



The Minnesota Chippewa Tribe

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February 7, 2014

John Linc Stine, Commissioner
 Minnesota Pollution Control Agency
 520 Lafayette Road North
 St. Paul, MN 55155-419

Re: Definition of “waters used for the production of wild rice”; wild rice water quality standards

Dear Commissioner Stine:

The Minnesota Chippewa Tribe appreciates having the opportunity to continue discussions with your agency regarding the definition of “waters used for the production of wild rice.” We commend the Minnesota Pollution Control Agency (MPCA) for the work done to clarify this definition and to strengthen protection for this critical resource. As you know, wild rice is a culturally significant resource for the tribes in Minnesota. From historical reports,¹ Band member accounts,² and current Minnesota Department of Natural Resources (“DNR”) and tribal reports,³ wild rice has declined significantly throughout Minnesota, and in southern Minnesota wild rice has virtually disappeared. Minnesota tribes have a unique relationship with the state regarding the protection of wild rice, as demonstrated through multiple rulemaking processes⁴ and executive orders.⁵

¹ Jenks, A.E., The Wild Rice Gatherers of the Upper Great Lakes: A Study in American Primitive Economics (Washington: GPO, 1901), available on-line at <http://greatlakeswater.owex.edu/library/articles-and-white-papers/wild-rice-gatherers-upper-lakes-study-american-primitive-economics> (last visited Oct. 12, 2012).

² Rosemary Berens, Bois Forte Tribal Historic Preservation Officer

³ See, e.g., 1854 Treaty Authority website, “Wild Rice Survey” (including list of wild rice waters in the 1854 Ceded Territory), available at <http://1854treatyauthority.org/wildrice/survey.htm> (last visited Oct. 12, 2012); MN DNR website, “Wild rice management,” available at <http://www.dnr.state.mn.us/wildlife/shallowlakes/wildrice.html> (last visited Oct. 12, 2012).

⁴ See, e.g., Laws of Minnesota 2007, chapter 7, article 1, section 168

⁵ See, e.g., Executive Order 13-10, “Affirming the Government-to-Government Relationship between the State of Minnesota and the Minnesota Tribal Nations: Providing for Consultation, Coordination, and Cooperation.”

Maintain the existing sulfate criterion for protection of wild rice waters

Minnesota tribal staff have participated in and followed closely the MPCA's research program related to the existing sulfate criteria for protecting wild rice waters⁶. Our thorough review and interpretation of the research results for the state-led hydroponics studies, the field surveys, the mesocosm studies, and the sediment studies leads to our conclusion that the existing federally approved sulfate criterion is well-supported by multiple lines of evidence, and should be maintained. There is no scientific defensible basis for raising this sulfate limit, which is the clear benchmark required by the US Environmental Protection Agency for considering approval of a revised criterion⁷, as was clearly communicated to the Minnesota legislative body in 2011⁸.

The MPCA proposed approach for listing wild rice waters is inconsistent with the Clean Water Act

The Minnesota tribes have fundamental concerns regarding MPCA's proposed approach for meeting the intent of the 2011 state legislation that directs the agency to establish criteria considering "history of wild rice harvests, minimum acreage, and wild rice density."⁹ In January of 2014, the Fond du Lac, Grand Portage, Leech Lake, White Earth and Bois Forte Bands communicated clear concerns for the agency's proposed 'watch list' approach in letters to MPCA; specifically, that this approach would violate the Clean Water Act (the Act) and Minnesota water quality standards (WQS). The agency had proposed to create a 'watch list' for those wild rice waters listed by the DNR for which the state lacked specific acreage and/or stand density measurements; only those waters with quantified stands would be formally listed as wild rice waters. The DNR list of Minnesota wild rice waters¹⁰ was compiled as part of a legislatively directed study of the threats to wild rice in Minnesota, and represented significant contributions from Minnesota tribal resource management staff. State and tribal staff also explicitly qualified this 2008 compiled listing as 'not comprehensive', and that it would be continuously updated as new data became available.

Under the Act, the Nation's waters are to be restored and maintained for the protection and propagation of fish, shellfish, and wildlife, and for recreation in and on the water.¹¹ The goal of a water quality standards program is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.¹² States and authorized Tribes adopt water quality

⁶ <http://www.pca.state.mn.us/index.php/water/water-permits-and-rules/water-rulemaking/minnesotas-sulfate-standard-to-protect-wild-rice.html#assessment>

⁷ See, generally, 40 CFR §§ 131.5, 131.11, and 131.21 (2013).

⁸ Letter from USEPA to Sens. Dill, Bakk, May 13, 2011.

⁹ Laws of Minnesota 2011, 1st Spec. Sess., chapter 2, article 4, section 32 –Wild Rice Rulemaking and Research)

<https://www.revisor.mn.gov/laws/?id=2&doctype=Chapter&year=2011&type=1>

¹⁰ MN DNR "Statewide Inventory of Wild Rice Waters" (2008) available at <http://www.dnr.state.mn.us/wildlife/shallowlakes/wildrice.html> (last visited Jan. 27, 2014).

¹¹ See 33 U.S.C. § 1251(a)(2).

¹² *Id.*

standards to protect public health, enhance the quality of water, and serve the purposes of the Clean Water Act¹³ and are free to add use classifications, as well as adopt any use classification system they see as appropriate (with the exception of waste transport and assimilation, which are not acceptable uses in any case). Among the uses listed in the Act, there is no hierarchy.

A primary objective for classifying a water body is to designate uses by evaluating and describing the ecosystem. "Designated uses" are based on the relationship and quality, i.e., the integrity, of all ecosystem components. States and authorized Tribes, through their approved WQS, specify appropriate, designated uses in order to achieve and protect existing and potential uses.¹⁴ They can select the level of specificity they desire for identifying designated uses and subcategories of uses. Subcategories of aquatic life uses may be on the basis of attainable habitat, innate differences in community structure and function, or fundamental differences in important community components. Special uses may also be designated to protect particularly unique, sensitive, or valuable aquatic species, communities or habitats.

The current state standard for listing wild rice waters is found at Minnesota Rule 7050.0224, "Specific Water Quality Standards for Class 4 Waters of the State: Agriculture and Wildlife," which at Subpart One states:

The numeric and narrative 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, subpart 1. 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.

Natural Wild Rice Waters should be classified as a distinct aquatic life use

The fundamental use in §101(a) of the Act for 'protection and propagation of fish, shellfish and wildlife' may also include the protection of aquatic flora. However, the agricultural use class (Minnesota's Class 4 waters) is intended to define *waters that are suitable for the irrigation of crops, consumption by livestock, support of vegetation for range grazing, and other uses in support of farming and ranching and protects livestock and crops from injury due to irrigation*

¹³ See EPA's Water Quality Standards Handbook Chapter 2: *Designation of Uses* (40 CFR 131.10) at <http://water.epa.gov/scitech/swguidance/standards/handbook/chapter02.cfm>

¹⁴ See 40 C.F.R. § 131.10 (2013).

and other exposures.¹⁵ The Minnesota tribes have consistently recommended to the MPCA, during multiple consultation sessions over the past three years specifically focusing on wild rice water quality standards, that natural wild rice stands (manoomin) are more appropriately classified under a distinct aquatic life use (i.e., Minnesota's Class 2 waters). It may be appropriate to leave paddy rice, a true cultivated agricultural product, in Class 4, but it is inaccurate and inherently offensive to Minnesota tribes to classify manoomin as a 'crop', and ecologically ignorant to categorize the naturally occurring hydrology of a natural wild rice bed as "irrigation." Irrigation is defined as "...to supply (dry land) with water by means of ditches, pipes, or streams."¹⁶ This is simply not an appropriate or accurate concept for describing a native plant species growing without cultivation in a natural water body.

Wild Rice Waters listed by the Minnesota DNR and Tribes are an 'existing use'

Tribal staff have also elevated the importance of distinguishing between a "designated use" and an "existing use" in consultation with the MPCA. An "existing use" can be demonstrated by either a) that fishing/swimming has actually occurred since November 28, 1975, or b) that the water quality is suitable to allow the use to be attained--unless there are physical problems, such as substrate or flow, that prevent the use from being attained.¹⁷ Following, "No activity is allowable under the antidegradation policy which would partially or completely eliminate any existing use *whether or not that use is designated in a State's water quality standards*. The aquatic protection use is a broad category requiring further explanation. *Non-aberrational resident species must be protected, even if not prevalent in number or importance*. Water quality should be such that it results in no mortality and no significant growth or reproductive impairment of resident species. Any lowering of water quality below this full level of protection is not allowed. A use attainability analysis or other scientific assessment should be used to determine whether the aquatic life population is in fact an artifact or is a stable population requiring water quality protection."¹⁸

Designated uses may be changed only based upon findings of a use attainability analysis that has demonstrated that attaining the designated use is not possible because of naturally occurring pollutant concentrations, natural flow conditions, hydrologic modifications, substantial widespread economic impact resulting from more stringent controls, or human-caused pollution that cannot be remedied. A designated use cannot be removed if the use can be attained by implementing effluent limits and best management practices.¹⁹ Therefore, attainable uses are, at a minimum, the uses (based on the State's system of water use classification) that can be achieved: (1) when effluent limits under sections 301 (b)(I)(A) and (B) and section 306 of the

¹⁵ *Id.* at Chapter 2, EPA Water Quality Standards Handbook

¹⁶ Webster's II New College Dictionary (ISBN 0-395-70869-9) 1999. Houghton Mifflin Co.

¹⁷ See Chapter 4, Water Quality Standards Handbook, Protection of Existing Uses

¹⁸ *Id.*

¹⁹ Per 40 C.F.R. Section 131.10(d), "[w]hen designating uses, States may wish to designate only the uses that are attainable. However, if the State does not designate the uses specified in section 101(a)(2) of the Act, the State must perform a use attainability analysis under section 131.10(j) of the regulation. States are encouraged to designate uses that the State believes can be attained in the future."

Act are imposed on point source dischargers; and (2) when cost-effective and reasonable best management practices are imposed on nonpoint source dischargers.

Minnesota's existing WQS require that the quality of listed and unlisted wild rice waters, and the aquatic habitat necessary to support the propagation and maintenance of wild rice plant species, not be materially impaired or degraded. In other words, Minnesota already requires the listing of *all* wild rice waters, regardless of production—the rules make no distinction based upon productivity.²⁰ As noted, most of the waters that now appear on MPCA, DNR, and the 1854 Treaty Authority lists *already* have an “existing use” as “waters used for the production of wild rice,” whether or not they include an estimate of acres of wild rice present for any given year. These waters must remain on the wild rice waters lists for regulatory purposes. They cannot be pulled off and dropped instead onto the proposed “watch list,” in effect, de-listing them as Class 4 waters of the state with the stroke of a pen. The Clean Water Act clearly states that this can only happen after significant process, including a reasoned determination has been made that production of wild rice is a designated use, not an existing use, and based upon the findings of a use attainability analysis, that the designation of “waters used for the production of wild rice” should be eliminated.

If a *designated use* is an *existing use* (as defined in 40 CFR 131.3) for a particular water body, the existing use **cannot be removed** unless a use requiring more stringent criteria is added. However, uses requiring more stringent criteria may **always be added** because doing so reflects the goal of further improvement of water quality. This is entirely consistent with the intent of not only the Clean Water Act goals, but also the intent of the DNR and Tribes in continually updating the list of wild rice waters within the state:

Productivity thresholds are not appropriate for defining wild rice waters

Even if the Act did not prohibit the watch list, it makes no sense as a conservation measure. Minnesota Chippewa Tribe Bands have consistently urged the MPCA to broadly, not narrowly, define wild rice waters, and to be as protective of this diminishing resource as possible. An unnecessarily restrictive list of “waters used for the production of wild rice” is not consistent with the principles of ecosystem management, whereby a management or regulatory agency seeks to maintain ecosystems such as wild rice waters in the appropriate condition to meet that beneficial use, while recognizing that all ecosystems have limited ability to accommodate stressors and still maintain that desired state. Using an arbitrary threshold of productivity to define “waters used for the production of wild rice” ignores the entire body of published scientific research *and* traditional ecological knowledge provided by tribal staff and tribal members that provides substantial evidence of the interannual variability in even traditionally productive waters. Given the scarcity of wild rice productivity and stand density data that the MPCA has compiled at this point in time, it is entirely premature to attempt to incorporate a representative productivity or density metric into the actual definition of a wild rice water body.

Furthermore, the Minnesota tribes with authorized water quality standards would *not* move to a less-inclusive definition or less-protective criterion even if the state adopted it. So the “watch

²⁰ See Minn. R. 7050.0224 subp. 1.

list” would also likely mean an end to an ongoing, cooperative, state-tribal conservation effort and would likely have a ripple effect on other aspects of these relationships, as wild rice is of such central importance to the Bands. As a practical matter, the result would be that the state and tribes would no longer maintain the same wild rice waters lists (at least within the 1854 Ceded Territory and on the reservations), which would undoubtedly create both administrative and permitting problems.

The “watch list” approach would have additional consequences, including delays in the environmental review process for projects with the potential to affect wild rice waters. Minnesota’s wild rice waters, whether designated by the state or not, are also federally protected as tribal traditional cultural properties under Section 106 of the National Historic Preservation Act (NHPA).²¹ The NHPA requires not only that a project with the potential to impact traditional cultural properties must carefully analyze potential impacts, but also stipulates that appropriate mitigation must be done or a project cannot proceed. If the same waters are not also listed at the state level, it will create a disconnect between the state and federal permitting processes and records, to the detriment of applicants, tribes, and agencies alike.

The Legislative directive can be fulfilled through MPCA’s watershed-based monitoring and assessment processes

MPCA should instead continue to list all wild rice waters *regardless* of current levels of production, and should simply add productivity measurements to their assessment database as they become available over time. This is appropriately accomplished through the state’s established ten-year cycle for major watershed assessments. MPCA assesses state waters through physical, chemical and biological monitoring. Biological evaluations provide a more precise statement of which species exist in a water body and therefore should be protected, determine the biological health of the water body, and determine the species that could potentially exist in the water body if the physical and chemical factors impairing a particular use were corrected. Over time, with adequate data, the MPCA should be able to make reasonably specific recommendations concerning the natural potential of a water body, levels of attainability consistent with this natural potential, confirm appropriate use designations, and identify impairments. The MPCA can most directly and appropriately address the legislative requirement for considering minimum acreage and wild rice density **through their established monitoring and assessment processes**, rather than struggling to clarify it in the definition of the wild rice designated use.

MPCA should expedite the listing of impaired wild rice waters

We also urge MPCA expedite the listing of “impaired” wild rice waters in order to ensure that water-quality-based effluent limits can be applied to discharges that exceed WQS criteria - just as Minnesota Rules already mandate. Any water body that is currently listed by the DNR, 1854 Treaty Authority, or MPCA as a wild rice water body, and is known to exceed Minnesota sulfate WQS for wild rice, should be designated as “impaired.”²² This would be consistent with the

²¹ See 36 C.F.R. §§ 800 *et seq.* (2013)

²² See Minn. R. 7050.0224 subp. 1.

MPCA's approach to designating any other type of impairment with assigned numeric or narrative criteria.

Conclusion

Natural stands of wild rice (manoomin) should be protected as a distinct Class 2 aquatic life use in Minnesota WQS, and the existing sulfate criteria (10 mg/l) should be maintained for this use class. Paddy rice may continue to be appropriately designated for protection under the Class 4 agricultural use. Narrowly defining waters used for the production of wild rice, based upon an arbitrary measure of human harvest potential, is inconsistent with Clean Water Act requirements. Creating a "watch list" to determine if waters already known as "wild rice waters," and listed by on the MN DNR, MPCA, or 1854 Treaty Authority, but that do not have estimated acreages, is also inconsistent with the Act. In order to protect and restore wild rice waters, natural variability in stand density and annual changes in location of stands in both streams and lakes must be acknowledged. The legislative mandate to consider wild rice acreage and stand density is most appropriately dealt with as an integral part of the MPCA's water body monitoring and assessment programs, not as a component of the water quality standard definition.

The goal should be continuing to build an inventory of natural wild rice waters that facilitates both conservation and monitoring, and that will dovetail with other procedures the MPCA is already implementing to require dischargers to do improved quality-assured monitoring. And properly listing impaired wild rice waters will ensure that water quality based effluent limits can be applied to dischargers that exceed Minnesota WQS criteria for the protection of these waters.

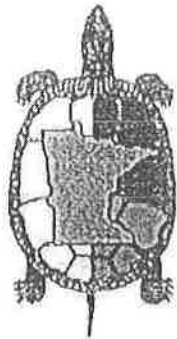
Sincerely,



Norman W. Deschampe
President

cc. Patricia Engelking, MPCA
Katrina Kessler, MPCA
Shannon Lotthammer, MPCA
Susan Hedman, US EPA
Tinka Hyde, US EPA
Linda Holst, US EPA

STATE OF MINNESOTA



INDIAN AFFAIRS COUNCIL

Website: <http://mn.gov/indianaffairs/>



John Linc Stine, Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

May 25th, 2017

Re: MPCA's Proposed Rule Revisions for Minnesota's Sulfate Standard to Protect Wild Rice.

Commissioner Stine:

The eleven independent sovereign Indian nations in the state of Minnesota appreciate the opportunity to have continuing dialogue with you and the Minnesota Pollution Control Agency (MPCA) regarding the work underway to revise the state's water quality standards protection for wild rice. There is a long history of expressed tribal concern documenting the damages to wild rice in the treaty ceded territories within the State of Minnesota beginning in the 1860's. Over the past several decades, we have participated in numerous state agency-led initiatives regarding wild rice, from previous rulemaking to identifying management and restoration strategies. Our motivation for sitting down at the table with the state to talk about wild rice has always been to forge a common understanding of how precious this singular resource is, and to reinforce a sense of shared responsibility to protect it for future generations. As we have repeatedly communicated to you and your staff, wild rice or *Mahnomin*, as the Ojibwe people call it, or *Psiâ*, as it is known by the Dakota people, is the preeminent cultural resource of this region and central to our cultural heritage. We see the severe diminishment of wild rice across its historic range as a call for stronger and broader protections of remaining stands here in Minnesota, its last refuge in the United States.

In previous consultations with MPCA, both formal government to government meetings and informal technical staff meetings, you have hopefully learned much more than you knew before about the unique characteristics of this incomparable and irreplaceable resource. We have shared our knowledge, our stories, and our experiences that come from many centuries of successfully managing and sustainably harvesting this sacred

food. We have not been surprised that the research program you conducted has yielded “modern” scientific evidence that wild rice is exceptionally sensitive to sulfate pollution, and that Dr. Moyle’s rigorous observational data from decades ago was actually on the mark. Our research, our monitoring and our traditional knowledge concur. We have also emphasized our experience with and concerns for other significant factors that can degrade or destroy natural stands of wild rice, including hydrologic changes, watershed development, invasive species, mechanical damage from motorized watercraft, and the overarching effects of climate change.

We have made it abundantly clear in our conversations and in written tribal comments that wild rice, in order to survive and thrive into the future, needs stronger and broader protections than just a single water chemistry criterion; one which, in fact, has not been properly implemented in the decades since it was promulgated. We urged your agency to reach across to the Minnesota Department of Natural Resources (MnDNR) and work collaboratively through your complementary regulatory responsibilities to forge meaningful, effective wild rice protections that go beyond a sulfate standard. Both of your agencies have been directed by the state legislature in recent years to examine water quality standards *and* management issues pertaining to wild rice. These past five years would have been a prime opportunity to not only refine and strengthen relevant water quality standards, but also refine and strengthen management, assessment, and restoration goals for this significant shared resource.

Our perspective is that, at this critical point in time, if MPCA were to seriously consider and incorporate the clear and specific recommendations that have come from experienced tribal staff, we could be commenting on revised wild rice water quality rules that:

- Recognize, first and foremost, its priceless value to the people of Minnesota and its exceptional ecological significance;
- Are as inclusive and conservative as possible in designating wild rice waters, recognizing its dramatically diminished occurrence and the need to protect all that we have left;
- Are broadly protective through additional narrative standards that reflect its sensitivity to pollution, habitat degradation and hydrologic alteration – such as those inherent in Aquatic Life Use classification;
- Define what is a sustainable, “harvestable” and generally healthy wild rice condition, and incorporate that by reference with a robust assessment methodology;
- Maintain the existing, simple-to-implement sulfate criterion that has been demonstrated to be protective of the water quality necessary to support wild rice, with rare exceptions afforded the option to demonstrate a site-specific standard that is protective of wild rice in that waterbody.

In addition to what could be defined or revised in Minnesota water quality rules, we have also counseled the agency on the overarching need for a commitment to conduct a comprehensive statewide inventory as quickly as possible. This should have been ongoing throughout the research and rulemaking process; in fact, there is a long history of the state making but not fulfilling this particular commitment. The lack of a common baseline

inventory of wild rice waters is a glaring deficiency in the state's ability to protect wild rice through the broad range of regulatory processes you are responsible for under the Clean Water Act. First, there must be sufficient baseline information on the presence of wild rice across Minnesota waters, including identifying a subset of waters that will be surveyed annually to help capture known variability in wild rice stands.

Second, the agency needs to commit to establishing an assessment methodology for evaluating the condition of wild rice waters, and not simply rely upon a single water quality criterion for determining compliance with this beneficial use. Assessment is a critical step towards identifying impaired wild rice waters, listing them on the state's 303(d) list, and ultimately leading to a process for restoration, if needed. Your expressed rationale for keeping the wild rice beneficial use in Class 4 (Agriculture and Wildlife) is that the original standard defined the beneficial use as a food source for humans and wildlife. You cannot possibly determine whether a wild rice waterbody is meeting *that* beneficial use without both monitoring data – of the resource itself - and a robust assessment methodology that can determine its condition: healthy, experiencing natural variability; or impaired, showing diminished vigor and productivity. This is no different than the framework your agency employs in its assessment of other beneficial uses, specifically involving biological measurements and analyses of the condition of the resource itself. The tools for developing such an assessment methodology are readily available in your agency's wetland assessment program and the field handbook recently published by Minnesota Sea Grant, which the tribes have advocated you use for stand density surveys that are comparable with ours.

But instead of taking an approach such as outlined above – an approach that honors the ecological and cultural significance of wild rice and respects the knowledge and experience of people who have successfully managed harvested, and restored wild rice - the MPCA has chosen to develop rule revisions that:

- Fail to acknowledge the unique ecological and cultural characteristics, and thereby a clear and compelling rationale for strengthening Clean Water Act protections;
- Err on the side of *exclusiveness* in designating WR waters, leaving hundreds of waters with an existing wild rice use unprotected;
- Conflate the sparse stem density established in your definition of 'wild rice water' with actually complying with the 'harvestable' beneficial use;
- Lack any assessment of the beneficial use, other than compliance with a single water chemistry parameter (problematic for their required responsibility to list impaired waters);
- Propose an arbitrary and narrow application of additional narrative standards protection to a truncated list of 'important wild rice waters', rather than all remaining and equally valuable wild rice waters;
- Are not conservative; the '4WR' distinction seems to favor certain wild rice waters without providing any rationale for why it is more important to protect them than to protect all wild rice waters;
- Propose a complicated, difficult-to-implement equation for deriving site-specific criteria that itself relies upon data that the state currently does not have.

The MPCA is already seriously behind the information curve in its failure to have an established baseline wild rice inventory in common with the MNDNR, the tribes, wildlife conservation organizations and state rice harvesters. The agency has acknowledged that it will take years to compile sediment and water quality data sufficient to implement this new proposed equation-based standard. There has been no discussion of an assessment methodology that can broadly evaluate the actual condition of our wild rice waters, instead maintaining only a narrow focus on compliance with a single parameter to identify impairment of this beneficial use. Yet, that beneficial use is defined as human and wildlife harvest and consumption! Without broad aquatic life use protection and a comprehensive condition assessment process, there cannot be an adequate water quality standards-based framework for triggering necessary restoration of degraded wild rice waters through either a total maximum daily load study or a watershed restoration strategy.

We know that the MPCA has engaged with numerous stakeholders throughout this process, both through the Wild Rice Advisory Committee and in separate meetings and communications. We know that the legislature has passed several bills severely limiting your agency's ability to implement the existing wild rice water quality standard in permitting or listing of impairments, and shielding dischargers from spending any money on compliance with the existing approved standard. This level of political constraint over the agency's Clean Water Act authorities is shocking, yet no more disturbing than the industry and Chamber of Commerce pressure and disinformation campaign that is behind it, as we have witnessed in Advisory Committee meetings, presentations to their members and supporters, and in their written comments throughout the process. While we would never expect industry or the Chamber of Commerce to champion the protection of wild rice, we certainly hold your agency to a higher standard; it is your core mission to *protect and improve the environment and enhance human health*.

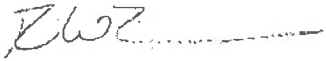
Yet, in your Draft Regulatory Analysis of costs associated with complying with the new rules, you only examine in detail dischargers' potential costs of compliance. There is no balanced analysis that genuinely shows "...a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule", as required by statute. To date, dischargers have borne *zero* costs to comply with the existing wild rice water quality standard, and Minnesota tribes (and any Minnesotan that harvests or eats Minnesota wild rice) have lost thousands of undocumented acres of productive wild rice waters. As we see the proposed rule revisions taking shape, we can only assume that the few potentially affected dischargers will claim undue economic hardship and be granted variances from any calculated sulfate criteria. No additional ecological or habitat protections are being considered or proposed for wild rice waters, nor any bona fide assessment that determines whether the defined beneficial use is being met. Regrettably, we can only conclude that tribes will continue to bear the 'costs' of your proposed rule, and dischargers will benefit.

After more than five years of investigation, literature searches, and experimental research, you now know of many other stressors that can affect the health and sustainability of wild rice in Minnesota lakes and flowages. Yet, sadly, the end result of MPCA's apparent rejection of the recommendations and experience shared by the tribes is that this rule revision process will not result in protection of wild rice for either meeting the MPCA's defined beneficial use, or the Minnesota tribes' expressed values.

Attachment 1A

We hope you will reconsider the tribes' recommendations before you move to finalize your rule revisions. We know it will take all our efforts, working together, to protect wild rice for future generations.

Sincerely,



Robert L. Larsen
President, Lower Sioux Indian Community
Chairman, Minnesota Indian Affairs Council

cc: Robert A. Kaplan, Acting Regional Administrator US EPA Region 5
Debra Dirjam, R5 RTOC Member – Lower Sioux Environmental Director
Seth Moore, R5 RTOC Member – Grand Portage Environmental Director
Levi Brown, R5 Alternate RTOC Member – Leech Lake Environmental & Lands Director



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol • 75 Rev. Dr. Martin Luther King Jr. Boulevard • Saint Paul, MN 55155

May 9, 2018

The Honorable Kurt Daudt
Speaker of the House of Representatives
Room 463 State Office Building
100 Rev. Martin Luther King, Jr. Blvd.
St. Paul, Minnesota 55155

RE: HF 3280 Wild Rice Water Quality Standards

Dear Mr. Speaker:

I write to inform you that I have vetoed HF 3280, the Wild Rice Bill, because it is an extreme overreach that eliminates important protections for wild rice, attempts to exempt Minnesota from the federal Clean Water Act, and ensures ongoing litigation that will prolong, not relieve, the current regulatory uncertainties.

Instead, I urge Legislative Leaders to use the remainder of this Session to bring the different stakeholders together and forge a resolution that respects the federal law, provides regulatory certainty to affected companies and municipalities, and protects our priceless wild rice resource for future generations.

Wild rice is very special to Minnesota. It is essential to the culture and spirituality of many Native American Tribes in our state. In 1973, the state set a 10 mg/L sulfate standard to protect wild rice. That standard has proven to be extremely difficult to implement, due in part to the current costs of sulfate treatment. Furthermore, recent scientific studies have questioned whether the sulfate limit needs to be that low in all wild rice waters to provide the protection it needs.

However, the bill passed this week by the Legislature does not solve the law's implementation challenges or provide regulatory certainty to those industrial and municipal operations affected by it. Instead, it throws out all we have learned about wild rice and sulfate and takes Minnesota backward in our efforts to balance the necessary protections of wild rice with the economic imperatives of jobs and environmentally sound industrial progress.

The Honorable Kurt Daudt
May 9, 2018
Page 2

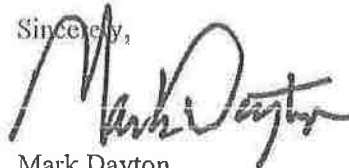
The bill you have sent to me is in direct conflict with federal law. If enacted, the Minnesota Pollution Control Agency (MPCA) would have to submit scientific evidence to the Environmental Protection Agency (EPA) that demonstrates how the state can repeal its current 10 mg/L sulfate standard and still protect wild rice. This puts the Agency in an impossible bind, as the research it conducted – at the direction of the Legislature – demonstrated the need for a sulfate standard to protect the growth of wild rice. Furthermore, if the Agency tried to issue any permits after the Legislature repealed the 10 mg/L standard without EPA approval of that repeal, municipalities and businesses seeking new permits could not expand or modify their discharges, creating additional regulatory limbo and litigation. Without a scientifically defensible basis for the repeal of the existing standard, the EPA should have to rule that it violates the Clean Water Act.

In 2011, the Legislature directed the MPCA to develop a new wild rice standard. Now, however, some Legislators have decided – based upon their own subjective analyses – that they do not like the science. In response, they have attempted to abolish the standard and pretend that it solves the problem.

This Legislature can do better. Minnesotans – including those whose cultural, environmental, and economic interests are invested in this complex issue – deserve much better. I, for one, believe strongly that working together, we can achieve a more ideal, workable, and sustainable solution for all the people of Minnesota.

For these reasons, today I am vetoing HF 3280 immediately to provide adequate time to resolve this issue during the remainder of this Legislative Session.

Sincerely,



Mark Dayton
Governor

cc: Senator Paul E. Gazelka, Senate Majority Leader
Senator Thomas M. Bakk, Senate Minority Leader
Senator Justin D. Eichorn, Chief Senate Author
Representative Melissa Hortman, House Minority Leader
Representative Dave Lueck, Chief House Author
The Honorable Steve Simon, Secretary of State
Mr. Cal Ludeman, Secretary of the Senate
Mr. Patrick Murphy, Chief Clerk of the House of Representatives
Mr. Paul Marinac, Revisor of Statutes



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Blvd ♦ Saint Paul, MN 55155-1611

May 30, 2018

The Honorable Kurt Daudt
Speaker of the House of Representatives
463 State Office Building
100 Rev. Martin Luther King, Jr. Blvd.
St. Paul, Minnesota 55155

RE: HF 3422 Wild Rice Water Quality Standards

Dear Mr. Speaker:

I have vetoed HF 3422, the Wild Rice Bill. My administration has repeatedly expressed my commitment to protect wild rice waters without imposing unaffordable treatment costs on Minnesota cities and businesses. To continue that process, today I am issuing an Executive Order to establish a Wild Rice Task Force that will address the issues I had hoped could be part of a legislative solution in the past session.

Furthermore, until such time as cost-effective sulfate treatment technologies are available, I have instructed the MPCA Commissioner implement the federal Clean Water Act by working closely with dischargers to assure that no existing permitted facility will be required to install unaffordable treatment to meet the existing sulfate standard. Other tools authorized under the Clean Water Act will be used to protect the Agency and permitted dischargers from allegations of non-compliance.

While I do recognize that HF3422 represents some progress over previous legislation, it is not enough to make up for the rest of bill's shortcomings.

Of particular note is the inclusion of a work group process and set of tasks that were acceptable only to the bill's proponents. During the ten days my staff and MPCA staff met with stakeholders, several of my Administration's draft proposals included the creation of an inclusive work group that would focus on recommendations for documenting, protecting, and enhancing natural stands of wild rice, and for reviewing existing scientific literature. However, it appeared that the interests, who advocated for the initial bill, were principally concerned with rehashing disagreements with MPCA on the scientific research supporting the sulfate standard, and with attempting to replace the MPCA's responsibilities under state and federal laws with the authority of the work group.

Attachment 1A

The Honorable Kurt Daudt
May 30, 2018
Page 2

Giving a work group the power to decide the state's wild rice water quality standard is an unlawful delegation of authority under the federal Clean Water Act, as well as offensive to the Native American Tribes, who place great significance on wild rice. By contrast, the Task Force I am creating will provide the opportunity to bring together a diverse group of stakeholders to work on practical measures to protect and restore wild rice.

While today I am vetoing HF 3422, I also restate my desire to bring Minnesotans together and find a path forward on this important issue.

Sincerely,



Mark Dayton
Governor

cc: Lieutenant Governor Michelle Fischbach
Senator Paul E. Gazelka, Senate Majority Leader
Senator William Linnmer, President Pro Tem of the Senate
Senator Thomas M. Bakk, Senate Minority Leader
Senator Bill Ingebrigtsen, Chief Senate Author
Representative Melissa Hortman, House Minority Leader
Representative Dan Fabian, Chief House Author
The Honorable Steve Simon, Secretary of State
Mr. Cal Ludeman, Secretary of the Senate
Mr. Patrick Murphy, Chief Clerk of the House of Representatives
Mr. Paul Marinac, Revisor of Statutes

STATE OF MINNESOTA
EXECUTIVE DEPARTMENT



MARK DAYTON
GOVERNOR

Executive Order 18-08

Establishing the Governor's Task Force on Wild Rice

I, Mark Dayton, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution and applicable statutes, do hereby issue this Executive Order:

Whereas, wild rice is the Official State Grain of Minnesota;

Whereas, wild rice is culturally important and spiritually sacred to Minnesota's Tribal Nations;

Whereas, the harvest and cultivation of wild rice is economically important to the State of Minnesota;

Whereas, the availability of wild rice is important to sustaining waterfowl and wildlife;

Whereas, the health of wild rice is dependent on water quality and other habitat conditions;

Whereas, the scientific understanding of the water quality and habitat conditions necessary for restoration and protection of naturally occurring wild rice has advanced through legislatively-funded research;

Whereas, the State of Minnesota has goals to restore degraded wild rice habitat and to protect naturally occurring wild rice stands; and

Whereas, the restoration and protection of wild rice habitat requires collaboration among state agencies, Tribal Nations, wild rice harvesters, industry, conservation advocacy groups, and scientists.

Now, Therefore, I hereby order that:

1. The Governor's Task Force on Wild Rice ("Wild Rice Task Force") is established with the following members to be appointed by the Governor:
 - a. one representative nominated by the Minnesota Indian Affairs Council;
 - b. one representative nominated by the Minnesota Chippewa Tribe;

- c. two independent scientists with expertise in wild rice research and plant-based aquatic toxicity;
 - d. one non-native wild rice harvester;
 - e. one representative from the ferrous mining industry;
 - f. one representative from the non-ferrous mining industry;
 - g. one representative from a municipal wastewater discharger;
 - h. one representative of an electric utility;
 - i. one representative of a statewide labor organization;
 - j. two representatives from environmental nongovernmental organization; and
 - k. one representative each from the Department of Natural Resources and the Minnesota Pollution Control Agency appointed by the commissioner of each entity to serve as an ex officio member.
2. The Wild Rice Task Force must review existing peer-reviewed scientific literature, both state-sponsored and otherwise, to identify information that is available to inform understanding of the impacts of sulfate or other sulfur compounds or habitat conditions on wild rice. The Wild Rice Task Force shall also identify information gaps in the scientific literature and make recommendations on priorities for wild rice research.
 3. The Wild Rice Task Force will prepare a report addressing the following questions:
 - a. Which water bodies used for producing wild rice should be added to or removed from the list of wild rice waters identified in Minn. R. 7050.0470, subpart 1 and part 7050.0471 subparts 3 through 9 in the Revisor's draft of rules proposed by the Minnesota Pollution Control Agency dated March 16, 2018?
 - b. What are the best management practices necessary for restoration and protection of natural wild rice stands?
 - c. What is the condition of wild rice waters downstream of selected permitted wastewater dischargers?
 - d. Are there any potential mitigating factors for wild rice to grow in waters with sulfate concentrations greater than 10 mg/L?
 - e. What is the level of funding needed and sources of potential funding to support: data collection and research; restoration and protection activities; best management practices; sulfate minimization plans; and the development and installation of cost-effective sulfate treatment technologies?
 4. The Wild Rice Task Force will be convened by the Environmental Quality Board which may contract for consulting and facilitation services. The Department of Natural Resources and the Minnesota Pollution Control Agency will provide technical expertise to support the Wild Rice Task Force.
 5. The Wild Rice Task Force shall deliver its completed report to the Governor by December 15, 2018.
 6. After receiving the completed Wild Rice Task Force report the Governor shall transmit the report to the chairs and minority leads of the Minnesota House and Senate environmental policy committees and to the Minnesota Tribal Nations.

7. On behalf of the Governor, the Environmental Quality Board will engage in formal consultation with Minnesota Tribal Nations on the recommendations contained in the Wild Rice Task Force report.

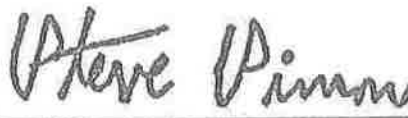
This Executive Order is effective fifteen days after publication in the State Register and filing with the Secretary of State, and shall remain in effect until rescinded by proper authority or until it expires in accordance with Minnesota Statutes, Section 4.035, subdivision 3.

In Testimony Whereof, I have set my hand on this 30th day of May, 2018.



Mark Dayton
Governor

Filed According to Law:



Steve Simon
Secretary of State



RESOLUTION 82-18

WHEREAS, the Minnesota Chippewa Tribal Executive Committee is the duly elected governing body of the Minnesota Chippewa Tribe, comprised of six member reservations (Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, and White Earth), and

WHEREAS, the Tribal Executive Committee, comprised of the Chairpersons and Secretary/Treasurers from the six constituent bands of the Minnesota Chippewa Tribe, is the duly elected governing body of the Tribe; and

WHEREAS, our people have lived along the lakes, rivers, and streams of northern Minnesota since time immemorial and Mother Earth has blessed our homelands with an abundance of clean water where our sacred manoomin (wild rice) flourishes; and

WHEREAS, manoomin holds a unique and sacred place in the lives and traditions of the Minnesota Chippewa Tribe and our over 41,000 members; and

WHEREAS, decreasing water quality and environmental degradation caused by irresponsible development poses an existential threat to our sacred manoomin and in turn our way of life; and


WHEREAS, the Minnesota Chippewa Tribe appreciates Governor Mark Dayton's recent efforts to protect wild rice by ensuring that water quality standards are not undermined and supports the creation of a wild rice task force provided that each of the member reservations of the MCT be provided a separate seat on the task force; and

BE IT RESOLVED, that the Minnesota Chippewa Tribe Tribal Executive Committee does authorize each member reservation of the MCT to appoint an individual to sit on the wild rice task force recently created by Governor Mark Dayton.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 10 For, 0 Against, 0 Silent, at a Special Meeting of the Minnesota Chippewa Tribal Executive Committee, a quorum present, held on May 31, 2018 in Walker, Minnesota.



Kevin R. Dupuis, Sr., President
THE MINNESOTA CHIPPEWA TRIBE



Melanie Benjamin, Secretary
THE MINNESOTA CHIPPEWA TRIBE

June 20, 2018

Governor Mark Dayton
130 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd
Saint Paul, Minnesota 55155

VIA U.S. MAIL

Re: Executive Order 18-08 Establishing the Governor's Task Force on Wild Rice

Dear Governor Dayton:

The Minnesota Chippewa Tribe is a federally recognized Indian tribe comprised of six constituent Bands of Anishinaabe: Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, and White Earth. Together, we comprise the over 40,000 members of the Minnesota Chippewa Tribe.

The Minnesota Chippewa Tribe appreciates your recent efforts to protect wild rice by ensuring that water quality standards are not undermined. The Minnesota Chippewa Tribe supports the creation of the wild rice task force provided that each of the member reservations of the Tribe be provided a separate seat on the task force.

In a Tribal Executive Committee meeting, held on May 31st in Walker, MN, the Minnesota Chippewa Tribe acted on the attached Resolution 82-18, which authorized each member reservation to appoint an individual to sit on your recently created wild rice task force. For this reason, we ask that you consider adding the seats for these appointments.

Miigwech (thank you) for your consideration of our request.

Sincerely,



Kevin R. Dupuis Sr.
President

Attachment:



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol + 75 Rev. Dr. Martin Luther King Jr. Blvd + Saint Paul, MN 55155-1611

June 27, 2018

Ms. Cathy Chavers
Chairwoman
Bois Forte Band of Chippewa
5344 Lakeshore Drive
Nett Lake, Minnesota 55772

Mr. Norman W. Deschampe
Chairman
Grand Portage Band of Lake Superior Chippewa
PO Box 428
Grand Portage, Minnesota 55605

Mr. Brian Pendleton
President
Lower Sioux Indian Community
39527 Res Highway 1
PO Box 308
Morton, Minnesota 56270

Ms. Shelley Buck
President
Prairie Island Indian Community
5636 Sturgeon Lake Road
Welch, Minnesota 55089

Mr. Charles Vig
Chairman
Shakopee Mdewakanton Sioux Community
2330 Sioux Trail NW
Prior Lake, Minnesota 55372

Mr. Terrence Tibbetts
Chairman
White Earth Nation
PO Box 418
White Earth, Minnesota 56591

Mr. Kevin Dupuis, Sr.
Chairman
Fond du Lac Band of Lake Superior Chippewa
1720 Big Lake Road
Cloquet, Minnesota 55720

Mr. Faron Jackson, Sr.
Chairman
Leech Lake Band of Ojibwe
115 6th Street North West
Cass Lake, Minnesota 56633

Ms. Melanie Benjamin
Chief Executive
Mille Lacs Band of Ojibwe
43408 Oodena Drive
Onamia, Minnesota 56359

Mr. Darrell G. Seki, Sr.
Chairman
Red Lake Band of Chippewa Indians
PO Box 550
Red Lake, Minnesota 56671

Mr. Kevin Jensvold
Chairman
Upper Sioux Community
5722 Travers Lane
PO Box 147
Granite Falls, Minnesota 56241

Dear Tribal Leaders:

I received copies of the Resolutions passed by the Minnesota Chippewa Tribe and the Minnesota Indian Affairs Council, regarding appointments to the Wild Rice Task Force. I understand and respect your wanting to have each Tribal Nation select an individual for appointment to the Task Force.

Tribal Leaders Wild Rice
June 27, 2018
Page 2

Unfortunately, Minnesota Statutes 15.0593 limits task forces, councils, and committees created by executive orders to no more than fifteen members. Executive Order 18-08, establishing the Governor's Task Force on Wild Rice, currently provides for twelve members, plus one representative from the Minnesota Department of Natural Resources and one representative from the Minnesota Pollution Control Agency.

I recognize that each of Minnesota's Tribal Nations are sovereign and deserve to participate equally in this process. For this reason, my Executive Order directs the Environmental Quality Board (EQB) to engage in formal consultations with all Minnesota Tribal Nations on the Wild Rice Report's recommendations. You should have received a letter from EQB Chair Dave Frederickson seeking formal consultation with you before the Task Force begins its work, preferably before September 1st.

I recognize that those formal consultations are not substitutes for seats on the Wild Rice Task Force, nor are they intended to be. They are opportunities for each sovereign nation to engage with my administration on wild rice protection and to share your expertise. I hope that you will participate in them.

Further, I have heard that the Dakota Tribes and Red Lake Nation are concerned that they do not have designated appointments to the Task Force. After consultation with MIAC Executive Director Dennis Olson, I will be amending Executive Order 18-08, adding one representative nominated by the four Minnesota Dakota Tribes and substituting one representative nominated by Red Lake Nation for the current nomination by the Minnesota Indian Affairs Council.

Given the limitations on membership imposed by Minnesota law, I hope you will be able to accept this change as a reasonable compromise. I respectfully ask the Minnesota Chippewa Tribe, the Dakota Tribes, and Red Lake Nation to submit your nominations for appointments to the Wild Rice Task Force by Friday, July 6. I thank you for your partnership in this important work.

Sincerely,


Mark Dayton
Governor

cc: Gary Frazer, Executive Director, Minnesota Chippewa Tribe
Dennis Olson, Executive Director, Minnesota Indian Affairs Council

STATE OF MINNESOTA
EXECUTIVE DEPARTMENT



MARK DAYTON
GOVERNOR

Executive Order 18-09

Amending Executive Order 18-08: Establishing the Governor's Task Force on Wild Rice

I, Mark Dayton, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution and applicable statutes, do hereby issue this Executive Order:

Whereas, Executive Order 18-08 was filed on May 30, 2018, providing for the establishment of the Governor's Task Force on Wild Rice;

Whereas, to amend Executive Order 18-08 subsection 1 located on pages 1 and 2.

Now, Therefore, I hereby order that subsection 1 be amended to read as follows:

1. The Governor's Task Force on Wild Rice ("Wild Rice Task Force") is established with the following members to be appointed by the Governor:
 - a. one representative nominated by the Minnesota Chippewa Tribe;
 - b. one representative nominated by the four Minnesota Dakota Tribes, which include the Shakopee Mdewakanton Sioux Community, Prairie Island Indian Community, Lower Sioux Indian Community, and Upper Sioux Community;
 - c. one representative nominated by Red Lake Nation;
 - d. two independent scientists with expertise in wild rice research and plant-based aquatic toxicity;
 - e. one non-native wild rice harvester;
 - f. one representative from the ferrous mining industry;
 - g. one representative from the non-ferrous mining industry;
 - h. one representative from a municipal wastewater discharger;
 - i. one representative of an electric utility;
 - j. one representative of a statewide labor organization;

- k. two representatives from environmental nongovernmental organization;
and
- l. one representative each from the Department of Natural Resources and the Minnesota Pollution Control Agency appointed by the commissioner of each entity to serve as an ex officio member.

This Executive Order is effective fifteen days after publication in the State Register and filing with the Secretary of State, and shall remain in effect until rescinded by proper authority or until it expires in accordance with Minnesota Statutes, Section 4.035, subdivision 3.

In Testimony Whereof, I have set my hand on this 28th day of June, 2018.



Mark Dayton
Governor

Filed According to Law:



Steve Simon
Secretary of State



*Letter to Governor Mark Dayton
August, 21, 2018*

We had an opportunity earlier this week to discuss the Wild Rice Task Force and direct government-to-government consultation with you. During this consultation, both the State and Tribal leadership present indicated a willingness to consider an alternative model or process to establishing a task force that will address concerns with protecting wild rice and clean water. The Tribal Executive Committee of the Minnesota Chippewa Tribe is supportive of pursuing the development or restructure of the process and the model that was previously selected by the state. As discussed at our meeting at the Capitol, we will be in contact directly with you, the Governor of Minnesota, to establish this 'alternative model' including discussing the focus and membership of this body. We believe that engaging in consultation with you complies with the resolution attached to this letter. Direct consultation with you would also strengthen our government-to-government relationship and ensure that Executive Order 13-10 is implemented properly.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Dupuis, Sr.", with a stylized flourish at the end.

Kevin R. Dupuis, Sr.
President

RESOLUTION 107-18

- WHEREAS,** the Minnesota Chippewa Tribe is comprised of six member reservations (Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, and White Earth); and
- WHEREAS,** the Tribal Executive Committee is the duly elected governing body of the Minnesota Chippewa Tribe and is comprised of the Chairpersons and Secretary/Treasurers from the six bands; and
- WHEREAS,** our people have lived along the lakes, rivers, and streams of northern Minnesota since time immemorial and Mother Earth has blessed our homelands with an abundance of clean water where our sacred manoomin (wild rice) flourishes; and
- WHEREAS,** manoomin is not simply a resource, it played a central role in the migration of Ojibwe and continues to hold a unique and sacred place in the lives and traditions of the Minnesota Chippewa Tribe and our over 41,000 members; and
- WHEREAS,** decreasing water quality and environmental degradation caused by irresponsible development and inadequate enforcement of the Clean Water Act pose an existential threat to our sacred manoomin and in turn our way of life; and
- WHEREAS,** it is critically important to protect clean water and the best way to protect water in today's society is to properly enforce the Clean Water Act; and we ask that the Governor of the State of Minnesota and Minnesota Pollution Control Agency to uphold State Water Quality Standards and the Clean Water Act; and
- WHEREAS,** on May 30, 2018, Governor Mark Dayton filed Executive Order 18-08 which provided for the establishment of the Governor's Task Force on Wild Rice; and
- WHEREAS,** the Governor's Task Force on Wild Rice was charged with reviewing scientific literature to identify information related to the impacts of sulfate or other sulfur compounds or habitat conditions on wild rice and shall prepare comments that address environmental conditions that contribute to wild rice population declines; and
- WHEREAS,** Executive Order 18-08 provided that the Governor's Task Force on Wild Rice would be comprised of: one representative nominated by the Minnesota Indian Affairs Council; one representative nominated by the Minnesota Chippewa Tribe; two independent scientists with expertise in wild rice research and plant-based aquatic toxicity; one non-native wild

Resolution 107-18
Page 2 of 4
August 21, 2018

rice harvester; one representative from the ferrous mining industry; one representative from the non-ferrous mining industry; one representative from a municipal wastewater discharger; one representative from an electric utility; one representative from a statewide labor organization; two representatives from environmental nongovernmental organizations; and one representative each from the DNR and MPCA to serve as ex officio members; and

WHEREAS, the Minnesota Chippewa Tribe responded to Executive Order 18-08 by passing a resolution and sending a correspondence to Governor Dayton informing him that each Band of the Minnesota Chippewa Tribe would like to have one representative on the Governor's Task Force on Wild Rice; and

WHEREAS, Governor Dayton responded by informing the Minnesota Chippewa Tribe that the composition of the Governor's Task Force on Wild Rice was governed by Minnesota Statutes 15.0593 and only fifteen (15) representatives could be appointed to the task force in question; and

WHEREAS, on June 28, 2018, Governor Mark Dayton filed Executive Order 18-09 which amended Executive Order 18-08 and changed the composition of the task force in the following manner: the representative appointed by the Minnesota Indian Affairs Council was deleted; one representative was to be nominated by the four Minnesota Dakota Tribes; and one representative was to be nominated by the Red Lake Nation; and

WHEREAS, the proposed composition of the Governor's Task Force on Wild Rice does not respect the sovereignty of the eleven federally-recognized Indian Tribes, Bands, and Communities in the State of Minnesota, and our unique status as federally recognized tribes that have guaranteed usufructory rights by Treaties, and

WHEREAS, the proposed Wild Rice Task Force composition does not acknowledge that Indian tribes will be disproportionately affected by the loss of a usufructory property rights directly related to legislation prohibiting enforcement of existing water quality standards and the composition minimizes the technical expertise, knowledge, and interests of Indian tribes; and

WHEREAS, the proposed Wild Rice Task Force composition directly relegates the Tribes to the status of special interest groups and industry rather than honoring Tribal sovereignty; and

Resolution 107-18
Page 3 of 4
August 21, 2018

WHEREAS, treating Indian tribes like special interest groups is disrespectful and contrary to Executive Order 13-10 which provides that "[a]ll Executive Branch agencies of the State of Minnesota shall recognize the unique legal relationships between the State of Minnesota and the Minnesota Tribal Nations, respect the fundamental principles that establish and maintain this relationship, and accord Tribal Governments the same respect accorded to other governments"; and

WHEREAS, the proposed composition of the Governor's Task Force on Wild Rice is similar to the MPCA Wild Rice Advisory Board where during the process and through consultation, the comprehensive comments provided on behalf of Indian tribes to the MPCA was disregarded entirely and not incorporated in the proposed wild rice rule; and

WHEREAS, the Tribal Executive Committee of the Minnesota Chippewa Tribe finds that it is in the Tribe's best interest to decline/reject the Governor's offer to participate in the Governor's Task Force on Wild Rice and instead will form a task force of its own expertise by inviting the other federally recognized Indian tribes in Minnesota to participate in gathering and reviewing information, preparing comments, and recommendations; and

BE IT RESOLVED, that the Minnesota Chippewa Tribe declines the Governor's offer to participate in the Governor's Task Force on Wild Rice; and

BE IT FURTHER RESOLVED, that the Minnesota Chippewa Tribe hereby establishes the Tribal Wild Rice Task Force which will be comprised, provided that such other federally-recognized tribes in Minnesota choose to participate, of:

- a. two representatives nominated by the Bois Forte Band;
- b. two representatives nominated by the Fond du Lac Band;
- c. two representatives nominated by the Grand Portage Band;
- d. two representatives nominated by the Leech Lake Band;
- e. two representatives nominated by the Mille Lacs Band;
- f. two representatives nominated by the White Earth Band;
- g. two representatives nominated by the Red Lake Nation;


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Page 4 of 4
August 21, 2018

- h. two representatives nominated by the Lower Sioux Indian Community;
- i. two representatives nominated by the Prairie Island Indian Community;
- j. two representatives nominated by the Shakopee Mdewakanton Sioux Community; and
- k. two representatives nominated by the Upper Sioux Community.

BE IT FURTHER RESOLVED, that the Tribal Wild Rice Task Force will review existing literature, including literature and information based on tradition, culture, and science, that is available to inform the understanding of the impacts of sulfate or other sulfur compounds on habitat conditions on wild rice, identify information gaps, make recommendations on priorities for wild rice research and prepare a report with recommendations in a similar fashion to that included in Executive Order 18-08, and provide such report to the Governor by December 15, 2018; and

BE IT FINALLY RESOLVED, that this Resolution shall serve as an official invitation to the other federally-recognized tribes in Minnesota to participate in the Tribal Wild Rice Task Force, shall serve as the official response to Governor Mark Dayton concerning the Governor's Task Force on Wild Rice, and shall serve as notice to the State of Minnesota and its agencies that the Minnesota Chippewa Tribe will only participate in government to government consultation on this issue with the Governor or an appropriately high ranking official.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 9 For, 0 Against, 0 Silent, at a Special Meeting of the Minnesota Chippewa Tribal Executive Committee, a quorum present, held on August 21, 2018 in Onamia, Minnesota.


Kevin R. Dupuis, Sr., President
THE MINNESOTA CHIPPEWA TRIBE


Melanie Benjamin, Secretary
THE MINNESOTA CHIPPEWA TRIBE

