Region 5 Response to Question on Consultation with Tribes on Mining Issues
(Draft – 4/13/16)

Question for the Record from the HAC Appropriations Subcommittee Hearing: *How aggressively are you making sure that tribal consultation is moving forward, especially in the area of the sulfite mining?*

Response: EPA follows the national tribal consultation policy issued on May 4, 2011. In order to ensure adherence to this policy, Region 5 developed and follows its regional consultation guidance and standard operating procedures for specific programs. For example, when water quality standards (WQS) revisions are submitted to EPA for formal agency approval, Region 5 follows specific consultation procedures to ensure tribes are invited to consult whenever state/tribal WQS actions may have an impact on tribal interests.

Region 5 has routinely consulted with tribes on a variety of state WQS actions that could potentially impact tribal interests, including nutrient criteria, human health criteria methodologies, BEACH Act guidance, and water quality standards variances for mercury, copper and chloride. Invitations to consult are offered to tribes that may be directly downstream of a state WQS action, adjacent to a WQS action or even within the ceded territory of certain tribes with treaty rights.

Since 2012, Region 5 has consulted with tribes in 2012 and in 2014 on EPA's review of Minnesota's biennial Section 303(d) list of impaired waters and the revisions to the Minnesota Statewide Mercury TMDL in 2012 and 2014. EPA discussions with tribal representatives on these topics have included tribal concerns related to wild rice waters in Minnesota and the potential deleterious impacts of elevated sulfate concentrations on tribal waters and waters upstream of tribal reservation lands. In September 2015, EPA held a tribal consultation discussion on EPA's review of the Minnesota 2014 Section 303(d) submittal with representatives of the Fond du Lac and Grand Portage tribes. EPA is currently reviewing the concerns raised by the tribes during this discussion in the context of EPA's final action on the 2014 303(d) list. EPA anticipates re-engaging the tribes to discuss EPA's consideration of tribal concerns on the 2014 303(d) list in the Spring of 2016.

Mining issues, including those involving sulfate/sulfide/sulfite and wild rice, have included both formal consultation with tribal leaders as well as informational meetings with tribal staff; several of those are listed below. In addition, the Region holds several sets of monthly calls with tribal staff to discuss water program, mining and WQS issues.

- **Mesabi Nugget (December 2012)** – formal consultation on Minnesota's variance for specific conductance, bicarbonate, hardness, and dissolved solids
- **PolyMet Corporation–NorthMet Project (proposed copper/nickel/precious metals mine) (April 2016)** – informal discussion with tribal staff on their concerns related to the Environmental Impact Statement and permitting under the Clean Water Act
- **Potential Revisions to Minnesota's Wild Rice WQS (August 2015; April 2016)** – informal discussions with tribal staff (Aug 2015, April 2016) and tribal leaders (April 2016)

- **Minnesota's Section 303(d) Impaired Waters List (September 2015)** – formal consultation on the Minnesota 303(d) list including concerns about potential deleterious impacts of elevated sulfate concentrations on tribal waters and waters upstream of tribal reservation lands