

STATE OF MINNESOTA
IN COURT OF APPEALS

MINNESOTA CHAMBER OF COMMERCE,

Appellant,

v.

MINNESOTA POLLUTION CONTROL AGENCY,

Respondent, and

WATERLEGACY,

Respondent-Intervenor.

**STATEMENT OF THE
CASE OF APPELLANT**

Trial Court No.: 62-CV-10-11824

Appellate No.: _____

1. Court or agency of case origination and name of presiding judge or hearing officer.

Ramsey County District Court, the Honorable Margaret M. Marrinan presiding.

2. Jurisdictional statement.

(A) Appeal from district court.

Statute, rule or other authority authorizing appeal:

This is an appeal as of right from a final judgment entered on May 15, 2012, in which the trial court denied Appellant's motion for summary judgment and granted Respondent's and Respondent-Intervenor's motions for summary judgment. The final judgment is subject to appeal under Minn. R. Civ. App. P. 103.03(a).

The scope of this appeal includes any order involving the merits or affecting the judgment, pursuant to Minn. R. Civ. App. P. 103.04.

Date of entry of judgment or date of service of notice of filing of order from which the appeal is taken:

The trial court administrator entered final judgment on May 15, 2012.

Authority fixing time limit for filing notice of appeal:

Minn. R. Civ. App. P. 104.01, subd. 1.

Date of filing any motion that tolls appeal time:

Not applicable.

Date of filing of order deciding tolling motion and date of service of notice of filing:

Not applicable.

(B) Certiorari appeal.

Not applicable.

(C) Other appellate proceedings.

Not applicable.

(D) Finality of order or judgment.

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees?

Yes.

If yes, provide date of order:

The trial court administrator entered final judgment on May 15, 2012, pursuant to the trial court's order of May 10, 2012.

If no:

Did the district court order entry of a final partial judgment for immediate appeal pursuant to Minn. R. Civ. App. P. 104.01?

Not applicable.

3. State type of litigation and designate any statutes at issue.

Civil litigation involving the application and construction of a regulation adopted by Respondent in 1973 and known as the "Wild Rice Rule," Minn. R. 7050.0224, subp. 2. Among Appellant's claims is that it is entitled to a declaratory judgment under the Minnesota Declaratory Judgments Act, Minn. Stat. ch. 555, construing the plain

language of the Wild Rice Rule. Also at issue are Minn. Stat. §§ 115.03, sub. 1(c), and Minn. Stat. § 116.07, subd. 6, which require Respondent to exercise its powers in a reasonable and practical manner. Finally, Appellant contends that the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, the Minnesota Water Pollution Control Act, Minn. Stat. §§ 115.01-115.09, and the Minnesota Municipal Water Control statute, Minn. Stat. §§ 115.41-115.54, require Respondent to classify waters of the State and to adopt standards of water quality for each classification necessary for the public use or benefit contemplated by the classification.

4. Brief description of claims, defenses, issues litigated and result below.

In 1973, Respondent adopted a rule, now codified at Minn. R. 7050.0224, subp. 2 (the “Wild Rice Rule”), establishing a numeric water quality standard for sulfates of 10 milligrams per liter (mg/L) in so-called “Class 4A” waters. Class 4A waters are waters used for agricultural purposes, including irrigation. The Wild Rice Rule, in narrative, further specifies that the numeric water quality standard of 10 mg/L for sulfates applies only to Class 4A water “used for the production of wild rice during periods when the rice may be susceptible to damage by high sulfate levels,” but does not define that term.¹ In addition, Respondent has never listed or identified the waters to which the Wild Rice Rule applies.

In 1975, Respondent applied the Wild Rice Rule for the first time. Relying upon the authority of the rule, Respondent included a sulfate discharge limitation in a wastewater discharge permit issued to Appellant’s member Minnesota Power. Respondent also determined, in the context of the Minnesota Power permit, that the “critical” months for wild rice were between late April and mid-June. Aside from reissuing the 1975 Minnesota Power permit, Respondent did not invoke or rely upon the Wild Rice Rule to establish sulfate discharge limitations in any wastewater discharge permit for the next 35 years. Then, in 2009 and 2010, Respondent contacted several of Appellant’s members to request field surveys to determine whether wild rice was present in waters to which they are discharging or proposed to discharge wastewater, whether or not those waters were used for irrigation to produce wild rice as an agricultural crop. Respondent also informed several of Appellant’s members that wild rice was susceptible to damage by “high sulfate levels” from April 1 through August 31. And Respondent issued a wastewater discharge permit to Appellant’s member United States Steel that imposed a year-round sulfate discharge limitation even though United States Steel was not discharging to waters used for agricultural irrigation to produce wild rice.

In December 2010, Appellant filed a complaint against Respondent. Appellant alleged that it was entitled to a judgment declaring that the Wild Rice Rule’s 10 mg/L

¹ A numeric water quality standard represents a concentration of a pollutant that Respondent deems will protect human health and the environment when the water is used for a specific purpose. A narrative water quality standard is a textual statement that describes a condition Respondent deems unacceptable in or upon a water.

numeric sulfate standard applies only to that sub-category of Class 4A waters used to irrigate wild rice grown as an agricultural crop. Appellant also alleged that the narrative water quality standard in the Wild Rice Rule, which qualifies the period when and conditions under which the numeric sulfate standard applies, is unconstitutionally vague. In addition, Appellant alleged Respondent's actions regarding the Wild Rice Rule exceeded Respondent's statutory authority and were unreasonable.²

Respondent-Intervenor intervened and moved to dismiss the complaint, arguing in part that the district court lacked jurisdiction over Appellant's claims. The trial court, the Honorable Gregg Johnson presiding, denied the motion. The trial court held that it had jurisdiction because Appellant alleged constitutional violations and presented a justiciable controversy for resolution under the Minnesota Declaratory Judgments Act.

The parties then filed cross-motions for summary judgment. Appellant argued that by its terms, the 10 mg/L sulfate water quality standard in the Wild Rice Rule applies to Class 4A "agriculture" waters used for the "irrigation" of "crops or vegetation usually grown in the waters or area, including truck garden crops," including "water used for production of wild rice" Minn. R. 7050.0224, subp. 2. In addition, Appellant argued that because the language of the Wild Rice Rule was unambiguous, the trial court could not resort to legislative history, other aids to statutory construction, or public policy concerns in interpreting the rule. Appellant also argued that even if it did not prevail on the merits of its statutory and constitutional claims, it was nonetheless entitled to a declaratory judgment that the Wild Rice Rule applies only to that sub-category of Class 4A waters used to irrigate wild rice grown as an agricultural crop. On the merits of its statutory claim, Appellant argued that Respondent's actions regarding the Wild Rice Rule were unreasonable and exceeded statutory authority because Respondent had attempted to expand the rule's unambiguous language regarding the numeric water quality standard, disregarded statutory provisions that require the listing of specific waters to which the rule applies, and failed to define critical terms in the rule's narrative water quality standard. On the merits of its substantive due process claim, Appellant argued that Respondent violated the substantive due process of Appellant's members by failing to list the sub-category of Class 4A irrigation waters to which the Wild Rice Rule's numeric sulfate standard applies and by failing to define the rule's term "during period when the rice may be susceptible to damage by high sulfate levels." Finally, Appellant argued that it was entitled to injunctive relief.

Respondent and Respondent-Intervenor argued that the administrative record from 1973 established that the Wild Rice Rule applied to both naturally growing wild rice and wild rice grown as an agricultural crop using Class 4A irrigation waters. In addition, Respondent and Respondent-Intervenor argued that Appellant's statutory

² Appellant also alleged a violation of the Equal Protection Clause but later dropped that claim.

and substantive due process claims failed as a matter of law, and as a result Appellant's Declaratory Judgments Act claim must be dismissed. As to the merits of Appellant's statutory and substantive due process claims, Respondent and Respondent-Intervenor argued that application of the Wild Rice Rule to naturally growing wild rice is consistent with Respondent's broad statutory duties. Respondent and Respondent-Intervenor also argued that the failure to define the rule's term "when the rice may be susceptible to damage by high sulfate levels" was not unconstitutionally vague, and that there was no constitutional or statutory requirement for Respondent to identify the specific waters to which the rule applied. Finally, Respondent and Respondent-Intervenor argued that Appellant's claims for equitable relief were moot.

The trial court, with the Honorable Margaret M. Marrinan presiding, granted the summary judgment motions of Respondent and Respondent-Intervenor and denied Appellant's motion for summary judgment. The trial court dismissed all of Appellant's claims and held that Appellant was not entitled to injunctive relief. This appeal followed.

5. List specific issues proposed to be raised on appeal.

Appellant's issues on appeal are:

1. Whether Appellant was entitled to summary judgment under the Minnesota Declaratory Judgments Act, Minn. Stat. ch. 555, for entry of a declaratory judgment that the numeric water quality standard for sulfates in the Wild Rice Rule, Minn. R. 7050.0224, subp. 2, applies only to Class 4A waters used for irrigation to produce wild rice as a crop?
2. Whether Appellant was entitled to summary judgment because Respondent Minnesota Pollution Control Agency's application of the Wild Rice Rule, Minn. R. 7050.0224, subp. 2, exceeds Respondent Minnesota Pollution Control Agency's statutory authority?
3. Whether Appellant was entitled to summary judgment that the Wild Rice Rule, Minn. R. 7050.0224, subp. 2, is unconstitutionally vague and violates the substantive due process of Appellant's members?
4. Whether Appellant was entitled injunctive relief?

6. Related appeals.

List all prior or pending appeals arising from the same action as this appeal. If none, so state.

None.

List any known pending appeals arising in separate actions raising similar issues to this appeal. If none, so state.

None.

7. **Contents of record.**

Is a transcript required to review the issues on appeal?

No.

If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary?

Not applicable.

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04?

Not applicable.

8. **Is oral argument requested?**

Yes.

If so, is argument requested at a location other than provide in Rule 134.09, subd. 2?

No.

9. **Identify the type of brief to be filed.**

Formal briefs under Minn. R. Civ. App. P. 128.02.

10. **Names, addresses, zip codes and telephone numbers of attorneys for Appellant, Respondent, and Respondent-Intervenor.**

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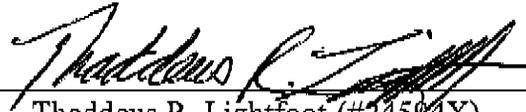
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Dated: June 1, 2012

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