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Daniel Cozza /R5/USEPA/US

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Subject Fw: Duluth News Tribune: Minnesota judge upholds wild rice sulfate limit

From the Duluth News on Saturday, 5/12

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Duluth News Tribune

Published May 12, 2012, 07:30 AM

Minnesota judge upholds wild rice sulfate limit

By: John Myers, Duluth News Tribune

A state judge has sided with environmental groups and the Minnesota Pollution Control Agency by upholding a state regulation on sulfate limits in lakes and rivers that contain wild rice

Ramsey County District Court Judge Margaret Marrinan has denied motions made by the Minnesota Chamber of Commerce in its lawsuit challenging the state wild rice sulfate standard.

In a 19-page decision filed Thursday, the judge granted motions for summary judgment made by WaterLegacy and the PCA, essentially upholding Minnesota's existing sulfate standard of 10 milligrams per liter in rivers and lakes that hold wild rice beds.

"Plaintiffs Complaint is dismissed in its entirety with prejudice and on the merits," Marrinan ruled.

The Chamber had argued the 1973 state sulfate rule, enacted based on 1940s research, was unfounded, based on poor science and overly restrictive, especially for the state's mining

industry.

“The judge said that no trial is necessary, that the Chamber doesn’t have a case, and she threw the case out,” said Paula Maccabee, attorney for Water Legacy. “The judge understood that the science is pretty clear; that sulfate can damage wild rice. Now it’s time for the mining industry to figure out how they can comply with the standard.”

Mike Robertson, environmental policy consultant for the Chamber, said he hadn’t yet read the decision and couldn’t comment on the findings or whether the group will appeal to the Minnesota Court of Appeals.

“We have to wait until we take a closer review of the opinion,” he said.

Sulfates are mineral salts containing sulfur that can come from decaying plants and animals as well as some industrial processes such as mine discharges, mine stockpiles and waste piles, tanneries, steel mills, pulp mills and textile plants. High sulfate levels are known to damage plants. It’s also suspected of damaging seeds, which are critical for regrowth of wild rice.

But it’s not completely clear how much sulfate is too much for wild rice. Minnesota has seen generally declining wild rice stands, PCA officials noted, but there may be no single culprit. Some say sulfate is a more critical issue in Northeastern Minnesota’s darker, less fertile waters.

In her decision, Marrinan ruled that the sulfate limit “does not violate due process. It is not unconstitutionally vague, nor is the application of the rule arbitrary and capricious.”

The decision added “in approving the wild rice standard, the EPA concluded that the standard is consistent with the federal Clean Water Act. Plaintiff’s assertion that the wild rice sulfate standard is in any way inconsistent with the Clean Water Act lacks merit.”

The immediate impact of the ruling isn’t clear. Several taconite mining operations may already be in violation of the sulfate standard, as may several municipal treatment plants. Sulfate also has become an issue in the debate over proposed copper mining in Minnesota, although mining companies such as PolyMet have said they can and will comply with the 10 milligram limit.

A PCA official did not return a reporter’s request for comment.

The 10 milligram limit was the subject of a 2011 state law that attempted to block enforcement of the state regulation. But the federal Environmental Protection Agency overruled state lawmakers, saying the sulfate limit had to be enforced under the federal Clean Water Act unless the state could prove it wasn’t necessary.

State lawmakers approved money for a major study of the impact of sulfate on wild rice. That study is just getting under way, with results not expected for several years.

“Until then, 10 milligrams is the limit,” Maccabee noted.

The Minnesota Chamber of Commerce filed its lawsuit on Dec. 17, 2010, asking for an injunction against enforcement of the limit. Motions for summary judgment by WaterLegacy and the PCA were filed on Jan. 31 this year and heard by the court on March 1.