

Commenter 75 – Bois Forte THPO

April 8, 2010

Stephanie Strength

Environmental Protection Specialist

USDA Rural Utilities Service

1400 Independence Ave. SW

Mail Stop 1571, Room 2244

Washington, DC 2025-1571

Dear Stephanie:

Please find below comments by Rose Berens, the Bois Forte Tribal Historic Preservation Officer, on the Bemidji-Grand Rapids Transmission Line Cultural Section in the Draft EIS. My comments have been voiced earlier and are substantially the same as hers.

Page 233; 3rd full paragraph:

75-1 The statement "or more likely Hudson's Bay" should be removed as the Anishinabe know where they originated and that is the Atlantic Ocean.

75-2 A Miqis shell is not a turtle shell.

75-3 Be consistent and either use "Ojibwe" or "Anishinabe." Rose prefers "Anishinabe."

75-4 Page 234; 1st paragraph: Anishinabe also lived inland along rivers and streams, not just along the shores of Lake Superior.

75-5 Sage was used more often than sweetgrass.

Page 235; 2nd full paragraph:

75-6 Replace "religious" with "spiritual."

Thanks you for the opportunity to comment on the draft EIS Cultural Section. Please contact me if you have any questions.

Sincerely;

Bill Latady

Bill Latady, Bois Forte Band Deputy THPO

cc: Rose Berens

Responses

Comment 75-1

Text in Section 3.9.4.2 regarding the Hudson Bay has been removed from the EIS.

Comment 75-2

Text in Section 3.9.4.2 has been edited to correct the noted error.

Comment 75-3

Text in Section 3.9.4.2 has been modified to refer to Anishinabe rather than Ojibwe.

Comment 75-4

Text in Section 3.9.4.2 has been modified to note that Anishinabe also lived along rivers and streams.

Comment 75-5

Text in Section 3.9.4.2 has been modified to note the use of sage.

Comment 75-6

Text in Section 2.9.4.2 has been edited to replace the word "religious" with "spiritual."

Commenter 76 – Chippewa National Forest



United States
Department of
Agriculture

Forest
Service

Chippewa National Forest
Supervisor's Office

200 Ash Avenue NW
Cass Lake, MN 56633-3089
Phone: 218-335-8600
Fax: 218-335-8637
TTY: 218-335-8632

File Code: 1950
Date: April 30, 2010

The Honorable Eric L. Lipman
Administrative Law Judge
P. O. Box 64620
St. Paul, MN 55164

Dear Judge Lipman:

Thank you for the opportunity to comment on the Bemidji-Grand Rapids 230kV Transmission Line project in the matter of the application for a route permit. Otter Tail Power Company, Minnesota Power, and Minnkota Power Cooperative (Applicants) have proposed a route that includes federal land administered by the Chippewa National Forest (CNF).

Our role in this transmission line project is that of a Cooperating Federal Agency in the preparation of the Environmental Impact Statement (EIS). Throughout the process the agencies have been working to coordinate our respective authorities in order to make consistent and complementary decisions. My decision, as will be documented in a Record of Decision (ROD), is whether to issue a Special Use Permit to the applicants authorizing them to occupy and use National Forest System (NFS) lands utilizing routes analyzed in the EIS.

- 76-1 | As the ROD will state special use authorizations are consistent with the 2004 Land and Resource Management Plan (Forest Plan) direction as long as the proposed use cannot be accommodated on non-NFS land. The Forest Plan states that the CNF generally will provide for utility transmission corridors and strives to emphasize the use of common corridors and multiple use sites when granting appropriate right-of-ways.
- 76-2 | As the CNF implements the Forest Plan, we keep in mind our unique relationship with the Leech Lake Band of Ojibwe (LLBO) because approximately 40% of the CNF is located within the boundaries of the Leech Lake Reservation. Likewise approximately 90% of the Leech Lake Reservation overlaps the CNF. Beginning in the mid-19th century, the United States made treaties with the Ojibwe that created the reservation and ceded areas of land in northern Minnesota to the federal government. The treaties also reserved the right of the Ojibwe bands to hunt, fish, and gather within the treaty area. The Forest Service has committed through its Forest Plan to facilitate the overall ability of the Ojibwe to exercise these rights in a sustainable fashion on NFS lands. In addition, government-to-government consultation is ongoing between the Forest Service and the LLBO. This consultation supports Executive Order 13175 (November 6, 2000), which also recognizes the sovereignty of federally recognized American Indian tribes and the special government-to-government relationship between the United States and American Indian tribes.



Responses

Comment 76-1

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 76-2

A discussion of the relationship between the Chippewa National Forest and Leech Lake Band of Ojibwe is noted in Section 1.3.3 of the EIS.

Commenter 76 – Chippewa National Forest

2

The Honorable Judge Lipman

The CNF as required by policy, direction, and law seeks to minimize affects to resources when implementing projects on NFS lands. With this letter I will outline key considerations of the CNF to aid the Public Utility Commission's route permit decision.

In development of the draft EIS, Alternative 1 and 2 were proposed by the applicant and Alternative 3 was developed to respond to the concerns of the LLBO. In general, each of the routes respond to separate issues with each having benefits and consequences. Alternative 1 was originally developed by the applicant and was driven by the desire to avoid the City of Cass Lake, a superfund site within the City of Cass Lake, and the pinch point between two lakes (Cass Lake and Pike Bay). Alternative 2 was proposed by the applicant as well; it is shorter and parallels the existing Enbridge Energy pipeline. Alternative 3 was proposed by the LLBO to largely avoid lands within the Leech Lake Reservation.

With the information available today, the CNF has evaluated each of the alternatives and has begun to identify benefits and impacts of the routes as highlighted below.

- 76-3 Early in the process the CNF has had concerns about Alternative 1 because it crosses the Pike Bay Experimental Forest where the research branch of the Forest Service conducts long term and ongoing research. The Forest Plan states that generally no new special use permits are allowed through the Pike Bay Experimental Forest. Additionally Alternative 1 includes a Goblin Fern study area and critical habitat for Goshawk nesting. This alternative primarily parallels the Great Lakes Gas pipeline which to date has been managed to have a minimal footprint, thus retaining the character of a closed canopy. Increasing this corridor by implementing Alternative 1 would result in a loss of the closed canopy currently in place. It is also worth noting that portions of this route contain spiritually and culturally significant areas for the LLBO, particularly the Ten Section and Cuba Hill areas. At this time Alternative 1 is the least desirable of the three routes from the perspective of the CNF.

- 76-8 Alternative 2 has advantages over Alternative 1 because it is the shortest of the routes and impacts less land therefore impacts fewer resources partly due to the co-location along the Enbridge Energy pipeline right-of-way. Of the three alternatives this route crosses the least amount of water basins and water courses. Conversely, the Forest Plan has attributed high scenic value the entire length of Alternative 2 through NFS lands. This high scenic value along with cumulative impacts with the trails, railroad and other utilities must be weighed. Finally, this area has been easily accessible to tribal members for fishing, hunting, and gathering. The expansion of the corridor by implementing Alternative 2 will likely result in impacts to fishing, hunting, and gathering.

- 76-11 Alternative 3, which parallels an existing transmission line for most of its length, was developed in response to the LLBO's desire to avoid the Leech Lake Reservation, thereby minimizing impacts to fishing, hunting and gathering on ceded lands. The benefits identified for this route include having the fewest known archaeological sites. This alternative is the longest of the three routes and has more impacts to wetlands, water bodies, water courses, soils, forested areas, and biological resources.

Responses

Comment 76-3

A discussion of the Pike Bay Experimental Forest appears in Section 3.15.2.6 of the EIS.

Comment 76-4

Text in Section 3.8.1.5 has been modified to note the proximity of Route Alternative 1 to the Goblin Fern study site. Text in Section 3.8.1.1 has been modified to note the presence of Northern Goshawk territory within 1,000 feet of Route Alternative 1.

Comment 76-5

A discussion of new corridor required for each Route Alternative appears in Tables ES-1 and 2-1 of the EIS.

Comment 76-6

Thank you for your comment. It has been noted and included in the record for this EIS. A discussion of the Ten Section and Cuba Hill areas appear throughout the EIS. A discussion of cultural resources and values appears in Section 3.9 of the EIS.

Comment 76-7

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 76-8

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 76-9

A discussion of Forest Service SIOs within the Study Area appears in Section 3.1 of the EIS.

Comment 76-10

Text in Sections 3.13.1.3, 3.13.2.2, and 3.13.2.3 has been supplemented to include a discussion on the visual intrusion at recreational and tribal access points.

Comment 76-11

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 76-12

Thank you for your comment. It has been noted and included in the record for this EIS.

Commenter 76 – Chippewa National Forest

3

The Honorable Judge Lipman

We appreciate the opportunity to comment regarding this project. If you have any questions please feel free to contact the Project Manager on the CNF, Catherine Thompson, at (218) 335-8655 or (cjthompson@fs.fed.us).

Sincerely,

/s/ Robert M. Harper
ROBERT M. HARPER
Forest Supervisor

cc: Cristi M Corey-Luse
Christine M Brown
Joseph G Alexander
Nancy S Larson
Catherine J Thompson
Stephanie Strength

Responses

Commenter 77 – City of Cohasset



305 N.W. First Avenue Cohasset, Minnesota 55721

Phone 218-328-6225
Fax 218-328-6226
E-Mail: city@ci.cohasset.mn.us
Website: www.cohasset-mn.com

April 7, 2010

Suzanne Steinhauer
Minnesota Office of Energy Security
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

RE: Bemidji-Grand Rapids 230kV Transmission Line Project

Dear Ms. Steinhauer,

77-1

The City of Cohasset (City) provides the following comments on the Bemidji-Grand Rapids 230kV Transmission Line Project Draft Environmental Impact Statement. Minnesota Power's Clay Boswell Substation (Substation) is located within the City. The Clay Boswell power generating facility employs approximately 265 full time employees and provides a significant portion of the City's tax capacity. The City's Comprehensive Plan states, "Cohasset will use all available tools to encourage continuation of the Clay Boswell generating facility.....". The City feels that this project will help maintain the viability of the facility, therefore we support the project.

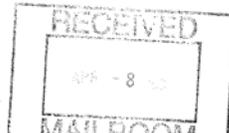
We have investigated the three line route alternatives within the boundaries of Cohasset and strongly prefer that, regardless of which Alternative is selected, the line stay in the existing power corridor on the south side of Highway 2 (as planned in Alternatives 1 and 3) as it passes out of the City. There are already a large number of power corridors through the City because of the presence of the Substation, and we do not wish to see another one added if at all possible. Crossing Highway 2 in Cohasset, adding a new power corridor north of the highway, and then crossing it again just east of Deer River, will have a strong negative social effect by further eroding the scenic nature of the area.

Thank you for the opportunity to comment on this project. Feel free to contact us if you have any questions.

Sincerely,

Rick Horton
City Services and Project Coordinator

cc: Cohasset City Council
Cohasset Public Utilities Commission
Susan Harper, City Administrator

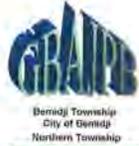


Responses

Comment 77-1

Thank you for your comment. It has been noted and included in the record for this EIS.

Commenter 78 – Greater Bemidji Area Joint Planning Board



Greater Bemidji Area Joint Planning Board

P.O. Box 1100 Bemidji, MN 56619
Office (218) 759-3579 Fax (218) 759-3591

21 April 2010

Suzanne Steinhauer, Permit Manager
State Energy Facility Permitting
Minnesota Department of Commerce
Office of Energy Security

Re: Bemidji-Grand Rapids 230kV Transmission Project

Dear Ms. Steinhauer:

- 78-1 This letter is a statement of support by the Greater Bemidji Area Joint Planning Board (JPB) for approval of this proposed project. Our agency supports a routing decision that minimizes the amount of disruption within our jurisdiction. The JPB strongly encourages maximizing the safe utilization of the existing U.S. Highway 2 right-of-way, major utility easements, or an appropriate combination thereof. These are best represented by alternatives 1 and 2 as depicted in the Draft EIS.
- 78-2
- 78-3 The JPB does not support the routing identified in alternative 3 because it appears to negatively impact high density residential areas within our jurisdiction.

The JPB is the land use planning and zoning authority under a cooperative agreement between Bemidji Township, City of Bemidji, and Northern Township. All three of the proposed routing alternatives will impact two of the governmental units within the JPB area of responsibility. Please direct all communication regarding land use and zoning approval questions to this office. The JPB land use regulations are contained in the Greater Bemidji Area Zoning and Subdivision Ordinance. This document may be viewed on line at <http://www.jpbgba.org>

Please contact me at 219-759-3579 with any further questions you may have.

Sincerely,


Mel Milender
Planning Administrator

cc. Joint Planning Board
Bemidji Township
City of Bemidji

Responses

Comment 78-1

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 78-2

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 78-3

Thank you for your comment. It has been noted and included in the record for this EIS.

Commenter 79 – Leech Lake Division of Resource Management



Leech Lake Band Of Ojibwe

115 Sixth Street NW, Suite E, Cass Lake, MN 56633
218-335-7400 - fax 218-335-7430

Arthur "Archie" LaRose, Chairman
Michael Bongo, Secretary/Treasurer

District I Representative *Robbie M. Hove* District II Representative *Lyman L. Losh* District III Representative *Eugene Whitebird*

20105-50447-04

Date: 5/3/2010

The Honorable Eric L. Lipman
Administrative Law Judge
P. O. Box 64620
St. Paul, MN 55164

Dear Judge Lipman:

We are pleased to comment on the Bemidji-Grand Rapids 230kV Transmission Line project in the state of Minnesota. Otter Tail Power Company, Minnesota Power, and Minnkota Power Cooperative (Applicants) have proposed a route that includes crossing the boundaries the Leech Lake Band Ojibwe.

The role of the Leech Lake Division of Resource Management (DRM) in this transmission line project is that of a Cooperating Federal Agency in the preparation of the Environmental Impact Statement (EIS). Throughout the process the agencies have been working to coordinate our respective authorities in order to make consistent and complementary decisions. The DRM's decision, will be documented in a Record of Decision (ROD) issued by myself.

The Leech Lake Band of Ojibwe has a unique relationship as co-managers of the area's that we share boundaries. This in turn gives the Chippewa National Forest (CNF) a trust responsibility to over see that safeguard of the Natural resources of the Leech Lake Band of Ojibwe (LLBO). Approximately 40% of the CNF is located within the boundaries of the Leech Lake Reservation. Likewise approximately 90% of the Leech Lake Reservation overlaps the CNF. The LLBO also reserved the right of the Ojibwe bands to hunt, fish, and gather within the treaty area. The CNF has committed through its Forest Plan to facilitate the overall ability of the LLBO to exercise these rights in a sustainable fashion on NFS lands. In Addition, government-to-government consultation is ongoing between the CNF and the LLBO. This consultation supports Executive Order 13175 (November 6, 2000), which also recognizes the sovereignty of federally recognized American Indian tribes and the special government-to-government relationship between the United States and American Indian tribes.

The CNF is required by policy, direction, and law seeks to minimize affects to Leech Lake Band of Ojibwe resources when implementing projects on NFS lands. With this letter I will outline the issues that will shape our decision.

In development of the draft EIS, Alternative 1 and 2 were proposed by the applicant and Alternative 3 was developed to respond to that there was not enough option on the table to fulfill the National Environmental Policy Act (NEPA) requirements. In general, each of the routes respond to separate issues with each having benefits and consequences.

Alternative 1 was originally developed by the applicant and was driven by the desire to avoid the City of Cass Lake, a superfund site within the City of Cass Lake, and the pinch point between two lakes (Cass Lake and Pike Bay). Alternative 2 was proposed by the applicant as well; it is shorter and parallels the existing Enbridge Energy pipeline. Alternative 3 was proposed to fulfill NEPA, and avoids almost all of the Leech Lake Reservation.

Responses

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HEARINGS

Commenter 79 – Leech Lake Division of Resource Management

20105-50447-04

With the information available today, the DRM has evaluated each of the alternatives and has begun to identify benefits and impacts of the routes as highlighted below.

- 79-1 | Alternative 1 contains spiritually and culturally significant areas for the LLBO, particularly the Ten Section and Cuba
79-2 | Hill areas. At this time Alternative 1 is the least desirable of the three routes from the perspective of the DRM.
79-3 | Also Route 1 crosses the Pike Bay Experimental Forest where the research branch of the Forest Service conducts
79-4, 79-5 | long term and ongoing research. The Forest Plan states that generally no new special use permits are allowed through
79-6 | the Pike Bay Experimental Forest. Additionally Alternative 1 includes a Goblin Fern study area and critical habitat for
79-7 | Goshawk nesting. This alternative primarily parallels the Great Lakes Gas pipeline which to date has been managed
79-8 | to have a minimal footprint. Increasing this corridor by implementing Alternative 1 would result in a degrading of this
79-9, 79-10 | area.
79-11 | Alternative 2 has advantages over Alternative 1 because it is the shortest of the routes; also out of the three
79-12 | alternatives this route crosses the least amount of water basins and water courses. On the contrary, the DRM has
79-13 | looked at the high value water bodies that route 2 would cross including the Mississippi River, Upper Sucker Lake a
79-14 | previously undeveloped Lake and the Pike Bay Bottle Neck Area, which is highly visited tourist attraction in the Cass
79-15 | Lake area. This high scenic value along with cumulative impacts with the biking/walking trails, railroad and other
utilities that have already littered this area must be weighed. The most important thing to be considered is that this
area has been easily accessible to tribal members for fishing, hunting, and gathering. The expansion of the corridor by
implementing Alternative 2 will result in impacts to fishing, hunting, and gathering. Route 2 leads to Environmental
Justice questions that would need to be addressed with the total population of the reservation being over 50%
American Indian.
- Alternative 3, which parallels an existing transmission line for most of its length, was developed in response to the
concerns that there were not enough alternatives to fulfill NEPA, also the route would minimizing the impacts to
fishing, hunting and gathering of the LLBO by avoiding almost all of the Leech Lake Reservation. The benefits
identified for this route include having the fewest known archaeological sites, would avoid all municipalities,
persevere the scenic value of the Highway 2 corridor and also avoids the Environmental Justice issue. The route 3
alternative is the longest of the three routes and would impact more wetlands, water bodies, water courses, soils,
forested areas, and biological resources that have already been affected by a pre-existing Power line.

If there are any questions please feel free to contact us at 218-335-7400.

Sincerely,



Bruce Johnson, Director
Division of Resource Management
Leech Lake Band of Ojibwe

cc: RTC
DRM files

Responses

Comment 79-1

The Ten Section and Cuba Hill areas are discussed throughout the EIS.

Comment 79-2

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 79-3

A discussion of the potential effects on the Pike Bay Experimental Forest appears in Section 3.15.2.6 of the EIS.

Comment 79-4

Text in Section 3.8.1.5 has been modified to note the proximity of Route Alternative 1 to the Goblin Fern study site.

Comment 79-5

Text in Section 3.8.1.1 has been modified to note the presence of Northern goshawk territory within 1,000 feet of Route Alternative 1.

Comment 79-6

A discussion of new corridor required for each Route Alternative appears in Tables ES-1 and 2-1 of the EIS.

Comment 79-7

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 79-8

Text in Section 3.4.2.1 has been supplemented with information on water bodies considered to be high value.

Comment 79-9

Thank you for your comment. It has been noted and included in the record for this EIS.

(cont. on next page)

Commenter 79 – Leech Lake Division of Resource Management

Responses

Comment 79-10

A discussion of cumulative impacts appears in Section 4 of the EIS.

Comment 79-11

Text in Sections 3.13.1.3, 3.13.2.2, and 3.13.2.3 has been supplemented to include a discussion on the visual intrusion at recreational and tribal access points. The Forest Service has committed through its Forest Plan to facilitate the overall ability of the Ojibwe to exercise treaty rights in a sustainable fashion on NFS lands.

Comment 79-12

A discussion of environmental justice impacts and the population of the LLR appear in Section 3.12 of the EIS. Text throughout the section has been modified to note the locations of LLBO populations throughout the Study Area.

Comment 79-13 through 79-15

Thank you for your comment. It has been noted and included in the record for this EIS.

Commenter 80 – Minnesota Department of Natural Resources

Minnesota Department of Natural Resources
500 Lafayette Road • St. Paul, MN • 55155-40



April 26, 2010

Suzanne Steinhauer
Project Manager
Minnesota Office of Energy Security
85 7th Place East, Suite 500
St. Paul, Minnesota, 55101-2198

Re: Draft Environmental Impact Statement for the Bemidji to Grand Rapids 230kV Transmission Project [PUC Docket Number: E017, E015, ET6/TL-07-1327]

Dear Ms. Steinhauer:

The Minnesota Department of Natural Resources (DNR) has reviewed the Draft Environmental Impact Statement (DEIS) for the Bemidji to Grand Rapids 230 kV Transmission Project. For most topics, the DEIS provides a thorough and accurate impact analysis of items identified in the scoping documents. More information would be helpful, and concerns remain, for topics such as avian impacts, routing near public lands, rare species and recreational resources. A thorough analysis of waterfowl and water bird use of the various route alternatives, along with estimates of risk for each alternative, or combination of alternatives, should be included in the EIS. Generally, based on review of the DEIS, it appears that if proper avoidance, minimization and mitigation measures are utilized; the Route 2 Alternative following U.S. Highway 2 will have the least potential for significant resource impacts. The following comments are provided for your consideration including a review of specific sections of the document in numerical order, recommendations based on DEIS review for permit requirements and mitigation, and DNR License to Cross Permit information.

3.6 Wetlands

80-1, 80-2 | Though wetland filling on the line route will in most cases be less than one acre, access roads may require more fill. More details about wetland impacts and required mitigation plans would be a helpful addition to the EIS. Please note that the DNR administers the Wetland Conservation Act on State Lands.

3.7 Biological Resources

State Managed Lands

As indicated in the DEIS and permit application, some route alternatives and alternative route segments have the potential to cross State Wildlife Management Areas (WMA) or other publicly managed lands and easements. The expenditure of state, federal, and private dollars to purchase property or establish conservation easements indicates the importance of these areas to wildlife and recreation. It is the responsibility of the DNR to seek avoidance, minimization, and mitigation for potential impacts to public lands from transmission lines, substations, or road networks associated with the project.

Bemidji Slough WMA

The 50-acre Bemidji Slough WMA, Unit No. 1669, owned and managed by the DNR, and located at Section 28, T 146 N, R 33 W, is an emergent wetland and upland grassland complex surrounded by wetlands, agricultural lands, and residential and commercial development. The WMA is within the Bemidji State Game Refuge.

Responses

Comment 80-1

Text in Section 3.6.2 has been supplemented to note that the amount and area of fill required for structure installation and access roads would depend on the Route Alternative selected and final structure placement. A discussion of mitigation measures agreed to by the Applicants to minimize the creation and use of access roads through wetlands appears in Section 3.6.3 of the EIS. This section has been modified to note that wetland delineations would be conducted when a Route Alternative is selected.

Comment 80-2

Text in Table 6-1 has been supplemented to include a discussion of the Wetland Conservation Act and note that the Act is administered by the DNR on state lands.

Commenter 80 – Minnesota DNR

The purpose of the Bemidji Slough WMA is to protect the wetland habitat complex and to provide upland nesting habitat for waterfowl and grassland nesting songbirds. While no waterfowl hunting is allowed on the WMA or within the encompassing state game refuge, deer and other small game hunting is permissible. In addition, because of its close proximity to the City of Bemidji and U.S. Highways 2 and 71, the WMA is a popular wildlife viewing area.

Due to the pressures and cumulative influences of residential and commercial development, adjacent roadways, agriculture, and the City of Bemidji, including a gas pipeline bisecting the WMA, managing Bemidji Slough WMA as a natural and functioning ecosystem is a challenge.

Transmission line encroachments into this WMA may result in changes in avifaunal activity, avian mortality risk (further described in DNR comments on 3.7.2.3), recreational usage and noxious invasive plant prevalence. Use of either a northerly or a southerly part of Route J could avoid direct encroachments on the WMA. However, a wetland complex associated with the WMA extends to the south of the WMA. Use of the southerly portion of Segment J would further fragment this wetland ecosystem. In addition, this route would not avoid other mentioned potential impacts to the extent practicable. Therefore, utilization of a route north of the WMAs north boundary, between the Bemidji Slough WMA and the adjacent businesses, or north of the businesses adjacent to U.S. Highway 2, would both avoid and minimize potential aforementioned impacts.

Hole- in-the-Bog Peatland Scientific and Natural Area (SNA)

This 1,622-acre peatland is the state's best example of a basin-filled raised bog characterized by a single well-defined, crested raised bog and a peatland lake. It provides a valuable setting for peatland research, being the most southwesterly peatland SNA, and one of the few SNAs outside of a major glacial lake plain.

The DEIS indicates that both Route 1 and 2 avoid direct impacts to this SNA, and that remaining indirect impacts are those associated with aesthetics. This SNA is part of a much larger wetland complex that buffers and contributes to the integrity of the Peatland SNA proper. Utilization of Route 2 following the U.S. Highway 2, instead of Route 1 in this area, would minimize indirect impacts to the SNA.

3.7 Biological Resources

The issue of bird collisions should be more specifically addressed regarding sensitive locations, mitigation and monitoring. Each corridor crosses important waterfowl flyways. The north corridor crosses the Bowstring and Popple rivers at the outlets of Rice and Natures Lakes. The eastern 15 miles of proposed Routes 1 and 2, from the Boswell Energy Center to the Mississippi river, bisect areas where significant numbers of waterfowl are present in the spring and fall. The water bodies are: Mud and Goose Lakes, Lake Winnibigoshish, Ball Club Lake, White Oak Lake, Little White Oak Lake, Blackwater Lake, Boswell Energy settling ponds, Bass Lake and the Mississippi River flood plain. Waterfowl fly back and forth from these water bodies, often in the dark, to and from feeding areas and security areas. Bisecting this complex with a 100 foot high transmission line may cause a high potential for bird strikes. Mud Lake Refuge has held up to 6,200 ducks in recent years. The Boswell settling ponds have held up to 1,500 mallards and 3,500 Canada Geese. Lake Winnibigoshish can also be a major resting area for scaup ducks and other diving ducks during the fall migration. Numerous known eagle territories exist in the corridor areas and young eagles are especially prone to hitting transmission lines. Other species that would be of concern include: peregrine falcon, great gray owl, osprey, northern goshawk, colonial waterbirds, herons, terns, bitterns, swans, and loons.

Although the central corridor is highly industrial relative to other land uses in this region, large patches of woodland exist near the corridor that hold interior forest bird species and provide habitat to species that

Responses

Comment 80-3

A discussion of potential impacts to the Bemidji Slough WMA appears in Sections 3.7.1.3 and 3.13.2.2 and Table 3.13-3 of the EIS. A discussion of the potential for Segment Alternatives to avoid the WMA appears in Section 2.2.2.1 and Table 2-2 of the EIS. Text in Sections 2.2.2.1 has been modified to indicate the presence of a wetland complex within Segment Alternative J.

Comment 80-4

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 80-5

Avian collisions are identified as a potential impact of the Project in Section 3.7.2.3. Text in Section 3.7.2.3 has been supplemented with additional information on annual avian mortality resulting from collisions. The Section has also been modified to note that monitoring and identification of specific avian corridors is ongoing. Specific mitigation measures proposed by the Applicants are presented in an Avian Mitigation Plan (AMP), which is included as Appendix I.

Commenter 80 – Minnesota DNR

- 80-6 need large forest tracts. Some of these patches are over one square mile with only narrow trails or roads. To decrease the level of fragmentation of woodlots and wetlands, proper alignment within chosen routes will be important. Please include a discussion in the FEIS of how the project would affect these large patches of woodland.
- 80-7 The DNR recommends that the proposer provide a detailed plan to address avian risk, including installation of bird diverters, lowering lines, providing alternate locations of transmission lines, line separation distance, possibly supplying power underground when necessary, or other measures as outlined in the recommendations section of this document.
- Appendix G indicates flight diverters would be installed where the new route would cross known flyways, or near large wetlands, impoundments, and lakes. Locations would be determined in consultation with State and Federal agencies. There is no discussion of mitigation or concern in the main document and no other mitigation techniques are included. A more thorough discussion on this topic is necessary to identify specific areas and to provide adequate mitigation and monitoring for bird collisions.
- 80-8 **3.7.2.1 Vegetation Cover**
This section indicates that, "Based upon MnDNR Natural Heritage Information System (NHIS) and data available from the MnDNR Data Deli, no rare or sensitive vegetation communities occur within the route or segment alternatives. Therefore, there would be no impacts to any rare or sensitive vegetation communities." The conclusion in the conclusion in the second sentence is an incorrect deduction from the first sentence. NHIS data are not based on an exhaustive inventory of the state. If there is a lack of data for a geographic area, the area should not be considered to have no significant features present. In this case, the Minnesota County Biological Survey (MCBS) has been completed for portions of the project area, but it should be clear that the MCBS has not been completed for the entire project area. Existing data is preliminary and has not been divided into native community types in areas. Therefore, conclusions should not be based on MCBS data alone. Section 5.3 of Appendix G clearly describes many plant communities containing rare and sensitive plant species. The EIS discussion and conclusions should be based on all available information (e.g. Appendix G – Biological Assessment and Evaluation, previous survey work, etc.). Rare species surveys may be needed if avoidance of native plant communities is not feasible.
- 3.7.2.3 Fauna**
It is unclear whether the recommendations of the Avian Power Line Interaction Committee (APLIC) will be followed to minimize electrocution of birds, including recommendations regarding the design of the power lines, markers on the lines, and addressing the presence of nesting and roosting birds. This did not appear to be explicitly stated. Specific measures should be addressed in the EIS to prevent electrocution and lessen bird strikes. Bird strikes and bird electrocution are concerns for all three route alternatives of the proposed transmission line corridor.
- 80-9 DNR Wildlife staff believe that transmission lines constructed through areas frequently used by waterfowl and other avian species can potentially cause a significant enough disturbance to negatively affect avifaunal activities such as feeding, resting, and nesting.
- Overhead transmission lines and associated structures constructed through important habitats such as lakes, rivers and wetlands can potentially increase waterfowl and other avian mortality in two ways: 1) by providing artificial perching sites for raptors to hunt from, thereby increasing waterfowl depredation, and 2) by impeding avian flyway routes, thereby increasing avian mortality due to collisions with power lines and associated structures.

Responses

Comment 80-6

A discussion of fragmentation and associated impacts on fauna appears in Section 3.7.2.3 of the EIS.

Comment 80-7

A detailed plan to address avian risk is included in the draft Avian Mitigation Plan (AMP) developed by the Applicants, which is included as Appendix I. A discussion of the AMP appears in Section 3.7.2.3 and 3.7.3.3 of the EIS.

Comment 80-8

Text in Section 3.7.2.1 regarding the lack of impacts to any rare or sensitive vegetation communities has been removed. Text in Section 3.7.2.1 has been modified to include a description of the limits of NHIS and MCBS information, and to note that a Biological Assessment and Evaluation for the Study Area has been conducted to supplement information. Once the Route Alternative and transmission line alignment are selected, suitable habitat for sensitive communities will be evaluated in advance of construction activities and suitable habitat will be surveyed for sensitive species. Information from the Biological Assessment and Evaluation is included in Sections 3.7 and 3.8 of the EIS.

Comment 80-9

Text in Section 3.7.2.3 has been modified to indicate that the Project would be designed to comply with the National Electric Safety Code requirements and Avian Power Line Interaction Committee Construction Design Standards. Text in Section 3.7.2.3 has been supplemented with additional information on avian mortality related to transmission lines and the use of design measures to reduce the risk of bird electrocution. A draft AMP is included in Appendix I.

Commenter 80 – Minnesota DNR

- 80-10 Considering these concerns, monitoring is an important topic to address. The DNR recommends that mortality of birds from electrocution or strike be reported to the DNR. The DNR also recommends that the right-of-way be open to surveys so that local research may be conducted to study the effects of transmission lines on birds.
- 80-11 Although certain types of impacts may be similar between various project alternatives, the amount of impact will not. The alternatives are variable in length, types and quality of habitat and resources crossed, and species present. For example:
- Many of the stream crossings associated with Alternative 3 do not currently have infrastructure crossings.
 - Many of the forests associated with Alternative 3 consist of larger blocks of contiguous forest.
 - Alternative 3 is the longest in length.
- 80-12 Therefore, it is inaccurate to state in this section that the impacts will remain the same between routes relative to wildlife. A more thorough impact analysis should be provided for each alternative including estimates of annual mortality due to power line collision and significance of impact relative to population.
- 3.8 Species of Special Concern**
Natural Heritage Information System (NHIS) data is an important topic for discussion and in the EIS. However, coverage is not equal throughout the three project corridors in the DEIS. The MCBS is typically limited in coverage to public lands, and there is not an equal amount of public lands among the three routes. The EIS should consider and disclose the limitations of MCBS data.
- 80-13 A thorough analysis of waterfowl and water bird use of the various route alternatives, along with estimates of risk and annual bird mortality for each alternative or combination of alternatives, should be included in the EIS. An annual cost estimate using DNR restitution values as surrogate for mitigation costs could be provided as a mechanism for quantifying avian effects and mitigation.
- 80-14 This section limits the review to species found within the route alternatives. It is standard practice for NHIS reviews to search for rare species within a one mile radius around project boundaries. For example, by not using a buffer, the DEIS does not identify that peregrine falcons (*Falco peregrines*), a state-listed threatened bird, have nested in close proximity to the Route 1 area. Similarly, it is incorrect to state that mussel species of special concern have been documented in Route 3, but not Routes 1 and 2. Rare mussels have also been documented in the streams and rivers that Routes 1 and 2 cross. The mitigation measures included on page 222 should be considered in these areas as well.
- 80-15 Table 3.8-5 contains several errors: In the column titled "listing status" under "State," the plant Ram's Head Lady's Slipper should be "T" for Threatened, Triangle Moonwort should be "T," Goblin Fern should be "SC" for Special Concern, Pale Moonwort should be "E" for Endangered, and St. Lawrence Grapefern should be labeled as "T." The common name for Botrichium simplex is Least Moonwort, and the State status should be "SC." White Adder's-mouth should be "SC," and Clustered Bur-reed should have a State status of "SC."
- 3.13 Recreation and Tourism**
- 80-18 Reference should be made to Minnesota's identified Water Trails. Please see the following webpage for more information on Minnesota's Water Trails: <http://www.dnr.state.mn.us/watertrails/index.html>. High Voltage Transmission Line (HVTL) construction can have visual impacts and affect the experience of recreational users of these canoe-boating routes.

Responses

Comment 80-10

Text in Section 3.7.2.3 has been modified to note that specific procedures for monitoring and reporting avian mortality related to the Project would be included in the AMP. The draft AMP is included as Appendix I.

Comment 80-11

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 80-12

Text in Section 3.7.2.3 has been supplemented with an estimate of annual avian mortality and significance of impacts relative to the population. Mitigation to reduce avian mortality is presented in the draft AMP, which is included as Appendix I.

Comment 80-13

Text in Sections 3.7.2.1 and 3.8 has been supplemented with information on the limitations on NHIS and MCBS data.

Comment 80-14

Please see response to Comment 80-12, which addresses a similar concern.

Comment 80-15

Text in Section 3.8 has been supplemented to indicate that the NHIS search identifies species documented within a 1 mile buffer zone surrounding the Route Alternatives.

Comment 80-16

Text in Section 3.8.1.4 has been supplemented to note the presence of mussels. Text in Section 3.8 has been supplemented to indicate that the NHIS search identifies species documented within a 1 mile buffer zone surrounding the Route Alternatives. The peregrine falcon was not identified within the buffer evaluated or documented during the Biological Assessment and Evaluation.

Comment 80-17

Tables 3.8-5 and 3.8-6 have been edited to correct the noted errors.

Comment 80-18

Text in Section 3.13.2.2 has been supplemented to include information on the presence of and potential impacts to water trails.

Commenter 80 – Minnesota DNR

Noteworthy areas of potential aesthetic impact are the crossing of the Mississippi River at the Power Dam on Beltrami County Road 12, Popple and Bowstring Rivers south of Dora Lake, and headwaters streams of the Big Fork River also south of Dora Lake.

Appendix G - Biological Assessment and Evaluation

Generally, it would be helpful if the information and data included in Appendix G was summarized in the main DEIS text. The following specific comments are offered regarding appendix G.

Page 3-3 Old Growth

80-19 In addition to the one old growth stand located in the route that is referred to, DNR designated old growth stands adjacent to the routes are also important to discuss. The ecological integrity of these old growth stands can be compromised if too much disturbance occurs in the area surrounding the stand. The DNR tries to maintain old forest conditions around these old growth stands using special management zones and old forest management complexes. At a minimum, any construction activities within 330 feet of an old growth stand should be discussed in the EIS. Forest loss, fragmentation, and spread of invasive species are the main concerns.

Page 3-3 MCBS

80-20 There are several MCBS sites rated as "Outstanding" in Cass County within the routes. Though there may be a typo in the county reference, it appears that these sites are not addressed in Appendix G.

Page 4-6 Goshawks and Page 5-7 Goshawks Table 5.2.1.

80-21 There is at least one Goshawk territory within 1000 ft of the routes located near Sucker Lake in close proximity to Route 1. More than 0.4 acre of Route 1 is located within the nesting area of Sucker Lake. It is unclear what size buffers around the nest were used in this analysis. It is important to show the reader how the values were calculated as it appears there is a discrepancy. If possible, construction and logging should not occur within at least 500 meters of an active nest during the breeding season of February 1st through August 1st.

The number of goshawk territories affected by the various routes differs within the DEIS. For example Chapter 3 Table 3.8.1 is different from Appendix G Table 5.2.1 and Appendix G Table 5.2.1 and Table 7.1. Explanation is needed about why these numbers differ so that alternatives can be adequately compared.

80-22 The DNR recommends that the Natural Heritage Information System is re-checked just before construction begins to see if there are any newly documented locations of tracked species within the routes.

Page 5-32 Direct and Indirect Effects

80-23 This section should refer to the new federal guidelines and note that all nest trees will be excluded from harvest. The protections mentioned may not satisfy the federal guidelines. It may be helpful to consult with the USFWS staff person Mags Rheude at 612-725-3548 ext. 2202 to obtain more information regarding these guidelines.

Page 5-62 Blanding's Turtle

80-24 Blanding's Turtle (State "T") are mentioned as occurring in the study area, yet in the rare species reptile section on page 200 of the DEIS, the species is not mentioned. Discussion of this species should be added to the EIS text and narrative.

Responses

Comment 80-19

Text in Appendix G, Section 3.3.4, has been modified to include information on old growth stands.

Comment 80-20

Text in Appendix G, Section 3.3.4, has been modified to include information on Cass County sites.

Comment 80-21

Text in Section 3.8.3 of the EIS has been modified to include DNR recommended mitigation for Goshawk nests. Text in Section 3.8.1.1 of the EIS has been modified to note the reported presence of the Goshawk territory within 1,000 feet of Route Alternative 1, and to explain how the number of occurrences were calculated.

Comment 80-22

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 80-23

Text in Appendix G, Section 5.2.1.14 has been modified to include a discussion of the new federal guidelines.

Comment 80-24

Text in Sections 3.8.1.2 and 3.8.1.3 and Tables 3.8-3 and 3.8-4 have been modified to include information on the Blanding's Turtle.

Commenter 80 – Minnesota DNR

General Recommendations for Permit Requirements and Mitigation

The following comments include recommendations for permit requirements or mitigation based on DNR staff review of the DEIS:

- 80-25 The permit should require that the applicant complete an overall Construction Environmental Control Plan (CECP) to make sure that appropriate systems are in place to ensure compliance with various permit and project plans. CEPC's typically contain additional environmental documents (e.g. Agricultural Impact Mitigation Plans, Environmental Mitigation Plans, Re-vegetation and Restoration Plans, Pollution Prevention Plan, etc.), policies, permits, plans and protocols which, when implemented, will minimize and/or mitigate the potential impacts associated with transmission line construction.
- As a component of the CECP, the applicant should include an Environmental Mitigation Plan (EMP) which provides an outline of construction-related environmental policies, procedures, and mitigations measures developed by CAPX for the transmission line project. An inventory of publically managed lands, rare features, water bodies, wetlands, sites of biodiversity significance, recreational trails, native prairie and habitat complexes should be included in the plan. Avoidance, minimization and mitigation measures for each resource should also be included in the plan. The DNR recommends that appropriate avoidance, minimization and mitigation be discussed and agreed upon as part of the permitting process.
- 80-26 The DEIS indicates that an avian protection plan is being prepared. Either a draft of the plan or specific monitoring and mitigation measures within the plan should be included in the EIS. It is recommended that the permit require the final plan to be completed in accordance with the *Suggested Practices for Avian Protection on Power Lines: State of the Art in 2006 (APLIC, 2006)*, be developed with consultation from the DNR, and be included in the CECP.
- 80-27 On other large projects similar to the Bemidji to Grand Rapids Transmission Project, applicants have been required to hire third-party agency monitors to work with and supplement agency field presence. These monitors also satisfy reporting expectations and help to ensure that impacts to protected resources are avoided and/or minimized. It appears that under the current proposal, the use of agency monitors is not planned. A permit requirement for the use of applicant or owner funded agency monitors would be beneficial and is a model that has worked well on other projects.
- 80-28 The route permit should require that a riparian corridor consisting of shrub or low growing woody species be protected and maintained within 35 feet of all public waters and public waters wetlands. This practice is outlined in Natural Resources Conservation Service (NRCS) Conservation Standard 391. The use of herbicide and pesticides should also be restricted in these areas during maintenance. Only woody vegetation that would interfere with the power lines should be trimmed or cleared. Woody vegetation plays an important role in providing habitat for wildlife along riparian corridors as well as providing shading of streams. This is especially important for cold and cool-water streams (e.g. Necktie River and tributaries). Another benefit of leaving woody vegetation is mitigation for providing Off Highway Vehicle (OHV) access to the streams. Utility crossings have become popular areas for OHVs to access and cross streams, which can result in bank instability and erosion.
- 80-29 The permit should require that the Project span waterways and wetlands, where possible, to minimize potential effects on water quality, wildlife, recreation, and aesthetics.
- 80-30 The DNR would encourage commitment from the project proposer to install replacement nesting structures at all locations where osprey build along future transmission line routes. H frame construction is especially attractive to osprey. It is possible that with new regulations, the project proposer would be

Responses

Comment 80-25

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 80-26

A draft Avian Mitigation Plan (AMP) is included as Appendix I. The AMP was prepared in accordance with APLIC guidelines. The final AMP will be submitted by the Applicant to the PUC and the DNR with applicable permit applications.

Comment 80-27

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 80-28

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 80-29

Thank you for your comment. It has been noted and included in the record for this EIS. A discussion of spanning water bodies as a potential mitigation measure appears in Sections 3.4.3, 3.5.3, and 3.6.3 of the EIS.

Comment 80-30

Thank you for your comment. It has been noted and included in the record for this EIS.

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removing nests of the species, so the replacement nest structures would serve as mitigation for this impact.

80-31 | The permit should require that, when possible, the HVTL be co-located with existing utility lines crossing at all existing public water crossings.

80-32 | The permit should require that, in environmentally sensitive areas, with landowner or agency consent, barriers be constructed to limit unauthorized OHV or other vehicle access to the project Right-Of-Way (ROW).

80-33 | **MDNR Land and Water Crossing Licenses**

The following DNR permitting information is provided at this stage in the environmental review and route permitting process for the project proposer, Office of Energy Security and Public Utilities Commission planning and coordination purposes and for consideration in the FEIS:

The review and issuance of DNR land and water crossing licenses are coordinated by the DNR Division of Lands & Minerals. The proposed project spans four counties in two DNR regions (NW and NE). The Lands & Minerals Regional Supervisor in Itasca County is Joe Rokala (218/999-7894) and the Lands & Minerals Regional Supervisor in the NW Region for all the counties to the west is Cindy Buttlerman (218/308-2627). The project proposer should contact Joe and Cindy to schedule a pre-application meeting to discuss administrative procedures for submitting the land and water crossing applications for this project.

The project proposer should allow adequate time for review and modification of the license applications after the completion of environmental review. The following information should be included in the license applications:

1. Length and width of each proposed state land and public water depicted on maps and plan sheets. Each crossing must be identified by legal description to the forty.
2. Clearing activities, construction methods, schedule, and staging of operations including equipment and materials storage proposed on state land or in public waters.
3. Permanent and temporary access points to the proposed ROW affecting state land or public waters.
4. Temporary work areas on state land adjacent to the ROW that may be needed during construction. These areas should be clearly delineated and identified in the application materials.
5. General location of existing utility lines or transportation ROWs within or near the proposed ROW on state land or in public waters.
6. State trails or Grant in Aid trails proposed to be crossed.
7. Location and design of tower structures including proposed methods for disposal or wasting of the back dirt resulting from the excavation of the tower footings.
8. Restoration methods including proposed seed mixes and invasive species control measures.

Responses

Comment 80-31

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 80-32

Thank you for your comment. It has been noted and included in the record for this EIS. The use of barriers to limit OHV access is discussed as a potential mitigation measure in Section 3.13.3 of the EIS.

Comment 80-33

Text in Section 3.4.1.1 has been supplemented to include a description of the information that would be required for a license to cross state lands and public waters. Information included in the license application would be specific to the Route Alternative selected. Text in Section 3.4.3 has been supplemented to include license conditions that may be imposed by the DNR for licenses to cross state lands and public waters.

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9. ROW maintenance methods and schedule on state land or in public waters.

In addition, the project proposer should be aware of the following points related to the licensing of state land and public water crossings:

1. DNR invasive species standards will apply to state-administered lands and public waters to include cleaning of equipment.
2. Certain pesticides are restricted from use on certified forest lands. Adequate notice of herbicide or pesticide use on state lands will be required and only approved herbicides will be allowed.
3. Use of native species for re-vegetation and clean weed free straw for mulch will be required on certain state land and public water crossings.
4. In-stream work on certain public waters, such as trout streams, must be avoided at prescribed times to accommodate fish spawning.
5. State lands purchased with the assistance of various Federal grant programs may require mandatory federal aid review and approval before the license can be issued. Supplemental information may be required for the federal review. If federal approval is required, additional time will be needed to process the application.
6. If a state land parcel becomes isolated due the construction of the ROW, the project proposer must provide access to the isolated state land across the ROW.
7. A monitoring fee will be assessed for DNR projected reasonable costs for monitoring the construction of the utility line and preparing special terms and conditions of the license to ensure proper construction. Independent environmental monitors may also be required during construction.
8. Permission for temporary access to the ROW across state land is considered a separate transaction and may be granted through a lease. Requests for temporary access are subject to review and approval, and in some cases may not be granted. Allow adequate time for processing access lease requests.

80-34 | The DNR appreciates the opportunity to provide input regarding the DEIS for the Bemidji to Grand Rapids 230 KV Transmission Project. Further coordination with the DNR regarding flyways sensitive to avian impacts and associated mitigation plans is needed. Coordination with the project proposer is currently ongoing regarding threatened and endangered species and should also continue. If any clarification is needed regarding the provided comments, please contact me.

Sincerely,



Jamie Schrenzel
Principal Planner
Environmental Review Unit
(651) 259-5115

Enclosures: 2

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Comment 80-34

Thank you for your comment. Text in Section 3.7.2.3 has been supplemented with additional information on annual avian mortality. The Section has also been modified to note that monitoring and identification of specific avian corridors is ongoing. Specific mitigation measures proposed by the Applicants are presented in a draft Avian Mitigation Plan (AMP), which is included as Appendix I.

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Environmental Review Fact Sheet Series

Endangered, Threatened, and Special Concern Species of Minnesota

Blanding's Turtle (*Emydoidea blandingii*)

Minnesota Status: Threatened
Federal Status: none

State Rank¹: S2
Global Rank¹: G4

HABITAT USE

Blanding's turtles need both wetland and upland habitats to complete their life cycle. The types of wetlands used include ponds, marshes, shrub swamps, bogs, and ditches and streams with slow-moving water. In Minnesota, Blanding's turtles are primarily marsh and pond inhabitants. Calm, shallow water bodies (Type 1-3 wetlands) with mud bottoms and abundant aquatic vegetation (e.g., cattails, water lilies) are preferred, and extensive marshes bordering rivers provide excellent habitat. Small temporary wetlands (those that dry up in the late summer or fall) are frequently used in spring and summer -- these fishless pools are amphibian and invertebrate breeding habitat, which provides an important food source for Blanding's turtles. Also, the warmer water of these shallower areas probably aids in the development of eggs within the female turtle. Nesting occurs in open (grassy or brushy) sandy uplands, often some distance from water bodies. Frequently, nesting occurs in traditional nesting grounds on undeveloped land. Blanding's turtles have also been known to nest successfully on residential property (especially in low density housing situations), and to utilize disturbed areas such as farm fields, gardens, under power lines, and road shoulders (especially of dirt roads). Although Blanding's turtles may travel through woodlots during their seasonal movements, shady areas (including forests and lawns with shade trees) are not used for nesting. Wetlands with deeper water are needed in times of drought, and during the winter. Blanding's turtles overwinter in the muddy bottoms of deeper marshes and ponds, or other water bodies where they are protected from freezing.

LIFE HISTORY

Individuals emerge from overwintering and begin basking in late March or early April on warm, sunny days. The increase in body temperature which occurs during basking is necessary for egg development within the female turtle. Nesting in Minnesota typically occurs during June, and females are most active in late afternoon and at dusk. Nesting can occur as much as a mile from wetlands. The nest is dug by the female in an open sandy area and 6-15 eggs are laid. The female turtle returns to the marsh within 24 hours of laying eggs. After a development period of approximately two months, hatchlings leave the nest from mid-August through early-October. Nesting females and hatchlings are often at risk of being killed while crossing roads between wetlands and nesting areas. In addition to movements associated with nesting, all ages and both sexes move between wetlands from April through November. These movements peak in June and July and again in September and October as turtles move to and from overwintering sites. In late autumn (typically November), Blanding's turtles bury themselves in the substrate (the mud at the bottom) of deeper wetlands to overwinter.

IMPACTS / THREATS / CAUSES OF DECLINE

- loss of wetland habitat through drainage or flooding (converting wetlands into ponds or lakes)
- loss of upland habitat through development or conversion to agriculture
- human disturbance, including collection for the pet trade* and road kills during seasonal movements
- increase in predator populations (skunks, raccoons, etc.) which prey on nests and young

*It is illegal to possess this threatened species.

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RECOMMENDATIONS FOR AVOIDING AND MINIMIZING IMPACTS

These recommendations apply to typical construction projects and general land use within Blanding's turtle habitat, and are provided to help local governments, developers, contractors, and homeowners minimize or avoid detrimental impacts to Blanding's turtle populations. **List 1** describes minimum measures which we recommend to prevent harm to Blanding's turtles during construction or other work within Blanding's turtle habitat. **List 2** contains recommendations which offer even greater protection for Blanding's turtles populations; this list should be used *in addition to the first list* in areas which are known to be of state-wide importance to Blanding's turtles (contact the DNR's Natural Heritage and Nongame Research Program if you wish to determine if your project or home is in one of these areas), or in any other area where greater protection for Blanding's turtles is desired.

List 1. Recommendations for all areas inhabited by Blanding's turtles.	List 2. Additional recommendations for areas known to be of state-wide importance to Blanding's turtles.
GENERAL	
A flyer with an illustration of a Blanding's turtle should be given to all contractors working in the area. Homeowners should also be informed of the presence of Blanding's turtles in the area.	Turtle crossing signs can be installed adjacent to road-crossing areas used by Blanding's turtles to increase public awareness and reduce road kills.
Turtles which are in imminent danger should be moved, by hand, out of harms way. Turtles which are not in imminent danger should be left undisturbed.	Workers in the area should be aware that Blanding's turtles nest in June, generally after 4pm, and should be advised to minimize disturbance if turtles are seen.
If a Blanding's turtle nests in your yard, do not disturb the nest.	If you would like to provide more protection for a Blanding's turtle nest on your property, see "Protecting Blanding's Turtle Nests" on page 3 of this fact sheet.
Silt fencing should be set up to keep turtles out of construction areas. It is <u>critical</u> that silt fencing be removed after the area has been revegetated.	Construction in potential nesting areas should be limited to the period between September 15 and June 1 (this is the time when activity of adults and hatchlings in upland areas is at a minimum).
WETLANDS	
Small, vegetated temporary wetlands (Types 2 & 3) should not be dredged, deepened, filled, or converted to storm water retention basins (these wetlands provide important habitat during spring and summer).	Shallow portions of wetlands should not be disturbed during prime basking time (mid morning to mid- afternoon in May and June). A wide buffer should be left along the shore to minimize human activity near wetlands (basking Blanding's turtles are more easily disturbed than other turtle species).
Wetlands should be protected from pollution; use of fertilizers and pesticides should be avoided, and run-off from lawns and streets should be controlled. Erosion should be prevented to keep sediment from reaching wetlands and lakes.	Wetlands should be protected from road, lawn, and other chemical run-off by a vegetated buffer strip at least 50' wide. This area should be left unmowed and in a natural condition.
ROADS	
Roads should be kept to minimum standards on widths and lanes (this reduces road kills by slowing traffic and reducing the distance turtles need to cross).	Tunnels should be considered in areas with concentrations of turtle crossings (more than 10 turtles per year per 100 meters of road), and in areas of lower density if the level of road use would make a safe crossing impossible for turtles. Contact your DNR Regional Nongame Specialist for further information on wildlife tunnels.
Roads should be ditched, not curbed or below grade. If curbs must be used, 4 inch high curbs at a 3:1 slope are preferred (Blanding's turtles have great difficulty climbing traditional curbs; curbs and below grade roads trap turtles on the road and can cause road kills).	Roads should be ditched, not curbed or below grade.

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ROADS cont.	
Culverts between wetland areas, or between wetland areas and nesting areas, should be 36 inches or greater in diameter, and elliptical or flat-bottomed.	Road placement should avoid separating wetlands from adjacent upland nesting sites, or these roads should be fenced to prevent turtles from attempting to cross them (contact your DNR Nongame Specialist for details).
Wetland crossings should be bridged, or include raised roadways with culverts which are 36 in or greater in diameter and flat-bottomed or elliptical (raised roadways discourage turtles from leaving the wetland to bask on roads).	Road placement should avoid bisecting wetlands, or these roads should be fenced to prevent turtles from attempting to cross them (contact your DNR Nongame Specialist for details). This is especially important for roads with more than 2 lanes.
Culverts under roads crossing streams should be oversized (at least twice as wide as the normal width of open water) and flat-bottomed or elliptical.	Roads crossing streams should be bridged.
UTILITIES	
Utility access and maintenance roads should be kept to a minimum (this reduces road-kill potential).	
Because trenches can trap turtles, trenches should be checked for turtles prior to being backfilled and the sites should be returned to original grade.	
LANDSCAPING AND VEGETATION MANAGEMENT	
Terrain should be left with as much natural contour as possible.	As much natural landscape as possible should be preserved (installation of sod or wood chips, paving, and planting of trees within nesting habitat can make that habitat unusable to nesting Blanding's turtles).
Graded areas should be revegetated with native grasses and forbs (some non-natives form dense patches through which it is difficult for turtles to travel).	Open space should include some areas at higher elevations for nesting. These areas should be retained in native vegetation, and should be connected to wetlands by a wide corridor of native vegetation.
Vegetation management in infrequently mowed areas -- such as in ditches, along utility access roads, and under power lines -- should be done mechanically (chemicals should not be used). Work should occur fall through spring (after October 1 st and before June 1 st).	Ditches and utility access roads should not be mowed or managed through use of chemicals. If vegetation management is required, it should be done mechanically, as infrequently as possible, and fall through spring (mowing can kill turtles present during mowing, and makes it easier for predators to locate turtles crossing roads).

Protecting Blanding's Turtle Nests: Most predation on turtle nests occurs within 48 hours after the eggs are laid. After this time, the scent is gone from the nest and it is more difficult for predators to locate the nest. Nests more than a week old probably do not need additional protection, unless they are in a particularly vulnerable spot, such as a yard where pets may disturb the nest. Turtle nests can be protected from predators and other disturbance by covering them with a piece of wire fencing (such as chicken wire), secured to the ground with stakes or rocks. The piece of fencing should measure at least 2 ft. x 2 ft., and should be of medium sized mesh (openings should be about 2 in. x 2 in.). It is *very important* that the fencing be **removed before August 1st** so the young turtles can escape from the nest when they hatch!

REFERENCES

- ¹Association for Biodiversity Information. "Heritage Status: Global, National, and Subnational Conservation Status Ranks." NatureServe. Version 1.3 (9 April 2001). <http://www.natureserve.org/ranking.htm> (15 April 2001).
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Minnesota DNR Division of Ecological Resources Environmental Review Fact Sheet Series: Blanding's Turtle

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DEPARTMENT OF NATURAL RESOURCES
Division of Ecological Resources

STATE OF MINNESOTA
Memorandum

DATE: April 27, 2010

PHONE: (651) 259-5115

TO: Suzanne Steinhauer
Department of Commerce, Office of Energy Security

FROM: Jamie Schrenzel
MDNR, Division of Ecological Resources

SUBJECT: Draft Environmental Impact Statement (DEIS) for the Bemidji to Grand Rapids 230kV
Transmission Project - Supplemental Comment [PUC Docket Number: E017, E015, ET6/TL-07-
1327]

The Minnesota Department of Natural Resources (DNR) sent comments April 26, 2010 regarding the DEIS for the Bemidji to Grand Rapids 230kV Transmission Project. One comment was unintentionally deleted during comment letter drafting. The following comment was intended to be located in the section of the comment letter titled "3.8 Species of Special Concern." It is acknowledged that this supplemental comment is being sent after the close of the formal comment period for the DEIS. If this comment cannot be added to the formal comment period record, please consider forwarding the comment to EIS writers for future reference.

3.8 Species of Special Concern

80-36 | The title of this section may be confused with the State designation of special concern. Please change this to "Species of Concern" to avoid confusion. References to "Species of Special Concern" in the text of this section should also be changed. Likewise, Table 3.8.1 "known occurrences of bird species of special concern..." should be renamed "Bird Species of Concern" and Table 3.8-5 should be re-named "Known Occurrences of Plant Species of Concern within Route Alternative."

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The title of Section 3.8 has been changed to "Species of Concern," as requested.

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April 20, 2010

Suzanne Steinhauer
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Minnesota Department of Commerce
85 7th Place East, Suite 500
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Re: Bemidji – Grand Rapids Transmission Line Project
PUC Docket No. E017, E015, ET6/TL-07-1327
OAH Docket No. 8-2500-20825-2

Dear Ms. Steinhauer:

On February 23, 2010, the Minnesota Office of Energy Security (OES) issued a Notice of Availability of Draft Environmental Impact Statement and request for public comments on the Draft Environmental Impact Statement (DEIS) relating to the route permit application by Otter Tail Power, Minnesota Power, and Minnkota Power Cooperative (the Applicants) for a 230 kV transmission line from Bemidji to Grand Rapids, Minnesota. The Minnesota Department of Transportation (Mn/DOT) has reviewed the DEIS regarding the proposed transmission line project and submits the following comments in response to the Notice.

Both the preferred and alternate routes evaluated in the DEIS have a number of locations that either cross or run parallel to highways that are part of the state trunk highway system and the National Highway System. Due to the magnitude of the impacts on these highways, the enclosed comments provide the background on Mn/DOT's Utility Accommodation Policy. Mn/DOT's policy seeks to permit utilities to occupy portions of the highway rights-of-way where such occupation does not put the safety of the traveling public or highway workers at risk or unduly impair the public's investment in the transportation system. The enclosed comments also provide input on specific impacts associated with the proposed project discussed in the DEIS.

Mn/DOT appreciates the opportunity to comment and commends the OES and RUS for the comprehensive and detailed draft of the EIS. Mn/DOT wishes to participate in the development of the EIS so that it will contain a thorough evaluation of the effects various route proposals may have on the state transportation system. Mn/DOT's fundamental interest is to ensure that the EIS identifies and quantifies, to the extent possible, any impacts the proposed high voltage transmission line (HVTL) may have on the safety of the transportation system, the effectiveness of the operations or maintenance of the state trunk highway system, and any additional costs that may be imposed on the state trunk highway fund as a result of the location of the proposed HVTL.

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Mn/DOT has adopted a formal policy and procedures for accommodation of utilities on the highway rights-of-way ("Utility Accommodation Policy"). A copy of Mn/DOT's policy can be found at <http://www.dot.state.mn.us/utility/files/pdf/appendix-b.pdf>.

Mn/DOT's approach to the high voltage transmission line ("HVTL") involved in the Applicants' proposal is to work to accommodate the HVTL within or as near as feasible to the trunk highway rights of way, based on an evaluation of the specific locations to ensure that appropriate clearance is maintained to preserve the safety of the traveling public and highway workers and the effective operation of the highway system now and in the foreseeable future. Mn/DOT's Utility Accommodation Policy seeks to guide the balance between accommodation of utility operations in the highway rights-of-way and preserving the safe and efficient operation of the transportation system.

The provisions of the Utility Accommodation Policy are based on the framework of several interrelated state and federal laws that led to its creation. These comments will outline the legal and regulatory structure under which the Policy was adopted, and will then discuss the types of circumstances and concerns that must be considered when applying the Utility Accommodation Policy to a specific situation as Mn/DOT works to accommodate a utility in a highway right-of-way while preserving the safe and efficient operation of the highway. The comments will provide as much specific information as is possible at this time on locations where the HVTL routes proposed by Applicants in this application either cross or run parallel to the trunk highway system. Finally, these comments will discuss a few specific portions of the DEIS.

I. Legal Framework Applicable to Mn/DOT's Utility Accommodation Policy

Mn/DOT's policy regarding accommodation of utilities is governed by both federal and state statutes and regulations. These comments will first describe the primary federal laws and then the state laws

A. Applicable Federal Laws

Certain highways in Minnesota are part of the National Highway System, which is established under 23 U.S.C. §103. The National Highway System and the Dwight D Eisenhower National System of Interstate and Defense Highways (Interstate System) are together known as the Federal-aid System. 23 U.S.C. §103(a). See also 23 CFR Part 470. In addition to the highways on the National Highway System, other highways also receive federal funding. Together, the highways in the National Highway System, the Interstate System, plus the other highways that receive federal funding are known as "Federal-aid highways." 23 CFR §470.103. The Federal-aid highways in Minnesota that are impacted by the Bemidji to Grand Rapids route proposal that would run parallel to the highway include US 2, US 71, MN 46, and MN 6. The Federal-aid highways that would be crossed by the route proposals include US 2, US 71, MN 6, MN 46 and MN 371.

Congress articulated the transportation policy of the United States in 23 U.S.C. §101(b). Among other things, Congress noted that "it is in the national interest to preserve and enhance the surface transportation system to meet the needs of the United States for the 21st Century," that "the current urban and long distance personal travel and freight movement demands have surpassed the original forecasts and travel demand patterns are expected to continue to change," and that "special emphasis should be devoted to providing safe and efficient access

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for the type and size of commercial and military vehicles that access designated National Highway System intermodal freight terminals." 23 U.S.C. §101(b)(3)(A), (B) and (E).

Federal law requires that "The real property interest acquired for all Federal-aid projects . . . shall be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public." 23 C.F.R. §710.201(e). In addition, all real property that is part of the Federal-aid highway system must be devoted exclusively to highway purposes unless an alternative use is permitted by federal regulation or the Federal Highway Administration ("FHWA"). This basic proposition is stated in 23 C.F.R. §710.403, which provides:

"(a) The [State Transportation Department] must assure that all real property within the boundaries of a federally-aided facility is devoted exclusively to the purposes of that facility and is preserved free of all other public or private alternative uses, unless such alternative uses are permitted by Federal regulation or the FHWA. An alternative use must be consistent with the continued operation, maintenance, and safety of the facility, and such use shall not result in the exposure of the facility's users or others to hazards."

Similarly, 23 C.F.R §1.23 restricts use of the highway right-of-way unless otherwise permitted. This section provides:

"(a) Interest to be acquired. The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation and maintenance of a project.

(b) Use for highway purposes. Except as provided under paragraph (c) of this section, all real property, including air space, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes. No project shall be accepted as complete until this requirement has been satisfied. The State highway department shall be responsible for preserving such right-of-way free of all public and private installations, facilities or encroachments, except (1) those approved under paragraph (c) of this section; (2) those which the Administrator approves as constituting a part of a highway or as necessary for its operation, use or maintenance for public highway purposes and (3) informational sites established and maintained in accordance with Sec. 1.35 of the regulations in this part.

(c) Other use or occupancy. Subject to 23 U.S.C. 111, the temporary or permanent occupancy or use of right-of-way, including air space, for nonhighway purposes and the reservation of subsurface mineral rights within the boundaries of the rights-of-way of Federal-aid highways, may be approved by the Administrator, if he determines that such occupancy, use or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon."

(Emphasis added.)

Federal law recognizes accommodating the placement of utility facilities as a permissible exception to the general mandate that all of a highway right-of-way, including the air space above the right-of-way, must be used solely for highway purposes. Section 109(l) of Title 23 of the U. S. Code provides:

"(1) In determining whether any right-of-way on any Federal-aid highway should be used for accommodating any utility facility, the Secretary shall—

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(A) first ascertain the effect such use will have on highway and traffic safety, since in no case shall any use be authorized or otherwise permitted, under this or any other provision of law, which would adversely affect safety;

(B) evaluate the direct and indirect environmental and economic effects of any loss of productive agricultural land or any impairment of the productivity of any agricultural land which would result from the disapproval of the use of such right-of-way for the accommodation of such utility facility; and

(C) consider such environmental and economic effects together with any interference with or impairment of the use of the highway in such right-of-way which would result from the use of such right-of-way for the accommodation of such utility facility. "

The U.S. DOT has implemented this statutory directive by adopting the rules relating to accommodation of utilities found at 23 C.F.R. Part 645, Subpart B. These regulations require that each state transportation department submit its policies for accommodating utilities within highway rights of way to the FHWA. 23 C.F.R §645.215(a). See also 23 C.F.R §645.209(c). The FHWA will approve the policy upon determination that it is consistent with federal statutes and regulations, and any changes to the policy are also subject to FHWA approval. 23 C.F.R §645.215(b) and (c). Once a state's policy has been approved by the FHWA, the state transportation department can approve requests by a utility to use or occupy part of the right-of-way of a highway that is part of the Federal-aid highway system if the request is encompassed by that policy. Exceptions to the policy can be granted, but if a state proposes to grant to a utility an exception to its utility accommodation policy, the exception is subject to review and approval by the FHWA. 23 C.F.R § 645.215(d). This may be considered a federal action which would need to meet all requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. §4321 et seq., to be in conformance with federal regulations.

B. Applicable Minnesota Laws

In addition to these federal laws, Mn/DOT's policy on utility accommodation must also conform to laws of the State of Minnesota. Article 14 of the Minnesota Constitution establishes the state trunk highway system. It also establishes "a trunk highway fund which shall be used solely for the purposes [of constructing, improving and maintaining the trunk highway system]." Minn. Const. Art. 14, §5. Under Minn. Stat. §161.20, the Commissioner of the Department of Transportation is charged with the responsibility to carry out the directive of Article 14 to construct, improve and maintain the trunk highway system, subject to the directive that trunk highway funds may be used only for trunk highway purposes. All of the Federal-aid highways identified above as impacted by the Bemidji to Grand Rapids proposal are part of the trunk highway system.

Minnesota has several statutes relating to use of highway rights-of-way by utilities. Minn. Stat. §222.37, Subd. 1, provides in part:

"Any . . . power company . . . may use public roads for the purpose of constructing, using, operating, and maintaining lines . . . for their business, but such lines shall be so located as in no way to interfere with the safety and convenience of ordinary travel along or over the same; and in the construction and maintenance of such line . . . the company shall be subject to all reasonable regulations imposed by the governing body of any county, town or city in which such public road may be."

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Minn. Stat. § 161.45 provides additional obligations for utility facilities occupying portions of a trunk highway right-of-way. Section 161.45, Subd. 1 provides in part:

"Electric transmission . . . lines . . . which, under the laws of this state or the ordinance of any city, may be constructed, placed or maintained across or along any trunk highway . . . may be so maintained or hereafter constructed only in accordance with such rules as may be prescribed by the commissioner who shall have power to prescribe and enforce reasonable rules with reference to the placing and maintaining along, across, or in any such trunk highway of any of the utilities hereinbefore set forth."

Subdivision 2 of §161.45 specifies the general rule that if the relocation of a utility placed in a trunk highway right-of-way is necessitated by a construction project on the trunk highway, the utility bears the costs associated with the relocation of its facility. However, if a utility facility is located on the Interstate System, then the cost of relocation of such facility is to be paid out of the state Trunk Highway Fund. See Minn. Stat. § 161.46.

Minnesota Rules part 8810.3100 through 8810.3600 contain rules relating to placement of utility facilities in trunk highway rights of way. Under part 8810.3300, a utility must obtain a permit for any construction or maintenance work in a trunk highway right-of-way. In addition, Subp. 6 of part 8810.3300 requires that, except for the negligent acts of the state, its agents and employees, the utility shall assume all liability for and save the state harmless from any and all claims arising out of the utility's work and occupation of a portion of the trunk highway right-of-way.

C. Mn/DOT's Utility Accommodation Policy

Mn/DOT has adopted a policy statement regarding the circumstances and methods under which it will grant permits to utilities to occupy a portion of a trunk highway right-of-way. Mn/DOT's Utility Accommodation Policy is in conformance with the federal and state statutes and regulations described above, and is also consistent with the American Association of State Highway and Transportation Officials (AASHTO) publications, A Guide for Accommodating Utilities Within Highway Right-of-Way and A Policy on the Accommodation of Utilities Within Freeway Right-of-Way. Mn/DOT's Utility Accommodation Policy has been reviewed and approved by FHWA under 23 CFR §645.215(b). Therefore, with respect to Federal-aid highways, further review and approval by the FHWA is required for Mn/DOT to grant an exception to the general application of the Policy, but FHWA review and approval is not necessary for permits granted within the scope of the Policy.

Mn/DOT's Utility Accommodation Policy recognizes that it is in the public interest for utility facilities to be accommodated on highway rights-of-way when such use does not interfere with the flow of traffic and safe operation of vehicles or otherwise conflict with applicable laws or impair the function of the highway. The Policy applies to all utilities, both public and private. Therefore it speaks in somewhat generic terms to cover as many anticipated situations as possible.

The Policy was developed with integrated sections, and two or more sections usually need to be read together when applying the Policy to the context of a utility accommodation circumstance. Some of the provisions most relevant to the Applicants' route proposals include:

- Part I.F – articulates the general policy of accommodation of utilities;
- Part I.G – contains provisions for granting exceptions to the Policy;

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- Part V – addresses the location requirements for utilities occupying a portion of a highway right-of-way that apply to most highways;
- Part VI – contains special rules for utility accommodation requests along freeways;
- Part X – contains specific requirements relating to overhead power and communication lines.

Mn/DOT is expressly required to include in its Utility Accommodation Policy some provisions that apply specifically to freeways. 23 CFR §645.209(c). Freeways are characterized by the fact that they are subject to full control of access – i.e., preference is given to through traffic by restricting areas where any person, including vehicles that use the highway, may enter or leave the freeway. By implementing full control of access, through traffic can safely achieve higher speeds and encounter fewer stoppages or slowdowns of the flow of traffic. On freeways, all crossings at grade are prohibited, and fencing is installed along the right-of-way to prevent other persons (including snowmobilers, bicyclists, walkers, etc.) or animals from entering the freeway right-of-way. Freeways also require special design considerations, such as the wider clear zones adjacent to the roadway due to the higher speeds achieved by through traffic on freeways.

The control of access aspect of freeways is a key consideration underlying the special rules regarding utility accommodation requests on freeways. The Utility Accommodation Policy states: "The installation of new utility facilities shall not be allowed longitudinally within the right of way of any freeway, except in special cases under strictly controlled conditions." Under Utility Accommodation Policy, Section VI.C, the utility seeking to establish that special circumstances exist to justify an installation on a freeway must demonstrate to Mn/DOT's satisfaction the following:

- a. The accommodation will not adversely affect the safety, design, construction, traffic operations, maintenance, or stability of the freeway.
- b. Alternate locations are not available or are cost prohibitive from the standpoint of providing efficient utility services.
- c. The accommodation will not interfere with or impair the present use or future expansion of the freeway.
- d. The location of the utility facility outside of the right of way would result in the loss of productive agricultural land or loss of productivity of agricultural land. In this case, the utility owner must provide information on the direct and indirect environmental and economic effects for evaluation and consideration by the Commissioner of Transportation.
- e. Access for constructing and servicing utility facility will not adversely affect safety and traffic operations or damage any highway facility.

Concurrence by the FHWA is also required before the permit for a longitudinal installation on a freeway can be granted.

II. Overview of Transportation-Related Impacts of HVTLs on Trunk Highways

The preferred and alternate routes proposed by the Applicants in this matter either cross over or run parallel to trunk highways in a number of locations. When a route is ultimately selected by the Minnesota Public Utilities Commission (MPUC), the Applicants will need to obtain a valid permit from Mn/DOT in any location where the HVTL will occupy any portion of the highway right-of-way.

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In anticipation of the time when the Applicants will submit applications for permits after a final route is selected, Mn/DOT has engaged in an ongoing dialogue with representatives of the Applicants and the OES in an effort to identify information that will be needed to assess the permit applications and, to the degree that specificity is possible at this stage of the proceedings, areas where specific concerns will need to be addressed along various potential route/alignment scenarios. Mn/DOT believes these discussions have been beneficial for all participants. The discussions have been challenging due to the large number of locations where the proposed HVTL routes and the trunk highways potentially intersect, the variety of unique circumstances that exist along each of these potential locations, and the number of unknowns and uncertainties surrounding the selection of the actual locations where the Applicants will eventually apply for permits from Mn/DOT.

One of the concepts that has been discussed with the Applicants and the OES is the importance of recognizing that highway rights-of-way do not have a uniform width. The width of the right-of-way, and the distance from the centerline of the roadway to the boundary of the right-of-way, varies from highway to highway, and even from mile to mile along a given highway. The reasons for this variability are many, and include considerations such as the time when the right-of-way was purchased, the topography and geology of the area, the negotiations with the individual landowners from whom the right-of-way was acquired, and the timing and nature of changes and upgrades to the highway that have occurred over the years.

Therefore, a uniform policy that an HVTL can safely be located "X" feet or "Y" feet outside the highway right-of-way boundary line generally does not work well. A two-dimensional map does not provide sufficient information to determine a suitable alignment for a HVTL. Rather, Mn/DOT's approach is to evaluate the type of activities that regularly occur on and along highways. These activities can be evaluated in three groups – (a) traffic that uses a highway, (b) maintenance, repair and related activities and structures associated with the ongoing operation of the highway, and (c) construction activities that are likely to occur in the foreseeable future. These functions or uses of the highway each have a zone – i.e., a height and width – in which they take place either along the roadway surface or in the ditches, near bridges, intersections or interchanges where the maintenance and construction activities take place.

Once the zones of these recurring highway activities are identified, a safety buffer zone from the location of the energized wires of the HVTLs must be applied. The Occupational Safety and Health Administration (OSHA) and the National Electric Safety Code (NESC) can provide guidance on the safety clearances for activities near various voltages of HVTLs. The OSHA or NESC safety buffer should be applied between the zones of transportation activities and the location of the energized lines.

1. Traffic That Uses a Highway

Minnesota's trunk highways are designed to facilitate both personal travel and the distribution of freight throughout the state. Pursuant to Minn. Stat. §§169.80 and 169.81, vehicles that do not exceed 13 feet 6 inches in height and 8 feet 6 inches in width can be operated on Minnesota's highways without a permit. Vehicles with larger dimensions, excluding farm vehicles, must obtain a permit. Over the past 5 years, Mn/DOT has issued 233,376 permits for oversize vehicles to operate on state trunk highways. These do not include oversize farm machinery (which do not require a permit) nor movements of houses or other buildings such as grain bins. The number of building moves varies between 400 and 600 per year. Of

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the oversize vehicle permits issued, 73 were for vehicles over 18 feet 5 inches high, with the largest reaching nearly 37 feet high. An example of the type of oversize loads frequently transported over trunk highways are the blades, base sections and nacelles used in constructing wind turbines.

In addition to freight and building moves, other traffic on the roadway portion of trunk highways includes such activities as snowplows, which operate on both the roadway and the shoulder. Snowplows are about 13 feet tall, and when their boxes are raised to distribute sand and salt, their height can reach as high as 18 feet. The relative size of snowplows on a typical highway surface is depicted in the drawing enclosed as Attachment 1.

2. Maintenance, Repair and Operational Activities

In addition to the zone associated with traffic traveling on a highway, there is another zone associated with maintenance and operational activities alongside the roadways. Examples of maintenance activities performed by highway workers, and the types of equipment commonly associated with those activities, include the following:

- guardrail and fence installation and repairs, using augers, loaders and skidsteers (which commonly have raised buckets for pulling posts, etc.).
- vegetation control, using mowers, bucket trucks for tree trimming, and equipment for applying herbicides.
- cleaning ditches, culverts and drains, using backhoes and excavators of various sizes that have boom arms that are used to scoop dirt and vegetation and deposit it into a dump truck that will be parked alongside the highway. Mn/DOT's larger ditch dredging equipment has a horizontal reach as long as 60 feet and a vertical operating dimension of up to 47 feet.
- vehicular accidents on highways often require special equipment to retrieve vehicles and repair damage. For example, when large vehicles such as trucks or buses run off the road or go down large ditches or into wetlands, large equipment with booms or winches may be used to pull them out.
- bridge inspections, using snoopers which have articulating arms that can lift a worker out over the side and then underneath the bridge structure.

Occasionally there is a need for immediate medical transport from roadside locations due to accidents and illnesses. For these situations there are a number of air medical helicopters stationed throughout Minnesota that will land in the roadside environment. These aircraft require clear approach and departure paths as well as an area large enough for the helicopter to land. Given the dimensions of the helicopters used in Minnesota, an area with a diameter of 90 feet should be considered the minimum requirement for landing. There should be two approaches to this area from different directions separated by an arc of at least 90° so that the aircraft can land and take off without a tailwind. Powerlines can be a particularly difficult obstruction for helicopter landings at night. The lines themselves are nearly invisible to the pilot, who must use the presence of poles as evidence that the lines exist. Most helicopters operating in this environment have line cutters installed on the aircraft to cut powerlines they encounter. Even so, helicopter crashes occur when powerlines get entangled in their rotor system or landing gear.

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Mn/DOT also maintains a number of structures alongside highways necessary for the safe and efficient operation of the highway, each of which requires periodic installation, maintenance and repair work. Examples of these structures include:

- road signs. The largest signs tend to be on freeways. Signs that extend out over the travel portion of a freeway must have 17.33 feet of clearance to the bottom of the sign, and the top of such signs can be 30.5 feet tall and may require boom trucks, bucket trucks or cranes to install or maintain such signs. Roadside guide signs along freeways can reach 13 feet tall and tend to be located as far out in the clear zone as practical.
- light posts, traffic control signals and poles for traffic monitoring cameras exist at various locations along highways, and range in height from 20 to 50 feet.
- high mast light towers are used along some freeways, and range in height from 100 to 140 feet.
- noise walls, which can be up to 20 feet high, are becoming increasingly common along freeways.

The relative size of some of these structures on a typical highway surface is depicted in the drawing enclosed as Attachment 2.

Another type of physical item located along highways is snow fences, either structural or living. Some snow fences are in the highway right-of-way, and others are placed by agreement with adjoining landowners and may be 150 feet off the highway right-of-way. Mn/DOT is usually able to work out arrangements with a utility owner regarding height and placement of vegetation used as a living snow fence in locations where a utility is placed. If living snow fences owned by Mn/DOT need to be removed or relocated to accommodate a utility placement, compensation for the removed vegetation is usually required as a condition for issuance of the permit.

3. Future Construction Activities

Mn/DOT continually evaluates the future needs for the trunk highway system and has construction projects in varying stages of development. Some have been designed and funded and are ready for construction. Others have been identified as needed or are anticipated due to development trends but have not yet been funded. The types of construction projects Mn/DOT performs that could be impacted by the location of a HVTL range from relatively minor changes to the width of a highway to major reconstruction projects. Examples of such construction projects might include:

- widening a roadway by addition of travel lanes or turn lanes, installation of a roundabout, or widening a shoulder area;
- rebuilding a highway in a way that changes the location or grade of a roadway; and
- addition of an overpass or interchange on a freeway or other highway.

In addition to changes in the configuration of a highway, consideration must be given to the equipment used during the construction process. Construction projects often involve the use of large excavators and cranes similar in size to the equipment described above which Mn/DOT uses for its maintenance activities. The equipment used in bridge work is especially large, usually requiring cranes with long booms to lift material into place. The equipment used on construction projects also needs to be refueled at the job site, which requires consideration of the safety precautions necessary for this procedure.

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The activities associated with vehicular traffic using the roadway surface have a zone in which they typically occur. The drawings enclosed as Attachments 1, 2 and 3 do not depict a specific location on a specific highway. Rather, they are illustrative of the zones or areas on any given highway where transportation-related activities may take place. The lighter shaded area above the roadway surface in the drawing enclosed as Attachment 3 depicts the zone or area in which vehicular traffic on the roadway may operate. The zone within which the activities associated with maintenance work take place is depicted by the darker shaded area on the drawing enclosed as Attachment 3. In addition to evaluating these zones of activity, Mn/DOT will also consider factors such as the width of the right-of-way, the topography of the land and the geometry of the roadway in a specific location when assessing the suitability of that location for an HVTL to occupy a portion of a highway right-of-way.

81-1 | Location of a HVTL in close proximity to a highway right-of-way limits future expansion or reconstruction of highways due to the complex and extremely costly nature of either moving the transmission lines or moving the path of the highway. In order for the Minnesota Public Utilities Commission to make a fully-informed selection of a route based on all the pros and cons of the various alternatives, these costs should be recognized and evaluated in the EIS evaluation of the impacts of the proposed routes. The EIS should include an evaluation of the risk of trunk highway funding liabilities, and the potential magnitude of such liabilities, that may be imposed on the Trunk Highway Fund resulting from various proposed alignments along trunk highway rights-of-way.

III. Bemidji to Grand Rapids Route Proposals

81-2 | In applying its Utility Accommodation Policy to a permit application, Mn/DOT must evaluate each proposed pole location individually in relation to the topography of the land, the geometry of the roadway, the width of the highway right-of-way, the design of the HVTL structures, and other factors. Given the variability of these factors and the large number of potential locations, Mn/DOT is not able to provide specific answers at this time about whether it can grant permits for the potential locations where the various route proposals intersect with highway rights-of-way. As referenced earlier, Mn/DOT's approach to the Applicants' proposal is to work to accommodate these HVTLs within or as near as feasible to the highway rights of way, based on an evaluation of the specific locations to ensure that appropriate clearance is maintained to preserve the safety of the traveling public and highway workers and the effective operation of the highway system now and in the foreseeable future.

To the degree that specificity is possible at this stage in the process, Mn/DOT will provide additional information about a few of the locations proposed in the routes involved in the Applicants' proposals.

A. Highway Crossing Locations Proposed by the Applicants

The Applicant's preferred and alternate route proposals contain about nineteen locations where the proposed HVTLs would cross over a trunk highway, as distinguished from circumstances where it would run parallel to the highway.

Highway crossings generally do not pose insurmountable difficulties in issuing a permit. Mn/DOT routinely grants such permits to a variety of types of utilities. These permits usually have conditions associated with them, such as placement of the poles so that they do not become a physical obstruction that might be struck by an errant vehicle or block the visibility of

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Although the routes under consideration do contain MnDOT ROW, the Applicants have stated that they do not intend to be within MnDOT ROW. Known MnDOT improvement projects in the Study Area are identified in Section 3.19.1.1. If the Project is outside of MnDOT ROW, there will be no impact to the trunk highway fund. As the MnDOT comments clarified on Page 5, if a utility is placed within a trunk highway ROW and needs to move due to construction on that trunk highway, the relocation costs are borne by the utility. If a utility is located within the Interstate system, relocation costs are born by the Trunk Highway Fund; the only interstate portion in the Study Area is the U.S. Highway 2 – U.S. Highway 71 interchange.

Comment 81-2

Thank you for your comment. It has been noted and included in the record for this EIS.

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81-3 traffic. Mn/DOT also does not permit utilities to run diagonally across intersections, and prefers that crossings occur as close to right angles as possible. Under Section V.G.5 of the Utility Accommodation Policy, special handling may be required for crossings of scenic byways. Mn/DOT has a long history of working with utilities, including the Applicants, to establish appropriate conditions in locations where the utility seeks to cross a trunk highway. With the locations proposed by the Applicants in this matter, Mn/DOT does not anticipate encountering such difficulties that there would be locations where it would be unable to grant permits, with appropriate conditions, for the highway crossings proposed in this matter.

B. Locations Parallel to Highway Rights of Way Proposed by the Applicants

Section 3.19 of the DEIS identifies the locations where each of the various potential routes under consideration run parallel to highways and roads. Some of the locations identified are roads or streets maintained by local highway authorities and are not part of the trunk highway system for which Mn/DOT is the responsible highway authority. The highway locations identified in the DEIS that are part of the trunk highway system over which Mn/DOT has jurisdiction include US 2, US 71, MN 371, MN 46, and MN 6.

The DEIS notes in Sections 1.2 and 1.3 that the Applicants have applied to the US Forest Service (USFS) and the Leech Lake Band of Ojibwe (LLBO) for appropriate authorizations to cross the Chippewa National Forest and the Leech Lake Reservation.

81-4 Mn/DOT holds a large number of highway easements applicable to locations where its trunk highways cross the Chippewa National Forest and Leech Lake Reservation lands. Any permits granted by Mn/DOT to the Applicants in those locations will govern the relationship of the HVTL to the highway easements, but would not supersede any requirements that Applicants obtain appropriate authorizations from the USFS and LLBO.

IV. Specific Comments on Matters Discussed in the DEIS

Although Mn/DOT cannot at this time state with specificity where permits might be granted for each of the locations listed above, there are a few situations where some additional information can be provided that would assist in the development of the EIS. The comment letter Mn/DOT submitted on July 2, 2009, during the EIS scoping process in this matter contains information related to the proposed routes, including construction activities planned for those areas. For ease of reference, a copy of that letter is enclosed as Attachment 4.

81-5 Section 2.4.5. Transmission Line Construction Procedures. On page 49, the DEIS discusses circumstances when changes to the grade may be necessary for the installation of transmission line structures, and also erosion control and grade restoration procedures in disturbed areas. The grading of the highway right-of-way is designed to assure proper drainage of water, and any changes to that grade could cause erosion of the highway and impede surface water drainage, adding cost to the trunk highway fund if remedial work is necessary. Changes to the grade of slopes adjacent to the highway can also affect the safety of the highway. In any location where poles may be installed in or close to the highway right-of-way, the Applicants will need to work closely with Mn/DOT to determine a suitable location for the poles as well as requirements for grade restoration.

81-6 Section 2.4.8. Transmission Line Maintenance and Operation. On page 53, the DEIS discusses the maintenance and inspection of the transmission line that will be necessary during the life of the structures. The EIS should note that in any locations where the Applicants seek to gain access to the HVTL from a trunk highway for these purposes, or trim vegetation in a trunk

Responses

Comment 81-3

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 81-4

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 81-5

Text in Sections 2.4.5 and 3.19.2 has been supplemented with a discussion of the potential impact to highway ROW drainage.

Comment 81-6

A discussion of the requirement to obtain a permit to access highway ROWs in accordance with the Utility Accommodation Policy appears in Section 3.19.3.1 of the EIS.

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Responses

- 81-6 (cont.) highway right-of-way, they will need to coordinate these activities with Mn/DOT and obtain any necessary approvals for these activities.
- 81-7 Section 3.1.3. Mitigation. On page 58, Section 3.1.1.1 of the DEIS takes note of the three scenic byways that are potentially impacted by the route proposals, and other parts of Section 3.1 of the DEIS note specific locations where the scenic byways are located. Section 3.1.3 addresses some of the potential methods for mitigation of such impacts once a route is selected. With respect to Great River Road, by virtue of Minn. Stat. §161.142 the Commissioner of Transportation participates in the construction, improvement and maintenance of the Great River Road and therefore would also be involved along with the MN-MRPC in any discussions concerning mitigation associated with the Great River Road. The DEIS should expressly recognize that once a route is selected, the Applicants should be required to work together with Mn/DOT to achieve mitigation in those locations where the route would run on or near a trunk highway right-of-way, and in particular on scenic byways.
- 81-8 Section 3.19.1.1. Federal, State, and County Roads.
- Table 3.19-1 on page 414 appears to be missing some items in the list of highway locations affected by the route proposal. The list should include two crossings of US 2 associated with Route Alternative 2 between Zemple and the Boswell substation. (See Appendix D, Sheets 22 and 23.) In addition, there appears to be a conflict on the actual location of Route Alternative 3. Appendix D, sheets 41, 42, 45 and 46, show Route Alternative 3 paralleling MN 6. Table 3.19-1 only lists Alternate Route E paralleling MN 6. The data about the location of the routes should be clarified.
 - On page 414, the DEIS notes that there is one safety rest area located near the routes proposed by the Applicants. The Cass Lake Safety Rest Area is located on the north side of US 2 in the city of Cass Lake. The Rest Area is located outside the boundaries of the proposed location for Route Alternative 2, and therefore does not appear to be impacted by the Applicants' proposals.
- 81-9
- 81-10 Section 3.19.2. Direct/Indirect Effects.
- On page 419, the DEIS lists several potential direct effects of the project. Mn/DOT's discussion in earlier portions of this letter expands on the direct effects that a HVTL may have on the trunk highway system, depending on the location selected for the poles. The discussion above focuses on safety considerations as well as maintaining the effectiveness of the operation of the trunk highway system. The considerations discussed earlier in this letter should be reflected in this part of the EIS.
 - In the third line of the fourth paragraph on page 420, the word "land" appears to be a typographical error and should be changed to the word "lane."
 - The fourth and fifth sentences of the fourth paragraph on page 420 briefly discuss the impact that the HVTL would have on highway construction and maintenance operations. The EIS should note that this is especially significant in areas such as the bridge over the Mississippi River west of Ball Club. The snooper used for bridge inspections and maintenance in this regional area has a boom that is 62 feet long and will require sufficient clearance for safe operation. In addition, the bridge will eventually need to be refurbished or replaced. Due to the volume of traffic and the large loads carried by US 2, reconstruction of the bridge one half at a time may not be a feasible alternative. Therefore, a temporary bypass bridge may be necessary, or an equipment staging area to the south between the railroad tracks and the bridge may be used. In either event, the HVTL should not be placed in a location that would interfere with such operations.

Comment 81-7

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 81-8

Table 3.19-1 has been modified to include information on the two crossings of U.S. 2 east of Zemple by Route Alternative 2 and the parallel segment of Route Alternative 3 with MN Highway 6. Text in Section 3.9.1.1 has been modified to note that the actual number and locations of highway crossings would vary depending on the final alignment of the transmission line ROW within the route selected.

Comment 81-9

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 81-10

Text in Section 3.19.2 has been supplemented with a discussion on the potential impacts of the Project to affect the grade and surface water drainage on highway ROWs and importance of maintaining clear zone. Please refer to specific comment responses above that indicate how each comment was addressed in the EIS.

Comment 81-11

Text in Section 3.19.2 has been edited to correct the noted error.

Comment 81-12

Text in Sections 3.19.1.1 and 3.19.2.3 has been supplemented to include information on the future construction plans for the U.S. 2 bridge west of Ball Club and potential impacts from the Project. Text in Section 3.19.2 has been supplemented with information on the clearance required for bridge inspections. The most recent refurbishment, in 1988, used an area between U.S. Highway 2 and the railroad for a staging area. It is the understanding of OES EFP staff that the land used for the staging area is owned by the U.S. Forest Service as part of the Chippewa National Forest.

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- 81-13 • The last sentence of the fourth paragraph on page 420 states: "If Project structures are placed in clear zones, MnDOT may be restricted in performing maintenance and upkeep of these areas." While this is correct, the EIS should also note that structures placed in the clear zone would also be a safety hazard. For these reasons, Mn/DOT's policy generally does not permit utility structures in the clear zone, and Mn/DOT would work with the Applicants to find an appropriate location for the structures to be located outside the clear zone.
- 81-14 • On page 421 (and also in later sections at pages 423, 425 and 428) the DEIS uses the phrase "the feasible 125-foot-wide ROW". The meaning of this phrase is ambiguous and should be clarified. Is this phrase intended to refer to a specific alignment within a proposed route? Also, the same sentence refers to that "feasible 125-foot-wide ROW" being "located within 300 to 1,500 feet of U.S. 2." This reference should also be clarified. Does this refer to the 125 foot ROW being located between 300 and 1,500 feet away from a designated point on the highway? More detailed information should be provided in terms of where the poles and wires would be located in relation to the midpoint of the highway surface.

Section 3.19.2.3. Route Alternative 2 and Associated Segment Alternatives. On page 426, the DEIS discusses the scenic easement maintained by Mn/DOT that impacts some potential alignments in one of the applicant's route proposals. Specifically, proposed Route Alternative 2 runs along US 2 through the community of Ball Club. This segment of the highway is part of the route that has been designated as the Great River Road National Scenic Byway. In addition, as the DEIS accurately notes, Mn/DOT obtained a scenic easement covering an area of land between the south shore of Ball Club Lake and US 2. It appears that alignments for the HVTL that follow the US 2 right-of-way would involve locating poles in the area subject to this scenic easement. The federal regulation governing areas of scenic enhancement and natural beauty restricts Mn/DOT's ability to grant a permit to the Applicants for this location. The regulation, 23 CFR §645.209(h), provides:

Scenic areas. New utility installations, including those needed for highway purposes, such as for highway lighting or to serve a weigh station, rest area or recreation area, are not permitted on highway right-of-way or other lands which are acquired or improved with Federal-aid or direct Federal highway funds and are located within or adjacent to areas of scenic enhancement and natural beauty. Such areas include public park and recreational lands, wildlife and waterfowl refuges, historic sites as described in 23 U.S.C. 138, scenic strips, overlooks, rest areas and landscaped areas. The State transportation department may permit exceptions provided the following conditions are met:

(1) New underground or aerial installations may be permitted only when they do not require extensive removal or alteration of trees or terrain features visible to the highway user or impair the aesthetic quality of the lands being traversed.

(2) Aerial installations may be permitted only when:

(i) Other locations are not available or are unusually difficult and costly, or are less desirable from the standpoint of aesthetic quality,

(ii) Placement underground is not technically feasible or is unreasonably costly, and

(iii) The proposed installation will be made at a location, and will employ suitable designs and materials, which give the greatest weight to the aesthetic qualities of the area being traversed. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable.

(3) For new utility installations within freeways, the provisions of paragraph (c) of this section must also be satisfied.

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Comment 81-13

Text in Section 3.19.2 has been modified to note that placement of structures in clear zones may present a safety hazard to motorists.

Comment 81-14

A definition of the 125-foot-wide feasible ROW appears in the introduction to Section 3. Text in Section 3.19.2 has been modified to note that the distance of transmission line structures and the Project ROW to U.S. 2 would vary depending on the final alignment of the transmission line. The transmission line alignment and exact location of Project structures would be determined after a Route Alternative is selected. There is no established average or minimum distance that a transmission line would be located to the edge of a highway ROW.

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81-15 Under this federal regulation, any alignments occupying a portion of US 2 at this location in Ball Club would be prohibited unless the Applicants requested and were granted an exception to this rule. At this time, it is not clear whether the Applicants will request an exception to this regulation and, if they do, what alignment would be proposed. Mn/DOT understands that to grant an exception under this regulation, the conditions specified in all subparts of 23 CFR §645.209(h) would need to be satisfied.

81-16 Section 3.19.3.1, MnDOT. On page 431 the DEIS notes that permits are required for locations where transmission lines cross highways and for use of the highway for construction access or maintenance. It should also note that permits are required for locations where a transmission line runs parallel to a highway and any part of the transmission line occupies a portion of the highway right-of-way (including the pole itself, an arm attached to the pole, or the wires which may hang over or blow over the highway right-of-way). This paragraph also notes the preference in Mn/DOT's Utility Accommodation Policy that overhead lines be placed near the outer edge of the highway right-of-way. The EIS should expressly recognize that one method of mitigation of the impacts the HVTL would have on trunk highways is the prudent selection of pole locations. Whatever route is ultimately selected, Mn/DOT intends to work closely with the Applicants when issuing permits to select prudent alignments for the HVTL and specific locations for the poles where the route coincides with highway rights-of-way. Sufficient flexibility to assure that impacts on the highway can be mitigated is imperative.

81-17 Section 3.20, Safety and Health. This section of the DEIS discusses a number of considerations relating to safety and health associated with HVTLs. It should be noted that to the extent that the HVTL is located in or very near to a highway right of way, these factors will also impact highway operations. Highway workers in the vicinity of HVTLs are likely to experience induced voltage. Highway workers, like members of the general population, may have implantable medical devices. Equipment and structures in highway rights-of-way will need to be grounded, and inspected for proper grounding regularly. By way of example, Mn/DOT maintains wire fences all along the right-of-way boundaries of freeways, and these will need to be grounded in all locations where HVTLs are placed nearby. Thus, the EIS should reflect that the discussion in this section is highly relevant to highway operations.

81-18 Finally, Mn/DOT wishes to underscore the importance of preserving sufficient flexibility for Mn/DOT to work with the applicant to determine an appropriate specific location for each pole to be placed along a trunk highway right-of-way. As the selection of the final route is made, in all locations where the route will cross or run parallel to a trunk highway it is imperative that the designated route be sufficiently wide so that Mn/DOT and the applicant can work collaboratively to address the circumstances at each location and determine a specific alignment that can be permitted consistent with the considerations described in this letter.

Mn/DOT has a continuing interest in working with the OES to ensure that possible impacts to highways and other transportation infrastructure are adequately addressed. We appreciate the opportunity to provide these comments. Please feel free to contact me if you have any questions regarding the information provided.

Comment 81-15

A discussion of the restrictions regarding location of utilities within scenic easements appears in Section 3.19.2.3 of the EIS. Text in this section was modified to note that placement of the Project structures within the scenic easement would be prohibited unless an exception is granted.

Comment 81-16

Text in Section 3.19.3.1 has been modified to indicate that a permit would be required if the Project were located within highway ROWs.

Comment 81-17

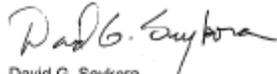
Text in Section 3.20.1.1 has been supplemented to include a discussion of those persons who could potentially work beneath or in proximity to the transmission line.

Comment 81-18

Thank you for your comment. It has been noted and included in the record for this EIS.

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Sincerely,



David G. Seykora
Office of the Chief Counsel

Enclosures

Attachments 1, 2 and 3

Attachment 4, Mn/DOT Comment Letter dated 07/02/09

MN Great River Road – MN Map: (See [Great River Road](#))

MN Lady Slipper Scenic Byway Map: (See [Lady Slipper Scenic Byway](#))

MN Avenue of Pines Scenic Byway Map: (See [Avenue of Pines - NF Scenic Byway](#))

Federal Regulations (See [Code of Federal Regulations](#))

2009 MN Statutes Ch. 161. (See [MN Statute 161.45](#) and [MN Statute 161.46](#))

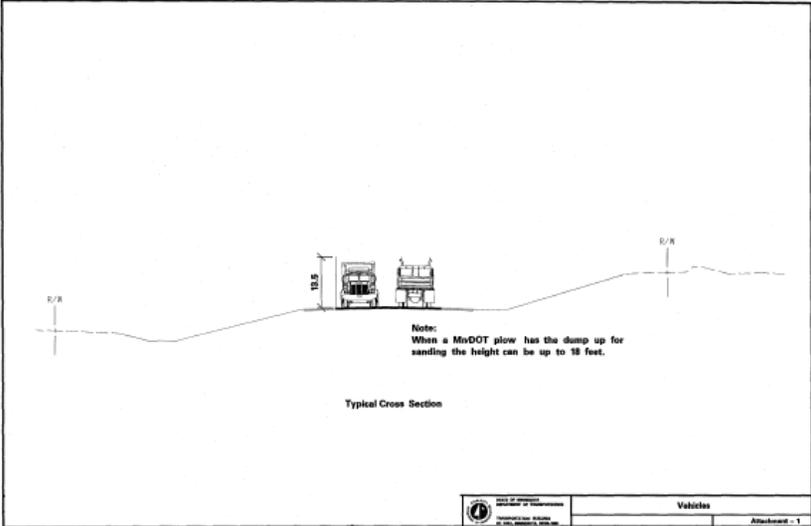
Mn/DOT Accommodation Policy (See [Mn/DOT Accommodation Policy](#))

cc: Deborah R. Pile, OES
Karen Hammel, OAG
Thomas Bailey, Briggs & Morgan
Robert E. Lindholm, Applicants
Michael Barnes, Mn/DOT
Scott Peterson, Mn/DOT
Jon Chiglo, Mn/DOT
Val Svensson, Mn/DOT
Wayne Scheer – Mn/DOT District 1
Stephen Frisco – Mn/DOT District 2

Responses

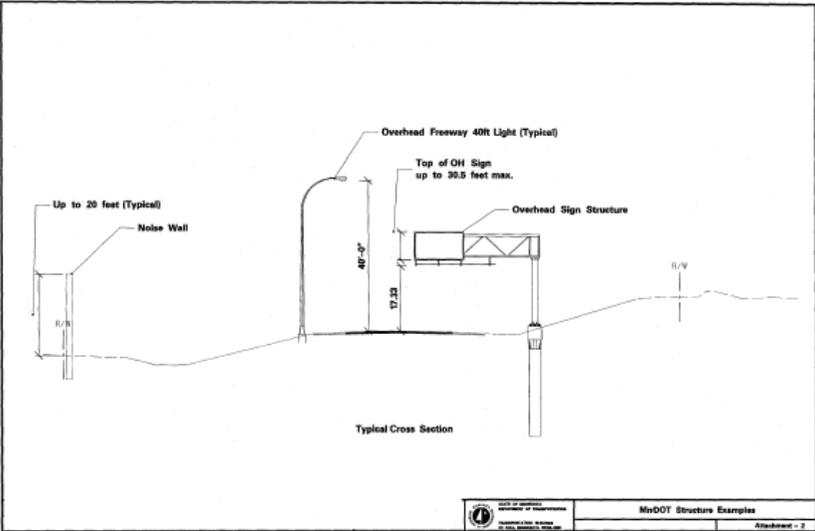
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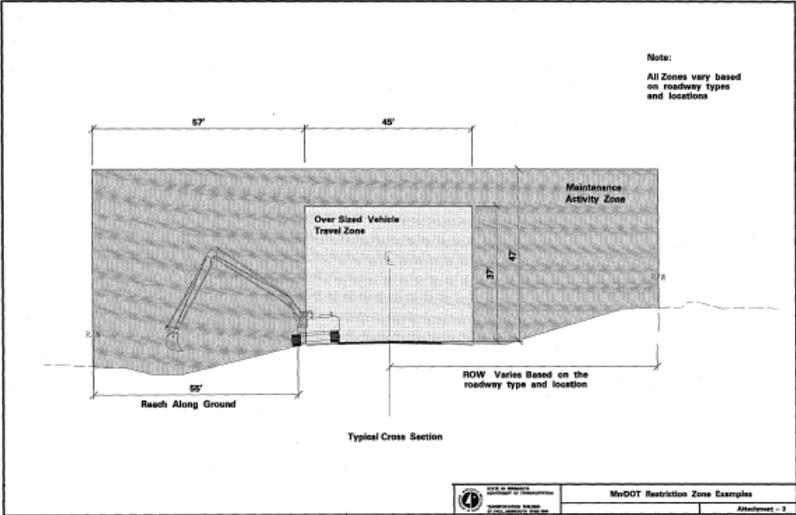
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July 02, 2009

Suzanne Steinhauer
Office of Energy Security
Minnesota Department of Commerce
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RE: CapX 2020 Bemidji - Grand Rapids 230 kV Transmission Project
PUC Docket No. TL-07-1327

Dear Ms Steinhauer:

The Minnesota Department of Transportation (MnDOT) has reviewed the Route Permit Application for the CapX 2020 Bemidji - Grand Rapids 230 kV Transmission Project. MnDOT appreciates the opportunity to comment and commends the applicants for their communication efforts throughout this process. MnDOT supports the project in general and wishes to participate in the effort to evaluate effects on the state transportation system. We request that the project: 1) not negatively affect the operations or maintenance of the state trunk highway system and 2) not increase or impose additional costs on the state trunk highway fund.

- Our comments focus on route alignments that are within 75' of the trunk highway right of way or roadway clear zone and that may encroach on the trunk highway right of way. Any alignments proposed within 75' of the right of way will have encroachment into the right of way either from the blow out zone or aerial intrusion. Alignments closer than 75' to the roadway right of way will have greater impacts. Mn/DOT is particularly concerned about the proximity of proposed transmission lines to trunk highway right of way and how this might affect Mn/DOT's maintenance, reconstruction, or new construction of roads and interchanges.
- Our comments describe the information that we believe is needed to make the route analysis clear and complete, conform to state and federal regulatory and permitting requirements and meet documentation requirements when permits are necessary.
- The commissioner of transportation is required by Minnesota Statutes, chapter 174, to develop, adopt, revise and monitor a statewide transportation plan that includes all modes of transportation, including highway, rail, air, waterways, transit, trails, bicycles and pedestrians. Therefore, Mn/DOT comments include information about other transportation services (rail, waterways, airports and scenic enhancements) that could be impacted by the proposed routes.
- It should be noted that alignments proposing aerial or blowout zone encroachment, foundation construction access or encroachment and maintenance access from the trunk highway rights of way will require a permit from Mn/DOT in accordance with Mn/DOT's Utility Accommodation Policy. We request a thorough evaluation of all environmental impacts of the proposed alignments within each route that would involve any use of Mn/DOT right of way.

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- As required by 23 CFR 645.215, Mn/DOT has adopted a Utility Accommodation Policy to address utility installations in trunk highway right of way. Part 645.215 also requires advance Federal Highway Administration (FHWA) approval for all proposed utility installations that are on the national highway system (NHS) and not in conformance with Mn/DOT's Utility Accommodation Policy. It should also be noted that aerial or blowout zone encroachment on the Federal-aid highway system that is not in conformance with the Mn/DOT Utility Accommodation Policy will require advance approval from the FHWA. This would be considered a Federal action and as such would need to meet all requirements of the National Environmental Policy Act (NEPA [42 U.S.C. 4321 et seq.]) to be in conformance with Federal regulations.

General Comments

As noted above, it is possible, that both Mn/DOT and FHWA will have a role in permitting and approving the location of these transmission lines given the range of alignments that are being considered. It has been indicated that the environmental process undertaken by the Office of Energy Security will be the only environmental study that is completed. As such, it is unclear what Mn/DOT's role and responsibility will be in ensuring conformance with applicable state and federal regulatory requirements if a permit and federal approval are necessary.

- We strongly recommend an inclusive process that engages federal agencies early in the process to aid in expeditious completion of the required documentation. Specifically, the environmental process should identify any locations that would require interaction by the Federal Highway Administration, National Park Service, Fish and Wildlife Service, Advisory Council on Historic Preservation, United States Coast Guard, United States Department of Interior, United States Environmental Protection Agency, Federal Aviation Administration, Natural Resources Conservation Service, Corps of Engineers, Federal Railroad Administration and the United States Department of Energy.
- We request the opportunity to work with you in developing a clear determination of Mn/DOT's role and responsibilities through the environmental process.
- The environmental process and subsequent document will need to evaluate sensitive properties and cultural resource impacts of each proposed route alignment so these can be properly assessed to determine if any resources are within Mn/DOT right of way and would have an impact from the issuance of a Mn/DOT permit.
- We request a thorough evaluation of all environmental impacts of the proposed alignments within each proposed route that would require Mn/DOT to issue a permit for use or encroachment of its right of way.
- It is expected that there may be impacts to non-highway transportation systems in the vicinity of the proposed routes. These systems include riverways and their transportation uses, rail corridors, and airport operations. The environmental process and subsequent document will need to evaluate resource impacts of each proposed route alignment so these can be properly assessed.
- Roadway corridors should be investigated to identify if any of the proposed transmission line routes will impact routes used to move houses or large equipment.
- It is also prudent to identify all requirements for both the Minnesota Environmental Policy Act (MEPA) and NEPA processes in the event a NEPA process is required. The state EIS process may not meet federal regulatory requirements.

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State and National Scenic Byways

Both Routes 1 and 2 cross the Great River Road southwest of Bemidji. Route 1 crosses Beltrami County Road 7 and Route 2 crosses Beltrami County Road 14. Route 2 runs along a Great River Road Alternate Route on TH 2 west of Cass Lake and east of Cass Lake to Cass County 10, which is also the Ladyslipper Scenic Byway. The alternate Great River Road Route follows TH 2 between Cass CR 75 and Cass CR 10. Route 2 runs along the Great River Road route on TH 2 through Bena between National Forest Service Road 91 and Cass CR 9. Route 2 runs along the Great River Road route on TH 2 through Ball Club between Itasca CR 39 and Itasca CR 18.

There is one Scenic Easement on TH 2 in Ball Club, between the highway and Ball Club Lake on the Great River Road. There are several Scenic Easements on TH 71, north of TH 2 in Bemidji along the northern route to Blackduck. These TH 71 scenic easements were part of the original right of way purchases and were required as part of the environmental mitigation for TH 71 when it was realigned from Bemidji to Blackduck in the late 1970's. The TH 71 scenic easements extend onto private property adjacent to the roadway and may restrict putting a power line in these areas.

An Alternate route going north to Blackduck and then east to TH 46 or TH 6 would avoid the Great River Road but, at a minimum, would cross TH 46, the Avenue of Pines Scenic Byway. If it would follow TH 46 back to TH 2, it would have a severe adverse impact on nearly that entire byway route. If it were to go further east to TH 6, it would not impact any more Scenic Byways but instead would follow the Bigfork River Valley for many miles between Dora Lake and TH 6. This area is an undisturbed forest area and the Bigfork River is a significant Minnesota canoe route. The use of this route would have an adverse impact on the natural and scenic qualities of the corridor.

Byways are designated because they possess one or more of six intrinsic qualities, including: scenic, cultural, recreational, natural, historic and archaeological. An analysis of the physical and visual impact on these intrinsic qualities should be conducted at each proposed crossing location to determine the route with the least adverse impact on the byway routes and corridors. Mitigation measures should be recommended for unavoidable impacts on intrinsic qualities within the scenic byway corridors.

Each scenic byway has a leaders' group and/or stakeholder group; these groups should be contacted as part of the environmental review process. Scenic easements should be investigated to identify any prohibitions or limitations that apply to land uses in the vicinity of the scenic byway. The state and federal regulations governing scenic byways can be found in the Mn/DOT Utility Accommodation Policy and 23 CFR 645.209 (h).

Rest Areas

The Cass Lake Rest Area appears to be outside of the proposed Route 2 for the Bemidji to Grand Rapids Transmission Line Project. There are no rest area impacts expected at this time.

Rail Corridors

Where proposed transmission lines may parallel highway right of way and there is a railroad right of way adjacent to the highway, there may not be enough room for construction of the transmission lines outside of the clear zones for both the railroad and the highway. For highways, the clear zone is an unobstructed, relatively flat area that extends out from the traveled lane to give drivers who run off the road a safe place to stop or to regain control of the vehicle. This area must be free from obstructions or other hazards. The railroads may have concerns with overhead crossings in their right of way, gate clearances, foundations, and

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electrical buildup on the rails. The Railroad that could be affected (depending on route option) is Burlington Northern Santa Fe (BNSF). At a minimum, the railroad noted should be part of the discussions to identify impacts of the proposed routes. Mn/DOT can provide contact information if requested.

The State Rail Bank Program allows the State to acquire and preserve abandoned rail lines for future transportation use or for transmitting energy, fuel or other commodities.

An existing State Rail Bank corridor runs from Bemidji to International Falls. The corridor is 100 feet wide, abuts private and government properties and has a small break in its continuity near Hines. A portion of this property could be impacted by the proposed North Corridor alignment. This corridor is currently permitted to the Minnesota Department of Natural Resources (DNR) as an ATV/Snowmobile trail. The DNR should be offered the opportunity to comment on this Route Permit Application.

Given the purpose of the State Rail Bank program, if the North Corridor is chosen, State Rail Bank property could be available to be leased for a portion of the corridor. Other possible alignments that require crossing of State Rail Bank property will require a permit from Mn/DOT in accordance with Mn/DOT's Rail Bank Permit Policy.

Airports

The proposed transmission line routes have the potential to negatively affect airport operations, navigational equipment, and land uses around airports. The commissioner of transportation has general supervision over the statewide system of airports in the state. He must assist political subdivisions, cooperate with federal authorities and promote and protect the utility of all Minnesota public airports and the public investment in them as outlined in Minnesota Statutes, chapter 360. Section 360.063, requires the commissioner to prescribe airport approach and turning standards and authorizes the commissioner to indicate circumstances in which structures would be airport hazards.

The routes proposed are in proximity to a number of public airports. Due to the proximity of an airport, a Notice of Proposed Construction or Alteration to the Federal Aviation Administration will be required. Please review the criteria for which notice must be made at the FAA Website - <http://forms.faa.gov/forms/faa7460-1.pdf>. A "Determination of Hazard" or "No Hazard" from the FAA is not a permit to construct. Independent of the determination, permits from the local airport zoning authority are required. All public airports within five miles of the project must be notified and given an opportunity to comment on compatibility of transmission lines with airport operations and land use compatibility.

The Mn/DOT Office of Aeronautics establishes, operates and maintains electronic navigation aids to augment the federal system in Minnesota. The Very High Frequency Omnidirectional Radio Range (VOR) system must be protected. The FAA or MN/DOT Office of Aeronautics must be notified to evaluate potential impacts of the proposed routes within five miles of a VOR.

Weather

It is expected that weather events (tornado, ice or blizzard conditions, heavy winds, lightning, etc) that disrupt transmission services due to down lines could disrupt access to the trunk highway system. This could also impact other uses such as emergency access, large equipment moves, defense actions, evacuation, and emergency landings. In 1998 a severe tornado hit St. Peter, Minnesota and major roadways were closed due to power lines that were down. A similar event that affected Nicollet and St. Peter occurred in 2006 and again required closure of major roadways due to lines on the ground. A third event that affected Hugo required closure of TH 61 to secure the area. The environmental study should collect information on the

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history of transmission line disruption including specific information on how often lines are down and why to better understand the possible impacts to the transportation system. This would also be helpful in evaluating impacts to the rail corridors and other transportation services that are within the proposed routes.

The location of the blowout zone and/or aerial encroachment may require the removal of or limitation of cost effective snow protection activities such as living snow fences. The study should address specific limitations to vegetation related to the trunk highway use into the future.

Some of the transmission line routes that have been proposed are in the vicinity of transportation corridors that have limited options for alternate highway routes. The environmental study should address impacts to trunk highway system redundancy resulting from transmission line outages that affect the use of the transportation corridors.

Maintenance

Traditional activities to maintain roadways and bridges could be impacted if the work area is within the blowout zone. The study process should include specific information regarding limitations to the trunk highway use if there is aerial or blowout zone encroachment. Items to address should include the use of heavy equipment, construction activities and vertical clear zone requirements to ensure safety.

The location of the blowout zone or aerial encroachment relative to longitudinal ditch sections should be investigated in proposed parallel installations. Mn/DOT uses large equipment for ditch dredging operations; horizontal reach on the equipment can be as long as 60 feet, with a vertical dimension up to 35 feet.

Permits

State law prohibits locating or servicing utility facilities on state highway right of way without first obtaining a permit from the commissioner of transportation. Freeways are a special case; state law requires that utility facilities be located outside the control of access lines, preferably on private property. Control of access is the condition where the rights of owners or occupants of land abutting highways is fully or partially controlled by public authority. This means that preference is given to through traffic by providing access connections with selected public roads and by prohibiting crossings at grade or direct private driveway connections. The Department of Transportation has adopted a utility accommodation policy that governs the location and installation of utility facilities. If the department departs from the policy with respect to the location of a utility facility on a freeway, MNDOT must obtain the prior approval of the Federal Highway Administration. In all cases, the location of utility facilities on federal-aid highway right of way must not adversely affect highway or traffic safety, impair the present or future use of the highway, impair its aesthetic qualities or conflict with federal laws and rules governing the use of highway right of way.

Safety Impacts

Mn/DOT has the responsibility to maintain and preserve Minnesota highways so they are safe, structurally sound, convenient to use and aesthetically pleasing. Location of lines in close proximity to the right of way may impose hazards to construction and maintenance operations such as mowing, sign placement or replacement, bridge inspection, ditch cleaning and other operations. Many construction and maintenance activities use large equipment that requires large overhead clearances for safe operation. Elimination of these clear areas may not conform to Occupational Safety and Health Administration (OSHA) requirements and may pose a safety hazard for workers within the trunk highway right of way.

Responses

Commenter 81 – Minnesota Department of Transportation

Location of lines in close proximity to the right of way may impose hazards to the travelers on the trunk highway system. In areas where the rights of way are narrow, aerial and blow out zone encroachment could extend over the driving lanes limiting the use of the space above the roadway for other transportation purposes.

Location of poles within the clear zone is a safety hazard as the poles for these facilities are fixed objects that would be within the recovery area for vehicles that leave the roadway.

The studies should evaluate risk and overall system safety impacts that may be imposed on Mn/DOT and the State of Minnesota in the event that poles, lines, aerial encroachment, blowout zone, and access are allowed within the Mn/DOT right of way.

Economic Impact to the Transportation System

Location of lines in close proximity to the right of way limits opportunities for future expansion or reconstruction of highways due to the complex and extremely costly nature of moving the transmission lines. This should be part of the economic assessment of the alignments within the routes proposed.

The studies should evaluate risk and overall system and trunk highway funding liabilities that may be imposed on Mn/DOT and the trunk highway fund and the state of Minnesota in the event that poles, lines, aerial encroachment, blowout zone, and access are allowed within the Mn/DOT right of way.

Detailed Comments by Districts

Mn/DOT District 1 (Itasca County)

Routes running parallel to State trunk highways warrant the following comments:

- There are two projects in Mn/DOT's State Transportation Improvement Program (STIP) 10 year time frame. S.P. 3103-63 (TH 2) is an unbonded overlay from Deer River to Cohasset to be let in March 2009 with one-year construction. S.P. 3115-51 (TH 169) is an urban reconstruction on Pokegama Avenue in Grand Rapids to be let in December of 2011.
- The right of way along the south side of TH 2 varies from 50 to 60 feet due to the BSNF. The right of way along the north side of TH 2 from Deer River to Cohasset is generally 100 feet and from Cohasset to Grand Rapids varies greatly but is as narrow as 50 feet. In Deer River and Cohasset, the right of way is generally 50 feet.
- After crossing the TH 2 near Reference Point (R.P.) 174, Lakehead Pipeline follows an easement just outside of the right of way until Cohasset where it veers away from TH 2.
- There are three existing sets of high voltage power lines located between R.P. 178.00-178.150 on the west edge of Cohasset. The lines are supported by a multiple poles holding with a cap, not normal metal towers. There are numerous lines on each set of wood "towers". Some of these poles already sit very close to Mn/DOT's clear zone.

Mn/DOT District 2 (Beltrami, Cass and Itasca Counties)

The following comments refer to the proposed North Corridor in District 2:

- TH 71 South of Bemidji – S.P. 0409-12 is a four lane expansion set for 2010/ 2011 construction. Possible future projects include a resurfacing of this segment. The right of way width varies in this area from 100 to 150 feet. This segment includes Mn/DOT Bridge #04012.
- TH 71 Tenstrike to Blackduck – There are no scheduled projects listed for this segment. Possible future projects for this segment include resurfacing, adding turn lanes,

Responses

Commenter 81 – Minnesota Department of Transportation

intersection improvements and culvert replacements. The right of way width in this area varies from 50 (in those areas adjacent to a 100 foot wide railbank corridor) to 100 feet.

- TH 6 North of Deer River – S.P. 3102-44 is a resurfacing project set to commence in 2009. Possible future projects for this segment include resurfacing, adding turn lanes, intersection improvements and culvert replacements. The right of way width varies in this area from 50 to 100 feet. This segment includes Mn/DOT Bridges #31001, #91063, #91031 and #3758.

The following comments refer to the proposed Central Corridor in District 2:

- TH 71 South of Bemidji - S.P. 0409-12 is a four lane expansion set for 2010/ 2011 construction. Possible future projects include a resurfacing of this segment. The right of way width varies in this area from 100 to 150 feet. This segment includes Mn/DOT Bridge #04012.
- TH 2 Bemidji to Deer River - S.P. 3102-44 is a resurfacing project set to commence in 2009. Possible future projects for this segment include resurfacing, adding turn lanes, intersection improvements and culvert replacements. The right of way width varies in this area from 66 to 200 feet. A significant portion of right of way is adjacent to the BSNF railroad corridor. This segment includes Mn/DOT Bridges #9549, #5760, #5761 and #8469.

The following comments refer to the proposed South Corridor in District 2:

- TH 71 South of Bemidji - S.P. 0409-12 is a four lane expansion set for 2010/ 2011 construction. Possible future projects include a resurfacing of this segment. The right of way width varies in this area from 100 to 150 feet. This segment includes Mn/DOT Bridge #04012.
- TH 64 and TH 200 to North of TH 200 - There are no scheduled projects listed for this segment. Possible future projects for this segment include resurfacing, adding turn lanes, intersection improvements and culvert replacements. The right of way width varies in this area from 75 to 150 feet.
- TH 371 at the intersection of TH 200 - There are no scheduled projects listed for this segment. Possible future projects for this segment include resurfacing, adding turn lanes, intersection improvements and culvert replacements. The right of way width varies in this area from 75 to 120 feet.
- TH 200 from TH 371 to TH 84 - There are no scheduled projects listed for this segment. Possible future projects for this segment include resurfacing, adding turn lanes, intersection improvements and culvert replacements. The right of way width varies in this area from 66 to 200 feet. This segment includes Mn/DOT bridges #8533, #8534, and #8136.
- TH 2 between Cass Lake to just west of Bena and between Bena and the east county line - Mn/DOT is on federal land by permit and does not have right of way by fee title.
- Mn/DOT has worked with the National Forest Service (NFS) to identify 6 to 8 potential areas for passing lanes between Cass Lake and Deer River that are in our long term plan but are currently unfunded. In addition, Mn/DOT has worked with the NFS to arrange for limited clearing or thinning of trees immediately along the south side of TH 2. This was done to reduce the shading of the road in the winter and help with snow and ice control. The NFS has long maintained that Mn/DOT should not remove any more trees along this corridor than absolutely necessary.

Mississippi River Crossing at Ball Club

- The current bridge at the Mississippi River crossing near Ball Club was most recently rehabbed in 1988. In this area there are limited roads to route traffic around this bridge

Mn/DOT Comments

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Responses

Commenter 81 – Minnesota Department of Transportation

during construction or emergencies. During the rehab the bridge was constructed under traffic to limit lengthy detours. In order to achieve this, the area to the south between the rail road tracks and the bridge was used for equipment staging including crane pads. The area to the north is low wetland and the only area with high ground in our right of way is to the south. Any emergency work or bridge construction in the future would likely use the same scenario. There is no planned construction of this bridge in the future.

Cass Lake/Pike Bay

- The current bridge on TH 2 at this location is not scheduled for reconstruction, and although the area is not as constricted as the Ball Club crossing, if the bridge were in need of repairs or reconstruction the immediate area would be needed for equipment staging including cranes in order to limit lengthy detours of the TH 2 traffic. There is also a multi-use trail in place that is on the south side of the highway.

Mn/DOT has a continuing interest in working with the Office of Energy Security to ensure that possible impacts to highways, airports, waterways, rail lines and the environmentally significant areas of highway right of way are adequately addressed. We appreciate the opportunity to provide these comments. Please feel free to contact me if you have any questions regarding the information provided.

Sincerely,



Michael A. Barnes, P.E.
Director, Engineering Services Division

Responses

Commenter 81 – Minnesota Department of Transportation

Responses

- Enclosures
- Great River Road – MN Map:
- MN Great River Road
- Lady Slipper Scenic Byway Map:
- MN Lady Slipper Scenic Byway
- Federal Regulations
- Code of Federal Regulations
- 2008 MN Statutes
- Chapter 161. TRUNK HIGHWAYS
- MN Statute 161.45
- MN Statute 161.46
- Mn/DOT Accommodation Policy
- Mn/DOT Accommodation Policy

Cc: Commissioner Tom Sorel
Khan Sahabjam
Derrell Turner– FHWA, Minnesota Division Administrator
Rima Kazas
Patrick Robben
Joshua Gackle
Deborah Pile – OES

Mn/DOT Comments

Commenter 82 – Minnesota Pollution Control Agency



Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, MN 55155-4194 | 651-296-6300 | 800-657-3864 | 651-282-5332 TTY | www.pca.state.mn.us

April 30, 2010

The Honorable Eric L. Lipman
Administrative Law Judge
P.O. Box 64620
600 North Robert Street
St. Paul, MN 55164-0620

RE: Bemidji – Grand Rapids 230 kilovolt (kV) Transmission Line
Draft Environmental Impact Statement (Draft EIS)
Docket Number: ET6/TL-07-1327

Dear Judge Lipman:

Thank you for the opportunity to review and comment on Bemidji – Grand Rapids 230 kV Transmission Line Project. Regarding matters for which the Minnesota Pollution Control Agency (MPCA) has regulatory responsibility and other interests, the MPCA has the following comments to provide at this time.

- MPCA noted that comments were received on the Scoping Decision from the U.S. Environmental Protection Agency on September 30, 2008. These mirror many of the concerns of the MPCA.
- As stated in Section 3.4, a National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) Construction Stormwater Permit is required from the MPCA prior to construction. Information regarding the MPCA's Construction Stormwater Program can be found on the MPCA's Web site at: <http://www.pca.state.mn.us/water/stormwater/stormwater-c.html>. Table 3.4-5 listed water resources with designated impairments in the study area. The stream designation and/or impairment will both dictate additional increased stormwater treatment during construction and require additional increased permanent treatment post-construction. These requirements will be included in the NPDES/SDS Construction Stormwater Permit. In addition, any project that will result in over 50 acres of disturbed area and has a discharge point within one mile of an impaired water, is required to submit their Stormwater Pollution Prevention Plan (SWPPP) to the MPCA for a review at least 30 days prior to the commencement of land disturbing activities.
- As stated in Section 3.4 of the Draft EIS, a Section 404 Permit is required by the U.S. Army Corp of Engineers. Depending on the project's proximity to impaired waters, a Clean Water Act Section 401 Water Quality Certification or waiver from the MPCA to verify compliance with state water quality standards may also be required. For further information about the 401 Water Quality Certification process, please contact Kevin Molloy at 651-757-2577 or Bill Wilde at 651-757-2825.
- On page 119, the first full paragraph mentions numerous water permits. However, there may be some confusion as to what permits would be required for this project. For example, this paragraph references the "General Permit for Storm Water Discharges Associated with Construction Activities." It is unclear whether this is the same or different than the referenced "National Pollutant Discharge and Elimination System (NPDES) permit" identified later in the paragraph. Also referenced is the "Storm Water Pollution Prevention Plan (SWPPP)." This is not a permit, but an erosion and sediment control plan that the owner of a project is required to complete prior

Responses

Comment 82-1

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 82-2

Text in Section 6 has been supplemented with a discussion of the requirements under the Clean Water Act Section 401.

Comment 82-3

Text in Section 3.4.3 has been modified with a description of which permits would be required for the Project. Text in the section has been supplemented to note that additional permits or approvals may be required from local governmental units.

Commenter 82 – Minnesota Pollution Control Agency

The Honorable Eric L. Lipman
April 30, 2010
Page 2

- 82-3 (cont.) to acquiring the NPDES Permit from the MPCA. The SWPPP must contain specific information that is identified in the NPDES General Permit for Construction Activity (MNR100001). In addition to the permits that are listed here, local government units (LGUs) may have permit requirements, such as one for moving dirt in the shoreland zone, although there are frequently exemptions to these requirements for utility work. Contact the LGU for further requirements.
- In Section 3.4.3 on page 119, the bulleted section identifies “typical” best management practices (BMPs) that may be used on this project to meet permit requirements. However, the BMPs listed here do not seem to be “typical” for this type of a project.
 - 82-4 ○ The third item suggests installing “sediment and erosion control measures prior to construction, in accordance with erosion control plans and permits.” Erosion control, which equates with ground cover, cannot be placed prior to beginning of construction activity; if that were the case, then the erosion control would immediately be removed once the ground clearing was initiated. Erosion control cannot realistically be installed until the work on an area has ceased for a period of time no greater than 14 days. Sediment control could be placed prior to beginning construction, and is required to be placed prior to beginning construction, but on a linear project such as this, which extends somewhere between 68 and 116 miles, “typical” sediment control BMPs (i.e., silt fence) are seldom used because they are impractical in many areas. They are valuable adjacent to surface waters and as ditch checks, but linear projects are almost always atypical with regard to sediment and erosion control. There are options for sediment control, such as using slash mulch produced on the project by chipping removed trees, soil berms placed during the clearing process, partially burying logs along the right-of-way, and numerous other possibilities, but these must be carefully thought out and discussed in consultation with the contractors for the project prior to developing the SWPPP.
 - 82-5 ○ The fourth bullet suggests “turbidity control methods” prior to discharging concrete wastewater to streams or surface waters. The intent here is unclear. Is the proposer referring to concrete slurry, or other type of wastewater? Concrete slurry must be contained in a lined concrete washout area, and cannot be discharged to streams or surface waters, but no water that is not clear and clean of sediment or other contaminants should be discharged to streams or surface waters.
 - 82-6 ○ The sixth bullet item indicates that the use of “...pesticides or herbicides” would be avoided in or near water bodies. As a significant portion of any of the suggested routes will be near or in wetland or other surface waters, an alternative method of controlling taller tree species should be suggested in these areas, as the application of herbicide is currently the only method suggested in the document.
 - 82-7 ○ The seventh bullet item indicates that construction vehicles will be fueled outside of water bodies; however, secondary containment of fuel tanks or other chemicals or vehicle maintenance is not mentioned as a BMP despite being a requirement of the NPDES Permit.
 - 82-8 ○ The eighth bullet indicates that procedures will be used to minimize “inadvertent fluid returns” during horizontal direction driller (HDD) operations. The MPCA has typically restricted the use of chemical additives in HDD drilling mud for similar activities, so clarification of what “procedures” are being considered would be useful in this section.
 - 82-9 ○ In addition to the procedures that will be used to reduce the risk of inadvertent drilling mud releases, a plan should be developed for the containment and removal of drilling fluids if they are released into water bodies. In areas where guided bores or HDD are not to be used for water body crossings, details of how those water bodies are to be crossed will be needed by state agencies to determine possible impacts, or to suggest possible alternative crossing methods.

Responses

Comment 82-4

Text in Section 3.4.3 has been modified to remove the discussion of pre-construction erosion controls and supplemented with additional detail on potential sediment control measures.

Comment 82-5

Text in Section 3.4.3 has been modified to note that wastewater and storm water control measures would be used to meet the effluent limits in permits prior to discharging from construction sites to surface water. Revised language proposed by the USEPA was used for the description of the Best Management Practice.

Comment 82-6

Thank you for your comment. It has been noted and included in the record for this EIS. Mitigation measures that would be required by federal agencies as permitting conditions would be included in the Record of Decision (ROD) issued by each federal permitting agency.

Comment 82-7

Text in Section 3.4.3 notes that use of appropriate spill prevention and containment procedures, which would include secondary containment, is a potential Best Management Practice that could be required as a permitting condition.

Comment 82-8

A description of transmission line construction procedures appears in Section 2.4.5 of the EIS. It is unknown if HDD would be required during construction of the Project.

Comment 82-9

Thank you for your comment. It has been noted and included in the record for this EIS. It is unknown if HDD would be required during construction of the Project. The Route Alternatives have been developed to span all water bodies.

Commenter 82 – Minnesota Pollution Control Agency

The Honorable Eric L. Lipman
April 30, 2010
Page 3

Please be aware that this letter does not constitute approval by the MPCA of any or all elements of the project for the purpose of pending or future permit action(s) by the MPCA. Ultimately, it is the responsibility of the project proposer to secure any required permits and to comply with any requisite permit conditions. If you have any questions concerning our review of this project, please contact Elise Doucette of my staff by e-mail at elise.doucette@state.mn.us or by telephone at 651-757-2316.

Sincerely,



Craig Affeldt
Supervisor
Environmental Review and Feedlot Section
Regional Division

CA/EMD:mbo

cc: Suzanne Steinhauer, Minnesota Office of Energy Security
Kevin Molloy – MPCA, St. Paul
Bill Wilde – MPCA, St. Paul
Scott Lucas – MPCA, Brainerd Office
Reed Larson – MPCA, Brainerd Office

Responses

Commenter 83 – Mississippi River Parkway Commission of Minnesota



Mississippi River Parkway Commission of Minnesota

300 33rd Avenue South, Suite 101 • Waite Park, Minnesota 56387
Phone: 651-341-4196 • E-Mail: info@MnMississippiRiver.com

Members of the House: Sheldon Johnson (DFL – 67B) – Chair; Greg Davids (R – 31B) **Members of the Senate:** David Senjem (R – 29), Sandra Pappas (DFL – 65) **State Agency Appointees:** Robin Kinney – Agriculture, Frank Pafko – Transportation, Don Frerichs – Explore Minnesota Tourism, Greg Murray – Natural Resources, Open – Historical Society
Regional Appointees: Jack Frost – Lake Itasca to Grand Rapids, John Schaubach – Grand Rapids to Brainerd, Karl Samp – Brainerd to Elk River, Paul Labovitz – Elk River to Hastings, Sheronne Mulry – Hastings to Iowa Border
Member at Large: Andrew Gollis

April 22, 2010

Suzanne Steinhauer
Office of Energy Security
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

RE: CapX 2020 Bemidji – Grand Rapids Transmission Line Project
PUC Docket No. TL-07-1327

Dear Ms. Steinhauer:

The mission of the Mississippi River Parkway Commission of Minnesota is to promote, preserve and enhance the resources of the Mississippi River Valley and to develop the highways and amenities of the Great River Road. The CapX 2020 Bemidji to Grand Rapids Transmission Line Project includes potential routes directly impacting the Great River Road, a National Scenic Byway in ten states. Our Commission requests that the information below and attached map be included in analysis and decision making processes for final transmission line location.

The Minnesota Great River Road has achieved the esteemed designation of a National Scenic Byway because it possesses characteristics of regional significance demonstrating intrinsic qualities in at least one of the following areas – archaeological; cultural; historic; natural; recreational; and scenic. The area of the proposed transmission line alignment includes all of these intrinsic qualities. It is imperative for our state to protect the byway and the river it celebrates for current and future byway travelers.

- 83-1 We ask that decision makers, in keeping with non-proliferation statutes, utilize all possible strategies to avoid, minimize and mitigate any impact to the Great River Road and Mississippi River corridors; and exercise due diligence in assessing potential impacts to the Great River Road. Cumulative impacts to the Great River Road and the Mississippi River throughout Minnesota should also be considered related to all CapX2020 transmission line segments being considered for approval. The MN-MRPC requests a video visual impact simulation of the proposed lines and associated vegetation impacts from the vantage point of both the car traveler and bicyclists in motion along the Great River Road prior to further consideration of the preferred alignment.

We appreciate your consideration, and offer our Commissioners and technical advisors to provide further information as the planning process continues. Please keep us informed of any actions taken on the Bemidji to Grand Rapids segment.

Sincerely,

Representative Sheldon Johnson
Chair

Responses

Comment 83-1

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 83-2

Thank you for your comment. It has been noted and included in the record for this EIS. A discussion of cumulative effects appears in Section 4 of the EIS. CapX2020 projects were determined to be outside the resource-specific geographic boundaries defined for the cumulative effects analysis.

Comment 83-3

Thank you for your comment. It has been noted and included in the record for this EIS. Although portions of the Great River Road are within the 1,000-foot-wide route alternatives under consideration, the actual cleared ROW would be outside the highway ROW. A visual assessment of the Study Area and visual simulations of the Project are included in Appendix E of the EIS. Additional visual assessments will not be prepared for the EIS.

Commenter 84 – Santee Sioux Nation

04/02/2010 10:57 FAX 402 437 5408

NEBRASKA SO-USDA RD

@001/005

*Please
Give to Tom Osborne ✓
MFH*



United States Department of Agriculture • Rural Development
Rm. 152 Federal Bldg 100 Centennial Mall North Lincoln, NE 68508
402-437-5551 Phone • 800-670-6553 Toll Free • 402-437-5983 TDY • 402-437-5408 Fax • <http://www.rurdev.usda.gov/ne>

FAX COVER SHEET

DATE: 4-2-10

TO: Colleen Landkamer
Minnesota State Director

FROM:

Maxine Moul
State Director

ATTENTION:

FAX NUMBER: 651-602-7826

TELEPHONE NUMBER: 402-437-5551

PHONE NUMBER:
651-602-7800

FAX NUMBER: 402-437-5408

SUBJECT:
Fax Received in Error

TOTAL NO. OF PAGES INCLUDING COVER:
5

MESSAGE:

We believe this was faxed to us in error and Maxine asked that I send this on to you.

Please feel free to call me if you have any questions.

Mary Sneckenberg *MS*

Special Projects Coordinator

CONFIDENTIALITY NOTICE

This communication is intended for the sole use of the person to whom it is addressed and may contain information that is privileged, confidential and exempt from disclosure. Any dissemination, distribution or copying of this communication by anyone other than the intended recipient or person responsible for its delivery is strictly prohibited. If you have received this communication in error, please phone this office immediately and either destroy the communication or return it to the addressee.

Responses

Commenter 84 – Santee Sioux Nation

04/02/2010 10:57 FAX 402 437 5408
04/11/2010 13:07 FAX

NEBRASKA SO-USDA RD

002/005
001/004

Responses

PROGRAM SUPPORT STAFF

USDA-RD-RHS-PSS
MS-0761, ROOM 6960
1400 INDEPENDENCE AVENUE, SW
WASHINGTON, DC 20250
PHONE: 202-720-9619
FAX: 202-690-4335

TO: Maxine Moul (Nebraska)

FAX #: (402)437-5408

FROM: Program Support Staff

RE: See Below

DATE: Thursday, April 1, 2010 **PAGES:** (including cover page) 4

REMARKS: *Due to the urgent nature of the information contained in the following pages, we are providing you with an advance copy so that you can act in a timely manner. The original has been mailed to your office today. If you have any questions, you may contact Bertina Adams at (202)-720-9623. Thanks*

Commenter 84 – Santee Sioux Nation

04/02/2010 10:57 FAX 402 437 5408
04/11/2010 13:07 FAX

NEBRASKA SO-USDA RD

003/005
002/004

Santee Sioux Nation

MAR 11 2010

COUNCIL HEADQUARTERS / MUSEUM

Chairman: Roger Trudell
Vice Chairman: David Henry
Treasurer: Robert Campbell
Secretary: Cora Jones



108 Spirit Lake Avenue West
Nebraska, NE 68788-7219
Phone: (402) 858-2772
FAX: (402) 858-2779

Subject: Santee Sioux Nation's response to your respective request that is governed under Section 106 of the National Historic Preservation Act (NHPA) and its Implementing regulations (36 CFR Part 800).

To Whom It may concern:

*130 kv Bemidji - Grand Rapids Transmission Project
Availability of Draft Environmental Impact Statement
Project: Bemidji, Minnesota*

84-1

The purpose of this letter is to inform you that the Santee Sioux Nation has no objection to your proposed project unless any cultural, natural resources and/or places with traditional cultural significance within the project are found. Then we want to be notified immediately.

84-2

We, also, want to be consulted in the event of any NEPA or Section 106 reviews which reflect any cultural significance that are specific to our Dakota culture.

Sincerely,

Cora L. Jones
Cora L. Jones, Secretary

Santee Sioux Nation

MARCH 2, 2010

Responses

Comment 84-1

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 84-2

Thank you for your comment. The comment letter was provided to the Rural Utilities Service, the federal lead agency responsible for Section 106 consultation. RUS will include the Santee Sioux Nation in the Unanticipated Discovery stipulation of the PA.

Commenter 84 – Santee Sioux Nation

04/02/2010 10:58 FAX 402 437 5408
04/11/2010 13:07 FAX

NEBRASKA GOVERNMENT

004/004

MAR 12 2010

RECEIVED
USDA/IRML CENTER
MAR -9 A 9 26
NOT SEEN SANITZER

Responses

Commenter 85 – United States Army Corps of Engineers



REPLY TO
ATTENTION

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
SIBLEY SQUARE AT MEARS PARK
190 FIFTH STREET EAST, SUITE 401
ST. PAUL, MINNESOTA 55101-1638

23 April 2010

Operations
Regulatory (2006-07078-RQM)

Ms. Stephanie A. Strength
USDA
Environmental Protection Specialist/RD
1400 Independence Ave. SW Room # 2244
Washington, DC 20250-1571

Dear Ms. Strength:

Thank you for the opportunity to comment on the Draft Environmental Impact Statement (DEIS) for the Bemidji to Grand Rapids 230 kV power line project. The Corps of Engineers (Corps) is reviewing this document according to our role under the National Environmental Policy Act. The applicant may request a pre-application meeting to discuss Section 404 of the Clean Water Act and Section 10 of 1899 Rivers and Harbors Act and the related permit processes.

Previously in 2007-2008, the Corps has worked with the United States Department of Agriculture (USDA) and participated in several interagency meetings to review the Alternative Evaluation Study and the Macrocorridor Study for the Bemidji-Grand Rapids 230 kV Line Project. In early 2009, the Corps continued to work with the USDA and the State of Minnesota Office of Energy Security as the proposed corridors were further refined as routes.

The Corps is in agreement with the level of analysis completed at the macrocorridor and route level for the preparation of the DEIS. The Corps has been involved at each of these steps and agrees with the alternatives that were dismissed and those carried forward into the DEIS for analysis. The Corps is a cooperating agency in the DEIS and because of that role has participated in the review of the analysis at each step. As such, the Corps has provided information and review directly related to aquatic resources impacts and regulatory review.

Please consider the following St. Paul District Army Corps of Engineers Comments on the Preliminary Draft Environmental Impact Statement for the Bemidji to Grand Rapids 230Kv Power line Project:

1. General Comment: As acknowledged in the DEIS, the National Wetlands Inventory (NWI) data have generally underrepresented wetland areas because the data were generated in the 1980s with the use of limited resolution aerial photography. Because of this, and the inherent problems with aerial photography in general, forested wetland areas

Responses

Comment 85-1

A discussion of soils information available for the Study Area appears in Section 3.3 of the EIS. The Section includes a discussion of potential impacts to saturated soils. Wetland delineation will be conducted by the Applicants and their consultants on the route selected prior to construction of the Project.

Commenter 85 – United States Army Corps of Engineers

Operations
Regulatory (2006-07078-RQM)

- 2 -

are often subject to underrepresentation, especially in northern Minnesota. Macro-corridor wetland review may be enhanced by including an analysis of hydric soils in addition to NWI data.

- 85-2 | 2. General Comment: Clearing of vegetation on stream banks should be kept to the minimum amount practicable. Only woody vegetation that would interfere with the power lines should be trimmed or cleared. Woody vegetation plays an important role in providing habitat for wildlife along riparian corridors as well as providing shading of streams. This is especially important for cold and cool-water streams. Another important benefit to leaving woody vegetation is mitigation against providing ATV's access to the streams. Utility crossings have become popular areas for ATV's to access and cross streams, resulting in bank instability and erosion. If clearing of woody vegetation must take place, low growing woody species should be replanted. These species should be determined in consultation with the natural resources agencies.
- 85-3 | 3. General Comment: What is meant by the cover type: Broadleaf Sedge/Cattail? How are they differentiated from sedge meadows? Please consider using the Eggers and Reed Community Classification System for wetland plant communities, or cross-referencing the current plant community classification system with Eggers and Reed.
- 85-4 | 4. ES-2 "Section 404 of the Clean Water Act relates to the placement of dredge and/or fill material in the waters of the United States, including adjacent wetlands." Please consider replacing the words "relates to" with "regulates" in this and all other sections of the DEIS.
- 85-5 | 5. ES-26: "Development of BMP's under a SWPPP, NPDES..." Please consider inserting CWA 404 permit here.
- 85-6 | 6. Page 5 Section 1.2.5 "As a cooperating agency in preparation of this EIS, and the agency responsible for determining whether to issue a permit for wetland impacts associated with the Project." This is an incomplete sentence please consider revision.
- 85-7 | 7. Page 5 Section 1.2.5 Please replace the wording "adopt" with utilize and incorporate the EIS.
- 85-8 | 8. Page 116 Section 3.4.2.1: *Leech Lake Reservation* "Segment Alternative K would introduce a new crossing of the Necktie River." While Segment Alternative K does introduce a new crossing to the Necktie River, the crossing is not within the Leech Lake Reservation boundary.
- 85-9 | 9. Page 123 Section 3.5.2.2: "Segment alternatives A, C, and K do cross water courses (Table 3.4-5)." The table referenced in this sentence should be changed to Table 3.4-4 to reflect the correct table.
- 85-10 | 10. Page 123 Section 3.5.2.3: "Segment alternatives C and K do cross water courses (Table 3.4-5)." The table referenced in this sentence should be changed to Table 3.4-4 to reflect the correct table.
- 85-11 | 11. Page 146 Section 3.6.3 Please include the statement "The Army Corps of Engineers, St. Paul District must require replacement of wetland functions and services lost due to regulated activities pursuant to Section 404 of the Clean Water Act and the Final St. Paul District Policy for Wetland Compensatory Mitigation in Minnesota in concert with other district policy and guidance."
- 85-12 | 12. Page 146 Section 3.6.3 Please add the word "compensatory" before the word mitigation in the statement "The five main categories of mitigation..." The St. Paul District Army Corps of Engineers considers avoidance and minimization forms of wetland mitigation.
- 85-13 | 13. Section 3.6.3: Please define wetland type conversion. Does this mean de-foresting forested and scrub-shrub wetland types?

Responses

Comment 85-2

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 85-3

Vegetative cover was analyzed in the EIS using vegetation cover types defined by Minnesota Geographic Analysis Program (GAP) Land 4 level cover data, which was obtained from the Minnesota Department of Natural Resources (DNR). Detailed information on the type of wetlands, which would allow for classification using the Eggers and Reed Community Classification System, was not available for the Study Area. Broadleaf Sedge/Cattail is defined by DNR as wetlands with less than a 10 percent crown cover, dominated by emergent herbaceous vegetation such as broadleaf sedges and/or cattails. Additional description of cover types appears in Appendix F of the EIS.

Comment 85-4

Text in Section 1.3.4 and the Executive Summary has been edited with the suggested text.

Comment 85-5

Table ES-3 and 5-2 have been modified to note that BMPs would be required under a Section 404 permit.

Comment 85-6

Text in Section 1.2.5 has been edited to correct the noted error.

Comment 85-7

Text in Section 1.2.5 has been modified as requested.

Comment 85-8

Text in Section 3.4.2.1 has been edited to correct the noted error.

Comment 85-9

Text in Section 3.5.2.2 of the EIS has been corrected to reference Table 3.4-6.

Comment 85-10

Text in Section 3.5.2.3 of the EIS has been corrected to reference Table 3.4-6.

Comment 85-11

Text in Section 3.6.3 has been supplement with the recommended language regarding the replacement of wetlands functions and services.

Comment 85-12

Text in Section 3.6.3 has been modified to note that mitigation would be compensatory mitigation.

Comment 85-13

A definition of wetland type conversion and a discussion of the potential impacts of wetland type conversion appear in Section 3.6.2 of the EIS.

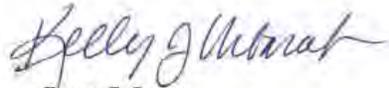
Commenter 85 – United States Army Corps of Engineers

Operations
Regulatory (2006-07078-RQM) - 3 -

- 85-14 | 14. Page 271: Table 3.11-5: Is the per capita income in Itasca County accurate in the table? The income level is depicted as dropping from \$17,171 in the year 2000 to \$ 3,317 in 2008.
- 85-15 | 15. Pg 501 Please include Section 404 of the Clean Water Act in the BMP's section.

Thank you for the opportunity to comment on the Draft Environmental Assessment for the Bemidji to Grand Rapids 230Kv power line project. If you have any questions, contact Mr. Robert Maroney in our Brainerd Field office at (218) 829-2711. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,



Tamara E. Cameron
Chief, Regulatory Branch

Responses

Comment 85-14

Table 3.11-5 has been edited to correct the noted error.

Comment 85-15

Please see response to Comment 85-5, which addresses the same concern.

Commenter 86 – United States Department of the Interior

Responses



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Custom House, Room 244
200 Chestnut Street
Philadelphia, Pennsylvania 19106-2904



IN REPLY REFER TO:

April 15, 2010

ER 10/216

Ms. Stephanie Strength
Project Manager
U.S. Department of Agriculture,
Rural Utilities Service
1400 Independence Avenue, SW
Room 2244, Stop 1571
Washington, D.C. 20250-1571

Subject: 230 kV Bemidji – Grand Rapids Transmission Project

Dear Ms. Strength:

The Department of the Interior (Department) has reviewed the February 10, 2010 Draft Environmental Impact Statement (DEIS) for the 230 kV Bemidji – Grand Rapids Transmission Project, in Beltrami, Hubbard, Cass, and Itasca Counties, Minnesota. With respect to resources or issues for which the Department or its bureaus have jurisdiction or special expertise, we offer the following comments and recommendations for your consideration.

Section 7 Consultation

In accordance with Section 7(a)(2) of the Endangered Species Act of 1973, as amended (ESA), it is the responsibility of the Rural Utilities Service (RUS) to determine if its actions “may affect” listed species or critical habitat. The RUS is required to prepare a Biological Assessment (BA) for Federal actions that are “major construction activities” [50 CFR 402.12 (b)]. The BA should evaluate the potential effects of the proposed action on Canada lynx (*Lynx canadensis*) and gray wolf (*Canis lupus*) and designated critical habitat and determine whether any such species or critical habitat is likely to be adversely affected by the action [50 CFR 402.12 (a)].

On December 17, 2009, RUS, the lead Federal action agency, prepared a Biological Assessment and Evaluation (BA/BE) to assess impacts to the Canada lynx and the gray wolf, both of which are listed as threatened under the ESA and have been documented to occur within the project area. No critical habitat has been designated in the project area for either the Canada lynx or the gray wolf. The RUS has determined that the proposed action, as described in the DEIS and which would include Alternative Route 1, 2, or 3, may affect, but is not likely to adversely affect either the Canada lynx or gray wolf.

The FWS has the following comments related to the BA/BE in the DEIS:

Commenter 86 – United States Department of the Interior

Canada lynx

- 86-1 The Land and Resource Management Plan – Chippewa National Forest, uses various indicators to analyze the effects of projects on the amount of foraging habitat, unsuitable lynx habitat and denning habitat, as well as connectivity and human disturbance within each lynx analysis unit (LAU). RUS described potential effects of the proposed action on these indicators in the BA/BE, but not within the context of LAU's. Nevertheless, use of these indicators is an appropriate way to assess effects of the proposed RUS action.
- Appropriate forest cover habitat for Canada lynx will decrease as a result of this project. Indirect effects include the removal of snowshoe hare habitat (young forest with dense understory) along right-of-ways, which may limit the available food sources to the Canada lynx. The proposed action may result in some effects to Canada lynx, but those effects are likely to be insignificant or discountable because a small area of habitat will be affected relative to the typical size of a Canada lynx home range. Moreover, there are no recent verified records of Canada lynx in the Study Area.
 - Canada lynx may alter movements to avoid construction areas, but this impact will be temporary and it is unlikely that these effects to movement will result in reduced survival or reproduction of Canada lynx.

The FWS concurs with the RUS determination that the proposed action will not adversely affect the Canada lynx.

86-2 Gray wolf

- This action is not expected to adversely affect gray wolf prey density nor will it increase permanent human population densities or road densities. Appropriate forest cover habitat for gray wolf will decrease as a result of this project. Gray wolves may alter movements to avoid construction areas, but this impact will be temporary.

The FWS concurs with the determination that the proposed action will not adversely affect the gray wolf.

Bald eagle *Haliaeetus leucocephalus*

- 86-3 Although the bald eagle was delisted pursuant to the ESA on August 8, 2007, it remains protected from harassment and disturbance under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act (Eagle Act). The Eagle Act (1940) defines "disturb" as, "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior." The FWS has developed The National Bald Eagle Management Guidelines (<http://www.fws.gov/midwest/eagle/guidelines/>)

Responses

Comment 86-1

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 86-2

Thank you for your comment. It has been noted and included in the record for this EIS.

Comment 86-3

Thank you for your comment. It has been noted and included in the record for this EIS. The Department of Interior recommends siting high voltage transmission lines at least two miles away from nests, foraging areas, and communal roosts of bald eagles. The recommendation may not be feasible to follow given the high density of bald eagles in the Study Area. Text in Section 3.8.1.1 has been supplemented with information on the number of bald eagle nesting sites within one mile of the Route Alternatives. Text in Section 3.8.3 has been supplemented with mitigation measures to reduce potential impacts on nesting sites, including implementing construction restrictions during the breeding season if activities are proposed within 660 feet of an active nest. Additional information is included in the Biological Assessment and Evaluation, included in Appendix G of the EIS.

Commenter 86 – United States Department of the Interior

86-3
(cont.)

guidelines.html), which are intended to help landowners minimize disturbance to bald eagles, thereby benefiting bald eagles and protecting landowners. The FWS strongly encourages adherence to these guidelines. The guidelines outline the following recommendations to avoid disturbing nesting eagles:

- Keeping a distance between the activity and the nest (distance buffers),
- Maintaining preferably forested (or natural) areas between the activity and around nest trees (landscape buffers), and
- Avoiding certain activities during the breeding season.

The FWS recommends a buffer distance of 660 feet if the proposed activity is visible from an active nest. One bald eagle nest was documented within the Route 1 Alternative and three nests were documented within the Route 2 Alternative.

The following guidelines should be followed in order to minimize disturbance to nesting bald eagles along any of the route alternatives.

- To avoid collisions, site high voltage transmission power lines at least two miles away from nests, foraging areas, and communal roost sites.
- Employ industry-accepted best management practices to prevent birds from colliding with or being electrocuted by utility lines, towers, and poles. If possible, bury lines in important eagle areas.
- Minimize potentially disruptive activities and development in the eagles' direct flight path between their nest and roost sites and important foraging areas.
- Where bald eagles are likely to nest in human-made structures and such use could impede operation or maintenance of the structures or jeopardize the safety of the eagles, equip the structures with either (1) devices engineered to discourage bald eagles from building nests, or (2) nesting platforms that will safely accommodate bald eagle nests without interfering with structure performance.
- Protect and preserve potential roost and nest sites by retaining mature trees and old growth stands, particularly within ½ mile from water.
- Utility lines should be strung in areas where surrounding vegetation is higher than utility poles to reduce collision risk.
- Providing perch guards on utility line poles near areas of high bald eagle concentration to prevent bird electrocution.
- Educate construction personnel of the presence of bald eagle nests along the transmission line routes and about the need for not approaching any actively nesting bald eagles, particularly on foot.

Responses

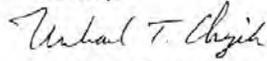
Commenter 86 – United States Department of the Interior

86-3
(cont.)

- Inform the Twin Cities ES Field Office, FWS of any unusual bald eagle activity noted during or after project construction at (612) 725-3548 x2202.

We appreciate the opportunity to review the document and provide comments.

Sincerely,



Michael T. Chezik
Regional Environmental Officer

cc:

N. Rowse, FWS, Bloomington, MN
Cathy Thompson, USFS, Cass Lake, MN

Responses

Commenter 87 – United States Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 15 2010

REPLY TO THE ATTENTION OF:
E-19J

Stephanie A. Strength, Environmental Protection Specialist
U.S. Department of Agriculture - Rural Development, Rural Utilities Service
Mail Stop 1571
1400 Independence Avenue, SW
Washington, DC 20250-1571

Re: Bemidji-Grand Rapids 230 kV Transmission Line Project Draft Environmental Impact Statement Beltrami, Hubbard, Cass and Itasca Counties, Minnesota.
CEQ No.: 20100060

Dear Ms. Strength:

In accordance with our responsibility and authority under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the U.S. Environmental Protection Agency (EPA) reviewed the U.S. Department of Agriculture – Rural Utilities Service’s (RUS) above-referenced Draft Environmental Impact Statement (DEIS), prepared in conjunction with the Minnesota Department of Commerce, Office of Energy Security (OES). Our detailed comments are enclosed.

Minnkota Power Cooperative, Otter Tail Power Company, and Minnesota Power (project proponents) propose to construct and operate a 230-kV electric transmission line from Bemidji to Grand Rapids, Minnesota (project). The project area contains the Leech Lake Indian Reservation (LLR), Chippewa National Forest (CNF) land, county, state and private land. The U.S. Army Corps of Engineers (Corps); U.S. Forest Service (FS), CNF; and the Leech Lake Band of Ojibwe (LLBO), Leech Lake Division of Resource Management (LLDRM) are identified as cooperating agencies on the EIS.

87-1

The no-build alternative and three major route alternatives (Alternatives 1, 2 and 3) are evaluated in the DEIS. Twenty segment alternatives (Segments A through T) associated with one or more of the three major route alternatives are also identified and evaluated. A DEIS preferred alternative is not identified. The preferred alternative identified in the Final EIS (FEIS) may be comprised of one or more segment alternatives in association with portions of one or more major route alternatives.

87-2

In most cases, trade-offs will need to be made between impacting one resource over another when choosing the various major route and segment alternatives that will make up the FEIS preferred alternative. The FEIS will need to clearly explain the process and underlying rationale for the selection of the major route alternative, or portions of major route alternatives and any associated segment alternatives that comprise the FEIS Preferred Alternative. The

Responses

Comment 87-1

Text in Section 5 has been supplemented to include a discussion of the federal agency Preferred Alternative.

Comment 87-2

Text in Section 5 has been supplemented to include a rationale for the selection of the federal agency Preferred Alternative.

Commenter 87 – United States Environmental Protection Agency

87-3 FEIS should identify whether or not the FEIS Preferred Alternative is, or is likely to be, the Corps of Engineers' least environmentally damaging practicable alternative (LEDPA) for Clean Water Act (CWA) Section 404 permitting for this proposal.

87-4 Given the amount and variety of resources of concern to the various local, state, tribal and federal resource agencies, the identification of adequate avoidance, minimization and compensation mitigation measures along with consideration of the feasibility of implementing the measures identified should be a key consideration when proposing an FEIS Preferred Alternative. The DEIS identifies potential avoidance and minimization mitigation measures. However, it is not clear which measures will definitely be undertaken if the project moves forward. In addition, it is not clear that compensation mitigation will be undertaken, in part, to compensate for: 1) the long-term loss of approximately 166 to 269 acres of forested wetland due to tree clearing, 2) the permanent loss of approximately 439 to 813 acres of upland forest (including CNF and LLR forest land), and 3) the potential loss of cultural and traditional resources important to the LLBO. The FEIS should include a wetland mitigation plan.

87-5 Consequently, EPA has concerns regarding potential environmental impacts to wetlands, surface waters, ground water, and the St. Regis Superfund Site, the alternatives analysis and identification of the EIS preferred alternative, and the adequacy of currently proposed mitigation. We give the DEIS and the three major route alternatives and their associated segment alternatives an EC-2 rating (environmental concerns – additional information needed). This means that EPA has identified environmental impacts that should be avoided in order to fully protect the environment. Additional information regarding the preferred alternative selection process, and mitigation commitments for first avoiding, then minimizing, and finally compensating for impacts that can not be avoided should be developed in consultation with the local, state, tribal and federal agencies and included in the FEIS and Record of Decision (ROD). We also recommend revising some specific language in the FEIS. A summary of EPA's rating definitions is enclosed.

If you have any questions regarding our comments, please contact Virginia Laszewski, lead reviewer to this project, at (312) 886-7501 or at laszewski.virginia@epa.gov. Please send EPA three hard copies and four CDs of the FEIS when available for our review and comment.

Sincerely,



Kenneth A. Westlake
Chief, NEPA Implementation Section
Office of Enforcement and Compliance Assurance

Enclosures: 2

Responses

Comment 87-3

Text in Section 5 has been supplemented to include a discussion of the federal agency Preferred Alternative and the LEDPA identified by the USACE.

Comment 87-4

A description of the treatment of mitigation measures in the EIS appears in the introduction to Section 3. For mitigation measures that have been proposed or agreed to by the Applicants, the text specifies that these mitigation measures "would" occur. For all other mitigation measures, including those that may be required by the HVTL permit or imposed by regulating agencies, the text specifies that these mitigation measures "could" occur. Under the State of Minnesota route permitting process, mitigation measures that will be undertaken by the Applicants are determined and presented in the final route permit issued by the PUC, not the EIS. Mitigation measures that would be required by federal agencies as permitting conditions will be included in the ROD issued by each federal permitting agency.

Comment 87-5

Mitigation measures that would be required by federal agencies as permitting conditions will be included in the ROD issued by each federal permitting agency. Text in Section 3.9.7 has been supplemented with a discussion of mitigation measures that would be required by the CNF on CNF lands to mitigate potential impacts to the LLBO.

Comment 87-6

Wetland delineations will be completed by the Applicants and their consultants once a Route Alternative is selected. Specific measures to avoid, minimize, and replace wetlands will be developed based on the Route Alternative selected and results of surveys. As such, final impacts to wetlands are unknown and a wetland mitigation plan has not been developed for inclusion in the EIS.

Commenter 87 – United States Environmental Protection Agency

cc: Tamara Cameron, U.S. Army Corps of Engineers, St. Paul District, MN
Nick Rowse, Project Biologist, Green Bay Ecological Services Field Office, U.S. Fish and Wildlife Service, MN
Robert Harper, Forest Supervisor, U.S. Forest Service – Chippewa National Forest, MN
Arthur LaRose, Chairman, Leech Lake Band of Ojibwe
Bruce Johnson, Division Director, Division of Resources Management, Leech Lake Reservation
Levi Brown, Environmental Manager, Division of Resources Management, Leech Lake Reservation
Steven Colvin, Supervisor, Environmental Review Section, Minnesota Department of Natural Resources, MN
Suzanne Lamb Steinhauer, Project Manager, Minnesota Department of Commerce Office of Energy Security, 85 – 7th Place East, Suite 500, Saint Paul, Minnesota 551001-2198

Responses

Commenter 87 – United States Environmental Protection Agency

EPA Comments Regarding USDA-Rural Utilities Service (RUS) Bemidji to Grand Rapids 230-kV Transmission Line Project Draft Environmental Impact Statement CEQ No.: 20100060

The Role of the EIS in Agency Review of the Project: The U.S. Army Corps of Engineers (Corps); U.S. Forest Service (FS), Chippewa National Forest (CNF), and the Leech Lake Band of Ojibwe (LLBO), Leech Lake Division of Resource Management (LLDRM) are identified as cooperating agencies on the EIS. The DEIS (page 7) identifies the EIS prepared for the Project will be used by Agencies responsible for review, permitting and issuing Decision Notices on the Project. The DEIS identifies (page 1-5) that the Corps intends to adopt the EIS as part of its review of the Project.

Under Section 404 of the Clean Water Act (CWA), a permit is required from the U.S. Army Corps of Engineers (Corps) for the discharge of dredge or fill material into waters of the U.S. The DEIS does not identify which 404 permitting mechanism (e.g., individual permit, regional general permit) that the Corps proposes to use for this proposal.

87-7 | **Recommendation:** We recommend the FEIS identify the specific 404 permitting mechanism (e.g., individual permit, regional general permit) that the Corps intends to use for this proposal. In addition, we recommend the FEIS identify whether or not the Corps will require compensation mitigation for all wetland loss, including the permanent loss of forested wetland due to tree clearing of the right-of-way.

Alternatives Analysis and Identification of the FEIS Preferred Alternative: A DEIS preferred alternative is not identified. All three major route alternatives (Alternatives 1, 2, and 3) and their associated segment alternatives (segment alternatives A through T) would impact a variety of resources. Due to the linear nature of the project some resources such as forested wetlands and upland forest will be impacted by all major route alternatives and associated segment alternatives. Specific areas such as the St. Regis Superfund site and the Ten Section Area in the CNF could be avoided by choosing one major route alternative over another and/or by incorporating segment alternatives that avoid these areas. It is clear that trade-offs will need to be made between various resources when identifying the major route alternative and associated segment alternatives that will comprise the FEIS identified Preferred Alternative.

87-8 | **Recommendation:** The FEIS should clearly explain the process and underlying rationale for the selection of the major route alternative and any associated segment alternatives that together comprise the FEIS identified Preferred Alternative.

87-9 | **Recommendation:** The FEIS should also identify whether or not the Corps considers the FEIS identified Preferred Alternative as the Corps' least environmentally damaging preferred alternative (LEDPA) for Clean Water Act (CWA) Section 404 permitting.

Wetlands Impacts and Mitigation: The amount of permanent direct wetland impact due to the placement of dredge and fill for this proposal is far less than the impacts associated with

Responses

Comment 87-7

Text in Section 3.6.3 has been supplemented with a discussion of the U.S. Army Corps of Engineers Section 404 permitting mechanism and whether the USACE would require compensatory mitigation for the Project.

Comment 87-8

See response to Comment 87-2, which addresses the same concern.

Comment 87-9

See response to Comment 87-3, which addresses the same concern.

Commenter 87 – United States Environmental Protection Agency

Responses

long term permanent conversion of forested wetland due to permanent tree clearing of the proposed 125-foot right-of-way. The DEIS identifies the potential for permanent forested wetland conversion of approximately 209 acres (Alternative 1), 166 acres (Alternative 2) or 269 acres (Alternative 3). This amount of permanent forested wetland loss is substantial. The DEIS does not include a draft wetland compensation mitigation plan.

87-10 | Recommendation: We recommend the FEIS include a wetland compensation mitigation plan that includes a specific compensatory mitigation plan for the conversion of forested wetlands into other wetland types.

Water Resources

EPA’s review of the DEIS found inaccurate information regarding the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity that should be corrected in the FEIS, as follows:

Section 3.4.3, page 119, first full paragraph describing water resource permits: This paragraph gives the impression that the General Permit for Storm Water Discharges Associated with Construction Activity is not a National Pollutant Discharge Elimination System (NPDES) permit.

87-11 | Recommendation: This paragraph should be amended to identify this permit as the "National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity." Also, the storm water pollution prevention referenced is a requirement of the general permit and can be deleted from this paragraph.

On December 1, 2009, EPA published Final Effluent Limitations Guidelines and New Source Performance Standards for the Construction and Development Point Source Category. The guidelines establish the national minimum standards for discharges of wastewater and stormwater from construction sites that disturb more than 1 acre. The guideline includes non-numeric standards for erosion and sediment controls, soil stabilization, dewatering, pollution prevention measures, prohibited discharges and surface outlets. The guideline also includes a numeric turbidity limit for sites where more than 10 acres are disturbed at one time. The turbidity limit will be phased in so that sites that disturb more than 20 acres will be subject to the turbidity limit on August 1, 2011. Sites that disturb more than 10 acres at one time will be subject to the turbidity limit on February 1, 2014. EPA plans to reissue its general permit in June 2011 to incorporate the guidelines. Additional information regarding the guidelines can be found at <http://www.epa.gov/guide/construction/>.

Section 2.4.3, page 119, fourth bullet in the list of typical Best Management Practices (BMPs) that may be used for this project: This bullet states, "Use turbidity control methods prior to discharging wastewater from concrete batching or other operations to streams or other surface waters." As identified above, EPA published new effluent guidelines that specifically address turbidity. This bullet needs to be clarified.

Comment 87-10

Wetland delineations will be completed by the Applicants and their consultants once a Route Alternative is selected. Specific measures to avoid, minimize, and replace wetlands will be developed based on the Route Alternative selected and results of surveys. As such, final impacts to wetlands are unknown and a wetland mitigation plan has not been developed for inclusion in the EIS.

Comment 87-11

Text in Section 3.4.3 has been revised with the proposed text changes.

Commenter 87 – United States Environmental Protection Agency

Responses

87-12 | **Recommendation:** EPA recommends revising this bullet to make it more general. For example, it could state, "Using wastewater and stormwater control measures to meet the effluent limits in permits prior to discharging from construction sites to surface waters."

Regulatory and Permit Requirements

The first part of *Table 6-1: Potentially Required Permits and Approvals* list the federal regulations, permits and approvals that may be required. Table 6-1 also includes a description of each regulation/permit/approval as it pertains to the project. EPA's DEIS review found the following errors in Table 6-1.

Pages 507, *Table 6-1: Potentially Required Permit and Approvals*: The paragraph describing Clean Water Act (CWA) Section 402 incorrectly states, "The NPDES permit would be issued by the State of Minnesota." EPA is the permit-issuing authority in Indian Country unless it has granted that authority to another entity. This includes CWA Section 401 certification.

87-13 | **Recommendation:** The paragraph describing 402 NPDES permitting should be corrected to read: "The NPDES permit would be issued by the EPA Region 5 Office for the portion of the project that is located in Indian Country."

87-14 | **Recommendation:** Include Section 401 water quality certification in Table 6-1 in the Clean Water Act category listed under the *Federal Regulations and Permits* column. The write-up to include under *The Description – As Relevant to the Project* might state, "401 certification is issued by EPA Region 5 for those portions of the project within the external boundaries of the Leech Lake Reservation. For the Leech Lake Reservation, EPA issues Section 401 water quality certification for Corps Section 404 individual permits. If the Corps issues the 404 permit as a General Permit, the 401 certification has been pre-approved."

For additional information regarding Section 402 construction general permits in Indian Country, contact Brian Bell at 312/886-0981 or brianc.bell@epa.gov. For Section 401 certification information, contact Janice Cheng at 312/353-6424 or cheng.janice@epa.gov.

87-15 | **Recommendation:** If the FEIS Preferred Alternative will be crossing any portion of the St. Regis Company Superfund Site, the following should be added as a potential federal requirement in *Table 6-1*:

Federal Regulations and Permits: Comprehensive Environmental Response Compensation and Liability Act (CERCLA),

Citation: 42 U.S.C. §§ 9607

Description – As Relevant to Project: The Act outlines the liabilities of owners or operators or other responsible person for each release of a hazardous substance or incident involving release of a hazardous substance."

Comment 87-12

Text in Section 3.4.3 has been revised with the proposed text changes.

Comment 87-13

Text in Table 6-1 has been revised with the proposed text changes.

Comment 87-14

Text in Table 6-1 has been revised with the proposed text changes.

Comment 87-15

Text in Table 6-1 has been modified to include a description of applicable CERCLA regulations.

Commenter 87 – United States Environmental Protection Agency

Responses

87-16 | **St. Regis Company Superfund Site:** Alternative 2 and Segment F have the potential to be located within a portion of the existing boundaries and potential future boundaries of the St. Regis Company Superfund Site south of Highway 2 in the City of Cass Lake, Minnesota. If Alternative 2 and/or Segment F is/are identified as components of the FEIS preferred alternative where work will occur on CERCLA Superfund sites listed on the National Priorities List, such as the St. Regis Company Superfund Site, the proponent must seek prior approval from EPA. The EPA contact is Timothy Drexler, EPA Remedial Project Manager, who may be reached at 312/353-4367 or drexler.timothy@epa.gov.

Recommendation: The DEIS includes inaccurate and/or incomplete information regarding the St. Regis Superfund Site that needs to be corrected in the FEIS, as follows:

87-17 | Section 2.2, page 24, *Table 2-2: Segment Alternatives Evaluated in the EIS:* Under Segment Alternative F, amend the written description to more correctly identify that Segment F is potentially within the St. Regis Superfund Site.

87-18 | Section 4.1.4, page 465, 1st full paragraph: Current contaminations of concern should include dioxin. In addition, the Feasibility Study being developed is only for contaminated soil and it is not complete. Finally, EPA hopes to have a public hearing on contaminated soil alternatives during 2010, not early 2010.

87-19 | Section 4.1.4, page 465, 2nd full paragraph: The proposed Segment F to Alternative 2 is potentially still within the St. Regis Site on both its eastern and western north-south legs. A significant portion of the western north-south leg is on the eastern side of Highway 371. This area, within the BNSF Railway Co. right-of-way, had elevated levels of dioxin, pentachlorophenol, and PAHs in surficial soil. The eastern north-south leg of Segment F is near the contaminated ground water plume of the St. Regis Site.

87-20 | Section 4.2, page 466, *Table 4-2: Resource-Specific Cumulative Effects Analysis:* Under the “Water” resource, add “Penetration of the contaminated ground water plume at the St. Regis Superfund Site for the construction of Alternative 2 may result in increased health concerns and interfere with ongoing remediation at the site.”

87-21 | Section 4.2.10.2, page 479, top of the page: The current outline of the St. Regis Superfund Site is subject to change based on the remedial alternatives selected. The statement that the St. Regis Superfund Site “is not expanding” should, therefore, be removed.

Upland Forest Impacts and Mitigation

Upland forests help to protect water quality in the immediate watershed, provide wildlife habitat, sequester carbon, act as living snow fences next to roadways and provide aesthetic quality to viewsheds along designated scenic byways in the project area. The proposal would permanently eliminate approximately 579 acres (Alternative 1), 439 acres (Alternative 2) or 813 acres (Alternative 3) of upland forest. Much of this land is located in the CNF and in the LLR.

Comment 87-16

Text in Table 6-1 has been modified to include a description of applicable CERCLA regulations.

Comment 87-17

Text in Sections 2.2.3.1 and 2.2.5.1 has been modified to note that Segment Alternative F is partially located within the St. Regis Superfund Site.

Comment 87-18

Text in Section 4 has been modified to include dioxin as a current contaminant of concern at the St. Regis Superfund Site.

Comment 87-19

Text in Section 4 has been modified to note that Segment Alternative F is partially located within the St. Regis Superfund Site.

Comment 87-20

Text in Section 4 has been modified to note that Segment Alternative F is partially located within the area of the St. Regis Superfund Site contaminated ground water plume.

Comment 87-21

Text in Section 4 referencing no planned expansion of the St. Regis Superfund Site has been removed.

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Compensation mitigation for the short-term and long-term temporal loss of upland forest is not mentioned in the DEIS. Due to the important role that forests play in the watershed, we encourage voluntary compensation mitigation for both the short-term and long-term temporal loss of upland forest. Mitigation might include, but need not be limited to, assisting local, county, state, federal and/or tribal agencies with any on-going or planned forest reclamation or living snow fence projects in the watersheds where the loss occurs.

- 87-22 | Recommendation: In addition to the avoidance and minimization measures suggested (pages 379 and 380) in the DEIS, we recommend the FEIS identify whether compensation mitigation for the loss of upland forest will be required by the CNF and/or the LLDRM for upland forest lost on CNF land and/or LLR land. We also recommend the FEIS identify potential compensation mitigation opportunities for the loss of upland forest at the local, state, federal and tribal levels. Where upland forest compensation is not required by CNF, LLBO, state or local agencies, we recommend the FEIS identify whether or not project proponents propose to undertake voluntary compensation mitigation measures in consultation with private land owners, local, state, federal and/or tribal entities.

Tribal Concerns

Alternative 1 and 2 substantially cross the sovereign lands of the LLR. The DEIS identifies that the tribe has indicated a number of concerns regarding impacts to traditional cultural, biological and socioeconomic resources. The DEIS also identifies (page ES-4) that within the Project area, RUS and the federal cooperating agencies have a trust responsibility to manage natural resources in accordance with various objectives listed here in the DEIS and with consideration to the specific land use policies of the LLBO.

- 87-23 | Recommendation: The FEIS should include a description of how tribal concerns were considered in the identification of the Preferred Alternative. Also, prior to development of the FEIS, additional consultation should be conducted to address tribal concerns in greater detail, including the identification of mitigation commitments.
- 87-24 |

National Historic Preservation Act, Section 106

Section 3.9.7, page 240, states, "In accordance with 36 CFR §§ 800.4(b)(2) and 800.5(a)(3), RUS may phase Section 106 identification, evaluation and application of the criteria of effect. The regulations establish that phasing is appropriate '[w]here alternatives under consideration consist of corridors or large land areas' as is the case with the alternatives under consideration in this DEIS. RUS may defer the steps in Section 106 review if it is specifically provided for in a Programmatic Agreement (PA)."

Page 240, goes on to state, "In meeting this requirement, RUS has developed a draft PA in consultation with the other federal agencies, LLBO, other participating Indian tribes, the SHPO and the Applicants. Because not all affected historic properties would be known prior to selection of the preferred alternative, the draft PA establishes procedures to guide the identification and evaluation of historic properties, the assessment of adverse effects and the

Responses

Comment 87-22

The United States made treaties with the Ojibwe that created the reservation and ceded areas of land in northern Minnesota to the federal government. The treaties also reserved the right of the Ojibwe bands to hunt, fish, and gather within the treaty area. The Forest Service has committed through its Forest Plan to facilitate the overall ability of the Ojibwe to exercise these rights in a sustainable fashion on NFS lands. Text in Section 3.9.7 has been supplemented with a discussion of mitigation measures that would be required by the CNF on CNF lands to mitigate potential impacts to the LLBO.

Comment 87-23

Text in Section 5 has been supplemented to include a discussion of the federal agency Preferred Alternative. Potential impacts unique to the Leech Lake Reservation are discussed throughout the EIS.

Comment 87-24

Text in Section 3.9.7 has been supplemented with a discussion of mitigation measures that would be required by the CNF on CNF lands to mitigate potential impacts to the LLBO.

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development of appropriate mitigation for any adverse effects. The PA establishes that avoidance of adverse effects to historic properties is preferred. An adverse effect might be avoided by shifting the ROW to exclude the area of the historic property. In addition, the PA outlines specific responsibilities for agencies, tribes and the Applicants, and contains protocols for inadvertent discoveries and pertinent administration provisions.”

The DEIS does not include a copy of the draft PA. In addition, there is no evidence, such as letters, in the DEIS from the LLBO, THPO, SHPO, consulting federal agencies and the Project Proponents (Applicant) that substantiate their support for the use of the above-mentioned draft PA.

87-25 | Recommendation: We recommend the FEIS include the signed PA.

Responses

Comment 87-25

The EIS has been supplemented with a draft Programmatic Agreement, which is included as Appendix K.

**SUMMARY OF RATING DEFINITIONS
AND FOLLOWUP ACTIONS***

ENVIRONMENTAL IMPACT OF THE ACTION

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

ADEQUACY OF THE IMPACT STATEMENT

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.