Fond du Lac Band of Lake Superior Chippewa

Resource Management Division

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Administration
Conservation
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Natural Resources
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Exhibits Accompanying Fond du Lac Band of Lake Superior Chippewa comments and objections to draft NorthMet §401 water quality certification

March 16, 2018

155256-1

Exhibit A

Conversation Record

PROJECT NAME: PolyMet NorthMet Mine

USFS Personnel: Marty Rye Title: SNF Forest Hydrologist

Phone Call: ☐ Incoming X Placed ☐Drop In / Face-to-Face Meeting

Date of Contact: 03/09/2018 Time: 10:50-10:57 am

Name of Caller / Contact: Steve Eggers

Organization: U.S. Army Corps of Engineers

Title: Senior Ecologist

Phone No. (651) 290-5371 *e-mail / other contact data*: steve.d.eggers@usace.army.mil

Notes:

- I asked Steve about the USACE follow up of a meeting with the Bands last summer regarding John Coleman's proposed alternative method to estimate wetland acreage
- Steve offered the following:
  - He had done some 'ground-truthing' in September 2017 and found some more wetlands than initially offered
  - The field evaluation was relatively limited in scope due to ease of access at the time – however he did find more wetland acreage.
  - Based upon this evaluation, the USACE instructed PolyMet (Barr) to re-evaluate the wetland area estimation using the tools John had used as well as aerial photos, etc.
  - Barr Engineering has yet to submit their report to the USACE.
  - Once Barr Engineering submits their report to the USACE, the USACE will review and check the results.
  - It is likely the acreage will be *different*, though the amount of difference is unknown until the Barr Engineering report has been submitted and reviewed.
  - Steve did not known *when* the report will be submitted to the USACE, but they USACE had been in contact with Barr requesting the report, so it is considered it may be sooner than later

Follow-Up Required (What / Who / Due Date):

1) Write up notes from conversation & send to Connie & Bands / MRye / 3/9/2018 ✓

2)

3)

Exhibit A - Fond du Lac 3/16/2018 Comments on MPCA §401 Certification

Exhibit B

WCA Wetland Bank Concept Plan Review
TEP Findings & Recommendations

Sponsor's Name			
EIP Credit Co. LLC			
Project Name/Number (if applicable)			
Lake Superior Wetland Bank			
County	Township Name	Section No.	Township No.
St. Louis	**McDavitt/Kelsey/Elsberg**	**Multiple**	
Sponsor's Relationship to Property			
☐ Fee Title Owner ☐ Contract for Deed Owner ☐ Contract or Agreement with Landowner ☒ Other: _____			

Local Government Unit (LGU) Name	LGU TEP Representative
St. Louis County	**Mark Lindhorst**
SWCD TEP Member (if different from above)	
Paul Ojanen and R.C. Boheim	
BWSR TEP Member	
Joan Weyandt	

1. ☒ Yes No Has the site/project completed a scoping review? If no, explain why (e.g. site/project reviewed under an old application, modification of an existing application, Technical Evaluation Panel (TEP) recommended skipping scoping review, etc.):

   The applicant submitted a scoping document for a proposed 3,624 acre project. The additional 17,671 acres being proposed as part of the concept plan did not have a scoping document completed. The TEP discussed the initial scoping document with the applicant on November 19, 2012. The TEP did not recommend proceeding to the concept stage due to the TEP's assessment that the site does not appear to meet the criteria to be considered an Exceptional Natural Resource and therefore would not be eligible for WCA replacement credits.

2. Based on the information provided, describe the TEP's opinion in regard to the suitability of the project to generate eligible wetland banking credits.

   ENRV Credit Potential:

   The Minnesota Board of Water and Soil Resources Exceptional Natural Resource Value (ENRV) guidance document lists exceptional resources as habitat for state listed endangered or threatened species, rare native plant communities, special fish and wildlife resources, sensitive surface waters and others determined to be exceptional by the TEP. The applicant has not included sufficient information to show that the area is eligible for Exceptional Natural Resources Value credit under MN Rule 8420.0526 Subp. 8.

   - Based on the information presented, the TEP does not consider this area exceptional within the context of the watershed.
   - The wetland types found in the proposed ENRV area have not been significantly lost or degraded in the watershed.
   - A tamarack/black spruce wetland is not considered an exceptional resource.

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- No evidence or location of rare plants was included. One rare plant found along a road right-of-way ditch is not sufficient evidence.
- Bears, moose and grey wolves are not considered endangered or threatened species.
- The Sax, Zim and Fermoy Wildlife Management Areas are not considered designated Scientific or Natural Areas by the Minnesota Department of Natural Resources.
- The Whiteface River is listed as impaired for mercury; so are most waters in Northern Minnesota. The source of the mercury is likely from atmospheric deposition, and there is no proposed method for quantifying how the proposal would reduce the mercury load to the watershed.
- This site is only a small portion of the Audubon Important Bird Area.
- Water tracts are not considered an exceptional value resource. No information has been provided indicating that the water tracts are impaired or how they will be restored.
- Actions that will achieve functional lift of the site have not been demonstrated.
- Blocking the ditches without restoring the substrate elevation and vegetation does not appear to achieve long term functional gain to a degree sufficient to justify replacement credits.
- The entire 21,292 acre area has been proposed for ENRV. It does not appear that the requirement that 25% of the area be restored will be achievable for the entire 21,292 acres.
- The applicant has not demonstrated any specific sites within the project area which may meet the ENRV guidance as exceptional.

Preservation Credit Potential:

- The applicant has not included sufficient information to show that the area is eligible for Preservation credit under MN Rule 8420.0526 Subp. 9.
- It has not been demonstrated that there is a high probability the wetland will be degraded or impacted.
- Logging of black spruce and tamarack is not considered a demonstrable threat. Both species regenerate naturally. The applicant asserts that the logged areas will be maintained as features to enhance the wildlife habitat, indicating that logging as a forest management tool will provide functional lift.
- The application does not provide adequate information on location of potential peat mining. Peat mining exists as a regulated activity in northeast Minnesota but is typically on smaller parcels that would not have a significant impact on the watershed.
- Ownership of mineral rights for the private and publicly held property was not discussed.
- Bedrock geology was not discussed.
- There is no evidence indicating that the bank is necessary to protect the natural resources given that over 80 % of the proposed bank is currently in public ownership and the use has not changed since the 1950's.
- The application states: *"The proposed Bank will remove all public and private drainages..... and restore the hydrology to more than 38 sq. miles of land."* Historical drainage improvements have not been clearly demonstrated as the application also states: *"Approximately 99% of the area of the soils within the bank are hydric, the hydrology within the bank is present as a highwater table and the historic vegetation of the bank are still present and dominate the site overall."* In addition, the application states: *"... the ditches are not draining the site effectively enough to create lateral effect to convert the site to upland."*
- The concept plan does not indicate how it will improve habitat for a state listed endangered or threatened species.
- There is no supporting information in the plan to indicate that the bank will restore 42.6 miles of drained land. To the contrary, the application states the site consists of a high water table.

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- There has not been sufficient information provided to justify an equal lateral effect on all the ditches. The application states that the ditches vary from 15 – 30 ft. wide, and 2 - 6 ft. in depth.
- The applicant must provide a wetland delineation with community type, reference points and data.
- The applicant has not demonstrated that the current wetland is degraded with respect to floodwater storage, nutrient assimilation, sediment entrapment and groundwater recharge.

3. Describe any potential issues/problems with the project (e.g. conflicting easements, detrimental effects on neighboring properties, erosive areas, conflicting surrounding land uses, etc.).

   - The ditches within the bank area must be legally abandoned in accordance with MN Statute 103E.
   - Adjacent properties, especially those on Stone Lake, and adjacent roads may be adversely impacted by the change in drainage.
   - The overall area adjacent to the bank consists of large tracts of forested wetland and areas converted to farm fields that are currently being use for hay or idle for hunting land.
   - The success of the rock check dams as a preferred restoration are in question due to the peat soils.

4. ☐ Yes ☒ No Does the TEP concur with the proposed credit actions and credit amount? If no, explain why:

   - Table 4 assumes that the entire site is eligible for ENRV credit. The entire area is not in need of 25% restoration.

   - Table 10a indicates that the majority of the site is proposed as preservation which will require a demonstration of a high threat of potential damage or impact to the wetland.

   - Credit calculations for restoration of partially drained wetlands is based on an equal lateral effect on all the ditches. No lateral effect calculations or findings are provided to justify this assumption. The application states that the ditches vary from 15 – 30 feet in width and 2 - 6 feet in depth. Vegetative restoration of the ditch areas will not include the ditch area as the standing water condition will remain instead of ditch filling and re-vegetation.

5. ☐ Yes ☒ No Does the TEP concur with the proposed credit release schedule and the associated crediting criteria? If no, explain why:

   - Vegetation management has not been defined. If returning the ditch edges to forested wetland type, the monitoring may extend to 10 or more years.
   - Methods of documenting functional lift have not been defined.

6. ☐ Yes ☒ No Does the TEP consider the proposed monitoring plan adequate to determine if proposed crediting criteria are met? If no, explain why:

   The current hydrology monitoring of the site is insufficient in providing data to determine if the ditches are providing partial drainage.

   - One year of monitoring during a drought year is not adequate to characterize the site conditions. A more intense monitoring plan is needed.
   - 29 monitoring wells spaced over approximately 120 acres of a 21,292 acre project area are insufficient. A more intense monitoring plan is needed.
   - Monitoring will continue through 2013 at the current site but there is no mention for how long the monitoring will continue after the ditches are plugged.
   - There is no mention or study of possible upstream or downstream effects on the surrounding landscape and landowners.

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- Baseline Functional Quality Assessment of all the community types and all areas of the site will be needed to provide information for ENRV and Preservation consideration.

7. Describe any aspects of the concept plan that should be revised, clarified, or further discussed in the full bank plan application.

   As stated above, the proposed application has not provided adequate information to indicate that this site meets the requirements of MN Chapter 8420.0526, Supb. 8 & 9. Based on this, the TEP is recommending that the applicant not proceed with an application for the proposed amount of ENRV and/or Preservation Wetland Banking Credits.

R C Bohn, South St Louis 8/26/2013

Paul Ogerman NSLSWCD 8/26/2013

SWCD Representatives (Date)

Jean Weyandt 8/26/13

BWSR Representative (Date)

Mark Lindhorst 8-26-13

LGU Representative (Date)

DNR Representative (if applicable) (Date)

If TEP recommendation is not unanimous, note dissenting votes with an asterisk and explain. Provide additional TEP comments and recommendations on a separate sheet and attach to this finding of fact form.

Exhibit B – Fond du Lac 3/16/2018 Comments on MPCA §401 Certification

Exhibit C

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

SEP 18 2014

REPLY TO THE ATTENTION OF:

WW-16J

Ms. Tamara Cameron, Chief
Regulatory Branch
St. Paul District
U.S. Army Corps of Engineers
180 Fifth Street East, Suite 401
Saint Paul, Minnesota 55101-1638

Subject: MVP 2012-04872 – Lake Superior Wetland Bank – Response to September 10, 2014 Email Request from St. Paul District Corps for Interagency Review Team comments on Draft Mitigation Plan and Draft Mitigation Banking Instrument

Dear Ms. Cameron:

The U.S. Environmental Protection Agency has reviewed the draft Mitigation Bank Plan (Plan) for the proposed Lake Superior Watershed Wetland Bank dated August 2014. The applicant, Ecosystem Investment Partners (EIP), is proposing to establish a wetland bank through a combination of restoration (via rehabilitation), enhancement, and preservation of aquatic resources on 21,292 acres in Bank Service Area 1, St. Louis County, Minnesota. On September 5, 2014, the St. Paul District Corps held an Interagency Review Team (IRT) meeting to have EIP provide an overview of their draft Plan and to allow EIP to answer questions and address concerns from the IRT regarding the Plan.

According to the Corps, EIP has provided a Plan that incorporates all the required components required under 40 CFR Part 230.94 (c)(2) through (c)(14) of the Federal Mitigation Rule. While the Plan may touch upon all parts required for a Plan, greater detail and clarification are needed considering the size of the proposed bank, the proposed mitigation activities, and the outstanding concerns and questions raised during the September 5, 2014 meeting.

EPA highlights specific needs and concerns regarding the draft Plan below, but assumes all issues and concerns raised during the September 5 meeting will be addressed by EIP in a revised version of the Plan. This information should be provided if EIP is to proceed to the next phase of the Mitigation Banking Process, Phase IV - Final Draft Instrument and Bank Plan. The following issues need to be addressed by EIP:

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Exhibit C – Fond du Lac 3/16/2018 Comments on MPCA §401 Certification

- Ditch check construction – specifically how the proposed design will adequately restrict flow, retain water on site and not result in excessive open water ponding despite the initial concerns with this design posed by the Board of Water and Soil Resources Water Resource Engineer;
- Lack of hydrologic and hydraulic analysis to depict site conditions and site design – specifically as it relates to ditch check design and the effects of filling the ditches, or portions of the ditches, on site;
- Lack of geologic or stockpile analysis in determining the amount of stockpiled material estimated to be available for use and anticipated borrow area locations and impacts;
- Land title acquisition status from the County and/or State and obstacles anticipated in obtaining title to these lands;
- Ditch abandonment status and any obstacles anticipated in this process;
- Status of obtaining maintenance rights for private drainage ditches and any obstacles anticipated in this process;
- Long term management – the need to develop a Plan, which discusses specific activities to be undertaken after release from monitoring with a discussion of how those activities will be funded (in perpetuity);
- Adaptive Management Plan – the need to develop a management strategy, with specific actions, to address potential unforeseen changes in site conditions or other components of the bank design to be included in the Plan;
- Performance standards – incorporating the use of reference sites to establish hydrology performance standards and establishing specific (or minimally a range of) Floristic Quality Assessment (FQA) metrics for each performance period throughout the site. FQA is proposed to show how the site will contribute to ecological sustainability of the watershed which may be suitable, however we recommend additional areas be analyzed;
- The restoration design of the area previously mined for peat;
- Crediting – additional justification for 50% crediting for areas left as open ditches and borrow areas and a more detailed discussion on the degree of functional gain proposed for each type of mitigation effort and how this lift may differ from area to area (possibly broken out by specific zones - e.g. primarily intact far eastern portions vs. heavily ditched western portion east of roadway vs. far western area). Justification of a 15% credit for enhancement areas given not all of the 18,601 acres will be subject to direct enhancement actions (as detailed in Figure 16);
- Clarification on Enhancement vs. Preservation – Figure 20 indicates areas will be credited for enhancement but mapping indicates these are preservation areas.

EPA requests that the Corps consider our comments and recommends the proposed bank not be considered for federal credit approval until all aforementioned concerns and considerations are adequately addressed. We appreciate the opportunity to provide comments on this revised bank plan and look forward to continued discussion with the Corps and IRT. If you have any questions, please contact Kerryann Weaver at 312-353-9483.

Sincerely,

Wendy Walsh

for Peter Swenson
Chief, Watersheds & Wetlands Branch

cc: Leslie Day, St. Paul District US Army Corps of Engineers (via email)

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