

Testimony of Kathryn Hoffman on SF672

Good afternoon, Madam Chair, members of the committee. My name is Kathryn Hoffman, and I am the Executive Director of the Minnesota Center for Environmental Advocacy. Thank you for the opportunity to testify on SF 672.

The Minnesota Center for Environmental Advocacy is a 43-year-old environmental organization that specializes in law and policy. We employ lawyers and experts and our lawyers practice in environmental and administrative law, many of whom have specialties in the area of the Clean Water Act and its state laws and rules that govern Minnesota's implementation of the Clean Water Act.

I am here today to express MCEA's opposition to SF672 governing the impaired waters list. Let me start by explaining a little bit about what the impaired waters list is, and how it is used. It is list of lakes, streams and rivers that do not meet water quality standards. Water quality standards ensure that our waters are usable for basic purposes such as fishing, drinking and swimming. Waters that don't meet these standards may not support healthy fish or plants, or might be unsafe for swimming or drinking. The impaired waters list is a way for the state to figure out which waters are dirty, and use that as a starting point for cleaning them up. So we can start with the basic premise that knowing which waters are dirty is a useful tool for the state.

The process for establishing the impaired waters list is fairly straightforward, yet this bill confuses the issue considerably. The state first comes up with a draft of proposed impaired waters. The state does this based on water quality sampling. The state only has enough money to sample most water bodies about once every ten years. So the state looks at the data from the past ten years and if the most recent data shows that the water is dirty, that lake, river or stream goes on the list. The state then proposes the list to the EPA. Anyone who has additional data about a water body showing that it is cleaner than the state thinks, or dirtier than the state thinks, and has suggestions about how to change the list, can submit comments to the state, or the EPA, or both. The EPA then approves a final list, which might be different than the state's draft, or it might be the same. Pretty straightforward.

This bill does something odd. It takes that draft list by the state and makes it a final decision, which can then be appealed by anyone for a contested case hearing. But the state's list is only a draft, and anyone who wants to can still make suggestions about the draft list to the EPA or the state. The list isn't final until EPA approves it, and that list can be challenged now. So this basically makes it so someone can get two bites at the apple, suing on the list multiple times during the process. This is slow and costly, and hard to make sense of.

Additionally, under this proposed bill, anyone can challenge the impaired waters list based how old the data is. But the state only has the funding to test most waters every ten years. It would be great if they could do more, but it simply isn't possible

under the current budget. So a lake that was tested more than five years ago, apparently, could be removed from the list, even though no one has a smidge of evidence that the lake is any cleaner. Does this mean we now pretend this water is clean? Remove warnings against swimming or drinking it? Pretend that it supports healthy fish communities when it doesn't? Ignoring the problem of dirty water doesn't make it go away.

Thank you for your time and attention today, and I'm happy to take any questions you might have.