



**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.

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.

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

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.

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.

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](mailto: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

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  
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Steven Colvin, Supervisor, Environmental Review Section, Minnesota Department of  
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Suzanne Lamb Steinhauer, Project Manager, Minnesota Department of Commerce  
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551001-2198

**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.

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.

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.

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

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.

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.

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/constuction/>.

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.

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.

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."

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](mailto:brianc.bell@epa.gov). For Section 401 certification information, contact Janice Cheng at 312/353-6424 or [cheng.janice@epa.gov](mailto:cheng.janice@epa.gov).

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."

**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](mailto: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:

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.

Section 4.1.4, page 465, 1<sup>st</sup> 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.

Section 4.1.4, page 465, 2<sup>nd</sup> 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.

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.”

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.

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.

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.

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.

### **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



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.

Recommendation: We recommend the FEIS include the signed PA.