UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

WATER LEGACY, FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA and GRAND PORTAGE BAND OF LAKE SUPERIOR CHIPPEWA, MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5, GINA McCARTHY, in her official capacity as Administrator of the United States Environmental Protection Agency, and SUSAN HEDMAN, in her official capacity as Regional Administrator of the United States Environmental Protection Agency Region 5,

Defendants.

Civil No. 13-1323 (JRT/LIB)

DEFENDANTS' UNOPPOSED MOTION FOR A VOLUNTARY REMAND WITH VACATUR

Defendants United States Environmental Protection Agency, United States Environmental Protection Agency Region 5, Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency, and Susan Hedman, in her official capacity as Regional Administrator of the United States Environmental Protection Agency Region 5 (collectively "EPA"), respectfully move that

the Court vacate the final EPA action challenged in this case and remand this matter to EPA. This motion is unopposed. The reasons for this motion are as follows:

1. Plaintiffs challenge a final EPA decision, taken on December 27, 2012, in which EPA approved a site-specific revision to Minnesota's water quality standards under section 303(c) of the Clean Water Act, 33 U.S.C. § 1313(c), relating to discharges from a facility in Hoyt Lakes, Minnesota, owned and operated by Mesabi Nugget Delaware, LLC (hereinafter, "December 27, 2012, Variance Approval Decision").

2. The merits have not been briefed, and dispositive motions are not due to be filed until May 15, 2014, under the Final Pretrial Order in this case.

3. Upon further review of this matter, EPA has determined that it should reconsider the request for a variance by the Minnesota Pollution Control Agency that EPA granted in the December 27, 2012, Variance Approval Decision. EPA therefore requests a remand of the December 27, 2012, Variance Approval Decision. EPA intends to disapprove the variance request on remand under section 303(c) of the Clean Water Act, 33 U.S.C. § 1313(c). Under these unique circumstances, EPA requests that the Court vacate the December 27, 2012, Variance Approval Decision before remanding the matter to EPA.

4. The case law fully supports granting a motion for voluntary remand in these circumstances. *See e.g.*, *Ethyl Corp. v. Browner*, 989 F.2d 522, 524 (D.C. Cir. 1993) ("We commonly grant such motions, preferring to allow agencies to cure their own mistakes rather than wasting the courts' and the parties' resources reviewing a record that

both sides acknowledge to be incorrect or incomplete."). While vacatur is not always appropriate when an agency requests a voluntary remand, as noted above, given EPA's intention to disapprove the variance request on remand, EPA requests that the Court vacate the December 27, 2012, Variance Approval Decision prior to remanding the matter to EPA.

5. Counsel for EPA has discussed this matter with counsel for all Plaintiffs and is authorized to state that this motion is unopposed. Counsel for EPA is also authorized to state that it is the parties' intention to file a stipulation of dismissal under Fed. R. Civ. P. 41 after the Court grants this motion.

For all these reasons, the Court should vacate the December 27, 2012, Variance Approval Decision challenged in this case and remand this matter to EPA. A proposed order is provided.

Respectfully submitted,

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Dated: March 10, 2014

CERTIFICATE OF SERVICE

It is hereby certified that on March 10, 2014, the undersigned caused the foregoing Defendants' Unopposed Motion for a Voluntary Remand with Vacatur to be served electronically on counsel in this case who are registered with the Court's ECF system by filing it electronically with the Court. Any counsel not registered for ECF service will be served by first class mail.

/s/David A. Carson