

**Supplemental Comments of WaterLegacy  
Minnesota Pollution Control Agency Citizens' Board Meeting  
October 23, 2012  
Mesabi Nugget NPDES/SDS Permit No. MN0067687**

WaterLegacy incorporates by reference all concerns raised in our February 18, 2012 comments regarding the above proposed permit and variance. We further summarize and state the following grounds for our objection to the proposed Mesabi Nugget permit and variance:

The failure of the proposed permit to impose limits on discharge of sulfates to waters used for the production of wild rice (Second Creek and the Partridge River) from September 1 through March 30 will result in a material impairment or degradation of the aquatic habitat necessary to support wild rice in violation of Minn. R 7050.0224, Subp. 1 and 40 C.F.R. §122.44(d), which requires that effluent limitations be set to prevent excursions above state narrative standards.

No factual record supports the MPCA's conclusion that wild rice in Second Creek and the Partridge River is only susceptible to damage from April 1 through August 31, despite the extraordinarily high sulfate levels in the Mesabi Nugget Area 1 Pit discharge. Based on analysis by MPCA staff scientists that the most likely mechanism for sulfate toxicity is formation of toxic hydrogen sulfide in sediments as a result of sulfate availability,<sup>1</sup> failure to include a numeric sulfate limit from September 1 through March 30 is an unreasonable interpretation of Minn. R. 7050.0224, Subp. 2.

The proposed variance from the total dissolved solids standard as well as the failure to limit sulfates under the wild rice sulfate standard will result in degradation of an existing use for production of wild rice in violation of Minn. R. 7050.0185 and 40 C.F.R. § 131.12(a)(1).

The Wild Rice studies required in the permit do not address the above permit deficiencies or the likelihood of degradation of existing beneficial uses for the following reasons: 1) study of the fate of sulfates in sediments is excluded; 2) no information on impairment of wild rice need be made available for more than 4 years; 3) there is no provision requiring re-opening of the permit if discharges from September 1 through March 30 allowed by the permit degrade or impair wild rice habitat and natural stands of wild rice.

The prior variance for Mesabi Nugget expired in June 2010 and the proposed interim effluent limits are less stringent than the effluent limits for bicarbonates, hardness, total dissolved solids and specific conductance as contained in the February 24, 2011 permit modification, in violation of 40 C.F. R. §122.44(l) which prevents backsliding to weaken permit conditions.

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<sup>1</sup> See MPCA, "The Sulfate Standard to Protect Wild Rice Study Protocol" (Nov. 8, 2011), pp. 6, 9, 11.

Revisions to the proposed permit reduce, but do not eliminate, the likelihood that discharge from the Area 1 Pit will impair aquatic life due to whole effluent toxicity (WET). Should discharge from SD001 pass a single WET test in August or September, the permittee can discharge pollutants in excess of water quality standards throughout September. Should discharge fail WET tests from October 1 through March 30, no restriction on discharge is imposed, although additional testing or study may be required. Despite improved monitoring, variances from water quality standards are likely to remove existing uses of receiving waters to sustain aquatic life.

No variance is permissible under federal law since the proposed variance for hardness bicarbonates, total dissolved solids and conductivity would remove existing Class 3C and 4A uses from the Partridge River and St. Louis River under low flow conditions and existing uses of receiving waters for the production of wild rice and for aquatic life, in violation of 40 C.F.R. §131.10 (h).

Neither Minnesota's standards allowing a variance under Minn. R. 7050.0190, Subp. 1 nor federal standards under 40 C.F.R. §131.10(g) have been met. There are no "exceptional circumstances" resulting in "undue hardship" under Minnesota rules and no evidence of "substantial and widespread economic and social impact" under federal regulations.

Reverse osmosis is technically feasible and acceptance of Mesabi Nugget's assertions that installing reverse osmosis would cause "undue hardship" or "widespread economic impact," rather than performing any analysis of prices, costs, internal rates of return or other economic variables reflects no independent judgment on the part of the Agency. Any regulated party may assert at any time that pollution control equipment will add to its costs. Should this obvious fact be deemed undue hardship or widespread economic impact, precedent would be set to provide indefinite variances for all water pollution control treatment.

In addition, an additional 9 years of delay prior to compliance with water quality standards (which have been in Minnesota rules since the 1970's) is patently unreasonable. The existence of these regulations was known to Mesabi Nugget when it purchased facilities with existing pollution from a bankrupt mining company and when it performed wastewater studies for environmental review several years ago. A 9-year delay is also inconsistent with Clean Water Act provisions limiting NPDES permits to a time period of no more than 5 years. If any variance is considered, findings should be limited to the challenge of immediate controls and compliance with water quality standards should be required within 5 years.

Respectfully submitted,

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