UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Grand Portage Band of Lake Superior Chippewa, Fond du Lac Band of Lake Superior Chippewa, Plaintiffs, v. United States Environmental Protection Agency, Michael S. Regan, Defendants.	Case No. 22-cv-1783 (JRT/LIB) **ORDER**

This matter comes before the undersigned United States Magistrate Judge pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636, and upon non-party Coalition of Greater Minnesota Cities ("CGMC"), Range Association of Municipalities and Schools ("RAMS"), the Minnesota Chamber of Commerce ("MCC"), Cleveland-Cliffs Inc. ("CCI"), and United States Steel Corporation's ("U.S. Steel," and collectively, Intervenor Group 1") Motion to Intervene, [Docket No. 20], as well as, non-party Minnesota Pollution Control Agency's (the "MPCA") Motion to Intervene. [Docket No. 34]. The Court took the Motions under advisement upon the written submissions. (Order, [Docket No. 41]).

For the reasons discussed below, the Court **GRANTS** Intervenor Group 1's Motion to Intervene, [Docket No. 20], as well as, the MPCA's Motion to Intervene. [Docket No. 34].

I. Background

The present action arises from the United States Environmental Protection Agency's ("Defendant EPA") approval of Minnesota's revised water quality standards, which replaced numeric limits with narrative criteria for pollutants primarily discharged by upstream mining . (See Complaint, [Docket No. 1], at pp. 2, 4). Plaintiffs, the Grand Portage Band of Lake Superior

Chippewa and the Fond du Lac Band of Lake Superior Chippewa ("Plaintiffs"), occupy Reservations along Lake Superior and the St. Louis River, respectively, with downstream waters flowing through and around the Reservations that connect to numerous surrounding wetlands, lakes, and streams. (Id. at pp. 3-4).

On July 14, 2022, Plaintiffs initiated the present action by filing their Complaint. [Docket No. 1]. Through the present action, Plaintiffs seek to set aside Defendant EPA's approval of Minn. R. 7050.0223 and Minn. R. 7050.0224. (Id. at p. 2). Plaintiffs allege that Defendant EPA violated the Clean Water Act and its own regulations when it approved Minn. R. 7050.0223 and Minn. R. 7050.0224, which revised Minnesota's water quality standards for waters designated for industrial, agriculture, and wildlife uses. (Id. at p. 4). Plaintiffs allege that the EPA failed to examine whether eliminating numeric limits for mining pollutants in upstream waters would not interfere with the water quality standards for downstream waters. (Id. at pp. 15-19). Plaintiffs specifically allege, however, that these revised standards will "likely result in increased pollution in downstream waters that flow around and through [Plaintiffs'] [R]eservations," thereby adversely affecting wild rice and altering or eliminating fish, aquatic life, and wildlife relied on by them for "subsistence, economic, and spiritual purposes." (Id. at pp. 9, 16).

Accordingly, Plaintiffs brought suit against the EPA itself and Michael S. Regan, Administrator of the EPA ("Defendants"). (Complaint, [Docket No. 1]).

On the basis of the allegations in their Complaint, Plaintiffs raise two causes of action: (1) EPA's Approval of Minnesota's Water Quality Standards Revision is Contrary to the Clean Water Act and Clean Water Act Implementing Regulations; and (2) EPA's Approval of Minnesota's Water Quality Standards Revision is Contrary to the Evidence and Arbitrary and Capricious. (Complaint, [Docket No. 1], at pp. 15-19).

As relief, Plaintiffs seek declaratory relief that the EPA's approval of Minnesota's repeal of numeric water quality standards for industrial and agricultural uses was in violation of the Clean Water Act and applicable regulations, as well as, arbitrary and capricious and an abuse of discretion; vacatur of the EPA's approval of said quality standards revision; and an award of Plaintiffs' costs and attorneys' fees as deemed appropriate under the Equal Access to Justice Act. (Complaint, [Docket No. 1], at p. 19).

Approximately two months after Plaintiffs initiated the present action, Intervenor Group 1 moved to intervene as Defendants in the present action. (Motion, [Docket No. 20]). Shortly thereafter, the MPCA also moved to intervene as a Defendant. (Motion, [Docket No. 34]). None of the present parties in this action have filed responses in opposition to these respective Motions to Intervene. Intervenor Group 1 represented in their submissions to this Court that Plaintiffs took no position on their Motion, and Defendants did not oppose it. (Meet and Confer Statement, [Docket No. 23]). The MPCA indicated in its written submission that neither Plaintiff nor Defendant opposed its present Motion. (Meet and Confer Statement, [Docket No. 39]).

II. Standard of Review

Rule 24 of the Federal Rules of Civil Procedure provides both for intervention as a matter of right and permissive intervention. Specifically, it provides:

> **(a) Intervention of Right.** On timely motion, the court must permit anyone to intervene who:
>
> > **(1)** is given an unconditional right to intervene by a federal statute; or
> > **(2)** claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.
>
> **(b) Permissive Intervention.**
>
> > **(1)** ***In General.*** On timely motion, the court may permit anyone to intervene who:
> > **(A)** is given a conditional right to intervene by a federal statute; or
> > **(B)** has a claim or defense that shares with the main action a common question of law or fact.

Fed. R. Civ. P. 24. "Rule 24 is construed liberally, and we resolve all doubts in favor of the proposed intervenors." United States v. Union Elec. Co., 64 F.3d 1152, 1158 (8th Cir. 1995). However, "[t]he decision to grant or deny a motion for permissive intervention is wholly discretionary." Franconia Minerals (US) LLC v. United States, 319 F.R.D. 126, 266 (D. Minn. 2017) (quoting S.D. ex rel. Barnett v. U.S. Dept. of Interior, 317 F.3d 783, 787 (8th Cir. 2003)).

> In the Eighth Circuit, a prospective intervenor must "establish Article III standing in addition to the requirements of Rule 24." The requirements for Article III standing are (1) injury, (2) causation, and (3) redressability. First, the prospective intervenor "must clearly allege facts showing an injury in fact, which is an injury to a legally protected interest that is 'concrete, particularized, and either actual or imminent.'" Second, the prospective intervenor must establish "a causal connection between the injury and the conduct complained of"; in other words, the intervenor's alleged injury must be "fairly traceable to the defendant's conduct." And, third, the prospective intervenor must establish that "a favorable decision will likely redress the injury."

Nat'l Parks Conservation Ass'n v. U.S. Envtl. Prot. Agency, 759 F.3d 969, 974 (8th Cir. 2014) (citations omitted).

III. Intervenor Group 1's Motion to Intervene. [Docket No. 20].

Intervenor Group 1 seeks an Order of this Court permitting it to intervene as Defendants in the present case. (Motion, [Docket No. 20]). As defined above, Intervenor Group 1 includes Coalition of Greater Minnesota Cities ("CGMC"), which is a "nonprofit, nonpartisan organization that represents more than 100 cities in Minnesota outside of the Twin Cities metropolitan area" and whose purpose, among other things, is to advocate for cities with respect to environmental concerns. (Mem., [Docket No. 22], at pp. 4-5; Holmer Decl., [Docket No. 25], at ¶¶ 3-4). CGMC asserts that many of its member cities own and operate wastewater treatment plants and own certain permits regulated and administered by the MPCA. (Mem., [Docket No. 22], at pp. 4-5; Holmer Decl., [Docket No. 25], at ¶ 7). Included among Intervenor Group 1 also is the Range Association of Municipalities and Schools ("RAMS"), whose "members include more than 60

school districts, townships, and cities within the Taconite Relief Area of Northeastern Minnesota" and whose purpose is to "monitor state and federal legislation and rule-making to determine how it may affect its members." (Mem., [Docket No. 22], at p. 7; Rukavina Decl., [Docket No. 30], at ¶¶ 3-5). Intervenor Group 1 also includes the Minnesota Chamber of Commerce ("MCC"), which "represents 6,300 employers and . . . more than 500,000 employees across Minnesota, in every industry and every size of business," and its purpose is to advocate for "sensible regulations that will allow Minnesota to maintain a clean environment and healthy business climate while fostering economic change and growth statewide." (Mem., [Docket No. 22], at pp. 7-8; Kwilas Decl., [Docket No. 27], at ¶¶ 3-5).

Lastly, Intervenor Group 1 includes Cleveland-Cliffs Inc. ("CCI"), and the United States Steel Corporation ("U.S. Steel"). CCI is the "largest flat-rolled steel company in North America and a leading supplier of automotive-grade steel," which operates 68 facilities and employs more than 27,000 employees in the United States and Canada, owns or operates five open-pit iron ore mining and processing facilities in Minnesota, and has "an attendant 11 [National Pollutant Discharge Eliminations Systems ("NPDES")/State Disposal System ("SDS") (collectively, "NPDES/SDS")] permits." (Mem., [Docket No. 22], at pp. 8-9; Aagenes Decl., [Docket No. 26], at ¶¶ 3-4). U.S. Steel is a "leading steel producer" with "ore operations at two facilities located on the Mesabi Iron Range . . . and, together, the facilities have approximately 1,800 employees" with these facilities being subject to the Minnesota's revised water quality standards at issue. (Mem., [Docket No. 22], at pp. 9-10; Bartovich Decl., [Docket No. 28], at ¶¶ 3-4).

In its written materials, Intervenor Group 1 contends they should be allowed to intervene as a matter of right, or in the alternative, that they should be granted permissive intervention. (Mem., [Docket No. 22]).

A. Standing

As a threshold matter, the Court will address whether Intervenor Group 1 has Article III standing to intervene. See White Earth Nation v. Kerry, No. 14-cv-4726 (MJD/LIB), 2015 WL 12778751, at *3 (D. Minn. Jan. 23, 2015) (noting that standing issues should be addressed prior to the merits of an argument and addressing standing prior to considering a motion to intervene).

In the Eighth Circuit, a prospective intervenor must "establish Article III standing in addition to the requirements of Rule 24." See Metro. St. Louis Sewer Dist., 569 F.3d at 833. The requirements for Article III standing are (1) injury, (2) causation, and (3) redressability. See id. at 833-34. First, the prospective intervenor "must clearly allege facts showing an injury in fact, which is an injury to a legally protected interest that is 'concrete, particularized, and either actual or imminent.'" Id. at 834 (quoting Curry v. Regents of the Univ. of Minn., 167 F.3d 420, 422 (8th Cir. 1999)). Second, the prospective intervenor must establish "a causal connection between the injury and the conduct complained of," Defenders of Wildlife, 504 U.S. at 560, in other words, the intervenor's alleged injury must be "fairly traceable to the defendant's conduct." Metro. St. Louis Sewer Dist., 569 F.3d at 834. Third, the prospective intervenor must establish that a "favorable decision will likely redress the injury."[1] Id.

Intervenors Group 1 alleges that they have Article III standing to intervene in this case because if Plaintiffs obtain the relief it requests through this litigation, Intervenors Group 1 would

[1] The Court agrees that CGMC, MCC, and RAMS can assert the standing of their members. An organization may assert standing on behalf their members by demonstrating that one or more of its members have personally suffered or will face harm through specific averments or proof. See Summers v. Earth Island Inst., 555 U.S. 488, 498-99 (2009); cf. Franconia Minerals (US) LLC v. United States, 319 F.R.D. 261, 267 (D. Minn. 2017) (finding that an organization had standing to intervene where it had "submitted the declarations of several members" describing their claimed injuries). However, an organization need not identify a specific member who will suffer harm "where all the members of the organization are affected by the challenged activity." See Summers, 555 U.S. at 498-99 (citing NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 459 (1958)); see also Ouachita Watch League v. U.S. Forest Serv., 858 F.3d 539, 543-44 (8th Cir. 2017). Here, CGMC, MCC, and RAMS point to the significant harm that their respective members would suffer if Minnesota's revised water quality standards are repealed, such as costly compliance costs and permit delays, as described, infra. (Mem., [Docket No. 22], at p. 12). Accordingly, CGMC, MCC, and RAMS can assert the standing of its members.

be harmed in several ways. First, Intervenors Group 1 assert that they have each invested "substantial efforts in the MPCA's rule-making proceeding" by, among other things, investing in experts to review proposed changes and submitting "multiple rounds of comments over the course of several years." (Mem., [Docket No. 22], at p. 13). For example, CGMC asserts that, because the regulations were "grounded in science, cost effective and achieve[d] measurable environmental benefits," it advocated for the adoption of the revised water quality standards and coordinated its member to do the same by submitting five rounds of comments to the MPCA. (Id.; Holmer Decl., [Docket No. 25], at ¶¶ 4-14; Exhibits A-E). MCC similarly asserts that it generally advocated for revised water quality standards by submitting two rounds of comments. (Kwilas Decl., [Docket No. 27], at ¶¶ 5-8; Exhibits A-B). RAMS, CCI, and U.S. Steel also assert that they submitted comments to the MPCA's rulemaking proceeding concerning the revised water quality standards. (See generally Rukavina Decl., [Docket No. 30], at ¶¶ 7-9; Bartovich Decl., Docket No. 28], at ¶ 4; Aagenes Decl., [Docket No. 26], at ¶ 5).

Second, Intervenors Group 1 assert that, should the Court vacate the EPA's approval of Minnesota's revised water quality standard, and thereby return to the previous outdated standards, this would result in "unnecessary significant cost and uncertainty" for CGMC, MCC, RAMS, CCI, and U.S. Steel. In support, CGMC notes that some of its member cities still have NPDES/SDS permit limits based on the outdated water quality standards, and if the permit limits are not updated with the revised water quality standards at issue, these member cities will suffer costly compliance costs, hindering economic development. (Id. at p. 5). MCC notes that, because the revised water quality standards "reflect[] current science and would not result in unnecessary economic harm/burden" on its member businesses, those members who are required to implement these standards through water discharge permits would be negatively impacted if these revised standards were vacated by this Court. (Mem., [Docket No. 22], at p. 8; Kwilas Decl., [Docket No. 27], at ¶

5). RAMS also notes that its members with permits would be negatively impacted if the revised water quality standards are repealed because said standards "reduce permit delays and avoid wastewater treatment costs that do not provide environmental benefits." (Mem., [Docket No. 22], at p. 7; Rukavina Decl., [Docket No. 30], at ¶ 7). CCI and U.S. Steel both assert that their facilities, which hold NPDES/SDS permits, would also be negatively financially affected if the revised water quality standards are vacated. (Aagenes Decl., [Docket No. 26], at ¶ 5; Bartovich Decl., [Docket No. 28], at ¶ 4). In further support, Intervenors Group 1 submitted a copy of the MPCA's Statement of Need and Reasonableness ("SONAR") and the administrative law judge's report on the rulemaking, which both explain the potential significant costs on the proposed intervenors. (SONAR, [Docket No. 29-1], at p. 119; Report of the Administrative Law Judge, [Docket No. 29-1], at ¶¶ 62, 86, 119-20; [Docket No. 25-1], at pp. 11-17).

By alleging loss of environmental benefits and potential costs associated with needing to comply with outdated water quality standards, thereby resulting in loss of profits, should Defendant EPA's approval of Minnesota's revised water quality standards be vacated, the Court finds that Intervenors Group 1 has alleged a concrete, particularized, and imminent invasion of a legally cognizable right. See National Parks Conservation Association v. E.P.A., 759 F.3d 969, 975 (8th Cir. 2014) (holding that the potential intervenor sufficiently alleged a financial injury where granting the plaintiff's relief would result in the intervenor being unavoidably harmed economically, as opposed to a proposed intervenor who alleges a financial injury contingent on several conditions).

The determination of whether Intervenor Group 1 has sufficiently alleged causation is a bit unusual, as the traditional standing inquiry requires a showing that the party's injury is fairly traceable to the defendant's conduct. See Am. Civil Liberties Union of Minn. v. Tarek ibn Ziyad Academy, 643 F.3d 1088, 1093 (8th Cir. 2011) (citing Metro. St. Louis Sewer Dist., 569 F.3d at

834). In Ziyad Academy, however, the Eighth Circuit found that an intervenor had proven causation for standing purposes where the intervenor's alleged injury was the termination of benefits the intervenor was then receiving from the defendant's actions that would occur if the result of the litigation was to put a stop to the defendant's actions. Id. at 1092–93.

Here, Intervenor Group 1 can trace its members' injuries to Defendant EPA through the potential order from this Court vacating Defendant EPA's approval of Minnesota's revised water quality standards, thereby causing a return to the previous outdated water quality standards and resulting in economic and environmental benefit losses. See id. at 1093; see also South Dakota v. Ubbelohde, 330 F.3d 1014, 1024-25 (8th Cir. 2003). Because the EPA would be compelled to vacate their approval, which would "cause the alleged injury to [Intervenor Group 1] if the [Plaintiffs] prevail[ ]," Intervenor Group 1 satisfies the causation element. See Tarek ibn Ziyad Acad., 643 F.3d at 1093; see also White Earth Nation, 2015 WL 12778751, at *4 (holding that the intervenor's alleged injury was traceable to the defendant's conduct where the intervenor alleged his increased profits would stop if the Court ordered that defendant set aside its approval of the intervenor's diversion plan).

Lastly, Intervenor Group 1's injuries can be redressed by preventing Plaintiffs from obtaining an order vacating the EPA's approval of the standards at issue, which if these organizations prevail, avoids reinstating the outdated water quality standards that Plaintiffs seek. See Nat'l Parks Conservation Ass'n, 759 F.3d at 975. Therefore, Intervenor Group 1 has adequately demonstrated standing in this matter.

B. Factors for Intervention as a Matter of Right

> Rule 24(a)(2) allows a party to timely intervene as a matter of right if: (1) the motion is timely; (2) the intervenor "claims an interest relating to the property or transaction that is the subject of the action"; (3) disposition of the action "may as a practical matter impair or impede the movant's ability to protect its interest"; and (4) the existing parties do not "adequately represent" the interest. In deciding a

> motion to intervene, the ruling court should "be mindful that 'the interest test' is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.

George v. Uponor, Inc., 290 F.R.D. 574, 577 (D. Minn. 2013) (citations omitted). The Court addresses each of the relevant factors in turn regarding Intervenor Group 1's Motion.

1. Timeliness

In the present case, Intervenor Group 1 filed their Motion to Intervene approximately two months after Plaintiffs initiated the present action. [Docket No. 34]. There is no indication that Intervenor Group 1 had anything more than minimal knowledge concerning the pending action before seeking to intervene, and there was no significant delay in Intervenor Group 1's decision to intervene. Moreover, there is little likelihood that Plaintiffs or Defendants will be prejudiced by Intervenor Group 1's intervention into the litigation at this early stage of the case, as is evidenced by the parties' decision not to oppose the present Motion to Intervene.[2]

Accordingly, the Court finds that Intervenor Group 1's Motion to Intervene, [Docket No. 20], was timely filed.

2. Interest

A proposed intervenor must show "a recognized interest in the subject matter of the litigation." Med. Liab. Mut. Ins. Co., 485 F.3d at 1008. The demonstrated interest must be substantial, direct, and legally protectable. Union Elec. Co., 64 F.3d at 1161.

Intervenor Group 1 asserts that they each have a "direct and substantial" interest in the present action because they have "invested significant effort in the MPCA's rule-making process." (Mem., [Docket No. 22], at pp. 18-19). Further, Intervenor Group 1 contends that they are each

[2] The fact that the parties failed to argue that the present Motion to Intervene is untimely represents a sufficient basis to forego the analysis of the timeliness factor in the favor of the proposed intervenor. See Nat'l Parks Conservation Ass'n v. U.S. E.P.A., 759 F. 3d 969, 975 (8th Cir. 2014) (foregoing consideration of timeliness factor of motion to intervene when timeliness not challenged).

subject to Minnesota's revised water quality standards, and would therefore, stand to be affected if the outdated water quality standards were restored. (Id.). The Court agrees.

In the present case, Plaintiffs seek to vacate the EPA's approval of Minnesota's revised water quality standards. As described above, because CGMC, MCC, RAMS, CCI, and U.S. Steel have each established significant economic and environmental interest in Minnesota's revised water quality standards and have already invested significant financial resources into the MPCA's rule-making process, Intervenors Group 1 has demonstrated recognizable economic interests in the present lawsuit. See Nat'l Parks Conservation Ass'n, 759 F.3d at 976.

Therefore, the Court finds that Intervenor Group 1's alleged interests, as detailed above, are sufficiently direct, substantial, and legally protectable to allow Intervenor Group 1 to intervene in the present action.

3. Possible Impairment

A proposed intervenor must also show that its alleged interest is one that may be impaired by the results of the litigation. For all the reasons discussed above, the present litigation has the potential to impair Intervenor Group 1's economic and environmental interests in Minnesota's revised water quality standards.

Accordingly, Intervenor Group 1 has shown a sufficient possible impairment to its alleged interest to allow Intervenor Group 1 to intervene.

4. Inadequate Representation of Interest

Finally, a proposed intervenor seeking to intervene as a matter of right must show that its interest is not adequately protected by the existing parties. "This requirement is met by a minimal showing that representation 'may be' inadequate." Kan. Pub. Emps. Ret. Sys. v. Reimer & Koger Assocs., Inc., 60 F.3d 1304, 1308 (8th Cir. 1995).

Intervenor Group 1 argues that, while Defendants may be interested in the same ultimate disposition of the present case, the current Defendants' specific interests differ from the interest of Intervenor Group 1. (Mem., [Docket No. 22], at pp. 22-23). Therefore, Intervenor Group 1 argues that its interests are not adequately protected by the existing parties. (Id.).

In the present case, Defendants have a broad interest in protecting the propriety of their respective regulatory procedures, the integrity of their decisions, and the overall wetlands of Minnesota. On the other hand, Intervenor Group 1 have a specific economic interest regarding the maintained approval of Minnesota's revised water quality standards.

On this basis, the Court finds that Intervenor Group 1 has demonstrated that their interests are sufficiently disparate from the current Defendants such that Intervenor Group 1's interests will not be adequately protected by the existing parties to this lawsuit. See Kan. Pub. Emps. Ret. Sys., 60 F.3d at 1308 ("[t]his requirement is met by a minimal showing that representation 'may be' inadequate").

Therefore, because Intervenor Group 1 has shown that they have standing to participate in this case, that they have filed a timely Motion to Intervene which demonstrates that Intervenor Group 1 has a recognized interest in the subject matter of the litigation that may be impaired by the disposition of the litigation, and that Intervenor Group 1's interest is not adequately protected by the existing parties, Intervenor Group 1's Motion to Intervene in this case as of right is **GRANTED**.[3]

[3] Because the Court concludes that Intervenor Group 1 may intervene as a matter of right, the Court does not address Intervenor Group 1's alternative arguments in support of permissive intervention.

IV. The MPCA's Motion to Intervene. [Docket No. 34].

The MPCA seeks an Order of this Court permitting it to intervene as a Defendant in the present case in order to defend its revision to Minnesota's water quality standards under Minn. R. 7050.0223 and Minn. R. 7050.0224. (Mot., [Docket No. 34]).

The MPCA is the state regulatory body charged with the authority to administer and enforce laws related to pollution and with the authority to classify Minnesota's waters. Minn. Stat. Ann. § 115.03. As such, the MPCA is required to, among other things, "establish reasonable pollution standards for any waters of the state in relation to public use," which includes "adopting, modifying, and enforcing standards and rules on behalf of the State to prevent, control, or abate water pollution as directed by the Clean Water Act." Minn. Stat. Ann. § 115.03(e). As relevant to the present action, the MPCA promulgated Minn. R. 7050.0110 and Minn. R. 7050.0140. Minn. R. 7050.0110 includes "a classification system of beneficial uses applicable to waters of the state, [as well as,] narrative and numeric water quality standards that protect specific beneficial uses." Minn. R. 7050.0110. Minn. R. 7050.0140 provides seven classifications "based on considerations of best usage and the need for water quality protection in the interest of the public." Minn. R. 7050.0140.

In its written materials, the MPCA contends that, as the agency that revised and submitted to Defendant EPA the water quality standards at issue, it should be allowed to intervene as a matter of right, and, in the alternative, it argues that it should be granted permissive intervention. (Mem., [Docket No. 36]).

A. Standing

The Court will first address whether the MPCA has Article III standing to intervene. See White Earth Nation, 2015 WL 12778751, at *3. As provided above, the requirements for Article

III standing are (1) injury, (2) causation, and (3) redressability. See Metro. St. Louis Sewer Dist., 569 F.3d at 833-34.

The MPCA alleges that, as the agency that promulgated Minn. R. 7050.0110 and Minn. R. 7050.0140, it has Article III standing to intervene in this case because, if Plaintiffs obtain the relief they request through this litigation, it would be injured in several ways. (Mem., [Docket No. 36], at p. 5). Specifically, the MPCA asserts that, because the outdated water quality standards stem from rulemaking from 1967, which were not supported by scientific evidence, the MPCA "managed the 10-year stakeholder input and scientific analysis" to revise the water quality standards at issue, as well as, the responsibility for enforcing these standards. (Id. at pp. 5-6). Thus, should the Court grant Plaintiffs their requested relief, the MCPA would be required to "undergo [a new] additional process" to revise the now outdated water quality standards, thereby requiring additional state funds and time. (Id. at p. 6).

The Court finds that the MCPA has alleged a concrete, particularized, and imminent invasion of a legally cognizable right because it has alleged potential economic loss should Defendant EPA be ordered to revoke its approval of Minnesota's revised water quality standards. See White Earth Nation, 2015 WL 12778751, at *4.

Furthermore, the Eighth Circuit has held that "when the defendant will be compelled to cause the alleged injury to the intervenor if the plaintiff prevails, the intervenor satisfies the traceability requirement even though the defendant and the intervenor seek the same outcome in the case." See Ziyad Academy, 643 F.3d at 1093. Here, if Plaintiffs prevail, Defendants' approval of Minnesota's revised water quality standards at issue will be vacated, and the MCPA will then be forced to reinitiate the entirety of the proceedings related to the revised water quality standards. On this basis, the Court finds that the MCPA has satisfied the causation element of Article III standing to intervene. For those same reasons, the Court finds that MCPA has shown redressability

because the injury it alleges would be redressed by a judicial determination that the EPA's approval of said water standards was valid. See Id.

Accordingly, the MPCA has sufficiently alleged all three prongs of Article III standing—injury, causation, and redressability—and the Court finds that MPCA has Article III standing to intervene in the present case.

B. Factors for Intervention as a Matter of Right

As provided above, Rule 24(a)(2) allows a party to timely intervene as a matter of right if: (1) the motion is timely; (2) the intervenor "claims an interest relating to the property or transaction that is the subject of the action"; (3) disposition of the action "may as a practical matter impair or impede the movant's ability to protect its interest"; and (4) the existing parties do not "adequately represent" the interest. George, 290 F.R.D. at 577. The Court will address each of the relevant factors.

5. Timeliness

Here, similar to Intervenor Group 1's Motion to Intervene, the MPCA filed its Motion to Intervene approximately two months after Plaintiffs initiated the present action. [Docket No. 34]. Similarly, there is no indication that the MPCA had anything more than minimal knowledge concerning the pending action before seeking to intervene, and there was also no significant delay in the MPCA's decision to intervene. Moreover, it does not appear that Plaintiffs and Defendants will be prejudiced by the MCPA's intervention at this early stage because neither party chose to oppose the present Motion.[4] All of the factors weigh in favor of finding the MPCA's Motion to Intervene, [Docket No. 34], timely.

[4] See, infra, fn. 2.

6. Interest

As noted above, a proposed intervenor must show "a recognized interest in the subject matter of the litigation," Med. Liab. Mut. Ins. Co., 485 F.3d at 1008, and the demonstrated interest must be direct, substantial, and legally protectable. Union Elec. Co., 64 F.3d at 1161.

Here, the MPCA asserts that the State of Minnesota, through the MPCA, has a "quasi-sovereign interest" in protecting the quality of the water, the economic well-being of its businesses, citizens, and municipalities, and a legitimate interest in enforcing its own rules and statutes. (Mem., [Docket No. 36], at p. 7). MPCA asserts that, because it would need to update its outdated water quality standards should Plaintiffs obtain the relief they seek here, it has alleged "sufficiently concrete" quasi-sovereign and legal interest in this litigation. The Court agrees. See Nat'l Parks Conservation Ass'n, 759 F.3d at 976.

Therefore, the Court finds that the MPCA's alleged interests, as detailed above, are sufficiently direct, substantial, and legally protectable to allow the MPCA to intervene in the present action.

7. Possible Impairment

A proposed intervenor must also show that its alleged interest is one that may be impaired by the results of the litigation. For all the reasons discussed above, the present litigation has the potential to impair the MPCA's quasi-sovereign, economic, and legal interests in the revised water quality standards.

Therefore, the MPCA has shown a sufficient possible impairment to its alleged interest to allow the MPCA to intervene.

8. Inadequate Representation of Interest

Lastly, a proposed intervenor seeking to intervene as a matter of right must show that its interest is not adequately protected by the existing parties. "This requirement is met by a minimal

showing that representation 'may be' inadequate." Kan. Pub. Emps. Ret. Sys., 60 F.3d at 1308. In determining the adequacy of the representation of a proposed intervenor's interest by the parties presently in the case, a court compares "the interests of the proposed intervenor with the interests of the current parties to the action." Sierra Club v. Robertson, 960 F.2d 83, 86 (8th Cir. 1992) (citations omitted). The theory of *parens patriae* "creates a presumption that a government agency will represent the interests of all citizens in cases raising matters of sovereign interest." Ubbelohde, 330 F.3d at 1025 (citing Mausolf v. Babbitt, 85 F.3d 1295, 1303 (8th Cir. 1996)). "Proposed intervenors can rebut this presumption, however, . . . by showing that the proposed intervenor's interest is not subsumed within the general interests of the public." Id.

The MPCA has made such a showing here. The MPCA asserted interest in promulgating its own rules and regulations for water quality, and the time, effort, and funds it has and will expend if the outdated water quality standards for Minnesota businesses, citizens, and municipalities are reinstated. (Mem., [Docket No. 36], at p. 8). Although the EPA may have a broader interest in regulating national water quality and approving state water quality standards, it has no specific interest in the MPCA's efforts to ensure that its own water quality standards and regulations are being defended, upheld, and enforced. Accordingly, the interests of Defendants and the MPCA are sufficiently disparate for the purposes of intervention.

Because the MPCA has demonstrated that it has Article III standing to participate in this case, that it has filed a timely petition which shows it has a recognized interest in the subject matter of the litigation that may be impaired by its disposition, and that its interest is not adequately protected by the existing parties, the MPCA may intervene in this case as of right. [5]

[5] Because the Court concludes that the MPCA may intervene as a matter of right, the Court does not address the MPCA's alternative arguments in support of permissive intervention.

Based on the foregoing, the Court **GRANTS** the MPCA's Motion to Intervene, [Docket No. 34].

V. Conclusion

For the foregoing reasons, and based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Intervenor Group 1's Motion to Intervene, [Docket No. 20], is **GRANTED**; and

2. The MPCA's Motion to Intervene, [Docket No. 34], is **GRANTED**.

Dated: November 21, 2022

s/Leo I. Brisbois
Hon. Leo I. Brisbois
U.S. MAGISTRATE JUDGE