

---

# Wild Rice Task Force Meeting I Summary DRAFT

10/19/2018 3:09 PM

Date: 9/27/2018

Time: 9:00 am – 4:00 pm

Location: Blandin Foundation, Grand Rapids, MN

**Task Force Members Present:** Kurt Anderson, Paul Austin, Chrissy Bartovich, Gary Drotts, Kathryn Hoffman, Emi Ito, Peter Lee, Norman Miranda, Brad Moore, Al Pemberton, John Rebrovich, Catherine Neuschler, Ann Geisen (substitute for Ann Pierce), Gabe Miller (substitute for Leya Charles),

**Staff Present:** Katie Pratt (EQB),<sup>1</sup> Kris Van Amber (MAD), Lisa Anderson (MAD), Mariah Levison (OCDR), Will Seuffert (EQB), Giuseppe Tumminello (EQB)

**Presenters:** Dave Pfeifer (EPA Region 5), Katharine Marko (EPA Region 5), Barbara Wester (EPA Region 5), Ed Fairbanks (Minnesota Department of Transportation Tribal Liaison), Catherine Neuschler (MPCA), Stan Ellison (retired, previous Director of Lands and Resources for Shakopee Mdewankaton Sioux)

## Agenda Review, Welcome, and Introductions

Kris Van Amber (MAD) welcomed all members and public to the first meeting of the Governor's Task Force on Wild Rice and introduced the staff supporting the Task Force. She then reviewed administrative logistics, agenda, and meeting objectives and led introductions.

## Welcome and Task Force Context

Will Seuffert (EQB) thanked members for their participation in the Task Force, introduced the EQB, and provided background on how the Task Force was developed.

Katie Pratt (EQB) provided additional context on the Task Force. To inform the design of the Task Force process, EQB and OCDR conducted approximately 30 interviews of individuals with diverse views on wild rice and the sulfate standard and reviewed relevant documents. They found that the people they spoke with expressed many shared values including clean water, jobs, importance of cultural communities, trust, and the protection of a plant that is spiritually, culturally, nutritiously, economically, and ecologically significant. Katie said they also

---

<sup>1</sup> For a list of acronyms and their meaning, please refer to the Acronyms section of this document.

observed highly divergent narratives about the science, impacts, and regulatory framework. Additional observations include that this case is exceptionally complex, and there are a lot of unknowns. Developing a new unified and inclusive narrative will be important work for the Task Force.

Katie gave an overview of the Task Force process and distinguished it from the MPCA Wild Rice Standards Advisory Group, which was designed to gather input on its scientific research, not to build consensus and focused narrowly on sulfate standard and regulatory process.

Katie asked the Task Force to come to the table with fresh eyes and renewed curiosity.

Katie updated the group on MCT and their participation in process. MIAC passed a resolution stating that they support the taskforce if all eleven Minnesota tribes could have a seat at the table. Executive Order 18-09 added one tribal seat to the Task Force. Red Lake Nation and the Dakota tribes subsequently appointed members to the Task Force. Task Forces created by the Governor are limited by statute to 15 members. MCT passed a resolution to create their own wild rice Task Force rather than participate in the Governor's Task Force on Wild Rice. MCT leaders and the Governor's Office agreed that they would like to find a way to work together but to date they have not yet been able to agree upon exactly how to do that.

## Introductions and Community Building

Mariah led introductions and opened conversations by asking each member to share one hope and one concern.

Members shared the following hopes:

- To get a baseline and evaluate its effectiveness
- To create a good building block for policy and consensus
- To develop a suite of meaningful options to protect and restore wild rice
- To develop a policy that considers the growth of wild rice as a plant and its characteristics
- To develop a framework of the global issues surrounding wild rice to use moving forward
- To suggest ideas that balance perspectives and can be implemented
- To create a framework and be conscious of the need for political process
- To gain a better understanding of the science, knowledge of where the science can be helpful, and consensus on key scientific points
- To reach consensus on something that can be adopted and turned into practical policies that still protects wild rice
- To create a shared understanding and vision and focus on getting there
- To arrive at consensus on policy that benefits wild rice that the state can adopt whole-heartedly
- To create a holistic approach that furthers science and a roadmap with detailed tasks for new legislators and a new governor
- To address low-hanging fruit and get rice growing

Members shared the following concerns:

- That members cannot move forward and do not end up in a better place
- That the group will get off the topic of wild rice
- That the process becomes too political to resolve
- That members will develop tunnel vision rather than having a broader discussion
- That the group will not develop anything that leads to future policy
- That the Task Force's product will not balance being good stewards of wild rice
- That the group forgets that water cannot be controlled and that change needs a long horizon (seven generations or 100-500 years)
- That people talk past one another rather than to one another
- That the Chippewa Tribe is not represented on the Task Force
- That the discussion will become too politicized
- That the process will get bogged down by all the concerns that members cited
- That the legislature will create solutions that unenforceable are incompatible with the NPS permit

Mariah also asked members to share one value that informs their work as a Task Force member.

- stewardship
- environmental preservation
- cost effectiveness (cost)
- science
- economic feasibility
- cultural preservation
- legal clarity
- innovation
- meaningful work
- preservation
- protection of resource
- sincerity
- compromise/knowledge
- collaboration
- protection of a valuable resource

## Discussion

Mariah asked members to share any reflections or questions.

Members expressed concern that the Task Force process would not be meaningful without the participation of the MCT and asked if there were other ways to engage them. Mariah explained that MCT leadership and the Governor's Office have been meeting to discuss concerns raised by MCT about the Task Force. She shared that MCT is particularly concerned about the number of tribal representatives on the Task Force and whether the process will be fair and balanced—ensuring the Task Force hears and integrates the perspectives of tribal

governments. Mariah outlined options both governments are considering, including sending representatives from each Task Force to the other Task Force meetings and sharing communications.

## Regulatory Framework Presentations

Katie introduced presenters. Presentations will be made available to members following today's meeting. All presentation materials can be found at <https://www.eqb.state.mn.us/content/wild-rice-task-force-supplemental#overlay-context=content/governors-task-force-wild-rice>.

### EPA Water Quality Standards

Dave Pfeifer (EPA) presented US EPA on water quality standards under the Clean Water Act.

#### Water Quality Standards 101

Mr. Pfeifer outlined Clean Water Act and water quality standards and answered clarification questions. Highlights include:

- Single species water quality standards are not common, but wild rice is also unique. Trout waters are likely the closest comparison.
- The federal government has the legal right to overrule states and tribes for water quality standards, because they must approve (or not approve) state water quality standards. The EPA rarely disapproves standards because they work with states and tribes while standards are being developed.
- States have to be consistent with the Clean Water Act and can propose criteria other than those established by the EPA if they can justify it based on sound science.

#### Roles identified by the EPA

Dave explained roles of state and tribal governments to open their regulations for public comment every three years. The EPA provides technical assistance and legal assistance to frame standards, give feedback on standards, and answer questions about water quality standards for states when developing policy.

States and tribes can designate uses based on sound scientific rationale; standards must contain sufficient parameters or constituents to protect the designated use, support the most sensitive designated use of the body of water. They usually defer to the most sensitive species. Pairing between criteria and use is critical.

Members asked clarification questions. The following information resulted:

- States designated uses when the Clean Water Act was enacted, and the uses generally do not change. Some states adopt blanket uses across the state. State can submit a case for what they think a body of water can support and then criteria for that body change. In region 5 see change requests based on biologic assessment methods.

- Wild rice is designated as agricultural use because for wild rice, the issue is maintaining the stand, not necessarily protecting the plant from toxicity. The way the use is set up determines the criteria applied to the body of water.
  - Institutional memory on why wild rice was designated in this manner is incomplete.
  - A member offered that it may be related to a peak in patty rice harvest.
  - Agricultural designation may also result from an emphasis on harvest and the idea that use applies to bodies where wild rice occurs in a harvestable quantity.
- Tribes choose their own designations or standards. Some view wild rice's use more as direct human consumption, which is also complicated by ducks and geese in the rice bed. Two Minnesota tribes (Fond du Lac and Grand Portage) and one Wisconsin Tribe (Lac du Flambeaux) have adopted the 10 mg/L standard.
  - In addition to meeting the same requirements as states, tribes are also required to submit a map to the EPA that shows their exterior boundary and prove that they are a tribe. The adjacent state(s) can comment on whether they agree with the jurisdictional boundary.
- For waters that flow across jurisdictional boundaries, if the downstream jurisdiction's water quality standards are more stringent, those standards must be met by sources upstream. The jurisdiction requesting the permit must also certify that there will not be impacts downstream. The downstream jurisdiction can also comment on the permitting jurisdiction's plan.

## Water Quality Standard process

Dave outlined the process of how standards get to adoption and approval. Members did not have clarification questions

## Variations

Dave explained variations, their essential components, and key players. Variations can allow for innovation and have been a significant part of the EPA's toolkit in solving problems.

Members asked clarification questions. The following information resulted:

- MPCA is considering how it might be able to issue a multiple discharger variance and are figuring out how to issue variations on a larger scale. This would provide an opportunity to pursue science and other means of reducing the pollutant at issue.
- The way the new regulation is written leaves duration for bringing a variance into compliance open-ended but includes a five year assessment. They must be able to document how they will use the time.
- The new variance rules need clarification on what to do when those requesting variations achieve the highest attainable condition but are still not in compliance
- The EPA and MPCA are working to make the process clearer, so jurisdictions with few resources can navigate the process without needing to hire consultants.

## Tribal Clean Water Regulations

Stan Ellison provided a tribal perspective on water quality standards and regulations. Stan worked for Shakopee Natural Resource Department, but he is not speaking from the perspective of a specific tribe.

Each of the 11 sovereign governments in Minnesota has its own way to address water quality. There are significant cultural differences among them all.

Shakopee built a water treatment plant but chose not to develop federally approved water quality standards because their water quality is heavily impacted by stormwater runoff from the surrounding metro area. There is potential for a patchwork of water quality standards, which would result in less-than-optimal outcomes. Tribes may decide not to create water quality standards under the Clean Water Act due to costs. They can also develop their own standards and enforce them on their reservations.

Dakota communities can easily prove their borders, per EPA requirement, because land was deeded and accepted by the Department of the Interior. Treaty bands have some disputed boundaries. Those disputes need to be dealt with in order to establish federal water quality standards. For grants, have to go through TAS process and prove the tribe has a constitution that allows it to regulate natural resources. Each time a tribe adds land to its trust, the tribe must redo the TAS.

Stan explained that tribes retained the right to hunt and fish on ceded territories as land trust. In order for the land trust to keep its value, there must be game on ceded lands. He stated that there is not a lot of wild rice in ceded territories; most of wild rice is within exterior reservation boundaries. He also explained complexities with fee lands, exterior boundaries, and shared waters.

One member clarified that the state acts under both federal and state authority and that there is disagreement on whether the state can apply state water quality standards to shared waters.

## MPCA wild rice and sulfate/sulfide revision process

Catherine Neuschler (MPCA) provided a high level overview of the history of the sulfate standard.

Highlights include:

- Water is protected for its beneficial use.
- The current standard is 10 mg/L, and there is also a narrative standard.

Members asked questions, which yielded the following information:

- The rule came about because there is a designated use for the production (intended as ecological production, rather than agricultural) of wild rice, but there is a short list of wild rice waters. That has led to evaluation of waters on a case-by-case basis, which is time-consuming.

- The agriculture standard is a presumptive designation, which applies to all water bodies in Minnesota, but the wild rice part of the standard only applies to the subportion of “waters used for production of wild rice.
- The administrative law judge said the equation was overly vague and did not function as a rule because the results of enforcing the standard were unknown at the time.
- The MPCA has gathered data from the 108 water bodies to develop the equation. MPCA has planned to use its 10 year cycle of water monitoring and assessment to collect sulfate data and sediment information to fill out the equation, focusing on wild rice waters impacted by dischargers, focusing on a different subset of waters each year.

## Discussion

Kris opened discussion by asking members what, if anything, surprised them.

Several members said they were surprised to learn about the EPA and its role, including that the process for changing beneficial use is not easy and that EPA also does not have a preference whether new standards emerge through legislative or administrative processes.

A few members said they learned more about variances, particularly how widespread they are and that they are used when the state has set stretch goals.

A few other members commented on the list of wild rice waters—what about the conversation was controversial, what waters that group dropped and why, and how that list of waters compared to the list developed by the DNR. MPCA clarified that their list was not an exact match with the DNR list, but that the DNR list was used to create the MPCA list. Also, some tribes asked that waters on their land be removed from the MPCA list. From the EPA’s perspective, the current list contains 24 wild rice water bodies that would be covered.

Kris then asked the group whether anything in their mind had shifted or if there was anything they wanted to know more about. Questions included:

- What is in place that looks at nonchemical processes and tools to protect and restore wild rice?
- What are the potential funding mechanisms?
- How much are we trying to protect wild rice?
- Is two acres the appropriate threshold for a wild rice water?
- Within a regulatory framework, is there a distinction between designated use and what the water is actually being used for?
  - Designated use is a use that is actually happening or a use that is protected but not occurring at that time.
  - Existing use is actually being used at the time but not an identified as a use for that water.
- Does sulfide make wild rice inedible?
  - The current standard is intended to keep sulfides low enough that wild rice can grow, not whether pollution affects the nutritional value or introduces human risks to consumption.

# Interest Based Problem Solving Training and process agreement

Mariah described the consensus building process that the group will use. She reviewed interest based problem solving and led the group through an exercise that applied interest based problem solving.

Mariah then asked members what operating agreements would enable them to be successful. Members suggested the following:

- Don't interrupt. Let people finish their thoughts
- When you have the floor, share the air (be concise)
- Assume best intent—give them the benefit of the doubt
- Speak your own truths—don't generalize
- Respect culturally appropriate ways of participation
- Create space for brainstorming
- Ask clarifying questions—seek to understand—give people the benefit of the doubt
- Come prepared for the discussion
- Be mindful—listen, participate, and be present
- Disagree without being disagreeable; respectfully disagree when needed; create a space for difference and engage with it
- Listen to learn. Share what's important to you.
- Don't squash ideas—be willing to work on the hard stuff
- Try to see things from a different perspective

Mariah distributed and reviewed the draft process agreement and asked for Task Force member feedback.

## Chippewa Tribe participation (continued from introductory discussion)

Mariah asked the Task Force members if they had additional thoughts about how to address their concern regarding lack of MCT participation on the Task Force. Task Force members directed staff to draft a letter to MCT leadership and the Governor encouraging them to continue working together at a government-to-government level to identify ways for the Task Force to collaborate with MCT. Members also asked that the letter clearly state that Task Force members are open to engaging with MCT in a variety of formats including collaboration between the two Task Forces, presentations, exchange of information and more. Staff will submit the letters to the Task Force for their review.

## Wrap-up

Kris closed the meeting by asking the group to complete the Task Force Feedback form and asked whether there was any other content they are interested in, especially regarding the two-day retreat. The next meeting will be October 11, 2018 from 10:00 am to 5:00 pm at the Rum River Library in Anoka.

## Acronyms

DNR – Department of Natural Resources (State of Minnesota)

EQB – Environmental Quality Board (State of Minnesota)

EPA – Environmental Protection Agency (United States Government)

OCDR – Office of Conflict and Dispute Resolution (State of Minnesota)

MAD – Management Analysis and Development (State of Minnesota)

MCT – Minnesota Chippewa Tribes

MPCA – Minnesota Pollution Control Agency (State of Minnesota)

MIAC – Minnesota Indian Affairs Council (State of Minnesota)

NPS – Nonpoint Source

TAS – Treatment as a State

WQS – Water Quality Standards

## Public comment

One person provided public comment. The comment will be submitted along with other comments and provided to the Task Force to review for the October 11<sup>th</sup> meeting.