



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:  
**WW-16J**

Ms. Katrina Kessler  
Assistant Commissioner  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, Minnesota 55155-4194

Re: Minnesota 2020 List of Impaired Waters under Clean Water Act, Section 303(d)

Dear Ms. Kessler:

The U.S. Environmental Protection Agency received the Minnesota Pollution Control Agency's (MPCA) 303(d) List of Impaired Waters still requiring Total Maximum Daily Loads (TMDLs), which was submitted as part of Minnesota's 2020 Integrated Report, on February 25, 2021. EPA has carefully reviewed Minnesota's submittal, including the listing decisions, the assessment methodology, and supporting data and information to determine whether Minnesota reasonably identified waters to be listed as impaired. EPA is partially approving and partially disapproving Minnesota's 2020 list.

Based on its review, EPA approves Minnesota's 2020 Section 303(d) List (Appendix 1 of the Decision Document for the Partial Approval) because Minnesota's decisions for those waters listed in Appendix 1 are consistent with Clean Water Act (CWA) Section 303(d) and EPA's implementing regulations. EPA also reviewed Minnesota's decisions not to list water segments based on Minnesota's conclusion that the readily available data and information do not require the identification of those water bodies as impaired. With the exceptions noted in the following paragraph, Minnesota's decision not to list these water bodies is reasonable.

EPA reviewed Minnesota's decision not to list water quality limited segments (WQLSs) based on Minnesota's conclusion that Minnesota state law bars MPCA from assessing or listing waters against Minnesota's federally-approved 10 mg/L standard applicable to "waters used for production of wild rice during periods when the rice may be susceptible to damage by high sulfate levels."<sup>1</sup> EPA disapproves Minnesota's decision not to identify certain WQLSs for sulfate impairment because the existing and readily available data and information for those

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<sup>1</sup> Minnesota Rule 7050.0224, subparts 1 and 2.


WQLSs indicate impairments for the numeric water quality criterion for sulfate.<sup>2</sup> Minnesota's decision to exclude these waters is inconsistent with CWA Section 303(d) and the implementing regulations.

EPA will identify for inclusion on the list those WQLSs still requiring TMDLs under Section 303(d) of the CWA and the implementing regulations pursuant to 40 C.F.R. § 130.7. Consistent with Section 303(d)(2), the details of EPA's disapproval decision, particularly the identification of specific waters for inclusion on the list based on the review of Minnesota's compliance with the statutory and regulatory requirements and other relevant information submitted to Minnesota, will be provided in a separate document to be published within thirty days of today's decision. Pursuant to 40 C.F.R. § 130.7(d)(2), EPA will issue a public notice providing for a 30-day public comment period regarding the addition of sulfate-impaired waters to Minnesota's CWA Section 303(d) List. After considering any comments received, EPA may make revisions, as appropriate, and will transmit its listings to Minnesota.

EPA's approval/disapproval authority extends only to the waterbodies and causes of impairment listed in Category 5 of the IR (State's Section 303(d) List), with the exception of any waters that are within Indian Country as defined in 18 U.S.C. § 1151. EPA is taking no action to approve or disapprove Minnesota's list with respect to any waters that are within Indian Country. EPA, or eligible Indian Tribes, as appropriate, will retain responsibilities under Section 303(d) for those waters.

I appreciate the continuing dialogue on these issues and look forward to our continued partnership in addressing the challenges of water quality in Minnesota. EPA will share any comments received on the public notice of the additions to Minnesota's CWA Section 303(d) List, and I and my staff will continue to collaborate with you and your staff as you prepare your 2022 list. Thank you for your attention to this matter. If you have any questions, please contact Mr. David Pfeifer, Chief, Watersheds and Wetlands Branch, at (312) 353-9024 or [pfeifer.david@epa.gov](mailto:pfeifer.david@epa.gov).

Sincerely,

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Date: 2021.03.26  
14:13:52 -05'00'

Tera L. Fong  
Division Director, Water Division

cc: Catherine Neuschler, MPCA  
Miranda Nichols, MPCA

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<sup>2</sup> MPCA, Responses to the 2020 Draft Impaired Waters List, Public Notice Comments (February 25, 2021), p. 2 of 12 [responses to public comments 5, 6, 8, 10, 11, 13, 15, and 19]; Letter from Tera L. Fong, EPA, to Katrina Kessler, MPCA, March 9, 2021; Letter from Katrina Kessler, MPCA, to Tera L. Fong, EPA, March 15, 2021.