



# The Minnesota Chippewa Tribe

January 12, 2024

Minnesota Pollution Control Agency  
Attn: Commissioner Katrina Kessler  
520 Lafayette Road  
St. Paul, MN 55155

Submitted via online portal (<https://mpca.commentinput.com/?id=ZPmRDdtNH>)

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## Re: MCT Comments on Minnesota Clean Water Act Section 303(d) Draft 2024 Impaired Waters List

Dear Commissioner Kessler,

The Minnesota Chippewa Tribe (“MCT”) appreciates the opportunity to provide comments on the MPCA Clean Water Act Section 303(d) Impaired Waters List. Wild rice is sacred, and every fall during the Rice Moon, Tribal Members gather rice on their Reservations and waters in our Treaty Ceded Territories.

Wild rice has been in decline since European settlement began in Minnesota. Sulfate pollution is one of the leading causes of this decline. Listing impaired wild rice waters is a good step in ensuring these waters will be restored. While MCT is pleased with the removal of 27 listings for improved water quality; however, considering that the State is adding 199 impairments in 54 water bodies brings the total number of listings from all years to 2,798 water bodies with 6,349 impairments, this appears to be a back-sliding of overall water quality. We would like to see more waters removed from the listing than those being added, so that we see an overall decrease in the number of listed water bodies and the number of impairments they have.

### Sulfate Increases Mercury Bioaccumulation

The role sulfate plays in increasing both mercury release from sediments and wetlands, and the methylation that leads to bioaccumulation, is well known. In MPCAs own words, “Minnesota’s water quality is threatened by these chemicals state-wide.” However, plans to minimize sulfate to reduce impairments due to methylmercury in fish tissue have not resulted in Total Maximum Daily Loads or Waste Load Allocations for sulfate in mercury-impaired waters.

Therefore, MCT supports MPCA’s proposal to add the twenty waters listed below to the final Minnesota 2024 Impaired Waters List:<sup>1</sup>

<sup>1</sup> MPCA Draft 2024 Impaired Waters List at excerpt of all Wild Rice Producing Waters Impaired for Sulfate (2024 Draft) at Ex. 6, available at <https://www.pca.state.mn.us/air-water-land-climate/minnesotas-impaired-waters-list>.

- |                                    |   |
|------------------------------------|---|
| 1. Bear Lake (24-0028-00)          | 2. Little Rabbit Lake (18-0139-00)        |
| 3. Birch Lake (69-0003-00)         | 4. North Twin Lake (31-0190-00)           |
| 5. Buffalo River (09020106-594)    | 6. Orwell Lake (56-0945-00)               |
| 7. Cannon River (07040002-501)     | 8. Pearl Lake (73-0037-00)                |
| 9. Clearwater River (86-0252-02)   | 10. Poplar River (09020305-518)           |
| 11. Dunka River (09030001-987)     | 12. Rice Lake (Minnesota R.) (10-0078-00) |
| 13. Elizabeth Lake (34-0022-02)    | 14. Rice Lake (Crow R.) (73-0196-00)      |
| 15. Embarrass River (04010201-B00) | 16. Sturgeon River (09030005-527)         |
| 17. Green Lake (34-0079-00)        | 18. Tilde Lake (09030005-527)             |
| 19. Hill River (09020305-539)      | 20. Trout Lake (31-0216-00)               |

The MCT also requests inclusion of one additional waterbody, Dark Lake (69-0790-000). There is an ample record demonstrating a sulfate impairment of wild rice in Dark Lake from monitoring data provided by US Steel Minntac at SW003 and SW005.<sup>2</sup>

We are not aware of any priority ranking list MPCA may have developed for impaired wild rice waters, however, and this is a major issue. The Agency must develop “priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.” 33 U.S.C. § 1313(d)(1)(A). Then, MPCA must establish Total Maximum Daily Loads (TMDLs) “in accordance with the priority ranking.” *Id.* at § 1313(d)(1)(C). This “priority ranking including waters targeted for TMDL development within the next two years” must be submitted biennially to EPA. 40 C.F.R. § 130.7(d). 33 U.S.C. § 1313(d)(1)(C) (ii) provides “TMDLs shall be established for all pollutants preventing or expected to prevent attainment of water quality standards as identified pursuant to paragraph (b)(1) of this section. Calculations to establish TMDLs shall be subject to public review as defined in the State CPP.” TMDLs for wild rice waters are long overdue.

The MCT is concerned that Waawiyegamaa-zaaga’igan (Round Lake, ID 01-0070-00) in Aitkin County and Akiko-ziibi (Kettle River) in Pine County (have been listed on the impaired water list since 1998), Manoominikaani-ziibi (Rice River, ID 07010104-505), Chi-manoominikaan-zaaga’igan (Lake Minnewawa, ID 10-033-00), Mitaawangaagamaa-ziibi (Sandy River, ID 10-060-00), Wayaanashkobiiyaag (Flowage Lake, ID 10-061-00), and Gaamitaawangaagamaag zaaga’igan (Big Sandy Lake, ID 10-062-00) listed on the draft List. Having waters listed as impaired for over 20 years is inexcusable, and many waters on the list have been listed longer. Are these waters that have been listed since before 2000 even being monitored to provide a better picture on their water quality status? If the issue is lack of personnel to sample these waters, is there anything we as the Minnesota Chippewa Tribe could do to assist the State in protecting our mutual interest in these waters?

<sup>2</sup> Discharge Monitoring Data for U.S. Steel Minntac Tailings Basin Dark River Sites (2013-2023) at Ex.12, from Wastewater Data available at <https://public.tableau.com/app/profile/mpca.data.services/viz/WastewaterDataBrowser/FrontPage>.

## Determine Total Maximum Daily Load

Many of these mercury-impaired waterbodies are important fisheries resources for Tribal Members to catch giigoonyag (fish), and the failure to timely address the mercury impairments disproportionately impacts Tribal people. Further Tribal members rely on these waters for regularly hunting zhiishiibag (waterfowl), and gathering manoomin (our sacred grain). The MCT has issued to MCT several joint letters, testimony and consulted on the cultural and spiritual significance of manoomin to Anishinaabe and its reliance on clean water for survival. Similarly, Minnesota tribes are also dismayed at the MPCA's failure to prioritize and complete waterbody-specific mercury TMDLs. Many of the state's waters listed as impaired for mercury in fish (some for more than 25 years) have no identified plan for TMDL development. While Minnesota has listed nearly 1,300 waterbodies as impaired for mercury, the majority of those impaired waters are under an EPA-approved TMDL (Minnesota's Statewide Mercury TMDL). However, MPCA's Draft 2024 Impaired Waters List includes just 425 waterbodies impaired for aquatic consumption due to mercury in the water column or in fish exceeding Minnesota's water quality standards.<sup>3</sup> Each of these waterbodies is in EPA Consolidated Assessment and Listing Methodology ("CALM") Category 5, meaning that the water body is impaired but no TMDL study has been approved by EPA. Of these 425, just 75 waterbodies are identified by MPCA as Commitment Group 1 priority, meaning that "MPCA commits to having in-progress TMDLs during the next two-year period (October 1, 2024-September 30, 2026)."<sup>4</sup> Clean Water Act regulations require states to provide the priority ranking for TMDLs "including waters targeted for TMDL development within the next two years." 40 C.F.R. § 130.7(b)(4). In Section 130.7 paragraph (c) is entitled "[d]evelopment of TMDLs and individual water quality based effluent limitations." This paragraph describes not merely the development of, but the *establishment* of TMDLs "at levels necessary to attain and maintain applicable narrative and numerical WQS with seasonal variations and a margin of safety." 40 C.F.R. § 130.7(c) (emphasis added). Prioritization and completion of these waterbody-specific mercury TMDLs must be accelerated.

Many of the MCT Bands Natural Resources Departments have worked with MPCA over the decades, we continue to offer partnering opportunities where the six Bands can assist the State in improving the water quality of these waters to protect the health of our citizens and the natural resources they access and depend on for their families.

## Multiple Factors Contribute to Mercury Levels, including Sulfate Pollution

Further, Tribes are concerned that MPCA's TMDL Prioritization Framework attributes the source of mercury in fish tissue solely to mercury "emitted into the atmosphere [that] deposits in lakes and streams and accumulates in fish," and apparently assumes that limiting mercury air emissions without addressing other exacerbating factors will result in mercury water quality standards attainment by 2025.<sup>5</sup> This is both contrary to the science and MPCA's own prior statements. The

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<sup>3</sup> MPCA Draft 2024 Impaired Waters List, *supra*, all Mercury Impaired Waters on MPCA's "2024 TMDL List" ("Mercury TMDL Waters").

<sup>4</sup> MPCA Draft 2024 Impaired Waters List, *supra*, General Notes Tab.

<sup>5</sup> MPCA TMDL Prioritization Framework, Ex. 14 at 11.

agency is well aware of the role that sulfate discharges play in increasing both mercury release from sediments and wetlands and the methylation that leads to bioaccumulation. In 2006, MPCA shared with the Minnesota tribes their plan to minimize sulfate to reduce impairments due to methylmercury in fish tissue:

It is important to minimize the effect of sulfate on MeHg [methylmercury] and P [phosphorus] because Minnesota's water quality is threatened by these chemicals state-wide. Federal NPDES permitting regulations prohibit the authorization of wastewater discharges that may cause or contribute to water quality impairments. Numerous water bodies in the state are listed as impaired because the MeHg concentrations in fish tissues make the fish unsuitable for frequent human consumption. Similarly, numerous water bodies are impaired because of excess P concentrations.<sup>6</sup>

Yet, to date, MPCA has completely failed to address this clear and evidence-based relationship between sulfate and mercury methylation (and, by extension, mercury impairments). Until MPCA includes sulfate pollution controls as a component of the implementation of mercury TMDLs, we will not see currently impaired waters attain compliance with Minnesota water quality standards, and traditional lifeways will continue to be at risk.

In conclusion, the MCT supports the addition of the twenty waters proposed by MPCA and requests one additional wild rice water (Dark Lake) for inclusion on the Minnesota 303(d) list for sulfate impairments. We also encourage the MPCA to develop a priority ranking list and begin to develop TMDLs for the waters with the highest priority before the 2026 Impaired Waters List is drafted. Additionally, we urge MPCA to explicitly recognize that mercury impairments are exacerbated by other factors, including sulfate pollution, and to implement controls on sulfate loading to attain compliance with mercury WQS in any mercury-impaired watershed affected by sulfate discharges.

Sincerely,

*Catherine Chavers*

[Catherine Chavers \(Jan 12, 2024 14:14 CST\)](#)

Catherine Chavers, President  
Minnesota Chippewa Tribe

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<sup>6</sup> MPCA Strategy to Address Indirect Effects of Elevated Sulfate on Methylmercury Production and Phosphorus Availability, Final (Oct. 19, 2006).






# MCT cmts re MPCA 2024 303(d) list wild rice waters 1.12.2024 final

Final Audit Report

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