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Howard D. Markus, Ph.D., P.E. (howard.markus@state.mn.us)
Research Scientist 3/Aquatic Ecologist
MN Pollution Control Agency

Re: Minnesota's Draft 2012 303(d) List of Impaired Waters

Dear Dr. Markus,

These comments are submitted on behalf of WaterLegacy, a non-profit group formed to protect Minnesota's water resources and the communities that depend on them. WaterLegacy has had the opportunity to review Minnesota's Draft 2012 list of Impaired Waters designated pursuant to Section 303(d) of the Clean Water Act, 33 U.S.C. §1313(d).

Water Legacy appreciates the progress made by the Minnesota Pollution Control Agency (MPCA) in 2012 to identify additional waters that are impaired for mercury contamination and to identify waters that are impaired for inability to sustain aquatic life. We noted that in the Arrowhead Region alone, 105 new designations were made of waters impaired for aquatic life as indicated in bioassessments of fish or macroinvertebrates. Residents, anglers and tribal members have long been concerned about the impacts of mining discharge, including sulfates and toxic metals, on aquatic ecosystems. Designating waters impaired for aquatic life is an important step in determining pollutants to which the impairments can be attributed, setting limits to protect aquatic uses and restoring the viability of designated uses.

Recognizing the importance of restoring designated uses that have been impaired by mining pollution, WaterLegacy is troubled by the MPCA's failure to identify waters where Minnesota's water quality standard limiting sulfates to 10 milligrams per liter (mg/L) is exceeded and where the propagation and maintenance of natural wild rice stands has been degraded and impaired.

Under the Clean Water Act, the Impaired Waters list must identify waters not meeting designated uses, waters where calculations or predictions indicate nonattainment of water quality standards, waters for which water quality problems have been reported by the public or other agencies, and waters identified by the state as impaired or threatened in a nonpoint assessment. 40 C.F.R. § 130.7(b)(5). The purpose of identifying impaired waters under the Clean Water Act is to create a framework where states prioritize among impaired waters based on the severity of the pollution and the uses to be made of such waters and then determine the total maximum daily load (TMDL) to which pollutants must be limited to attain applicable water quality standards. 33 U.S.C. § 1313(d); 40 C.F.R. §130.7(d)(1).

Minnesota rules recognize the designated use of Class 4 waters for the propagation and maintenance of natural stands of wild rice, stating that the quality of waters and habitat "necessary to support the propagation and maintenance of wild rice plant species must not be materially impaired or degraded." Minn. R. 7050.0224, subp. 1. A water quality based standard limiting sulfates in waters used for the production of wild rice to 10 mg/L has been in effect since 1973 to protect this beneficial use. Minn. R. 7050.0224, Subp. 2.

The MPCA has several sources of information from which to make an identification of waters not meeting their designated uses for the propagation and maintenance of wild rice:

- Certain selected wild rice waters are identified in rule to call attention to the need for protection of this vital designated use. These include St. Louis River, Artichoke Lake, Bluebill Lake, Breda Lake, Cabin Lake, Caribou Lake, Christine Lake, Fourmile Lake, Hay Lake, Lieuna Lake, Long Lake, Marsh Lake, Moore Lake, Northern Light Lake, Papoose Lake, Rice Lake, Round Island Lake, Round Lake, Seven Beaver Lake, Stone Lake, Skibo Lake, Swamp River, and White Pine Lake. Minn. R 7050.0470.
- Additional wild rice waters were identified in a 2008 report by the Minnesota Department of Natural Resources to the Legislature, which found stands of natural wild rice on 1,292 lakes and segments of rivers and streams in Minnesota.
- The 1854 Treaty Authority also maintains a list of wild rice waters within the 1854 Ceded Territory that lists hundreds of rivers, streams and lakes, including the St. Louis River, Partridge River, Embarrass River, and Birch Lake.
- Surveys and investigations in connection with NPDES/SDS permits and environmental review have identified wild rice waters, including Swan Lake, Swan River, Hay Creek, Hay Lake, the Partridge River, Embarrass River, Embarrass Lake, Cedar Island Lake, Esquagama Lake, St. Louis River and Birch Lake.

The MPCA has monitoring data and reports from the public and from other State and tribal agencies confirming that many known wild rice waters are not meeting designated wild rice uses and are not attaining water quality standards limiting sulfates in wild rice waters.

Much of the impairment of wild rice uses is attributable to high levels of sulfates discharged to surface waters from mine pits, waste rock piles and tailings basins. As stated in the PolyMet NorthMet DEIS, “[i]t has long been known that sulfate concentrations in the St. Louis River are sometimes elevated due, most likely, to mining related sulfate releases.” DEIS, at 4.1-194. “Sulfate concentrations in waters draining non-mining impacted watersheds ranged from 3.4 to 5.8 mg/L, whereas sulfate concentrations in tributaries from mining impacted watersheds ranged from 22 to 127 mg/L. *Id.*

WaterLegacy commends the MPCA for new listings of waters impaired for aquatic life, a critical step in determining what limits on salts and toxic metals are needed to protect fish and the aquatic ecosystem. WaterLegacy believes that the Clean Water Act requires a similar rigorous undertaking to list Minnesota waters that are impaired due to their exceedance of water quality standards that protect natural stands of wild rice. Failure of the Agency to identify these impaired waters places wild rice waters and habitats at risk.

In addition to the preceding comments, WaterLegacy joins in comments filed by Center for Biological Diversity on February 17, 2012. Please feel free to call me if you have any questions.

Sincerely,



Paula Goodman Maccabee
Counsel/Advocacy Director for WaterLegacy