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Richard Clark, Water Quality Permits  
Minnesota Pollution Control Agency  
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St. Paul, MN 55155-4194  
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*Re: May 8, 2012 – Draft Staff Recommendation*  
Waters Used for the Production of Wild Rice – Partridge and Embarrass Rivers

Dear Mr. Clark:

Thank you for providing the above MPCA Draft Recommendation document to WaterLegacy. We understand that this document is still under review by tribal technical staff and that, after such review, a new Draft Recommendation will be more broadly distributed for comment. WaterLegacy requests that we receive any such revised Draft when it is produced and expressly reserve our right to submit additional comments at that time. WaterLegacy raises the following issues for clarification and to receive additional information.

Wild Rice Paddy Farm

Please help us understand why the MPCA would construe the LTVSMC documents to conclude that Embarrass River waters adjacent to the wild rice paddy farm location should not be considered waters used for the production of wild rice.

The LTVSMC letter to the U.S. Army Corps of Engineers dated August 16, 1994 states that this area was “farmed essentially on a continuous basis between 1957 and 1993 when the commercial operation went bankrupt.” Thereafter, LTVSMC purchased the wild rice paddy farm and obtained wetlands credit for “restoration” of this area.

Looking at this LTVSMC letter and the October 18, 1995 transfer of permit 70-0998, it would seem that use of waters for irrigation of wild rice paddy farming was an existing use of the portion of the Embarrass River located in section 35, T60N, R15W on November 28, 1975, under Clean Water Act regulations (40 C.F.R. §131.3) and an existing beneficial use under State non-degradation rules (Minn. R. 7050.0185) as well as a designated use protected by the wild rice sulfate standard (Minn. R. 7050.0224). If the MPCA does not believe this is the case, please explain.

Next, no discussion is provided by the MPCA to explain how a regulated party might avoid compliance with the wild rice sulfate standard by changing the use of “waters used for the production of wild rice,” whether through degradation, purchase or wetlands development. Does the MPCA know of any guidance on this issue? If so, we would request a copy.

The February 6, 2012 memo from Dave Youngman cites a personal conversation with Joe

Giffon in 1993 to suggest that the paddy rice farm remained productive in 1993. WaterLegacy would request copies of any contemporaneous documents reflecting this conversation or other conversations or data relevant to the change in land use of the paddy rice farm.

“Oral Information” from Tribal Technical Staff

The MPCA’s Draft Recommendation seems to suggest that oral information was insufficient to establish historic use of wild rice. WaterLegacy would ask that the person(s) providing this information be identified, along with any credentials they might have and the nature of oral histories provided. Has the MPCA determined that oral history information must be reduced to writing in order to be considered as evidence of wild rice locations? If so, what form must that writing take? Is there guidance on consultation with tribal historic sources on which the MPCA has relied to set its standards for oral history? If so, please provide a reference.

The Draft Recommendation states, “River segments adjacent to the former paddy wild rice farm were ‘re-evaluated’ (see above) as a result of verbal comments.” However, the only information cited regarding this re-evaluation is that field surveys were done and “no wild rice was observed in the adjacent portion of the Embarrass River during the Barr/PolyMet fields surveys in 2009-2011.” If the oral information spoke of *historic* presence of wild rice, wouldn’t sediment cores rather than current field surveys be the appropriate method to confirm or deny the oral history?

Density of Wild Rice Used by Wildlife

The MPCA’s Draft Recommendation states that “MPCA staff concluded that the limited number of individual wild rice plants at points in the Embarrass River upstream of Embarrass Lake is not sufficient to be used as a food source for wildlife . . .”

WaterLegacy would like to know how many plants in how large an area the MPCA deems “sufficient to serve as a food source for wildlife.” We would then request any documents demonstrating for how many decades the wild rice density in the Embarrass River upstream of Embarrass Lake has been “not sufficient” to meet this new MPCA requirement. We would also appreciate citations to any scientific literature suggesting that a certain number of individual plants are needed for wild rice to be used as a food source for wildlife.

Thank you again for providing WaterLegacy with the MPCA’s May 8, 2012 Draft Recommendation regarding wild rice waters in the Partridge and Embarrass Rivers. We look forward to receiving the additional information requested in this letter as well as the MPCA’s revised Draft Recommendation after tribal consultation has been completed.

Sincerely yours,



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Counsel/Advocacy Director for WaterLegacy

cc: Mark Tomasek (mark.tomasek@state.mn.us)  
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