



**Paula Goodman Maccabee, Advocacy Director and Counsel**

1961 Selby Ave., St. Paul, MN 55104 (651-646-8890)

[paula@waterlegacy.org](mailto:paula@waterlegacy.org) or [pmaccabee@justchangelaw.com](mailto:pmaccabee@justchangelaw.com)

March 12, 2021

Cheryl L. Newton (by email only [Newton.Cheryl@epa.gov](mailto:Newton.Cheryl@epa.gov))

Region 5 Acting Administrator

United States Environmental Protection Agency

77 West Jackson Boulevard

Chicago, IL 60604

Tera Fong (by email only [Fong.Tera@epa.gov](mailto:Fong.Tera@epa.gov))

Region 5 Water Division Director

United States Environmental Protection Agency

77 West Jackson Boulevard

Chicago, IL 60604

Re: Minnesota Wild Rice Impaired Waters – Clean Water Act Section 303(d)  
2020 Impaired Waters List submitted by MPCA on Feb. 25, 2021

Dear Ms. Newton, Ms. Fong,

This letter is written on behalf of WaterLegacy, a Minnesota non-profit organization founded to protect Minnesota waters and the communities that rely on them. We write this letter to request that the U.S. Environmental Protection Agency (“EPA”) disapprove Minnesota’s 2020 Clean Water Act Section 303(d) impaired waters list on the grounds that, in violation of the Clean Water Act, the Minnesota Pollution Control Agency (“MPCA”) failed to list wild rice waters impaired due to sulfate in excess of Minnesota’s federally-approved water quality standard of 10 milligrams per liter (“mg/L”).

After dithering for nearly an entire year over this issue, the MPCA finally submitted its 2020 Section 303(d) list on February 25, 2021. That impaired waters list failed to identify a single wild rice water impaired due to excessive sulfate. MPCA attempted to justify its failure to list wild rice waters on the basis of a 2015 Minnesota session law.

It is doubtful that the MPCA lacks the acumen to realize that the Clean Water Act preempts a state session law attempting to block listing of impaired navigable waters of the United States. It is far more likely that, absent EPA or court oversight, the MPCA lacks the political will to comply with federal law.

The EPA has a non-discretionary duty under the Clean Water Act and its implementing regulations to disapprove a state Section 303(d) impaired waters list that violates federal law. 33 U.S.C. § 1313(d)(2); 40 C.F.R. § 130.7(b), (d)(2). The EPA, then, also has an obligation to use all available data to identify impaired waters in the State. 33 U.S.C. § 1313(d)(2); 40 C.F.R. § 130.7(d)(2), (b)(5), (b)(6)(iii). In addition to these legal obligations, EPA now also has an important opportunity to sanction Minnesota’s failure to comply with the Clean Water Act and rectify a serious and pressing environmental injustice to indigenous communities in Minnesota.

WaterLegacy has previously criticized both the MPCA's failure to list wild rice impaired waters and EPA's decision on January 28, 2019 to approve Minnesota's 2016 and 2018 Section 303(d) lists despite this failure. Our concerns and documentation of the past and current situation are contained in the following documents attached with this letter:

- Attachment A WaterLegacy Comments to EPA on 2016, 2018, and draft 2020 MPCA Section 303(d) List, Oct. 22, 2020.
- Attachment B WaterLegacy Comments to MPCA on draft 2020 Section 303(d) List, Oct. 22, 2020.
- Attachment C WaterLegacy Exhibits to both Section 303(d) Comments to EPA and Comments to MPCA, Oct. 22, 2020.
- Attachment D EPA Region 5 Response to WaterLegacy Section 303(d) Comments, Nov. 10, 2021.
- Attachment E MPCA, Notice of Submittal and Responses to the 2020 Draft Impaired Waters List Public Notice Comments, Feb. 25, 2021.

MPCA admits in its responses to comments that there are at least seven Minnesota wild rice waters impaired due to sulfate. From WaterLegacy's perspective, the time for an incremental approach on this issue has passed. The MPCA has irretrievably missed its chance to comply with federal law. We hope that, in contrast, the EPA will rise to the occasion and list *all* identifiable Minnesota wild rice waters impaired due to excessive sulfate as required by the Clean Water Act.

In conclusion, WaterLegacy respectfully requests that the EPA act promptly and decisively to disapprove Minnesota's 2020 Clean Water Act Section 303(d) impaired waters list on the grounds that the MPCA's failure to list wild rice waters impaired due to sulfate in excess of Minnesota's 10 mg/L water quality standard violates the Clean Water Act and its implementing regulations. WaterLegacy further respectfully requests that the EPA then, within the time set by the Clean Water Act, list every Minnesota wild rice water impaired due to sulfate for which there is available data, including but not limited to the waters identified in the Attachments to this letter.

We appreciate your consideration, and we look forward to hearing from you soon by phone (651-646-8890) or by email ([pmaccabee@justchangelaw.com](mailto:pmaccabee@justchangelaw.com)).

Sincerely yours,



Paula G. Maccabee  
WaterLegacy Advocacy Director and Counsel

cc. David Pfeifer ([Pfeifer.David@epa.gov](mailto:Pfeifer.David@epa.gov)) with Attachments  
Paul Proto ([Proto.Paul@epa.gov](mailto:Proto.Paul@epa.gov)) with Attachments