

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Civil Other/Misc.

In the Matter of the Denial of Contested Case
Hearing Requests and Issuance of National
Pollutant Discharge Elimination System/State
Disposal System Permit No. MN0071013 for
the Proposed NorthMet Project, St. Louis
County, Hoyt Lakes and Babbitt, Minnesota

Court File No. 62-CV-19-4626
Judge John H. Guthmann

**DECLARATION OF
PAULA G. MACCABEE**

State of Minnesota)
) ss.
County of Ramsey)

I, Paula G. Maccabee, hereby declare as follows:

1. I am an attorney licensed in Minnesota. I represent WaterLegacy in the above-captioned matter.

2. MCEA, Friends of the Boundary Waters Wilderness, Center for Biological Diversity, WaterLegacy and the Fond du Lac Band of Lake Superior Chippewa (collectively, “Relators”) are the Relators in the above-captioned matter.

3. In late October 2019, WaterLegacy secured documents from the U.S. Environmental Protection Agency (“EPA”) as a result of a March 27, 2018 Freedom of Information Act (“FOIA”) request and the granting of a fee waiver appeal. These EPA FOIA documents suggested that the Minnesota Pollution Control Agency (“MPCA”) may have had phone calls and conferences with EPA not yet confirmed in any records produced to Relators.

4. On November 15, 2018, I filed another FOIA request on behalf of WaterLegacy, FOIA request EPA-R5-2020-001126. This FOIA request sought EPA notes pertaining to phone conferences or meetings that may have occurred between MPCA and EPA on March 12, 2018;

March 15, 2018; April 30, 2018; June 11, 2018; October 22, 2018; November 8, 2018 and November 28, 2018. I followed up this request with phone calls to EPA requesting expedition to the extent possible, due to imminent Court deadlines to disclose exhibits.

5. Late Friday afternoon, December 27, 2019, EPA sent WaterLegacy a final disposition regarding EPA-R5-2020-001126, along with EPA notes of various conversations with MPCA and a privilege log reflecting withheld attorney notes. The cover email (RELATORS_66003), disposition letter (RELATORS_66004-06), Enclosures A and B with privilege log and released records (RELATORS_66007-08) and EPA notes (RELATORS_66009-11) are attached with this declaration as **Attachment A**.

6. On Monday, December 30, 2019, I sent MPCA and PolyMet counsel copies of these newly-secured EPA FOIA documents with a meet-and-confer email asking for a response by this morning if counsel would agree to include these documents on Relators' Exhibit List, explaining that Relators had no access to these documents until December 27, 2019. Counsel did not respond and did not agree to add these new EPA FOIA documents to Relators Exhibit List.

7. There is good cause for Relators' failure to disclose these exhibits on or before December 16, 2019. WaterLegacy's previous FOIA requests had provided no notes from these phone conversations, and documents produced in discovery by MPCA were insufficient to determine if some of the conferences had even occurred, let alone the content of the conversations. WaterLegacy made its FOIA request EPA-R5-2020-001126 on November 15, 2019, and only received a response on the afternoon of December 27, 2019.

8. Relators would be severely prejudiced if EPA's notes and the Enclosures secured from EPA pursuant to EPA-R5-2020-001126 were not allowed as exhibits in this matter. These EPA documents provide the only documentary record in these proceedings proving that staff level

calls were in fact completed between MPCA and EPA on March 12, 2019 and that a call between MPCA and EPA took place on November 8, 2018. Notes from March 12, 2018 reflect MPCA's report of contacts since March 5, 2018 between MPCA and EPA. Notes from April 30, 2018 reflect that MPCA intended that its responses to comments would not directly address EPA's concerns, but would make responses to members of the public whose concerns overlapped those of EPA. The documents obtained by Relators as a result of EPA responses to FOIA request were under the sole custody and control of EPA until December 27, 2019 and provide highly probative evidence of Relators' alleged procedural irregularities in this matter.

I declare under penalty of perjury that everything that I have stated in this document is true and correct

Dated: December 31, 2019

s/s Paula G. Maccabee
PAULA G. MACCABEE

Message

From: r5foia@epa.gov [r5foia@epa.gov]
Sent: 12/27/2019 4:08:57 PM
To: pmaccabee@justchangelaw.com
Subject: Final Disposition, Request EPA-R5-2020-001126
Attachments: Other-20191220141007-WD Close out EPA-R5-2020-001126.pdf

EPA-R5-2020-001126 has been processed with the following final disposition: Full Grant.

Records were released to the public as a result of this request. You may retrieve these records immediately using the following link: [View Records](#) Over the next 2 hours, these records are also being added to FOIAonline's search pages, further enabling you to retrieve these documents associated with your FOIA request at any time.

