State of Minnesota
Minnesota Pollution Control Agency
MPCA Rebuttal Response to Public Comments
January 8, 2020

This document supplements information in the Statement of Need and Reasonableness (SONAR; Hearing Exhibit D) and the December 31, 2019, MPCA Post-Hearing Response to Public Comments in the matter of proposed amendments to Minnesota Rules, chapter 7050, relating to Class 2 and Class 7 beneficial use designations.

This document contains the Minnesota Pollution Control Agency's (MPCA or Agency) detailed responses to public comments submitted during the post-hearing comment period (December 11, 2019, through December 31, 2019). As provided for in Minn. R. 1400.2230, a rebuttal period allows the Agency to review submissions made during the post-hearing comment period and respond to new information submitted. Eight comment letters were received from the public by the Office of Administrative Hearings (OAH) during the post-hearing comment period. The comment letters were submitted by Paula Maccabee, John Lenczewski, Eric Morrison, Janet Keough, Sally Munger and Gay Trachsel, Howard Markus, Laura Gauger, and Jacob Crawford (resubmission of form letter from 261 separate parties).

For convenience, the MPCA has included a spreadsheet compiling the written comments received during the post-hearing public comment period in **Rebuttal Response Attachment 1**. Rebuttal Response Attachment 1 either directly excerpts or paraphrases written comments received during the post-hearing public comment period. A single written comment letter may address multiple issues or multiple parts of the proposed rule. Each distinguishable comment within a letter has been labeled as a separate line in Rebuttal Response Attachment 1. Rebuttal Response Attachment 1 contains information on the rule part or parts each comment relates to, when identifiable. Rebuttal Response Attachment 1 also identifies the pages in the SONAR (Hearing Exhibit D) or Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on which the comment topic is addressed.

The Agency thoroughly reviewed all comments submitted during the post-hearing comment period and identified new topics that were not raised during the pre-hearing comment period (September 23 through November 7, 2019) or at the public hearing on December 11, 2019. Detailed responses in this document are provided in this rebuttal for new topics raised in the post-hearing comment period.

The post-hearing comments largely reiterated comments heard during the pre-hearing comment period (September 23 through November 7, 2019) and at the hearing on December 11, 2019. For convenience, in this document the MPCA provides a brief summary of comments that were not new and which were previously addressed by the MPCA. For those comments, the MPCA provides reference to the location where the Agency previously responded to those comments in the Agency's response in Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments.

All comments provided to the MPCA have been posted in their entirety on the MPCA webpage for this rulemaking at: https://www.pca.state.mn.us/water/wqs-designated-uses.

The comment topics specifically addressed in this document are:

A. Comments in support of the proposed rule amendments

Summary of comments:
Two commenters expressed support specifically for the Class 2Ag, 2Ae, and 2Be (i.e., use designations with more stringent standards) water bodies that would be designated through the proposed rule amendments [Maccabee, Lenczewski].

MPCA response:
The comments received in the post-hearing comment period were not substantially different from comments received during the pre-hearing comment period (September 23 - November 7, 2019) or at the hearing held on December 11, 2019. A response to these comments can be found in Section A.1 of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on pages 3-4.

B. Comments regarding the MPCA's statutory authority to adopt these rule amendments

Summary of comments:
The MPCA received comments contending that the MPCA does not have the statutory authority to adopt these rules or that these amendments need to go through a contested case hearing [Morrison, Maccabee].

MPCA response:
The comments received in the post-hearing comment period were not substantially different from comments received during the pre-hearing comment period (September 23 - November 7, 2019) or at the hearing held on December 11, 2019. A response to these comments can be found in Section B of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on page 4.

C. Comments related to the public notice to adopt rules

Summary of comments:
The MPCA received a comment [Maccabee] that suggested the "Notice of Intent to Adopt Rules" (Hearing Exhibit F) was misleading because it was not clear that 31 Class 2A streams were proposed to be designated Class 2Bd.

MPCA response:
The comment received in the post-hearing comment period was not substantially different from comments received during the pre-hearing comment period (September 23 - November 7, 2019) or at the hearing held on December 11, 2019. A response to this comment can be found in Section C of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on pages 5-6.

D. Comments related to the use review process and requirements for evidence supporting use designations

Summary of comments:
Some commenters stated that the specific use designations and supporting documentation were not sufficient to demonstrate that Class 2A is not an existing or attainable use for the proposed Class 2Bd designations [Maccabee, Lenczewski, Markus]. Furthermore, some of these commenters argued that the stakeholder process was not sufficient or transparent and that there was insufficient coordination with important stakeholders [Lenczewski, Maccabee].

MPCA response:
The comments received in the post-hearing comment period were not substantially different from comments received during the pre-hearing comment period (September 23 - November 7, 2019) or at the hearing held on December 11, 2019. A response to these comments can be found in Section D of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on pages 6-8.

E. Comments on the proposed Minn. R. 7050.0420 rule language

Relates to:
Minn. R. 7050.0420 (Trout waters).

Hearing Exhibit D (SONAR) discussion at:
Section 1.B., Statement of general need [p. 3];
Section 2.E.4., Review of cold and warm/cool water aquatic life uses for lakes and streams [pp. 13-15];
Section 5.A.2., Revising Minn. R. 7050.0420 [p. 21];
Section 5.B., Proposed changes and specific reasonableness [p. 22 and footnote 16].

Other relevant documents:
MPCA Post-Hearing Response to Public Comments, Section F.1 [pp. 9-10];
MPCA Post-Hearing Response to Public Comments, Section F.8 [pp. 16-17].

Summary of comments:
The MPCA received several comments expressing concern that the proposed rule language would not protect existing or attainable cold water habitats [Maccabee, Lenczewski, Keough, Markus]. Two of these commenters also argued that the MPCA does not need to revise Minn. R. 7050.0420 in order to designate waterbodies which are not on the Minnesota Department of Natural Resources' (MDNR) trout waters list (Minn. R. 6264.0050) as Class 2A [Maccabee, Lenczewski].

MPCA response:
The comments received in the post-hearing comment period related to protecting existing or attainable cold water habitats were not substantially different from comments received during the pre-hearing comment period (September 23 - November 7, 2019) or at the hearing held on December 11, 2019. A response to these comments can be found in Sections F3, F.4, and F.5 of

Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on pages 11-15.

The comments indicating that the MPCA does not need to modify rule language to list waters as Class 2A which are not on the MDNR's trout waters list is different from comments received previously. Although the use designations described by the commenters may be possible without amendments to Minn. R. 7050.0420, it does not address two issues which are rectified through the proposed rule amendments. First, the current rule language in Minn. R. 7050.0420 is not clear regarding whether or not the MPCA can diverge from the MDNR's trout waters list by designating additional Class 2A waters. The proposed rule amendments are needed to clarify that the list of Class 2A waters do not always align with the MDNR's trout waters list and to describe how use designation determinations are made (Hearing Exhibit D, SONAR [pp. 21, 22, and footnote 16]). In addition, the title of Minn. R. 7050.0420 itself can be misleading as not all cold water habitats support trout (see MPCA Post-Hearing Response to Public Comments, Section F.8 [pp. 16-17]). Second, the rule amendments are needed to correctly designate warm water habitats which are included on the MDNR's trout waters list. The need for this is described in Hearing Exhibit D, SONAR [pp. 13-15, 21, and 22] and in MPCA Post-Hearing Response to Public Comments, Section F.1 [pp. 9-10].

F. Comments related to the protection and restoration of water quality and aquatic life habitat

Summary of comments:
Two comment letters expressed a general concern that the proposed use designations would lessen protections for Minnesota's waters [Maccabee, Munger and Trachsel].

MPCA response:
The comments received in the post-hearing comment period were not substantially different from comments received during the pre-hearing comment period (September 23 - November 7, 2019) or at the hearing held on December 11, 2019. A response to these comments can be found in Section G.1 of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on pages 18-19.

G. Comments related to coordination with other agencies

Summary of comments:
One commenter indicated that it is important for the MPCA to coordinate management of cold water habitats with the MDNR [Maccabee].

MPCA response:
The comment received in the post-hearing comment period was not substantially different from comments received during the pre-hearing comment period (September 23 - November 7, 2019) or at the hearing held on December 11, 2019. A response to this comment can be found in Section J of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on pages 23-24.

H. Comments related to sulfate standards and drinking water use designations

Summary of comments:
Several comments expressed concern that correcting Class 2A designations as Class 2Bd would remove or reduce protections in water quality standards for sulfate and thereby increase sulfate loading to Minnesota's waters [Maccabee, Morrison, Keough, Munger and Trachsel, Gauger]. Some of these commenters also noted the connection between sulfate levels and methyl mercury. One commenter [Maccabee] specifically cited concern that the rule amendments would result in a loss of domestic consumption standards because the domestic consumption use (Class 1B) is automatically applied to Class 2A water bodies, but not Class 2B waters.

MPCA response:
The comments received in the post-hearing comment period were not substantially different from comments received during the pre-hearing comment period (September 23 - November 7, 2019) or at the hearing held on December 11, 2019. A response to these comments can be found in Section K.1 of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on pages 24-25.

I. Comments related to specific proposed use designations

Summary of comments:
A commenter [Keough] cited Cedar Lake as an example of a proposed use designation that does not protect attainable or existing uses. Another commenter [Lenczewski] cited a number of stream reaches (Knife River, Blackhoof River, Nemadji River, Stoney Brook, Cory (Corey) Brook, Willow Creek, Johnson Creek, Browns Creek, and Whitewater River) where the MDNR "disagrees" with the MPCA use designation proposals in these rule amendments. Mr. Lenczewski further elaborated on Cory Brook and indicated that the proposed use designation does not protect an existing use and that a tributary included with the proposed Cory Brook use designation is specifically designated as a trout water by the MDNR.

MPCA response:
The comment received in the post-hearing comment period related to Cedar Lake was not substantially different from comments received during the pre-hearing comment period (September 23 - November 7, 2019) or at the hearing held on December 11, 2019. A response to this comment can be found in Section M.1 of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on page 28.

Mr. Lenczewski cited a number of additional stream reaches which he characterized as indication of disagreement between the MPCA and MDNR. However, as described in Section Q [p. 32] of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments, differences in designations between the MPCA and MDNR do not necessarily indicate disagreement. In the cases where the MPCA is designating stream reaches as Class 2Bd while the MDNR retains the trout water designation, the MDNR acknowledges that these waters do not support cold water habitat. At this time, the MDNR is opting to retain the trout water designation for these water bodies and managing them as trout protection waters. This is consistent with how the MDNR

implements protections for trout waters. The reasonableness of different "use designation" frameworks between the MPCA and MDNR is further described in in Section F.1 [pp. 9-10] of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments.

In regards to the reasonableness of the proposed Cory Brook use designation, a response to this comment can be found in Section M.4, page 29, of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments. In addition, the MPCA addressed the Blackhoof River specifically in the post-hearing response to comments by withdrawing a use designation proposal for a section of the Blackhoof River (Waterbody ID: 04010301-761; Hearing Exhibit D, SONAR Exhibit S-32 [p. 38]). (See use designation withdrawal in section II, page 4, of the cover memo to the December 31, 2019, MPCA Post-Hearing Response to Public Comments.)

Regarding the Cory Brook tributary, Mr. Lenczewski is correct that the tributary to Cory Brook (07010106-599) is designated as a trout water by the MDNR in Minn. R. 6264.0050. The MDNR does not specifically manage this water as a trout water and the record of its original designation is not clear regarding why it was originally designated. As part of the initial review of the use designations for Cory Brook and its tributaries, it was determined that the tributary to Cory Brook may have originally been designated due to the tributary's proximity to Cory Brook. This would have been an extension of the designation of tributaries to trout waters within Public Land Survey (PLS) sections[1] to an adjacent PLS section. Regardless, there is no information from the tributary itself to demonstrate whether or not this tributary is a cold water habitat. Based on data from adjacent stream reaches, the MPCA initially determined that this tributary is unlikely to naturally support a cold water habitat. However, since data are limited for this stream reach, the MPCA plans to remove this tributary from the proposed rule amendments to permit the collection of additional data to confirm that it should be designated Class 2Bg. The specific need and reasonableness for this proposed change to the rule amendments as published is described in the table below. (Note: This proposed change to the rule amendments as published is in addition to the two proposed changes to the rule amendments as published that were included in section II, pages 3-4, of the cover memo to the December 31, 2019, MPCA Post-Hearing Response to Public Comments.) Overall, the modifications to the proposed use designations and rule language demonstrate that the MPCA thoroughly considered stakeholder input and that the Agency protects beneficial uses as required by state and federal regulations.

[1] Minn. R. 6264.0050 Subp. 4. "Listing of designated trout streams. The following described streams and portions of streams and their tributaries within the section specified are designated as trout streams…"

Proposed change to the rule amendments as published	Statement of need and reasonableness
7050.0470, Subp. 4 Documents incorporated by reference[2]. ("Beneficial Use Designations for Stream Reaches: Crow Wing River Watershed (07010106)"); https://www.pca.state.mn.us/sites/default/files/wq-s6-47j.pdf).	Several comments emphasized the need for sufficient evidence to propose a use designation. Based on this consideration, the Agency again reviewed the proposed use designation of the unnamed tributary to Cory Brook (Waterbody ID: 07010106-599; Hearing Exhibit D, SONAR Exhibit S-32 [p. 74]) and is withdrawing the use designation for this stream reach. The reasonableness of the proposed use designation for this stream reach was originally based on its affiliation with the Cory Brook reach (Waterbody ID: 07010106-700) use designation proposal (Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments, Section F.1 [pp. 9-10]). This was the result of a determination that this tributary was likely designated a trout stream by the MDNR to protect the downstream trout stream, Cory Brook, and not because this tributary was managed as a habitat for trout. Furthermore, review of data from adjacent stream reaches indicated that this tributary is unlikely to naturally support a cold water habitat. Removing this tributary from the current rule proposal will permit the collection of additional data to confirm the natural stream type of this reach, and to ensure that the requirements are met to demonstrate that the current use designation (i.e., Class 2A) is not an existing or attainable use. If these new data indicate that the tributary is incorrectly classified, the MPCA will propose a classification change in a future rulemaking. The Class 2A designations for the tributaries to unnamed tributary to Cory Brook (Waterbody IDs: 07010106-638 and 07010106-637) will also be retained. These tributaries were originally designated Class 2A because they are located within the Public Land Survey section (see Minn. R. 6264.0050, Subp. 4) in which the unnamed tributary to Cory Brook flows.

[2] "As part of the adoption of the TALU framework, the process for revising and documenting use designations for streams was modified to facilitate updates to beneficial use tables. These tables are incorporated by reference in Minn. R. 7050.0470 […], but the specific use designations are not listed in rule." Hearing Exhibit D, SONAR, page 12

J. Comments related to the determination of impairment based on habitat

Summary of comments:
The MPCA received comments [Keough, Markus] expressing concerns that the rule language in Minn. R. 7050.0150, subp. 6, Item E does not include "habitat quality" as a factor for a finding of an impaired condition. The commenters indicated that this is not appropriate because habitat potential is important for determining if a use is attainable.

MPCA response:
The comments received in the post-hearing comment period were not substantially different from comments received during the pre-hearing comment period (September 23 - November 7, 2019) or at the hearing held on December 11, 2019. A response to these comments can be found in Section N of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on page 30.

K. Comments questioning the impetus for the rule amendments

Summary of comments:
The MPCA received a comment indicating that the main impetus of the proposed rule amendments is to amend Minnesota's water quality rules for the benefit of the mining industry [Maccabee].

MPCA response:
The comment received in the post-hearing comment period was not substantially different from comments received during the pre-hearing comment period (September 23 - November 7, 2019) or at the hearing held on December 11, 2019. A response to this comment can be found in Section O of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on pages 30-31.

L. Comments related to trout biology

Summary of comments:
The MPCA received a comment expressing concern that the proposed use designations do not consider fish biology [Lenczewski]. Specifically, these comments indicated that trout are mobile and may move into waters that are not considered cold water habitat for part of the year. The commenter further elaborated indicating that by refining the extent which supports cold water communities, it creates small sections that may not be protective for mobile fish species.

MPCA response:
The comment received in the post-hearing comment period was not substantially different from comments received during the pre-hearing comment period (September 23 - November 7, 2019) or at the hearing held on December 11, 2019. A response to this comment can be found in Section Q of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on pages 32.

M. Comments expressing concern that the proposed rule amendments will make it easier to change use designations in future rules

Relates to:
Minn. R. 7050.0224 (Specific water quality standards for Class 4 waters of the state; agriculture and wildlife);
Minn. R. 7050.0420 (Trout waters);
Minn. R. 7050.0470 (Classifications for surface waters in major drainage basins).

Relevant documents:
Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments.

Summary of comments:
The MPCA received a comment [Maccabee] expressing concern that the proposed use designations will make it easier in future rules to remove designated uses or use subcategories. The commenter specifically expressed concern that the Class 2Bd designation would make it easier in future rule amendments to remove the Class 1B designation compared to waterbodies designated as Class 2A. This commenter further indicated a concern that the proposed rule amendments could make it easier to remove wild rice water designations in the future by setting a precedent.

MPCA response:
The comment received in the post-hearing comment period related to future Class 2A and 1B designations was not substantially different from comments received during the pre-hearing comment period (September 23 - November 7, 2019) or at the hearing held on December 11, 2019. A response to this comment can be found in Section R of Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments on page 33.

The proposed rule amendments do not change the requirements for adding or removing use designations, including wild rice waters. The proposed rule language amendments and use designations in the current rule amendment are consistent with the federal and state requirements for use designations (see MPCA Post-Hearing Response to Public Comment, Attachment 2, Section R [p. 33]). This rule does not impact requirements for adding or removing wild rice water use designations in the future by setting precedent or otherwise.

N. Comment that the MPCA mischaracterized comments at hearing

Relates to:
Minn. R. 7050.0219 (Human health-based criteria and standards);
Minn. R. 7050.0420 (Trout waters);
Minn. R. 7050.0470 (Classifications for surface waters in major drainage basins).

Relevant documents:
Attachment 2 of the December 31, 2019, MPCA Post-Hearing Response to Public Comments.

Summary of comments:
The MPCA received a comment indicating that during the hearing on December 11, 2019, the MPCA mischaracterized the form letter from 261 parties by stating that these letters were only requesting hearing [Crawford]. The commenter described this form letter as also being opposed parts of the rule amendments.

MPCA response:
During the December 11, 2019, hearing the MPCA stated the number of hearing requests that it received. This statement did not mischaracterize the nature of the form letters from 261 parties because the statement only addressed the hearing request content of the form letters. The form letters also included comments and those comments were addressed by the MPCA. These comments were part of the MPCA's summary of comments received during the hearing presentation (Hearing Exhibit L.1 [p. 3, slides 39-48]). The MPCA also responded to these comments (Hearing Exhibit I.12) in detail in MPCA Post-Hearing Response to Public Comments (See Attachment 2, Sections C, D, F.1, F.3, F.8, G.1, H, and K.1). In addition, one individual [Poisson] added an additional comment to this form letter and the MPCA also responded to this unique comment (See MPCA Post-Hearing Response to Public Comment, Attachment 2, Section G.1).

Rule Part(s)	Comment Topic	Summary of comment (note: comments that are paraphrased are indicated with *)	MPCA Response	Discussed on SONAR page or supporting documentation	Affiliation Name/ Address	Comment Type
7050.0219, 7050.0420, 7050.0470	Comment that the MPCA mischaracterized comments at hearing	*The MPCA characterized the form letter from 261 parties as only requesting hearing, but this was not the case	Rebuttal response, Section N	MPCA Post-Hearing Response to Public Comment, Attachment 2, Sections C, D, F.1, F.3, F.8, G.1, H, and K.1	Jacob Crawford	Post-Hearing Comment Period
7050.0219, 7050.0420, 7050.0470	Comments regarding the MPCA's statutory authority to adopt these rule amendments	"MPCA lacks authority under either the Clean Water Act or Minnesota statutes to enact the proposed changes to Minn. R. 7050.0420"	See MPCA Post-Hearing Response, Attachment 2, Section B	Hearing Exhibit D, SONAR [pp. 18-20]	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420	Comments on the proposed Minn. R. 7050.0420 rule language	"MPCA's proposed rule would add new language limiting the protection for trout waters or "cold water habitat" waters to the situation where current conditions support a healthy population and habitat"	See MPCA Post-Hearing Response, Attachment 2, Section F.3, F.4, and F.5	Hearing Exhibit D [pp. 13-15]; Hearing Exhibit D, SONAR Exhibit S-32 [pp. 20-187]; Hearing Exhibit D, SONAR Exhibit S-37 [pp. 18-21]; Hearing Exhibit D, SONAR Exhibit S-18	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420	Comments on the proposed Minn. R. 7050.0420 rule language	"...the phrase "feasibly attainable use" is vague and is not defined by either federal or Minnesota law"	See MPCA Post-Hearing Response, Attachment 2, Section F.5	Hearing Exhibit D, SONAR Exhibit S-16	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420	Comments on the proposed Minn. R. 7050.0420 rule language	*The phase "feasibly attainable" does not address the concern that the MPCA is proposing to designate uses based on current conditions and not on protecting attainable or existing uses	See MPCA Post-Hearing Response, Attachment 2, Section F.5	Hearing Exhibit D, SONAR Exhibit S-16	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to the use review process and requirements for evidence supporting use designations	*The proposed rule would place the burden of proof on demonstrating that a water can meet a cold water habitat use and thereby will result in the removal of Class 2A waters	See MPCA Post-Hearing Response, Attachment 2, Section D	Hearing Exhibit D, SONAR [pp 11-15]; Hearing Exhibit D, SONAR Exhibit S-32 [pp. 20-187]; Hearing Exhibit D, SONAR Exhibit S-37; Hearing Exhibit D, SONAR Exhibit S-31; Attachment 3	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to the use review process and requirements for evidence supporting use designations	"WaterLegacy is concerned that the process used by MPCA to propose downgrading trout waters did not comply with CWA regulations."	See MPCA Post-Hearing Response, Attachment 2, Section D	Hearing Exhibit D, SONAR [pp 11-15]; Hearing Exhibit D, SONAR Exhibit S-32 [pp. 20-187]; Hearing Exhibit D, SONAR Exhibit S-37; Hearing Exhibit D, SONAR Exhibit S-31; Attachment 3	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420	Comments on the proposed Minn. R. 7050.0420 rule language	"MPCA can upgrade designations and list additional trout waters based on current data without new text for Minn. R. 7050.0420."	Rebuttal response, Section E	Hearing Exhibit D, SONAR [pp. 3, 13-15, 21, and 22]; MPCA Post-Hearing Response to Public Comments, Sections F.1 and F.8	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0470, 7050.0420	Comments related to the protection and restoration of water quality and aquatic life habitat	"...the proposed rule distracts from MPCA's primary duties to control pollution and set pollution allocations and best management practices to restore impaired waters, including trout waters." and "...the proposed rule will help move MPCA farther away from restoration of impaired waters."	See MPCA Post-Hearing Response, Attachment 2, Section G.1	Hearing Exhibit D [pp. 1-4, 9]	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420	Comments on the proposed Minn. R. 7050.0420 rule language	"...the proposed rule conflicts with the CWA and Minnesota law." and "Modernizing rule language to explicitly include other cold water biota in Minn. R. 7050.0420 does not require changes to make it easier and even mandatory to remove trout water designations."	See MPCA Post-Hearing Response, Attachment 2, Section F.4	Hearing Exhibit L.2; Hearing Exhibit D, SONAR Exhibit S-16	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to the use review process and requirements for evidence supporting use designations	"MPCA's proposed rules are also neither needed nor reasonable, since they fail to reflect coordination with key stakeholders."	See MPCA Post-Hearing Response, Attachment 2, Section D	Hearing Exhibit D, SONAR [pp 11-15]; Hearing Exhibit D, SONAR Exhibit S-32 [pp. 20-187]	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0470	Comments related to coordination with other agencies	*Lack of agency coordination	See MPCA Post-Hearing Response, Attachment 2, Section J	Hearing Exhibit D, SONAR [pp.13-15]; Hearing Exhibit D, SONAR Exhibit S-32 [pp. 3-10, 16, 20-187]; Hearing Exhibit D, SONAR Exhibit S-37	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to the use review process and requirements for evidence supporting use designations	*Lack of consultation with stakeholders	See MPCA Post-Hearing Response, Attachment 2, Section D	Hearing Exhibit D, SONAR [pp 11-15]; Hearing Exhibit D, SONAR Exhibit S-32 [pp. 20-187]	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period

Rule Part(s)	Comment Topic	Summary of comment (note: comments that are paraphrased are indicated with *)	MPCA Response	Discussed on SONAR page or supporting documentation	Affiliation Name/ Address	Comment Type
7050.0219, 7050.0420, 7050.0470	Comments related to the public notice to adopt rules	"MPCA's final notice lacked any statement saying that some Class 2A trout waters would be reclassified for Class 2B uses, let alone specifying which waters would be downgraded."	See MPCA Post-Hearing Response, Attachment 2, Section C	Hearing Exhibit F	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to sulfate standards and drinking water use designations	"The proposed rules would allow removal of drinking water standards for sulfate"	See MPCA Post-Hearing Response, Attachment 2, Section K.1	Hearing Exhibit D, SONAR [footnote p. 2]	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420	Comments expressing concern that the proposed rule amendments will make it easier to change use designations in future rules	"Nothing in MPCA's proposed Class 2 rule prevents a trout water from being downgraded to a Class 2B use that lacks any protection from sulfate pollution."	See MPCA Post-Hearing Response, Attachment 2, Section R	Hearing Exhibit D, SONAR Exhibit S-16	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments questioning the impetus for the rule amendments	"Mining companies are among the stakeholder beneficiaries of the proposed rule"	See MPCA Post-Hearing Response, Attachment 2, Section O	Hearing Exhibit D, SONAR [p. 1], Attachment 11; Attachment 12	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420	Comments expressing concern that the proposed rule amendments will make it easier to change use designations in future rules	*The proposed rule amendments could make it easier to remove wild rice water designations in the future by setting a precedent	Rebuttal response, Section M	Hearing Exhibit D, SONAR Exhibit S-16; MPCA Post-Hearing Response to Public Comments, Section R	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments in support of the proposed rule amendments	"Accept all of MPCA's proposed changes to make designation of waters more protective as reasonable and appropriately based on current data."	See MPCA Post-Hearing Response, Attachment 2, Section A.1	Hearing Exhibit D, SONAR [pp. 1-4, 20-23]	Paula Maccabee, WaterLegacy	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments in support of the proposed rule amendments	"We applaud the MPCA's steps to change the use designation of 34 stream segments to Class 2A (Class 2Ag and Class 2Ae), thereby increasing protections for these coldwater systems."	See MPCA Post-Hearing Response, Attachment 2, Section A.1	Hearing Exhibit D, SONAR [pp. 1-4, 20-23]	John Lenczewski, Minnesota Trout Unlimited	Post-Hearing Comment Period
7050.0420	Comments on the proposed Minn. R. 7050.0420 rule language	"The agency has existing authority to add more [Class 2A] stream segments and it does not need to re-write Rule 7050.0420 to do so."	Rebuttal response, Section E	Hearing Exhibit D, SONAR [pp. 3, 13-15, 21, and 22]; MPCA Post-Hearing Response to Public Comments, Sections F.1 and F.8	John Lenczewski, Minnesota Trout Unlimited	Post-Hearing Comment Period
7050.0420	Comments on the proposed Minn. R. 7050.0420 rule language	*The proposed 7050.0420 is overly broad and confusing	See MPCA Post-Hearing Response, Attachment 2, Section F.2	Hearing Exhibit D, SONAR [p. 21]	John Lenczewski, Minnesota Trout Unlimited	Post-Hearing Comment Period
7050.0420	Comments on the proposed Minn. R. 7050.0420 rule language	"The proposed language changes may unwittingly create a new definition of trout waters, inserting the words "habitat" and "healthy" in such a way that it may have unintended adverse consequences in the future."	See MPCA Post-Hearing Response, Attachment 2, Section F.3, F.4, and F.5	Hearing Exhibit D [pp. 13-15]; Hearing Exhibit D, SONAR Exhibit S-32 [pp. 20-187]; Hearing Exhibit D, SONAR Exhibit S-37 [pp. 18-21]; Hearing Exhibit D, SONAR Exhibit S-18	John Lenczewski, Minnesota Trout Unlimited	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to the use review process and requirements for evidence supporting use designations	*The MPCA's documentation demonstrating that a cold water habitat is not an existing or attainable use is not sufficient	See MPCA Post-Hearing Response, Attachment 2, Section D	Hearing Exhibit D, SONAR [pp 11-15]; Hearing Exhibit D, SONAR Exhibit S-32 [pp. 20-187]	John Lenczewski, Minnesota Trout Unlimited	Post-Hearing Comment Period
7050.0470	Comments related to specific proposed use designations	*Detailed documentation of Cory Brook indicates that cold water habitat is an existing use	See MPCA Post-Hearing Response, Attachment 2, Section M.4	Hearing Exhibit D, SONAR Exhibit S-31 [pp. 28-31]	John Lenczewski, Minnesota Trout Unlimited	Post-Hearing Comment Period
7050.0470	Comments related to specific proposed use designations	*The MDNR "disagrees" with the MPCA's use designations proposals for sections of the Knife River, Blackhoof River, Nemadji River, Stoney Brook, Cory (Corey) Brook, Willow Creek, Johnson Creek, Browns Creek, and Whitewater River.	Rebuttal response, Section I and see MPCA Post-Hearing Response, Attachment 2, Sections F.1 and Q	Hearing Exhibit D, SONAR Exhibit S-31 [pp. 28-31]	John Lenczewski, Minnesota Trout Unlimited	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to trout biology	*Proposed use designations do not consider fish biology. For example some trout may move from cold water reaches to warm water sections seasonally.	See MPCA Post-Hearing Response, Attachment 2, Section Q	Hearing Exhibit D, SONAR [pp. 6-7]; Hearing Exhibit D, SONAR Exhibit S-16	John Lenczewski, Minnesota Trout Unlimited	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to trout biology	"The agency's process of breaking up streams into small segments is arbitrary and not reasonable when used as justification to give lesser protection to some stream segments vital to various life stages of mobile fish populations"	See MPCA Post-Hearing Response, Attachment 2, Section Q	Hearing Exhibit D, SONAR [pp. 6-7]; Hearing Exhibit D, SONAR Exhibit S-16	John Lenczewski, Minnesota Trout Unlimited	Post-Hearing Comment Period

Rule Part(s)	Comment Topic	Summary of comment (note: comments that are paraphrased are indicated with *)	MPCA Response	Discussed on SONAR page or supporting documentation	Affiliation Name/ Address	Comment Type
7050.0420, 7050.0470	Comments related to the use review process and requirements for evidence supporting use designations	"Process for changing aquatic life use designations lacks transparency and stakeholder input"	See MPCA Post-Hearing Response, Attachment 2, Section D	Hearing Exhibit D, SONAR [pp 11-15]; Hearing Exhibit D, SONAR Exhibit S-32 [pp. 20-187]	John Lenczewski, Minnesota Trout Unlimited	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to trout biology	"MPCA dismissal of expert judgment of DNR fish biologists is not reasonable"	See MPCA Post-Hearing Response, Attachment 2, Section Q	Hearing Exhibit D, SONAR [pp. 6-7]; Hearing Exhibit D, SONAR Exhibit S-16	John Lenczewski, Minnesota Trout Unlimited	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to sulfate standards and drinking water use designations	*Concerned that the proposed rule amendments will allow increased sulfate and mercury pollution	See MPCA Post-Hearing Response, Attachment 2, Section K.1	Hearing Exhibit D, SONAR [footnote p. 2]	Eric Morrison	Post-Hearing Comment Period
7050.0219, 7050.0420, 7050.0470	Comments regarding the MPCA's statutory authority to adopt these rule amendments	*The MPCA does not have legal authority to adopt these rules	See MPCA Post-Hearing Response, Attachment 2, Section B	Hearing Exhibit D, SONAR [pp. 18-20]	Eric Morrison	Post-Hearing Comment Period
7050.0420	Comments on the proposed Minn. R. 7050.0420 rule language	*MPCA's proposed rule would limiting the protection for cold water habitat waters to the situation where current conditions support a healthy population and habitat	See MPCA Post-Hearing Response, Attachment 2, Section F.3	Hearing Exhibit D [pp. 13-15]; Hearing Exhibit D, SONAR Exhibit S-32 [pp. 20-187]; Hearing Exhibit D, SONAR Exhibit S-37 [pp. 18-21]; Hearing Exhibit D, SONAR Exhibit S-18	Janet Keough	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to sulfate standards and drinking water use designations	*Concerned with the removal of sulfate standards for waters being designated Class 2Bd; also concerned with mercury contamination	See MPCA Post-Hearing Response, Attachment 2, Section K.1	Hearing Exhibit D, SONAR [footnote p. 2]	Janet Keough	Post-Hearing Comment Period
7050.0420	Comments on the proposed Minn. R. 7050.0420 rule language	*Potential and history of potential needs to be considered when designating beneficial uses	See MPCA Post-Hearing Response, Attachment 2, Section F.4	Hearing Exhibit L.2; Hearing Exhibit D, SONAR Exhibit S-16	Janet Keough	Post-Hearing Comment Period
7050.0470	Comments related to specific proposed use designations	*Cedar Lake should not be "downgraded" to a 2Bd because it has the potential to be restored to a stream trout water	See MPCA Post-Hearing Response, Attachment 2, Section M.1	Attachment 9	Janet Keough	Post-Hearing Comment Period
7050.0150	Comments related to the determination of impairment based on habitat	*The listing of waters as impaired based on habitat should not be excluded in rule language (see Minn R. 7050.0150, Subp. 6, Item E)	See MPCA Post-Hearing Response, Attachment 2, Section N	Attachment 10	Janet Keough	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to sulfate standards and drinking water use designations	*Concerned with the removal of sulfate standards for waters being designated Class 2Bd; also concerned with mercury contamination	See MPCA Post-Hearing Response, Attachment 2, Section K.1	Hearing Exhibit D, SONAR [footnote p. 2]	Sally Munger and Gay Trachsel, League of Women Voters Duluth	Post-Hearing Comment Period
7050.0470, 7050.0420	Comments related to the protection and restoration of water quality and aquatic life habitat	*Generally concerned with the protection of Minnesota's waters	See MPCA Post-Hearing Response, Attachment 2, Section G.1	Hearing Exhibit D [pp. 1-4, 9]	Sally Munger and Gay Trachsel, League of Women Voters Duluth	Post-Hearing Comment Period
7050.0420	Comments on the proposed Minn. R. 7050.0420 rule language	*Potential and history of potential needs to be considered when designating beneficial uses	See MPCA Post-Hearing Response, Attachment 2, Section F.4	Hearing Exhibit L.2; Hearing Exhibit D, SONAR Exhibit S-16	Howard Markus	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to the use review process and requirements for evidence supporting use designations	*Potential to support a beneficial use needs to include consideration of reasons why sampling does not demonstrate the presence of a cold water community and should also consider other forms of evidence (e.g., MDNR management post 1975, adjacent resources) for the presence of a cold water habitat	See MPCA Post-Hearing Response, Attachment 2, Section D	Hearing Exhibit D, SONAR [pp 11-15]; Hearing Exhibit D, SONAR Exhibit S-32 [pp. 20-187]; Hearing Exhibit D, SONAR Exhibit S-37 [pp. 18-21]	Howard Markus	Post-Hearing Comment Period
7050.0150	Comments related to the determination of impairment based on habitat	*The listing of waters as impaired based on habitat should not be excluded in rule language (see Minn R. 7050.0150, Subp. 6, Item E)	See MPCA Post-Hearing Response, Attachment 2, Section N	Attachment 10	Howard Markus	Post-Hearing Comment Period
7050.0420, 7050.0470	Comments related to sulfate standards and drinking water use designations	*Concerned that the proposed rule amendments will increase sulfate pollution and negatively impact fish, wild rice, and human health; the MPCA needs to protect waters from sulfate pollution	See MPCA Post-Hearing Response, Attachment 2, Section K.1	Hearing Exhibit D, SONAR [footnote p. 2]	Laura Gauger	Post-Hearing Comment Period