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EQB MONITOR

AUAR UPDATE ADOPTED

Project Title: Oxbow Commons

Description: On May 13, 2002, the Brooklyn Park City Council approved Resolution #2002-141 approving the Alternative Urban Areawide Review (AUAR) for Oxbow Commons/Muir Park Village/97th Avenue. On September 22, 2008, the Brooklyn Park City Council approved Resolution #2008-170 approving the Updated Alternative Urban Areawide Review for Oxbow Commons. The environmental review has since expired per Minnesota Rules 4410.3610 Subpart 7 (A) where portions of the original project have not received final approval. Updated AUARs were mailed to recipients listed on the Environmental Quality Board's distribution list on August 9, 2011. The Updated AUAR for Oxbow Commons 610 Crossings was adopted by the Brooklyn Park City Council on September 26, 2011.

RGU: City of Brooklyn Park

The *EQB Monitor* is a biweekly publication of the Environmental Quality Board that lists descriptions and deadlines for Environmental Assessment Worksheets, Environmental Impact Statements, and other notices. The *EQB Monitor* is posted on the Environmental Quality board home page at <http://www.eqb.state.mn.us/>.

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Minnesota Environmental Quality Board
520 Lafayette Road – 4th Floor
St. Paul, MN 55155-4194
Phone: 651-296-6300
Fax: 651-297-2343
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EAW NEED DECISIONS

The noted responsible governmental unit has made a decision regarding the need for an EAW in response to a citizen petition.

- Otter Tail County, Little McDonald (56-328), Kerbs (56-1636), and Paul (56-355) Lakes Outlet Project, EAW ordered

EIS NEED DECISIONS

The responsible governmental unit has determined the following projects do not require preparations of an EIS. The dates given are, respectively, the date of the determination and the date the EAW notice was published in the *EQB Monitor*.

- City of Otsego, 85th Street Extension, September 26, 2011 (August 22, 2011)

NOTICES

Metropolitan Airports Commission/Assessment of Environmental Effects of the 2012-2018 Capital Improvement Program for MSP and Reliever Airports

Minnesota Statutes 1988, Chapter 664, requires the Metropolitan Airports Commission (MAC) to prepare an Assessment of Environmental Effects (AOEE) for projects in the Commission's seven-year Capital Improvement Program (2012-2018) for airports included in its system.

An EAW, EA or EIS has been previously prepared and a public hearing held for each MSP and reliever airport project in the 2012-2018 CIP that requires an EAW under Chapter 664. An assessment of the cumulative environmental effects of CIP projects at each affected airport in the system is presented in the AOEE.

A copy of the AOEE can be downloaded on the Internet at: www.macnoise.com/files/MAC-2012-AOEE-10-10-11.pdf

Additionally, a copy of the AOEE can be obtained by contacting Christene Sirois-Kron, Metropolitan Airports Commission, 6040 28th Avenue South, Minneapolis, MN 55450; 612-725-6455. Comments concerning the AOEE can be given at a Public Hearing to be held on Wednesday, November 7, 2011, at 11:00 a.m. in room 3048, Mezzanine level, Lindbergh Terminal, Minneapolis -St. Paul International Airport, or in writing to Christene Sirois-Kron at 6040 28th Avenue South, Minneapolis, MN 55450. Comments on the AOEE must be received by the close of business on Wednesday, November 16, 2011. Persons planning to attend the public hearing should call Christene Sirois-Kron at 612-725-6455 for security checkpoint information.

STATE OF MINNESOTA Energy Facility Permitting

NOTICE OF AVAILABILITY OF ENVIRONMENTAL ASSESSMENT

In the Matter of the Application of Prairie Rose Transmission, LLC for a Route Permit for the 115 kV Interconnection Project in Rock County (PUC Docket: IP-6838/TL-10-134)

The Minnesota Department of Commerce, Energy Facility Permitting Unit (EFP) has released the Environmental Assessment (EA) for the Prairie Rose 115 kV Transmission Line Project.

The intent of the environmental review process is to inform the public, the applicants and decision-makers about potential impacts and possible mitigations for a proposed project. The EA for the Prairie Rose transmission project evaluated impacts for the Applicant's proposed route along County Road 7 and Township Road 72 in Rock County. In this instance, no route alternates were proposed for comparative analysis.

Copies of the EA can be obtained through EFP and may be viewed at the Public Utilities Commission website: <http://www.energyfacilities.puc.state.mn.us/Docket.html?Id=28283>.

Project Description

The Project is a 115 kV transmission line that would be built to interconnect the Prairie Rose 200 MW Wind Farm to the transmission grid. The complete proposed transmission line would span approximately 24 miles, from the Prairie Rose Wind Farm Substation in Rose Dell Township in Rock County to the Split Rock Substation in Brandon, South Dakota. The Minnesota portion of the proposed Project would be approximately 5.5 to seven miles long. The single-circuit transmission line would head west along County Highway 7 to County Highway 23. There it would continue due west along Township Road 72 to the Minnesota-South Dakota border. The proposed route would be sited along a combination of existing road right-of-way (ROW) and private land adjacent the public road ROW.

Public Hearing

A Public Hearing on the Route Permit will be held in the project area shortly after this release of the Environmental Assessment and will be noticed separately.

Project Contacts and Information

For more information about the environmental review process, contact State Permit Manager David Birkholz (651-296-2878, david.birkholz@state.mn.us), Department of Commerce, Energy Facility Permitting, 85 7th Place East, Suite 500, Saint Paul, Minnesota 55101-2198.

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OAH Docket No. 8-2002-223311-2

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of Higdem
Township of the Denial of Public Waters
Work Permit Application No. 2007-0158
and Order for Restoration

**NOTICE AND ORDER FOR
PREHEARING CONFERENCE AND
ORDER FOR HEARING**

TO: MARVIN HEDLUND, CHAIR, Higdem Township, 18432 470th Ave. NW, Oslo, MN
56744.

NOTICE OF HEARING

HIGDEM TOWNSHIP IS HEREBY NOTIFIED that the Minnesota Department of Natural Resources (“DNR”) has initiated this action pursuant to Minn. Stat. § 103G.311 (2010) to consider the denial of the after-the-fact public waters work permit application of Higdem Township for the raising of a township road within the effective flow area of the Red River of the North and the DNR order for restoration.

ORDER FOR PREHEARING CONFERENCE

IT IS HEREBY ORDERED that a contested case **prehearing conference** will be held by telephone on November 21, 2011, at 1:30 p.m., initiated by the Office of Administrative Hearings, located at Harold E. Stassen Office Building, State Capitol Complex, 600 North Robert Street, St. Paul, MN 55101. **All mail sent to the Administrative Law Judge assigned to this matter should be directed to P.O. Box 64620, St. Paul, MN 55164-0620.**

ORDER FOR HEARING

IT IS FURTHER ORDERED that, pursuant to Minn. Stat. § 103G.311, a contested case hearing in this matter will be held at a time and place to be decided by the Administrative Law Judge at the prehearing conference.

The Chief Administrative Law Judge, Office of Administrative Hearings, has assigned this matter to Eric Lipman Administrative Law Judge, Office of Administrative Hearings, P.O. Box 64620, St. Paul, Minnesota 55164-0620, telephone (651) 361-7842.

ALLEGATIONS

1. Pursuant to the consent of Congress set forth in 33 U.S.C. 567, the State of Minnesota and the State of North Dakota entered into an agreement in November 1976 entitled “Joint and Cooperative Agreement for the Establishment of Criteria for Authorizing Dikes and Other Flood Control Structures and Measures on the Red River of the North and the Bois de Sioux River (hereinafter the “Interstate Compact”). The intent of the Interstate Compact was to “constitute a basis for joint management and regulation of the boundary rivers” of the states. One of the primary purposes of the Interstate Compact was to address flooding along the Red River of the North and the impact of unauthorized water control structures located within each state on such flooding. The Red River of the North is a public water as defined in Minn. Stat. § 103G.005, subd. 15(a)(9) (2010) and consequently is subject to the public waters regulatory authority of DNR.

2. The Interstate Compact was amended in 1980 (hereinafter the “First Amendment”) to incorporate agricultural dike rules adopted by both states and to create a framework for the states to develop a corrective plan to “mitigate to the maximum extent possible the adverse impacts to the floodplain.” The First Amendment directed that the

corrective plan shall consider, among other things, “existing roads” and their contribution to increased flood stage. The First Amendment was signed by the then-Governors of Minnesota and of North Dakota.

3. Pursuant to the authority set forth in paragraph (k)(3) of the First Amendment, the States of Minnesota and North Dakota entered into an agreement, through their respective natural resources/water commissioners, entitled “Cooperative Agreement for the Formulation of a Corrective Plan for Agricultural Levees Between River Mile 236 and 287 of the Red River of the North” in 1985 (hereinafter the “Cooperative Agreement”). The Cooperative Agreement set forth a mechanism to address continuing disputes regarding unauthorized dikes along the Red River of the North through the development of a corrective plan. Within the Cooperative Agreement, the states agreed to the establishment of a Technical Committee charged with making seven “findings” that would become the corrective plan required by the First Amendment and be binding on the states (hereinafter the “Corrective Plan”).

4. Relevant to the present appeal, Finding No. 6 was adopted in 1987 and became part of the Corrective Plan. Finding No. 6 established an “effective flow area” for the Red River of the North and required that “[r]oadways and driveways within the ‘effective flow area’ must remain at or below their present elevations.” The purpose of this provision of Finding No. 6 was to address the impact of roadways and driveways on flood levels of the Red River of the North as such structures act in the same manner and have a similar impact on flood levels as dikes and levees.

5. Higdem Township is located in Polk County, Minnesota, and borders to the west along the Red River of the North. A significant portion of Higdem Township lies within the “effective flow area” identified in the Interstate Compact’s Corrective Plan. As a part of its

duties, Higdem Township constructs and maintains township roads pursuant to the authority found in Minn. Stat. § 164.02 (2010).

6. In 2006, Higdem Township raised by approximately two feet a township road, also known as 200th Street NW, located between Sections 8 and 17, Township 154 North, Range 50 West. This work extended along approximately 0.74 miles of the township road. The township road is located within the “effective flow area” of the Red River of the North as defined in the Corrective Plan. This road raise elevated the township road above the elevation of the road as it existed in 1987 at the time Finding No. 6 became part of the Corrective Plan.

7. Pursuant to Minn. Stat. § 103G.245, subd. 1 (2010), a DNR public waters work permit is required for, among other things, construction of structures that result in a change to the course, current or cross section of public waters. Pursuant to Minn. Stat. § 103G.245, subd. 9 (2010), DNR’s public waters work permit authority includes projects “involving the control of floodwaters by structural means, such as dams, dikes, [and] levees” No public waters work permit or other consent had been granted for the road raise by DNR to Higdem Township pursuant to Minn. Stat. ch. 103G (2010).

8. On June 14, 2006, DNR issued Public Waters Cease and Desist Order #W831944 to the Higdem Township contractor and Public Waters Cease and Desist Order #W831945 to the Higdem Township Supervisor directing that no further work be undertaken on the road raise.

9. By Public Waters Work Permit Application No. 2007-0158 dated August 26, 2006, Higdem Township applied for an after-the-fact permit for the road raise.

10. By letter dated October 6, 2010, DNR denied the after-the-fact permit application, finding:

a. The State of Minnesota and the State of North Dakota had entered into an Interstate Compact in 1976 to address the prevention and control of floodwaters on the boundary waters of the states, including the Red River of the North.

b. The Interstate Compact was amended in 1980 to incorporate agricultural dike rules applicable to both states.

c. The Interstate Compact was further modified to establish a procedure to address pre-existing dike elevations along the Minnesota side of the Red River of the North. One of the resulting determinations, entitled Finding No. 6, was the maximum allowable elevations of dikes in an area that includes Higdem Township. In particular, Finding No. 6 states that “roadways and driveways within the ‘effective flow area’ [of the Red River of the North] must remain at or below their present elevations.”

d. The road raise undertaken by Higdem Township in 2006 and subject to after-the-fact public waters work permit application No. 2007-0158 lies within the “effective flow area” identified in Finding No. 6.

e. The road raise as proposed “is limited by the terms in the [Interstate] Compact” because it proposes to raise the township road located within the effective flow area above its elevation as existed at the time Finding No. 6 was adopted.

11. In the same letter, DNR ordered Higdem Township to take the necessary action to restore the township road “to the elevation of the road prior to the work that was done sometime around May or June 2006.”

12. By letter dated November 9, 2010, Higdem Township timely appealed the denial of after-the-fact public waters work permit application No. 2007-0158 and the order for restoration.

ISSUES

1. Whether DNR’s denial of Higdem Township’s after-the-fact public waters work permit application No. 2007-0158 and DNR’s order for restoration is consistent with applicable Minnesota statutes, specifically Minn. Stat. § 103G.245 (2010), and the terms and obligations of the Interstate Compact.

2. The relevant statutes and laws include, but need not be limited to, Minn. Stat. §§ 103G.245, subd. 1(1) and (2) and subd. 9(b); 103G.251; 103G.301; and 103G.315 (2010); the Interstate Compact, the First Amendment, the Cooperative Agreement, and Finding No. 6 of the Corrective Plan.

Dated this 5th day of October, 2011.

MINNESOTA DEPARTMENT OF NATURAL
RESOURCES

/s/ Tom Landwehr
TOM LANDWEHR
Commissioner

International Falls Land Port of Entry Improvements Study Final Environmental Impact Statement

The U.S. General Services Administration (GSA) has published a final environmental impact statement (EIS) for the International Falls Land Port of Entry (LPOE) Improvements Study in International Falls, Koochiching County, Minnesota. The purpose of this EIS is to provide the GSA and the public with a full accounting of the environmental impacts to the natural, social, and atmospheric environments, and transportation systems. The EIS serves as the primary document to facilitate review of the proposed action by federal, state, and local agencies and the general public.

The GSA is proposing to replace the undersized and functionally obsolete LPOE with a LPOE which meets the needs of the CBP and other federal agencies and adheres to the design requirements of the GSA. The purpose for the study is to identify an alternative that provides efficient and safe inspection and processing of vehicles and people at the LPOE, meets the needs of the CBP, and complies with the design requirements of the GSA. The study is needed because the existing LPOE has many problems and deficiencies, preventing the agencies operating at the LPOE from adequately fulfilling their respective missions.

The GSA announced the availability of the Draft EIS for the International Falls LPOE Improvements Study on January 14, 2010. A 45-day comment period immediately followed, during which the GSA invited Federal, State and local agencies, organizations and individuals to submit comments on the Draft EIS. A public hearing was held at the Rainy River Community College on January 27, 2010 and a transcript of the hearing was prepared. An advertisement for the public hearing appeared in International Falls' *The Daily Journal* on two occasions prior to the hearing and advertisements for the public hearing were placed at Boise, Inc. and other prominent locations. Two attendees offered substantive comments during the public hearing. The public hearing was preceded by an open house to allow attendees to view plans of the build alternatives in detail, review the Draft EIS and discuss its content with the GSA, and ask questions. The GSA received eight letters and one e-mail providing comments, copies which are contained in the FEIS with responses to the substantive comments.

After careful consideration of the comments received on the Draft EIS, the GSA identified Alternative 10 as best satisfying the proposed action's purpose and programmatic needs and has the least impact on the human and natural environment. Alternative 10 is identified as the Preferred Alternative in the FEIS subject also to Congressional authorization and appropriation of availability of funds, GSA control of the site to complete archaeological investigations and continuity of the tenant agencies' Program of Requirements as they were understood at the time this study was completed.

Following the 30-day notice in the Federal Register, the GSA will issue a Record of Decision at which time its availability will be announced in the Federal Register and local media.

The GSA appreciates your assistance on this study. If you have questions, contact Donald Melcher at (312) 353-1237 or donald.melcher@gsa.gov.