

The logo for MASLON, consisting of the word "MASLON" in a bold, sans-serif font. The letters "A" and "O" are significantly larger than the other letters. A thin yellow horizontal line is positioned directly beneath the text.

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December 31, 2019

*Via E-filing and hand delivered*

The Honorable John H. Guthmann  
Ramsey County District Court  
1470 Ramsey County Courthouse  
15 Kellogg Boulevard West  
St. Paul, MN 55102

**Re: Ramsey County Court File No. 62-cv-19-4626**

Dear Judge Guthmann:

Relators respectfully request that the Court supplement Relators' December 27, 2019 Informal Motion to Amend Exhibit List to include six documents provided by the U.S. Environmental Protection Agency ("EPA") in response to a Freedom of Information Act ("FOIA") late Friday afternoon, after Relators' Informal Motion was filed on December 27, 2019.<sup>1</sup>

Relator WaterLegacy has sought EPA records, including notes from phone calls with the Minnesota Pollution Control Agency ("MPCA") since March 27, 2018. (Declaration of Paula G. Maccabee ("Maccabee Decl.") ¶ 3 (Dec. 31, 2019). EPA documents received in October 2019 as a result of a prior WaterLegacy FOIA request suggested that MPCA and EPA may have had phone calls and conferences with EPA not yet confirmed in any records produced to Relators. (*Id.*).

On November 15, 2018, WaterLegacy filed FOIA request EPA-R5-2020-001126 seeking notes of phone conferences between MPCA and EPA believed to have occurred between March 12, 2018 and November 28, 2018. (*Id.* at ¶ 4). EPA provided WaterLegacy with a final disposition for this FOIA request on December 27, 2019. (*Id.* at ¶ 5). These EPA documents provide the only record that staff level conversations between EPA and MPCA took place on March 12, 2018 and November 8, 2018 and contain information pertinent to MPCA's communications with EPA regarding EPA's withholding of EPA written comments on the PolyMet permit and MPCA's intention that responses to comments would not directly address EPA's concerns. (*Id.* at ¶ 8).

Relators would be severely prejudiced if these documents, which are probative of alleged procedural irregularities and were in EPA's sole custody and control until December 27, 2019, were not allowed as Relators' exhibits. Relators request this Court's relief.

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<sup>1</sup> On Monday, December 30, 2019, Relators shared these FOIA documents with opposing counsel and requested agreement to add them to their Exhibit List, but no agreement ensued.

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Respectfully submitted,

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Enclosure

cc: Counsel of Record (via Odyssey)