STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

Minnesota Chamber of Commerce,

Plaintiff,

vs.

Minnesota Pollution Control Agency,

Defendant, and

WaterLegacy,

Defendant-Intervenor.

Court File No. 62-CV-10-11824
Hon. Margaret M. Marrinan

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

This matter came on for hearing on the parties' cross motions for summary judgment on March 1, 2012. Thaddeus Lightfoot, Esq., appeared on behalf of Plaintiff; Assistant Attorney General Robert B. Roche appeared on behalf of Defendant Minnesota Pollution Control Agency; Paula Maccabee, Esq., appeared on behalf of Defendant-Intervenor WaterLegacy.

Plaintiff has withdrawn its claim regarding Count I of the Amended Complaint.

Plaintiff seeks partial summary judgment on the remaining following counts:

1) Count II: in which it alleges that the "Wild Rice Rule" is unconstitutionally vague and thus a violation of due process. The basis for this allegation is that the term "when rice may be susceptible to damage from high sulfate levels" is not defined.

2) Count III: in which it alleges that Defendant's actions applying the "Wild Rice Rule" exceed Defendant's statutory authority and are arbitrary and capricious because:

   a. Defendant would apply them to all waters in the state rather than limit them to waters used for agricultural irrigation in the production of wild rice; and

   b. Defendant has created a narrative wild rice classification for Class 4A waters without specifically listing or otherwise classifying those waters; and

   c. Defendant has required that Plaintiff members perform wild rice surveys to determine whether waters fall within the narrative sub-classification.

3) Count IV: in which it asks the Court to construe the Wild Rice Rule under the authority of the Minnesota Declaratory Judgments Act (Minn. Stat. Ch.555).

Defendant and Defendant-Intervenor seek summary judgment regarding all of Plaintiff's claims.

FINDINGS OF FACT

1. The Minnesota Legislature has adopted wild rice as the official grain of the State of Minnesota and has explicitly recognized the importance of protecting it. Minn. Stat. § 1.148, subd. 1 (2010).

2. In keeping with the policy set by Minn. R. 7050.0186[1], and in order to comply with the United States Environmental Protection Agency (EPA) requirements under the Federal Water Pollution Control Act Amendments of 1972, in 1973 the Minnesota Pollution Control Agency (MPCA) adopted water quality standards for Class 4 waters of the state.

The rationale for protection of these waters is addressed by Minn. R. 7050.0224, subp.1:

> The *numeric* and *narrative* [emphasis supplied] water quality standards in this part prescribe the qualities or properties of the waters of the state that are necessary for the agriculture and wildlife designated public uses and benefits. Wild rice is an aquatic plant resource found in certain waters within the state. The harvest and use of grains from this plant serve as a food source for wildlife and humans. In recognition of the ecological importance of this resource, and in conjunction with Minnesota Indian tribes, selected wild rice waters have been specifically identified [WR] and listed in part 7050.0470, subp.1.[2] The quality of these waters and the aquatic habitat necessary to support the propagation and maintenance of wild rice plant species must not be materially impaired or degraded. If the standards in this part are exceeded in waters of the state that have the Class 4 designation, it is considered indicative of a polluted condition which is actually or potentially deleterious, harmful, detrimental, or injurious with respect to the designated uses.

Minnesota's wild rice sulfate standard is found in Minn. R. 7050.0224, subp. 2 (2011). The rule provides in pertinent part:

> Class 4A waters. The quality of Class 4A waters of the state shall be such as to permit their use for irrigation without significant damage or adverse effects *upon any crops or vegetation usually grown in the waters or area*, [emphasis supplied] including truck garden crops. The following standards shall be used as a guide in determining the suitability of the waters for such uses . . . : Sulfates (SO_4) 10 mg/L, applicable to water used for production of wild rice during periods when the rice may be susceptible to damage by high sulfate levels.
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> Minn. R. 7050.0224, subp. 2 (2011).

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[1] "It is the policy of the state to protect wetlands and prevent significant adverse impacts on wetland beneficial uses caused by chemical, physical, biological or radiological changes. The quality of wetlands shall be maintained to permit the propagation and maintenance of a healthy community of aquatic and terrestrial species indigenous to wetlands, preserve wildlife habitat, and support biological diversity of the landscape. In addition these waters shall be suitable for....irrigation...as specified in part 7050.0224, subpart 4...."

[2] This rule specifically identifies as [WR] the sub-set of wild rice waters in the Lake Superior watershed.

Of the subparts to the water quality standards in Minn.R. 7050.0224, subpart 2 (Class 4A waters) is the only one that specifically refers to crops and vegetation. Classes 4B and C have as their focus livestock and wildlife.

3. The MPCA adopted a wild rice numeric sulfate standard of 10 milligrams per liter ("mg/L") for water used for production of wild rice based on recommendations by the Minnesota Department of Natural Resources ("MDNR") that sulfate concentrations above that level are a serious detriment to the natural and cultivated growth of wild rice.

4. In addition to the numeric standard, Minnesota Rules also adopted a narrative standard that applies only to specifically identified wild rice waters. Minn.R. 7050.0224, subp.1, *supra.*

5. Whether standing alone, or viewed in tandem with the above rules, the term "when the rice may be susceptible to damage by high sulfate levels" is straightforward and understandable: if the rice is at a point in development when sulfates can damage it, the maximum sulfate level is 10 mg/L.

6. Testimony from the hearing on the initial adoption of the wild rice sulfate standard clearly establishes that, from the time of its initial adoption, the MPCA intended the wild rice sulfate standard to protect both naturally growing and cultivated wild rice.[3]

7. The first time that the MPCA imposed a discharge limit based on the wild rice sulfate rule (Minn. R. 7050.0224, Subp. 2) was in a 1975 permit for the Clay Boswell Steam Electric Station ("Clay Boswell Permit").

[3] Affidavit of Gerald Blaha, Ex. C, p. 27: testimony of John McGuire, Chief of the Section of Standards and Surveys, Division of Water Quality, MPCA.

8. The record of the administrative hearing for the Clay Boswell Permit reflects that the hearing examiner supported application of a sulfate limit in that permit in order to protect natural stands of wild rice, not agricultural irrigation of cultivated wild rice.[4]

9. The MPCA issued sulfate limits three other times: a June 17, 2010 permit modification for U.S. Steel Corporation (Keetac mining area) and two October 25, 2011 permits for U.S. Steel (Keetac mining area and tailings basin). It is notable that the areas in question affect *natural* stands of wild rice, not the agricultural irrigation of cultivated rice. The direct receiving waters included both listed waters (Welcome Creek and O'Brien Creek) and unlisted waters (Welcome Lake and O'Brien Reservoir). All of these waters were classified as Class 4A and 4B waters. U.S. Steel neither requested an administrative hearing nor challenged the permit at the Court of Appeals.

10. In 2010, the EPA, addressing the issue of sulfate discharge for the Keetac mine expansion and the proposed PolyMet NorthMet mining project, advised Defendant MPCA that the wild rice protection rule must be applied to limit that discharge in receiving waters. Both of those projects affected natural stands of wild rice, rather than agricultural irrigation for cultivated rice[5]. The waters to which this sulfate limit applied included lakes, rivers and creeks not specifically listed as wild rice waters in Minn. R. 7050.0470, Subp. 1.[6]

11. The MPCA has approximately ten years of sulfate data for mining discharges because it has monitored wastewater discharges from mining operations in order to evaluate their overall toxicity and their potential to adversely affect groundwater. The agency concluded that

[4] Affidavit of Gerald Blaha, Paragraph 9.
[5] Affidavit of Paula Maccabee, Ex. 8 and 9.
[6] Swan Lake, Swan River, Hay Creek, Hay Lake and Upper Partridge River. *Id.*

this data could be useful in evaluating the potential impact of mining discharges on the wild rice sulfate standard.[7]

12. To determine whether sulfate dischargers are potentially interfering with attaining the wild rice sulfate standard, the MPCA reviews permit applications on a case-by-case basis. Where the data suggests that a discharge has high levels of sulfates upstream of a water identified as one potentially used for production of wild rice, the agency may request dischargers to conduct surveys to determine if the discharge is, in fact, upstream of a water used for production of wild rice. This authority derives from M.S. 115.03, subd. 3 (e) (7) which gives the agency the authority to require owners and operators of such discharge systems to do so.

13. As part of the permit review process, the MPCA reviews the following information: (i) available wild rice records and databases that the MDNR maintains; (ii) consultation with aquatic plant biologists at the MDNR; (iii) information received from external stakeholders, including, but not limited to, Native American tribes and environmental groups; and (iv) information provided by the discharger.

14. The MDNR's list of waters where wild rice has been identified is not an exhaustive list of waters used for production of wild rice. Where a permit applicant discharges upstream of a water that is not on the MDNR list, but which has been identified as potentially producing wild rice, the MPCA has requested that the permit applicant conduct a survey of any wild rice stands in the receiving waters to help determine whether the receiving water is a water used for production of wild rice.

[7] The MPCA does not yet have similar data for municipal discharges, but is in the process of obtaining it as part of a broader MPCA strategy to evaluate the impact of wastewater discharges on Class 3 and Class 4 water standards. It intends to use the monitoring data to determine whether additional discharge limits are necessary to protect Class 3 and 4 water quality standards, including the wild rice sulfate standard.

15. Any party who disagrees with the MPCA's determination of 1) whether a water qualifies as a water used for production of wild rice or 2) whether the permit needs to include a sulfate limit has the option of requesting a contested case hearing before an administrative law judge on the issue pursuant to Minn. R. 7000.1800. Although Plaintiff's members allege they have been affected by the wild rice sulfate standard, they failed to request such a hearing, and have sought relief under Chapter 555 of the Minnesota Statutes.

16. During the 2011 Minnesota Legislative Session, it was proposed that the application of Minnesota's wild rice sulfate standard be suspended, or that the sulfate standard be increased from 10 mg/L to 50 mg/L. In response to those proposals, on May 13, 2011 the U.S. EPA[8] wrote the sponsoring legislators warning that:

> 1) "[L]egislation changes [to] the EPA-approved water quality standards for Minnesota...must be submitted to EPA for review...and are not effective for Clean Water Act (CWA) purposes, including [National Pollutant Discharge Elimination System] permits, unless and until approved by EPA; and
>
> 2) If it "determined that a state is not administering its federally approved NPDES program in accordance with requirements of the CWA, EPA has the authority to...withdraw authorization of the program...."

17. Rather than passing either of the above bills, the 2011 Minnesota legislature passed, and the governor signed, a bill regarding the wild rice sulfate standard. Minn. Laws 2011 1 Sp. c. 2, art. 4, § 32. That law requires the MPCA to form an advisory group and conduct an extensive study of the impacts of sulfates and other substances on wild rice. *Id.* at § 32(c)&(d). Once that research is complete, the bill requires the MPCA to amend the wild rice sulfate standard to:

[8] The EPA has delegated the administration of the federal Clean Water Act in Minnesota to the MPCA.

(i) address water quality for both natural stands of wild rice and cultivated wild rice; (ii) specifically designate waters to which the wild rice sulfate standard applies; and (iii) designate the times of year when the standard applies. *Id.* at § 32(a)(1)-(3).

18. Pursuant to that legislation, the MPCA has formed an advisory group and held three meetings of that group to date (October 10, 2011, November 30, 2011 and March 27, 2012), established a study protocol, published a Request for Proposals to undertake research outlined in the study protocol, submitted a legislative report as required by December 15, 2011, and awarded a contract to the University of Minnesota to conduct the wild rice/sulfate studies.

CONCLUSIONS OF LAW

1. Plaintiff has withdrawn its claim that the MPCA's application of the wild rice sulfate standard has violated the Equal Protection Clause of the United States Constitution. Summary Judgment in favor of the MPCA and Defendant-Intervenor is therefore proper as to that claim.

2. Summary judgment is appropriate under the Minnesota Rules of Civil Procedure, when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law. Minn.R.Civ.P. 56.03.

3. There are no genuine issues of material fact and the MPCA has demonstrated that it is entitled to judgment as a matter of law on each of Plaintiff's alleged claims.

A. Counts II and Count III:

The Wild Rice Rule does not violate due process. It is not unconstitutionally vague, nor is the application of the rule arbitrary and capricious.

4. An agency rule is unreasonable (and therefore invalid) when it fails to comport with substantive due process because it is not rationally related to the objective sought to be achieved.[9] The rationale underlying the Wild Rice Rule (Minn. R. 7050.0224, subp. 2) is found in the subparagraph preceding it: since wild rice is a food source for both wildlife and humans, the quality of the waters and the aquatic habitat necessary to support its propagation and maintenance must not be materially impaired or degraded. The policy upon which this rationale is based (Minn.R.7050.0186) is the protection of the quality of wetlands so as to "permit the propagation and maintenance of a healthy community of...species indigenous to wetlands...In addition these waters shall be suitable for...irrigation...."

5. Where a rule is challenged as "invalid as applied", Minnesota law allows only limited judicial inquiry into the validity of an administrative regulation in question. The party challenging the rule bears a heavy burden and must establish that the rule is not rationally related to the legislative ends sought to be achieved or that in adopting the rule the MPCA exceeded its statutory authority.[10]

6. Plaintiff has not met its burden of proving that the MPCA's application of the wild rice sulfate rule conflicts with statutory authority or is otherwise not rationally related to the legislative goal of protecting the environment. MPCA's application of the wild rice sulfate rule is reasonably related to achieving the legitimate goal of protecting Minnesota's environment.

7. Minnesota's Class 4 waters, which encompass the sub-classification of Class 4A waters, are "waters of the state that are or may be used for any agricultural purposes, including

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[9] *Mammenga v. Dep't of Human Services,* 442 N.W. 2d 786, 789 (Minn. 1989).

[10] *Mammenga v. Dep't of Human Services*, 442 N.W. 2d 786 (Minn. 1989); *Hirsch v. Bartley-Lindsay Co.*, 537 N.W.2d 480 (Minn. 1995).

stock watering and irrigation, or by waterfowl or other wildlife, and for which quality control is or may be necessary to protect terrestrial life and its habitat or the public health, safety, or welfare." Minn. R. 7050.0140, subp. 5 (2011).

8. Minnesota's Class 4A water quality standards are intended to protect both naturally occurring vegetation grown in the waters themselves and cultivated crops in the area around the water. The MPCA's application of the wild rice sulfate standard to protect naturally growing wild rice in ambient waters of the state is legally valid because it is consistent with the plain language of the water quality standard. Minn. R. 7050.0224, subp. 2.

9. Under Minnesota law, "[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2010). Minnesota courts apply the provisions of chapter 645 to both statutes and administrative rules. The administrative and legislative records clearly demonstrate that the MPCA has always intended the wild rice sulfate rule to protect both cultivated and natural stands of wild rice. The agency's application of the rule to waters with natural stands of wild rice is legally valid because it is consistent with the administrative history and intention of the regulation.

10. The MPCA's application of the wild rice sulfate rule to protect waters with natural stands of wild rice is also consistent with a number of established legislative policies and statutory duties, among them the duty to ensure that the State of Minnesota maintains its responsibility to administer the federal Clean Water Act in Minnesota.[11]

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[11] Minn. Stat. § 115.03, subd. 5 (2010) ("the agency shall have the authority to . . . establish and appl[y] rules . . . and permit conditions, consistent with and, therefore not less stringent than the provisions of the Federal Water Pollution Control Act, as amended, applicable to the participation by the State of Minnesota in the national pollutant discharge elimination system (NPDES)")

11. In the 2011 special session, the legislature specifically directed the MPCA to adopt an amended rule which shall "address water quality standards for waters containing natural beds of wild rice, as well as for irrigation waters used for production of wild rice . . . ." Minn. Laws 2011 1 Sp. c. 2, art. 4, § 32 (a)(1). The MPCA's application of the wild rice rule to protect natural stands of wild rice is consistent with legislative policy that explicitly recognizes the importance of wild rice to the State of Minnesota.

12. The wild rice sulfate standard is a numeric standard set forth in Minn. R. 7050.0224, subp. 2. Minn. R. 7050.0224, subp.1 also includes a narrative standard that applies only to specifically identified wild rice waters. Minn. R. 7050.0470, subp. 1 (2011), in turn, specifically identifies [WR] the sub-set of wild rice waters in the Lake Superior watershed to which this narrative applies.

To the extent Plaintiff claims that the narrative wild rice standard does not identify the waters to which that narrative standard applies, the claim fails as a matter of law.

13. Under Minnesota law, "[a] statute that does not implicate First Amendment freedoms is facially void for vagueness only if it is vague in all its applications. Unless the statute proscribes no comprehensible course of conduct at all, it will be upheld against a facial challenge." [12]

14. The Plaintiff has not established that the wild rice sulfate rule is vague in all of its applications or that it proscribes no comprehensible course of conduct at all. The MPCA applied this rule in the Clay Boswell Permit and an independent hearing examiner supported the application of the rule in that case. The MPCA has recently applied the rule in the reissuance of

[12] *State v. Normandale Properties, Inc.*, 420 N.W.2d 259, 262 (Minn. Ct. App. 1988) (citing *Village of Hoffman Estates v. Flipside Hoffman Estates, Inc.*, 102 S.Ct. 1186, 1191 (1982).

the U.S. Steel Keewatin Taconite permit. U.S. Steel neither requested an administrative hearing nor challenged the permit in the Court of Appeals.

15. Under Minnesota law, a party challenging a law on constitutional grounds, including vagueness, bears a heavy burden of proof.[13] The Plaintiff must overcome every presumption of constitutionality and show that the wild rice sulfate standard is unconstitutionally vague as applied to Plaintiff's members. Plaintiff has not met this burden.

Sulfate Standard not Void for Vagueness

16. Contrary to Plaintiff's assertion, the fact that the wild rice sulfate standard does not include an explicit definition for the term "when the rice may be susceptible to damage by high sulfate levels" does not render the rule void as applied. The void for vagueness doctrine demands only that laws be drafted with "sufficient definiteness that ordinary people can understand what conduct is prohibited."[14] Even if a law speaks in "broad, flexible standards that require persons subject to a statute to exercise judgment," or requires persons to "rely on common sense and intelligence to determine whether their conduct complies with the law [it] does not render the law unconstitutionally vague." [15]

17. The civil, regulatory nature of the wild rice sulfate standard is subject to a "vagueness test" that is less strict than for criminal statutes. "To find a civil statute void for vagueness, the statute must be 'so vague and indefinite as really to be no rule or standard at

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[13] "In attacking a rule on due process grounds, including a vagueness challenge, the challenger bears a heavy burden [cit. om.] The standard for determining vagueness is well-settled: [it is] void for vagueness if it fails to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or fails to provide sufficient standards for enforcement...The rule should be upheld unless the terms are so uncertain and indefinite that after exhausting all rules of construction it is impossible to ascertain legislative intent." *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency*, 469 N.W.2d 100, 107 (Mn.App.1991).

[14] *State v. Romine*, 775 N.W.2d 884, 891 (Minn. Ct. App. 2008) (quoting *Kolender v. Lawson*, 103 S. Ct. 1855, 1858 (1983)).

[15] *State v. Enyeart*, 676 N.W.2d 311, 321 (Minn. Ct. App. 2004).

all.'"[16] The challenged law must "define the forbidden or required act in terms so vague that individuals must guess at its meaning . . . ." [17] Put another way: "a statute will be upheld against a facial challenge unless [it] proscribes no comprehensible course of conduct at all". [18]

18. Civil laws regulating business are less likely to be void for vagueness than criminal laws "because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action. Indeed, the regulated enterprise may have the ability to clarify the meaning of the regulation by its own inquiry, or by resort to an administrative process."[19]

19. The application of the wild rice sulfate rule to Plaintiff in this case is not unconstitutionally vague under this standard. Plaintiff's members are not left to guess as to what conduct is prohibited or required under this rule.

20. The wild rice sulfate rule is an ambient water quality standard. As such, it describes the desired condition of Minnesota's waters, but is not a discharge standard and does not proscribe or prohibit conduct.[20] The only way that the MPCA can require or prohibit action based on the wild rice sulfate standard is through a permitting action. [21]

21. Before the MPCA issues a permit for a point source such as Plaintiff's members, it is legally required to publish a draft of the permit for public review and comment. Minn. R.

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[16] *Seniors Civil Liberties Ass'n v. Kemp,* 965 F.2d 1030, 1036 (11th Cir. 1992).
[17] *Humenansky v. Minn. Bd. of Med. Examiners*, 525 N.W.2d 559, 564 (citing *Kolender v. Lawson*, 103 S.Ct. 1855, 1958 (1983).
[18] *State v. Normandale Properties, Inc.*, 420 N.W.2d 259, 262 (Minn. App 1988).

[19] *Village of Hoffman Estates*, 102 S.Ct. at 1193
[20] Minn. R. 7050.0224, subp. 2.
[21] See, for example., 40 C.F.R. § 122.44(d)(1) (2011) (requiring permitting authority to impose discharge limits in permits where evidence shows that discharge has reasonable potential to cause or contribute to a violation of a water quality standard in a receiving water); Minn. R. 7001.0150, subp. 2 (2011) (requiring MPCA issued permits to include terms necessary to achieve compliance with applicable state and federal law).

7001.0100 (2011). If Plaintiff's proposed permit includes a limit based on that rule, then Plaintiff's members have thirty days to review, comment on, and question that proposed limit. Any party who disagrees with the terms of a proposed MPCA permit has the right to request a contested case hearing before an administrative law judge to review and clarify the terms of the proposed permit. Minn. R. 7000.1800 (2011). Any party who is aggrieved by the agency's final decision in a permitting action has a right of certiorari review by the Court of Appeals. Minn. Stat. § 115.05, subd. 11 (2010). Plaintiff has not and cannot show that any of its members have been left guessing as to what conduct is required or prohibited. Plaintiff's void for vagueness challenge fails as a matter of law.

22. The term "when the rice may be susceptible to damage by high sulfate levels" is straightforward and can be understood using plain language. If wild rice is at a point in its life cycle when sulfates will damage the plant, then the receiving water must not exceed 10 mg/L. Because the rule can be applied based on its plain language, it is not void for vagueness. The goal of the law is to protect production of wild rice in Minnesota. In view of that goal it is reasonable to conclude that the standard applies at a point in the wild rice life cycle when sulfate is found to damage the plant. The rule is not void for vagueness.

"Bodies of Water" not Void for Vagueness

23. The fact that the MPCA does not specifically list every body of water to which the wild rice sulfate standard applies neither violates the Due Process clause of the Constitution nor does it exceed MPCA's statutory authority: neither the Constitution nor Minnesota or federal statutes require a state to list expressly every surface water to which a water quality standard applies. Such a requirement would be particularly absurd in a state such as Minnesota.[22]

[22] According to the Minnesota Legislative Manual (2011-2012) there are 11,842 lakes of more than 10 acres, 3 major river systems, and 6,564 (69,200 miles) rivers and streams.

24. Nor does the lack of a specific listing render the rule unconstitutionally vague. Plaintiff's members are not left guessing as to whether the wild rice sulfate standard applies to a particular water or as to what is required of them under the standard because the proposed permit details exactly what is required of Plaintiff's members.

25. The wild rice sulfate standard is likewise consistent with state and federal statutory requirements.

State Law

26. Under Minnesota law, the MPCA has the duty and the authority "to establish and alter such reasonable pollution standards for any waters of the state in relation to the public use to which they are or may be put as it shall deem necessary for the purposes of this chapter . . . ." Minn. Stat. § 115.03, subd. 1(c) (2010). Nothing in the statute suggests that the MPCA is required to list every single water to which a water quality standard applies. The legislature has given the MPCA broad discretion as to how to best structure Minnesota's water quality standards and has expressly recognized that it is proper for the MPCA to establish water quality standards for *groups* of waters instead of listing every single water to which a standard applies. The legislature has required the MPCA to "group the designated waters of the state into classes, and adopt classifications and standards of purity and quality therefore." Minn. Stat. § 115.44, subd. 2 (2010).

27. The MPCA's administrative rules likewise recognize the need for the agency to employ grouping in the establishment of water quality standards.[23] The assertion that Minnesota law requires a specific list of each water to which a water quality standard applies is without merit.

[23] *See* Minn. R. 7050.0140, subp. 1 ("the waters of the state are grouped into one or more of the classes in subparts 2 to 8.")

28. In adopting the wild rice sulfate standard, the MPCA established a group of waters to which the standard applies. That group of waters consists of "waters used for production of wild rice." Minn. R. 7050.0224, subp. 2 (2011). This type of grouping is expressly authorized under Minnesota law.

29. As the EPA made clear in its May 13, 2011 letter to the Minnesota Legislature, the EPA has formally approved Minnesota's wild rice sulfate standard. When the EPA approves a state's water quality standard, it must determine whether the standard is "consistent with the requirements of the Clean Water Act." 40 C.F.R. § 131.5 (a)(1). In approving the wild rice sulfate standard, the EPA concluded that the standard is consistent with the federal Clean Water Act. Plaintiff's assertion that the wild rice sulfate standard is in any way inconsistent with the Clean Water Act lacks merit.

Federal Law

30. There is no requirement in federal law for the state to list expressly every single water to which a water quality standard applies in order for the standard to apply. On the contrary, the federal Clean Water Act allows for application of water quality standards to water bodies that are implicated without being expressly listed on an individual basis.

31. Minn. Laws 2011 1 Sp. c. 2, art. 4, § 32(a)(2) directs the MPCA to initiate rulemaking regarding identification of waters to which this wild rice sulfate standard applies. Plaintiff's assertion that state and federal law would require such a listing is inaccurate and would significantly impede the MPCA's ability to fulfill its statutory obligation to promulgate and enforce water quality standards for the State of Minnesota.

32. The Wild Rice Rule (Minn. R. 7050.0224, subp.2) is rationally related to both the stated policy and rationale of the rules and is not void for vagueness.

B. Count IV: Plaintiffs are not entitled to a Declaratory Judgment.

33. M.S. 555.02 specifies the actions a court may construe under the Declaratory Judgment Act:

> Any person...whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising [under the same] and obtain a declaration of rights, status or other legal relations thereunder.

34. This act is not an express independent source of jurisdiction[24]: it does not create an independent cause of action. Because Plaintiff's substantive claims all fail as a matter of law, Plaintiff's Declaratory Judgment Act claim must also be dismissed.

35. To the extent that Plaintiff's claims are based on permitting actions that the MPCA may take in the future, those claims are conjectural and not subject to court action at this time.[25]

36. Given the above, Plaintiff has adequate remedies at law and is not entitled to a declaratory judgment.

C. Request for Equitable Relief

37. Plaintiff has requested that the Court "preliminarily and permanently" enjoin the MPCA from imposing any of the sulfate discharge limitations discussed above. Case law addressing Minn.R.Civ. P. 65.02 (temporary injunctions) has established five factors determining whether such an injunction should be granted: a) the nature of the relationship; b) relative hardships; c) likelihood of success on the merits; d) public policy; and e) administrative burdens.[26]

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[24] *Alliance for Metropolitan Stability v. Metropolitan Council,* 671 N.W.2d 905, 915 (Minn. App. 2003).
[25] Any such quasi-judicial action is reviewable via certiorari to the Court of Appeals under M.S. 115.05, subd.11(2010).
[26] *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 137 N.W.2d 314 (1965).

38. Analyzed under those factors, Plaintiff's request should be denied. As with Minn. R. Civ.P.65.01, the threshold question is whether there is immediate and irreparable injury that constitutes a ground for the issuance of the injunction and whether that party does not have an adequate remedy at law.[27]The failure to meet this burden is, in and of itself, a sufficient basis on which to deny the relief.[28] In this case, each of Plaintiff's claims are based on actions that the MPCA allegedly *may* take in the context of permitting proceedings. Plaintiff has an adequate remedy at law for any MPCA permitting decision: the right to request a contested case hearing before an administrative law judge on any MPCA permitting matter,[29] and a statutory right of certiorari review of any final MPCA permitting decision before the Minnesota Court of Appeals. [30] Because Plaintiff clearly has adequate remedies at law in this case its request for equitable relief must be denied.

39. Analyzed under the *Dahlberg* factors, the Court reaches the same conclusion. In this case the determinative factors under *Dahlberg* are a) the likelihood of success on the merits (see discussion, *supra;)* and b) public policy[31]. Balancing the relative hardships between the parties, the analysis also favors the Defendant. While complying with the rules may be more costly to the Plaintiff's members, the rationale for Defendant's action is clearly stated in Minn.R. 7050.0224, subp.1:

> "...The harvest and use of grains from this plant serve as a food source for wildlife and humans...the quality of these waters and aquatic habitat necessary to support the propagation and maintenance of wild rice plant species must not be materially impaired or degraded...

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[27] *Unlimited Horizon Mktg., Inc. v. Precision Hub, Inc.*, 533 N.W. 2d 63 (Minn. App. 1995).
[28] *Morse v. City of Waterville*, 458 N.W. 2d 728 (Minn. App. 1990).
[29] Minn. R. 7000.1800 (2011).
[30] Minn. Stat. § 115.05, subd. 11(1) (2010).
[31] See discussion supra at p. 3 regarding Minn.R. 7050.0186, M.S. 1.148, subd.1.

40. Plaintiff's argument that its members may have to take action to comply with the wild rice sulfate standard during the interim period in which the MPCA conducts the research necessary to amend the rule as directed by the Legislature is without merit. The Legislature has already addressed how the wild rice sulfate standard is to be applied during that interim period.[32]

For this Court to second-guess the Legislature's determination of how the standard should be applied while the standard is in the process of being amended is inappropriate. Plaintiff's request for injunctive relief should be denied.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. The motion for summary judgment of Defendant MPCA and Defendant-Intervenor WaterLegacy's is granted in its entirety.
2. Plaintiff's motion for a "preliminary and permanent" injunction is denied.
2. Plaintiff's partial motion for summary judgment is denied in its entirety.
3. Plaintiff's Complaint is dismissed in its entirety with prejudice and on the merits.

10 May 2012

HON. MARGARET M. MARRINAN
JUDGE OF DISTRICT COURT

[32] Minn. Laws. 2011 1 Sp. c. 2, art. 4, § 32 (e).