

CITY OF GILBERT
CITY COUNCIL MEETING
Tuesday, January 26, 2016

6:30 P.M. REGULAR CITY COUNCIL MEETING

1. CALL TO ORDER

- A. Roll Call
- B. Pledge of Allegiance
- C. Approve Agenda

2. PUBLIC INPUT

3. APPROVE CITY COUNCIL MINUTES

- A. January 12, 2016

4. NEW BUSINESS

- A. Reschedule first City Council meeting in August
- B. Memorandum of Understanding from JPJ Engineering
- C. Request from Mesabi Bituminous
- D. License Agreement from Eveleth Fee Office
- E. Computer Service Agreement
- F. Request from Iron Range Youth in Action
- G. Continuing Education Request
- H. 2016 Minnesota Municipal Utilities Association Dues
- I. Resolution 2016-02 Request a MN Rule Change

5. REPORTS

- A. City Councilors
- B. City Attorney
- C. City Engineer
- D. Chief of Police
- E. Public Works Operations Director
- F. Library Director

6. APPROVE PAYMENT OF BILLS AND PAYROLL

7. ACKNOWLEDGE

- A. Response from Auditor Regarding Citizen Complaint
- B. EFGSD Joint Powers Rec Board Minutes December 9, 2015
- C. Notice from Mediacom regarding additional channel listing

8. ADJOURN

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**CITY OF GILBERT
MINUTES OF REGULAR COUNCIL MEETING
TUESDAY, JANUARY 12, 2016
COUNCIL CHAMBERS**

Mayor Kutsi called the meeting to order at 6:30 p.m.

Present: Mayor Kutsi, Councilors Pontinen, Skalko, Bol & Liimatta.

Absent: None.

Staff Present: City Attorney Bonnie Thayer, City Engineer Jannick, Chief Techar, Public Works Operations Director Lautigar, Library Director Miller and City Clerk/Treasurer Sakrison.

Mayor Kutsi led the audience in the Pledge of Allegiance to the Flag.

Motion by Skalko second by Liimatta to approve the agenda. All approved.

Public Input:

Beth Milos gave her thoughts on the following issues:

- Possible Budget/Finance Oversight Committee.
 - She thinks it is a good idea.
 - She felt that if people weren't losing their homes, paying high taxes, or drowning in debt, the City would be doing well and not need the public's help.
 - She does not see how having a Budget/Finance Oversight Committee could be a bad thing. The citizens are overtaxed, the property values are plummeting, so she wants to know why this would be a bad idea. She feels the City is not doing well at all and drowning in debt.
- First Responder Training.
 - Again, she thinks this is a good thing.
 - She mentioned that her mother-in-law was in charge of the First Responders for 10 years and never got paid. But did it as a service to the community.
 - She asked Steve Peterson, who is currently in charge of the First Responders, when did he start to get paid for that position. Steve Peterson stated that is was approved in June 2015. She then asked him how many calls he had been on and meetings he had been to since September 1. Steve said he would have to check his time sheets. Beth stated that she had his timesheets and that he had not been to any calls or meetings since September 1 and she has an issue with that. She would like him to look into that and report back at the next meeting. She believes that if he is getting paid for the position there should be time being put in.
- Beth stated that she knows of two companies that would like to come to Gilbert but won't because of the high taxes.

Councilor Bol also hoped that the other Councilors would approve the Budget/Finance Oversight Committee as he believes it is a good idea.

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**CITY OF GILBERT
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Kate Giese also spoke about the Budget/Finance Oversight Committee and that they would like to also find ways to grow the businesses and generate revenue, in addition to overseeing the budget.

Nick Ouke questioned the charges to the City from the City Attorney and City Engineer for the DNR trail easement. City Attorney Thayer stated that she negotiated with Arcelor for the easement for the DNR Trail, and City Engineer Jammick did the sketches and survey for the easement. He also questioned costs for the digester, which Public Works Operations Director Lautigar explained is for the sewer plant and that is was for services provided when the digester was failing. He then questioned the Lower Florida Infrastructure and the engineering fees charged for that. Lautigar stated that the engineering fees are included in the total cost of the project, and a lot of the projects have been paid for with grant money. He also wanted to know how the Councilors were going to vote for the Budget/Finance Oversight Committee. Mayor Kutsi stated that is an item on the agenda for tonight's meeting and would be discussed at that time.

Motion by Liimatta second by Skalko to approve December 22, 2015 Regular City Council Minutes. Approved.

Motion by Skalko second by Liimatta to approve Resolution 2016-01 Official Designations.
Discussion: Pontinen questioned on the appointment of the City Attorney and asked if there were other firms asked to give proposals for that position. City Clerk Sakrison noted that Colosimo Patchin & Kearney was the only proposal received and that she was not directed to send out an RFP to receive any others. Pontinen also stated that he only wants the attorney present at one meeting a month and the City would save \$250/month. Mayor Kutsi stated that he feels their presence is needed at both monthly Council meetings and it will be kept the same.
Approved 3 – 2.

Motion by Bol second by Skalko to approve 2016 Regular Council Meeting Schedule. Approved.

Motion by Liimatta second by Skalko to approve City Attorney Colosimo Patchin & Kearney to do Property Title Work, and City Engineer JPJ Engineering to do any right-of-way work needed to complete the Property Title Work. Councilor Bol asked what the cost estimate of the city attorney would be. Attorney Thayer said that with a preliminary look at the work she does not believe it would be an excessive cost. Councilor Pontinen asked what the cost estimate for the City Engineer work would be. City Engineer Jammick stated that it would depend how the land was platted. Estimates could be given before work was done once it was looked into. Motion was amended to just include the Attorney Property Title Work. Approved.

Motion by Liimatta second by Skalko to NOT WAIVE the monetary limits on municipal tort liability established by Minnesota Statutes, Section 466.04, as recommended by the City Attorney. Approved.

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CITY OF GILBERT
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TUESDAY, JANUARY 12, 2016
COUNCIL CHAMBERS

Motion by Skalko second by Liimatta to renew the City's membership in RAMS for \$700. Pontinen wanted to know if we are getting \$700 worth of services. Skalko noted that at the recent meeting you can see a positive change in the organization and there was a lot of power in that room, and that representation is important. Mayor Kutsi feels that the organization has really turned around and they do a lot of lobbying. Approved.

Motion by Bol second by Pontinen to form a Budget/Finance Oversight Committee.

Discussion: Bol feels that more eyes the better. Pontinen stated that there are 11 people willing to help the City. Mayor Kutsi would like to follow the Charter. Bol feels if this is turned down, the City will continue to run inefficiently. Liimatta agrees that there are already boards to provide oversight that are not filled, that were set up and designed to advise the council, he believes the oversight is already set-up and to fill the existing boards. Skalko noted that this is not the first time this has been discussed, and it has been turned down before, he feels that this would start interfering with people doing their jobs and that we need to keep trying to move ahead. Kate Giese stated that there are 11 people that are willing to kick start the City and come up with ideas to help give advice to the City to troubleshoot, people want to change, "we can do what we want to needle into your business", it's all public record. Skalko asked why it could not stay as an Economic Development Committee. Ouke stated that we can talk about economic development all we want, no one will come until the City lowers taxes. Bol publicly supports forming this committee and feels if it is prevented that people are afraid of what the committee will bring forth. Kutsi feels that he finds the time to do what he was elected to do. Beth Milos asked the councilors if they are "too good to accept the help"?

Motion Failed 2 - 3. Pontinen – Aye, Skalko – Nay; Kutsi – Nay; Bol – Aye; Liimatta – Nay.

Motion by Liimatta second by Kutsi to approve two of the Gilbert First Responder members to attend some of the Arrowhead EMS training from January 21, 2016 to January 24, 2016 not to exceed \$1,000. Approved 4 – 1.

Councilor Pontinen stated that he is disappointed that the Budget/Finance Committee was voted down.

Mayor Kutsi spoke with Senator Tomassoni on the IRRRB Feasibility Grant. He was invited to a meeting Thursday to discuss the new sulfate standards. And he was invited by the MPCA to go down to the Twin Cities on Thursday to meet with the Governor and he declined as it was just a photo op. Discussed changing chemicals at the water plan to transition from lime, but need pilot testing done to see if chemical would work with existing equipment at plant.

Councilor Bol thanked whoever took care of the potholes at the Holiday Gas Station. He also was disappointed in the Budget/Finance Committee not being formed. He wants the council to strongly reconsider forming the committee. Why turn down free help?

City Attorney Thayer thanked the council for the appointment of City Attorney for another year.

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CITY OF GILBERT
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City Engineer Jamnick noted that the Contractor on Hwy135 project is responsible for the maintenance at the project site. He updated on the funding cycles. The CDBG application has been submitted and the 15 minute presentation is January 14, 2016 for the sanitary sewer work in Genoa. The IRRRB is seeking a public works project grant.

Chief Techar noted that he gave out the December activity report.

Public Works Operations Director Lautigar stated that the two rink attendants are set up and are running on their own and working out well. Pontinen asked what they do when it's not snowing. Lautigar stated there are a lot of maintenance issues that they are catching up on, organization, painting walls, waxing floors, interior maintenance and sanding.

Library Director Miller

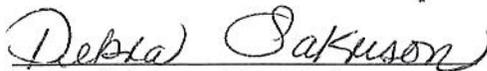
- Adult Winter Reading Program – Hot Reads for Cold Nights is in progress. Adults can enter into a drawing for each book they read for a chance to win a prize from the Library Foundation, held the first week of March
- Anima Club meets on Friday, January 15, 2016
- Closed January 18, 2016 for Martin Luther King Jr. Day
- Magic the Gathering will be January 21, 2016 @ 4:00 p.m.
- The movie “Minions” will be on January 22, 2016
- Coloring Club on January 25, 2016
- Councilor Skalko asked if they were getting any feedback on being closed on Saturdays. They have not heard much.

Motion by Skalko second by Liimatta to require hard copies of Land Use Permits to be kept at City Hall. Approved.

Motion by Liimatta second by Skalko to approve bills and payroll subject to audit by Mayor and Clerk. Approved 4 - 1.

Mayor Kutsi acknowledged the 2016 Meeting Schedule for the Planning and Zoning Board.

Motion by Skalko second by Bol to adjourn the meeting at 7:52 p.m.


Debra Sakrison, City Clerk

ATTEST:

Robert Kutsi, Mayor

4A

City of Gilbert
Request for City Council Action

Date: January 14, 2016

Issue: 1st City Council Meeting in August

Background: The Primary Election is on Tuesday, August 9, 2016 so the City Council meeting scheduled for Tuesday, August 9, 2016 will need to be re-scheduled.

Council Action:

City Council action is requested to re-schedule the Gilbert City Council meeting scheduled for Tuesday, August 9, 2016 to Monday, August 8, 2016 due to the Primary Election.

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City of Gilbert
Request for City Council Action

Date: January 22, 2016

Issue: Memorandum of Understanding from JPJ Engineering

Background: Personnel of JPJ Engineering have served as Municipal Engineers for the city of Gilbert for many years. This memorandum of understanding details some of the services provided.

Council Action:

City Council action is requested to approve the Memorandum of Understanding from JPJ Engineering for engineering services.

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CITY ENGINEER – City of Gilbert

General Engineering Services Include, But Not Limited to:

- Attend meetings, minimum one City Council Meeting per month, public utilities, planning and zoning, and other committee and organization meetings to keep abreast of project activities throughout the City.
- Provide consulting services, review of technical problems, project planning, and provide “on call” services to the City Council and City Department Heads.
- Assist in writing funding applications to the various local, state and federal agencies.
- Provide general engineering studies, reports and cost estimating.
- Provide general engineering design service.
- Meet regularly with wastewater and water plant manager and operators to review capital improvement projects, budgets and long-term improvements.
- Meet regularly with the Public Works Department to review street and infrastructure improvements, budgets and short-term and long-term projects improvements.
- Other general engineering services customary to normal city functions.
- All secretarial, phone calls, photocopying and other customary overhead expenses.

The City will not be billed monthly for this work and any applicable charges would be included as stated below.

Additional Engineering Services that will be described in detail along with a proposed fee schedule shall be stated in the Letter Agreement for Engineering Services for each particular project. Additional Engineering Services include, but not limited to:

- Engineering Design of projects to be prepared for competitive construction bids
- Engineering Design to obtain permits
- Construction Management
- Surveying
- Construction Inspection
- Record Drawings
- Other Engineering Systems

JPJ Engineering, Inc.

By: _____

January 22, 2016

Date

City of Gilbert

By: _____

Date

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City of Gilbert
Request for City Council Action

Date: January 21, 2016

Issue: Request from Mesabi Bituminous for the second installment of the forgivable loan in the amount of \$20,000

Background: Per the Development Agreement between the city of Gilbert and Mesabi Bituminous the second installment of the forgivable loan is to be paid to Mesabi Bituminous upon substantial completion of the building. . . . "the building is considered substantially complete when it is heated and occupied."

Council Action:

City Council action is requested to pay Mesabi Bituminous \$20,000 as the second installment of the forgivable loan as described in Section Four of the Development Agreement.

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- (iii) Payments to the City for materials taken shall be made monthly or as billed, based upon the estimates of materials removed as determined by the City from available documents and data. Payments shall be made within ten (10) days to the City of Gilbert. At the discretion of the City, the final payment shall be based upon the final quantities as determined by the City's records and measurements.

- B. In consideration of the expenditures involved in site preparation and infrastructure, at the point when Mesabi Bituminous can start removing materials from the Premises, the City and Mesabi Bituminous shall meet, and in good faith, mutually agree upon an amount of materials that will be considered pre-paid. Mesabi Bituminous shall send monthly reports indicating production for the preceding month as if payments were due and payable, deducting that production from the pre-paid production volume until such pre-paid amount is exhausted. Thereafter, Mesabi Bituminous shall pay the City for material removed and deposits as per terms of this Agreement.

- C. In addition to any monies discussed herein, Mesabi Bituminous agrees to pay the City for all damages to the Premises or surrounding area or any facility located thereon including, but not limited to, the value of any timber and shrubbery destroyed, the cost of repairing roads, railroads, culverts, or any other facilities damaged or relocated due to Mesabi Bituminous's use of the Premises. Additionally, Mesabi Bituminous shall keep the Premises neat and free from refuse at all times during the life of this Development Agreement. Upon expiration or termination of this Agreement, all equipment of Mesabi Bituminous, if any, shall be removed from the Premises within thirty (30) days.

**SECTION FOUR
FORGIVABLE LOAN**

A forgivable loan in the amount of eighty-five thousand dollars (\$85,000) shall be made by the City to Mesabi Bituminous in two installments. Mesabi Bituminous shall sign promissory notes to this effect. If Mesabi Bituminous defaults on any of the below enumerated conditions, or refuses to comply with Section Five of this Agreement, the promissory note(s) shall become immediately due and payable. If all of the terms of this agreement are satisfied, the promissory note(s) shall be deemed satisfied.

The first installment of sixty-five thousand dollars (\$65,000) shall be disbursed by the City to Mesabi Bituminous upon receipt of a signed quote or written contract for construction of a building, with a minimum price of sixty-five thousand dollars (\$65,000). Upon substantial completion of the building, and if in compliance with the below enumerated terms, the second installment of twenty thousand dollars (\$20,000) shall be made by the City to Mesabi Bituminous. 'Substantial completion' shall be determined by the City Engineer. At a minimum, the building is considered substantially complete when it is heated and occupied.

The terms of the forgivable loan are the following:

1. Mesabi Bituminous shall complete construction of the building by November 30, 2015, with 'completion' being determined by the City Engineer;

City of Gilbert
Request for City Council Action

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Date: January 22, 2016

Issue: License Agreement from Eveleth Fee Office

Background: The city of Gilbert holds a license from the Eveleth Fee Office for an easement for a 8 inch water main and the former skating rink site. This is a renewal request for 2016.

Council Action:

City Council action is requested to approve License #G-1 with Eveleth Fee Office for 2016 in the amount of \$130.

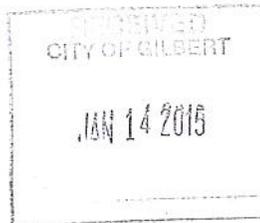
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Eveleth Fee Office, Inc.

GEOLOGISTS/MINING ENGINEERS

LAND MANAGEMENT
LEASE NEGOTIATIONS
MINERAL APPRAISALS
MINERAL EXPLORATION

301 MCKINLEY AVENUE • P.O. BOX 521 • EVELETH, MINNESOTA 55734-0521
Phone (218) 744-4646 • Fax (218) 744-2149 • ~~XXXXXXXXXX~~ efoinc@gmail.com



January 12, 2016

City of Gilbert
Attn: City Clerk
P.O. Box 548
Gilbert, MN 55741

Re: License #G-1 - Skating rink and pipeline easement

Enclosed are two copies of the 2016 license agreement for the period 1/1/2016 through 12/31/2016. Please note we have adjusted the license fee to cover the pipeline easement and the former skating rink area.

To renew, please have both copies signed as indicated and return them together with the license fee of \$130.00 payable to the Eveleth Fee Office, Inc., P.O. Box 521, Eveleth, MN 55734-0521. A fully executed copy of the license will be returned to you.

Also, please contact your insurance company and request that a certificate of insurance be forwarded to our office for the current year.

If you have any questions regarding this license renewal, please contact me. Thank you.

Sincerely,

Daniel L. England

DLE/law

Enclosures

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L I C E N S E
No. G-1

THIS LICENSE made as of the 1st day of January, 2016, by and between Daniel L. England, as President of Eveleth Fee Office, Inc., and as duly authorized Attorney in Fact for the owners in fee of the hereinafter described land, hereinafter called Licensor, and City of Gilbert, hereinafter whether one or more called Licensee, whose address is P.O. Box 548, Gilbert, MN 55741,

W I T N E S S E T H

In consideration of the rent to be paid and the agreements herein set forth by Licensee to be performed, Licensor, as to its interest only in the property hereinafter described, does hereby grant to Licensee, License and permission to use and occupy the parcel of land in the County of St. Louis, State of Minnesota, described as follows, to-wit:

A parcel of land in the SW-NW of Section 35, Township 58, Range 17, known as Lot ---, as shown on Licensor's Map of said land on file in the office of the Eveleth Fee Office, Inc., at Eveleth, MN, which Lot is hereinafter referred to as "said property" or "said licensed property".

EXCEPT all minerals and mineral rights.

for the period from the date hereof to December 31, 2016, unless sooner terminated as herein provided. Upon the execution and delivery of this agreement, Licensee shall pay Licensor the sum of One hundred-thirty no/100 Dollars (\$ 130.00) per year as rent. Rent shall be paid to Licensor, care of Eveleth Fee Office, Inc., P.O. Box 521, Eveleth, MN 55734-0521.

Licensee shall use said property solely for the purpose of a skating rink and 8-inch water main pipeline easement and for no other purpose whatsoever. Licensee shall not modify or damage any improvement, structure or equipment of Licensor or of any third party located upon said property.

This License is subject to any public or private right-of-way now existing on or over said property, and to any public right-of-way that may hereafter be obtained by lawful proceedings; and the Licensor hereby reserves and shall at all times have the right, without any liability for damages to the Licensee, to grant to any person or corporation rights-of-way over or across the said property for telephone, telegraph, electric light or power purposes or for railways or for water or gas mains, sewers, ditches, highways or other public uses, and upon the grant of any such right this License shall be subject thereto.

This License may be terminated by Licensor by 60 days' written notice to Licensee of termination of this License. Said notice may be given by delivering the same to Licensee, by leaving said notice with any person of suitable age and discretion at the address of Licensee above given, or by mailing said notice to Licensee at said address by ordinary or certified United States mail, or at such other address as Licensee shall have specified by written notice given to Licensor. Upon the expiration of the time specified in said notice, Licensee shall vacate said property and remove its structures and equipment therefrom, repair any damage to the property caused by Licensee, and leave said property in a neat and orderly condition. If Licensee shall have paid rent for a longer term than it is permitted to occupy said property, and has vacated said property upon the termination or expiration of this License and has kept and performed the agreements contained in this License, Licensor shall upon termination refund to Licensee that proportion of the rent paid by Licensee which the unexpired part of the License term bears to the whole of the License term. Licensee shall be entitled to no other compensation or damages whatsoever by reason of termination of this License. Licensee disclaims any right, title or interest in said property other than that which it has under this License.

If upon termination or expiration, Licensee shall leave upon said property any structures or equipment of Licensee, Licensor shall without further notice become the owner thereof, and at its option may retain the same or may have the same removed, stored or destroyed at the expense of Licensee, and Licensee shall pay the cost of such removal, storage or destruction upon demand.

Licensee agrees that Licensor shall have no liability arising from or based upon any condition of or occurrence upon said property, unless such condition or occurrence is willfully or recklessly caused by Licensor. Licensor shall have no responsibility or liability for the safety of any person or property authorized or allowed by Licensee to be upon said property of Licensor, and all such responsibility and liability shall be borne by Licensee. Licensee releases Licensor from liability arising out of and expressly assumes all existing risks and dangers connected with the occupancy of said property, and all risks and dangers which may hereafter arise, by reason of the past, present or future carrying-on by Licensor, its predecessors, or any other person or corporation of mining, quarrying or like business on, in or under said property or any land or premises adjacent to or in the vicinity thereof, including but not limited to risks and dangers arising from blasting, the cracking or caving of the surface or the loss or removal of lateral or subjacent support, the use or diversion of streams or ponds of surface or underground water which may exist upon or affect the condition of said property, and the construction, operation and maintenance of ditches, pipelines, telephone lines, electric transmissions lines, roads and railroads.

Licensee agrees to defend, indemnify and save Licensor and the Eveleth Fee Office, Inc. and their

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officers, agents and employees harmless from any and all claims, demands and actions made or brought by reason of damage to or destruction of property of others, or injury to or the death of persons, whether due to the negligence of Licensor or the negligence of Licensee or the negligence of third parties, or any combination thereof, or based upon strict liability or any other basis of liability, in any manner arising or alleged to have arisen from any occurrence upon or condition of said property or any improvement, structure or equipment thereon, unless such damage, destruction, injury or death is caused by the willful or reckless conduct of Licensor; and Licensee shall pay all recoveries, costs, experts' fees and attorneys' fees incurred by Licensor in connection therewith.

Licensee further agrees to defend, indemnify and hold harmless Licensor and Eveleth Fee Office, Inc., and their officers, agents and employees, hereinafter in this paragraph referred to as Indemnitees, from and against any and all claims, damages, losses, fines, penalties, liabilities and costs, including response costs, clean-up costs, claims for natural resources damages, and expenses, including attorneys' fees, experts' fees and all other costs and expenses of litigation, which Licensor or any other Indemnitee may suffer or incur or for which Licensor or any other Indemnitee may be held liable, and Licensee releases the Indemnitees from any liability, arising out of any and all spills, leaks, releases and discharges in, upon, under or from said real property of any hazardous substance, hazardous waste, pollutant, contaminant, waste, petroleum substance, crude oil or any fraction thereof, whether the hazardous substance, hazardous waste, pollutant, contaminant, waste, petroleum, crude oil or fraction thereof was placed or came to be located in or upon said real property or was released, discharged, spilled or leaked in or upon said real property before or after the date of this License.

Licensee agrees that during the term of this License or any renewal thereof, Licensee will carry public liability insurance with the following limits: \$2 million (\$2,000,000.00) per occurrence for bodily injury and \$2 million (\$2,000,000.00) per occurrence for property damage. Further such policy of insurance shall be specifically endorsed to include coverage for the contractual liabilities assumed by Licensee under this License. Licensee shall provide Licensor with a certificate of insurance evidencing the limits of coverage and contractual endorsement required hereunder.

Licensee agrees that no delay on the part of Licensor in enforcing any of the conditions or covenants of this License, or in terminating or revoking said License shall be construed to be or operate as a waiver of any of the rights of the Licensor hereunder.

It is agreed that wherever the words "it", "he", "his", or "him" are used herein with reference either to Licensor or Licensee, such words shall mean the party or parties respectively referred to, whether male or female, or whether one or more individuals, partnerships, corporations or other organizations; and the term "Licensor" or "Licensee" shall mean all the licensors or licensees, as the case may be, if there are more than one of either or both designations, and that the word "party" shall include all the parties of the same part.

This agreement shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and assigns of the respective parties hereto; but Licensee shall not assign this agreement or the License hereby granted, or sublet or sell or convey any building, structure or fence belonging to him and located on said property nor sublet any part of said property without the prior written consent of Licensor or its duly authorized agent or representative.

IN WITNESS WHEREOF, this License has been executed by the duly authorized representatives of Licensor and Licensee as of the day and year first above written.

Licensor:

Licensee:

By _____
Daniel L. England

By _____
Mayor

Its Authorized Attorney in Fact

By _____
City Clerk

City of Gilbert
Request for City Council Action

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Date: January 22, 2016

Issue: Computer Service Agreement between the city of Gilbert and the Eveleth Police Department

Background: The Eveleth Police Department is interested in contracting with the city of Gilbert for IT services. Attached is the current draft of the service agreement.

Council Action:

City Council action is requested to approve the Computer Service Agreement between the City of Gilbert and the Eveleth Police Department as presented.



City of Gilbert

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www.gilbertmn.org

16 South Broadway • P.O. Box 548 • Gilbert, MN 55741

Phone: 218-748-2232 • Fax: 218-748-2234

_____, 2016

Eveleth Police Department
415 Pierce Street
Eveleth, MN 55734

To whom it may concern:

Enclosed is a computer service agreement. This is the latest service concept that is being used in our area today. The agreement is designed to address the need for periodic maintenance and software security. This way your computers get regular attention and, in addition, you have someone knowledgeable about your system and specific needs if by chance a problem does occur. It is a bit like your own part-time IT department.

In today's world the much needed, high-speed, always-on-Internet creates added security risks. The high-speed broadband Internet connection has its advantages and is a necessity in the information age, but the risks of hackers obtaining confidential information and data stored within your system does require regular monitoring and maintenance.

This agreement will ensure that you don't overpay for the service of your computers and network infrastructure. To get the service underway please complete and return the following agreement.

If you have any questions, please reach me on my mobile at (218)780-7717.

Respectfully,

Steve Peterson, IT Manager / EMS Director
City of Gilbert
16 S Broadway St - PO Box 548
Gilbert, MN 55741

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Office: (218)748-2232
Mobile/Text: (218)780-7717
Fax: (218)748-6939
Email: stevepeterson@gilbertmn.org
Website: WWW.GILBERTMN.ORG

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NETWORK AND MAINTENANCE SERVICE AGREEMENT

FOR DATA CONNECTION AND EQUIPMENT BETWEEN

**City of Gilbert - Gilbert Police Department
16 Broadway Street South
Gilbert, MN 55741
(Hereinafter referred to as the "Technology Consultant")**

AND

**Eveleth Police Department
415 Pierce Street
Eveleth, MN 55734
(Hereinafter referred to as the "Customer")**

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City of Gilbert- Gilbert Police Department
PO Box 548
GILBERT, MN 55741

This agreement, effective January 1, 2016, is made by and between the Eveleth Police Department, located at 415 Pierce Street, Eveleth, MN 55734, hereinafter referred to as "Customer", AND City of Gilbert- Gilbert Police Department, located at 16 Broadway Street South, Gilbert, MN 55741, hereinafter referred to as "Technology Consultant."

1. This Agreement sets forth the entire agreement of the parties, and supersedes all prior or contemporaneous oral or written understandings, statements, representations, or promises with respect to the maintenance of the items specified in the Equipment List, attached hereto and incorporated herein as Exhibit A. No other terms and conditions shall be included or implied unless agreed to in writing and signed by the parties to this Agreement.

2. Term of Agreement. Either party may cancel this agreement upon ninety (90) days' notice to the other party. Notices shall be in writing and hand-delivered or sent by certified mail addressed to the other party as herein provided. Notice to the Technology Consultant shall be delivered to the Gilbert Chief of Police at 16 Broadway Street South, P.O. Box 548, Gilbert, MN 55741, and notice to the Customer shall be delivered to the Eveleth Chief of Police at 415 Pierce Street, Eveleth, MN 55734.

3. Scope of Services. All services performed under this Agreement will be provided by a representative of the Technology Consultant, authorized by the FBI and BCA. Technology Consultant shall be responsible for determining his/her own schedule; however, the Technology Consultant shall establish office hours in which an authorized representative is available to Customer's staff. The Technology Consultant agrees to provide the following services and perform the following work:

(a) Consultation Services. The Technology Consultant will consult with employees and administration of the Customer concerning computer security policies of the Customer, and violations of that policy by employees/staff of the Customer.

(b) Routine Maintenance Services. The Technology Consultant shall perform the following routine maintenance and adjustment services to the hardware and software of the equipment listed in Exhibit A:

Hardware	Software
1.) Cleaning and dusting the fans and internal components.	1.) Antivirus security updates and configuration.
2.) Maintenance of Network related devices listed in Exhibit A.	2.) All operating systems service packs and updates are completed on a regular basis.
3.) Recommend hardware upgrades to maximize your system.	3.) Removal of temporary and unnecessary files that are cluttering your hard disk.
4.) Replacing any malfunctioning hardware.	4.) Optimize hard disk and rearrange data if needed.
5.) Coordinate reprogramming for VPN tunnel when State and/or County addresses are added or updated.	5.) Remove unnecessary programs and start-ups that are slowing your system.
	6.) Detect registry and operating system problems.
	7.) Network Optimization.
	8.) User support of PsPortals, MyBCA, Shield.
	9.) User support of Velosum, TicketWriter.

(c) Remedial Maintenance Services. Remedial Maintenance Services resulting from the failure of any equipment listed in Exhibit A shall be performed by Technology Consultant upon notification by the Customer. Technology Consultant will respond within four business days after such notification.

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(d) Specialized Services. Technology Consultant will assist Customer's staff with the training, operation, and database upkeep of Customer's incident complaint reporting software, records management system, and computerized aided dispatching. In addition, the Technology Consultant will provide technical representation for the customer at NEMESIS group meetings, BCA audits, and other meetings when requested by the Customer, and the Technology Consultant is available.

4. Additional Time Devoted by Technology Consultant. It is anticipated that extra projects or services will be needed by the Customer. The Technology Consultant will perform these services above and beyond the scope of services defined in Section Three of this Agreement, at an hourly rate of \$65.00 per hour or based on a per project proposal.

5. Project Management. The Customer may from time to time request that the Technology Consultant arrange for the services of others. With prior authorization of the Customer, all costs to the Technology Consultant for those services will be paid by the Customer.

6. This Agreement is not a hardware equipment warranty or insurance policy. The obligations of the Technology Consultant under this Agreement do not extend to cover replacement and repairs necessitated by:

(a) Any additions, alterations, modifications or repairs not recommended or authorized by the Technology Consultant;

(b) Equipment being used in a manner not in accordance with the instructions and recommendations of the Technology Consultant;

(c) Negligence or want of care in use of equipment; and

(d) Damage caused by an Act of God, storms, tempest, floods, earthquakes, enemies, riots, strikes, lockouts, fires, explosions, accidents and other things beyond the control of the Technology Consultant.

7. Place Where Services Will Be Rendered. The Technology Consultant will perform most services under this Agreement at Eveleth Police Department, Gilbert City Hall, Gilbert Police Department (Gilbert and Biwabik office), East Range Police Department (Aurora and Hoyt Lakes), or remotely when deemed necessary. In addition, the Technology Consultant will perform support services on the telephone and at such other places in accordance with this Agreement.

8. The Customer shall provide without charge to the Technology Consultant adequate facilities for maintenance and repair including but not limited to: job specific tools, office space, a computer, electricity, phone, and storage space.

9. The Customer shall not make or allow additions, alterations, modifications or repairs to the equipment listed in Exhibit A, by anyone other than an authorized representative of the Technology Consultant, or such technicians employed by the Customer as have been approved for that purpose by the Technology Consultant. If the Customer permits the equipment to be otherwise repaired, maintained, or adjusted, the Technology Consultant shall not be responsible for any damage to the equipment or loss of use suffered by the Customer.

10. Payment to Technology Consultant. For its services performed under this Agreement, the Customer shall pay to the Technology Consultant one thousand dollars (\$1,000.00) per month, due and payable on the fifteenth day of the following month. Said price includes the cost of labor only.

All replacement parts required by the Technology Consultant to service the equipment listed in Exhibit A will be supplied by the Technology Consultant and invoiced to the Customer. Additional time and special projects as described in Sections Four and Five will be invoiced to the Customer. Invoices shall be paid within 30 days.

4E
6/7

A fee will be charged for payments received after the due date. A service fee is computed on a monthly rate of 1.5% (18% annually) with a minimum service charge of \$1.00. All returned items and/or replacement parts are subject to a 15% restocking fee. There will be a \$30.00 fee charged for each returned check.

11. Confidential Information. The Technology Consultant agrees that any information received by the Technology Consultant during furtherance of the Technology Consultant's obligations in accordance with this Agreement, which concerns the personal, financial or other affairs of the Customer, will be treated by the Technology Consultant in full confidence and will not be revealed to any other persons, firms or organizations.

12. Independent Contractor. Under this Agreement, the Technology Consultant is an independent contractor and nothing contained in this Agreement shall create or be construed as creating the relationship of employer and employee between the Technology Consultant and Customer. Accordingly, Technology Consultant is not eligible for worker's compensation or unemployment compensation benefits through Customer, and it is the Technology Consultant's sole obligation to comply with the applicable provisions of all federal and state tax laws with respect to any payments to Technology Consultant hereunder.

13. Waiver of any default or breach of this contract shall not be deemed to be a waiver of any subsequent default or breach. Waiver of any default or breach of any provision of this contract shall not be construed to be a modification of the terms of this contract, unless it is stated to be as such in a written document approved and signed by the parties to this Agreement.

SIGNED for and on behalf of CITY OF GILBERT- GILBERT POLICE DEPARTMENT

By: _____

Title:

Date:

SIGNED for and on behalf of the CUSTOMER

By: _____

Title:

Date:

City of Gilbert
Request for City Council Action

4F
1/3

Date: January 22, 2016

Issue: Request from Iron Range Youth in Action program for funding support for the 21st Annual Young Leaders Conference

Background: The city of Gilbert has contributed \$100 as support the past several years.

Council Action:

City Council action is requested to approve contributing _\$_____ to the Iron Range Youth in Action to support the 21st Annual Young Leaders Conference.



Greetings,

December 30, 2015

HF
2/3

The St. Louis County Iron Range Youth in Action program staff and students are enthusiastically planning their 21st Annual Young Leaders Conference: Make a Difference 2016. On February 22nd, we will be hosting over 350 Iron Range teens from Hibbing, Chisholm, Cherry, Ely, Eveleth/Gilbert, Mesabi East, North Woods, South Ridge, Northeast Range, Mountain Iron/Buhl and Virginia High Schools at Fortune Bay Resort. The focus of this Conference is to provide education through a variety of student-run workshop offerings and a presentation delivered by a professional keynote speaker. Our goal for student participants is to bring awareness that everyone can make a positive difference in their lives by becoming active in community service projects and civic events.

- 2015/2016 IRYA projects include:
- Sponsoring the annual Young Leaders Conference with youth presenting workshops on issues that are meaningful for teens.
 - Volunteering with community service organizations and events: Adopt-A-Highway Clean-Up, Sand Lake Shuffle, Land of the Loon Festival, Service Projects with the Salvation Army locations across the Iron Range, Pepsi Challenge, Range Mental Health Dinner, Virginia Foundation Activities, United Way activities, Project Warmth, Iron Range Home, Sport & Travel Show, Eveleth Foundation activities, Mesabi Humane Society, Festival of Trees, Governor's Fishing Opener, and Field of Screams.
 - Holiday Gift Wrapping, Nursing Home Visits, Recycling Programs, Kids Voting, Range-Wide Dances, American Lung Association booth at the St. Louis County Fair and Lobbying Day at the State Capitol.
 - Building homes for Habitat for Humanity locally across the Iron Range.
 - Service Learning Trip to the Twin Cities area to volunteer at Salvation Army and Ronald McDonald House in July of 2015.
 - Publishing Generation W (youth newspaper) – 4 times annually
 - IRYA Holiday Food Drive –organized food drives in area schools - more than 12,000 pounds of food distributed to several area food shelves benefiting our Iron Range communities in November and December.
 - Bullying education in our area schools.
 - Cardboard Box City at Biwabik Pavilion to raise awareness and funds for the homeless.

The conference fee per student is \$50.00. We expect to host approximately 350 students this year. Community contributions are used toward conference expenses such as the keynote speaker, curriculum materials, banquet lunch and entertainment. The St. Louis County Board of Commissioners is a primary sponsor and contributor to this event. We hope you will consider making a contribution to this special event planned for Iron Range High School students. A contribution form is enclosed.

The Partners Board, St. Louis County Iron Range Youth in Action Program and Iron Range High School Advisors and Students are excited to be part of the process and have an organizational role for this educational event. If you have any questions about the IRYA Program, activities or conference, please do not hesitate to contact us.

Thank You for your continued commitment to the youth of the Iron Range!

Sincerely,

Partners Board of Northern St. Louis County
St. Louis County Iron Range Youth in Action Program

Contact Information:
Phone: (218) 749-7114 or (218) 742-9598
Fax: (218) 749-0698
Email: burnett2@stlouiscountymn.gov
or ericksont@stlouiscountymn.gov

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- Tom Beaudry
City of Cook
- Rob Kutsi
Mayor of Gilbert
- Biwabik Township
City of Babbitt
City of Eveleth
City of Hibbing
City of Tower

IRYA Program Staff
Taryn Burnett, Coordinator
Tyler Erickson, Coordinator
Shelly Jamnick, Support Staff

St. Louis County Extension Office
Northland Office Center
307 1st Street South #105
Virginia, MN 55792



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Please make your check payable to “St. Louis County”
and mail your contribution to:

St. Louis County Extension Office
Northland Office Center
307 1st Street South, #105
Virginia, MN 55792

We would like to sponsor the following scholarships for area students to attend the 21st Annual
Young Leaders Conference: Make a Difference 2016
on February 22nd at Fortune Bay Resort:

- One Student-\$50 _____
- Two Students-\$100 _____
- Three Students-\$150 _____
- Four Students-\$200 _____
- Five Students-\$250 _____
- Six Students-\$300 _____
- OTHER AMOUNT _____

NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____ PHONE #: _____

Thank You for contributing to the youth of the Iron Range!
Your generosity is a commitment to the future leaders of our communities.

HG
1/4

City of Gilbert
Request for City Council Action

Date: January 22, 2016

Issue: Continuing Education Request from Jack Bradach

Background: The water and wastewater operators are required to attend training to earn Continuing Education Units to maintain their licenses. Jack Bradach is requesting approval to attend the Minnesota Rural Water Association Technical Conference in St. Cloud March 1-3, 2016. The registration is \$225.00. Other costs will include lodging, meals and travel. He will earn 16 direct credit hours that will apply to both water and wastewater.

Council Action:

City Council action is requested to approve Jack Bradach's request to attend Minnesota Rural Water Technical Conference in St. Cloud, MN March 1-3, 2016 and to authorize the payment of the conference registration fee, lodging, meals and travel.

MRWA 32nd Annual Water & Wastewater

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2/4



TECHNICAL CONFERENCE

March 1-3, 2016 - River's Edge (Civic Center)
St. Cloud, MN - Tentative Agenda



Tuesday, March 1, 2016

- 8:15am Color Guard Ceremony
- 8:30am Opening Session: Quality on Tap! Our Commitment, Our Profession
- 8:45am Introduction of MRWA Diamond, Ruby, & Emerald Corporate Partners
- 9:00am Keynote Speaker Steven Krueger, Minnesota State Patrol: Distracted Driving & HAZMAT Materials Safety
- 10:30am Exhibit Hall Opens - *Enjoy the latest innovations, technology, and new products in the industry!*
- 11:45am Luncheon

Concurrent Mini-Sessions Begin (3 tracks)

Water/Wastewater Track

- 1:00pm Proper Installation for Magnetic Flow Meters
- 1:30pm Hazards of Water System Pressure Loss
- 2:00pm Affects of Phosphorus and Nitrogen on Water Bodies
- 2:30pm Which Storage Tank is Right For Your System?
- 3:00pm What's in Your Pint? Water Quality of Your Beverage
- 3:30pm Accurate Annual Water Appropriations Reporting

Booth Demonstrations

- MN Smart City / Infrastructure Stress Transparency Tool
- Hydrants and Valves Repair
- Identification of I & I Sources & Evaluating Solutions
- Waterous Pacer Fire Hydrant Repair
- New Pump Technology
- Valve Riser Box Repairs

Groundwater/WHP Protection Track

- Introduction to Groundwater
- How are Drinking Water Supply Management Areas (DWSMA's) Delineated?
- Red Rock Well Siting and Wellhead Protection
- Reduce Risk in WHP Areas by Partnering with Hazardous Waste in Stearns County
- GRAPS/WRAPS/and 1 Watershed 1 Plan - How do MN Water Planning Initiatives Fit Together
- SWP Grant Program Update - Program Changes, Application Criteria, and Great Project Ideas

- 4:00pm Refreshments, Door Prizes, Exhibitor Gift - Last Chance to Tour Exhibit Hall!
- 5:00pm Exhibit Hall Closes - Meet & Greet and Sports Raffle Begin in Glenn Carlson Hall

Finance Session

Wednesday, March 2nd
10:00am - 11:00am

Wednesday, March 2, 2016

- 6:45am Rural Water Breakfast - Enjoy a sit-down breakfast, Rural Water Style
- 8:15am Leaders in the Industry: NRWA & MRWA We Work For YOU! Awards & Poster Contest Winners
- 9:00am Water Taste Test
- 9:15am Insights & Opportunities for Water-Use Efficiency - Keynote

2016 Sports Raffle Prize:

2016 Polaris Sportsman 4 Wheeler OR 2016 John Deere Lawn Mower - **YOUR CHOICE**



This
OR
That



Donated by MRWA
& Hawkins Inc!



Concurrent Sessions Begin

Water Operation & Maintenance Session

- 10:00am Building the Right Solution for Your Liquid Storage Application
- 11:00am Combatting Iron Bacteria in Water Plants and Distribution Systems
- 12:00pm Luncheon & Door Prizes
- 1:00pm Hydrants & Valves: New Restraint Fittings
- 2:00pm Unmanned Aerial Vehicle (UAV) Drones in Your Community
- 3:00pm Biological Treatment Technology for Nitrate Removal
- 4:00pm Establishing an Antenna Management Program

Wastewater Mechanical Operation & Maintenance Session

- 10:00am Chlorine-Based Treatment for Wastewater
- 11:00am Biological Control of Ammonia in Wastewater Systems
- 12:00pm Luncheon & Door Prizes
- 1:00pm Energy Efficiency & Renewable Energy Technologies in Wastewater
- 2:00pm Smart Digital Chemical Dosage Equipment
- 3:00pm Best Practices in Monitoring the Level of a Digester
- 4:00pm New Protective Coatings for WWTP

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Wednesday, March 2, 2016 (continued)

Wastewater Ponds Operation & Maintenance Session

- 10:00am Nitrification Problems in Minnesota Lagoons
- 11:00am Level Control Options for Wastewater Ponds
- 12:00pm Luncheon & Door Prizes
- 1:00pm Wastewater Pond Operations

Wastewater Collections Operation & Maintenance Session

- 2:00pm Small Community Collections Systems
- 3:00pm How to Properly Fill out Your eDMR
- 4:00pm Understand Arc Flash & Minimizing the Risks

Management Session

- 10:00am What is Groundwater, and What's in it?
- 11:00am Vulnerable Aquifers - Case Study
- 12:00pm Luncheon & Door Prizes
- 1:00pm USDA Rural Development (RD) Apply
- 2:00pm Asset Management - The Next Requirement?
- 3:00pm How to Fill Out Water Supply Plans
- 4:00pm Negative Impacts of Surface Water

Groundwater Session

- 10:00am Definition of Nitrate Problems in Minnesota Drinking Water and Features of Existing Ag Programs -AND- Nitrogen Fertilizer Management Plan Discussion
- 11:00am Find 'The Guy' That Can Help to Coordinate WHP Plan Implementation
- 12:00pm Luncheon & Door Prizes
- 1:00pm What's Going On in the World of Urban Nitrate Management?
- 2:00pm MDH Virus Study Update
- 3:00pm Water Reuse Project in Minnesota-Target Field and City of Eagan Examples
- 4:00pm Grill the SWP Unit: PWS Open Discussion Time

Exam Refresher Sessions - These sessions will run 10:00am - 5:00pm

- 10:00am A&B Water Operator Certification Exam Refresher
- 10:00am C&D Water Operator Certification Exam Refresher
- 10:00am C&D Wastewater Operator Certification Exam Refresher

Wednesday, March 2, 2016
Class E Small Water Systems Session
(NonTranslent NonCommunity and NonMunicipal)
Session Time: 8:00am - 12:00pm
 Topics covered include: MDH Updates for Small Systems; Water Sampling Requirements; Revised Total Coliform Rule; Operator Certification; Wells: Operation & Maintenance; Wellhead Protection; Asset Management; and Leak Detection & Line Locating.
4 water certification hours awarded for session attendance.

2016 Sports Raffle
Prize: Ice Fishing
 Package donated by Team Lab!



New This Year: Sit-Down Breakfast

Wednesday
March 2nd
 6:45 am - 7:45am
**Rural Water
 Style Breakfast**
 Glenn Carlson
 Hall

Come enjoy breakfast with Rural Water



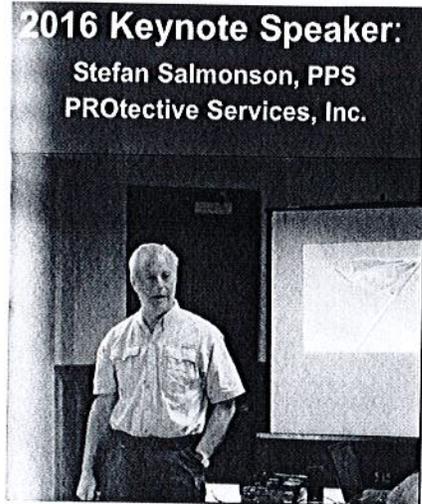
4G
4/4

Thursday, March 3, 2016

Thursday, March 3, 2016
Water and Wastewater Exams
will be given at 8:30am.

Water -AND- Wastewater Operation and Maintenance Session
(water and wastewater concurrent sessions combined)

- 8:30am MDH & MPCA Updates
- 9:30am Break
- 9:45am Active Shooter / Armed Intruder Keynote Presentation - Stefan Salmonson, PPS
 "Active Shooter" events continue, often daily. Now, more than ever, training and preparation are paramount to survival. This presentation reviews the basic concepts/observations, expands with the recognition of the suspect's preparatory acts (suspicious indicators), motives, intent, possible link to anniversary dates, HUMINT (Human Intelligence), defining imminent danger, de-escalation methods, benefits of security/risk assessments, survival options and (due diligence) considerations for employees, supervisors, managers and executives. Integration, with expanded law enforcement protocols, will also be discussed.
- 11:45am Wrap-Up and Drawings
- 12:45pm MRWA Annual Meeting



Exam Prep Refresher Session Offered at Technical Conference

The Minnesota Rural Water Association will be sponsoring an Exam Refresher Session on Wednesday, March 2, 2016, as part of the MRWA Technical Conference. The exam refresher session will give the attendee an opportunity to review information that will be part of the certification testing. The certification test will be given Thursday, March 3, 2016, at 8:30am.

- YES, I will be attending the **WATER Exam Refresher A&B**, March 2, 2016, from 10:00am - 5:00pm.
 - YES, I will be attending the **WATER Exam Refresher C&D**, March 2, 2016, from 10:00am - 5:00pm.
 - YES, I will be attending the **WASTEWATER Exam Refresher Class**, March 2, 2016, from 10:00am - 5:00pm.
 - YES, I will be attending the entire Technical Conference
- (If not, please fill out the registration information below)

- Yes, Please send me an exam application - circle one: Water or Wastewater
- Yes, Please send me a Minnesota Department of Health Class D WATER Study Guide.

There is no charge for this session if you are attending the Technical Conference (See Technical Conference registration form.) If you are **NOT** attending the Technical Conference, there is a fee of \$120.00 for the Exam Refresher Session. The following registration is required. *There is no charge to come and only take the test on Thursday, March 3.*

WEDNESDAY EXAM REFRESHER ONLY: Includes Refresher Class & Luncheon - \$120.00

Please make check payable to Minnesota Rural Water Association or pay online at: www.mrwa.com (use the Pay Online button)

Name (please print) _____

Address _____

City _____ State _____ Zip _____

Employer _____

E-mail: _____

If you have any questions, call 800-367-6792, fax 218-685-5272, or e-mail: mrwa@mrwa.com. Register online at www.mrwa.com (use the fast track training button)

*You **MUST** fill out and mail an exam application to the Minnesota Department of Health (Water Exam) **OR** the Minnesota Pollution Control Agency (Wastewater Exam) **15 days prior to the exam date**. The exam fee, payable to MDH is \$32.00 and to MPCA is \$55.00. Exam applications can be downloaded at: www.mrwa.com. (Use the water or wastewater resources link.)

4H
1/9

City of Gilbert
Request for City Council Action

Date: January 22, 2016

Issue: 2016 Minnesota Municipal Utilities Association Dues

Background: The city has been a member of the MMUA for a number of years. The organization provides a variety of services to its members.

Council Action:

City Council action is requested to approve the payment of the 2016 dues to Minnesota Municipal Utilities Association in the amount of \$1740.00, to be paid from the Electric Fund.

4H
2/9

Mission, Vision, Values

Why MMUA Exists

The Minnesota Municipal Utilities Association is a nonprofit corporation representing the interests of the state's 100+ municipal electric and natural gas utilities. MMUA was formed in 1931 and provides a wide variety of services to its members.

MMUA's Mission

To unify, support, and serve as a common voice for municipal utilities.

MMUA's Vision

Excellence in supporting the interests and efforts of municipal utilities.

MMUA's Values

People: Practice respect, demonstrate leadership, encourage growth through education and training.

Safety: Be safety-driven at all times and work to instill a safety culture in all operations.

Advocacy: Be an articulate and powerful voice on the issues.

Teamwork: Working together we can accomplish what would be impossible alone.

Communication: Listen carefully, speak respectfully and truthfully.

Creativity: Find new solutions to solve new challenges.

Dedication: Do whatever it takes to help our members get the job done.

Integrity: Be honest, trustworthy, reliable, and fiscally responsible.

Environment: Support the efficient use of resources and sustainable energy.

Read More About Our Programs & Services (<http://www.mmua.org/about/join-mmua>)

Thank You, Annual Sponsors



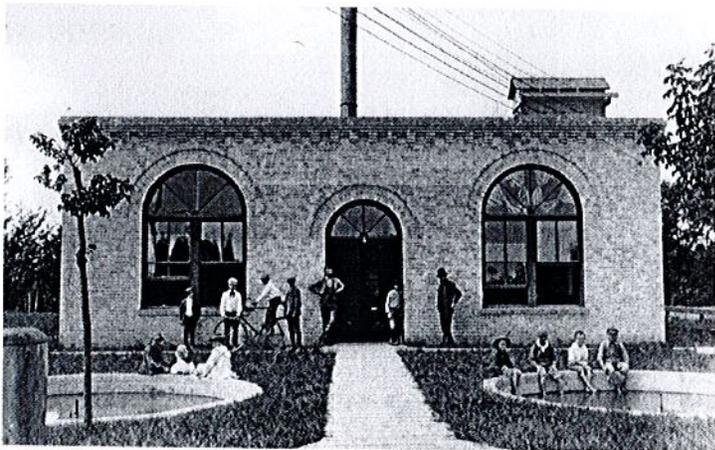
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Power Plant in Moorhead, Minnesota | 1895

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- Leadership (<http://www.mmua.org/about/leadership>)
- About MN's Municipal Utilities (<http://www.mmua.org/about/mn-municipal-utilities>)
- MN Municipal Utilities Map (<http://www.mmua.org/about/mn-municipal-utilities-map>)
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- Utility Management (<http://www.mmua.org/about/utility-management>)
- Finance Program (<http://www.mmua.org/about/finance-program>)
- Drug and Alcohol Testing Consortium (<http://www.mmua.org/about/drug-and-alcohol-testing-consortium>)
- Tom Bovitz Memorial Scholarship Program (<http://www.mmua.org/about/tom-bovitz-memorial-scholarship-program>)
- Connector (<http://www.mmua.org/about/connector>)
- Calendar (<http://www.mmua.org/about/calendar>)
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 - Cold Weather Rule (CWR) Guide (<http://www.mmua.org/about/publications-cold-weather-rule-guide>)
 - CWR Customer Brochure (<http://www.mmua.org/about/publications-cwr-customer-brochure>)
 - Minnesota Stray Voltage Guide (<http://www.mmua.org/about/publications-minnesota-stray-voltage-guide>)



62% of our electric utilities have operated for 100 years or more.

4H
4/9

About MN's Municipal Utilities

Meet Minnesota's Municipal Utilities

Current Industry Structure

The electric utility industry is comprised of municipal utilities, cooperatives and investor-owned utilities.

Municipal utilities are governed by the city council or appointed utility commission. Municipals are non-profit. Capital is raised through operating revenues or sale of tax-exempt bonds. There are 125 municipal electric utilities in the state, and they serve approximately 357,000 customers. Regulation is largely through the local council or commission. Various safety and service issues are regulated by the state PUC or federal government. Municipals also occasionally address wholesale power and transmission transactions at the Federal Energy Regulatory Commission.

Cooperatives are governed by an elected board of directors. Those cooperative customers whose name appears on a bill are eligible to vote for these directors. Cooperatives are non-profit entities but make a 'margin' on sales. Cooperatives often access funds through the federal Rural Utilities Service, or the National Rural Utilities Cooperative Finance Corporation (CFC), a privately owned, non-governmental organization. Traditionally, cooperative boards set their own rates. Cooperatives serve approximately 741,000 customers.

Investor-owned utilities, also known as IOUs, are governed by a board of directors elected by stockholders. IOUs are a state-regulated monopoly. They exist to make a profit for their stockholders while serving the public. Capital is raised through stock sales, taxable bonds and through operating revenues. Five IOUs operate in Minnesota. They serve more than 1.44 million customers. IOUs are regulated by the Minnesota Public Utilities Commission (PUC).

Customer Mix

Municipal electric utilities serve approximately 308,000 residential customers, 46,000 commercial customers, and 3,000 industrial customers. Total population of municipal electric utility cities is approximately 643,000.

Cooperatives serve approximately 686,000 residential customers, 51,000 commercial customers and 4,200 industrial customers.

Investor-owned utilities comprise the largest segment of the industry in Minnesota. They serve approximately 1.3 million residential customers, 169,000 commercial customers, and 1,500 industrial customers.

Big and Small (*but mostly small*)

There are 125 municipal electric and 31 municipal gas utilities in Minnesota (some cities with municipal electric utilities also operate municipal gas utilities; other cities operate a gas utility but not an electric utility). These utilities are located throughout the state. See the state map for their locations.

By far the largest municipal electric utility is Rochester, which serves a city of over 100,000 people. The next largest municipal, Moorhead, is much smaller, with a 35,900 population. Anoka, Austin, Moorhead, Owatonna, Rochester and Shakopee are the only utilities with more than 10,000 customers.

Of Minnesota's municipal utilities. 82% of have fewer than 5,000 customers; about

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Breaking News

7 Jan (news/breaking-news/utility-deposit-interest-rate-announced)

7 Jan (news/breaking-news/vendor-opportunities-announced-for-lineworkers-rodeo)

7 Dec (news/breaking-news/registration-open-for-lineworkers-rodeo)

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38% have fewer than 1,000 customers, and about 20% have fewer than 500 customers.



(<http://www.mmua.org/userfiles/ckfiles/images/Madelia main street web.jpg>)

The average municipal electric utility operates in a city of 5,142 people and has 2,856 customers. The median municipal electric utility operates in a city of approximately 2,500 people and has approximately 1,800 customers. The smallest municipal electric is tiny Whalan, with a population of 63 (2010 census).

The largest municipal gas utility is Duluth, which serves in a city of 85,000. The next largest municipal gas utility is Austin, which serves in a city of 23,700. Due to these larger cities, the city population for an average gas utility is 7,040, but the median municipal gas utility operates in a city of only 1,200.

While no new municipal electric utility has formed since 1965, a number of municipal gas utilities have formed in recent decades. The most recent municipal gas utilities formed are Brownton (2013) and Battle Lake (approved by voters in 2012 and bonds sold and construction started in 2014).

Benefits of 'Public Power'

Municipal utilities, also known as 'public power,' are an important, contemporary American institution. From small towns to big cities, wherever public power exists, it is an expression of the American ideal of local people working together to meet local needs. It is an expression of the local control that is at the heart of our federalism system.

Public power is also a strong competitive force that provides a "yardstick" for consumers and regulators to measure the performance and rates of private power companies. This continuous competition helps all electric consumers, not just those served by public power.

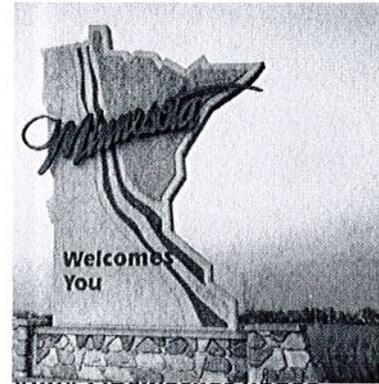
However, a public power utility has many distinct characteristics that benefit the consumers of the individual community it serves.

Serving Local Needs

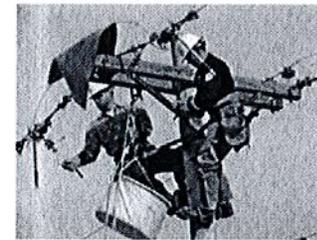
Municipal utilities offer energy services tailored to their local needs. These services range from construction and maintenance of municipal water pumping, street lighting and heating assistance programs to a wide range of energy efficiency and conservation projects, such as: lighting retrofits and rebates, residential compact fluorescent lighting programs, loans, air conditioning tune-ups, load control, tree planting, audits, public education, distribution and/or installation of water heater blankets, infra-red camera surveys and power factor improvement activities, to name a few. Minnesota municipal utilities also operate the largest residential co-generation heating system in the world, the first hot water district heating system in the U.S., and also fostered the first commercial wind electric generating plant in Minnesota.

Regulation

View All News
(<http://www.mmua.org/news/breaking-news>)



APPA Lineworker Rodeo



(<https://www.youtube.com/watch?v=pDWi9hN4AC0>)MMUA and Minnesota municipal electric utilities will host the 2016 American Public Power Association Lineworkers Rodeo. For additional information, see the APPA Rodeo (<http://www.publicpower.org/Events/Landing.c?ItemNumber=29879&navItemNumber=38291>); homepage.

The Power of Community



(<https://www.youtube.com/watch?v=RiGaj4KFviY&feature=youtu.be>)

Video highlights the benefits of Public Power in Minnesota

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Municipal utilities are governed either by a local utility commission or by a city council. Governance in the 125 municipal electric utilities is nearly evenly split between these two methods. Where municipal utilities are governed by a local utilities commission, commissioners are generally appointed by the city council. In two cities - Blue Earth and Austin - commissioners are elected. Municipals are subject to all the state's laws regarding public bodies, including the Data Practices Act, Open Meeting Law, public bidding laws and the recently-enacted government ethics laws. No other utility invites as much public input or operates in such an open, democratic manner. Open, accessible governance is one reason municipals are also known as 'public power' utilities.

Low Costs

Municipal utilities typically have some of the lowest rates in the state. This is especially noteworthy, since Minnesota is generally considered a state with moderate electric rates. The U.S. average revenue per kilowatt hour for all sectors, by state, in 2007 was 9.13 cents. The Minnesota average was 7.83 and the municipal average was 7.79.

Reliable Service

When there is a problem, response time from utility personnel located in the city is quicker than calling a utility with personnel spread over a wide distance.

There have been many examples of municipal utilities shining through widespread disaster. The Halloween ice storms of 1991 highlighted the reliability of municipal systems. according to the Austin Daily Herald, "In Austin, the power outages lasted a few hours before restored. In the countryside and rural towns, it would be days or even weeks before full power was returned." A reprise of that storm in March of 1992 led to an outage of 14 hours for residents in parts of southwestern Minnesota. In Worthington, according to the Daily Globe, "The power was off for a total of two minutes."



The April 2013 ice storm in southwestern Minnesota left 70,000 electric customers without power. Media reports noted Worthington has the hardest hit in terms of tree damage. Precious little utility damage occurred in Worthington, however, since the system is entirely underground. Transmission lines to the city

were downed, so power from the municipal power plant was rotated throughout the city. Media reports noted the 'rolling blackouts' in the city, but failed to mention that customers were never without power for more than an hour at a time over a four day period. Across the street from the municipal territory, some customers were without power for a week or longer.

During that same ice storm, 15 minutes after transmission service was cut and the city of Adrian was plunged into darkness, power was restored from the municipal power plant. The city remained a beacon of light and warmth while most of the region shivered in the dark for days.

Contributions

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In addition to providing reliable, low-cost power, municipal electric utilities also return money to the city general fund. This helps a city keep down its property taxes. In many cities, municipal utilities contribute financially to local development efforts, provide free or discounted service to the city, and contribute time, equipment, and materials to city projects. Allowing a municipal electric utility to serve throughout the city keeps all citizens on an equal footing as far as taxes and electric rates, and thus helps prevent local political problems.

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62% of our municipal electric utilities have successfully operated for 100 years or more.



Minnesota Municipal Utilities Association

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Plymouth, MN 55447-5142
Phone 763.551.1230 | Toll Free 800.422.0119 (MN)
Fax 763.551.0459
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2016 Regular Membership Dues

ELECTRIC UTILITIES

MMUA dues for 2016 are based upon product sold during the calendar year 2013 according to the US Energy Information Administration. If the utility serves electric and water customers, dues are paid on the electric utility operation only.

ELECTRIC MEMBERSHIP DUES AS SHOWN ON THE ENCLOSED INVOICE ARE CALCULATED AS FOLLOWS:

- (1) If your city's population is 1,100 or less, your dues are calculated at the rate of \$0.9786 per city resident plus .013100% of electric revenue less revenue from sales to any customer that has been granted an exemption from the CIP program.
- (2) If your city's population is 1,101 to 5,500, your dues are calculated at the rate of \$.1450240 per megawatt-hour sold up to a maximum of \$12,733, plus .013100% of electric revenue less revenue from sales to any customer that has been granted an exemption from the CIP program.
- (3) If your city's population is more than 5,500 and your sales are 750,000 megawatt-hours or less, your dues are calculated at the rate of \$.1450240 per megawatt-hour up to a maximum of \$23,423, plus .013100% of electric revenue less revenue from sales to any customer that has been granted an exemption from the CIP program.
- (4) If your city's population is more than 5,500 and your sales are in excess of 750,000 megawatt-hours, your dues are calculated at the rate of \$.1450240 up to a maximum of \$47,969, plus .013100% of electric revenue less revenue from sales to any customer that has been granted an exemption from the CIP program.

Minnesota Municipal Utilities Association

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e-mail: lpederson@mmua.org

INVOICE

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DATE	INVOICE NO.
1/7/2016	46320

BILL TO
Gilbert Water & Light Broadway Street PO Box 368 Gilbert, MN 55741-0368

PURCHASE ORDER	TERMS	DUE DATE
	Net 30	2/6/2016

DESCRIPTION	QTY.	RATE	AMOUNT
2016 Electric Utility Member Dues January 1 - December 31, 2016 Based on 1,808 population, 11,036 mwhrs. sold and \$1,062,082 electric revenue in 2013. (See enclosed dues rate sheet to see how your dues were calculated.) Electric dues can be paid quarterly. To opt for this please pay 25% of this amount and you will be billed for remaining balance on a quarterly basis.	1	1,740.00	1,740.00

Subtotal	\$1,740.00
Sales Tax	\$0.00
Total Due	\$1,740.00
Payments/Credits	\$0.00
BALANCE DUE	\$1,740.00

For proper credit, please include invoice number with remittance.

Thank you!



City of Gilbert
Request for City Council Action

Date: January 21, 2016

Issue: Christopher Hood, an attorney with Flaherty & Hood P.A. is seeking support for a petition to the MPCA to amend the newly adopted riverine standards. If not amended this new standard could potentially impact the City of Gilbert's wastewater treatment facility.

Council Action:

City Council action is requested to approve Resolution 2016-02, Authorizing Flaherty & Hood, P.A. to file a petition on its behalf for amendment to Minnesota Rules 7050.0150, .0220, and .0222 to the Minnesota Pollution Control Agency and the Minnesota Office of Administrative Hearings pursuant to Minnesota Statutes, Section 14.091

MEMORANDUM

To: CGMC and MESERB Members

From: Christopher M. Hood, Shareholder Attorney; and
Robert T. Scott, Senior Attorney
Daniel M. Max, Associate Attorney

Date: January 15, 2016

Re: **Rulemaking Petition to MPCA**

The Coalition of Greater Minnesota Cities (CGMC) and Minnesota Environmental Science and Economic Review Board (MESERB) at their respective Fall membership meetings authorized filing a petition for rulemaking with the Minnesota Pollution Control Agency (MPCA) seeking to have the MPCA amend its newly adopted riverine standards based upon the post-rulemaking identification of new evidence, which demonstrates such rules have relied upon two factors (dissolved oxygen (DO) flux and the five-day biochemical oxygen demand (BOD₅) test) for purposes of identifying nutrient impairment not accepted by the scientific community or the U.S. EPA for use for such purposes. As a result, the current MPCA riverine standards rule is significantly flawed, and we desire at this time to present such information to the MPCA in the form of a petition for rule amendments so that the MPCA can take the appropriate steps necessary to correct the rule.

Background and Legal Basis for Petition for Rulemaking

Under section 303(c) of the Clean Water Act, state standards are required to be based on a “sound scientific rationale” and “sound scientific information” (40 C.F.R. 131.11(a) and (b)), and “appropriate technical and scientific data and analyses” (40 C.F.R. 131.5(a)(4)).

However, new evidence, which has come to light following the adoption of the riverine standards, clearly demonstrates that the current rules, in part, do not meet the above requirements. In Freedom of Information Act (FOIA) requests to the U.S. Environmental Protection Agency (EPA), EPA responded stating that it had no documents or records in its possession demonstrating either;

1. that dissolved oxygen (DO) flux, *per se*, should be considered indicative of use impairment in a river or stream, or
2. that using the five-day biochemical oxygen demand (BOD₅) test as a nutrient response criterion was scientifically defensible,

flawed and unreasonable. The present rulemaking petition is intended to correct the portion of the rules that are so flawed and unreasonable and leave rules in place that are scientifically sound and justified.

- **Rulemaking Petition Process**

Upon receiving a rulemaking petition from one or more cities or sanitary districts, the MPCA is required to either (1) agree to the requested amendment of the riverine standards rule as contained in the petition, or (2) turn the petition over to the Office of Administrative Hearings (OAH) for review. Minn. Stat. § 14.091, subd. (c). OAH would then be tasked with determining if the petition satisfied the requirements outlined above, and if so, would hold a rulemaking hearing and issue an order on the continued need for and reasonableness of the riverine standards rule. *Id.*, subd. (d). If OAH were to conclude that the riverine standards were no longer reasonable, the rules would become unenforceable 90 days thereafter, pending further action by the MPCA to amend the rules impacted by OAH’s order. *Id.*, subd. (e).

If OAH were to find that the riverine standards rule continues to be needed and reasonable, the petitioning cities and/or sanitary districts would likely be able to appeal OAH’s decision to the Minnesota Court of Appeals as a matter of right under a writ of certiorari. Minn. Stat. § 606.06; *see also Meath v. Harmful Substance Compensation Bd.*, 550 N.W.2d 275 (Minn. 1996) (quasi-judicial decisions of administrative agencies, “marked by an investigation into a disputed claim and a decision binding on the parties,” are appealable under a writ of certiorari).

A successful petition under Minn. Stat. § 14.091, whether through the OAH rulemaking hearing or subsequent appeal, would result in the challenged riverine standards rules being unenforceable, and would again likely result in the MPCA seeking to amend its standards consistent with the positions contained in the rulemaking petition.

Please do not hesitate to contact us at 651-225-8840, tpflaherty@flaherty-hood.com, or dmmarx@flaherty-hood.com to discuss further.

CMH/RTS

14.091 PETITION; UNIT OF LOCAL GOVERNMENT.

(a) The elected governing body of a statutory or home rule city, a county, or a sanitary district may petition for amendment or repeal of a rule or a specified portion of a rule. The petition must be adopted by resolution of the elected governing body and must be submitted in writing to the agency and to the Office of Administrative Hearings, must specify what amendment or repeal is requested, and must demonstrate that one of the following has become available since the adoption of the rule in question:

- (1) significant new evidence relating to the need for or reasonableness of the rule; or
- (2) less costly or intrusive methods of achieving the purpose of the rule.

(b) Within 30 days of receiving a petition, an agency shall reply to the petitioner in writing stating either that the agency, within 90 days of the date of the reply, will give notice under section 14.389 of intent to adopt the amendment or repeal requested by the petitioner or that the agency does not intend to amend or repeal the rule and has requested the Office of Administrative Hearings to review the petition. If the agency intends to amend or repeal the rule in the manner requested by the petitioner, the agency must use the process under section 14.389 to amend or repeal the rule. Section 14.389, subdivision 5, applies.

(c) Upon receipt of an agency request under paragraph (b), the chief administrative law judge shall assign an administrative law judge, who was not involved when the rule or portion of a rule that is the subject of the petition was adopted or amended, to review the petition to determine whether the petitioner has complied with the requirements of paragraph (a). The petitioner, the agency, or any interested person, at the option of any of them, may submit written material for the assigned administrative law judge's consideration within ten days of the chief administrative law judge's receipt of the agency request. The administrative law judge shall dismiss the petition if the judge determines that:

- (1) the petitioner has not complied with the requirements of paragraph (a);
- (2) the rule is required to comply with a court order; or
- (3) the rule is required by federal law or is required to maintain authority to administer a federal program.

(d) If the administrative law judge assigned by the chief administrative law judge determines that the petitioner has complied with the requirements of paragraph (a), the administrative law judge shall conduct a hearing and issue a decision on the petition within 120 days of its receipt by the Office of Administrative Hearings. The agency shall give notice of the hearing in the same manner required for notice of a proposed rule hearing under section 14.14, subdivision 1a. At the public hearing, the agency shall make an affirmative presentation of facts establishing the need for and reasonableness of the rule or portion of the rule in question. If the administrative law judge determines that the agency has not established the continued need for and reasonableness of the rule or portion of the rule, the rule or portion of the rule does not have the force of law, effective 90 days after the administrative law judge's decision, unless the agency has before then published notice in the State Register of intent to amend or repeal the rule in accordance with paragraph (e).

(e) The agency may amend or repeal the rule in the manner requested by the petitioner, or in another manner that the administrative law judge has determined is needed and reasonable. Amendments under this paragraph may be adopted under the expedited process in section 14.389. Section 14.389, subdivision 5, applies to this adoption. If the agency uses the expedited process and no public hearing is required, the agency must complete the amendment or repeal of the rule within 90 days of the administrative law judge's decision under paragraph (d). If a public hearing is required, the agency must complete the amendment or repeal of the rule within 180 days of the administrative law judge's decision under paragraph (d). A rule

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or portion of a rule that is not amended or repealed in the time prescribed by this paragraph does not have the force of law upon expiration of the deadline. A rule that is amended within the time prescribed in this paragraph has the force of law, as amended.

(f) The chief administrative law judge shall report the decision under paragraph (d) within 30 days to the chairs of the house of representatives and senate committees having jurisdiction over governmental operations and the chairs of the house of representatives and senate committees having jurisdiction over the agency whose rule or portion of a rule was the subject of the petition.

(g) The chief administrative law judge shall assess a petitioner half the cost of processing a petition and conducting a public hearing under paragraph (d).

History: 1999 c 193 s 1; 2000 c 335 s 1; 1Sp2003 c 1 art 2 s 29



City of Gilbert

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CITY OF GILBERT, MINNESOTA CITY COUNCIL RESOLUTION 2016-02

A RESOLUTION BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GILBERT, MINNESOTA AUTHORIZING FLAHERTY & HOOD, P.A. TO FILE A PETITION ON ITS BEHALF FOR AMENDMENT TO MINNESOTA RULES 7050.0150, .0220, AND .0222 TO THE MINNESOTA POLLUTION CONTROL AGENCY AND THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS PURSUANT TO MINNESOTA STATUTES, SECTION 14.091

WHEREAS, the Minnesota Pollution Control Agency (herein “MPCA” or the “Agency”) adopted certain new and revised water quality standards and criteria for rivers and streams under Minn. R. 7050.0150, .0220, and .0222 (herein the “riverine standards”) on June 24, 2014; and

WHEREAS, the riverine standards rely in part on scientifically unsupported applications of (1) a test used to determine biochemical oxygen demand (BOD) in water bodies over a five day period (BOD5), and (2) a measurement of dissolved oxygen variation (DO flux) in water bodies, to determine whether a measured body is impaired because of nutrient growth, and thus whether a violation of the riverine standards has occurred; and

WHEREAS, the City owns and operates a wastewater treatment facility that is regulated by the MPCA and subject to National Pollution Discharge Elimination System Permit No. MN0020125, which expires on February 28, 2020, the terms and conditions of which will likely be influenced by MPCA’s application of the riverine standards; and

WHEREAS, significant new evidence has come to light since the MPCA formally adopted the riverine standards on June 24, 2014 (as listed in Paragraph 2 below) which demonstrates that neither BOD5 nor DO flux are reliable indicators of nutrient impairment; and

WHEREAS, Minn. Stat. § 14.091, subd. (a) authorizes the elected governing body of a city, county or sanitary district to petition for amendment or repeal of a rule or a specified portion of a rule by submitting a written petition to the agency and to the Office of Administrative Hearings (OAH) when “significant new evidence relating to the need for or reasonableness of the rule” has become available since the adoption of the rule in question; and

WHEREAS, on the basis of the significant new evidence listed in Paragraph 2 below, the City wishes to petition the MPCA and OAH for amendment of the riverine standards to correct their unsupported applications of BOD5 and DO flux to determine whether a measured body is impaired because of nutrient growth, and thus whether a violation of the riverine standards has occurred.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL THAT:

1. Pursuant to Minn. Stat. § 14.091, the City Council hereby approves the filing of a petition on its behalf, in form and substance consistent with the attached Appendix A (the "Petition"), requesting amendments to Minn. R. 7050.0150, .0220, and .0222 on the basis of significant new evidence relating to the reasonableness of these rules discovered after the MPCA adopted amendments thereto to impose water quality standards and criteria for rivers and streams on June 24, 2014.
2. The significant new evidence upon which the Petition is based includes the following:
 - a. A Freedom of Information Act request from Hall & Associates to EPA for public records regarding the use of the BOD5 test as a valid nutrient impairment indicator dated November 6, 2014 and EPA's response thereto dated December 5, 2014, in which EPA conceded that it possesses no documentation supporting the use of the BOD5 test as a proper nutrient response criterion. (Exhibit 7 to the Petition.)
 - b. A memorandum published on November 19, 2014 by Andrew Eaton, of the Joint Editorial Board of the *Standard Methods for the Examination of Water and Wastewater*, the expert that EPA relies upon for proper test development and usage (see 40 C.F.R. § 136.3) and the entity that developed the BOD5 test, clarifying that BOD5 should *not* be used as a parameter to evaluate the presence of a nutrient impairment. (Exhibit 8 to the Petition.)
 - c. A Freedom of Information Act request from Hall & Associates to EPA for public records indicating that DO flux, by itself, causes aquatic life impairment, dated July 31, 2014, EPA's response thereto dated September 12, 2014, and follow up correspondence, in which EPA affirmed that it possesses no documentation supporting the use of DO flux as an aquatic life impairment parameter. (Exhibit 9 to the Petition.)
 - d. Excerpts from the Minnesota Environmental Science and Economic Review Board's Motion to Supplement the Administrative Record, December 5, 2014, in Minnesota Court of Appeals Case No. A14-1694 (870 N.W.2d 97), and MPCA's Response to Petition to Supplement the Record, December 11, 2014, in which MPCA admitted that it possesses no information indicating that it ever requested any of the expert peer reviewers tasked with reviewing its riverine standards to specifically address the BOD5 and DO flux issues. (Exhibit 10 to the Petition.)

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3. The City retains and authorizes the law firm of Flaherty & Hood, P.A. to submit the Petition on the City's behalf and thereafter to represent the City in all subsequent proceedings administered by the MPCA and/or OAH concerning the Petition.

PASSED by the City Council of the City of _____ on this ___ day of _____, 2016.

ATTEST

City Clerk

Mayor

**PETITION FOR RULE AMENDMENT TO THE
MINNESOTA POLLUTION CONTROL AGENCY**

Pursuant to Minnesota Statutes § 14.091

Petitioners: [City of _____]

 [City of _____]

 [City of _____]

 [City of _____]

 [_____ Sanitary District]

 [_____ Sanitary District]

 [_____ Sanitary District]

Addresses: **Please see list on Appendix A.**

Petitioners request that the agency named above:

- Adopt a new rule governing _____
- Amend Minnesota Rules, part(s) Minn. R. 7050.0150, .0220, and .0222
- Repeal Minnesota Rules, part(s) _____

1. Introduction

The elected governing body of a city, county or sanitary district has a statutory right to petition for amendment or repeal of a rule or a specified portion of a rule by submitting a written petition to the agency and to the Office of Administrative Hearings (OAH) when "significant new evidence relating to the need for or reasonableness of the rule" has become available since the adoption of the rule in question. Minn. Stat. § 14.091, subd. (a).

The Minnesota Pollution Control Agency (herein "MPCA" or the "Agency") adopted certain new and revised water quality standards and criteria for rivers and streams under Minn.

R. 7050.0150, .0220, and .0222 (herein the “riverine standards”) on June 24, 2014.¹ The riverine standards rely in part on scientifically unsupported applications of (1) a test used to determine biochemical oxygen demand (BOD) in water bodies over a five day period (BOD5), and (2) a measurement of dissolved oxygen variation (DO flux) in water bodies, to determine whether a measured body is impaired because of nutrient growth, and thus whether a violation of the riverine standards has occurred.

Significant new evidence has come to light since the MPCA formally adopted the riverine standards on June 24, 2014 which demonstrates that neither BOD5 nor DO flux are reliable indicators of nutrient impairment. First, a memorandum published on November 19, 2014 by the *Standard Methods* board of editors, the very experts responsible for the development and use of the BOD5 test incorporated by MPCA into the riverine standards, expressly confirmed that it is improper to use BOD5 as an impairment response criterion for nutrients (as MPCA has done in the riverine standards).

Second, the United States Environmental Protection Agency (EPA) confirmed in its responses to several Freedom of Information Act (FOIA) requests between September 12, 2014 and December 5, 2014, that, among other things, it did not have any records concerning the use of BOD5 as a nutrient response criterion or which supported using DO flux as a response variable for identification of nutrient impairment (in contradiction of MPCA’s statements during rulemaking that EPA scientists reviewed and supported MPCA’s use of BOD5 and DO flux as nutrient impairment indicators). Relatedly, MPCA has now admitted in court filings that it possesses no information indicating that it ever requested any of the peer reviewers tasked with reviewing its riverine standards to specifically address the BOD5 and DO flux issues (again in contradiction of MPCA’s statements during rulemaking).

This significant new evidence undermines the scientific rationale for and reasonableness of the riverine standards’ use of BOD5 and DO flux as indicators of nutrient impairments, and Petitioners accordingly now petition under Minn. Stat. § 14.091 for the amendment of the riverine standards to remove the BOD5 and DO flux response variables, as shown *supra* in Section 4.

2. Background: Regulatory Framework

The Clean Water Act Section 303(c) requires states to adopt water quality standards to protect aquatic life and public health and, as explained in EPA’s implementing rules, such criteria are set at the level “necessary to protect the adopted uses.” 33 U.S.C. §1313(c); 40

¹ The rule amendments also affected Minn. R. 7050.0205, .0467 (which was repealed), and .0468, but such sections are not at issue in this petition.

C.F.R. 131.2.² In Minnesota, the MPCA is entrusted with the authority “to establish and alter such *reasonable* pollution standards for any waters of the state in relation to the public use to which they are or may be put as it shall deem necessary for the purposes of this chapter” Minn. Stat. § 115.03, subd. 1(c) (emphasis added). Federal law also requires that the adopted numeric criteria be based on “sound scientific information”. 40 CFR 131.5(a)(2).

Water quality standards (WQS), including the riverine standards, are a performance-based regulatory system in which the WQS identify, using the best-available science, the conditions that must exist in Minnesota’s water bodies to fully support each waters' designated uses. Attaining the designated use is the objective of the WQS. Under Minn. Stat. § 14.14, subd. 2, and Minn. R. 1400.2100, “the agency must establish the need for and reasonableness of a proposed rule by an affirmative presentation of facts.”

All WQS must be based on causation; *i.e.*, exceedance of a given threshold of a given pollutant is deemed to impair one or more designated uses for a given body of water.³ This assessment requires two basic demonstrations: (1) identification of an impairment threshold; and (2) a demonstration of how the pollutant is causing the adverse effect on aquatic life and/or recreational uses (often with laboratory studies). *See* Minn. R. 7050.0150, subp. 1; *and* Minn. R. 1400.2070, subp. 1.

3. Detailed Explanation of Need for Rule Amendment

The stated purpose of the riverine standards is to prevent excessive plant growth in rivers and streams due to elevated nutrient levels. Minn. R. 7050.0222, subs. 2b(D), 3b(D), 4b(D). Where such plant growth is natural, not controlled by nutrient levels or not excessive, nutrient

² The CWA calls “standards” the combination of designated beneficial uses, and the criteria necessary to achieve those uses. Minnesota law tends to refer to the latter as simply “standards,” and so for purposes of this petition the term “standards” shall encompass what are called “criteria” in the federal Clean Water Act. *See discussion at* R. 00113-15 (SONAR Book I); *see also* 40 C.F.R. 131.3(i), 40 C.F.R. 131.11(a).

³ *See* Minn. R. 7050.0150, subp. 1: “The intent of the state is to protect and maintain surface waters in a condition which allows for the maintenance of all existing beneficial uses. The condition of a surface water body is determined by its physical, chemical, and biological qualities. The agency shall determine an exceedance of water quality standards or an impaired condition **based on pollution of the waters of the state from point and nonpoint sources that has resulted in degradation of the physical, chemical, or biological qualities of the water body to the extent that attainable or previously existing beneficial uses are actually or potentially lost.**” (emphasis supplied)

levels do not require regulation. See Minn. R. 7050.0150, subps. 5 and 5a; see also Minn. R. 7050.0170.

A river or stream segment is considered impaired for nutrients under the riverine standards if (1) the total phosphorous (TP) value is exceeded, and (2) any one or more of four identified “response variables” (i.e. sestonic chlorophyll a, DO flux, BOD5), which the riverine standards use to gauge when the aquatic environment is directly responding to phosphorus inputs, is also exceeded. See Minn. R. 7050.0150, subp. 5b.

The riverine standards prescribe numeric values for each of these response variables, according to any one of three “river nutrient regions” (herein “RNRs”), with separate values prescribed for some mainstem navigable pools. Minn. R. 7050.0222, subps. 2, 2b, 3, 3b, 4, and 4b. The regulatory effect of declaring a waterbody nutrient impaired is significant. First, a Total Maximum Daily Load (“TMDL”) must usually be prepared for all waterbodies that are nutrient impaired as a means to determine and allocate the total amount of nutrients a waterbody can retain without violating the water quality standard. See 33 U.S.C. § 1313(d); 40 C.F.R. § 130.2(h)-(i); 40 C.F.R. § 130.7(c). Second, dischargers to impaired waterbodies - whether a TMDL has been issued or not - customarily receive more stringent water quality-based effluent limitations under 40 C.F.R. § 122.44(d). As a means to comply with nutrient TMDLs and/or the more stringent permit limitations, permittees on waterbodies designated as nutrient impaired will have to expend resources to reduce nutrient discharges, creating additional solid waste for disposal, consuming electricity and chemical usage. Such technology comes at cost to the municipal permittees, which can only be funded through municipal bonds and tax hikes to the constituents.

The MPCA’s use of BOD5 and DO flux as nutrient impairment criteria in the riverine standards was scientifically problematic, and the source of challenges by the regulated community, in particular by the Minnesota Science and Economic Review Board (MESERB), during the MPCA’s public rulemaking process and in a declaratory judgment action following the MPCA’s formal adoption of the riverine standards. See *MESERB et al. v. Minnesota Pollution Control Agency*, 870 N.W.2d 97 (Minn. Ct. App. 2015). The Court of Appeals declared the riverine standards to be valid, but, at MPCA’s request, expressly did not consider the new evidence upon which this petition is based. See Ex. 1, Court of Appeals’ Order denying motion to supplement administrative record.

a. BOD5 Test Issues

The BOD5 test is designed to measure oxygen demand from organic substances. Minn. R. 7050.0150, subp. 4. Nutrients are added to a water sample and the test is run for five days “in the dark” which, in the presence of live algae, causes an oxygen demand that does not exist in the

real world. As noted by Dr. Steven Chapra, one of the foremost authorities on nutrient impairment evaluation, the BOD5 test measures the effects of numerous non-nutrient parameters (organic substances, nitrogenous material) and is artificially inflated by effects from live algae placed in the dark for five days. Therefore, utilizing this test with ambient samples containing live algae would very likely produce a BOD reading that does not actually exist and is simply an artifact of the test method. *See* Ex. 2, Chapra Analysis of BOD5 (“It is my assessment that the creation of a BOD₅ criteria as a nutrient impairment indicator is fundamentally flawed and not consistent with accepted scientific practices for assessing nutrient impacts in streams or any other natural waters.”)

Consequently, no federal nutrient criteria development guidance document has ever recommended regulating BOD as a nutrient impairment indicator. The inclusion of the BOD5 test as a nutrient impairment response variable in the riverine standards will inevitably lead to the classifications of rivers and streams as impaired even when there is, in fact, no impairment related to nutrients.

b. DO flux issues

Regarding the DO flux variable, MESERB noted that DO flux, by itself, is not an appropriate response variable for prevention or identification of nutrient impairment either. *See* Ex. 3, MESERB comments on DO flux. Use of DO flux as a nutrient response variable to identify aquatic life impairment, as opposed to minimum DO, has not been accepted by the scientific community and has not been endorsed in any EPA guidance documents dealing with the development of nutrient criteria. As with the BOD test, this response criteria is affected by other, non-nutrient, natural factors (*e.g.*, temperature, natural plant growth, stream depth, existence of wetlands, and velocity) and one cannot assess the ecological significance of the measured DO flux without conducting further detailed assessments. MPCA’s use of this metric as an indicator of nutrient-induced use impairment was also unprecedented. Expert testimony from Thomas Gallagher, unrefuted by MPCA, confirmed that the DO flux level selected by MPCA is exceeded naturally in many waters. MPCA acknowledged that it had not evaluated the range of naturally occurring DO flux found in waters with healthy fisheries. *See* Ex. 4, Thomas Gallagher analysis and MPCA acknowledgement it did not evaluate the range of naturally occurring DO flux found in waters with healthy fisheries.

c. MPCA’s rulemaking defense of BOD5 and DO flux criteria

During rulemaking on the riverine standards, the MPCA refused to alter its approach and modify the rule to account for the shortcomings in using BOD5 and DO flux as nutrient response

variables, and addressed the regulated community's objections to using these criteria not with specific scientific evidence supporting its position, but with general claims that these objections had been fully addressed by peer reviewers and the EPA, as exemplified by the following testimony:

... EPA had multiple reviewers of all of the materials submitted in the Statement of Need and Reasonableness, the technical support documents and the rule revisions. Each of those reviewers, I assume, reviewed the scientific analysis and, in whole, the conclusion was that EPA supported the scientific analysis. See Ex. 5, MPCA statements referencing EPA review and approval of nutrient response variables. (emphasis supplied)

I want to stress that we did not reach this point alone... We've been working very closely with EPA Region 5 scientists, nutrient experts, since the mid '90s, early on, in the development of the technical support documents. We shared a draft with EPA Region 5 and EPA region -- or the headquarters of EPA, who then contracted with three independent scientific peer reviewers. Their comments and the discussion that ensued led to additional analysis, improvements, modifications, and, really, a stronger scientific package. *Id.* (emphasis supplied).

Following a public hearing on the rule amendments before an Administrative Law Judge (ALJ) on January 8, 2014, the ALJ issued his report on May 2, 2014, in which he recommended that the rule amendments be adopted. See Report of the Administrative Law Judge, In re the Proposed Rules of the Pollution Control Agency for Rule Amendments Governing Water Quality Standards - River Eutrophication, Total Suspended Solids and Minor Corrections and Clarifications to Minnesota Rules 7050 and 7053.⁴ The ALJ cited EPA's "preliminary evaluation" that the riverine standards "appear to be scientifically defensible" in his findings supporting his recommendation (although EPA did not specifically reference MPCA's use of BOD5 and DO flux). *Id.*, ¶¶ 101—102. MPCA thereafter formally adopted the riverine standards on June 24, 2014 and published notice of adoption of the Standards in the *Minnesota State Register* on August 4, 2014. See Ex. 6, Published notice of adoption of riverine standards.

⁴ Available online at:

<http://mn.gov/oah/images/2200-30791%20Eutrophician%20Rule%20Report.pdf>

d. New evidence necessitating rule amendment

Following the MPCA's adoption of the riverine standards, counsel for MESERB submitted a FOIA request to EPA regarding the use of the BOD5 test as a valid nutrient impairment indicator. *See Ex. 7, BOD5 FOIA Request/Response.* In its response to the FOIA request, EPA conceded that it possesses no documentation supporting the use of the BOD5 test as a proper nutrient response criterion, thus negating MPCA's claims during rulemaking that EPA had reviewed and agreed with its use of the BOD5 test in the riverine standards. *Id.*

Further, *The Standard Methods*, the expert that EPA relies upon for proper test development and usage (*see* 40 C.F.R. § 136.3) and the entity that developed the BOD5 test in the first place, published a memorandum on November 19, 2014 for the purpose of clarifying that BOD5 should *not* be used as a parameter to evaluate the presence of a nutrient impairment. *See Ex. 8, Standard Methods Memo on BOD5 test.* In this publication the *Standard Methods* board of directors specifically instructed that “[t]he BOD test (Standard Method S21 0 B) *is not considered to provide an appropriate measure of nutrient pollution nor is it a valid predictor of nutrient impacts.*” (emphasis supplied.)⁵

This new evidence confirms that the BOD5 test is simply being misapplied in the riverine standards as it plainly was not designed to be, and is incapable of reliably predicting nutrient impairment in the environment. Therefore, use of this test to identify nutrient impaired waters is clearly not scientifically defensible, in violation of 40 CFR 131.5 *Humana of Aurora v. Heckler*, 7S3 F.2d 1S79, 1583 (10th Cir. 1985) (“When an agency [decision is] based on a study [that is] not designed for the purpose and which is limited and criticized by its authors on points essential to the use sought to be made of it, the administrative action is arbitrary and capricious and a clear error in judgment.”).

Moreover, courts in Minnesota prevent the admission into evidence of the results of a scientific test that was not correctly applied or not intended to demonstrate a scientific/factual issue. *See Goeb v. Tharaldson*, 615 N.W.2d 800, 810 (Minn. 2000) (in order for scientific evidence to be admissible “[t]he scientific technique must be generally accepted within the relevant scientific community, and the particular evidence introduced must have a scientifically reliable foundation”) (citing *Frye v. United States*, 293 F. 1013 (D.C.Cir.1923), and *State v. Mack*, 292 N.W.2d 764, 768-69, 772 (Minn.1980)). *A fortiori*, the riverine standards must not be allowed to misapply the BOD5 test to predict nutrient impairments (and thus violations of the

⁵ Eaton, A. November 19, 2014. *Memorandum: RE: BOD as an Indicator of Nutrient Pollution.* Standard Methods for the Examination of Water and Wastewater Joint Editorial Board. Available at https://www.standardmethods.org/PDF/BOD_Nutrient_Pollution_Memo_2014.pdf

riverine standards) when such test was not designed to and is not capable of accurately predicting nutrient impairment. *Id.*

With specific regard to DO flux, a separate EPA FOIA response affirmed that the Agency has no documentation supporting use of DO flux as an aquatic life impairment parameter. *See* Ex. 9, DO flux FOIA Request/Response with follow-up correspondence. In this FOIA response, EPA confirmed that it “currently has no official records dealing with DO variation as a water quality impairment in and of itself (that *is*, when DO levels never drop below the daily minimum OR the 7-day mean minimum).” This new evidence from the EPA again contradicts MPCA’s representations during the rulemaking that EPA had reviewed and agreed with MPCA’s use of DO flux as an impairment criterion, and undermines the continued reasonableness of maintaining the DO flux variable in the riverine standards.

Finally, MPCA admitted in a filing to the Minnesota Court of Appeals in the *MESERB* case (870 N.W.2d 97) that it possesses no information indicating that it ever requested any of the expert peer reviewers tasked with reviewing its riverine standards to specifically address the BOD5 and DO flux issues. *See* Ex. 10, Excerpts from MESERB Motion to Supplement the Administrative Record, December 5, 2014, and MPCA Response to Petition to Supplement the Record, Minnesota Court of Appeals Case No. A14-1694, December 11, 2014 (“First, simply put, MPCA has no direct or indirect knowledge that such information (i.e. various records relating to the scope, content, and issues addressed by each of the six expert peer reviews) exists and does not possess, nor has ever possessed such additional information.”)

MPCA’s admission, post rulemaking, that it possesses no information indicating that the objections to using BOD5 or DO flux as nutrient response variables, which were repeatedly raised since 2010 by MESERB and its experts, were *ever* presented to *any* peer reviewer, undermines its assurances during rulemaking that these expert peer reviewers (from the EPA and otherwise) confirmed these objections to be unsupported. *See infra*, p. 6. In so doing MPCA “swept [an] issue under the rug” and “avoided stubborn questions” in the rulemaking. *See White v. Minnesota Dep’t of Natural Resources*, 567 N.W.2d 724, 735 (Minn. App. 1997).

In considering (and rejecting) MESERB’s and other regulated parties’ challenge to the riverine standards, the Minnesota Court of Appeals, at MPCA’s request, specifically refused to consider the *Standard Methods* memorandum rejecting the use of the BOD5 test as a nutrient impairment indicator and EPA’s FOIA responses confirming that it possesses no records supporting MPCA’s use of BOD5 and/or DO flux as nutrient response criteria. *See* Ex. 1, Minnesota Court of Appeals’ Order denying motion to supplement administrative record.

The maintenance of the BOD5 and DO flux nutrient response variables in the riverine standards will result in MPCA classifying Minnesota rivers and streams as nutrient impaired even though there is, in fact, no impairment related to nutrients.⁶ The new evidence now

⁶ Conversely, it also possible that the numeric criteria selected for DO flux and BOD5 will not be

available from *The Standard Methods* and the EPA confirms that the riverine standards, as currently constructed with the BOD5 and DO flux endpoints included, are likely to improperly indicate nutrient impairment even where plant growth is not causing an impairment of beneficial water uses. See Minn. R. 7050.0150, subp. 5b (high nutrients with *any* elevated response variables constitutes a violation of the riverine standards). An agency regulation that lacks documented, reasonable scientific support is unreasonable. Minn. R. 1400.2070, subp. 1; see *Manufactured Housing Inst. v. Pettersen*, 347 N.W.2d 238 (Minn. 1984), *Minn. Chamber of Commerce v. Minn. Pollution Control Agency*, 469 N.W.2d 100 (Minn. Ct. App. 1991); 40 C.F.R. 131.11(a) (criteria must have sound scientific rationale).

Especially in light of the significant fiscal impacts to the regulated community and the public of classifying a waterbody as nutrient impaired and the adverse ecological effects of increasing chemical and energy usage, criteria and response variables that are not based on a sound scientific rationale and will result in misclassifications of nutrient impairments simply must be corrected.⁷

4. Proposed Rule Amendment

In light of the new evidence described in Section 3 *infra* (the *Standard Methods* memorandum rejecting the use of the BOD5 test as a nutrient impairment indicator, EPA's FOIA responses confirming that it possesses no records supporting MPCA's use of BOD5 and/or DO flux as nutrient response criteria, and MPCA's admission that it possesses no information indicating that it ever requested any of its peer reviewers to specifically address the BOD5 and DO flux issues), Petitioners hereby petition for the following amendments to Minn. R. 7050.0150, .0220, and .0222 as follows:

Minn. R. 7050.0150

exceeded in situations where there is a real nutrient impairment.

⁷ Further, the riverine standards' misuse of the BOD5 test DO flux measurement is inconsistent the MPCA's statutory authority, which requires WQS to be structured in such a way as to demonstrate how the pollutant of concern is causing the adverse effect sought to be avoided: in other words, causation and not merely correlation. See Minn. Stat. § 115.03, subd. 1 (the MPCA's authority is to "establish ... such reasonable pollution standards for any waters of the state in relation to the public use to which they are or may be put as it shall deem necessary..."). See also Minn. R. 7050.0150, subp. 1 (the MPCA "shall determine an exceedance of water quality standards or an impaired condition based on pollution of the waters of the state from point and nonpoint sources that has resulted in the degradation of ... the water body *to the extent that attainable or previously existing beneficial uses are actually or potentially lost.*") (emphasis supplied).

Subp. 4. Definitions.

~~C. "BOD5" or "five day biochemical oxygen demand" means the amount of dissolved oxygen needed by aerobic biological organisms to break down organic material present in a given water sample at a certain temperature over a five day period.~~

~~E. "Diel flux" means the daily change in a constituent, such as dissolved oxygen or pH, when there is a distinct daily cycle in the measurement. Diel dissolved oxygen flux means the difference between the maximum daily dissolved oxygen concentration and the minimum daily dissolved oxygen concentration.~~

Subp. 5. Impairment of waters due to excess algae or plant growth.

~~D. representative summer average concentrations of five day biochemical oxygen demand measured in rivers and streams;~~

~~E. representative diel dissolved oxygen flux measurements in rivers and streams as averaged over a minimum of four consecutive days during the summer season;~~

Subp. 5b. Impaired condition; rivers and streams.

A. elevated levels of nutrients under subpart 5, item A, and at least one factor showing impaired conditions resulting from nutrient overenrichment under subpart 5, item B, ~~D, E,~~ F, or H; or

Minn. R. 7050.0220

Subp. 3a. Cold water sport fish, drinking water, and associated use classes.

A. (12) Eutrophication standards for rivers, streams, and navigational pools (phosphorus, total $\mu\text{g/L}$; chlorophyll-a (seston), $\mu\text{g/L}$; ~~five-day biochemical oxygen demand (BOD5), mg/L ; diel dissolved oxygen flux, mg/L~~ ; chlorophyll-a (periphyton), mg/m^2)

Subp. 4a. Cool and warm water sport fish, drinking water, and associated use classes.

A. (12) Eutrophication standards for rivers, streams, and navigational pools (phosphorus, total $\mu\text{g/L}$; chlorophyll-a (seston), $\mu\text{g/L}$; ~~five-day biochemical oxygen demand (BOD5), mg/L ; diel dissolved oxygen flux, mg/L~~ ; chlorophyll-a (periphyton), mg/m^2)

Subp. 5a. Cool and warm water sport fish and associated use classes.

A. (8) Eutrophication standards for rivers, streams, and navigational pools (phosphorus, total $\mu\text{g/L}$; chlorophyll-a (seston), $\mu\text{g/L}$; ~~five-day biochemical oxygen demand (BOD5), mg/L ; diel dissolved oxygen flux, mg/L~~ ; chlorophyll-a (periphyton), mg/m^2)

Minn. R. 7050.0222

Subp. 2. Class 2A waters; aquatic life and recreation.

Eutrophication standards for Class 2A rivers and streams.

North River Nutrient Region:

Phosphorus, total $\mu\text{g/L}$ less than or equal to 50

Chlorophyll-a (seston) $\mu\text{g/L}$ less than or equal to 7

~~Diel dissolved oxygen flux mg/L less than or equal to 3.0~~

~~Biochemical oxygen demand (BOD5) mg/L less than or equal to 1.5~~

Central River Nutrient Region:

Phosphorus, total $\mu\text{g/L}$ less than or equal to 100

Chlorophyll-a (seston) $\mu\text{g/L}$ less than or equal to 18

~~Diel dissolved oxygen flux mg/L less than or equal to 3.5~~

~~Biochemical oxygen demand (BOD5) mg/L less than or equal to 2.0~~

South River Nutrient Region:

Phosphorus, total $\mu\text{g/L}$ less than or equal to 150

Chlorophyll-a (seston) $\mu\text{g/L}$ less than or equal to 35

~~Diel dissolved oxygen flux mg/L less than or equal to 4.5~~

~~Biochemical oxygen demand (BOD5) mg/L less than or equal to 3.0~~

Subp. 2b. Narrative eutrophication standards for rivers and streams.

A. Eutrophication standards for rivers and streams are compared to summer-average data or as specified in subpart 2. Exceedance of the total phosphorus levels and chlorophyll-a (seston), ~~five-day biochemical oxygen demand (BOD5), diel dissolved oxygen flux,~~ or pH levels is required to indicate a polluted condition.

B. Rivers and streams that exceed the phosphorus levels but do not exceed the chlorophyll-a (seston), ~~five-day biochemical oxygen demand (BOD5), diel dissolved~~

~~oxygen flux~~, or pH levels meet the eutrophication standard.

Subp. 3. **Class 2Bd waters.**

North River Nutrient Region

Phosphorus, total $\mu\text{g/L}$ less than or equal to 50
 Chlorophyll-a (seston) $\mu\text{g/L}$ less than or equal to 7
~~Diel dissolved oxygen flux mg/L less than or equal to 3.0~~
 Biochemical oxygen demand (BOD5) mg/L less than or equal to 1.5

Central River Nutrient Region

Phosphorus, total $\mu\text{g/L}$ less than or equal to 100
 Chlorophyll-a (seston) $\mu\text{g/L}$ less than or equal to 18
~~Diel dissolved oxygen flux mg/L less than or equal to 3.5~~
~~Biochemical oxygen demand (BOD5) mg/L less than or equal to 2.0~~

South River Nutrient Region

Phosphorus, total $\mu\text{g/L}$ less than or equal to 150
 Chlorophyll-a (seston) $\mu\text{g/L}$ less than or equal to 35
~~Diel dissolved oxygen flux mg/L less than or equal to 4.5~~
~~Biochemical oxygen demand (BOD5) mg/L less than or equal to 3.0~~

Subp. 3b. **Narrative eutrophication standards for rivers, streams, and navigational pools.**

A. Eutrophication standards for rivers, streams, and navigational pools are compared to summer-average data or as specified in subpart 3. Exceedance of the total phosphorus levels and chlorophyll-a (seston), ~~five day biochemical oxygen demand (BOD5)~~, ~~diel dissolved oxygen flux~~, or pH levels is required to indicate a polluted

condition.

B. Rivers, streams, and navigational pools that exceed the phosphorus levels but do not exceed the chlorophyll-a (seston), ~~five-day biochemical oxygen demand (BOD5), diel dissolved oxygen flux,~~ or pH levels meet the eutrophication standard.

Subp. 4. Class 2B waters.

Eutrophication standards for Class 2B rivers and streams.

North River Nutrient Region

- Phosphorus, total µg/L less than or equal to 50
- Chlorophyll-a (seston) µg/L less than or equal to 7
- ~~Diel dissolved oxygen flux mg/L less than or equal to 3.0~~
- ~~Biochemical oxygen demand (BOD5) mg/L less than or equal to 1.5~~

Central River Nutrient Region

- Phosphorus, total µg/L less than or equal to 100
- Chlorophyll-a (seston) µg/L less than or equal to 18
- ~~Diel dissolved oxygen flux mg/L less than or equal to 3.5~~
- ~~Biochemical oxygen demand (BOD5) mg/L less than or equal to 2.0~~

South River Nutrient Region

- Phosphorus, total µg/L less than or equal to 150
- Chlorophyll-a (seston) µg/L less than or equal to 40
- ~~Diel dissolved oxygen flux mg/L less than or equal to 5.0~~
- ~~Biochemical oxygen demand (BOD5) mg/L less than or equal to 3.5~~

Crow Wing River from confluence of Long Prairie River to the mouth of the Crow Wing River at the Mississippi River

Phosphorus, total $\mu\text{g/L}$ less than or equal to 75

Chlorophyll-a (seston) $\mu\text{g/L}$ less than or equal to 13

~~Diel dissolved oxygen flux mg/L less than or equal to 3.5~~

~~Biochemical oxygen demand (BOD5) mg/L less than or equal to 1.7~~

Crow River from the confluence of the North Fork of the Crow River and South Fork of the Crow River to the mouth of the Crow River at the Mississippi River

Phosphorus, total $\mu\text{g/L}$ less than or equal to 125

Chlorophyll-a (seston) $\mu\text{g/L}$ less than or equal to 27

~~Diel dissolved oxygen flux mg/L less than or equal to 4.0~~

~~Biochemical oxygen demand (BOD5) mg/L less than or equal to 2.5~~

Subp. 4b. Narrative eutrophication standards for Class 2B rivers and streams.

A. Eutrophication standards for rivers and streams are compared to summer-average data or as specified in subpart 4. Exceedance of the total phosphorus levels and chlorophyll-a (seston), ~~five-day biochemical oxygen demand (BOD5), diel dissolved oxygen flux,~~ or pH levels is required to indicate a polluted condition.

B. Rivers and streams that exceed the phosphorus levels but do not exceed the chlorophyll-a (seston), ~~five-day biochemical oxygen demand (BOD5), diel dissolved oxygen flux,~~ or pH levels meet the eutrophication standard.

5. Conclusion

MPCA is required to reply to this petition in writing within 30 days stating whether or not it intends to adopt the rule amendments petitioned for herein, and if it does not intend to amend the rule it must request OAH to review the petition. Minn. Stat. § 14.091, subd. (b). For the

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reasons set forth and discussed above, Petitioners respectfully request that the MPCA give notice under section 14.389 of its intent to adopt the amendments to Minn. R. 7050.0150, .0220, and .0222 petitioned for herein, as specifically set forth *infra* in Section 4.

DATED: _____

FLAHERTY & HOOD, P.A.

Robert T. Scott (#0330759)
Daniel M. Marx (# _____)
525 Park Street, Suite 470
St. Paul, MN 55103
Tel: (651) 225-8840
Fax: (651) 225-9088

ATTORNEYS FOR PETITIONERS

Appendix A – Petitioners' Addresses



CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS

P.O. Box 960 • 225 1st Street North, Suite 2400, Virginia, Minnesota 55792
218-749-4880 • FAX 218-749-8528

7A

January 11, 2016



To the City Council
City of Gilbert, Minnesota

I do not believe the issue of exclusion of fiscal disparities (dollars or percentages) warrants an instance of misconduct of a public officer or employees.

At the municipal level, the pertinent information at the time of certification of the final levy to the County is the total City Budget amounts and gross levy numbers (and percentages.) The fiscal disparities and taconite credits are gross levy deducts used to calculate net levy. These amounts are pertinent at the County level, since they are part of the calculation that it uses to levy verses the individual tax payers.

In my 35+ years of auditing local governmental units, I have found this to be the case for all municipalities.

Sincerely,

A handwritten signature in black ink that reads "Greg A. Knutson".

Greg A. Knutson, CPA
Walker, Giroux & Hahne, LLC

Cc: Bonnie A. Thayer, Colosimo, Patchin, & Kearney, Ltd.

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**E.F.G.S.D. JOINT POWERS RECREATION BOARD MEETING
Wednesday December 09, 2015**

Meeting called to order by Chairperson Maroste @ 5:18 p.m.

Roll Call: Present: Peterson, Forte, Lindseth, Maroste, Coombe, Lautigar and Director Homola.

Absent: Torrel and Hultman.

Approval of minutes: Motion by Peterson, 2nd by Lautigar, to approve the minutes of the November 11, 2015 meeting. Motion Carried.

Financial Report: Motion by Coombe, 2nd by Lautigar, to approve the financial report as posted and the November 2015 bills in the amount of \$7,229.71 M.C.

Correspondence: NONE

Old Business: A. Figure Skating: After working out some early season scheduling conflicts the figure skating program is going well. The program is Saturdays from 8:00 – 9:15 a.m. and Sundays 6:00 – 8:00 p.m.

B. Hockey: The hockey season is underway. Season is going well. There are some concerns at the squirt level with difficulty competing at this point of the year.

C. Youth Basketball: The basketball season is underway with grades 3 – 6 playing a regular schedule. Mark Terrio is doing a nice job again this season.

D. Fayal – Rec. Budget: Board member Lindseth (Fayal Rep.) attended a Fayal Town Board meeting and addressed any questions they had. Budget issues seem to be resolved.

New Business: A. Outdoor Rinks: The weather has not cooperated for the outdoor rinks.

Motion by Lindseth, 2nd by Peterson, to approve the following rink attendants for the 2015-16 season: Fayal Rink: Hunter Haavisto, Scott Wudinich and John Torma, W. Eveleth: Brody Denny and Jessie Denny, North Side Rink: Ryan Harju. M.C.

Other Business: NONE

Motion by Lindseth to adjourn, 2nd by Coombe. M.C. Meeting adjourned @ 5:56 p.m.

Respectfully submitted;
R.D. - Homola

7c

Theresa Sunde
Government Relations Manager



Via Mail

January 18, 2016

Dear Community Official:

On or around February 16th, Mediacom Communications will add this channel to the lineup in your area:

KQDS D2 Antenna V

Channel 105

For newer TV's, it may be necessary to reprogram or re-scan your TV. Mediacom customers may call 866-609-6180 for more information. Should you have any questions please feel free to contact me at 507-837-4878 or email me at tsunde@mediacomcc.com.

Sincerely,

Theresa Sunde

Cloquet and Cloquet Headend Communities