WILD RICE: THE MINNESOTA LEGISLATURE, A DISTINCTIVE CROP, GMOS, AND OJIBWE PERSPECTIVES

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Wild Rice: The Minnesota Legislature, a Distinctive Crop, GMOs, and Ojibwe Perspectives

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I am proud to represent Monsanto. We have a billion acres of GMO crops and there has not been a single adverse incident in ten years. Monsanto has never thought about engineering wild rice. It is a unique product and so makes no economic sense [to genetically engineer it]. We have federal and state regulations. How much more process can you get? Minnesota has spent a ton of time and money to nurture the biotechnology industry. If this legislation passes, make no mistake, the national organic websites will have its results up all over the country…

Sarah Janacek, lobbyist for Monsanto

Genetically engineered seeds and crops abound in U.S. agriculture. Proponents of this technology cite the promise of genetic engineering to feed a hungry world, reduce pesticide use and provide crop-based energy alternatives. Opponents cite concerns regarding the safety of these technologies to the environment and humans and the capability of federal regulatory agencies to keep genetically and non-genetically engineered crops separate. A few critics are concerned about the respect of Indigenous...
populations for whom particular food resources are culturally sacred and protected by
treaty. The Minnesota Legislature weighed in on this debate, passing legislation in 2007
described, in part, as “an act modifying provisions for regulating genetically engineered
organisms.” The legislation is noteworthy because it specifically addresses concerns
regarding some potential impacts of genetically engineering a crop sacred to Indigenous
bands. Second, the legislation mandates that a state level regulatory body, the
Environmental Quality Board, adopt rules requiring an environmental impact statement
(EIS) in the case of a permit for the release of genetically engineered wild rice. Finally,
the legislation is unique in requiring a study be carried out by the state Minnesota
Department of Natural Resources on potential threats to natural stand wild rice, including
those from genetically engineered strains.

Opponents of the Minnesota legislation claimed that it “sends a chill through
many communities in the state… we [in Minnesota] are circumscribing the ability for
people to work in genetic engineering on agricultural crops… and… we [in Minnesota]
are opening a door we will be sorry we opened.” In this article, we examine the history
of this legislation, arguments supporting and opposing it, and some legislative procedures
facilitating its passage. Minnesota’s case is unique because it concerns a plant sacred to
sovereign American Indian Nations (Ojibwe) governed by treaty rights specific to wild
rice. It is also unique because non-American Indians in Minnesota also claim it as part
of their identity (e.g. Minnesota state grain). Non- American Indians, living outside

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3 From testimony, March 28, 2006, HF3915, House Committee of Agriculture and Rural
Development, Minnesota Legislature.
4 From testimony, April 25, 2007, HF2096, House Floor, Minnesota Legislature.
5 Anishinaabe(g), Ojibwe, Ojibway, Ojibwa and Chippewa are all names for the same group of people. This
can cause confusion. According to several scholars, the use of Ojibwe or Anishinaabe(g) is one of personal
preference. We use Ojibwe in this paper. Quotations, however, will not be changed. Generally,
Anishinaabe(g) is used by the people themselves. Chippewa is the official name recognized by the federal
government.
Minnesota but in places where wild rice grows, also view it differently from other cash crops. Wild rice is considered unique to northern North America. Minnesota’s situation, however, is not unique to the extent it shares in common with other states’ discussions stemming from larger debates over the regulation of crop biotechnology.

**History of wild rice legislation in Minnesota**

In legislative session 2005, a version of the “wild rice bill” prohibited the release and sale of genetically engineered wild rice in Minnesota. The 2005 bill, S.F. 1566, was tabled. The 2006 bill, H.F. 3915, emerged, in part, after discussions between interested parties. H.F. 3915, titled, “A bill for an act relating to agriculture; providing for a wild rice study,” was heard in the House Agriculture, Rural Economies and Veterans Affairs Committee. Passing the House, it did not reach the Senate. In 2007, Senate File 2096, an Omnibus Environment, Natural Resources, and Energy Appropriations bill, contained...
language regulating the release of genetically engineered wild rice. Passing the House and Senate, the bill was signed by the Governor on May 7, 2007. 9

This legislation, pertaining to genetically engineered organisms and wild rice, underwent much negotiation over three years. The process by which legislation with little support in 2005 became law in 2007 warrants consideration. The evolution of this bill -- its language, the discussions in and outside committees, and its outcome -- was likely influenced by procedural, economic and political events. For the first time, it is possible to see a series of related discussions over several years on crop biotechnology in a state legislative context.

*The case of Minnesota, wild rice and the legislature*

One can argue Minnesota’s case is unique because of the combination of cultural, political and economic circumstances which led to inclusion of language pertaining to wild rice and genetic engineering in S.F. 2096. Other states are on the cusp of passing or have passed similar legislation reflecting broader changes in national and international discussions. First, we examine some reasons why this legislation may be unique to Minnesota. Second, we discuss the broader context of crop biotechnology and Indigenous rights also of interest to other states and jurisdictions.

I remember when my grandfather harvested wild rice. I remember climbing a tree when I was too young [to directly participate]. [Harvesting wild rice] is something I’ve participated in my whole life. I have first hand knowledge [of this practice], the harvesting, hand-parching, and finishing. [This practice] was passed onto me by my [grandparents and parents] and now I am passing it on to my children… The Creator has given us many things. Every time we try to change [what we are given], it messes things up. I’m afraid this will happen to our wild rice beds. To [genetically engineer] wild rice

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9 In summary, the bill makes the state Environmental Quality Board (EQB) responsible for coordinating state and federal regulatory activities relating to genetically engineered organisms within Minnesota. The board must adopt rules requiring an environmental impact statement (EIS) in the event of a permit application for genetically engineered wild rice. The bill also requires a study by early 2008 estimating, among other factors, potential threats to natural stands, including those from genetically engineered strains.
would be disrespectful to the First People who inhabited this land… It would be morally wrong.

Chairman George Goggleye Jr., Leech Lake Band of Ojibwe\textsuperscript{10,11}

Although legislation on this issue was heard in the years 2005, 2006, and 2007 at the Minnesota legislature, for approximately a decade prior to these hearings, members from all six bands of Ojibwe in Minnesota expressed views similar to those expressed by Chairman Goggleye in 2007. In 2006, all Minnesota bands passed resolutions in support of state legislation. Ojibwe from Wisconsin, Michigan and parts of Canada also expressed similar concerns during the decade preceding the introduction of Minnesota’s legislation. While Ojibwe bands in and outside Minnesota are distinct Sovereign Nations with views differing on many subjects, they unanimously supported various iterations of this bill.

Throughout the course of three years, members opposing or voicing concerns about this legislation made the following comments:

Is there a problem with wild rice? Did a sportsmen’s group come to you or is it one or more of the Sovereigns from up North? Do you have knowledge of what the Sovereigns are doing to address this concern among themselves?

Representative Emmer\textsuperscript{12}

Is the interest in this study about economic benefits just for tribal folks in your area? I was just wondering if it was becoming a “we” vs. “them” sort of debate. Seemed like it was starting to go that way.

Representative Klinzing\textsuperscript{13}

\textsuperscript{10} From testimony, March 15, 2007, H.F. 1662 and 1663 (precursors to S.F. 2096), House Environment and Natural Resources Committee.

\textsuperscript{11} The word for wild rice in the Ojibwe language is \textit{manoomin}, often translated as “good berry” (Thomas Vennum Jr., WILD RICE AND THE OJIBWAY PEOPLE, Minnesota Historical Society Press: St. Paul, (1988). Referring to wild rice as \textit{manoomin} recognizes that this food is traditionally and originally associated with Ojibwe. Wild rice is the English name given \textit{manoomin}. Ojibwe language includes a number of dialects resulting in non-uniform spelling of the word. There are additional challenges with spelling because while the double vowel system is gaining popularity, there is no single standardized orthography for the language (http://en.wikipedia.org/wiki/Ojibwe_writing_systems#Fiero_Double_Vowel_System).

\textsuperscript{12} Representative Emmer, House Floor testimony, addressing Representative Moe, bill’s author, May 15, 2006.
[This bill] is about politics, emotion, guilt and pride. We’ve had only one instance of white rice being a problem…

Representative Mahoney

This legislation was all political… It was completely politically driven. This is a Native American plant… The whole process was pushed by Leanna (sic) LaDuke for the purpose of raising the profile of culturalists on Native American reservations. The guilt comes from people feeling guilty about how they treated Native Americans. There is pride that the Native Americans now feel they have a more equal footing...

Representative Mahoney

In light of these remarks, it seems critical to clarify specific, Constitutional, Sovereign and Treaty rights held by American Indians in this country. Such clarifications were not made during legislative testimony. Ojibwe perspective on wild rice is not just “one more” among other “equally valid” perspectives in Minnesota. Ojibwe are citizens of federally recognized Sovereign Nations guaranteed by a series of Supreme Court judgments from the 1820’s and 1830’s. Tribal governments voluntarily negotiate with states regarding matters of tribal jurisdiction and resource management guaranteed in negotiated treaties.

In this case, a matter regarding natural stand wild rice growing in large quantities on American Indian Reservations, it is not a question of “we vs. them;” rather, it is one of considering justly the rights guaranteed to Ojibwe in treaty making. It is also a matter of rendering due consideration the lengthy history and integrity of Indigenous environmental law and management that precedes and succeeds settlement. As recognized by Borrows, Kidwell and Wilkins, from somewhat different angles, “Indigenous or tribal peoples of the world… regulate rights and obligations crucial for

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13 From House Floor testimony, May 15, 2006, Representative Klinzing addressing Representative Moe, bill’s author.
14 House Floor testimony, May 15, 2006, Representative Mahoney.
maintaining the harmony with nature and the environmental awareness characteristic of the traditional way of life.”

Indigenous legal and management approaches to natural resources, broadly speaking, take into consideration the pre-eminence of “natural cycles.” “The cycles of the natural environment oriented native people to the repetition of events… Native worldviews were more often concerned with events that repeated themselves on a regular basis -- the growth and harvest of crops, the mating and migration of animals, the movements of stars and planets. Recognition of… cycles… depends on accumulation of data over extended periods of time, usually greater than those of the lifetime of a single observer, and requires some form of record-keeping.” Many Indigenous communities for millennia had sophisticated record-keeping including the Mayans, Aztecs, and Incans to name a few. Communities today continue these traditions.

Kidwell points out that, “Native systems of knowledge are difficult to describe, for while they often reflect familiar Western processes -- observation, deduction, hypothesis, experimentation -- they also rest upon fundamentally different understandings of the world…” As the Brundtland Commission noted, [some Indigenous people] “have enjoyed substantial and long-term environmental successes.” Borrows continues, “Indigenous inclusion… in existing [legal and government] institutions … facilitates sustainability by suggesting important reconnections of biological relationships with

18 Kidwell, Id.
19 Id.
20 Id.
21 Borrows, Id.
ecosystems.” Finally, “Indigeneous legal principles form a system of ‘empirical
observations and pragmatic knowledge’ that has value both in itself and as a tool to
demonstrate how people structure information.”

Wild rice has enjoyed an Indigenous management history that is unique and
precedes modern times. Such management is distinct and more developed than other
Indigenous resource management (management for deer, for example). Tribal elders and
resource managers have historically monitored and managed water levels as part of wild
rice management. For example, if a particular beaver appeared to be building a dam that
might affect water levels and negatively impact wild rice growth, that beaver “ended up
in the pot.” In Nett Lake, Bois Forte Band of Chippewa, a boulder the size of a small
car protrudes out of the water in front of Spirit Island. Historically, tribal elders
determined the time of rice harvest, in part, by gauging when water levels reached a
particular point on that rock.

While Ojibwe have well-developed wild rice management traditions, elders
appreciate both the fragility and resilience of this resource. Historically, if a crop was
not robust, damaged by storms or straight line winds, communities traveled to other lakes
for harvesting. Ojibwe wild rice managers have acknowledged the complexity of
biological relationships and ecosystems.

In their remarks at the legislature in 2007, legislators failed to acknowledge
critical historical and legal precedents. Minnesota became a state in 1858. Statehood did

22 Borrows, Id.
23 Paul Schultz, Joseph LaGarde, White Earth Reservation, John Persell, Leech Lake Reservation, 2006-
2008, personal communication.
not eliminate the sovereign status of American Indian nations and management of resources within their jurisdictions, nor did it eliminate prior treaty obligations. It also did not eliminate the “Federal Government’s obligation to protect tribal trust resources: land, water, hunting and fishing rights, and that sovereign immunity is integral to protection of those resources…”

In 1837, the United States entered into a treaty with several Bands of Chippewa Indians guaranteeing certain hunting, fishing and gathering rights (among them wild rice) on ceded land. This treaty did not specify that Ojibwe “owned” wild rice, but guaranteed the protection of Ojibwe to harvest and manage native stands. The rights guaranteed in that treaty were recently recognized again in a 1999 Supreme Court decision: Minnesota, et al., Petitioners v. Mille Lacs Band of Chippewa Indians et al. This case was filed in August 1990, by members of the Mille Lacs band of Ojibwe against the State of Minnesota for “interfering with the hunting, fishing and gathering rights that had been guaranteed them in the 1837 treaty with the United States.”

Serious consideration of Ojibwe views regarding wild rice is not a matter of considering “another view.” It is not optional to overlook the ways treaty rights confer specific responsibilities to American Indians over particular natural resources. In discussions about science, biotechnology and management of natural stand wild rice, it is potentially unlawful for states to ignore treaty-based claims. Legislators need to consider

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29 Wilkins, Id.
30 McClurket et al., Id.
31 Id.
Constitutional and Supreme Court mandates; abdication of these responsibilities is tantamount to ignoring the rule of law.

*Ojibwe and wild rice*

Over three years of legislative discussion, proponents argued that wild rice is spiritually and culturally sacred to Ojibwe. Little, if any, discussion clarified that relationship. We take time to include discussion, while not presenting an exhaustive analysis.

Ojibwe band members signing the treaty of 1837 asserted their right to gather wild rice in ceded territories based on reasons of livelihood and spiritual tradition; wild rice is central to Ojibwe survival and identity. The Ojibwe migration story tells of a time when they lived in the East and were instructed by the Creator to follow the *miigis* (cowrie shell) on a westward journey that would end when they reached “the place where the food grows on water.” Wild rice is this food. Ojibwe nations live alongside Minnesota, Wisconsin, Michigan and Canadian lakes and rivers where they encountered rice, perhaps many hundreds of years ago, perhaps longer, where it grows naturally.

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32 There are many versions of this story. We extrapolate from the most widely recognized among Ojibwe.
33 The Creator is also commonly called the Great Spirit or Gichi Manitou and is generally understood as the maker and designer of everything.
34 A *miigis* is a type of shell that is small, light in color (cream, beige or ecru), oval shaped and has a long, narrow opening on one side. It is known as a cowry (also spelled cowrie) shell in English.
today. Associated with origin stories, wild rice is central to notions of being Ojibwe; managing wild rice in its natural state is a moral obligation.  

For Ojibwe, wild rice has medicinal and nutritional value derived from its spiritual significance — a belief reflected in use of wild rice to promote recovery from sickness as well as for ceremonial feasts.”  

Wild rice is served at spiritual ceremonies, pow-wows, family gatherings, other special events, and as a regular part of family meals.  

Ojibwe understand their relationship to wild rice through stories known to all members from childhood. The stories depict the advent of specific “heroes” and their connection to humans, animals and plants. “[T]hese legends explain the origin of wild rice.” One story describes how Wenabozhoo, the main Ojibwe “culture hero,” was introduced to wild rice.  

…One evening [Wenabozhoo] returned from hunting but had no game. . .As he came towards his fire, there was a duck sitting on the edge of his kettle of boiling water. After the duck flew away, he looked into the kettle and found wild rice floating upon the water, but he did not know what it was. He ate his supper from the kettle, and it was the best soup he had ever tasted. Later, he followed in the direction the duck had taken, and came to a lake full of manoomin. He saw all kinds of ducks, geese, mud hens, and all the other water birds eating the grain. After that, when [Wenabozhoo] did not kill a deer, he knew where to find food to eat. . .  

Other stories tell how wild rice was a gift to Ojibwe from the Creator to end famine during the late winter when supplies of food often ran low and game was difficult to secure.

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36 From testimony, March 15, 2007, H.F. 1662 and 1663 (precursors to S.F. 2096), House Environment and Natural Resources Committee; Vennum, *Id.*  
37 *Id.*  
38 *Id.*  
39 A culture hero is the most important legendary figure of a specific people and is often involved in the creation of the world. A culture hero often discovers significant things like fire, or, as in this case, wild rice. Different Ojibwe communities use a variety of names for the culture hero due to dialect differences in the Ojibwe language. He is known by names including Nanaboozhoo, Nanabush, Nanapush, and Manaboozhoo, B. Johnston, OJIBWAY HERITAGE. McClelland and Stewart: Toronto, Canada (1976).  
Only the old ones speak of how the people suffered during the hungry-time. It occurred in the late winter or early spring... when snow covered the ground and the supply of stored food dwindled. Babies cried desperately for food. Mothers wept in despair, and fathers turned their backs to hide their tears... Soon people found rice growing in many shallow lakes and rivers. The hungry times ended.\textsuperscript{41}

Considered perfect in its natural state as depicted in oral tradition, the process of harvesting wild rice is also central to the relationship between Ojibwe and this sacred resource. Many offer a prayer and gift of tobacco before beginning harvest. Owing to its cultural, spiritual and nutritional sustenance, Ojibwe appropriately honor the rice and its Creator.\textsuperscript{42}

Harvesting is most often done in teams of two – one person using a forked pole to propel the canoe, and the other using knocking sticks to gently knock the rice into the canoe and into the water.\textsuperscript{43} The grains landing back in the water help ensure the harvest for the coming years. It would be nearly impossible for one person to harvest rice using a canoe and knocking sticks; cooperation between the paddler and harvester is essential. Acts of cooperation remind harvesters of their relationship with rice and keep the community strong.

Ojibwe understand themselves, their history, and their relationship to the natural world through these stories. The first story emphasizes the importance of learning from animal siblings. The second illustrates how food is directly connected to survival. Neither story places humans in positions superior to wild rice; rather, culture heroes, the Creator, animals, and plants possess significance that humans cannot fully know. From


\textsuperscript{42} A prayer of thanks is offered and then a small amount of tobacco is placed near the shoreline or in the water near the wild rice. Many Ojibwe believe that tobacco is a special plant that feasts spirits so in this case tobacco is offered to both thank and feast the spirit of the rice.

\textsuperscript{43} Regguinti’s \textit{Sacred Harvest} gives an excellent modern-day account of the wild rice harvesting process; Vennum, \textit{Id.}
these stories, Ojibwe understand their mandate to protect and maintain this sacred resource.

Throughout the course of Minnesota’s Legislative hearings, it is unclear whether the spiritual and cultural significance of wild rice to Ojibwe affected outcomes. In previous years, the bill did not pass in spite of testimony similar to Chairman Goggleye’s in 2007. It is possible, however, that the consistency of these arguments, the increased participation by Ojibwe tribal leaders, along with other arguments, helped in passing “wild rice language” in S.F. 2096. Whatever the full set of reasons, it is inaccurate to claim this legislation was mainly about “non-American Indians feeling guilty” or “American Indians having Native Pride” exercising political muscle. These explanations discount the legal realities of American Indian sovereignty and treaty-secured resource management. They discount the significance of Sovereign Nation rights to preserve Ojibwe identity and livelihood.

Wild rice and Minnesotan identity

I am supporting this legislation because it is about wild rice and wild rice alone. It is a very unique crop.

Representative Juhnke

I have frequented for a long time a lake home of my parents near wild rice beds. We have also harvested it. We eat a lot of wild rice… It is an important part of our heritage in Minnesota. It’s important to our [Minnesota] heritage to maintain a pure wild rice strain…

Representative Klinzing

Wild Rice, Minnesota's State Grain, is almost as old as history itself.

C&G Enterprises

We offer you the essence of Northern Minnesota in our products (wild rice).

GRV Gibbs Wild Rice

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44 From testimony, April 4, 2006, House Committee on Agriculture and Rural Development.
45 From testimony, May 15, 2006, on H.F. 3815.
Many legislators, Democrat and Republican, supported this legislation because, as they stated, “wild rice is unique to Minnesota” and Minnesotan identity. They wanted to clarify that, while perhaps important to American Indians, wild rice was important to non-American Indians as well. Precisely what is “Minnesotan” about wild rice? Answers may vary greatly from person to person. In any case, while such views may have played a significant role in this bill’s passage, I look at concrete legislative procedures and political realities that likely came into play. In sum, the most important reasons for this bill’s passage in 2007, according to its chief author, were: a Democratic House and Senate majority with sufficient partisan loyalty on some issues and supportive chairs in both the House and Senate Environment Policy and Finance Committees.\footnote{Representative Frank Moe, June 22, 2007, personal communication.}

*Legislative factors contributing to passage of S.F. 2096*

When brought to the House Floor, this bill passed as part of an Omnibus Environment bill: 88 to 44. For legislation which in previous years did not make it past the first committee hearing, this vote represents a dramatic shift. In this section, I consider the political make-up of the Minnesota House and Senate, lobbying tactics and the role of outside support in 2007.

In 2006, some of the bill’s opponents described it as purely an “Indian bill,” meaning bands, band-affiliated, or “American Indian” non-government organizations comprised its primary support. The bill was in fact heavily supported by band members: all six Ojibwe bands from Minnesota passed their own resolutions in support of this legislation. The Leech Lake Band of Ojibway and Red Lake Nation showed strong support, as did the White Earth Land Recovery Project (WELRP). The bill, however,
was also supported by the Izaak Walton League of America and closely watched by the Minnesota Center for Environmental Advocacy, Sierra Club, League of Conservation Voters, Audubon Society, Farmers Union, Institute of Agriculture and Trade Policy (IATP), and the Land Stewardship Project.\(^{49}\)

In 2007, the number of organizations officially supporting the legislation jumped to approximately 51, and also included six mayors, two city councils, and one county board.\(^{50}\) Among the diverse range of new organizations supporting the bill were the Joint Religious Legislative Coalition and the Minnesota Association of Conservation Professionals, which wrote formal letters to leaders of key committees at the start of 2007. While impossible to determine the influence of particular organizations, the sizeable jump in support and its widespread political and geographic base are noteworthy.

It is also important to take into account some changes in opponent tactics. In 2006, those publicly testifying against the bill included a Monsanto lobbyist, representatives from biotechnology trade organizations including MNBIO and Medical Alley, officials from the Minnesota Department of Agriculture (MN Dept. of Ag.), officials from the University of Minnesota, and the Minnesota Cultivated Wild Rice

\(^{49}\) Representative Frank Moe, ibid, May 2006.
\(^{50}\) Joint Religious Legislative Coalition, Minnesota Farmers Union, Institute for Agriculture and Trade Policy, Land Stewardship Project, Minnesota Association of Conservation Professionals, Izaak Walton League Minnesota Division, Mankato Area Environmentalists, NE Minnesotans for Wilderness, League of Women Voters — Minnesota, Sustainable Farming Association of Minnesota, National Environmental Trust, The Alliance for Sustainability, EAGLE (Environmental Association for Great Lakes Education), Kids for Saving Earth, Renewing the Countryside, MN COACT (Citizens Organized Acting Together), Sweetwater Alliance, Institute for a Sustainable Future, Institute for Local Self Reliance, The Wild Institute, Friends of the Boundary Waters Wilderness, Minnesota River Valley Audubon Chapter, Duluth Audubon Society, Saint Paul Audubon Society, American P.I.E. (Public Information on the Environment), Lake Superior Sustainable Farming Association, Round River Farm, Park United Methodist Church, Brainerd Aveda Corporation, The Lutsen Resort, Gunflint Lodge, Chef Lucia Walker, GRV Gibbs Wild Rice, Northern Waters Smokehaus, Fitgers Brewhouse, Bennett’s on the Lake, Blue Heron Trading Company, Chester Creek Café, Linden Hills Co-op, Whole Foods Co-op (Duluth), W-Trek Outfitters, Midnight Sun Adventure Company, Duluth Pack, Wilderness Family Naturals, Mississippi Corridor Neighborhood Coalition, North American Water Office, Harbor Friends of Grand Marais, Environmental Justice Advocates of Minnesota, Clean Water Action Alliance of Minnesota, Voyageurs National Park Association, 1000 Friends of Minnesota, Mayor R.T. Rybak (Minneapolis), Mayor Chris Coleman (St. Paul), Mayor Herb Bergson (Duluth), Mayor James Wallin (Brainerd), Mayor Elaine Flemming (Cass Lake), Mayor Larry Huboltz (Detroit Lakes), Mayor Bill Eck (Waubon), Park Rapids City Council, Duluth City Council, St Louis County Board.
Association. The Minnesota Department of Natural Resources (DNR) took a neutral stance.\textsuperscript{51} In both 2006 and 2007, opponents lobbied legislators off the Capitol and Committee floors. In 2007, however, the number of public testimonies against the bill shrank. The DNR supported the legislation, but did not play an active role in its support. Several of the same biotechnology trade organizations from the 2006 session testified. Monsanto, the MN Dept. of Ag. and the Minnesota Cultivated Wild Rice Council, however, did not testify. The University of Minnesota took a neutral position.

Concurrent with changes in political support for and against this bill were changes in political leadership in the Legislature. In 2006, the Republicans controlled the House and Governor’s seat, but in 2007, the Democrats took control of the House and maintained control of the Senate. While not necessarily a partisan issue -- in fact, many in favor of the bill were Republican and many opposed were Democrat -- votes, however, tended to divide along partisan lines. Even prior to the 2007 session, the bill’s authors had adequate numbers of votes in both the House and Senate. The vote in the House was not close: 88 to 44. House proponents voted in favor of wild rice language and funding in S.F. 2096; House opponents proposed amendments to remove this language on the House Floor, but the amendments were defeated.

The bill’s main author, Representative Frank Moe, attributed success to several important factors. Several representatives played particularly active roles. Representative Kent Eken, co-author, was an especially strong supporter throughout the session. Representative Phyllis Kahn’s support in the Government Operations Committee was pivotal in keeping the bill moving. Finally, Chair Jean Wagenius, was adamant that this bill not be removed from the Environment Omnibus bill. She met with

\textsuperscript{51} From testimony, March 28, 2006, House Committee on Agriculture and Rural Development.
Speaker Ellen Anderson and Senate Finance Chair Lyndon Carlson to make clear her position.\textsuperscript{52}

In addition to the work of particular representatives, other factors played important roles. Prior to Committee hearings, Representative Moe met with seasoned legislator, Senator Rod Skoe (served two terms in the House and currently in his second term in the Senate). Representative Moe consulted Senator Skoe, working with him to draft mutually agreeable language. Senator Skoe is a paddy wild rice farmer and represents many constituents from White Earth and Red Lake Bands. Senator Skoe is also a member of the Minnesota Cultivated Wild Rice Council. In 2006, Senator Skoe’s public position on the bill was unclear. He did not openly oppose the bill as it traveled through Committee to the House floor. At one point during a House Agriculture, Rural Economies, and Veterans Affairs Committee hearing, the Minnesota Cultivated Wild Rice Council claimed its members opposed this legislation.\textsuperscript{53} Such claim, however, failed to acknowledge that Council members, Senator Skoe and the Red Lake Nation, did not actively join the bill’s opposition. In 2007, understanding that Democrats held the majority in the House and that the “wild rice issue” was not going away, it is possible Senator Skoe consented to work on mutually agreeable language with the bill’s authors.\textsuperscript{54}

Prior to the 2007 session, as well as ongoing during hearings, Representative Moe and lobbyists met with Legislators who may not have made up their minds regarding the bill. In comparison to 2006, Representative Moe noted proponents simply had more people on the ground. It is also possible that lobbying in 2007 was more effective due to

\textsuperscript{52} Representative Frank Moe, June 22, 2007, personal communication.
\textsuperscript{53} From testimony, March 28, 2006, HF 3915, “Wild Rice Study,” the House Committee of Agriculture, Rural Economies, and Veterans Affairs, Minnesota Legislature.
\textsuperscript{54} Representative Frank Moe, June 22, 2007, personal communication.
increased tribal leader testimony. Complementing such testimony was the work of lobbyists in 2007, Andrea Hanks and Allen Richardson from the White Earth Land Recovery Project (WELRP), Jamie Edwards of Mille Lacs Band, Henry Erdman and Bob Johnson (former legislators) of Bois Forte Band, Steve Smith of Minnesota Chippewa Tribe, and tribal attorney, Wayne Bohn of Leech Lake Band. Craig Hassel, Professor of Food and Nutrition, University of Minnesota, spoke on behalf of the legislation at several committee hearings as a private citizen.

Lobbyists in 2007 were better informed and more strategic, having benefitted in part from their experiences in 2005 and 2006. Prior to the 2007 session, resolutions for “wild rice” were introduced and passed at the DFL precinct caucuses. These resolutions then went to the county and finally state DFL Conferences. Such resolutions may or may not be taken seriously depending on the legislator. It is worth mentioning the “wild rice” resolution was the only one in the “Agriculture” category that made it to the DFL’s action agenda for the 2007 session. Perhaps few constituents realize how few items actually become a part of a party’s “action agenda,” and yet without that level of support, legislation may be weaker. Lobbyists may be effective in many ways. The energy, strategic planning, and competence of some of the most active lobbyists was apparent in the 2007 bill’s first hearing in the House Environment and Natural Resources Finance Division Committee. Representative Dennis Ozment, serving for almost 24 years, singled out Richardson saying that during all his time in the Legislature he had never been as

55 Lobbying efforts were led largely by Winona LaDuke and Sarah Alexander of WELRP.
56 Allen Richardson, June 28, 2007, personal communication.
well-briefed on a single issue as he was by Allen Richardson of White Earth Land Recovery Project (WELRP).

Finally, the Environment and Natural Resource Committees in the House and Senate, critical to the bill’s passage, were controlled by sympathetic Chairs, Representative Jean Wagenius and Senator Sautveer Chaudhary. These Chairs were willing to hear the bill and supported it throughout the session. While the bill had the votes needed to pass the House and Senate, getting through committee is not an insignificant hurdle. The importance of “procedure” can be pivotal, as is seen in the following example.

On March 27, 2007, the House Government Operations, Reform, Technology and Elections Committee heard the bill. After testimony and discussion, most of its members were in favor of sending it to the House Finance Committee. House Government Operations Chair, Gene Pelowski, however, had received a request to hear the bill from Chair Tim Mahoney, House Biosciences and Emerging Technology Committee. The Biosciences Chair and many of its members adamantly opposed the bill. Sending the bill to Biosciences would most likely have led to its demise. Chair Pelowski, however, desired to follow procedural precedent and respect another chair’s request to hear the bill. Representative Pelowski moved to send the bill to Biosciences. In an effort to save it, Representative Phyllis Kahn motioned for an amendment to send the bill to the Finance Committee. Representative Moe and others rallied committee members to their seats. When a quorum was met, Representative Pelowski called for a vote. He voted against

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57 From testimony, April 2007, House Environment and Natural Resources Finance Division Committee.
sending it to the House Finance Committee. His committee members, however, overruled him, and the bill was sent to Finance and not Biosciences.\textsuperscript{58}

While this bill had critical support outside the Legislature, and sufficient votes to pass the House and Senate, all bills follow Committee protocol. The controlling caucus and Committee chairs play powerful roles in a bill’s fate. While legislative procedure is not unique to Minnesota, the “wild rice bill” relied on legislative process for success. Wild rice, unique in terms of its relationship to Indigenous communities, unique as the state’s official grain, was in no way unique when it came to enduring legislative process. No matter how hard its proponents worked, including the bill’s authors, without majorities in the House and Senate and without the support of critical Committee chairs, this bill would likely not have passed in 2007.\textsuperscript{59}

In terms of garnering the Governor’s support, proponents arranged for every tribal chair to call the Governor asking that he not “line item-out” funding for wild rice in S.F. 2096.\textsuperscript{60} The Minnesota Chippewa Tribe passed a resolution and sent it directly to the Governor.\textsuperscript{61} The Governor may not have supported this legislation, \textit{per se}, but it is possible that during the 2007 session, when he vetoed a large number of Democrat authored legislation, he needed to prioritize his vetoes.

Impossible as it may be to decipher exactly which factors facilitated passage of wild rice language in S.F. 2096, it is likely that increased levels of constituent support, proponent strategy, and economic factors outside the state, played a role. At this point,

\textsuperscript{58} Representative Frank Moe, May 2007, personal communication.
\textsuperscript{59} Representative Frank Moe, June 22, 2007, personal communication.
\textsuperscript{60} Representative Frank Moe, May 2007, personal communication.
\textsuperscript{61} Allen Richardson, May 2007, personal communication.
we look briefly at the political and economic context of crop biotechnology in 2007 as it relates to this legislation.

**Changes in the political landscape of crop biotechnology**

*Federal oversight: Are the regulators regulating?*

Lobbyist Janacek for Monsanto declared in 2006, “We have federal and state regulations. How much more process can you get?” Paul Strandberg, representative from the Agricultural Marketing Services of the MN Dept. of Ag., declared in 2006, “The [GM] germplasm won’t escape into natural stands.” Then came escaping genetically engineered Liberty Link white rice from Arkansas and escaping bentgrass from Oregon in the summer 2006. Suddenly “adequate federal process” seemed hard to come by, and “inescapable germplasm” somehow capable of escaping.

Warnings about federal oversight and the possibility of genetically engineered strains ending up in undesired locations were longstanding. At the 2006 Minnesota Legislature, Dennis Olson, Institute for Agriculture & Trade Policy (IATP), presented information from the Inspector General of the United States Department of Agriculture (USDA). Olson drew attention to an audit that found the Animal and Plant Health Inspection Service (APHIS), the USDA branch responsible for regulating GM crops,

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62 From testimony, March 28, 2006, House Agriculture and Rural Development Committee. Strandberg does not cite evidence that germplasm will not escape into natural stands.


“failed to properly oversee field trials of GE plants.” According to the report, APHIS, “lacks basic information about the field-test sites it approves and is responsible for monitoring, including where and how the crops are being grown, and what becomes of them at the end of the field test.” The audit cited regulatory weaknesses in the internal management controls, “increasing the risk that genetically engineered organisms will inadvertently persist in the environment before they are deemed safe.” It seemed all but a prediction of the August 2006 events.

Whether the Monsanto lobbyist’s claim from 2006 testimony that “in a billion acres of [Monsanto] GMO crops, there has not been a single adverse incident in ten years,” was accurate, for that company, such claim was false for the industry as a whole after August 2006. It is also important to pay attention to several less well-publicized cases of escaped GE germplasm. Scientists in Canada reported an instance in which genetically herbicide resistant canola appeared to have spread to a wild relative. In Japan, transgenic canola was found growing near some ports and roadides. Since the crop is not grown commercially in Japan, scientists hypothesized that imported seeds had escaped during transportation to oil-processing facilities. Representative Mahoney argued that the Arkansas case was “just one problem” involving white rice. Unfortunately, it was not “just one,” and that incident alone is estimated to have cost the U.S. long grain rice industry $1.5 billion.

Implications for wild rice

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66 USDA, Id.
67 Id.
68 Id.
69 Janacek, Id.
69 A. Pollack, Grass created in lab is found in the wild, N.Y. TIMES, August 16, 2006.
It seems incumbent on legislators to take seriously warnings from relevant testimony. Mary Hanks, Minnesota Department of Agriculture, answered legislators’ questions in 2006 regarding possible contamination of wild rice by a genetically engineered variety. Hanks works with APHIS and oversees all applications for plot approvals in Minnesota. When asked, “Is wild rice adequately protected?” she said, “I am not too familiar with wild rice aside from eating it. I would need to [have information] regarding the biology and agronomy of [wild rice]. Such a study would not take two years. But, honestly, I do not know how long it would take… I would need to know about the movement of pollen and seed from research sites to lakes. It is likely that [some kind of] containment of research sites [would be necessary]. As Winona LaDuke pointed out, birds carry seed. [So I can imagine], bird netting might be necessary… I would need to know how far pollen moves.”

In fact, Joanna Cregan, Master’s student at the University of Minnesota, wrote her thesis, 2004, in part, on pollen travel of wild rice. She concluded after a four year study that “the percent pollination observed at various distances are higher than those in corn pollen studies… small amounts of wild rice pollen can travel and remain viable for at least two miles… The release of wild rice pollen follows patterns similar to those observed for other wild-pollinated species.”

This study was out well before the 2006 hearings. While Cregan’s is a single study and not published in a peer-reviewed journal, its results are supported by similar

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71 From testimony, March 28, 2006, Hanks, Ph.D., Director of Sustainable Agriculture and Integrated Pest Management, MN Dept. of Ag.
studies on other crops. These findings taken together with the distribution of water basins with *Zizania sp.* across Minnesota make clear that viable genetically engineered wild rice test plots (ones that would not contaminate native stands) would be nearly, if not impossible, to locate. The farms on which such test plots would be established are nearly, if not all, too close to native stands.

Specific information regarding pollen travel and wild rice in conjunction with information regarding other crops pens undeniable warnings. While such research and warnings were not heeded in 2006, the cases in Arkansas and Oregon dramatically affected national attitudes towards federal regulatory capability.

**Lost opportunities in biotechnology?**

One lobbyist during the 2006 hearings stated, “this bill ignores the positive side of GM crops, that a potato resistant to a particular pest may prove critical to agriculture or alleviate chronic malnutrition. There is a dramatic promise for meeting the greatest challenges of the 21st century.” A Monsanto biologist in a different setting, speaking to an author writing about genetically engineered crops, said, “You know we need genetic engineering… to feed the world.” Finally, opponents of legislation in 2007 stated, “We [Minnesotans] are not going to be the cheapest box stackers and screw turners…This [legislation] sends a deleterious message to those who want to come here and do this work… We are circumscribing the ability for people to work in genetic engineering on agricultural crops… We are opening a door we will be sorry we opened.”

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73 N. Ellstrand, *When transgenes wander, should we worry?* PLANT PHYSIOLOGY, April **125** (2001).
74 Cregan, *Id.* (Figure 2: Distribution of water basins with *Zizania sp.* across Minnesota.)
75 P. Bloom, June 29, 2007, Professor, Department of Soil, Water, Climate, University of Minnesota, personal communication.
76 From testimony, March 28, 2006, Beth Nelson, President of Minnesota Cultivated Wild Rice Council.
78 From testimony, May 15, 2007, Representative Michael Beard.
How does one evaluate these claims? Every year, opponents repeated their concern about “the chill” this legislation gives biotechnology companies. They repeated their concern each year that Minnesota would set a precedent regarding a clamp-down on important crop and other biotechnological research. These are potent arguments.

It is critical to make distinctions in the claims of the bill’s opponents versus real and potential economic, environmental and health risks such technologies pose. To some extent, such clarification gets at the heart of the issue. How do we balance the promises of science and economic development with the known and unknown consequences? When potential risks of public trust and subsequent economic costs become real, the discussion is no longer theoretical.

*Crop biotechnology: safety first, what does that mean?*

As Representative Hamilton in 2006 stated, “GM crops have been around a long time and are very safe.” GM crops have been around for approximately thirty or so years. We look at some specific cases, to the extent that information is available, in order to determine how the definition and questions of “safety” may be relevant to questions of protecting wild rice.

In answer to Representative Hamilton’s claim, it may be most relevant to cite Norman Ellstrand, Professor of Genetics, University of California-Riverside:

The products of plant improvement are not absolutely safe, and we cannot expect transgenic crops to be absolutely safe either. Recognition of that fact suggests that creating something just because we are now able to do so is an inadequate reason for embracing a new technology. If we have advanced tools for creating novel agricultural products, we should use the advanced knowledge from ecology and population genetics as well as social sciences and humanities to make mindful choices about how to create the products that are best for humans and our environment.

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79 From testimony, March 28, 2006, House Agriculture, Rural Economies and Veterans Affairs Committee.
80 Ellstrand, *Id.*
The promises of crop biotechnology are often cited -- from the potential contributions of pest-resistance to solving malnutrition. It seems incumbent upon researchers and lobbyists, working on behalf of biotechnology companies, to specify along with benefits, unanswered questions. No matter their institutional affiliation, researchers must be forthright about what they do not understand regarding new technologies. Given the level of controversy, public concern, and economic mishap, it appears increasingly clear that companies and researchers will be held to higher standards of accountability; they must gain public trust.

Representative Hamilton, in 2006, cited the example of vitamin A rich rice, “Golden Rice,” as an example of the promises of biotechnology. Golden rice is the “poster child” for the potential of genetic engineering. This technology, however, has not been perfected and is not yet ready for sale in the world market. It may prove to be a “miracle food.” At this point, however, it is not possible to draw that conclusion. Yet, it is often discussed as nothing less than a “technological break-through …potentially solving an urgent and previously intractable health problem for the poor of the developing world.” 81 Marion Nestle, Chair of the Department of Nutrition and Food Studies at New York University, acknowledges, “Food biotechnology… may improve nutrition and health, but at the moment its benefits remain theoretical.” 82 Those who developed golden rice do not, however, address Nestle’s concern, that this one innovation is not enough to make a difference in any individual’s health. “The addition of one, two [or more] nutrients to an existing food does not constitute a food-based approach… The complexity of the physiological, nutritional, and cultural factors that affect vitamin A

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82 Nestle, *Id.*
status suggest that no single nutrient added to food can... effectively remedy... dietary deficiencies."\(^{83,84}\) Gordon Conway, of the Rockefeller Foundation, stated that [golden rice] is a research product in need of considerable development.\(^{85}\) It is possible that such development may come, but it is premature to speak of it as a break-through.\(^{86}\)

As Ellstrand points out, it is critical to ask questions about the actual promises of any crop technology and find its relevance to other crop research. Monsanto’s lobbyist in 2006 suggested there must be a good reason why “Minnesota has spent a ton of time and money” to nurture the biotechnology industry.\(^{87}\) General promises of biotechnology are not in and of themselves problematic. But, as in the case of golden rice, it is not enough for its innovator to say, “Of course, there will be substantial equivalence, toxicology and allergenicity assessments. Careful socioeconomic and environmental impact studies will help avoid any possible risk and make sure the technology reaches the poor.”\(^{88}\) None of this is “of course.” Promises of “taking necessary precautions and following regulatory procedures” were also made by the creators of genetically engineered white rice and bentgrass. The economic costs of losing public trust were tremendous.

*Potential risks – who will take them?*

How much risk will we take? When will we know when safe is safe enough? Representative Hamilton in 2006 noted, “the perception that consumers are being sold an unsafe product and that the government isn’t protecting them [can be unnerving and will

\(^{84}\) Nestle, ibid.
\(^{86}\) Mayer, J., September 2006, Golden Rice research update, University of Minnesota.
\(^{87}\) Janacek, Id.
\(^{88}\) Potrykus, Id.
damage consumer confidence and product sales]… But GM products have been around a long time and they are very safe, everything from cooking oils to papayas.”

Michael Meacher, former UK minister of the environment, wrote that because “genes interact, one gene may trigger other unpredicted and undesired effects… The random position and lack of control of the gene’s functions could change any character of the plant and might not be evident immediately.” He notes, “While it is often claimed that GMOs have been ‘rigorously’ tested, all that this testing amounts to is deciding whether a GM crop is similar in terms of its composition to the non GM plant… It wholly misses the point that health concerns are focused, not on known compounds, but on the effects of GM technology which are unpredictable…” A protein chemist working at AgrEvo, Sue MacIntosh, said, “We wish there was a test where you plug in a protein and out pops a yes or no answer [whether it is allergy-producing]. But no such test [exists]… short of giving it to a lot of people and seeing what happens.” We do not have proof that GMOs cause allergies. But we also do not have evidence that they do not.

In 2006, the market answered the question of how much risk is enough. Following the revelation of unauthorized Liberty Link in U.S. commercial supplies, rice exports to the E.U. effectively stopped. In December 2006, Russia formally announced a ban on global rice imports, citing the U.S. case as a reason for this decision. On March 19, 2007, the California Rice Commission voted to support a moratorium on field-testing all genetically modified rice cultivars in California for the 2007 crop, and for future crops, until research protocol and safeguards are acceptable to the Commission.

89 Hamilton, Id.
90 Smith, Id.
91 Cohen, Milstein, Hausfeld & Toll announces six state class action filed against Bayer CropScience over rice contamination, BUSINESS WIRE, August 28, 2006; Russia bans all rice imports, cites U.S. GMO
On March 31, 2007, the U.S. rice industry declared they wanted the federal government to reject a plan to grow genetically modified rice in Kansas, saying the country’s growers would suffer “financial devastation” if modified crops contaminate the commercial supply. “If Ventria’s pharmaceutical rice were to escape into the commercial rice supply, the financial devastation to the U.S. rice industry would be absolute,” the USA Rice Federation declared. “There is no tolerance, either regulatory or in public perception, for a human gene-based pharmaceutical crop to end up in the world’s food supply.” The National Farmers Union also issued a statement expressing the same concern as USA Rice Federation regarding pharmaceutical rice. Al Montna, Chairman of the USA Rice Federation said in March 2007 that he was “increasingly frustrated with the apparent lack of ability on the part of private companies and federal regulators to control research and maintain accountability of the resulting products. The current approach to research, development and management in the biotechnology industry must be replaced with more conservative technologies.”

Summary

I am supporting this legislation because it is about wild rice and wild rice alone. It is a very unique crop. If this isn’t about wild rice, it will be advertised as the camel’s nose under the tent, a moratorium on GE crops broadly. If you’re going to go after other crops, and say that GMOs aren’t good, then you’re [the bill’s authors and supporters] not helping yourselves with this bill. The FDA will have some oversight and they treat GM products as not substantially different from what is on the shelves. Cutting to the chase, this bill is about the fact that in Beltrami County, [Minnesota], wild rice is unique.

Representative Juhnke

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93 From testimony, March 28, 2006, Representative Al Juhnke, the House Agriculture, Rural Economies and Veterans Affairs Committee.
The problem is that legislation like this sends a message to the rest of the country. We don’t want to be the only state that has legislation like this. We don’t want to stick out. We don’t have any idea where legislation like this will lead.

Representative Davids

We have reaped the benefits of GM crops and [we do not want to send a message that suggests we are ignorant of that fact].

Representative Welti

The above testimony heard in 2006 exposes a contradiction. Wild rice is unique as articulated earlier in this paper, particularly for Ojibwe Sovereign Nations, and also for non-American Indian Minnesotans. Yet after summer 2006, its cultural relevance may not matter in the context of the larger debate over public trust and crop biotechnology.

Warnings preceding white rice and bentgrass came for more than a decade prior to 2006, and yet were largely ignored. Other states have attempted to pass legislation placing stricter regulations on genetically engineered crops. In 2006, Vermont introduced legislation, “An act relating to liability resulting from the use of genetically engineered seeds and plant parts.” Passing in the House and Senate, it was vetoed by the Governor. In 2007, the University of Hawaii declared that it would not take out patents on taro, a food sacred to Native Hawaiian people. Legislation imposing a 10-year moratorium on developing, testing, propagating, cultivating, growing, and raising genetically engineered taro in Hawaii was introduced in 2007. The House Agriculture Chair refused to hear it. Legislation in California and Arkansas, however, passed giving these states the power to prohibit the introduction of GE rice. In Washington,

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94 From testimony, March 28, 2006, Representative Gregory Davids, Chair, the House Agriculture and Rural Development Committee, and personal communication, August 18, 2006.
95 From testimony, March 28, 2006, Representative Andy Welti, the House Agriculture and Rural Development Committee.
legislation was adopted prohibiting the planting of GE canola in areas near the state's large non-GE seed production. Additional success outside Minnesota may be a matter of time.

Far from being the “camel’s nose under the tent,” this legislation may result in Minnesota being viewed as exercising caution where caution is warranted. One might argue that legislators should be evaluated in terms of how well they examine warnings. Once warnings turn to irreversible events, the costs are undeniable. It matters not whether Monsanto, another company or scientist, plans to genetically engineer wild rice. The issue is how well legislators analyze relevant information that place Indigenous cultural identity and livelihood, the environment or public at risk. This will not be the last case of its kind. Minnesotans, citizens of the U.S. and citizens of other countries must ask themselves whether they are willing to consider the technological, scientific, cultural, and human questions such problems demand. We do well to begin our deliberation before the next biotechnological mishap for which we are ill-prepared.

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