

**STATE OF MINNESOTA
IN COURT OF APPEALS**

United States Steel Corporation,

Court of Appeals Case No. A24-0428

Relator,

**WATER LEGACY MOTION TO
INTERVENE OR IN THE
ALTERNATIVE FOR LEAVE TO
APPEAR AS AMICUS CURIAE**

vs.

Minnesota Pollution Control Agency,

Respondent.

Pursuant to Minnesota Statutes 116B.09, subd. 1 and Rule 127, Minn. R. Civ. App. P., WaterLegacy respectfully moves the court to intervene as a Respondent in this case, in which United States Steel Corp. (“US Steel”) seeks to overturn a decision by the Minnesota Pollution Control Agency (“MPCA”) denying a site-specific sulfate standard for Hay Lake. Upholding that denial is needed to prevent conduct, including sulfate mine discharge, far exceeding Minnesota’s wild rice standard and to prevent pollution, impairment, and destruction of water and wild rice. Minn. Stat. §§ 116B.02, subd. 5; 116B.09, subd. 1. WaterLegacy’s interests are not represented by any other party. If intervention is not granted, WaterLegacy seeks leave to appear as amicus curiae under Rules 127 and 129, Minn. R. Civ. App. P.

I. WaterLegacy Has a Right to Intervene in this Matter to Prevent Conduct Likely to Cause Pollution, Impairment, or Destruction of Natural Resources.

The Minnesota Environmental Rights Act (“MERA”) states that in “any action for judicial review” of “any administrative . . . proceeding” a “corporation,

association, organization or other legal entity having shareholders, members, partners, or employees residing within the state . . . shall be permitted to intervene as a party” upon a verified pleading asserting that the “action for judicial review involves conduct that has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state.” Minn. Stat. § 116B.09, subd. 1. WaterLegacy submits the Declaration of Paula G. Maccabee (“Maccabee Decl.”) verifying the averments in this Motion and the Proposed Statement of the Case of Intervenor-Respondent WaterLegacy.

WaterLegacy is a Minnesota non-profit corporation formed to protect Minnesota’s water resources and the communities that rely on them. Maccabee Decl. at ¶2. WaterLegacy’s members and employees include Indigenous and non-Native residents of Minnesota who hand harvest and consume wild rice naturally grown in Minnesota waters. *Id.* WaterLegacy’s mission and longstanding interests include defending and enforcing water quality standards; protecting the beneficial use of waters for self-sustaining production of wild rice; and restoring wild rice waters impaired due to excessive sulfate. *Id.*

WaterLegacy participated in the administrative proceedings by which the MPCA adopted the Framework for Developing and Evaluating Site-specific Sulfate Standards for the Protection of Wild Rice (December 2023) (“Framework”), the application of which to Hay Lake is at issue in this appeal. *Id.* at ¶3. WaterLegacy’s participation critiqued MPCA’s draft Framework and sought more stringent criteria. *Id.*, Addendum at 1-792.

WaterLegacy previously secured the right to intervene as a defendant in litigation filed by the Minnesota Chamber of Commerce against the MPCA to prevent enforcement of the wild rice sulfate standard. *Id.* at ¶4. WaterLegacy also participated in the 2011 process by which the MPCA approved the Keetac mining permits cited by US Steel in its Statement of the Case, in which WaterLegacy sought more expeditious enforcement than that proposed by the MPCA. *Id.* at ¶5.

In rulemaking, WaterLegacy opposed the “Sulfate Standard Formula” developed by the MPCA and now relied upon by US Steel to request a site-specific sulfate standard. *Id.* at ¶6. WaterLegacy, tribes, and other allies prevailed in the 2018 rulemaking process that rejected the Formula and upheld Minnesota’s existing wild rice sulfate standard. *Id.* WaterLegacy also sought and secured United States Environmental Protection Agency oversight of MPCA to require application of the wild rice sulfate standard to waters under Clean Water Act (“CWA”) jurisdiction and to list Hay Lake under the CWA as a water impaired for wild rice beneficial use due to excessive sulfate pollution. *Id.* at ¶¶7-8. WaterLegacy litigated in Minnesota appellate courts to reverse a permit issued by MPCA for the US Steel Minntac tailings basin that failed to regulate seepage to ensure compliance with the wild rice sulfate standard. *Id.* at ¶9.

WaterLegacy is entitled to intervene because, if MPCA’s decision to reject US Steel’s site-specific standard for sulfate in Hay Lake is not affirmed in judicial review, the conduct of US Steel or its successors in discharging sulfate from mine facilities is “likely to cause pollution, impairment, or destruction of the air, water, land or other

natural resources located within the state.” Minn. Stat. §§ 116B.02m subd. 5; 116B.09, subd. 1; Maccabee Decl. at ¶10. Reversal of MPCA’s decision to deny a site-specific sulfate standard for Hay Lake would result in exceedance of Minnesota’s statewide wild rice sulfate standard by nearly a factor of eight and have material adverse effects meeting MERA’s criteria: 1) severe adverse effects; 2) harm to a resource of historical and cultural significance; 3) pollution that would preclude wild rice replacement; 4) consequential effects on fish and wildlife; and 5) effects on waters already impaired for wild rice production due to excessive sulfate. *Id.* at ¶10; *State by Schaller v. Cty. of Blue Earth*, 563 N.W.2d 260, 267 (Minn. 1997).

WaterLegacy’s interests are not adequately represented by existing parties. Maccabee Decl. at ¶11. WaterLegacy and the MPCA have frequently diverged on issues related to wild rice beneficial use, enforcement of Minnesota’s wild rice sulfate standard, the use of a Formula in place of the standard, and the need to designate Hay Lake as impaired for wild rice beneficial use. *Id.* at ¶¶3-9. WaterLegacy was previously granted the right to intervene in a case involving the MPCA for similar reasons. *Id.* at ¶4. In this matter, although WaterLegacy is requesting to serve as an Intervenor-Respondent, it has been demonstrated that the MPCA does not adequately represent WaterLegacy’s interests and cannot serve as its agent. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 208 (Minn. 1993) (under Minn. Stat. § 116B.09, one party cannot always act as the “agent” of another to protect an environmental interest).

WaterLegacy’s motion to intervene is timely filed and will not delay the proceedings or prejudice other parties. Maccabee Decl. at ¶14. *Cf. SST, Inc. v. City of*

Minneapolis, 288 N.W.2d 225, 230 (Minn. 1979). Full intervention is requested, rather than just the opportunity to submit an amicus brief, in order to 1) address broad issues raised by US Steel regarding application of the wild rice sulfate standard on which the MPCA and WaterLegacy have previously taken opposing positions, and 2) ensure that there is a complete record supporting MPCA's decision to deny a site-specific sulfate standard for Hay Lake. Maccabee Decl. at ¶¶11-12.

This Motion, Proposed Statement of the Case, Addendum, and the Declaration verifying these documents demonstrate that WaterLegacy's participation as an Intervenor-Respondent meets the criteria and should be granted as a matter of right under Minn. Stat. § 116B.09, subd. 1.

II. If the Court Denies WaterLegacy's Motion to Intervene, WaterLegacy Requests Leave to Appear in this Matter as Amicus Curiae.

In the alternative, if intervention is not granted, WaterLegacy applies for leave to appear as amicus curiae pursuant to Minn. R. Civ. App. P 129.01(b) and (c). WaterLegacy's application is timely. Its participation as an amicus curiae is public in nature and is consistent with WaterLegacy's longstanding interests in defending and seeking enforcement of Minnesota's water quality standards, protecting water quality and the beneficial use of waters to grow self-sustaining wild rice, and restoring waters that are impaired due to anthropogenic pollutants, including sulfate pollution that impairs wild rice. Maccabee Decl. at ¶¶1-9. WaterLegacy's amicus brief would request that this Court affirm the MPCA's decision denying US Steel's request for a site-specific standard for Hay Lake.

WaterLegacy's participation in this matter would be desirable. In its Statement of the Case, US Steel makes far-reaching claims that the wild rice sulfate standard does not apply to natural stands of wild rice and that Hay Lake is not properly designated as a water subject to the wild rice sulfate standard. These claims implicate broad interests of WaterLegacy and the public across Minnesota in protecting water quality, environmental health, and justice by preserving and restoring wild rice beneficial use. *Id.* at 12.

In addition, this appeal is the first judicial test of the MPCA's process for evaluating a site-specific sulfate standard and is likely to set precedent. Participation of amicus curiae is appropriate when an appeal impacts interests beyond those represented by parties in the case. *See, e.g., St. Paul Fire & Marine Ins. Co. v. A.P.I., Inc.*, 738 N.W.2d 401, 411 (Minn. App. 2007) (noting that an amicus brief sheds "additional light on the important issues and considerations" of an industry "which pervasively affects the public.>").

WaterLegacy has more than a decade of unique experience in rulemaking, administrative advocacy, and litigation defending wild rice beneficial use and the application of the sulfate standard. Its participation as amicus curiae will assist the court in determining whether US Steel's claims are misplaced, unsupported, or may have been resolved prior to and outside the scope of the MPCA's decision rejecting a site-specific standard for Hay Lake.

CONCLUSION

For the foregoing reasons, WaterLegacy respectfully requests that this Court grant its Motion to Intervene or, in the alternative, grant leave to appear as amicus curiae.

DATED: March 29, 2024

Respectfully submitted,

/s/ Paula G. Maccabee

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CERTIFICATE OF COMPLIANCE

I certify that this request and response contains 1,494 words (exclusive of caption, signature block, and certificate) and complies with Minnesota Rules of Civil Appellate Procedure 129.01(c). This request was prepared using a proportional font size of 13 pt. This document was prepared on, and word count provided by, Microsoft Word 2024.

DATED: March 29, 2024

/s/ Paula G. Maccabee

Paula G. Maccabee (#129550)