our future.

16 Technical comments -- I will submit
17 technical comments at a later time. Thank you so
18 much.

19 THE JUDGE: So grateful for your time
20 and contributions, Ms. Christenson. Looking forward to
21 your remarks by the 24th of February. Thank you.

22 Ms. Cohen, Counselor, if you wouldn't
23 mind stating and spelling your name for our record.

24 ANN COHEN: Thank you, Your Honor.
25 My name is Ann Cohen, A-n-n, C-o-h-e-n.

1 THE JUDGE: What should we know,
2 Counselor?

3 ANN COHEN: Well, this is what I
4 think we should know. First, the diagram that MPCA
5 showed during its presentation of the roads leading to
6 the box, saying water quality standards only protect
7 their beneficial use is wrong. What the box should say
8 is protect all existing beneficial uses of water.

9 The Clean Water Act requires water
10 quality standards to protect all existing uses. You
11 cannot remove a road if it is going to impact an
12 existing beneficial use of that water. In particular,
13 the key aquatic life use.

14 So, now my lawyerly juices are
15 flowing and I'm very tempted to go into chapter and
16 verse of the Clean Water Act and its regulations, but I
17 think I will save that for my written comments.

18 THE JUDGE: We're so very grateful.

19 ANN COHEN: Unless you'd like to hear
20 it now.

21 THE JUDGE: Can you hit the
22 highlights, Counselor? Mindful that there are other
23 people who also have arguments on the Clean Water Act
24 that are in line behind you.

25 ANN COHEN: I will. So, my main

1 point is, although adopted to protect industrial,
2 agricultural uses, the current Class 3, 4 numeric
3 standards protect aquatic life.

4 And this is demonstrated by a robust
5 body of scientific evidence, including some created by
6 the MPCA itself. And this evidence is already in this
7 rulemaking record and we will add to it with our
8 comment.

9 So, removing these standards -- these
10 numeric standards would endanger aquatic life, which is
11 the most important use of our waters. And Minnesota
12 knows this.

13 For years Minnesota has fought
14 proposals to outlet Devils Lake in North Dakota into
15 Minnesota waters in part because of the high level of
16 dissolved solids, including sulfate, in that lake.

17 And tests conducted on that lake
18 water on game fish, walleye, northern pike, have
19 established that such high dissolved solid level impede
20 fish hatching. And this is not what we want for our
21 Minnesota waters.

22 So, the Clean Water Act does not
23 allow the State to weaken its water quality standards.
24 It is irrelevant that MPCA adopted the Class 3 and 4
25 standards to protect industrial and irrigation uses.

1 Under the Clean water Act these
2 standards cannot be changed if removing them would
3 endanger the existing aquatic life use.

4 So, MPCA does not disagree that its
5 changes to these rules must not endanger the aquatic
6 life use. And in this rulemaking MPCA makes two
7 arguments as to why it should be allowed to proceed.

8 First, MPCA argues that they can
9 enforce a narrative standard to protect aquatic life.
10 And second, MPCA argues that if it enforces the Class 2
11 chloride standards, which is an existing rule, that
12 standard will act as a surrogate to protect aquatic
13 life.

14 Unfortunately, neither of these
15 arguments is valid. First, MPCA has admitted numerous
16 times that narrative standards are more difficult to
17 enforce. In fact, the Clean water Act disfavors
18 narrative standards for this exact reason.

19 So, in order to deal with the problem
20 of enforcing the aquatic life narrative standard, MPCA
21 has included the S-5 SONAR appendix, S-5 policy
22 document, which effectively established the standards
23 based upon specific conductant.

24 But MPCA has a problem because it
25 cannot effectively enforce the S-5 document unless it is

1 adopted into rule. Right now it's an unpromulgated
2 rule. And MPCA has run into problems in the past trying
3 to enforce its unpromulgated policies.

4 The chloride standard similarly has
5 enforcement issues. And MPCA has admitted that the most
6 likely solution to high chloride discharges, the one
7 that cities could probably afford, would not address the
8 other salty parameters as it hopes.

9 So, MPCA does have some options here,
10 Judge Lipman. They could put this rulemaking on hold or
11 delay its effective date until it concurrently adopts
12 its specific conductant narrative translator, the S-5
13 document, into rule.

14 Based on MPCA's robust scientific
15 support for their document and EPA's recent action in
16 approving a specific conductant standard for the Fond du
17 Lac Band, specific conductance numeric standards would
18 provide broad protection for aquatic life and would
19 likely be approved by the EPA.

20 So, as a related or independent
21 option, MPCA could also concurrently adopt the rule
22 requiring significant dischargers of dissolved salts and
23 solids to conduct full effluent toxicity testing to
24 determine protective limits for the water bodies
25 receiving their discharge.

1 But the current proposal is half a
2 loaf and it is not better than none, it is worse. Now,
3 MCEA supports financial assistance to governmental units
4 which are struggling to comply with the existing
5 standards, including the chloride standard.

6 MCEA believes that with time and
7 creative engineering many small towns and cities will be
8 able to reduce their salty waste streams. We support
9 variances and schedules of compliance as necessary to
10 work out the issues.

11 But we do not support eliminating
12 numeric standards that would let industrial dischargers
13 that can't afford to fix these problems completely off
14 the hook.

15 Finally, we do have one specific
16 concern that we would like MPCA to address either today
17 or in its written responses. And that is how these rule
18 changes, if adopted, would affect the proposed permit
19 for the PolyMet facility.

20 Would these changes allow the PolyMet
21 mine to reduce the level of treatment it has proposed?
22 Would these changes, if adopted, allow PolyMet to
23 discharge directly from its tailings basin?

24 In closing, Judge Lipman, MCEA also
25 supports providing some extra time for rebuttal

1 comments, if that is possible.

2 I think we're going to have a lot of
3 substantial comments in this record. And I think it
4 would be reasonable if we could agree on an extension of
5 the time from the given five days.

6 So, with that, I will close my
7 statement unless anybody has any questions they would
8 like to address.

9 THE JUDGE: We're grateful, Counsel.
10 I think the five-day piece is in statute and rule and
11 that might be the subject of a future legislative
12 change, as some of the items that we're doing in
13 rulemaking involve highly technical questions.

14 I know that it's certainly a
15 challenge for the agencies to do rebuttal in this
16 circumstance, just as it might be for stakeholders.

17 And so, I don't think I have the
18 authority to do that in this proceeding, but I would
19 encourage you to look at Chapter 14 and Part 1400. If
20 you agree with that assessment, put a pin on it and
21 maybe we both arm in arm go up to the legislature and
22 say that this needs to be rethought.

23 I don't think I, in fact, have the
24 power to do what you're suggesting. With that, I'm very
25 grateful for your time and contributions to the record.

1 With that, Ms. Linda Herron, if you
2 would state and spell your name for our record.

3 Ms. Herron, state and spell your name for our record.

4 LINDA HERRON: Yes, my name is Linda,
5 L-i-n-d-a, Herron, H-e-r-r-o-n. I testify as a resident
6 of Minnesota who's concerned about the health of our
7 environment, our waters included.

8 The Minnesota Pollution Control
9 Agency was created, as I quote their website, "To
10 monitor environmental quality and enforce regulations
11 using data driven decisions to protect the health of
12 Minnesota's people and their environment."

13 In the recent past the MPCA has
14 tarnished its reputation as a guardian of environmental
15 health and thereby lost the trust of the people, and I
16 include myself here.

17 I refer to the MPCA's attempt to
18 discourage the Environmental Protection Agency from
19 submitting its comment on the PolyMet mine proposal
20 until the public comment period had ended.

21 So, when the MPCA proposes to
22 deregulate certain standards, the public, myself
23 included, wishes to know the origin of these proposals
24 and whether powerful entities have come to influence
25 outcomes.

1 Implicit in the proposed deregulation
2 of numeric standards in favor of narrative standards,
3 the data driven decisions referred to earlier seem to
4 give way to a more subjective determination of what
5 constitutes pollution or danger thereof.

6 The MPCA narrative standard uses the
7 term "reasonable" whose definition varies widely from
8 agency to agency and agent to agent. The elimination of
9 numeric criteria for conventional pollutants leads to a
10 failure to meet the purposes of the Clean Water Act and
11 will not be protective of Minnesota's waters.

12 If these rule changes are enacted the
13 standards that protect Minnesota's waters from excessive
14 sulfates would become unenforceable. In fact,
15 deregulation of the main pollutants of the mining
16 industry is a clear nod to that industry to do whatever
17 is deemed necessary to continue mining practices as
18 reasonable.

19 I am concerned that these
20 deregulations will allow not only the current taconite
21 mining industry greater freedom from pollution limits,
22 but additionally proposed more hazardous industries,
23 such as copper-nickel mining.

24 Contamination of clean water in the
25 Boundary Waters Canoe Area and the Lake Superior

1 watersheds by copper-nickel mining pollution is assured.
2 what about aquatic insects, fish and amphibians, would
3 their survival be jeopardized?

4 Mercury contamination would result
5 from higher levels of sulfate, causing algal blooms.
6 The wider repercussions of unregulated salt impacts on
7 sustainable farms and the impact on tourism, fishing and
8 general recreation need to be assessed before changing
9 important protective regulations.

10 I ask, therefore, that you, Judge
11 Lipman, reject the MPCA's proposed rules to deregulate
12 salts and ion pollution in Classes 3 and 4. These rule
13 changes will not protect people or natural resources
14 from dangerous pollution. They favor industry over
15 people.

16 Rather than fewer or less limiting
17 regulations, the MPCA should be focused on protection of
18 people and their environment first and foremost. And I
19 thank you for listening to my comments.

20 THE JUDGE: Ms. Herron, we're
21 grateful for your time and very thoughtful contributions
22 to our record. With that, our next witness is Bob
23 Tammen. Mr. Tammen, if you wouldn't mind stating and
24 spelling your name for our record.

25 BOB TAMMEN: Thank you, Your Honor.

1 My name is Bob Tammen, B-o-b, T-a-m-m-e-n.

2 THE JUDGE: What should we know?

3 BOB TAMMEN: My wife Pat and I live
4 in Soudan, Minnesota, home of Minnesota's first iron
5 mine. I started working in the mines 50 years ago. At
6 that time we had mines with tailings ponds that were
7 leaking degraded water into Minnesota's public waters.

8 Now 50 years later (inaudible) into
9 Minnesota's public waters. 50 years of pollution. And
10 now you (inaudible) Hanson talked about specific
11 conductivity. And I was really interested in
12 conductivity because I did electrical work in the mines.

13 I'm interested in how good does water
14 carry electricity and feed water carries very little
15 electricity. So, I went and bought a conductivity meter
16 and I checked conductivity all over the Arrowhead.

17 When I go to one of Minnesota's
18 natural lakes, I'm probably going to get a reading of
19 less than a hundred microsiemens. The iron mining pit
20 that's filled with ground water and surface all get
21 measurements up to 300.

22 (Inaudible) tailings pond, it's
23 common to get readings over a thousand microsiemens.
24 we've got an order of magnitude greater conductivity
25 coming off of our mining operations and being dumped

1 into our public waters.

2 We have a real problem with
3 degradation up here. And, you know (inaudible). I'm
4 too old and the mining companies are too dirty to get it
5 done that quick, but we can lay a foundation for the
6 next generation. And I think that's what we have to be
7 thinking here.

8 It's obvious that these (inaudible)
9 is a little amorphous, a little easier to manipulate.
10 We need firm standards. We need to clean up that
11 conductivity. We need to leave something better for the
12 next generation. Thank you.

13 THE JUDGE: Thank you so much,
14 Mr. Tammen, appreciate your time and very thoughtful
15 contributions to our record. With that, Mr. Bruce
16 Johnson, and following him will be Maureen Johnson.
17 Mr. Bruce Johnson?

18 BRUCE JOHNSON: Hello.

19 THE JUDGE: If you could state and
20 spell your name for our record, Mr. Johnson.

21 BRUCE JOHNSON: Yes, Your Honor, my
22 name is Bruce Johnson, B-r-u-c-e, J-o-h-n-s-o-n.

23 THE JUDGE: Thank you so much. What
24 should we know?

25 BRUCE JOHNSON: I conducted water

1 quality research, including lake recovery from sewage,
2 at the US EPA and copper-nickel sulfate mining impacts
3 at the DNR. I'm familiar with Minnesota industrial
4 water quality permits because I enforce them at MPCA.

5 As a supervisor at MnDOT it was my
6 job to understand environmental rules and work with
7 personnel to ensure their compliance. My education is
8 in biology and chemistry.

9 All of my experience gives me both
10 scientific and compliance insights into the proposed
11 rules we're discussing today. Under the proposed rules
12 more pollution will be allowed in all Minnesota water
13 bodies than before.

14 MPCA's own science is not considered
15 in doing its rule writing. The rules must be rejected.
16 The proposed rules reduce protections that are important
17 to Minnesotans and our clean water.

18 Elimination of these standards will
19 cause significant degradation of water because there's
20 no numerical basis remaining for control of pollutants.
21 Because these standards have not been enforced by MPCA
22 in water permits, some pollutants are already toxic in
23 our waters.

24 The MPCA's proposed rules for Class 3
25 and 4 would not meet the purposes of the classes in the

1 Clean Water Act in the Minnesota law. Clean Water Act
2 and Minnesota Statutes 115.42 require protections to
3 prevent and control pollution in order to maintain and
4 restore water bodies.

5 Minnesota Rule 7050.0140 requires
6 rules to protect public health and welfare. But
7 Minnesota's SONAR states that the purpose of these
8 proposed rules is to make it easier for large industries
9 and agriculture.

10 In Class 3 and 4 most numeric
11 standards are removed. Some are replaced with a
12 narrative standard. And what is left applies to
13 specific users, not to all the users of the water.

14 I've both enforced rules and complied
15 with them. I can say emphatically that I could not
16 enforce these narrative rules to protect water, nor
17 could I comply with them without numerical standards.

18 Today I'll focus my efforts on
19 chlorides and sulfates in Minnesota waters and habitats.
20 My written comments will be more comprehensive.

21 Chloride and sulfate have direct
22 individual toxicities to organisms, but they also have
23 critical impacts to habitat because they are each
24 heavier than water. They concentrate the bottom of
25 surface waters and they displace oxygen.

1 Sediments then release extensive
2 nutrients and heavy metals that are held in these
3 sediments. The reaction of sulfate and sediments will
4 result in increased mercury releases, along with other
5 heavy metal.

6 Excess nutrients can result in
7 overgrowth of blue-green algae, well known to kill dogs
8 and harm humans even at Shagawa Lake up in Ely.

9 MPCA proposes Class 3 rules to remove
10 numeric standards for the pollutant. Most of the areas
11 in Minnesota are classified as protective of Class 3 and
12 Class 3B chloride standards in Northeastern Minnesota in
13 the sense of the Lake Superior, Boundary Waters and
14 watersheds.

15 This area is naturally low in
16 chlorides. But copper-nickel mining is likely to bring
17 new chloride pollutants to the surface. I'm personally
18 aware of high chlorides found in the MN AMAX
19 copper-nickel exploration in the mid 1970s.

20 Their dewatering killed some wetland
21 and vegetation out there. They had a study for a long
22 time. Scientific research has determined that salt
23 inclusions found anywhere in the Duluth complex, the
24 area where the sulfide mining is proposed, is very high
25 in concentration.

1 As with other standards in this
2 rulemaking MPCA has proposed to remove existing chloride
3 standards. Minnesota's remaining 230 parts per million
4 Class 2 chloride standard is not sufficiently protective
5 of lake or wetland habitat.

6 Low oxygen conditions developed below
7 the chemokine, that's a salt-induced layering in lakes
8 that salt falls to the bottom, hangs there. That
9 results in the loss of all but the most resilient of
10 deep water species. Fish such as Lake Trout, many other
11 species are adversely affected because they can't get in
12 the habitat.

13 MPCA has admitted that chloride road
14 salt is toxic to Minnesota waters. And Minnesota's
15 chloride salt problems threatens freshwater fish.

16 So, my conclusion is Minnesota's
17 proposed removal and weakening of a numeric standard for
18 chloride and sulfates does not follow the law, will not
19 protect these protective aquatic life or their habitats.

20 It's unreasonable and fails to
21 consider the science of lakes and sediments. Please
22 disapprove the changes to Minnesota's proposed rules.
23 Thank you.

24 THE JUDGE: Thank you so much,
25 Mr. Johnson, very grateful for your time and very

1 thoughtful contributions to our record, really do
2 appreciate that. So, with that, Ms. Maureen Johnson?

3 CLAUDIA HOCHSTEIN: Ms. Johnson, I
4 have requested to unmute your line. Ms. Johnson, your
5 phone should be prompting you to unmute yourself at this
6 point. Ms. Johnson, I believe you're unmuted.

7 THE JUDGE: Ms. Johnson?
8 Ms. Johnson, I'm just wondering if we can take
9 Ms. Sietsema's testimony and then we'll try again in
10 hopefully around five minutes time. I guess I'd like to
11 do that if you don't mind.

12 Ms. Sietsema, if you wouldn't mind
13 stating and spelling your name for our record once you
14 are unmuted. I'm not sure -- hold on a second,
15 Ms. Sietsema, there seems to be a sound issue.

16 CLAUDIA HOCHSTEIN: Ms. Sietsema, are
17 you trying to talk? Because it does look like you are
18 unmuted here.

19 THE JUDGE: Ms. Sietsema, why don't
20 you try again?

21 SARA SIETSEMA: How about now?

22 MS. HOCHSTEIN: Yes.

23 THE JUDGE: Use your stage voice, it
24 seems very soft.

25 SARA SIETSEMA: Sara Sietsema,

1 S-a-r-a, S-i-e-t-s-e-m-a.

2 THE JUDGE: Ms. Sietsema, what should
3 we know?

4 SARA SIETSEMA: Thank you for the
5 opportunity to comment on the proposed amendments to
6 rules governing the State's Class 3 and 4 water quality
7 standards.

8 I am the environmental specialist for
9 the City of Willmar, which owns and operates a
10 wastewater treatment facility and holds a National
11 Pollutant Discharge Elimination System and a State
12 Disposal System permit.

13 Cities like Willmar are on the
14 forefront of protecting Minnesota's water quality
15 through our wastewater and storm water facilities.

16 Our goal as cities is to ensure that
17 our state's water resources are protected based on the
18 best available science in a manner that allows for
19 flexibility and ensures wise investments of limited
20 state and local resources for clean water
21 infrastructure.

22 It has been a long-standing priority
23 of Willmar and other cities to seek updates and
24 revisions to Class 3 and 4 water quality standards.

25 The State has known that the

1 standards are outdated since at least 2010 and has
2 continued to include limits in cities and NPDES permits
3 based on the outdated standards since that time.

4 More recently MPCA has completed
5 updated scientific work to propose alternative standards
6 that can protect the environment and address our
7 long-standing concerns. We believe it's past time to
8 update the standards.

9 Willmar's current wastewater permit
10 has limits based on the outdated Class 3 and 4 water
11 quality standards. The existence of these limits in our
12 permit is a significant concern for our community
13 because these limits have the potential to limit our
14 economic growth and require the City to make extremely
15 costly changes to existing infrastructure in the future.

16 It is unreasonable to require our
17 City to meet permit limits that have serious negative
18 economic impacts for our community where the standards
19 those permit limits are based upon are outdated and not
20 based on the most recent science.

21 From our perspective it is critical
22 to update these standards now so we can work with MPCA
23 to have the flawed limits taken out of our permit to
24 avoid additional costs or negative impacts on our
25 economy due to these outdated standards.

1 willmar is committed to Clean Water
2 Act compliance and protecting our local watershed. When
3 our wastewater treatment facility was built in 2010 it
4 was not designed to remove salty parameters such as
5 bicarbonates, hardness, total dissolved solids or
6 specific conductance.

7 willmar's drinking water source is
8 ground water, like many municipalities, and our ground
9 water is considered very hard. Our City's source water
10 exceeds or nearly exceeds the future final monthly
11 average permit limits for four parameters.

12 willmar has two water treatment
13 plants, so implementing the technology to achieve
14 compliance with the Class 3 and 4 limits has shown to be
15 grossly unaffordable.

16 Over the past five years we have
17 spent more than two and a half million dollars to reduce
18 chloride use, identify and improve INI and educate our
19 residents on the environmental impacts of excess
20 chloride.

21 Based on our preliminary review of
22 MPCA's proposed amendments to the Class 3 and 4 water
23 quality standards we are generally supportive of the
24 following proposed changes.

25 We are supportive of the Class 3 and

1 Class 4A standards changing from numeric standards to
2 narrative standards. This change is needed and
3 reasonable and is supported by the updated science.

4 It will also allow MPCA needed
5 flexibility to implement these standards in City permits
6 in a manner that ensures environmental protection and
7 reduces unnecessary costs and economic harm for cities
8 such as Willmar by using the narrative translator
9 process.

10 We are generally supportive of the
11 proposed narrative translator processes developed for
12 both the Class 3 and 4A standards. This process allows
13 for a tailored site specific approach to permit limits
14 and water protection that many municipalities have long
15 requested.

16 However, to ensure regulatory
17 certainty, we would like to ensure that MPCA cannot
18 change these narrative translator processes without
19 seeking review and comment from the public beforehand.

20 We are concerned about MPCA's
21 proposal to adopt guidance about how to implement the
22 state's aquatic life narrative standards as part of this
23 rulemaking. This issue is outside the scope of this
24 rulemaking.

25 It impacts multiple cities and is not

1 something that was previously presented to cities or
2 city groups. This effort should be completed by a
3 separate rulemaking process.

4 On behalf of the City of Willmar I
5 urge MPCA to update the outdated standards to ensure
6 that Willmar will be regulated based on the best
7 available science.

8 Thank you for the opportunity to
9 testify. I appreciate the work that MPCA has put into
10 this effort. And I will be working to provide more
11 detailed comments before the end of the public comment
12 period.

13 THE JUDGE: Thank you so much,
14 Ms. Sietsema, appreciate your time and very thoughtful
15 contributions. I'd like to go back in the line to try
16 Ms. Johnson again if we could. Ms. Maureen Johnson, are
17 you able to access the audio?

18 CLAUDIA HOCHSTEIN: Ms. Johnson, I
19 sent a request for you to unmute your phone. Your phone
20 should be asking you to unmute yourself.

21 THE JUDGE: Well, Ms. Johnson, out of
22 deference and respect for the other folks in line behind
23 you, I'm going to move on in the list.

24 Mindful, of course, that there's a
25 full 20 calendar day comment period following this up

1 through February 24 at 4:30. And I certainly hope that
2 you will write down what you would have shared with us
3 and be a part of our record.

4 with that, I'm going to move along to
5 Ms. Nancy Schuldt. And following her will be Peder
6 Otterson and Brian Rossow.

7 Ms. Schuldt, if you wouldn't mind,
8 once you're unmuted, to state and spell your name for
9 our record.

10 NANCY SCHULDT: Yes. Hello, Judge
11 Lipman, my name is Nancy Schuldt, it's spelled
12 N-a-n-c-y, S-c-h-u-l-d-t.

13 THE JUDGE: Ms. Schuldt, what should
14 we know?

15 NANCY SCHULDT: I am the water
16 projects coordinator for the Fond du Lac Band of Lake
17 Superior Chippewa. And the Fond du Lac Band has
18 federally delegated authority under the Clean Water Act
19 for our water quality standards program and EPA approved
20 water quality standards. And I have managed our program
21 for over 22 years.

22 First of all, I fully endorse the
23 comments provided by Secretary/Treasurer April McCormick
24 on behalf of Minnesota tribes.

25 But I offer a few additional comments

1 today focusing on just a couple of key clauses in the
2 need and reasonableness of the proposed revised Class 3
3 and 4 water quality standards that we've been flagging
4 for years in both informal staff-to-staff communication
5 between tribes and MPCA, as well as detailed technical
6 comments that have been provided on the earlier draft
7 SONAR in 2019.

8 This proposed rulemaking which
9 weakens or outright eliminates numeric criteria for
10 dissolved salts for the beneficial use classes assigned
11 to industrial, agricultural, and wildlife might seem
12 esoteric, but generally benign.

13 In fact, MPCA assures us in the SONAR
14 that they don't expect the rule changes to have a
15 negative environmental consequence. The proposed rules
16 are designed to be as protective of the industrial and
17 agricultural beneficial uses as the currently applicable
18 standards.

19 The Class 3 and 4 water quality
20 standards continue to apply statewide and as a general
21 classification to all water bodies.

22 As you heard from some of the
23 previous commentators, in direct contradiction to that
24 assertion, the MPCA also maintains throughout the
25 technical support documentation of these rule revisions

1 that these standards only apply where and when there is
2 an appropriator for that use.

3 So, by only applying those standards
4 at a point of intake of water, these revised standards
5 for all intents and purposes do not protect all of the
6 waters of the state, despite what the agency is saying.

7 They only serve to protect documented
8 existing use. They do nothing whatsoever to protect
9 unknown users or future users and they most certainly do
10 not protect wildlife.

11 This leads me to a second important
12 point that I want to make today. How is MPCA actually
13 implementing these water quality standards in Minnesota?
14 Scott Kyser described during the agency overview how
15 water quality standards are established, how they don't
16 cross the lines between uses and how they are distinct
17 from permit limits.

18 Water quality standards don't exist
19 in a Clean Water Act silo. How water quality standards
20 are actually implemented include monitoring and
21 assessment where waters actually meet those criteria and
22 maintain those beneficial uses.

23 They're used to established limits on
24 permitted discharges so that all water body uses will
25 continue to be protected and all water quality standards

1 continue to be met.

2 And finally, they are used to
3 identifying water bodies that are not meeting those
4 criteria or maintaining those beneficial uses. And
5 then, if that's the case, you list those waters as
6 impaired and develop plans or implementation actions to
7 bring those water bodies back into (inaudible).

8 MPCA has not been fully implementing
9 the existing Class 3 and 4 standards today. Their
10 proposed changes will do even less. The agency has
11 never monitored or assessed the waters of the state to
12 see if they meet the existing criteria, nor are they
13 proposing to do so in the future.

14 They have imposed some permit limits
15 in the municipal industrial discharge permits, but I'm
16 not aware of a single instance where there has been
17 enforcement of those limits.

18 I am aware, however, of several
19 specific water bodies where there is clearly an
20 impairment that has been linked to high salinity
21 discharges. And I'm aware of numerous water bodies
22 where industrial dischargers grossly exceed existing
23 standards.

24 But instead of working to bring those
25 dischargers into compliance, the agency instead is

1 weakening the standards. This is not how the Band
2 approaches implementation of our water quality standards
3 under the Clean Water Act. And we don't believe it is
4 reasonable or supportable.

5 Finally, I fully understand that
6 these Class 3 and 4 standards are not intended to
7 protect aquatic life uses. The tribes have been urging
8 the MPCA to promulgate protective numeric aquatic life
9 use, Class 2 standards, for these very same parameters
10 before taking this action of removing or weakening
11 criteria for parameters applicable to Class 3 and 4.

12 And MPCA maintains that they don't
13 have the data or the information needed to do so at this
14 time. They suggest they might consider it in the
15 future. This position is neither reasonable nor
16 supportive.

17 Just last year, 2020, the EPA
18 approved Fond du Lac's proposed specific conductance
19 criteria for aquatic life use, which was derived from
20 MPCA's data following EPA guidance.

21 And this approval from EPA came about
22 despite an extraordinary deluge of critical comments
23 from industrial and municipal dischargers upstream of
24 the reservation during our public comment period.

25 I will be submitting additional

1 detailed technical comments before the comment period
2 concludes. Thank you.

3 THE JUDGE: Thank you so much,
4 Treasurer Schuldt, appreciate your comments and very
5 thoughtful contributions to our record.

6 With that, Mr. Peder Otterson, if you
7 wouldn't mind unmuting yourself and stating and spelling
8 your name for our record.

9 PEDER OTTERSON: Thank you, Your
10 Honor. My name is Peder Otterson, P-e-d-e-r,
11 O-t-t-e-r-s-o-n. That's Peder spelled with a D, it runs
12 in our family. My grandfather brought it with him from
13 Norway in the late 1890s, my dad gave it to me when I
14 was born in Duluth, Minnesota where my mother's parents
15 lived.

16 I made my first canoe trip up to the
17 Gunflint Trail with my dad (inaudible) in 1938 when I
18 was just four years old. Why do I say that? Because
19 that's where I began my love affair with Minnesota's
20 lands and waters.

21 It saddens me to see the changes that
22 are coming. What we do today will affect tomorrow's
23 outcome, either for the good or the bad. Here then are
24 my prepared remarks that I will also be submitting later
25 into the written record.

1 I speak in opposition to the proposed
2 deregulation of MPCA rules regarding Class 3 and 4
3 waters. I base this upon both my education and later
4 work as a hydrogeologist and limnologist that included
5 work as a full Brice scholar at the Max Planck Institute
6 for Limnology in Germany early in my career.

7 while pursuing a doctorate at the
8 Limnological Research Center at the University of
9 Minnesota, I interrupted my studies in 1972 to conduct
10 work as a research scientist on the regional
11 copper-nickel study in Northeast Minnesota.

12 From there I went on to serve 34
13 years with the Minnesota Department of Natural Resources
14 Division of Waters, from which I am now retired.

15 I fully understand why the Minnesota
16 Pollution Control Agency should see the need to update
17 the water quality standards that have been basically
18 unchanged since 1967. However, this is not the way to
19 do it.

20 During the earlier copper-nickel
21 study I helped to track leachate from a waste rocks
22 stockpile at the Dunka pit as it flowed through an
23 unnamed stream and wetland and to Bob Bay on Birch Lake.

24 The water was high and dissolved
25 metals and other elements. Specific conductance was a

1 convenient and easy way to track the pollutants as they
2 made their way to the lake. Such a test is neither
3 costly nor difficult to make.

4 I liken it to a caged canary in a
5 mine, it points to a greater problem. While currently
6 it's only listed for Class 4 waters, I recommend that it
7 be extended to include Class 3.

8 This leads me to the proposal to
9 eliminate all numerical standards for Class 3 and 4
10 waters and replace them with more general narrative
11 standards. I see absolutely no reason to support such a
12 change.

13 Much has changed since 1967. At that
14 time we had little awareness of the growing impacts of
15 the global climate change. Now we can see the effects
16 all around us, including right here in Minnesota.

17 These will continue to worsen in the
18 next few years. They are both direct and indirect
19 (inaudible) to water quality. I see no mention of that
20 at all in the SONAR.

21 Furthermore, so far as Class 4 waters
22 are concerned, we now know much more about the impact of
23 neonicotinoids upon pollinators caused by intensive
24 agricultural irrigation.

25 Associated nitrates are also known to

1 migrate down into the ground water where they can
2 pollute both private and public water supplies. In
3 fact, nitrate pollution to adjacent streams and rivers
4 feeding the Mississippi River is now known to be a major
5 contributor to the growing dead zone in the Gulf of
6 Mexico.

7 I believe both nitrate and sulfite
8 numerical standards should be maintained and even
9 strengthened. What is the cost to the environment if
10 they are ignored?

11 Finally, as a hydrologist and former
12 water educator, I used to teach about the hydrologic
13 cycle, air, water, ground, they're all interconnected.
14 Everyone wants clean water, but we have to work to keep
15 it that way. The benefit is well worth the cost.

16 With these thoughts in mind, I urge
17 the Minnesota Pollution Control Agency to refresh its
18 water quality standards to meet the challenges that lie
19 before us. Thank you.

20 THE JUDGE: Thank you so much,
21 Mr. Otterson, grateful for your time and thoughtful
22 contributions to our record. Mr. Brian Rossow.

23 And while he's unmuting himself and
24 before he begins, I'll just say that after this we're up
25 against our next 90-minute court reporter break. So,

1 after Mr. Rossow concludes his remarks we'll have a
2 brief intermission.

3 And after the intermission, Karen
4 Johnson, Don Arnosti and Garrie Huisenga will be first
5 in the queue. You won't want to miss that, they have
6 important contributions to make. So, I'm urging folks
7 to stick with us through the intermission after
8 Mr. Rossow.

9 With that, Mr. Rossow, if you would
10 kindly state and spell your name for our record.

11 BRIAN ROSSOW: Absolutely. My name
12 is Brian Rossow, B-r-i-a-n, R-o-s-s-o-w.

13 THE JUDGE: Thank you, Mr. Rossow.
14 what should we know?

15 BRIAN ROSSOW: First of all, I want
16 to thank you, Judge Lipman, for the opportunity to
17 comment on the proposed amendments to the rules on the
18 Class 3 and 4 water quality standards.

19 I'm the city clerk for the City of
20 Lakefield and I'm speaking on behalf of the City, which
21 owns and operates a wastewater facility and holds an
22 NPDES permit.

23 In the essence of preserving
24 everyone's time, I want to say that I completely agree
25 with the comments provided by Ms. Sietsema from Willmar.

1 Lakefield is in a nearly identical situation as Willmar
2 based on our extremely hard water and our permit limits
3 based on outdated science.

4 So, we're really facing a lot of the
5 same challenges. Lakefield currently has limits based
6 on the outdated Class 3 and 4 waters in our wastewater
7 permit.

8 The existence of these limits in our
9 permit is a significant concern for our community
10 because these limits have the potential to limit our
11 economic growth and require the City to make potentially
12 costly changes to existing infrastructure in the future.

13 City of Lakefield with a population
14 of just under 1,700 has already committed to a 20
15 million dollar project to address chloride and other
16 salty parameter limits based on these outdated standards
17 in our permit.

18 We feel it's unreasonable to require
19 our city to meet these permit limits that have serious
20 negative economic impacts for our community where the
21 standards on those permit limits are based on is
22 outdated and inconsistent with the most recent science.

23 So, from our perspective it's
24 critical to update these standards now so that we can
25 work with the MPCA to have the broad limits taken out of

1 our permit to avoid additional costs or negative impacts
2 on our economy because of these outdated standards.

3 So, based on our preliminary review
4 of MPCA's proposed amendments to the Class 3 and 4 water
5 quality standards, we're generally supportive of the
6 following proposed changes.

7 We're generally supportive of the
8 Class 3 and 4A standards changing from numeric standards
9 to narrative standards.

10 We're generally supportive of the
11 proposed narrative translator processes developed for
12 both Class 3 and 4A standards. This process allows for
13 a tailored site specific approach to permit limits and
14 water protection that many municipalities have long
15 requested.

16 A site specific approach is
17 particularly beneficial to Lakefield because our
18 facility discharges treated wastewater to an unnamed
19 stream that is classified as a Class 3 and 4A water,
20 which then flows to South Herron Lake, which is also
21 classified as a Class 3 and 4A water. Neither the
22 unnamed stream or South Herron Lake are used for
23 industrial or irrigation uses.

24 And some of you that might be
25 familiar with Lakefield may have heard our previous city

1 clerk say, kind of became a catchphrase of hers, that
2 you can drink our water, but you can't flush it.

3 And it sounds funny to say that, but
4 what she meant is based on the limits in our permit that
5 were based on the water standards I just mentioned, the
6 ground water from our wells would not meet the permit
7 limits to be discharged. Literally our ground water
8 directly from the wells would not be allowed to be
9 discharged.

10 So, on behalf of my city I urge MPCA
11 to update the outdated standards to ensure that
12 Lakefield and other cities will be regulated based on
13 the best available science. Thank you again for the
14 opportunity to testify.

15 And we appreciate what you've done
16 here today and what the MPCA is continuing to do. And
17 we look forward to providing more detailed comments and
18 working with the MPCA going forward.

19 THE JUDGE: Thank you so much,
20 Mr. Clerk, we're very grateful for your time and
21 contributions on behalf of the city to our record.

22 With that, mindful of our court
23 reporter's dutiful service, she's entitled to a
24 15-minute respite. It's 5:20, so we'll return at 5:35.
25 The webex connection will continue during our

1 intermission.

2 I urge folks to get up to stretch,
3 hydrate as is appropriate. And we'll have an on time
4 departure again at 5:35.

5 I'd ask Ms. Johnson to get into her
6 seat a minute or so early because we're eager to hear
7 from her, Karen Johnson, then Don Arnosti, then Garrie
8 Huisenga, you won't want to miss it. We're in recess
9 until 5:35.

10 (At this time a brief recess was taken
11 from 5:20 p.m. until 5:35 p.m.)

12 THE JUDGE: The hour of 5:35 having
13 arrived, Ms. Hochstein, are we in a position to move on
14 to Ms. Johnson?

15 CLAUDIA HOCHSTEIN: Yes, we are,
16 Ms. Karen Johnson. And I am requesting her to unmute
17 now.

18 THE JUDGE: Madam Court Reporter, are
19 you ready? Excellent. We're back on the hearing record
20 after a short recess.

21 Ms. Karen Johnson, if you wouldn't
22 mind unmuting yourself and stating and spelling your
23 name for our record.

24 KAREN JOHNSON: Okay. I'm trying.

25 THE JUDGE: We hear you, thanks.

1 KAREN JOHNSON: Oh, you do. Oh, you
2 heard that word, too, didn't you? Anyway, I am a native
3 of Northeast Minneapolis, Columbia Heights and I have
4 lived in Minnesota all my life. I love our whole state
5 especially our state parks, lakes, rivers, Boundary
6 waters and Lake Superior.

7 I've owned a cabin on a small
8 pristine lake on widow Lake in Hackensack for 50 years.
9 I've canoed the Boundary Waters many times, sailed on
10 Lake Superior around the Apostle Islands and Isle
11 Royale.

12 I consider myself a good Minnesotan,
13 a very concerned citizen, a nonexpert, as some of you
14 who are very good experts today, and a voice of one.

15 The land and lakes in the Boundary
16 waters and Lake Superior watershed are currently big
17 concerns for many people in our state, including myself,
18 and the representatives Stauber, Emmer, Fischbach, and
19 Hagedorn.

20 Also, another group that's concerned
21 is the Minnesota Pollution Control Agency. The latter
22 two groups are concerned more about jobs and mines while
23 the rest of us seem to have the environment on our
24 minds.

25 The Minnesota Pollution Control

1 Agency, which is an agency that is supposed to be
2 designed to protect the environment by controlling and
3 protecting the pollution in the state, is proposing to
4 lower the already low regulations for salts and ions in
5 the area.

6 If their mission is to protect and
7 increase the environmental standards, how and why do
8 they want to lower them? This is a very big concern for
9 me.

10 It is a known fact that science has
11 proven that salts and ions in water cause mercury
12 poisoning. And lowering that regulation makes no sense.
13 It will cause more pollution and more poisoning.

14 And it's also a known fact that
15 currently without lowering the standards, 10 percent of
16 the babies born in Duluth have levels of mercury that
17 exceeds the limit for brain damage.

18 Lowering the standards would allow
19 more mercury, mercury methylation and algae blooms into
20 the watershed. This is not a good trade. Lake Superior
21 and the watershed is nonpolitical, only the people who
22 manage it.

23 Lowering standards on ions and salt
24 would benefit only large mining corporations, not lakes,
25 not rivers, not industry, not farmers, not toads, not

1 frogs, not wild rice. Not one thing would benefit from
2 those lowering the standards.

3 But lowering the standards would make
4 it easier for the sulfide mines to get permits because
5 they would meet the lower standard. These mines pollute
6 and it has never ever been proven that they haven't.

7 And mining companies have never ever
8 cleaned up the messes they have made. These jobs they
9 create for local Minnesotans are not sustainable, they
10 only last until the mine closes. And most of the jobs
11 are automated and run by the foreign companies that we
12 have ready to do that.

13 We do not even need the minimum
14 amount of copper and nickel that these mines would
15 produce. Production would be a drop in the bucket when
16 compared to the world's copper. The world doesn't need
17 any more copper, we have enough copper to last us 50
18 years into the future.

19 The one thing we could think about
20 and that is recycling. For every pound of copper put
21 into recycling we would get a pound of copper out.
22 There would be no need for a new mine to cause more
23 pollution.

24 If, indeed, they want to put a mine
25 here, let these mines and these companies prove that

1 they will not cause any more pollution or deaths while
2 they're mining and after they close. So far not one
3 mine in the whole world has done that either.

4 I do not wish our state to be the
5 guinea pig for this venture. These mining companies are
6 not thinking of Minnesotans, only making money.

7 And the job situation in the area
8 could definitely be improved by looking at our very own
9 Minnesota environmental engineering programs. They're
10 all out of them, our institutions are just amazing with
11 the new environmental stem kits that are in those
12 programs.

13 They invent new low carbon
14 sustainable industries at the fraction of the cost and
15 very little pollution, it's what they do. Plus, these
16 good paying jobs would be sustainable far into the
17 future for our citizens of the Northeast. They would
18 have been designed for them by the people in our state.

19 I'm calling on our representatives,
20 Mr. Stauber, Emmer, Fischbach, and Hagedorn to do -- to
21 use their legislative power to do what they were elected
22 to do, serve the people and land of Minnesota, not the
23 financial interest of mining corporations.

24 I'm calling on the Minnesota
25 Pollution Control Agency to do what they are supposed to

1 do and prevent pollution and protect that air and water
2 and land of Minnesota.

3 And, Judge Lipman, I'm asking you to
4 please not recommend the deregulation of Class 3 and
5 Class 4 ions and salts. I want to say thank you very
6 much.

7 And I want to say that I have learned
8 a tremendous amount from all of this. I've never been
9 on a court report before, it's absolutely fascinating.
10 I've listened to every single one of you who is an
11 expert in your field.

12 And I guess my committee of one, me,
13 represents a whole lot of general population in
14 Minnesota who are very concerned about their environment
15 and what their government agencies are doing for them or
16 to them. And thank you very much for permitting me to
17 speak today.

18 THE JUDGE: Thank you so much,
19 Ms. Johnson, grateful for your time and contributions to
20 our record. Again, as I noted at the outset, if there
21 is anyone for whom this process is built it is for you,
22 it is for that committee of one, for that singular
23 individual.

24 we're delighted, of course, and rely
25 upon and need the contributions of subject matter

1 experts, but the hope and expectation of the legislature
2 was that our process would be open enough and inclusive
3 enough to reach you. So, we're very grateful for your
4 time and contributions.

5 With that, Mr. Don Arnosti, if you
6 wouldn't mind unmuting yourself, stating your name and
7 spelling it for our record.

8 DON ARNOSTI: Thank you, Judge
9 Lipman. My name is Don Arnosti, D-o-n, A-r-n-o-s-t-i.

10 THE JUDGE: What should we know?

11 DON ARNOSTI: I'm an environmental
12 consultant with more than 30 years experience working
13 here in Minnesota for several nonprofit public advocacy
14 organizations in various positions, as water program
15 director, policy director, and executive director over
16 the years.

17 I have participated in developing
18 many state laws and rules addressing water quality and
19 citizen enforcement actions under the Clean Water Act.
20 I'm commenting as an interested citizen.

21 The MPCA is concerned about the cost
22 to smaller communities in the form of expert consultant
23 services utilized to address wastewater permitting
24 issues, SONAR, Page 37.

25 Those same difficulties are faced by

1 members of the public, such as myself, with far fewer
2 resources who want to retain protection for the
3 beneficial uses of public waters by voiceless wild
4 animals and by the unborn generations of humans whose
5 future will be diminished if we do not protect a full
6 array of native wildlife.

7 In the interest of time, I will focus
8 my comments in just a few areas. Number one, the MPCA's
9 proposed rules make unreasonable assumptions unsupported
10 by science that wildlife of numerous species use water
11 for drinking -- that use water for drinking can be
12 protected by proposing standards to protect for the
13 watering of domestic livestock. This is an unreasonable
14 assumption.

15 Number two, the proposed standards
16 for nitrates and sulfates are unsupported by science
17 with regard to protecting beneficial use by wildlife.

18 Number three, the proposed Class 4B
19 standards for salinity -- the current Class 4B standard
20 for salinity is currently a thousand milligrams per
21 liter. The proposed will weaken and -- weaken
22 protections for beneficial use by wildlife in a proposed
23 total dissolved solids TDS standard of 3,000 milligrams
24 per liter.

25 And number four, there are existing

1 MPCA programs that address some of the identified needs
2 of small communities, several of whom have testified
3 here today, for financial assistance to meet current
4 chloride standards.

5 These existing programs should be
6 expanded in lieu of this rule revision, which would
7 present fewer harms and greater benefits to the public
8 interest than this proposed relaxation of numeric
9 standards.

10 To dig a little deeper into the first
11 supposition, wild animals are defined in Minnesota
12 Statute 978.015, subdivision 55 as "All creatures, not
13 human, wild by nature and including mammals, birds,
14 fish, amphibians, reptiles, crustaceans and mollusks."

15 These wild animals or wildlife in the
16 rules vary dramatically in physiology, lifespan,
17 metabolic rates and exposure to pollution in public
18 waters even for purposes of watering.

19 Bats and swallows, for example, fly
20 above the water for drinking purposes, while beavers,
21 otters, frogs and muskrats live immersed for much of
22 their lives in the water they drink. Fish and mollusks,
23 of course, immerse throughout their life.

24 wild black bears in North America
25 have an average lifespan of 18 years and a metabolic

1 rate that varies widely during the year.

2 The proposed rules ask for an
3 unsupported leap of faith that "Given that the data
4 available for wildlife species is limited, it is
5 reasonable to use these livestock data as surrogates for
6 wildlife data," SONAR, Page 48.

7 We've been hearing from the MPCA that
8 there's a lot of new science since the 1960s when these
9 rules were promulgated.

10 Yet in the area of impact of some of
11 these chemical constituents, some of these salts on
12 wildlife, they offer no science and ask us instead to
13 believe that diverse species of wildlife act in the same
14 way as domesticated poultry and ruminants, cows, that
15 they're proposing as surrogates in their sensitivity for
16 all species of wild animal.

17 This is an unreasonable assumption
18 unsupported by science. Poultry and ruminants are
19 slaughtered at very young ages, mere weeks in the case
20 of poultry, long before chronic effects of pollutants,
21 such as nitrate, sulfates or chloride are evident.

22 The chosen numeric standard for
23 nitrate, 100 milligrams per liter is ten times more
24 polluting than the human health standard for drinking
25 water.

1 Likewise, the chosen standard for
2 sulfates, 600, is greater than the human drinking water
3 standard of 250 liters. Again, resting on the
4 unsupported assumption that all wild animals respond to
5 these pollutants similarly to domestic livestock.

6 Humans are clearly a more sensitive
7 species to sulfates and to nitrates than domestic
8 livestock. And, "Given the data available for wildlife
9 species is limited, humans are a reasonable surrogate
10 for wildlife watering."

11 The rules should propose a limit of
12 no more than 10 milligrams per liter for nitrates and
13 250 for sulfates.

14 In the interest of time I will skip
15 through a little bit of what I'm going to present and
16 just wrap up with a few things.

17 The chloride standards are proposed
18 to be relaxed from 50 milligrams per liter and 100
19 milligrams per liter in two different classes of water
20 to 230 milligrams per liter.

21 The MPCA acknowledges the harm caused
22 by high levels of chloride in state waters and proposes
23 this relaxation of standard.

24 I cannot help but think some of their
25 reasoning comes from the state law that requires them to

1 assess the cost to small communities and small
2 businesses of these rules, as well as some of the
3 testimony that we've heard from some of these
4 communities.

5 The Clean Water Act requires that
6 cost considerations not be part of standard setting. In
7 lieu of that I recommend a reasonable alternative with
8 more public benefits is to reduce -- rather than
9 reducing protective water quality standards for chloride
10 is to increase the existing MPCA point source
11 implementation grant program, which allows community
12 drinking water facilities that soften water to be
13 eligible for grants of up to seven million dollars for
14 80 percent of the cost of installation.

15 The primary source in regulated
16 wastewater discharges of chloride is individual water
17 softener systems in homes and businesses. Preferred
18 action would be to expand these loans and grants for a
19 centralized line softening water treatment system, which
20 do not produce chloride pollution.

21 The City of Pipestone, Minnesota has
22 used this grant, along with a loan, to treat drinking
23 water, eliminating the need for in-home water softening
24 and dramatically reducing wastewater chloride
25 discharges.

1 THE JUDGE: Final thoughts,
2 Mr. Arnosti?

3 DON ARNOSTI: Such grants and loans
4 for chloride pollution prevention do not negatively
5 affect beneficial uses of public waters like rolling
6 back the standards.

7 Because these rules rely on a faulty
8 leap of faith that all species of wildlife are affected
9 by various pollutants in a manner similar to domestic
10 livestock to justify the relaxation of existing numeric
11 enforceable standards or the imposition of unproven new
12 standards, I request that you reject these proposed
13 rules in their entirety.

14 Alternatives to address needed
15 changes to these rules exist and the MPCA should pursue
16 those.

17 THE JUDGE: Thank you so much,
18 Mr. Arnosti, very grateful for your very detailed and
19 thoughtful and important contributions to our record.
20 Also looking forward to your more detailed comments by
21 the 24th of February.

22 With that, Gary Huisenga, can you
23 unmute yourself?

24 GARRIE HUISENGA: Hi.

25 THE JUDGE: State your name for our

1 record.

2 GARRIE HUISENGA: I'm Garrie
3 Huisenga, G-a-r-r-i-e, H-u-i-s-e-n-g-a.

4 THE JUDGE: Thank you so much,
5 Mr. Huisenga. What should we know?

6 GARRIE HUISENGA: I'm a retired
7 electrical engineer and a Minnesota resident and I enjoy
8 our wonderful outdoors, especially the Boundary Waters
9 Canoe Area wilderness. This natural area needs to be
10 protected from sulfide mining and subsequent
11 contamination in the area.

12 The process of issuing a permit
13 leaves many questions as to why it deviated from the
14 open process that is standard for these permits.

15 Why were there no defined enforceable
16 limits on major ions that will be released? How can
17 simply monitoring the levels be considered any type of
18 control without set limits?

19 All types of industries have numeric
20 limits on emissions in order to reduce the amount of
21 greenhouse gases released into the atmosphere. Why
22 would a major ion water contamination be an exception to
23 this numeric standard?

24 Simply monitoring the amount with no
25 enforceable limit does not protect the environment.

1 That would be equivalent to saying there's no speed
2 limit on the roads, but everyone needs to monitor their
3 speeds, it would be a disaster.

4 without a legal way of enforcing the
5 amount of emissions there's no reason for (inaudible).
6 Anyone that's visited the Boundary Waters Canoe Area
7 wilderness knows that the lakes and waters are all
8 interconnected. What happens in one lake impacts a
9 larger area.

10 When a major ion contaminant gets
11 into the ground water under one lake it would be
12 devastating for a large area of wilderness. This cannot
13 be allowed to happen.

14 I've been going to the Boundary
15 waters Canoe Area wilderness for many years on solo
16 trips and with family and friends. On several occasions
17 with friends from other countries they remarked that
18 there's no place like this in their country and they
19 didn't know of any other place in the world like this.

20 It's a true treasure of nature. This
21 needs to be preserved for future generations. I want my
22 grandkids to be able to enjoy this for their lifetimes.

23 The rule changes relating to Class 3
24 and Class 4 water standards should be rejected to
25 protect the Boundary Waters Canoe Area wilderness and

1 other natural areas. Thank you for the opportunity to
2 speak.

3 THE JUDGE: Thank you kindly,
4 Mr. Huisenga, for you sticking with us and for your very
5 kind and thoughtful contributions to our record.

6 With that, Tess Dornfeld, if you
7 could unmute yourself and state and spell your name for
8 our record.

9 CLAUDIA HOCHSTEIN: Ms. Dornfeld, I
10 sent you a request to unmute, you should be able to
11 unmute yourself.

12 THE JUDGE: Ms. Dornfeld?
13 Ms. Hochstein, can we try Ms. Johnson again and see if
14 we can't remedy the issue with Ms. Dornfeld while we're
15 talking to Ms. Maureen Johnson?

16 CLAUDIA HOCHSTEIN: Yes, it will take
17 me a second to find that phone number to unmute in this
18 list. Okay, Ms. Johnson, I am sending you a request to
19 unmute.

20 THE JUDGE: Ms. Maureen Johnson, can
21 you hear us?

22 MAUREEN JOHNSON: Can you hear me?

23 THE JUDGE: We can hear you. If you
24 would state and spell your name for our record.

25 MAUREEN JOHNSON: Thank you. My name

1 is Maureen Johnson, M-a-u-r-e-e-n, J-o-h-n-s-o-n.

2 THE JUDGE: Thank you. What should
3 me know?

4 MAUREEN JOHNSON: Thank you. From
5 Stacy, Minnesota, I'm a retired biologist, six years in
6 water quality research with US EPA and US Forest Service
7 and 20 at MPCA managing superfund cleanups. I use state
8 and federal standards to protect people, water and
9 biological resources and to enforce compliance.

10 All living things need water, in
11 water and on land. 7050.0224, Class 4 includes
12 "wildlife uses," not wildlife drinking uses. MPCA errs
13 in narrowing the meaning of the words.

14 7050.0141 is clear about wildlife in
15 Class 4. "Agriculture and wildlife includes all waters
16 used by waterfowl or other wildlife and for which
17 quality control is or may be necessary to protect
18 terrestrial life and its habitat."

19 Terrestrial life is moose, frogs,
20 ants and dragon flies. All use water in some way to
21 sustain biological needs, food, shelter, reproduction,
22 habitat and for drinking.

23 The MPCA cannot demonstrate these
24 uses are not existing or attainable, but denies wildlife
25 applicability to Class 4. The State intends protection

1 of all beneficial uses in 7050.0150. Proposed rules
2 must not eliminate wildlife uses and protection.

3 Common human activities cause
4 pollution, agricultural fertilizers, mining sulfate and
5 winter road maintenance using chloride. In addition to
6 these chemical toxicities scientists study atoxic effect
7 occurring as these chemicals increase together.

8 Specific conductance measures the
9 toxic effect of all ionic chemicals in water in
10 microsiemens per centimeter, I'll call them units.

11 In 2016 Bruce Johnson and I studied
12 specific conductance in the copper-nickel area of
13 Ecoregion 50 in Northeast Minnesota. In this area with
14 St. Louis River's headwaters the stream with the lowest
15 specific conductance had only 12 units.

16 The studied area with some man caused
17 contamination averaged only 68 units. But where the
18 St. Louis receives mining impacts, specific conductance
19 increased by 400 percent. Of aquatic life found
20 upstream, 18 percent were not found there. 5 percent is
21 a level of concern in 7050.0217.

22 A scientist would ask which of these
23 lost species and what level of specific conductance are
24 important to native Drip Trout in that area.

25 In the several water permits I have

1 seen, especially in mining, MPCA has not set required
2 effluent limits to assure the water body meets all
3 standards, even if for decades standards are exceeded in
4 the water body.

5 So, like superfunds, resolving
6 impaired waters have become a permanent program at
7 public expense because pollution has gone uncontrolled
8 for decades and permittees have waste-like tailings
9 basins or waste rock piles continuing to contaminate
10 state waters.

11 Removing the specific conductance
12 standard now will remove even the possibility of
13 protection from its toxicity for all state waters.

14 The MPCA's proposed specific
15 conductance policy blurs the standard concept and sets
16 no enforceable limits for pollution. Permittees will
17 continue to discharge with no limits until the MPCA
18 applies the policy to thousands of individual permits.

19 EPA has already approved a specific
20 conductance standard of 300 units, still pretty high,
21 for Fond Du Lac Band of Lake Superior Chippewa
22 Reservation waters. It can be done. MPCA ignores
23 biological science on other deleted standards. My
24 written comments will explain further.

25 Please retain all the existing

1 standards by rejecting this proposal and requiring that,
2 first, Class 2 aquatic life be updated with standards
3 that are now in Classes 3 and 4. Thank you, Your Honor.

4 THE JUDGE: Thank you so much,
5 Ms. Johnson, I'm glad that we were able to circle back
6 with you and able to get you to testify and be a part of
7 our record.

8 With that, I'm going to try Ms. Tess
9 Dornfeld. Ms. Dornfeld, are you able to unmute
10 yourself? Excellent. Ms. Dornfeld, if you could state
11 and spell your name for our record.

12 TESS DORNFELD: Tess Dornfeld,
13 T-e-s-s, D-o-r-n-f-e-l-d.

14 THE JUDGE: Thank you so much,
15 Ms. Dornfeld. What should we know?

16 TESS DORNFELD: In response to your
17 questions, Judge Lipman, it's clear the agency has not
18 demonstrated the need and certainly not the
19 reasonableness of the proposed changes.

20 The heading of the MPCA webpage on
21 these changes states this will, and I quote, "Protect
22 state waters while lowering regulatory hurdles." This
23 is the Pollution Control Agency.

24 Obviously it is not reasonable for
25 MPCA to prioritize lowering regulatory hurdles when

1 their name itself says it is meant to control pollution.

2 Something else it says on the
3 webpage, and I quote, "The MPCA is proposing detailed
4 methods to determine if permitted facilities need limits
5 on the level of pollutants in their discharge."

6 If a regular person, as you
7 described, would absolutely not say that is reasonable
8 that some facilities would need no limits on pollution.

9 And the same goes for the numeric
10 standards being removed, I understand that one size may
11 not fit all, but there needs to be a minimum baseline at
12 the very least.

13 In Minnesota we always hear the
14 arguments in favor of projects like mining and
15 infrastructure, that we have strong environmental
16 standards and we can have confidence in our regulations.

17 Anyone who's paid attention to the
18 Line 3 pipeline issue that our state is contending with
19 right now has heard Governor walz and others talk
20 repeatedly about how our strong standards will protect
21 our water. And the same argument has been made by those
22 who support the proposals for copper-nickel mining.

23 How can we rely on these strong
24 standards when MPCA wants to change them? I'm very
25 concerned, especially about what changing the standards

1 will mean for the limits used for the permits for mining
2 projects.

3 And, unfortunately, there's a
4 demonstrated need to be skeptical, especially on this
5 topic, given MPCA's misconduct in relation to the
6 PolyMet permitting process. And that needs to be taken
7 into account.

8 And related to that and to all of the
9 concerns about these changes, the violation of treaty
10 rights must be of primary concern.

11 Our state is one of the many
12 governments that has consistent history of disregarding
13 our treaty obligations, especially in terms of the
14 environmental rights of tribes. And that behavior must
15 not continue with these changes, it needs to end now and
16 we need to respect the treaties.

17 I also want to share in the concern
18 about the consequences for small farmers who would be
19 threatened by the impact on their water quality.

20 There's a plaque at the Canadian
21 border that I visited welcoming people to our state that
22 says "Minnesotans are proud of their state's natural
23 beauty and our leaders and resource conservation and
24 concern for the quality of life."

25 These proposed changes do not

1 represent leadership in resource conservation or concern
2 for the quality of life. MPCA's own goal of lowering
3 regulatory hurdles is contrary to its own name, to our
4 state's values and to anyone who would think is
5 reasonable and necessary. Thank you.

6 THE JUDGE: Thank you so much,
7 Ms. Dornfeld, appreciate your time and contributions to
8 our record. Ms. Lynn Anderson, if you could unmute your
9 microphone and state and spell your name for our record.

10 LYNN ANDERSON: My name is Lynn
11 Anderson, L-y-n-n, A-n-d-e-r-s-o-n.

12 THE JUDGE: What should we know?

13 LYNN ANDERSON: Thank you, Judge. My
14 husband and I own lakefront property on Round Lake,
15 Minnesota in Aitkin County. There are over 200 homes
16 and cabins on this beautiful spring-fed lake, it's one
17 of the cleanest lakes in Minnesota.

18 The water is almost drinking water
19 clean, according to the DNR, because we have fresh water
20 jellyfish. And we're surrounded by a number of other
21 inland lakes in the area, Horseshoe, Lake Minnewawa, Big
22 Sandy, Aitkin, Rat Lake, all that have prime wild rice
23 habitat, fishing opportunities, lots of recreation.

24 And this is all in an area that's
25 home to thousands of vacation cabins in Northeastern

1 Minnesota. Savanna Portage is nearby with a number of
2 pristine lakes and then we have the wild Rice National
3 wildlife Refuge.

4 The area is home to a number of
5 wildlife in terms of birds and eagles and ospreys and
6 people really enjoy themselves. There's quite a line of
7 traffic on I-65 for three seasons of the year with
8 people coming up to enjoy the pristine and tranquil
9 environment. It's really a unique ecosystem.

10 And the Boundary Waters is only two
11 hours north and we've got the north shore of Lake
12 Superior. All of these areas support a robust tourism
13 industry with local businesses. And we want to see it
14 preserved.

15 We don't want a Flint, Michigan
16 situation in Minnesota. And you might think, why would
17 I bring Flint, Michigan up. Well, Flint, Michigan is an
18 example of small changes that were made in the water
19 system that had a huge negative impact on many people.

20 It would have been easy to prevent
21 that situation if there had been high standards in place
22 and if people had been paying attention to the impact
23 and the needs of the people in the region for clean
24 water. But now it's a very costly situation to fix.

25 And if the ground water in

1 Northeastern Minnesota is polluted because these
2 proposed rule changes, the MPCA rule changes are
3 implemented, how is it ever going to be fixed? This
4 precious clean water that is really a national treasure.

5 Many people who live outside the
6 state of Minnesota are just so impressed with how
7 beautiful the state is and how many -- what a water rich
8 area it is in so many ways.

9 We come from a family where my
10 husband's great-grandfather homesteaded on the lake that
11 we live on. He was an immigrant from Sweden. Some of
12 the property has remained, the generations have enjoyed
13 it for close to a hundred years.

14 And our family is not really unique,
15 many cabin owners in our area have had property where
16 that cabin has been passed down. So, it's really an
17 important ecosystem that needs to be protected.

18 And less than five miles from our
19 property is a proposed tamarack talon metal sulfide mine
20 that's owned by an international conglomerate. I don't
21 know what they're doing there or why they think they
22 have the right to develop a nickel mine there.

23 It's owned by a mining conglomerate
24 with a terrible international record for human rights
25 abuses. And where they've attempted to build these

1 sulfide mines in water rich areas, it's always resulted
2 in pollution. So, we oppose these proposed MPCA rule
3 changes for a number of reasons.

4 First, the standards to not take into
5 account the entire ecosystem as a whole. And I don't
6 believe they're up to date with good and
7 state-of-the-art climate science. I haven't heard that
8 talked about except by a couple of people who commented
9 today.

10 These proposed rule changes are not
11 inclusive of Minnesota's people, the needs of Native
12 American life ways, their rights to hunt and to fish and
13 to gather, nor the needs of sustainable organic farmers
14 that we heard spoken of earlier, as well as the concerns
15 of cabin owners like us and out-of-state vacationers who
16 really treasure the clean water of Lake Superior and
17 Boundary waters and the local businesses who rely on the
18 tourism outdoor industry.

19 So, especially during this time of
20 rapid global warming I believe MPCA should be doing its
21 job of strengthening Minnesota water standards and not
22 weakening them. Thank you.

23 THE JUDGE: Thank you so much,
24 Ms. Anderson, very grateful for your time and thoughtful
25 contributions to our record. After Ms. Anderson, Gretel

1 Lee is next and then following her will be Liz Wefel and
2 Kevin Strauss.

3 So, Ms. Lee, if you wouldn't mind
4 stating and spell your name for our record.

5 GRETTEL LEE: Thank you, Your Honor.
6 My name is Gretel Lee, G-r-e-t-e-l, L-e-e.

7 THE JUDGE: What should we know,
8 Ms. Lee?

9 GRETTEL LEE: Thank you, Your Honor.
10 As I said, my name is Gretel Lee, I am an environmental
11 attorney at the law firm of Flaherty and Hood. And I'm
12 here today to testify in support of this bill -- sorry,
13 legislative session, in support of this rulemaking on
14 behalf of the Minnesota Environmental Science and
15 Economic Review Board.

16 MESERB, as it's commonly known, is a
17 joint powers organization of over 50 cities and public
18 utilities that own and operate wastewater treatment
19 plants across greater Minnesota.

20 THE JUDGE: Just a little slower,
21 Counselor, for the benefit of our court reporter.

22 GRETTEL LEE: Absolutely, my
23 apologies. This is an issue that has heavily impacted
24 municipalities for the better part of 60 years and is
25 something that cities have been requesting relief from

1 for a while.

2 AS I mentioned, I'm testifying in
3 support of this rulemaking. We view it as absolutely
4 necessary and absolutely reasonable. And I feel the
5 need to note that these rules are targeted to very
6 specific uses.

7 I want to note that this is separate
8 from the aquatic life standard, which people rightfully
9 have a concern over, but this is separate from that.
10 That is beyond the scope of this rulemaking.

11 I understand with chloride itself
12 being a salty parameter, it's hard to completely divorce
13 the Class 2 aquatic life standards from this.

14 However, Class 2 chloride is a good
15 indicator for the impact that other salty parameters
16 have on water systems. And the aquatic life standard is
17 protective of that. And those rules really aren't being
18 changed in this rulemaking.

19 An example of this at play is the
20 linkage permitting policy that is employed by the MPCA
21 to this date, it's approved by the EPA. And I just
22 wanted to note that for the record. Again, that's
23 outside the scope of this rulemaking.

24 The existing Class 3 and 4 standards
25 are outdated, they are not based on recent or even

1 semi-recent science. And they require facilities to
2 meet permit limits that because they're blanket applied
3 across the state may not even have a beneficial impact
4 to the water body that they're on.

5 while this is the case in some areas,
6 it also can lead to very serious negative economic
7 impacts. And as a result the existing rules really
8 create two major problems.

9 First and foremost, there are over
10 150 cities across the state of Minnesota right now that
11 stand to exceed these limits in their permits if the
12 water quality standards are not updated.

13 Some of our member cities already
14 have, you heard from a few of them earlier, and this
15 causes problems that are detrimental to everybody. It
16 causes problems and delays in the permitting process.

17 It causes an increase in costs in
18 having to comply not only attributed to those delays,
19 but also with having to comply. And that's not
20 necessarily being reasonable given the state and
21 application of the rule on that specific water body.

22 A really good example of this is the
23 city of Luverne and the TruShrimp issue, which I'm sure
24 many people on this call today are aware of. And I know
25 MPCA certainly is aware of it.

1 The long and short of it, there was
2 an outdated limit in the City's permit and this company
3 cited that as the reason for packing up and leaving,
4 resulting in the City having expended millions of
5 dollars, the State and the company, and ultimately it
6 was because of an outdated standard in that permit.

7 We support this rule because of its
8 tailored and site specific approach. These new rules
9 bring an individualized and specific protection to the
10 water body and the designated protective uses.

11 We obviously support the replacement
12 with the narrative standards, the incorporation of that
13 narrative translator process, and the tiered and
14 differentiated application due to crop sensitivities.
15 So, also, that is taken into consideration in this
16 rulemaking and is absolutely important.

17 We also -- I want to note our support
18 of the updated protective flow from the 7Q10, which is a
19 throat flow, to the 122Q10, it allows the limits in
20 these permits based on these standards to reflect the
21 actual conditions at play in the water bodies. So, it's
22 a much more appropriate measurement, that 122Q10.

23 Ultimately these changes will result
24 in necessary protections for these individual water body
25 uses, for the people who live on them and they don't

1 lock our individual cities across the state into these
2 overly strict limits that in a lot of places provide no
3 net benefit to the water quality.

4 I do want to note two quick things
5 that we noticed in the rulemaking that we will be
6 providing additional comment on.

7 But the inclusion of the narrative
8 standards, as I mentioned at the beginning, the aquatic
9 life, the SONAR Appendix S-5, I know that has been
10 mentioned a couple of times, that's beyond the scope of
11 this rulemaking.

12 We were under the impression, as many
13 people were, at the beginning of this rulemaking that it
14 was going to strictly focus on Class 3 and 4 standards.

15 And because this is outside of that
16 we think it should be withdrawn and addressed in a
17 separate rulemaking. We're not opposed to that, it just
18 shouldn't be a part of this.

19 In addition, I also want to note that
20 I noticed some changes in the language to the Class 4A
21 language regarding the sulfate standard. Specifically
22 I'm referring to the changes in Minnesota Rule
23 7050.0224, subdivision 2.

24 MPCA maintained that this rulemaking
25 will not impact the wild rice standard, but they're also

1 proposing to remove the quote as a guide language in
2 there. We maintain that that needs to stay in the
3 rulemaking at this time because its removal will
4 effectively create a de facto standard and also outside
5 the scope of this.

6 In closing, thank you, Your Honor, we
7 are generally supportive. Water bodies and uses vary
8 widely across the state. And Minnesota is a big state,
9 there's a lot of different things that happen here.

10 We need rules that reflect those
11 differences and that's what this rulemaking does. So,
12 we are supportive. We will be supplementing my
13 testimony today with written comments.

14 And I just want to thank you, Judge
15 Lipman, and the MPCA for the opportunity to testify
16 today and to the agency for their work on this rule.

17 THE JUDGE: Thank you kindly,
18 Counselor, looking forward to your remarks on the 24th.
19 With that, Mr. Kevin Strauss, if you wouldn't mind
20 unmuting yourself.

21 CLAUDIA HOCHSTEIN: Judge Lipman, I
22 think that --

23 THE JUDGE: I made an error, it's
24 Ms. Wefel. Forgive me, Ms. Wefel, if you wouldn't mind
25 unmuting yourself. And thank you for the intervention,

1 Ms. Hochstein. Ms. Wefel, state and spell your name for
2 our record.

3 ELIZABETH WEFEL: Yes, my name is
4 Elizabeth Wefel, that's spelled w-e-f-e-l. I am an
5 attorney with the firm of Flaherty and Hood and I am
6 here on behalf of the Coalition of Greater Minnesota
7 Cities.

8 I want to thank you for the
9 opportunity to comment on these proposed amendments to
10 the rules governing the State's Class 3 and 4 waters.

11 Our organization is made up of 105
12 cities across the state that play an essential role in
13 protecting Minnesota's waters through our wastewater and
14 storm water systems. Most of our cities hold NPDES
15 permits or belong to a district that does.

16 With that many members who could face
17 potential limits with the outdated rules, we're very
18 concerned that they could be facing costly and
19 environmentally unnecessary effluent limits in their
20 permits based on the old standards.

21 Failure to update these standards
22 could hamper economic development in the state, as we
23 saw in Luverne with the case of TruShrimp. We do not
24 want to repeat that scenario across the state.

25 THE JUDGE: Counselor, just a little

1 slower for the benefit of our court reporter.

2 ELIZABETH WEFEL: Sorry, trying to
3 get through it fast right now.

4 THE JUDGE: You can feel free to hit
5 the highlights, mindful that we have a written comment
6 period.

7 ELIZABETH WEFEL: Okay. Great. We
8 are concerned about the resources that would be required
9 to upgrade wastewater facilities to comply with outdated
10 standards, costly upgrades that would not help the
11 environment.

12 We're also concerned about the MPCA's
13 efforts to develop guidance for applying the narrative
14 aquatic life standards to wastewater facilities as part
15 of this rulemaking.

16 We are concerned that the guidance
17 being proposed will have a significant impact for cities
18 and that very few, if any of them, are aware that the
19 guidance is being proposed at this time.

20 Given that the narrative aquatic life
21 standards are outside the scope of this rulemaking, we
22 request that the MPCA develop this guidance through a
23 separate process.

24 Apart from this guidance effort we
25 believe that the changes to these standards are

1 reasonable and grounded and updated scientific research
2 and we urge adoption of these rules. That's it. Thank
3 you.

4 THE JUDGE: Thank you kindly,
5 Counselor, appreciate your time and thoughtful
6 contributions to our record. Again, looking forward to
7 hearing more detailed comments from you and the
8 coalition by the February 24 deadline.

9 With that, Mr. Kevin Strauss, if you
10 wouldn't mind unmuting yourself and stating your name
11 and spelling your name for our record.

12 KEVIN STRAUSS: Thank you, Your
13 Honor. My name is Kevin Strauss, K-e-v-i-n,
14 S-t-r-a-u-s-s. And I'm a resident of Rochester,
15 Minnesota.

16 Judge Lipman, I'm asking you to
17 please reject the Minnesota Pollution Control Agency's
18 MPCA proposed Class 3 and 4 rule changes. I'm asking
19 for this for three main reasons.

20 First of all, the rules change is
21 contrary to MPCA's organizational mission and mandate.
22 The rule change seeks to solve a pollution problem by
23 simply redefining pollution so that the agency can
24 ignore it.

25 And there is no evidence that this

1 rule change will lead to cleaner water. And that's a
2 primary factor in everything that MPCA does.

3 The rule change is contrary to MPCA's
4 organizational mission and state mandate because their
5 mission is to protect and improve the environment and
6 human health. This proposed rule will accomplish
7 neither of these goals.

8 In fact, these changes will increase
9 baseline pollution in Minnesota's rivers and lakes and
10 will cause harm to human health by increasing nitrate
11 pollution in Minnesota's drinking water aquifers.

12 In Eastern Minnesota we're already
13 dealing with nitrate problems in cities like Hastings
14 where the ground water has nitrate pollution in it.
15 Having more surface water nitrate pollution will
16 increase nitrate leaking into ground water systems.

17 Cities are rightly concerned about
18 costs. As taxpayers we pay those costs, but the cost to
19 deal with outdated standards at this point is minuscule
20 compared to what Hastings, Minnesota does today to clean
21 excessive nitrates out of their drinking water supply.

22 We as Minnesotans expect our state
23 troopers to keep our highways safe. We expect the MPCA
24 to keep our rivers, lakes and drinking water safe.
25 These rules will not accomplish that goal.

1 Earlier Mr. Kyser said that this was
2 not an antidegradation hearing, but the central job of
3 the MPCA is antidegradation. You can't just ignore your
4 job when you're doing rulemaking.

5 It's true, the current rules are
6 outdated, everyone agrees about that, but this is not
7 the right way to fix them. This will actually make the
8 problem worse. The standards do need to be updated and
9 cities are rightfully concerned about those standards.

10 We as taxpayers should be concerned
11 about cost, even though that's not a part of this
12 hearing, we pay that as citizens. We also have a
13 history to look back on. Preventing pollution is always
14 far less expensive than cleaning it up after it occurs.

15 While it's true that in the short
16 term cities may have to pay more to deal with these
17 current not ideal standards, reducing the standards such
18 that we have increased pollution to deal with is going
19 to lead to a lot more expense for taxpayers.

20 Number two, the rule change seeks to
21 solve a pollution problem by simply re-defining
22 pollution so the agency can ignore it.

23 Now, this is a little odd, it's a bit
24 like a classroom teacher saying anyone who's sitting in
25 a classroom receives an A on today's test and then

1 reporting to state officials that their students vastly
2 improved their test scores.

3 To put it in a more regulatory
4 context, it's a lot like the Minnesota State Patrol
5 saying they want to eliminate numerical speed limits for
6 highways, they'll have narrative standards like driving
7 safely as a way to reduce the incidences of speeding
8 here in Minnesota.

9 Now, on paper it would look like
10 speed would decrease because we're no longer measuring
11 it. In reality the roads would be less safe, people
12 would be driving 90 miles an hour on some of our
13 highways.

14 On the upside, we could have fewer
15 state troopers enforcing these narrative highway
16 standards. I don't think that's what we want to do, we
17 want safe highways, we want safe rivers and lakes and
18 safe drinking water. That's the job of state officials
19 to do those things.

20 We're not going to get rid of
21 pollution by ignoring it, we tried that. Think back to
22 the '50s and '60s, we ignored pollution for decades
23 until it got so bad that we had to create the
24 Environmental Protection Agency. We don't want to go
25 backwards.

1 The MPCA staff do a lot of things
2 really well, but they probably don't have a lot of
3 livestock experts on their staff. I grew up in
4 Wisconsin visiting my uncles on their dairy farms. And
5 I'm no agricultural professional, but I can do research.

6 Mr. Kyser stated that the standard
7 for nitrate nitrogen would be a hundred parts per
8 million for livestock consumption. Perhaps the MPCA has
9 not done research into this.

10 According to the Penn State Extension
11 and the Iowa State University Extension, once you reach
12 a level of 20 parts per million, it would be harmful to
13 dairy cattle. I tend to believe that cattle in Iowa and
14 Pennsylvania are similar to the dairy cattle we have
15 right here in Southeastern Minnesota.

16 So, that leads me to believe that
17 perhaps the MPCA standard is way too high, five times
18 the expected level that other states have said are
19 harmful.

20 Now, it's true some other cattle
21 might be able to survive a hundred parts per million of
22 nitrates, that's possible, but we're not going to be
23 able to say, okay, this part in Minnesota is fine for
24 beef cattle, but not dairy cattle.

25 We have dairy cattle in wide ranges

1 of the state here. Now, since Minnesota has a robust
2 dairy industry, especially here in Southeastern
3 Minnesota, the standards need to protect all kinds of
4 cattle, not just those that are most able to consume
5 nitrate water.

6 It's also true that we have 1.3
7 million Minnesotans who drink surface water. Now,
8 perhaps you or I don't, I drink well water here in
9 Rochester. That's about 20 percent of our population of
10 our state.

11 The drinking water standard for water
12 is 10 parts per million. If we're going to allow
13 pollution up to 100 parts per million in surface waters,
14 those waters don't just evaporate.

15 That nitrate moves downstream, it
16 will move to cities that have to draw their drinking
17 water out of surface waters. They will then have to
18 filter that water from a hundred parts per million down
19 to 10 parts per million of nitrates.

20 Again, huge costs. Ask the City of
21 Hastings, Minnesota how much they spend each year to
22 clean nitrates out of their drinking water supply. Now,
23 that's a slightly different case, they have nitrates in
24 their wells, but the process is the same.

25 You have to use a very complicated

1 process of reverse osmosis to remove nitrates from
2 drinking water. And that's also not an optional rule.
3 Cities are not allowed to provide water to their
4 citizens that do not meet drinking water standards.

5 THE JUDGE: Some final thoughts,
6 Mr. Strauss?

7 KEVIN STRAUSS: I'll wrap it up.
8 Thank you, Your Honor. Historically lowering standards
9 for clean water has never led to cleaner water, it
10 always leads to the opposite.

11 Because the rules are contrary to the
12 MPCA mission, they seek to eliminate a problem by just
13 ignoring it. And there's no evidence that weakening a
14 standard leads to cleaner water.

15 I'm asking you to reject the MPCA
16 Class 3 and 4 rule changes. Thank you for your time on
17 this important issue.

18 THE JUDGE: Thank you very much,
19 Mr. Strauss, for your kind and thoughtful remarks,
20 grateful for your contributions to our record.

21 Mr. Bob Beranek, Rob Beranek, if you
22 wouldn't mind unmuting your line and stating and
23 spelling your name for our record.

24 ROB BERANEK: Can you hear me, Your
25 Honor?

1 THE JUDGE: We can, thank you so
2 much, Mr. Beranek.

3 ROB BERANEK: Good evening, Judge
4 Lipman, my name is Rob Beranek, that's spelled R-o-b,
5 B-e-r-a-n-e-k.

6 THE JUDGE: Thank you so much,
7 Mr. Beranek. What should we know?

8 ROB BERANEK: I'm the director in
9 permitting and regulatory affairs for Cleveland Cliffs
10 and I have experienced being involved in similar water
11 quality standard rulemaking matters in several states
12 and at the federal level with US EPA.

13 A little bit about Cleveland Cliffs,
14 Cliffs produces domestic flat roll steel and is the
15 largest iron ore pellet producer in North America.

16 And Cleveland Cliffs' iron mining
17 facility in Minnesota represents the foundation of our
18 ability to produce domestic steel and is a significant
19 employer in Northern Minnesota. Our facilities all have
20 water district permits and will be impacted by this
21 rulemaking.

22 I wanted to add a little bit about
23 myself. Although I'm based out of Marquette, Michigan,
24 I get the pleasure of spending a lot of time in
25 Minnesota, both for work and for recreation. A lot of

1 aquatic treasures in your state.

2 From there, I wanted to address some
3 of the challenges ahead of you. You had some prompts
4 for yourself ahead of the comment period this evening.
5 One of the questions you were asking yourself is does
6 the agency have the legal authority to conduct this
7 rulemaking.

8 And in my experience the answer is
9 yes. They've been granted that authority by the state
10 legislature and they've also been given the primacy to
11 operate the clean water program in the state by US EPA.

12 Also, to the question of has the
13 agency demonstrated the need and reasonableness for the
14 proposed rule, I think the technical support document
15 does an excellent job of documenting over a decade of
16 work that PCA has put into this rulemaking.

17 And as far as the need goes, I noted
18 on Page 11 of the SONAR that PCA says that the source of
19 the current standards with a two-page letter was on any
20 scientific justification or supporting literature in
21 their recommendations.

22 I'm personally very pleased to see
23 the rationale that's been outlined in the technical
24 support document.

25 I wanted to acknowledge the Pollution

1 Control Agency for getting this rulemaking put forward
2 during COVID, I know it's been hard, a lot of work and
3 personal effort that they had to put in to get this
4 rulemaking out under these strange times. So, I
5 appreciate that.

6 I want to give the Cleveland Cliffs'
7 support for the use of narrative standards and that
8 includes the use of the narrative translator process.
9 In my work on the Clean Water Act many states, and at
10 the federal level, the Clean Water Act allows for these
11 narrative standards.

12 Minnesota water quality standards
13 include other narrative standards. Most water discharge
14 permits include narrative effluent limits. And the use
15 of numeric translators are not required by the Clean
16 Water Act, but more recently have been encouraged across
17 the United States.

18 So, I think the use of this narrative
19 standards coupled with a narrative translator is
20 considered right now to be one of the best in class
21 permitting when narrative standards are being used. It
22 allows for a fit-for-purpose standard setting and then
23 subsequent effluent limits in permits.

24 I also want to express Cleveland
25 Cliffs' support for the proposed numeric standards in

1 the wildlife and livestock consumptive use that's
2 Class 4B. And then, also PCA's data support in the
3 SONAR for the use of site specific standards for these
4 proposed numeric standards are overprotective.

5 During the comment period Cliffs and
6 others suggested that different areas the state should
7 have different numeric standards, but we acknowledge the
8 difficulty that PCA pointed out in implementing that,
9 but I think the proposal they made is reasonable.

10 I also want to support the proposed
11 changes to the wetland standards as Class 3D and 4C and
12 also express support for the use of the narrative
13 translator methods more broadly.

14 And I did want to mention that we
15 would like to see PCA adopt a policy that when future
16 changes are made to the proposed translators that
17 there's a formal and transparent process for the
18 development and also public comment on those translator
19 methods.

20 I mention that because I don't think
21 it's required by rule, but I think it would be a good
22 policy. Your Honor, thank you for your time this
23 evening and the opportunity to comment in this public
24 hearing.

25 THE JUDGE: Thank you so much,

1 Mr. Beranek, appreciate your time and contributions to
2 our record. Ian Hedberg, and following him will be
3 Chris Knopf.

4 Mr. Hedberg, if you wouldn't mind
5 unmuting yourself and stating and spelling your name for
6 our record.

7 IAN HEDBERG: Hello?

8 THE JUDGE: We can hear you,
9 Mr. Hedberg, if you'd state and spell your name for our
10 record.

11 IAN HEDBERG: Thank you for the
12 opportunity to comment on these proposed rule changes.
13 My name is Ian Hedberg, I-a-n, H-e-d-b-e-r-g.

14 I do not speak on behalf of an
15 organization and I'm not a lobbyist. I'm a lifelong
16 resident of Minnesota and I am here to testify as an
17 ordinary person in the state. Keeping in mind that
18 there are ordinary folks like me who haven't even heard
19 of this meeting.

20 I'm sure the Pollution Control Agency
21 has heard plenty from the interest of owners, investors
22 and cities since their power makes them loud, but I
23 believe the duty of the Pollution Control Agency is not
24 to ensure that things are fast, convenient and
25 profitable for a small number of people, but rather to

1 represent the people of Minnesota as a whole.

2 Here our license plates call this
3 place the Land of 10,000 Lakes. Of all the features the
4 Department of Motor Vehicles could highlight about the
5 state, it chose the water because water is our most
6 precious natural resource, our most precious wealth.

7 The Mississippi and Minnesota Rivers
8 are behind the prosperity of the Twin Cities. Lake
9 Superior is behind the prosperity of Duluth. And our
10 agricultural, tourism, forestry, and mining industries
11 all depend on the abundance of fresh clean water our
12 state is blessed with.

13 To contaminate that water supply is
14 to kill the goose that lays the golden eggs. A foolish,
15 greedy effort to see if someone can squeeze out a little
16 more profit that only ends up destroying the foundation
17 of our wealth.

18 You have already heard extensive
19 testimony about how the rule changes would contaminate
20 our water bodies. I am not an expert in pollution
21 science, so I can't evaluate the effect of these
22 proposed rule changes.

23 There are many other Minnesotans who
24 also lack the expertise to understand the ramifications
25 of these changes, many who will never know that the

1 rules were ever changed, but who nevertheless will
2 suffer countless invisible ways from reduced access to
3 clean water.

4 I urge the Court to weigh highly the
5 warnings of experts who are able to evaluate the
6 proposed rule changes and who have (inaudible).

7 You have also heard testimony from
8 several cities supporting reduced pollution standards,
9 which is an admission that these changes allow for
10 greater contamination.

11 So, I urge the Court to put health
12 over mere money, water over short-term profits and
13 consider the effects of this action on the next seven
14 generations 200 years from now.

15 I urge the Court to avoid any
16 decisions that would harm the quality of our state's
17 water because we need clean water because water is
18 precious, far more valuable than any bump in profits,
19 far more valuable than mere convenience navigating
20 regulations. We need our clean water because water is
21 precious and we must never forget that.

22 THE JUDGE: Thank you so much,
23 Mr. Hedberg. I just want to make a comment. I'm
24 delighted that an ordinary person such as yourself took
25 time to join and contribute to our record.

1 I'd also make the still more
2 important point that I'm hoping that you will do what
3 you can to let people within your personal network,
4 within reach of you know about this rulemaking and know
5 that we have an open comment period that extends through
6 February 24.

7 As I noted at the beginning of this
8 hearing, you don't necessarily have to be here in order
9 to contribute to our record. I hope you will do what
10 you can, as well as others, to let people know about
11 this process. With that -- Mr. Hedberg?

12 CLAUDIA HOCHSTEIN: Your Honor, I
13 believe that we are actually on Chris Knopf.

14 THE JUDGE: So, Mr. Knopf, you've
15 been very patient. If you could state and spell your
16 name for our record.

17 CHRIS KNOPF: Sure. Good evening,
18 thank you. My name is Chris Knopf and that's spelled
19 C-h-r-i-s, and the last name is, that's K-n-o-p-f, Chris
20 Knopf.

21 THE JUDGE: Thank you so much,
22 Mr. Knopf. What should we know?

23 CHRIS KNOPF: Good evening. Thank
24 you, Your Honor, for this opportunity to testify this
25 evening. My name is Chris Knopf, I'm the executive

1 director of Friends of the Boundary Waters wilderness.

2 Friends of the Boundary Waters
3 wilderness is a nonprofit organization that for the last
4 40 years has been a leader in protecting the Boundary
5 Waters Canoe Area and the broader collateral Superior
6 ecosystem.

7 THE JUDGE: A little slower,
8 Mr. Knopf, for the benefit of our court reporter.

9 CHRIS KNOPF: Sure. It's been a long
10 day for the court reporter, I don't want to make it any
11 tougher there for sure.

12 The Boundary Waters is the most
13 visited wilderness area in the United States and a key
14 driver to the wilderness-based economy in the northern
15 communities that are gateways to the wilderness.

16 The Friends have been a leader for
17 over 40 years, as I mentioned. In keeping with our
18 mission, it strongly opposes the proposed rules to
19 remove the numeric water quality standards and
20 deregulate salts and ionic pollution.

21 The Boundary Waters and Lake Superior
22 watersheds would be particularly harmed by this
23 deregulation because the Boundary Waters, the Rainy
24 River watershed and Lake Superior would be downgraded
25 from Class 3A and Class 3B to a new general class that

1 would be unprotected for hardness and less protected
2 from chlorides.

3 They're even more vulnerable because
4 they are high-quality waters that are naturally low in
5 chloride, hardness, sulfate and other ionic pollutants
6 since their ecosystems, fish, aquatic plants, and
7 wildlife would be destroyed if these salts and
8 conductive pollutants were deregulated.

9 In short, these pollutants would kill
10 aquatic life, harm human health and remove existing
11 protections for these critical water bodies.

12 The Boundary Waters and Lake Superior
13 belong to all Minnesotans. And limits on the discharge
14 must be set to protect all waters, not just specific
15 private interest.

16 To ensure the proper protection for
17 Minnesota's cleanest water, we join with our partners
18 and thousands of Minnesotans from across the state to
19 call for the following.

20 First, reject all removal or
21 weakening of any Class 3 and Class 4 numeric water
22 quality standards. Second, reject the proposal that
23 water quality violations only matter when the water is
24 taken by a high volume appropriator.

25 Third, reject the proposal to change

1 to wildlife uses that protect wildlife only for
2 watering. Fourth, protect Minnesota's wild rice by
3 placing narrative and numeric standards for wild rice
4 with aquatic life protection where they belong.

5 And finally, set new stringent limits
6 to protect clean water, fish and health based on modern
7 science. Protecting our clean water is one of the
8 greatest challenges we face in the nation and
9 deregulating pollution limits (inaudible) the exact
10 opposite of what Minnesota needs.

11 The Boundary Waters and Lake Superior
12 must be protected, the rules should reflect this dire
13 reality. Thank you so much for this opportunity to
14 testify.

15 THE JUDGE: Thank you so much,
16 Mr. Knopf, I appreciate your time, contribution --
17 thoughtful contribution to our record.

18 Next we're going to be unmuting a
19 caller who's from the 218 area code whose last digits in
20 his or her phone is 09. Caller --

21 CLAUDIA HOCHSTEIN: Your Honor, it
22 doesn't appear that that phone number is on this call
23 anymore.

24 THE JUDGE: Okay. That person, while
25 they were in line before, has passed. Margaret

1 Saracino? Ms. Saracino, if you wouldn't mind unmuting
2 yourself and stating and spelling your name for our
3 record.

4 MARGARET SARACINO: Hello, can you
5 hear me now?

6 THE JUDGE: We can.

7 MARGARET SARACINO: Okay, great. My
8 name is Dr. Margaret Saracino. Margaret,
9 M-a-r-g-a-r-e-t, Saracino, S-a-r-a-c-i-n-o.

10 THE JUDGE: Thank you, Ms. Saracino.
11 what should we know?

12 MARGARET SARACINO: I'm sorry?

13 THE JUDGE: I just asked, what should
14 we know?

15 MARGARET SARACINO: Okay. I am a
16 child and adolescence psychiatrist in Northeastern
17 Minnesota. And I appreciate, Judge Lipman, the
18 opportunity to come and say my concerns about the
19 changes that are proposed.

20 I am a child and adolescence
21 psychiatrist, I trained at the University of Minnesota
22 for medical school, went to the Mayo Clinic for my
23 psychiatry training and child fellowship.

24 I've been treating children and
25 adolescents for the last 25 years and have a commitment

1 to working with children, adolescents and families on
2 mental health issues treating mental health conditions,
3 but more importantly, trying to work on preventing
4 mental health illnesses from occurring in the first
5 place.

6 I appreciate the opportunity to speak
7 regarding the concerns that I and many physician
8 colleagues and other health care providers have
9 regarding the proposed changes to water quality
10 standards that will result in significantly more mercury
11 being released from sediments and increased downstream
12 mercury methylation.

13 Methylmercury is a known neurotoxin
14 and possesses a high risk to human health, particularly
15 the health of children, the most vulnerable in our
16 society. And it's to that risk that I speak today.

17 In terms of the risks to human health
18 and particularly children, and with any illness,
19 prevention is safer and more effective than treating an
20 illness and certainly more cost effective. And it is in
21 the spirit of prevention, again, that I say that I'm
22 going to speak to the methylmercury and the risk to
23 human health.

24 So, methylmercury, as I said, is a
25 known neurotoxin. And what that means is that it's

1 toxic to the brain and central nervous system. The
2 timing and the amount of exposure determines the extent
3 of the risk.

4 The brains of fetuses that are
5 exposed to methylmercury through a mother, a pregnant
6 woman, eating fish with high amounts of methylmercury
7 exposes that fetus to the methylmercury through the
8 placenta.

9 The blood brain barrier is a part of
10 our brains that protects the neurons or nerve cells from
11 being exposed to heavy metals and neurotoxins.

12 In a fetus, all the way up to age two
13 years, that blood brain barrier is not well formed and
14 does not protect those developing neurons from
15 neurotoxins, which makes fetuses extremely at risk for
16 the toxic effects of the methylmercury.

17 And the little cells that are
18 developing in the brain and multiplying rapidly take in
19 that methylmercury in much higher amounts and is very
20 deleterious to those neurons and can cause brain damage.

21 Infants are also exposed through
22 breast milk. Children are exposed through eating fish
23 with high methylmercury content. So, adults are also
24 exposed to the neurotoxic effects of methylmercury. And
25 this effect can cause neurodegenerative diseases, so

1 degenerating the brain, the nerve cells.

2 Neurodevelopmental issues are more
3 with the children in the developing brain. And again,
4 that's what I want to focus on today.

5 So, we know that there are various
6 heavy metals that are exuded in mining processes. Some
7 of those heavy metals include lead, which can cause
8 permanent brain damage, arsenic, manganese, mercury that
9 can go on to become methylated and become neurotoxic.

10 And studies have shown that even
11 minor exposures of multiple of these neurotoxins can be
12 additive and synergistic and cause brain damage.

13 When I talk about neurodevelopmental
14 disorders, what that means is obviously problems of
15 development affecting the brain.

16 So, you might recognize diagnoses
17 such as ADHD, Autism Spectrum Disorder, learning
18 disorders, language disorders, motor disorders,
19 intellectual disabilities. Those are all consequences
20 of exposure to neurotoxins.

21 Studies have shown that --
22 neurodevelopmental disorders cause significant emotional
23 and financial cost to families and communities.
24 Children with these disorders may require many services,
25 such as special education, occupational and physical

1 therapy services, speech and language therapy.

2 And it's not uncommon, and I would
3 almost say very common, for children with
4 neurodevelopmental disorders to have comorbid or also
5 have psychiatric disorders, such as depression, anxiety,
6 and behavioral disorders.

7 These comorbid conditions add to the
8 needs of these children, add to the stress of the
9 individual and the family, financial and emotional.

10 When children have more emotional
11 problems they might require individual therapy, family
12 therapy, partial hospitalization, inpatient treatment if
13 the condition becomes severe, foster placement, and
14 residential placement.

15 And those are all costs, again,
16 emotional and financial, to individuals' families and
17 communities.

18 THE JUDGE: Ms. Saracino, some final
19 thoughts?

20 MARGARET SARACINO: Yes. So, one
21 other thing before I conclude is that there is a
22 shortage of child psychiatry in Northeastern Minnesota
23 and the nation in general. There are not enough
24 providers to provide the care that is needed.

25 And it is frightening to think that

1 with the dearth of resources that we have now, should
2 this process -- if the sulfates increase and the
3 methylmercury increases and there's more risk for
4 neurodevelopment disorders, we are not going to be able
5 to meet that need.

6 And we need to think of human health
7 aspects of this, not only the environment, which is very
8 profound, but also the human health aspects. So, I ask
9 to please reject the proposal of the change of rules.

10 Thank you.

11 THE JUDGE: Thank you so much,
12 Doctor, appreciate your time and thoughtful
13 contributions to our records.

14 Next up, Stephanie Digby, if she
15 could unmute her line and state and spell her name for
16 our record. Ms. Digby?

17 STEPHANIE DIGBY: My name is --

18 THE JUDGE: Ms. Digby, we're having a
19 little trouble with the audio. Maybe you could turn off
20 the camera and try?

21 STEPHANIE DIGBY: Okay. Is that any
22 better?

23 THE JUDGE: It's a lot better, thank
24 you.

25 STEPHANIE DIGBY: Thank you. Good

1 afternoon, Judge Lipman, thank you for these hearings.
2 My name is Dr. Stephanie Digby, my doctorate is in plant
3 biological from the University of California,
4 specialized in mycology, that's the study of fungi.

5 My dissertation from the University
6 of Rhode Island was on aquatic fungus. And what I
7 learned affects what I am to say.

8 Aquatic fungi are the start of the
9 food chain, not the little insects. The aquatic fungi
10 are an essential part of the aquatic food chain. They
11 make leaves palatable so that the insects, invertebrates
12 can eat the leaves.

13 These fungi are hypersensitive to
14 pollutants. They're especially hypersensitive to
15 sulfates. So, if you kill off your aquatic fungi,
16 you're damaging the food chain.

17 These fungi are called ascomycetes
18 and basidiomycetes, a-s-c-o-m-y-c-e-t-e and b-i-s --
19 b-a-s-i-d-i-o-m-y-c-e-t-e.

20 THE JUDGE: Thank you, Dr. Digby.

21 STEPHANIE DIGBY: When people talk
22 about wildlife they think about macro vertebrates. That
23 is scientifically unsound, you have to start at the very
24 beginning of the food chain. And if you don't, it's
25 unscientific.

1 And what I have heard from MPCA is
2 unscientific. They seem to be applying the Red Queen
3 rules, the truth is what I say it is. And I have to
4 question MPCA. Minnesota Pollution Control Agency, or
5 should it not now be changed to Enabling Agency.

6 The other problem of it is mercury
7 into the environment. The doctor spoke about the brain
8 damage that happens. Japan knew about this in the
9 1950s. Are we trying to reiterate Minamata in
10 Minnesota?

11 And the reduction of mercury
12 pollution is exactly what will happen. Unfortunately,
13 it will be to our Native American populations. It will
14 not affect the out-of-state polluters who are going to
15 make a little bit of money from destroying our Boundary
16 waters.

17 I cannot comprehend that MPCA has
18 even considered it, but they seem to have forgotten what
19 their original intent was, which was to protect, rather
20 than to just give away the state for short-term profits.

21 Thank you, Your Honor, I will keep it
22 brief. I will submit a lengthier comment.

23 THE JUDGE: We're so grateful for
24 your time and thoughtful comments, Dr. Digby, and your
25 willingness to put additional detail in before

1 Wednesday, February 24.

2 with that, we're moving on to our
3 last commentator before our next court reporter break.
4 John Lenczewski. And after Mr. Lenczewski we're going
5 to take a short standing break in benefit of our dutiful
6 and hard-working court reporter. And I'll talk more
7 about the length of the recess after that.

8 First let's hear from John
9 Lenczewski, if you unmute yourself. Mr. Lenczewski, if
10 you could state and spell your name for our record.

11 JOHN LENCZEWSKI: Yes, thank you,
12 Your Honor. My name is John Lenczewski, that's spelled
13 J-o-h-n, L-e-n-c-z-e-w-s-k-i.

14 THE JUDGE: What should we know,
15 Mr. Lenczewski?

16 JOHN LENCZEWSKI: Thank you, Your
17 Honor. I guess I've been listening to all this and I
18 don't want to stand in the way of everybody's break, but
19 it's been fascinating testimony. And I'm going to
20 probably throw away my script a little bit here.

21 I'll just say I'm a lifelong angler,
22 I'm a member of Trout Unlimited. I'm testifying on
23 their behalf and on my own.

24 I just want to point out what's at
25 stake here. We've got about a million and a half

1 anglers in the state. They and hunters account for
2 about 5.5 billion dollars a year in economic benefit and
3 48,000 jobs just in Southeastern Minnesota.

4 Just the trout fishing in
5 Southeastern Minnesota accounts for more than 890
6 million dollars a year. So, this is a big economic
7 driver for the state, but it's also a big cultural -- a
8 big part of our culture.

9 In fact, we even have a
10 constitutional right to fish. We need places to do
11 that. We need clean, fishable water in order to
12 exercise that constitutional right.

13 So, what you've probably got from a
14 lot of the other testifiers is just frustration, a real
15 sense of frustration with the Pollution Control Agency.

16 Just to give you a little context,
17 this originated with a petition to remove some uses from
18 the Dark River. And in the process the public, a lot of
19 outcry, but the PCA realized even if they achieve that,
20 they still have to protect downstream uses under the
21 Clean Water Act.

22 So, there was this pesky conductivity
23 standard that applied all the way to Lake of the Woods.
24 So, realizing that it's hard to remove designated uses,
25 amazingly they decided to just remove the standard for a

1 whole class rather than to remove those designations.

2 So, just really breathtaking, very
3 frustrating for a lot of us who realize that waters are
4 waters, they have fish and bugs and people use them.
5 And you can't really dice up the uses so cleanly, they
6 should be protecting all the uses of the water, not kind
7 of doing this in a little silo.

8 It's that frustration with the
9 attempt to do this in little silos. And if you look at
10 the PCA's exhibit, I think it's S-5 in particular, but
11 they acknowledge that increased levels of conductivity
12 will -- do harm aquatic life.

13 And the reason for this Class 3 and 4
14 rulemaking they say is we need to update the standards
15 and apply the newer science. And we agree. And yet,
16 they refuse to do that. Acknowledging that there is
17 better science, in fact, they even give it to us in this
18 guidance document, but the same rule doesn't seem to
19 apply.

20 So, they know the science, they've
21 actually got very good science-based standards tailored
22 to each ecoregion of the state. So, there's a separate
23 one -- in Northeastern Minnesota it's lower because it's
24 less impacted. There's a higher standard in places like
25 Willmar.

1 So, they have the science right now,
2 they have those numbers, they could adopt this not as
3 some guidance, but rather take those benchmark --
4 regional benchmarks and create those as numeric
5 standards by ecoregion. They can do that today.

6 And the frustration with a lot of us
7 is why aren't you trying to protect this aquatic life?
8 In that regard our standards are just as outdated. So,
9 we don't feel it is reasonable to remove the only
10 protections for some of the waters and the aquatic life
11 in them through this rule change.

12 We don't think it's reasonable to not
13 at the same time update that Class 2 standard. So, we
14 have the science for it, there's just no good reason why
15 this rulemaking could not have ruled that in.

16 They pulled back after Dark River,
17 they had plenty of time to take this guidance document
18 or policy and propose it as a rule. So, Ms. Cohen
19 pointed out this is a policy that could change tomorrow,
20 it's not a rule, it's not a standard.

21 So, we would urge you to reject this
22 rulemaking packet as a whole because it's unreasonable
23 without taking a look at and updating that Class 2
24 protections. So, I'll leave it there, it's getting
25 late. Thank you, Your Honor, and I really appreciate

1 the opportunity.

2 THE JUDGE: So grateful for your time
3 and contributions, Mr. Lenczewski, I'm very grateful.
4 what I'd like to do is take our court reporter break.
5 we would resume after the recess at precisely 7:16
6 because we're going to use the remaining 44 minutes that
7 we've set aside to hear from folks.

8 we're still not through our first
9 round, but if you're interested in being recognized for
10 a second round, please make a notation in the chat and
11 we'll try to recognize folks for a second round of
12 comment, to the extent that time permits.

13 we're grateful for folks who have
14 stuck with us. And with that, we're in recess until
15 precisely 7:16.

16 (At this time a brief recess was taken
17 from 7:01 p.m. until 7:16 p.m.)

18 THE JUDGE: Our next witness will be
19 Ricky DeFoe, but as he's making his way to the
20 microphone I wanted to make a brief set of
21 announcements.

22 First being that I misspoke before
23 the break, before we left for the intermission. The
24 hearing was noticed to go until the last speaker wanted
25 to be recognized or 8:30.

1 So, we're not concluding at 8:00. If
2 there's still folks that want to be recognized we'll be
3 going to 8:30, so that was an error on my part.

4 I did also want to say that by my
5 rough informal calculation by folks limiting themselves
6 to about five minutes, we've heard from 37 people so
7 far. And the high water mark over the course of this
8 hearing is that we had nearly 160 folks tuned in and
9 participating in hearing.

10 Again, compared to prepandemic
11 levels, without the use of this special technology, I
12 don't think that we would have had 160 people at a
13 rulemaking hearing. So, great tribute to people's time
14 and attention and the promise of this technology.

15 And again, I'm excited that folks
16 limited themselves so that we could hear from probably
17 an extra 20 people that we wouldn't have ordinarily
18 heard for under other circumstances.

19 So, your brevity, your focus, your
20 commitment and courtesies to other stakeholders is
21 really appreciated because we were able to include these
22 other voices in the development of our record.

23 Our next witness is Mr. Ricky DeFoe.
24 Mr. DeFoe?

25 RICKY DeFOE: Yes, thank you, Judge

1 Lipman.

2 THE JUDGE: If you spell your name,
3 if you could spell it for us.

4 RICKY DeFOE: First name Ricky,
5 R-i-c-k-y, middle initial W, last name DeFoe,
6 D-e-F-o-e.

7 THE JUDGE: Thank you so much,
8 Mr. DeFoe. What should we know?

9 RICKY DeFOE: I'm a Fond Du Lac Band
10 member, an elder, a pipe carrier. I wanted to say that
11 the Chippewa Nation, particularly the Anishinaabe
12 Nation, has been here long before the state of Minnesota
13 has been in existence.

14 Our people, indigenous people
15 literally (inaudible) our flesh and bones make up the
16 topsoil of these lands. So, I wanted to say that the
17 United States --

18 THE JUDGE: I'm just wondering if you
19 wanted to undo the video just because the bandwidth is
20 cracking up a bit. I think we could hear you clearer if
21 you just did it that way. We're eager to hear from you.
22 You were saying?

23 RICKY DeFOE: I want to say that the
24 United States of America, and particularly Minnesota,
25 has squandered the wealth of this nation, particularly

1 the Ojibwe ceded territories within.

2 There is -- the history in this
3 country and particularly this state is replete with a
4 lack of consultation with the tribes, in particularly
5 Fond du Lac as a Band.

6 We refer to the Northwest Ordinance
7 of 1787, ratified in 1789, that the Ordinance directs
8 that the utmost good faith should always be observed
9 toward Indians, their land and property. This
10 guarantees tribal land rights.

11 The State of Minnesota statutes say
12 that agencies of Minnesota must consult with the tribes
13 also. So, again, we want to talk about the -- and bring
14 attention to the lack of consultation by the Minnesota
15 Pollution Control Agency to particularly Fond du Lac and
16 the Bands in Minnesota.

17 The Minnesota Pollution Control
18 Agency is a rogue agency. Why does the agency want to
19 avoid foreseen water quality standards? Where is the
20 accountability? Why does the Minnesota Pollution
21 Control Agency want to weaken Minnesota water quality
22 standards that prevent excessive sulfate?

23 Let's talk wild rice, manoomin,
24 tremendous cultural importance for us Ojibwe. Around
25 the great city of the Ojibwe, it's part of our migration

1 story. Natural wild rice protects water quality,
2 reduces algae blooms, and provides habitat for fish,
3 mammals and waterfowl.

4 Rice is the result of increased
5 sulfate pollution in surface waters, which also
6 increases methylmercury contamination of fish in
7 Minnesota. The methylmercury is a neurotoxin affecting
8 brain development in the unborn fetus, infants and
9 children.

10 The 1973 wild rice sulfate standard
11 was adopted ten parts per million by the Minnesota
12 Pollution Control Agency and approved by the United
13 States Environmental Protection Agency under the Clean
14 Water Act.

15 In 2010 the Environmental Pollution
16 Control Agency told the Minnesota Pollution Control
17 Agency to enforce this standard. Things are getting
18 worse, not better, they're four times, five times worse.

19 The Band has authority to set under
20 -- to set water quality standards under the Clean Water
21 Act. The Clean Water Act protects downstream states,
22 which includes tribes, Fond du Lac in particular, with
23 treatment as a state from upstream activities causing
24 pollution.

25 The Act also requires that permits

1 meet the water quality standards of the downstream
2 state, in particular Fond Du Lac, as well as those where
3 facilities are located.

4 We demand access to uncontaminated
5 waters. Minnesota Pollution Control Agency's proposed
6 mining pollution deregulation would protect polluters,
7 not people or natural resources.

8 The United States of America is
9 supposed to be a nation of laws. The last I heard
10 Minnesota was part of that nation. Let's join the
11 tribes in doing our part.

12 Our Mother Earth is 70 percent water.
13 97 percent of that water you cannot drink or live by.
14 At least 3 percent fresh water, 1 percent in the
15 atmosphere, 1 percent subsurface and 1 percent surface
16 water. Of that surface water the Great Sea of the
17 Ojibwe, Lake Superior also known as, is 10 percent.

18 So, we can't gamble or take a chance
19 on life with water. There's four elements for -- that
20 are critical to life, earth, wind, fire, and water.

21 In our after-life ceremony we talk
22 about the wind stops blowing, the (inaudible) stop
23 flowing and we're returned to our Mother Earth.

24 So, we strongly oppose Minnesota
25 Pollution Control Agency's deregulation rules, which

1 exacerbate current forms of corporatocracy and by
2 extension inverted totalitarianism. So, we say reject
3 MPCA proposal. Thank you, Judge Lipman.

4 THE JUDGE: Thank you so much,
5 Mr. DeFoe, appreciate your time and contributions to our
6 record, very, very grateful. And after Mr. DeFoe,
7 Awaniikwe is our next witness. Could you unmute your
8 line?

9 CLAUDIA HOCHSTEIN: Your Honor,
10 Awaniikwe requested to go after Jami Gaither, if that's
11 okay with you.

12 THE JUDGE: For the time permitting
13 Awaniikwe has passed. And Ms. Jami Gaither?

14 JAMI GAITHER: Thank you, Judge, my
15 name is Jami Gaither, J-a-m-i, G-a-i-t-h-e-r.

16 THE JUDGE: Thank you so much. What
17 should we know?

18 JAMI GAITHER: A Native sister has
19 urged me to speak and Ian Hedberg's testimony has driven
20 me to agree. As many of you may relate life has been
21 quite stressful of late, so I had this on the calender
22 for next week.

23 However, Ian makes good points about
24 the difficulty most Minnesotans face in trying to be a
25 part of these civic engagement processes. And I've been

1 disturbed by some of what I've seen in this process
2 today to which I will speak.

3 THE JUDGE: Ms. Gaither, if you could
4 just be a little slower, mindful that Marcia is trying
5 to keep up. Okay?

6 JAMI GAITHER: Oh, thank you. First,
7 engagement requires being plugged into the system. One
8 thing I noticed was that I needed to secure a link today
9 as the initial notice of the meeting did not include it.
10 It would be provided later, we were told.

11 So, how many wanted to be here today,
12 but aren't for simply missing the update or not being
13 able to find it and giving up in frustration? Even when
14 one is plugged in there's difficulty with staying
15 involved, and moreover, with being heard.

16 I've had several years now as a
17 civically engaged Minnesotan, especially with regard to
18 working with the MPCA and other agencies charged with
19 protecting our water and us citizens.

20 I've written much with many
21 scientific and media links to the dangers of our living
22 situation here on earth to no avail. If a biologist
23 from 1921 was here, he would be shocked at the
24 devastation of our current water situation.

25 Yet we watched as the 2020 water plan

1 was approved with a sole nay vote from a Native
2 representative Awaniikwe who heeded the call from
3 another Native speaker regarding the winter stock trade
4 during public comments that day.

5 This voter took time to pause and
6 vote no when asked about the legal precedence that
7 required consideration. All others simply ignored their
8 noted requirement to recognize treaty law, the highest
9 law of the land.

10 We've seen the approval of Line 3
11 without agencies following the science or the process
12 required by Minnesota's Environmental Protection Act.

13 I've watched as thousands of
14 Minnesotans have spoken in opposition, dozens of them,
15 many with strong scientific backgrounds, have struggled
16 to get one bit of time with state agency representatives
17 to discuss their concerns.

18 Meanwhile, Enbridge had weekly
19 meetings to discuss their perspectives. It's no wonder
20 decisions continue to be made that provide ease for
21 large corporations and misery for every-day Minnesotans.

22 Our voices are not heard while
23 applicants are treated as customers coming in to buy up
24 resources of our state, be that clean water, trees or
25 ground through which to run a tar sands pipeline as that

1 industry dies.

2 This rule change is another piece of
3 what takes us to further devastation of our waters.
4 These decisions are made in small failures as agencies
5 ignore their authority and take the necessary time to do
6 proper evaluations.

7 They don't get input from the public,
8 which they are not precluded from doing, but have not
9 done, even when we have begged for inclusion in these
10 processes.

11 We must be satisfied with small
12 victories, like a couple years back, again in
13 rulemaking, where enough public outcry forced
14 abandonment of additional pipeline industry friendly
15 rule changes.

16 While I recognize Judge Lipman's
17 generous reminders throughout the day that there's a
18 link or that there's comments that can be made, the link
19 from the MPCA barely mentioned the comment period that
20 will remain open after this meeting today.

21 In fact, if you look at the notice,
22 it's seven paragraphs later where you find a link where
23 you can make your comments, but no mention at that place
24 of the deadline.

25 I've listened to many concerns,

1 especially those of the Native speakers today. I was
2 most disturbed by the hurrying of Secretary/Treasurer
3 April McCormick as she was reporting for many tribal
4 voices.

5 And I wonder if these voices will
6 again be ignored, if their treaty rights to clean water
7 will be allowed, if the Executive Order 1924 that Tim
8 Walz signed to have all agencies respect treaty rights
9 and Native (inaudible) in consultation will continue to
10 be ignored.

11 I pray that these voices will be
12 heeded and that changes that deteriorate our ability to
13 maintain clean water will not continue as they have
14 through all we have seen.

15 That biologist from 1921, if he was
16 looking today he would be disturbed. We have seen
17 continued degradation since that time.

18 And it would be really nice if we
19 could see a move in the opposite direction to where we
20 consider the voice of those people who have allowed us
21 to come into this land and share it with them
22 peacefully.

23 It's not going to be a surprise as we
24 continue to see those voices ignored and the
25 deterioration of our environment happen that we're going

1 to see more and more people standing up, as we see right
2 now along the Enbridge corridor, where people are trying
3 to stand for clean water as a foreign corporation comes
4 in with a pipeline that is totally unnecessary as we
5 face the devastation of our planet. Thank you for
6 considering my comment.

7 THE JUDGE: Thank you so much,
8 Ms. Gaither. I just want to make a point that it's
9 certainly my hope, my fond hope that neither
10 Secretary/Treasurer McCormick, nor you think that I
11 wasn't pleased to have her comments, wasn't delighted
12 that she was part of our record.

13 My request that she confine her
14 comments was out of a concern that I might not be able
15 to reach your comments later on in the evening. That
16 was my concern.

17 So, I'm delighted to have Secretary
18 McCormick's contributions to this record, but I'm
19 likewise thrilled and delighted to have your
20 contributions to this record. And that was the
21 balancing that I was trying to achieve.

22 Likewise, Mr. DeFoe, other members of
23 the Anishinaabe community, I want to hear from as many
24 voices as possible. With that, Awaniikwe, if you'd like
25 to be recognized, I'm eager to hear from you.

1 CLAUDIA HOCHSTEIN: Your Honor, I'm
2 sorry, there's been another person that Awaniikwe has
3 requested go in front of her. And now we are getting a
4 couple more requests here. Awaniikwe is requesting to
5 go last. So, up now will be Renee Keezer and then Dawn
6 Goodwin and then Awaniikwe.

7 THE JUDGE: Ms. Keezer?

8 RENEE KEEZER: Keezer, Renee Keezer,
9 R-e-n-e-e, K-e-e-z-e-r.

10 THE JUDGE: Ms. Keezer, what should
11 we know?

12 RENEE KEEZER: I'm a senior at
13 Bemidji State University, I'm majoring in environmental
14 health and toxicology, indigenous studies, minoring in
15 indigenous sustainability studies and Ojibwe.

16 And one thing that I do know with the
17 increased sulfate is that when it enters into the
18 wetlands, that we end up with increased methylmercury,
19 which goes into that.

20 It's a mercury that accumulates in
21 the fish where we see the biomagnification in -- like,
22 in the eagles and other predator species.

23 We also see a net affect the
24 economics in the state of Minnesota because the fishing
25 is one of the big tourist attractions for this state.

1 This might seem like a good decision
2 for the mining, but I think that it's -- for the amount
3 of copper and nickel that they're extracting from this
4 mine, I don't think that there's no way that it's
5 sustainable or that it's even economically feasible.

6 I think that not only do we need to
7 keep the standards in place, I think we should increase
8 the standards so that we can protect Minnesota's waters.

9 Our surface waters, we already have
10 over 55 percent of the surface waters in the state of
11 Minnesota are impaired. And we need to do something to
12 start fixing that and not contributing to it and
13 increasing the damage that we are already seeing.

14 We are a huge contributor to the dead
15 zone in the Gulf of Mexico. And we need to start taking
16 action and start looking at what kind of environment are
17 we leaving. What kind of environment are we living in
18 right now?

19 The water is now on the market,
20 futures for the water on the market, how long until
21 Minnesota waters? The water futures are being sold on
22 NASDAQ. It's no longer looked at as a public good.

23 How long until our water is a
24 commodity on NASDAQ? And we need to protect this now.
25 And decreasing standards is not economically or

1 environmentally viable to the state of Minnesota.

2 THE JUDGE: Thank you so much,
3 Ms. Keezer. Ms. Dawn Goodwin?

4 DAWN GOODWIN: (Native language
5 spoken). My name is Every Lasting Wind and I live here
6 in White Earth. My English name is Dawn Goodwin,
7 D-a-w-n, G-o-o-d-w-i-n.

8 THE JUDGE: What should we know?

9 DAWN GOODWIN: I'm very upset. I'm
10 angry and disappointed in the Minnesota Pollution
11 Control Agency. We have not had proper consultation as
12 Anishinaabe people.

13 We are tired of not being heard.
14 Maybe we're being heard, but we're not being listened
15 to. You heard us loud and clear tonight that we want to
16 protect our waters, our waters.

17 I'm not going to repeat what everyone
18 said. I stand by those who are standing for the water.
19 And I'm not going to say the water, I'm going to say
20 nibi, standing for nibi. Nibi means my life, that's
21 what that means. Without clean nibi we will all perish.

22 When I was a child I had my first
23 lesson, eight years old, about pollution, water
24 pollution. I went home and asked my father, I did not
25 know he was a biologist, I said, "Dad, what are we going

1 to do when the water is polluted?"

2 And he said, "Don't worry my girl,
3 there's a Clean Water Act." Thank you for listening.

4 THE JUDGE: Thank you, Ms. Goodwin,
5 grateful for your time and thoughtful contributions to
6 our record, very grateful. Awaniikwe? Did you want to
7 be recognized?

8 CLAUDIA HOCHSTEIN: Awaniikwe, I have
9 sent you the request to unmute. There you go.

10 AWANIIKWE: (Native language spoken).
11 Judge, it's been an honor to sit here and listen to
12 everybody voice their opinion, voice their truths, voice
13 their scientific proven theories.

14 I'm standing here before you on
15 behalf of my future generations. The treaty of 1826 was
16 just 20 miles from here at the mouth of Jay Cooke State
17 Park. That was the first treaty ever written in the
18 state of Minnesota, 1826. That's 195 years ago.

19 At that time our people could drink
20 out of that St. Louis River. We could eat the fish.
21 There was manoomin growing there. I went down there the
22 other day and there's a sign there that says you can no
23 longer eat this fish. And if you have questions call
24 this number.

25 I called that number, you know what?

1 It's disconnected. It's been disconnected for the last
2 four years. What does that mean when people go down to
3 that park and they want to know more information about
4 that? Again, we are invisible.

5 The treaty of 1854 is my signatory,
6 that is why I stand here. It's exasperating that we
7 have to do this -- continually to do this, continually
8 to beg and plead to be heard.

9 Whereas, the State of Minnesota does
10 not have jurisdiction over us. The treaties are the
11 supreme law of the land. In those treaties you are to
12 be protecting *nibi* and *manoomin*.

13 These are our family members. These
14 are -- we are not above them, we are equal to. Because
15 of their existence we exist. They are not resources,
16 they are our relatives.

17 We're talking about a water variance.
18 We're talking about polluting water, the water we drink.
19 I asked -- I asked Uncle Google, I said, "Hey, Google,
20 what are the two things you can't live without?" They
21 said, "Water and food." What did they say? Water and
22 food.

23 Polluting our water is killing our
24 *manoomin*. I eat that. I go out and I tap these trees
25 and they give us this beautiful maple syrup. I utilize

1 all of the mashkiki that we have, all that medicine.

2 Again, it's exasperating that I have
3 to do this, that we have to have a public comment, that
4 we even have to have a public comment period in this day
5 and age talking regarding poisoning our waters.

6 I am the 40th person that is talking.
7 Of those 40 I've counted less than eight that were in
8 support of. 11 generations, we've been trying to tell
9 you don't poison our food, don't poison our water
10 because when you do that it's genocide.

11 And it's not only genocide upon the
12 Anishinaabe, it's genocide to you too, Judge, to you
13 too, Ms. Court Reporter, to you too, MPCA collaborator.
14 They're poisoning your water, don't drink it, don't fall
15 for it. Thank you for listening.

16 THE JUDGE: Ms. Awaniikwe, thank you
17 so much for your kind contributions. We are honored by
18 you as you honored us with your kind and thoughtful
19 contributions. With that, Ms. Hochstein, are we at the
20 second round?

21 CLAUDIA HOCHSTEIN: Your Honor, we
22 are, in fact, at the second round. If you check your
23 messages you've got the list there.

24 THE JUDGE: I do. Thank you and we
25 appreciate everyone's kind comments. Right now we have

1 four people in the list to be recognized for a second
2 round. Mindful that we have an adjournment at 8:30.

3 I guess I would like folks to try to
4 keep to five or seven minutes, maybe a little bit
5 longer. I know there was a hope and expectation that
6 there might be some longer time, but I do want to hear
7 from all four of those folks.

8 So, with that, we'll begin with the
9 second round with Mr. Eric Morrison. If you wouldn't
10 mind unmuting yourself. Mindful that Jo Haberman, Paula
11 Maccabee and Mr. Kevin Strauss are in line behind you.

12 CLAUDIA HOCHSTEIN: Your Honor, we
13 also have two more people who have raised their hands
14 here, it looks like. So, it will be six people, Anna
15 Marie Yilniemi and then a phone number is after that.
16 So, I will unmute Eric Morrison now.

17 THE JUDGE: Okay. Mr. Morrison,
18 we're eager to hear from you again, but mindful that
19 there are thoughtful, clear, important people behind
20 you. I'd be grateful for brevity and clarity from you,
21 but I'm eager particularly to hear from you.

22 ERIC MORRISON: Thank you, Judge
23 Lipman. I'm going to keep my comments short. I'll
24 really emphasize the written comments, so if you would
25 please look for those that would be good.

1 I'm really impressed by you and your
2 letting everybody talk. And I've really been moved by a
3 lot of things that people have said and it's kind of
4 hard to add to that.

5 The thing I left off with is what is
6 modern and what isn't. And I think in some ways these
7 narrative standards seem to be more modern because
8 they're going to be allowing some different businesses
9 that we haven't had before.

10 When I was speaking I was talking
11 about chloride ion. And removing that standard, it
12 potentially causes downstream corrosivity.

13 And I know that it would be really
14 modern, for example, to grow shrimp in our state instead
15 of shipping soy products down to the Gulf and then
16 shipping shrimp back here.

17 That leaves a problem of having a
18 67-acre artificial ocean that has to be disposed of
19 someplace. And it's very convenient and very modern
20 perhaps to just get rid of that chloride concentration
21 limit and conductivity because an artificial ocean would
22 be about 50,000 microsiemens.

23 That's the kind of thing that's just
24 -- without getting into the technical details is really
25 kind of out of place with a lot of what we've been

1 talking about today.

2 So, I'll let you go on. I just
3 appreciate your thoughtfulness and your patience and you
4 stayed until the end.

5 THE JUDGE: Absolutely. I appreciate
6 your kindness, Mr. Morrison. Myself, and I speak for my
7 colleagues in this as well, we're all called to do this
8 because we believe strongly in the wisdom of the group
9 and we're eager to expand the group and to engage the
10 group, to hear from the group.

11 It's the purpose to which we've
12 dedicated our professional lives. With that, I'd like
13 to hear from Ms. Jo Haberman.

14 CLAUDIA HOCHSTEIN: Your Honor, I'm
15 sorry to interrupt again, I compared the phone numbers
16 here and one of the names. It looks like two of these
17 people have not spoken yet. So, if you do not object I
18 would like to go to Anna Marie first, phone number
19 2183-something, ending in 28.

20 THE JUDGE: Anna Marie, in the 218
21 area code, if you could unmute yourself.

22 ANNA MARIE YILNIEMI: Hello?

23 THE JUDGE: Yes. Spell your name for
24 our record. We can hear you.

25 ANNA MARIE YILNIEMI:

1 Y-i-l-n-i-e-m-i.

2 THE JUDGE: Yilniemi, is that how you
3 pronounce it, Ms. --

4 ANNA MARIE YILNIEMI: Yes.

5 THE JUDGE: What should we know?

6 ANNA MARIE YILNIEMI: Yes, thank you.
7 I want to say that I've been involved in this process
8 for just a short decade now. 2009 I became aware of how
9 our standards get manipulated and changed to accommodate
10 industry for the sake of commerce and prosperity.

11 And since then I've attended many,
12 many hearings. And I feel frustrated because
13 consistently we rally to have our voices heard and to
14 engage in this meaningful process and the outcome has
15 often been a bit confusing and even disappointing.

16 And while these permits and variances
17 get adopted or get questioned or discussed, it becomes
18 confusing. And then these industries move forward
19 making claims of these processes that have been ongoing
20 with Minnesota's high standards.

21 And behind the scenes these high
22 standards are slowly getting chipped away. So, it's so
23 overwhelming that this particular hearing, I didn't even
24 realize was -- the magnitude of it, what was taking
25 place.

1 So, now we're living in this
2 pandemic, which by the way is an indicator, it is in
3 direct result of climate change is this increase in
4 viruses and pandemics. And I'm baffled.

5 I'm so grateful for all of the people
6 who are speaking here. And I'm a little bit -- a little
7 bit concerned because I've heard some really important
8 stuff being said.

9 And while I see evidence that you are
10 respectful, I also feel like this whole process is a
11 little bit of a charade and that there are slight micro
12 indicators in people's reactions and responses.

13 And the charade being that it's a
14 performance to collect this material that gets filed and
15 put away and when it gets commented on in the future,
16 it's changed.

17 Okay, I don't want to get off track,
18 so I apologize. It's another thing that makes me very
19 concerned about my ability to survive into the future
20 and for my children's ability to survive into the
21 future.

22 And I wonder, who is behind these
23 needs to change all these standards, to lower these
24 standards? And consistently it's major industry. And
25 who is the money behind the major industry? And

1 consistently it's multi-national corporations. And who
2 is behind these multi-national corporations but these
3 dark forces that we never see.

4 And, you know, nowadays we talk about
5 war like we don't want a war, but we're in constant war.
6 And we have this invisible war and it's like these
7 multi-national corporations are attacking us and they're
8 doing a brilliant job.

9 They have us tearing ourselves apart
10 for this perception of some kind of gain, some benefit,
11 some monetary improvement, when really our water systems
12 are being poisoned. And we are just a few generations
13 from being decimated.

14 I mean, it's just -- it's so fragile.
15 And once we cross that line there's no going back.
16 There's no fixing or undoing any of this. So, that's
17 one of my great concerns.

18 And I want to see an outcome in this
19 process where we the people, the citizens who have an
20 obligation to honor our treaties that we are
21 co-signatures on, these treaties that have been
22 mentioned repeatedly that I've heard being mentioned.

23 It's important for us to understand
24 that we are the other party there and we have a
25 responsibility to uphold those treaties. And this is

1 how we do it.

2 We have to say no to industry and we
3 have to tighten our boot straps and say okay, our
4 perceptions need to shift because these industries that
5 we think are going to save us are actually trying to
6 kill us.

7 I mean, poisoning our water supply is
8 a really easy way to conquer us and it's effective. And
9 we're doing it, we're helping the process along by
10 lowering our standards.

11 So, please, please give some meaning
12 behind the statement that Minnesota has high standards.
13 Let's raise our standards, let's not lower them. Thank
14 you for your time tonight. I wish everyone well. And
15 thank you for listening to me.

16 THE JUDGE: Thank you, Ms. Yilniemi,
17 appreciate your time and contributions. Let me make one
18 point. This process is not a charade in any way.

19 The reason why the legislature has an
20 independent administrative law judge preside in these
21 hearings is because my pay and the quality of my working
22 conditions, my pension, all of that isn't decided by the
23 MPCA. I'm an independent administrative agency.

24 ANNA MARIE YILNIEMI: Yes, and thank
25 you for saying that, Judge. And with no disrespect

1 intended towards you, you are not the first independent
2 law judge that I have spoken to in this hearing format
3 in which people like yourself hear us and understand
4 what we're saying, yet it gets disregarded when being
5 referred back to.

6 These supporters of these industry
7 proposals, they talk about the pieces of the process as
8 being rigorous and having -- coming to an outcome.

9 And it is rigorous, but it -- we're
10 doing it over and over again. And judges like
11 yourselves, they hear us and they understand the truth
12 of it. And the -- and nothing comes of it.

13 THE JUDGE: Again, I won't
14 necessarily speak as to that, I'm saying there's a
15 structural protection in the independents. I don't work
16 for industry, I don't work for the MPCA.

17 ANNA MARIE YILNIEMI: Certainly,
18 thank you. I'm sorry, I guess not all of that statement
19 was directed at you as it is about this bigger, broader
20 picture.

21 Because my statements are going into
22 a record and the hope is that one day someone will come
23 into this record and they will look at the details and
24 it will have some impact and meaning.

25 So, I'm going to thank you once again

1 for your time to listen. There's other people that wish
2 to speak and I know they have important things to say.

3 THE JUDGE: Thank you so much,
4 Ms. Yilniemi. We have a caller from the 218 area code
5 with the last digits 28. If you wouldn't mind unmuting
6 yourself and identifying yourself for our record.

7 CLAUDIA HOCHSTEIN: If your phone
8 number is 218 and ends in 28 you should have received --
9 there you go, we're good.

10 THE JUDGE: If you could state and
11 spell your name for our record.

12 ELIZABETH JAAKOLA: My name is
13 Elizabeth Jaakola. And that last name is spelled
14 J-a-a-k-o-l-a.

15 THE JUDGE: What should we know?

16 ELIZABETH JAAKOLA: (Native language
17 spoken). I'm a member of the Fond Du Lac Band of Lake
18 Superior. I am also a citizen of the state of
19 Minnesota. I am a mother, an educator of 30 years.

20 I have parents who have been citizens
21 here their entire lives. I have children who I am
22 raising here. And I'm calling to speak about this issue
23 about lowering the water quality standards.

24 And I think I'm going to begin, even
25 though I know many have spoken about the treaties, and I

1 want to add my voice to the concerns that when the
2 treaties, which are the supreme law of the land, were
3 signed to cede the territory that allowed Minnesota to
4 gain statehood, we did not cede our human rights.

5 We did not cede our water or rights
6 to water. We did not cede our inherent roles as keepers
7 of the water. And as such, it's our duty to speak up to
8 protect our waters.

9 And we wonder how it is that the MPCA
10 feels that it has the authority to issue permits or
11 allow water quality standards to be lowered without
12 consent or permission from the Anishinaabe Nation, who
13 signed those treaties that allowed Minnesota to become a
14 state.

15 I think that it's been proven that
16 the science is there that says that if the water quality
17 standards are lowered or dissolving the salts, that it
18 will kill our wild rice and many Ojibwe medicine
19 necessary to sustain the people and sustain our
20 practices.

21 And in essence -- in actuality, to
22 change the standard then is tantamount to genocide, as
23 has already been stated a few times.

24 And I know that you said that many of
25 you have dedicated your lives to upholding the law and

1 that's very honorable. We have dedicated our lives --
2 we've dedicated our lives to our Anishinaabe
3 (inaudible).

4 And we have dedicated many
5 generations to being able to live here and sustain this
6 land in order that it will sustain the people, not just
7 Anishinaabe people, but people of all backgrounds.

8 And the Fond Du Lac Band has a water
9 quality ordinance and it has the Clean Water Act. And
10 to read from that ordinance, it says, "Water quantity
11 and quality and habitat alterations that may limit the
12 growth and promulgation of or otherwise cause or
13 contribute to an adverse effect to wild rice and other
14 flora and fauna of cultural importance to the Band shall
15 be prohibited."

16 Another portion of that says,
17 "Natural hydrologic conditions supportive of the natural
18 biological community, including all flora and fauna and
19 physical characteristics naturally present in the water
20 body shall be protected to prevent any adverse effects."

21 We could go on and on reading, but it
22 sums up this way. I'm here to implore you to listen to
23 our testament, to listen to our science, to listen to
24 natural law and tribal authority as we say you do not
25 have our permission to lower the water quality

1 standards.

2 Thank you for listening to me. I
3 will end it with that.

4 THE JUDGE: Thank you so much,
5 Ms. Jaakola, appreciate your time and your patience in
6 waiting and contributions to our record.

7 Next up is Nancy Beaulieu.
8 Ms. Beaulieu?

9 NANCY BEAULIEU: Good evening, I'm
10 Nancy Beaulieu, Minnesota Chippewa Tribe, Leech Lake.
11 And I just want to thank everybody for their honest
12 testimony tonight and for giving this opportunity to
13 speak.

14 As mentioned before, our words
15 continue to fall on deaf ears. We've attended hearings,
16 meetings, we do everything that's asked of us and we do
17 that in a good way and we always show up with good
18 intentions.

19 And yet our rights to exist still
20 continues to be unheard. And I want to remind this
21 agency that is charged with protecting our waters that
22 you as an agency have a treaty obligation.

23 And that obligation is everyone's
24 obligation if your home, your land, your business,
25 whatever it be is on this land, you too have a treaty

1 obligation.

2 And I want to use the word
3 "obligation" because when we use the term
4 "responsibility" people sometimes choose not to take
5 responsibility. But under the treaties, in black and
6 white, one, treaties were intended for us to live as
7 good neighbors, two, be good stewards of the earth.

8 And our people signed those treaties
9 to preserve our way of life. And under those treaties
10 we never surrendered our rights to the waters to hunt,
11 fish and gather. And yet those treaties have never been
12 honored to this day.

13 Currently Governor walz's
14 administration has the Executive Order 1924 for the
15 government-to-government relationships. And I know this
16 agency sits at the table at the Minnesota Indiana
17 Affairs Council. And in that meeting space there should
18 be some meaningful conversation.

19 But yet, attending the Minnesota
20 Chippewa Tribe Tribal Executive Committee just last
21 Friday in Fond du Lac, I was disheartened to heard that
22 the Minnesota Pollution Control Agency hasn't consulted
23 Minnesota Chippewa Tribe in lowering the standards.

24 So, I don't understand what it takes
25 for this agency and other agencies, like the DNR, to

1 understand they have an obligation to uphold the
2 treaties. There's a misconception that these treaties
3 only belong to us.

4 But then again, I'm going to remind
5 you that your forefathers signed those with our
6 ancestors and they're very much alive today as the day
7 they were signed.

8 And we see with the Biden
9 administration as well, he wants to work on his
10 government-to-government relations. And I'm very
11 pleased to have Ms. Haaland be nominated for the
12 Interior Secretary because without people -- our people
13 in these types of positions, I think we'll continue to
14 get ignored.

15 So, there's a lot of work to do right
16 now. And I suggest this agency uphold the treaty
17 obligation, honor the Executive Order 1924 under the
18 walz administration and do what's right.

19 This water is sacred to our people
20 and it's sacred to all living things. And currently
21 right now Minnesota is having some issues with the
22 forever chemical, there's so many unknowns.

23 We have Line 3 stuffed down our
24 throats right now because we know, again, this agency
25 has failed white Earth, Red Lake, and Mille Lacs. They

1 shoved this pipeline down our throats during a pandemic
2 to exacerbate the climate change and COVID-19.

3 It also brings deadly man camps to
4 our communities. But yet it seems like through this
5 agency and other agencies here in Minnesota, it just
6 seems that brown lives don't matter. Native lives do
7 matter.

8 And we're here to testify that your
9 rule change is an attack on our culture, it's an attack
10 on our sovereignty and it's an attack on our
11 self-determination.

12 So, I urge the Minnesota Pollution
13 Control Agency to uphold the treaty obligations because,
14 one, you're not only violating the Clean Water Act, you
15 also must consider the Winters Doctrine of 1908, which
16 guarantees clean water around reservations.

17 It's really, really sad to put
18 science at the forefront of how safe it is to damage the
19 future. Because there are flaws in the system.
20 Currently (inaudible) county Enbridge is on their
21 corridor right by Lake Irvin off the Mississippi there,
22 there's integrity at issue with the closing on the pipe.

23 And that's one reason why we don't
24 put pipes and mines by our fresh drinking water. And
25 regardless of what the science says, you must remember,

1 you all took an oath to uphold the United States
2 Constitution. And you must re-examine Article 6, which
3 states treaties are supreme law of the land.

4 So, with that being said, sovereignty
5 will always supersede science. And this agency must
6 learn how to make good, sound decisions that protect the
7 people of Minnesota and tribal nations.

8 It's not in your power to violate our
9 basic right to life. And for protecting all living
10 things, that's what you're charged with, DNR, but yet we
11 see corporate power come in and get their way. And they
12 get that by lobbying people and lowering the standards.

13 THE JUDGE: Ms. Beaulieu, some final
14 thoughts?

15 NANCY BEAULIEU: Yes. I would want
16 this agency to consider their obligation to the treaty,
17 again, we never ceded our right to hunt, fish and
18 gather, nor did we ever give up our right to protect the
19 water.

20 The state hijacked jurisdiction over
21 our waterways. And we're going to do everything in our
22 power to make sure that agencies like this will hear us
23 out.

24 THE JUDGE: Thank you so much,
25 Ms. Beaulieu, appreciate your time and very thoughtful

1 contributions to our record.

2 In the second round we have three
3 folks that have asked for recognition, Ms. Maccabee of
4 Water Legacy, Mr. Strauss, and Secretary/Treasurer
5 McCormick have asked for recognition. We have about 19
6 minutes left in our hearing.

7 So, I'd really like to, if we could,
8 get to Secretary McCormick's remarks again.

9 Ms. Maccabee, can you try a five-minute segment? Same
10 thing with Mr. Strauss, and then we can certainly hear
11 from Treasurer McCormick. Ms. Maccabee?

12 PAULA MACCABEE: Your Honor, I'm
13 going to be very brief. I will address the questions
14 that I don't think can be done in writing and then the
15 rest I will submit in writing.

16 I would just ask that you would
17 request that the PCA give us the answers by next Friday
18 because some of them will influence our ability to write
19 written comments.

20 The first question are issues where I
21 think the SONAR is incorrect and an errata needs to be
22 filed. The first one pertains to the Boundary Waters
23 Canoe Area wilderness and Voyageurs National Park.

24 Because on Pages 69 and 70 the SONAR
25 states the current rule, 7050.0430, which states that

1 all unlisted streams and lakes in the BWCAW, BWCAW is
2 Boundary Waters Canoe Area wilderness, and Voyageurs
3 National Park are Class B waters.

4 And it seems from the text that the
5 PCA is suggesting that this is a mistake and this was
6 done by accident. And BWCAW and Voyageurs are really
7 Class 3 waters.

8 So, is that what the MPCA is actually
9 saying in those pages of the SONAR or have I
10 misinterpreted them? I wonder if there's someone from
11 the PCA who could respond? Is it possible to have
12 answers to questions here? Because if not, this isn't
13 going to work.

14 THE JUDGE: The rules of the game are
15 that you can certainly propound the questions, the
16 agency can take them under advisement. I don't know if
17 Mr. Kyser wants to answer them here or in writing.

18 JEAN COLEMAN: Judge Lipman, this is
19 Jean Coleman from PCA. And given the time that is
20 remaining and the detail of the question and the number
21 of people still interested in speaking, I can say that
22 we will absolutely respond to the question in writing
23 during the post-comment period -- post-hearing comment
24 period.

25 PAULA MACCABEE: I can't write

1 comments without knowing these answers. So, if we could
2 just have a commitment from the PCA to give answers in
3 writing, I think, by middle of next week, that would be
4 fine, it doesn't have to be done tomorrow.

5 And then I'll submit everything in
6 writing. Because that will allow people to have a
7 chance to speak to the judge. And then, Your Honor,
8 you'll get answers to the questions, too.

9 I have questions that there's an
10 error regarding the Boundary Waters Canoe Area
11 wilderness. There seems to be an error about the wild
12 rice rule. And just some questions for clarification.

13 And I will submit them tomorrow and
14 then ask that if the PCA could commit to a date by which
15 I would get the written answers, that would be great,
16 and then I can let other people speak.

17 THE JUDGE: Grateful for your time
18 and contributions, Counselor. Okay if we --

19 PAULA MACCABEE: Could we get a
20 commitment first, Your Honor, as to whether they're
21 going to get us a response, a date?

22 THE JUDGE: The minimum is that by
23 the first comment period, but I'm sure that you can have
24 a conversation with Ms. Coleman to see if that timeline
25 couldn't be speeded up.

1 But the process in the statute is
2 that we have a public hearing and then there are replies
3 to the things that are raised in the first comments.
4 That might not be ideal and you've given a really good
5 reason why you'd like to hear sooner.

6 PAULA MACCABEE: No, sir, the process
7 in law is that the people get the chance to ask
8 questions of the agency. Here's something as important
9 as whether all these rules are just by accident or
10 whether they actually classify waters as Class 3A and B.

11 These are things that we should be
12 able to ask a question and get it answered because we
13 can't write comments when we don't know the answers.
14 And that's why the law of the statute and the rules
15 allows us to ask questions.

16 So, I'm happy to say that we don't
17 need to sit and wait for them to dig up answers now, but
18 it is not consistent with the rules. Because if the
19 rules meant you get your answers after you have to put
20 in comments, then they wouldn't have said you can ask
21 during the hearing.

22 THE JUDGE: I think it contemplates a
23 situation where there's a very complicated question
24 that's asked during a hearing that might take some time
25 to develop an answer. And your question might be such a

1 question, I don't know.

2 PAULA MACCABEE: Well, with respect
3 to the other people who are testifying I'm willing to
4 put the questions in writing, but it does not seem
5 respectful to me to say you won't get answers to them
6 until the comment period is over.

7 Because that would mean the ten or
8 11,000 people who are my supporters and who are counting
9 on me would have comments that are in error or incorrect
10 because the answer would come too late.

11 All I'm asking is a commitment to the
12 time in which I will get the answer. And saying it will
13 come by the end of the comment period is not going to
14 give us a chance to make any kind of comment or
15 response.

16 THE JUDGE: I think what Part 1400
17 contemplates is a response in the comment period and
18 then your rebuttal five business days later as to why
19 that's not true, why that's insufficient, why that's
20 crazy, why that's whatever.

21 To the extent that we can do that by
22 you talking and staple the relations with the agency
23 sooner rather than later, I think that's great. But the
24 current process is the current process.

25 with regard to that, Counselor, I'm

1 going to move on to Mr. Strauss. Thank you kindly for
2 your contributions. Mr. Strauss?

3 KEVIN STRAUSS: Thank you, Judge
4 Lipman. I just want to take a moment to realize and
5 help us all realize that we are having a hearing
6 extensively to encourage a state agency, the Minnesota
7 Pollution Control Agency, to do its job. That's amazing
8 to me.

9 These are state agencies who have a
10 job to do, they're supposed to do it in a certain way,
11 protecting clean water. And because they appear to be
12 taking actions that will make more pollution happen we
13 have to have a hearing to encourage them to do their
14 job.

15 With that being said, the real issue
16 here is who should pay to clean up river and lake
17 pollution. In Rochester, like many cities, we have a
18 rule that says you have to clean up after your dog.

19 The reason we do this is because we
20 believe it's the dog owner, not taxpayers, who should
21 have to clean up dog droppings on our sidewalks and
22 streets. Imagine how many piles of dog droppings we'd
23 see if we didn't require dog owners to clean up their
24 own messes.

25 Yet right now the rule being proposed

1 here is doing exactly that, it's saying that Minnesota
2 taxpayers should pay to clean up pollution from the
3 taconite and copper-nickel industries.

4 We've seen this before, of course
5 industries are going to lobby and spend lots of money
6 encouraging that taxpayers pay the bill for their work.
7 That totally makes sense. Every industry would love to
8 have taxpayers give them money or not make them pay for
9 the cost of their industry. That totally makes sense
10 for business.

11 What doesn't make sense is that the
12 MPCA is going along with it. The MPCA appears in some
13 cases here to have been captured by the industry they're
14 supposed to regulate. That would be kind of like bank
15 robbers having control and being able to lobby the
16 police about rules.

17 The MPCA's SONAR delivered great
18 depth, it's very in-depth, I enjoyed reading it about
19 the cost of the taconite industry to clean up their
20 wastewater. And there is a cost, everyone agrees
21 there's a cost.

22 Unfortunately, the MPCA omitted any
23 information about the cost to taxpayers to clean up the
24 increased pollution from this new rule. You think you
25 would have both pieces of information, not just focus on

1 the industry cost, but also on the cost to taxpayers.

2 Because when pollution happens in
3 Minnesota, in the end it's either the corporations that
4 cause the pollution or taxpayers who clean it up,
5 there's not another source of funds there.

6 By adopting the new rules the MPCA
7 and companies like Cleveland Cliffs are asking us to
8 clean up their mess. Perhaps there's a reason we should
9 subsidize multi-million dollar multi-national
10 corporations. I'd love to hear that reason.

11 And if they wanted us to give them a
12 government handout, they're welcome to make the case.
13 They can lobby our politicians, like they do right now,
14 and say we should give them X number of dollars. But
15 that's not what they're doing here.

16 They're trying to change rules to
17 reduce a cost for them to do business. And maybe that's
18 okay, but we can't take that big step until we know what
19 the cost is going to be.

20 So, by the MPCA omitting information
21 about possible downstream cost for this increased
22 pollution, the documents provided are not sufficient.

23 Now, you can say, okay, it would take
24 too long for the MPCA to make those estimates, it's not
25 reasonable. They spent a whole lot of time estimating

1 the cost to the taconite industry.

2 They could have spent the same amount
3 of time and gotten great information about potential
4 costs of this rule to taxpayers. They chose not to do
5 that. Perhaps they weren't required, but they chose not
6 to do that.

7 In effect, we're asking for the
8 industry to -- we're asking to socialize the cost of
9 this pollution by charging us taxpayers and not private
10 industry to clean up their mess.

11 Why is that a bad thing? Because
12 costs are the only thing industry deals with, that's
13 what they respond to. So, by taking away the cost of
14 cleaning up their pollution, they have no incentive to
15 innovate.

16 They have no incentive to use new
17 technology to solve this problem. Because they decided
18 Minnesota taxpayers, they'll pay for it. So, there's a
19 real harm to cleaning up the industry's pollution.

20 We're asking that you -- many people
21 here are asking you to reject the proposed rule changes,
22 they're not reasonable, they're not even complete in
23 terms of the costs and impacts, they're not supported by
24 the science.

25 MPCA's own science says that this

1 will lead to more pollution. And that's what they're
2 supposed to prevent. And they'll require Minnesota
3 taxpayers, you and me, to pay to clean up mining
4 pollution.

5 In effect they're saying you don't
6 have to clean up your own mess, we'll clean it up for
7 you. We've seen what happened before.

8 We have huge pollution problems we're
9 still cleaning up because we allowed industry to give us
10 the cost for their pollution. I don't think we should
11 do that again. Thank you.

12 THE JUDGE: Thank you so much. We're
13 now going to turn to Secretary McCormick. And I'm going
14 to give her the remaining eight minutes to the bottom of
15 the hour. Secretary McCormick, thank you for your
16 kindness and hanging out. We're eager to hear from
17 you.

18 APRIL MCCORMICK: These remarks
19 continue from the remarks I made earlier. And a special
20 thank you, Your Honor, to continue.

21 The agency simply refused to either
22 acknowledge or conduct an analysis of the potential of
23 this rule change to result in an impairment or
24 degradation of wild rice waters.

25 The exclusion of wild rice impacts

1 from this proposal they're making is part of the long
2 and ugly history, a history that we had hoped this
3 administration would put behind us.

4 Our hope is much diminished when
5 tribes see a dismissal of our concerns or that despite
6 many requests, MPCA has only studied impacts of the
7 proposed change to Class 4 agricultural waters by doing
8 such things as reviewing the use of those waters for
9 sustaining cultivated agricultural products like
10 strawberries, corn, soybeans.

11 MPCA singled out for exclusion from
12 its review of the waters that sustain our sacred and
13 wild food. This exclusion also means that MPCA did not
14 consider the impacts of these proposed rule changes on
15 the Native people who rely on wild rice to survive.

16 Likewise, MPCA ignored the potential
17 impacts on Class 2 aquatic life use. MPCA refused to
18 study the potential impacts on aquatic invertebrates.
19 These are aquatic insects which are very sensitive to
20 salts.

21 If you increase chloride and other
22 limits to upstream Class 3 and 4 waters, it could kill
23 aquatic insects. This would also kill the trout that
24 eat those insects downstream in Class 2B waters.

25 Again, the loss of that fish habitat

1 means a disparate impact on Native people who eat more
2 of that fish. But MPCA did no analysis of that impact.

3 Despite reporting to respond to and
4 consider tribal comments, in fact, the SONAR goes out of
5 its way to claim it's doing just that. MPCA has
6 effectively refused to consider the impacts of its
7 rulemaking on Native people.

8 In addition, the deficits of
9 reviewing wild rice waters, the agency has not followed
10 its own environmental justice framework. The MPCA's
11 environmental justice map doesn't even show wild rice
12 waters.

13 The SONAR fails to analyze impacts on
14 treaty resources. Treaty resources must be protected by
15 our state and federal agencies because their use of
16 property rights are guaranteed into perpetuity by
17 treaties signed between tribes and federal government.

18 Tribal citizens have a distinct
19 sociopolitical status as members of their tribe. And we
20 are uniquely distinct from any other category or group
21 who may comment on this issue today.

22 When I describe these use of property
23 rights guaranteed into perpetuity, I mean that the
24 waters must be clean enough for humans to drink, the
25 fish must be safe to consume, and the sensitive aquatic

1 life, manoomin and the ecosystem that supports it must
2 remain sustainable for future generations of tribal
3 citizens.

4 The fact is clean water is clean
5 water. MPCA in the SONAR says it hopes that it could
6 develop a collaborative process to address tribal
7 concerns over wild rice, as if tribes hadn't been at the
8 table already for years, presenting these same positions
9 administration after administration.

10 If I may, Your Honor, I must say that
11 it is historic and an extreme honor that I've been
12 authorized by the Anishinaabe, the Dakota tribes.

13 I'll list them again, Bois Forte Band
14 of Chippewas, Fond du Lac Band of Lake Superior
15 Chippewa, Leech Lake Band of Ojibwe, Lower Sioux Indian
16 Community, Mill Lacs Band of Ojibwe, the Minnesota
17 Chippewa Tribe, Prairie Island Indian Community, Red
18 Lake Nation, Shakopee Mdewakanton Sioux Community, and
19 White Earth Nation.

20 These and other tribes may also offer
21 separate comments today. I'll also submit these
22 additional written comments after the hearing.

23 Again, for all these reasons, we as
24 tribal leaders, tribal citizens and Minnesotans ask you
25 to disprove of MPCA's Class 3 and 4 rules in their

1 entirety. (Native language spoken). And thank you.

2 THE JUDGE: Thank you kindly,
3 Secretary McCormick, you do great credit to not only
4 your Band, but also the tribes that you represent today.
5 So, we're very grateful for your time and particularly
6 thoughtful contributions to our record.

7 I want to say just generally about
8 the comment process. I think that the many stakeholders
9 that we've heard from today show that we can talk about
10 really complicated and important scientific issues.

11 We can talk about things which are
12 controversial in our communities and as to which we have
13 genuine disagreements and do so respectfully with
14 respect to other folks.

15 And also that we can enliven and
16 enrich the record upon which decisions are made by
17 understanding the deep individualized and personalized
18 impact of these policy making decisions, not as a macro
19 matter, but as to individual citizens who took time out
20 of their day to participate in this process.

21 Chapter 14, our Minnesota
22 Administrative Procedures Act understands that some of
23 these processes can be challenging and difficult, not
24 only for individual citizens, but also for the agencies,
25 but it does so with a particular method in mind.

1 The preambulatory phrases again say
2 that it's their expectation -- the legislature's
3 expectation that if we do policy making in this way, as
4 difficult as it is, we will have better substantive
5 results in the everyday contact with state government by
6 doing it this way.

7 I think as charged and sometimes
8 difficult as this particular hearing has been, it
9 absolutely fulfills that promise. We will have a better
10 set of substantive decisions than if we didn't hear from
11 the many people who chose to speak tonight and develop
12 our record.

13 The key important reminders is that
14 we're not at all done. There's more that needs to be
15 said and more that needs to be discussed and more that
16 needs to be analyzed.

17 And the initial comments on that must
18 be received by 4:30 p.m. on February 24, 2021. That's a
19 Wednesday. Wednesday, 4:30 p.m. on February 24, 2021.
20 And after that there will be a five business day
21 rebuttal comment period that will end on 4:30 p.m. on
22 the following Wednesday, March 3, 2021.

23 Really very helpful if you use in
24 your written comments the docket number, which is
25 8-9003-37102. Also really handy, if you can refer to

1 the Revisor number, which is 4335. That will make sure
2 that your comment in addition to being timely received
3 will be routed to the exact right inbox.

4 I'm very grateful for everyone's
5 kindnesses and courtesies to each other and your
6 kindness and courtesies to me. I can't wait to read and
7 consider your submissions during the comment period.

8 With that, you have my very grateful
9 thanks. And we are adjourned.

10 (Hearing concluded at 8:30 p.m.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 REPORTER'S CERTIFICATE

2
3 I, MARCIA L. MENTH, do hereby certify that I
4 recorded in stenotype the hearing on the foregoing
5 matter on the 4th day of February, 2021 via webex;
6

7 That I was then and there a Notary Public in
8 and for the County of Wright, State of Minnesota;
9

10 I further certify that thereafter and on that
11 same date I transcribed into typewriting under my
12 direction the foregoing transcript of said recorded
13 hearing, which transcript consists of the typewritten
14 pages 1 through 246;
15

16 I further certify that said hearing transcript
17 is true and correct to the best of my ability.
18

19 WITNESS MY HAND AND SEAL this the 9th day of
20 February, 2021.
21

22
23 /s/ Marcia L. Menth

24 _____
MARCIA L. MENTH
Court Reporter
25