

# Menoukha Case

## WILD RICE

Both the Clean Water Act and Minnesota law prohibit degradation of water quality in Minnesota lakes, streams, and wetlands. Many of Minnesota's most abundant wild rice stands in the Boundary Waters, the Lake Superior watershed, and north central Minnesota (including the Big Sandy Lake area) are far below the 10 p.p.m. limit on sulfate. Sulfate in these wild rice waters should not be allowed to increase even if the degraded level of sulfate remains just below the standard.

The MPCA's "equation" method to determine if wild rice production would be protected without the 10 ppm standard was debunked in contested case proceedings in 2018. The "site-specific standards" loophole should not be used to resurrect this scientifically unsupported theory. The wild rice sulfate standard is not advisory. Any discharger asking for MPCA even to consider of a "site-specific standard" sulfate standard must prove that wild rice beneficial use will be protected long-term. The MPCA must not allow polluters to degrade high quality, low-sulfate wild rice waters. The MPCA has no discretion to continue to delay or deny enforcement.

Before debunked "site-specific standards" can even be re-considered for wild rice waters that currently exceed the wild rice sulfate discharger, the proponent (discharger or MPCA) should have to prove based on independent research—from the time historic sulfate discharge began to the present—the absence of harm to wild rice beneficial use, including harm to wild rice abundance, seed productivity, genetic diversity, and nutritional quality. Evidence should be based on at least 5 years of independent research using site-specific wild rice seeds and sediment to demonstrate that the proposed sulfate levels would not cause harm to wild rice beneficial use, including harm to wild rice abundance, seed productivity, genetic diversity, and nutritional quality.

In addition, peer-reviewed scientific evidence does not support allowing more sulfate when there is also a high level of iron in sediments. Adding sulfate to waterbodies with high levels of iron coats wild rice roots with iron sulfide and interferes with wild rice seed quality, production, and sustainability.

## FISH

Sulfate pollution increases toxic mercury contamination of fish due to release of mercury from sediments and increased mercury methylation. MPCA must consider the effects of lax sulfate standard enforcement on mercury and methylmercury, and the effects of mercury on fish.

## PEOPLE

Increased mercury contamination of fish will damage the developing brains of fetuses, infants, children, and people who rely on fish for subsistence, and will impair the exercise of tribal Treaty-reserved rights. Any standards for discharge of sulfate in waters that support fish and wild rice should be approved by tribal consultation and tribal consent and a formal and public rulemaking process. Unless and until there is formal tribal approval as required under state law and the Clean Water Act, the MPCA must apply the 10 ppm wild rice sulfate standard in setting and enforcing permit limits and in preparing TMDL studies and implementation plans to restore wild rice waters listed as impaired due to excessive sulfate. MPCA must neither delay or assume a less stringent will at some point be approved.

Wild rice harvested in Minnesota makes its way around the United States. The health of wild rice waters is of great importance, not only to tribal members in Minnesota, but to those dispersed who rely on that irreplaceable taste and heritage.