



**LEECH LAKE BAND OF OJIBWE
DIVISION OF RESOURCE MANAGEMENT**

190 Sailstar Dr. NE, Cass Lake, MN 56633

February 24, 2022

VIA ELECTRONIC MAIL

City of Cohasset
Attn: Max Peters, Director of City Operations
305 Northwest 1st Avenue
Cohasset, MN 55721
maxp@cohasset-mn.com

Re: Leech Lake Band of Ojibwe Comments on the Frontier Project EAW

Dear Mayor Hagy and Cohasset City Council:

The Leech Lake Band of Ojibwe appreciates the opportunity to comment on the revised Frontier Project Environmental Assessment Worksheet (“EAW”). Leech Lake was pleased when the City of Cohasset decided to postpone their decision on the inadequate EAW that was prepared in 2021. The revised EAW provides a much more robust presentation of the significant environmental effects that will result from the proposed industrial wood products manufacturing facility. Despite the additional efforts to satisfy the requirements for environmental review under Minnesota law, the current EAW still provides an inadequate analysis of numerous significant environmental effects.

The revised EAW still fails to address serious concerns regarding the destruction of wetlands, destruction of eagle nests and habitat, range-wide impacts on threatened, endangered, and special concern species, and completely lacks any meaningful analysis of mandatory environmental impact statement (“EIS”) triggers that clearly need to be addressed. The revised EAW still fails to adequately address comments submitted by Leech Lake during the original comment period. In order to ensure these concerns are fully addressed, Leech Lake incorporates by reference its comments submitted in response to the withdrawn 2021 EAW. Not only is the

current EAW, once again, legally inadequate based on numerous mandatory EIS triggers, but also identifies significant environmental impacts from air pollution that are not adequately addressed. The additional information has convinced the Band that the Frontier Project is not consistent with environmental stewardship goals identified by the Band and should not be built in a location where such significant environmental effects cannot be avoided. The proximity of the project to sacred cultural resources, including wild rice, Bald Eagle nests, and the wide ranging ecological impacts are not proper.

The following comments on the revised Frontier Project EAW represent the wide range of environmental effects that are of significant concern to the Leech Lake Band of Ojibwe. Many of these concerns are in line with the concerns of the general public as outlined in the purpose and need for the Minnesota Environmental Policy Act. Some of the issues raised herein do not trigger a mandatory EIS category on their own, but some do. Taken in the aggregate, the cumulative environmental effects of the Frontier Project are significant and require the preparation of an EIS to allow the public to fully understand the immediate and long term effects the Frontier Project will have on the delicate ecosystems in the Mississippi River Headwaters. As discussed below, Minnesota law requires an EIS for the Frontier Project and any decision otherwise is arbitrary and capricious and lacking in detailed analysis required by the scope of environmental effects.

1. Introduction

Minnesota Statute 116D.04, Subpart 2a, requires the responsible governmental unit (RGU) to prepare an Environmental Impact Statement (EIS) where there is “potential for significant environmental effects resulting from any major governmental action.” One of the key features of an EIS is analysis of “appropriate alternatives to the proposed action.” *Id.* The RGU must

consider cumulative effects,¹ and all connected and phased actions as part of a single project when making the determination of whether to require a project proposer to prepare an EIS.² Although the Minnesota Legislature attempted to remove the requirement to conduct an EIS based solely on the size of the facility³, this legislation did not exempt Huber from having to complete an EIS where other mandatory EIS categories are triggered, or where the aggregate effects of the Project’s multiple components create “potential for significant environmental effects.” *Id.*

The Frontier Project proposal to construct an enormous wood fiber manufacturing facility on 188 acres of undeveloped forests and wetlands will have massive environmental impacts, with multiple components having significant impacts in their own right. On the project site alone, Huber proposes the destruction of nearly 30 acres of wetlands and shallow lakes, over 35 acres of forest, 30 acres of grasslands, and 30 acres of cropland.⁴ The Project also proposes emission of 644 tons of carbon monoxide, 528 tons of nitrous oxides, 454 tons of total particulate matter, 213 tons of volatile organic compounds, and lower amounts of numerous other criteria pollutants.⁵ The Project will significantly affect threatened, endangered, and sensitive species, including destroying two Bald Eagle nests. The Project has also identified that it will require over 400,000 tons of timber harvest annually to meet the OSB production goals. Timber that will come from areas where the Leech Lake Band of Ojibwe hold treaty rights to hunt, fish, and gather for traditional cultural, subsistence, and commercial purposes.

¹ Minn. R. 4410.1700, subd. 7. (2018).

² Minn. R. 4410.1700, subp. 9. (2018).

³ As noted below, this legislation violates Article XII of the Minnesota Constitution.

⁴ Frontier Project Revised Environmental Assessment Worksheet, 13 (January 18, 2022) (hereinafter “Revised EAW”).

⁵ Revised EAW at 34.

Taken individually, each of these environmental effects is significant and considered in the aggregate, as the law requires the City of Cohasset to do, the cumulative environmental effects of the Huber Frontier Project pose substantial threats. Although the revised EAW prepared by Huber attempts to diminish and segment these threats, the environmental effects identified in the Frontier Project EAW, along with additional mandatory EIS triggers identified in these comments, require the City of Cohasset to determine that an EIS is mandatory. Huber is required to show that the significant environmental effects of the Frontier Project cannot be avoided through alternative designs, technologies, or locations before they are allowed to subject the people of the State of Minnesota and the Leech Lake Reservation to the environmental burdens of the Frontier Project.

Environmental Justice

Environmental Justice requires that no population bears a disproportionate share of negative environmental consequences from industry or natural resource development.⁶ The Leech Lake Band has borne more than its fair share of deteriorating forests, air quality, rice beds, and loss of diversity by companies extracting resources from our lands for financial gains that are not realized by the people of Leech Lake.

Huber chose this site adjacent to the Boswell coal plant because it was offered by Minnesota Power, who is recruiting a large industrial customer for electricity. The Boswell plant has been a major air emitter since the 1950s. Now, Minnesota Power wants to place another major emitter of air pollution on the same site. The Leech Lake Band has suffered from Boswell air pollution for generations. The Huber mill would force the Band to continue to bear a disproportionate share of air pollution for decades into the future and degrade our treaty right to

⁶ *Environmental Justice*, Minn. Pollution Control Agency, Admin. Policy No. i-admin8-29 (November 2020).

fish, hunt, and gather. The location of the Frontier Project ensures that the history of environmental justice burdens on Leech Lake are perpetuated by replacing one Title V air polluter with another, who will also devastate the forest ecosystems tribal members rely on for subsistence and cultural identity.

Failure of Consultation by State Agencies

Minnesota Statute section 10.65 establishes Minnesota's legal obligation to engage in government-to-government consultation with Tribal nations "on matters that have tribal implications." This law requires state agencies to take proactive steps to identify and seek input from tribal governments and considering their interest as a necessary and integral part of the decision-making process. *Id.*

The Leech Lake Band is gravely concerned that Huber and Minnesota Power have been meeting with state agencies behind closed doors, including the Minnesota Pollution Control Agency, the Iron Range Resources and Rehabilitation Board, and the Department of Employment and Economic Development, to facilitate the placement of an enormous industry one mile from our reservation border. (See attached emails). For nearly a year, the corporations have been actively collaborating with state agencies to provide incentives, waive environmental review and rapidly approve permits, while excluding the Leech Lake Band from these discussions. This appears to have been a deliberate effort to bypass state environmental laws and government-to-government consultation in order to, once again, saddle the Leech Lake Reservation with an enormous polluter.

Air Pollution

Air pollution represents a significant environmental effect from the Frontier Project. The EAW identifies two criteria pollutants exceeding the 250 annual ton threshold for criteria pollutants that triggers mandatory EAW preparation under MEPA. This mandatory EAW

category indicates that the Minnesota Pollution Control Agency (“MPCA”) should be the RGU.⁷ The Frontier Project also exceeds the threshold for greenhouse gas equivalents triggering a mandatory EAW prepared by MPCA.⁸ This section will focus on the significant environmental effects potentially resulting from the air pollution identified in the EAW, but, as discussed later, because the air pollution is one of multiple mandatory categories triggered by this project, the City of Cohasset is not the appropriate RGU for the EAW or an EIS. Cohasset should not only order Huber to prepare an EIS, but, in addition, should relinquish authority as the RGU and allow MPCA to assume responsibility over the Frontier Project EIS.

Major concerns regarding air pollution from the Frontier project focus on the sheer volume of emissions, as well as alarming quantities of specific pollutants of special concern. Emissions of two pollutants, nitrous oxides and carbon monoxide, are more than double the threshold requiring Title V air permits under the Clean Air Act and five additional pollutants exceed 100 tons of annual emissions.⁹ These emissions alone should be considered significant¹⁰ and require preparation of an EIS to consider alternatives to these significant emissions, but there is another alarming issue regarding the air pollution proposed by the Frontier Project. ACID RAIN! The combination of nitrous oxides and sulfur dioxide creates acid rain¹¹ and while the sulfur dioxide emitted by the Frontier Project is relatively low (34 tons annually), the neighboring Boswell Energy Center emits 577 tons of sulfur dioxide annually.¹² Any of these

⁷ Minn. R. 4410.4300, subp. 15.A.

⁸ Minn. R. 4410.4300, subp. 15.B.

⁹ Revised EAW at 34.

¹⁰ The Frontier Project would be 6th highest emitter of nitrous oxides and the 4th highest emitter of carbon dioxide, excluding mining and energy production.

¹¹ EPA, *What Causes Acid Rain?*, <https://www.epa.gov/acidrain/what-acid-rain#:~:text=Acid%20rain%2C%20or%20acid%20deposition,even%20dust%20that%20is%20acidic>. (accessed Feb. 24, 2022).

¹² Permitted Facility Air Emissions Data, <https://www.pca.state.mn.us/air/permitted-facility-air-emissions-data>, accessed Feb. 13, 2022.

factors taken alone should be considered significant environmental impacts that require the consideration of alternatives that is required during the preparation of an EIS.

Wetlands

The basic premise of the Clean Water Act Section 404 program prohibits the destruction of wetlands where there is "a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem..." 40 C.F.R. § 230.10(a). The regulations dictate a presumption that "practicable alternatives that do not involve special aquatic sites" are available "unless clearly demonstrated otherwise." 40 C.F.R. § 230.10(a)(3). The Huber Frontier Project fails this standard because the facility can be built in many other locations that do not involve aquatic sites.

Huber claims in the EAW that no alternative sites offered appropriate zoning with "lesser environmental consequences,"¹³ but fail to support their conclusion with anything in the EAW record. This is contradicted by other statements in the Environmental Assessment Worksheet, which states:

If the proposed project is not constructed in Cohasset, HEW expects that it would construct a similar facility in another State or Canadian province. HEW identified several promising alternative locations, although none was as attractive as Cohasset.¹⁴

Huber is pursuing this site because the land was offered by Minnesota Power, owner of the proposed project site. Minnesota Power is offering wetlands as a construction site, because it is seeking a large industrial customer. In short, the Huber Corporation is shopping around for a building site that offers the most financial advantages, and undeveloped wetlands are a bargain. For now, Huber has decided to take a run at permitting the project at this location.

¹³ Revised EAW at 31.

¹⁴ Revised EAW at 10.

The project site includes over 100 acres of federally protected wetlands with a hydrologic connection to Blackwater Creek and the Mississippi River. The north portion of the site includes significant forested peatlands, adjacent to a large, forested wetland of several hundred acres. This is a large wetland complex with ecological characteristics important to the overall environmental health of our region's ecosystem. The Huber facility would have ecological and watershed repercussions far beyond the 30 acres Huber proposes to fill in the short term.

The Leech Lake Band of Ojibwe and many other Tribal Nations retain treaty rights to hunt, fish, and gather wild rice in ceded territory throughout northern Minnesota and Wisconsin.¹⁵ Wetlands are critical to many species of fish and game, for food production, spawning and nursery habitat, refuge, and the reduction of harmful pollutants in water. In a recent Supreme Court decision, the United States asserted, and the Court affirmed in a 4-4 per curium decision, a treaty right to hunt and fish includes a right against substantial degradation of tribal fisheries.¹⁶

The Army Corps wetlands delineation indicates that the wetlands that are proposed to be filled have a direct hydrological connection to the large "Blackwater" wild rice bed along the Mississippi River adjacent to and immediately downstream of the proposed Huber site. See, Map A. It is a popular location for Tribal and non-Tribal ricers every year. One of the reasons it is so popular is the dams on the Mississippi keep the water level relatively stable and during years, like 2021, when drought makes other rice beds hard to access, this bed has water and generally harvestable crops. The wetlands that Huber proposes to fill are currently a filter for water quality. Removing the wetland filters and replacing them with industrial development will be harmful to the water quality that the rice depends upon to flourish. The Blackwater portion of

¹⁵ See, *Minnesota v. Mille Lacs*, 526 U.S. 172 (1999), also *U.S. v. Brown*, 777 F.3d 1025 (8th Cir. 2015).

¹⁶ See, Brief of United States at 19, *Washington v. U.S.* 584 U.S. ____ (2018).

the Mississippi is heavily impacted already due to the Boswell power plant, and Boswell Energy has court-ordered site specific criteria to protect wild rice.



Huber is proposing wetlands banking to mitigate the loss of wetlands, but wetlands that are many miles away will not prevent harm to wild rice at this location on Blackwater Creek. Instead, the loss of wetlands will result a direct loss of wetland filtering and substantially more industrial stormwater runoff into an important wild rice gathering area. Wild rice requires high transparency waters in order to thrive.¹⁷

¹⁷ See, A. Myrbo, SULFIDE GENERATED BY SULFATE REDUCTION IS A PRIMARY CONTROLLER OF THE OCCURRENCE OF WILD RICE (*ZIZANIA PALUSTRIS*) IN SHALLOW AQUATIC ECOSYSTEMS, 22 September 2017, available at <https://doi.org/10.1002/2017JG003787>.

The Huber plant would have consequences for wild rice beyond the immediate loss of wetlands. In particular, the Leech Lake Band is concerned that air emissions from Huber will combine with existing emissions from Boswell to form deposits of sulfides into rice growing waters. Streams and wetlands that have high concentrations of dissolved sulfide in the sediment have a low probability of hosting wild rice.¹⁸

The Leech Lake Band's concerns about treaty rights also go beyond the wetlands on site. The scale of the Huber plywood mill is enormous. It would consume far more timber than our region can sustain, with significant negative effects on wetlands, wild rice beds, wildlife and treaty fisheries throughout the region. Huber plans to harvest nearly all timber feedstock within a 70-mile radius. This region is either our Reservation or the 1855 Treaty ceded territory area where we retain hunting, fishing, and rice gathering rights.

Huber's proposal to destroy wetlands would have irreversible social and cultural impacts to wetlands and treaty rights, and an EIS is required. An EIS is also needed to evaluate the alternatives and whether practicable alternatives exist that would not fill ecologically important wetlands. Here, Huber has not only practicable alternatives, but "several promising alternative locations."

Treaty Resources

The Environmental Assessment Worksheet examines the effects on treaty rights to the Ojibwe people on pages 7 & 8 and does so incorrectly and generalizes Indian people in an unhealthy way that perpetuates negative stereotypes. To clarify, there are 11 federally recognized Native American Tribes within the State of Minnesota, 7 Ojibwe and 4 Dakota. Leech Lake Band of Ojibwe does not speak for any other Tribe or peoples other than its' own

¹⁸ See, A. Myrbo, *infra*.

and reserves their right to speak for themselves on this project and how it would affect their lands or rights. In regard to the analysis, firstly, it does not consider the indirect effects of air pollution on the subsistence fisheries of the Region that provide cultural and subsistence livelihood to the Leech Lake people. Second the examination of lands where wood supply relies upon a false assumption that county, state and federal law are sufficient to protect Tribal treaty rights. Lastly the project builds upon western doctrine that marginalizes Tribal interests to exploit Tribal forests and perpetuates historical trauma and environmental justice concerns. These EJ concerns were highlighted in the initial LLBO comments and remain unaddressed with the revised project EAW. This issue should be explored through an EIS process and mitigated against.

Northern Minnesota and the Leech Lake Indian Reservation hold large fisheries. The Leech Lake Reservation contains the 3rd (Leech Lake), 4th (Lake Winnibigoshish) and 8th (Cass Lake) largest lakes in present day Minnesota. These three lakes have healthy robust fisheries of Walleye that provide both cultural significance and subsistence diet to Leech Lake people. In addition, the Lakes of Cass, Leech and Ball Club hold robust Whitefish fisheries that are harvested annually for the stated reasons and also are sold commercially by the people and government of Leech Lake. The Leech Lake Government recognizes the reliance our people hold culturally, economically, spiritually and as a means for livelihood and are proactive in protecting our fisheries in order to sustain them for these means. Treaties with the U.S. government reserved these rights and LLBO Resolution No. 01-73 outlines mercury limits for waters of the Leech Lake Reservations based on traditional consumption of fish harvests from our lakes. In addition to water regulation, the Leech Lake Division of Resource Management

actively manages these fisheries in coordination with MNDNR to ensure the health and welfare of Walleye and Whitefish populations and maintains a fish hatchery to that end.

The EAW in examining the potential of the project to affect Tribal Rights relies upon county, state and federal law to be protective of reserved treaty rights and does so in error. Particularly the fiber resource study indicates that “State and county land departments in Minnesota are required to manage timberland for the full productivity (and timber sale revenue) within the limits of sustainability and the protection of the other ecological values.”¹⁹ The ‘limits of sustainability’ is a undefined term and the Leech Lake Band of Ojibwe often disagrees with county, state and federal land managers on these limits and how they should be viewed within the Leech Lake Reservation as ensuring flora and fauna included on the LLBO Threatened, Endangered and Sensitive Species list. This list is the management tool that the LLBO uses to determine sustainability for Tribal trust resources. To provide additional clarity to these limits and how forest management can best align with protecting and sustaining the cultural livelihood of the LLBO and its’ people, the LLBO has passed Resolution No. 2020-06 Adopting the Desired Vegetative Conditions (DVCs) following a public rulemaking process in 2019. These DVCs are the forest management priorities of the Band designed to protect Ansihinaabe values, culture and protect the trust property rights the Leech Lake Band holds on all lands within the Leech Lake Reservation, as affirmed in *Leech Lake Band of Chippewa v. Herbst*.²⁰ These DVCs were designed because of the negative effects to Tribal trust resources that are currently seen with the timber targets and management of the lands by the counties, state and federal agencies with holdings on the Leech Lake Reservation. This history, overview of DVCs intent and rulemaking process was outlined for Huber staff at a July 2020 meeting where it was told to

¹⁹ Revised EAW at 8.

²⁰ *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001, 1006. (D. Minn. 1971).

LLBO leadership and staff that Huber did not utilize any Federal lands in its' modeling, which as shown on Page 8 of the EAW, was not true. Huber's claimed avoidance of federal timber sources also fails to understand the land ownership dynamic within the Reservation boundaries, which makes simply avoiding federal timber sources an ineffective approach to avoiding impacts to treaty resources on and off the Reservation.

Lastly the project builds upon western doctrine that marginalizes Tribal interests to exploit Tribal forests and perpetuates historical trauma and environmental justice concerns. These EJ concerns were highlighted in the initial LLBO comments and remain unaddressed with the revised project EAW. The Leech Lake Band of Ojibwe, due to the rich forests of the Reservation has historically been the target of U.S. Federal policy to abolish Tribal land rights to open forest to outside logging interests. This began with the Nelson Act of 1889. United States Representative Knute Nelson of Minnesota, who sponsored the Act, was closely tied to the timber barons.²¹ Under the Nelson Act, each Indian family received 80–160 acre allotments within the boundaries of the Leech Lake Indian Reservation, with remaining “surplus” lands opened up for private sale. With the passage of the Nelson Act, logging commenced on the Leech Lake Indian Reservation with abandonment. It was apparent to the timber industry, which pushed for the Nelson Act, that immense profits could be made if it could get access to the timber found on the remaining tribal allotments once the surplus lands were cut. The Nelson Act was amended in 1897 to allow for the disposal of “dead and down” timber for cents on the dollar.²² This worsened the situation for the Leech Lake Nation because it encouraged dishonest

²¹ Theodore Catton, *AMERICAN INDIANS AND NATIONAL FORESTS* 41 (The University of Arizona Press, 2016).

²² Newell Searle, *MINNESOTA NATIONAL FOREST: THE POLITICS OF COMPROMISE, 1898-1908*, Fall 1971, pg. 246, Minnesota Historical Society.

loggers to run grass fires through the remaining virgin forest on the Reservation and declare it as “dead and down.”²³

In response to the Battle at Sugar Point, and under continued pressure from the Federation of Women’s Clubs, Congress enacted two statutes in relatively quick succession in an effort to remedy the effects of the Nelson Act on the Leech Lake Indian Nation. The first statute, the Morris Act of 1902,²⁴ created the Minnesota Forest Reserve. The purpose of the Minnesota Forest Reserve was to protect the 225,000 acres of remaining forestland on the Reservation. Originally, requesting that a much larger acreage be protected, the Federation of Women’s Clubs asked that only lands on the “Chippewa Reservation” be included in the Forest Reserve, scaling down the original request from 489,000 acres to 225,000 acres.²⁵ As requested by the Ojibwe delegation, this statute amended the Nelson Act to remove the dead and downed timber provision. Though the Minnesota Forest Reserve resulted in protections for a large portion of the remaining forest lands on the Leech Lake Indian Reservation, and what is now the Chippewa National Forest, it also intensified pressures on the remaining tribal allotments. In the midst of these increasing pressures on the landscape, Congress enacted the 1908 Minnesota National Forest Act, which officially established the Minnesota National Forest (renamed the Chippewa National Forest in 1928) on the lands originally designated as the Forest Reserve.²⁶

Notwithstanding the protections of the Morris Act and the National Forest Act, the competing desires to protect and exploit the timber resources found within the external

²³ Cecilia McKeig, & Renee Geving, THE 1898 BATTLE OF SUGAR POINT: THE LAST CONFRONTATION BETWEEN THE U.S. ARMY AND THE INDIANS OF NORTH AMERICA at 4, Cass County Historical Society (June 2011).

²⁴ An Act to amend an Act entitled “An Act for the relief and civilization of the Chippewa Indians in the State of Minnesota, June 27 1902. 32 Statute 400 (*Hereinafter* Morris Act).

²⁵ Searle, *supra*, note 14 at 249-250.

²⁶ An Act amending the Act of January fourteenth, eighteen hundred and eighty-nine, and Acts amendatory thereof, and for other purposes, May 23, 2008, Sixtieth Congress. Session I. Ch. 193 (*Hereinafter* Minnesota National Forest Act).

boundaries of the Leech Lake Indian Reservation combined to accelerate the dramatic loss of land experienced by the Leech Lake Nation. In just the first 20 years of the 20th century, the Nation had lost approximately 650,000 acres, and today holds the smallest percentage of its original Reservation of any of the state's Ojibwe tribes.²⁷ Of its original 677,099 acres of treaty guaranteed homelands, the Leech Lake Nation now holds approximately 27,000 acres.²⁸

This is a small portion of the history that shapes the LLBO and its' people but direct effects of legislation to marginalize Tribal interests and rights is shown in the simplified forests of the Leech Lake Reservation that the LLBO DVCs are working to restore and maintain. This project, if implemented would consume far more timber than our region can sustain, with significant negative effects on wildlife and treaty fisheries. The EAW does not represent the LLBO or its interest accurately and perpetuates false narratives that Tribal rights are not impacted by development outside reservation boundaries. The Frontier Project will perpetuate Environmental Justice issues that have defined LLBO's history of the Forest being managed for outside interests and not the Tribes and the EAW fails to consider and address what EJ impacts the project will have. This issue should be further considered in an EIS as it is a significant impact to the integrity of the LLBO.

Wildlife

The following discussion outlines concerns about habitat and species that will be jeopardized by the Huber project.

²⁷ See Minnesota Indian Affairs Council, http://mn.gov/indianaffairs/tribes_leechlake.html (last visited March 9, 2021).

²⁸ Minnesota House of Representatives Research Department, *American Indians, Indian Tribes, and State Government*, at 133 (6th Ed. Jan. 2017).

Young Forests

If implemented, this project would result in the perpetuation and increase in the amount of young almost exclusively aspen forests. It has long been recognized that there is an overabundance of aspen in northcentral Minnesota, well in excess of what should naturally be found here. Young aspen has long been touted as “good for wildlife”, but this is only true to a limited degree. In this part of MN about 25% of our wildlife species select or can tolerate young forests, while about 75% need older, structurally diverse, mixed-species forests to prosper. As a consequence, most wildlife in this region are not benefited by aspen regeneration. The other thing to consider, even for species that use young forest, is that not all clear-cut aspen stands have the same value. For example, if you take an old, highly mixed stand, and cut small patches (2-8 acres) of it that regenerate to aspen this will benefit some species such a ruffed grouse because they will have some younger brood cover near older forests that provide winter food and cover. However, when large blocks of forest are converted to monotypic aspen and repeatedly harvested and regenerated back to aspen its value to even young forest wildlife species diminishes. This is because each time an aspen stand is harvested it becomes simpler and simpler and lacks the diversity of cover and herbaceous plant species that even young forest wildlife species need. The standard method for forest harvesting 40 years ago was “high grading,” which amounted to “take the best, leave the rest”. From the perspective of wildlife species that utilize young forest this was a good thing as many of the trees such as dead, diseased, and hollow that are import to wildlife were left in the stands. Current practices of taking virtually all trees from a stand and flattening the remaining material to the ground is not good for wildlife, even young forest species. The Huber project will result in continued declines in many wildlife species and for this reason the issue needs to be evaluated in an EIS.

Snowshoe Hare

Snowshoe hare, a keystone species, is a prime example of a species that is struggling because of issues from conversion to young forests and current forest management practices. This species is generally thought to thrive in both very young and very old forest structures, but under current forest harvest methods they are nearly absent from young forests in this part of MN. Naturally young forests in this part of the country would have been created by either wind-throw events or stand replacement fires. In the case of wind-throw, the wind toppled trees provide lots of hiding cover, while increased sunlight provides a flush of new growth for hare to eat. This no longer occurs as every effort is made to “clean up” any wind damaged timber, much to the detriment of many wildlife species. In the case of stand replacement fires, hare habitat would be eliminated, but the regrowth of young trees and herbaceous plants combined with the cover created as the fire killed trees fall, provides excellent hare habitat. Once again, this no longer occurs because these types of fires are rapidly suppressed and any fire damaged trees are salvaged to “clean up” the forest. Snowshoe hare are an important cultural species to the Band as well as the forest ecosystem. This issue needs to be evaluated in an Environmental Impact Statement.

Canada Lynx

The Canada lynx was an endemic species to the Leech Lake Reservation that has all but been extirpated due to the decline of snowshoe hare. This portion of Minnesota as well as the forest regions north and west of the Reservation should be included as lynx range during the listing of the species, but against the Bands wishes they were not. We hope this will be rectified during the upcoming designating of critical habitat. We believe that if snowshoe hare populations can be recovered on the Reservation there is a good chance the Canada lynx can

return also. The Huber project, if approved, will result in the continued demise of snowshoe hare as outlined above and diminish any chance of having the lynx return to our forests. This issue needs to be evaluated in an EIS.

Goblin fern (Botrychium mormo)

The goblin fern is a cryptic fern with the center of the world's population found within the Leech Lake Reservation and Chippewa National Forest (approximately 90%).²⁹ The goblin fern was common in suitable habitat that consisted of mature to old growth mixed northern hardwoods and rich maple basswood forests, but the population has dramatically declined.³⁰ There is a genetically related species in the western US, *B. montanum* but its morphology and especially ecology is sufficiently different from *B. mormo* so they are likely to be maintained as distinct varieties.³¹ A recent survey of *B. mormo* populations found that on the Leech Lake Reservation and Chippewa National Forest goblin fern had been extirpated from 50% of sites and was in peril at 40 % of the remaining locations.³² Many of the other locations outside the CNF / LL Reservation where it has been found are believed to have already been extirpated or nearly so. At this rate of decline, the species has a high probability of being extinct within a decade or so. There have been fairly exhaustive searches for this plant in Minnesota by the DNR County Biological Survey that has surveyed all counties in Minnesota, as well as survey work completed by the US Forest Service and Leech Lake Reservation DRM. There has also been a lot of work in adjacent states that have suitable habitat. Populations are rarely found anymore

²⁹ K. J. Zlonis & B. W. Henderson, *Invasive earthworm damage predicts occupancy of a threatened Forest Fern: Implications for Conservation and Management*. 430 *Forest Ecology and Management* 291 (2018). <https://doi.org/10.1016/j.foreco.2018.08.004>.

³⁰ K. Doyle, *Conservation Assessment for Botrychium mormo (Little Goblin Moonwort)*. USDA Forest Service, Eastern Region. 15-GN-11091300-1096.

³¹ Ltr. from Dr. Donald Farrar. Personal communication, 2021. Genetics Professor Emeritus, Iowa State University.

³² Zlonis, *supra* n. 31.

with often only single plants located indicating range-wide problems. Approximately 25 years ago, when it was first determined that this plant was rapidly declining, the CNF instituted 250-foot buffers around locations where this species was found and they have subsequently avoided all management activities in forest stands where it grows. Despite these efforts plant numbers have continued to plummet.

Conditions that are favorable for this species vary from year to year and on average an individual plant may only come up one out of every three years. One thing that is certain, this species is highly dependent on the thick duff layer that accumulates on the forest floor, which has been negatively affected by the spread of non-native earthworms that destroy this habitat.³³ Many current forest management practices accelerate earthworm spread and do not allow forests to progress through natural succession to older life stages that goblin ferns need.

Earthworms have been found to be rapidly spread by human activity and logging practices. These activities limit the reproduction and growth of understory herbaceous plants as well as the regeneration of many tree saplings.³⁴ Not only are non-native earthworms a problem for *B. mormo*, but the whole northern hardwood ecosystem. The presence of earthworms reduces the size and growth of sugar maples while simultaneously increasing the mortality of trees. It also alters the abundance and species composition for herbaceous plant and invertebrates that inhabit these forests. Northern hardwood stands, particularly those containing sugar maple, are an important cultural forest type that will not prosper from this project.

We can no longer find any forest stands that have not been negatively affected by earthworms. On their own, earthworms only spread about 25-30 feet per year, so most of the

³³ Great Lake Worm Watch. <https://wormwatch.d.umn.edu>.

³⁴ Bohlen, P. J., Scheu, S., Hale, C. M., McLean, M. A., Migge, S., Groffman, P. M., & Parkinson, D. 2004. Non-native invasive earthworms as agents of change in northern temperate forests. *Frontiers in Ecology and the Environment*, 2(8), 427–435. [https://doi.org/10.1890/1540-9295\(2004\)002\[0427:nieaao\]2.0.co;2](https://doi.org/10.1890/1540-9295(2004)002[0427:nieaao]2.0.co;2)

spread we are seeing is due to human activities. For example, if an earthworm, or its cocoon, is stuck on the tire of a logging skidder for about two rotations it will have spread as far as the earthworms would have spread in an entire year on their own. Recreational vehicles like ATVs and intentional release have also rapidly spread earthworms. The Huber Project will hasten the decline of goblin fern by perpetuating short term aspen regeneration that does not allow forest succession and increased logging disturbance that hasten earthworm spread. The monotypic aspen forest type is not natural here and there is no Ecological Classification System (ECS) “aspen” type for this region.³⁵ Aspen is an early successional species that grows in many of our hardwood and richer pine types, but naturally it would not be as abundant as it is. Much of the aspen we currently have is due to the conversion of hardwood stands to monotypic aspen. The Huber project, if approved, will accelerate the demise of goblin fern and result in a trend towards federal ESA listing if not outright extinction of this species. For this reason, this issue needs to be addressed in an Environmental Impact Statement.

Northern long-eared bats

Northern long-eared bats, as well as most other bat species in MN, are not doing well, primarily due to white-nose syndrome, but many of these species are forest dwelling and dependent upon cavity trees for roosting and to rear their young. Continued and accelerated harvest of aspen will be detrimental to bat species by decreasing the number of cavities available. The Service has yet to designate critical habitat for this species so caution needs to be taken with respect to altering its habitat. This issue needs to be addressed in an EIS

Rusty Patch Bumble Bee

³⁵ Minnesota Department of Natural Resources (2003). Field Guide to the Native Plant Communities of Minnesota: The Laurentian Mixed Forest Province. Ecological Land Classification Program, Minnesota County Biological Survey, and Natural Heritage and Nongame Research Program. MN DNR St. Paul, MN.

In 2015, the rusty patch bumble bee was listed as Critically Endangered on the IUCN Red List, and in 2017 was federally listed under the Endangered Species Act. The species has a documented decline of 87% in the last 20 years. Despite active surveys and monitoring in our area the last individual that was recorded was in 2016 and was well within the potential area of effect for the Huber Project. We believe its population is declining rapidly in this area. To properly manage for this species, there are four habitat features necessary for one or more colonies to survive.³⁶ 1) Create, enhance, maintain foraging habitat: with at least 10 species of flowering plants available in the spring, summer, and fall. 2) Create or maintain nesting habitat: 20% of the area should be undisturbed with native bunch grasses, uncompacted loose soil, and fallen leaves not raked or otherwise removed. 3) Create or maintain overwintering habitat: wooded areas that contain diverse 10 or more species of spring flowering herbaceous plants, shrubs, or trees. 4) Create or maintain the following features in the management area: permanent meadows or grasslands with high diversity flowering species and maintain understory in woodlands. The loss of native flowering forbs due to earthworm activity, exacerbated by logging compacting the soil and introducing invasive species, increases phenological changes in plants due to climate change and are serious impacts that are planned byproducts of the Huber Project. Additionally, the air pollution that is anticipated with this project will drastically reduce the Rusty Patch Bumble Bees' ability to process its food and will leave it vulnerable to environmental pathogens. This needs to be considered and evaluated in an EIS for the project.

Gray wolf

A recent Federal Judge ruling returned protection of the gray wolf to the Federal Govt. over much of the United States. The reasoning of this ruling was the fact that a number of States

³⁶ *Rusty patched Bumble Bee*. Official site of the U S Fish and Wildlife Service. (n.d.). Retrieved December 13, 2021, https://www.fws.gov/midwest/endangered/insects/rpbb/pdf/ConservationGuidanceRPBBv1_27Feb2018.pdf.

have demonstrated that they are incapable of protecting the species and that it is still absent from a significant amount of its former range. The Leech Lake Band, in numerous communications with the FWS and MN DNR, have pointed out our similar concerns over protection of wolves on the Leech Lake Reservation. The gray wolf holds significant cultural value for many of our members and this was not being addressed. Efforts to get the FWS to recognize that, under federal treaty, they have an obligation to protect the interest of the Band and the species we value have not been successful. Now that the gray wolf is back under federal protection it is our hope that FWS will take our interests seriously and conduct a Biological evaluation and support an EIS for the Huber Project.

Increased timber harvest, that will need to take place if the Huber Project is approved, will not be beneficial to gray wolves and many other wildlife species. Many wolves avoid areas where there is increased human activity such as logging and vehicle traffic. Without more protected areas, with less human activity, gray wolves will not do well. We not only want to wolf populations healthy for cultural reasons, but we feel they will also play a critical role in delaying and controlling the spread of Chronic Wasting Disease (CWD) into northern MN. Wolves are specialist in identifying and removing sick and injured prey from a population. By doing so, especially in the case of CWD, we believe they can reduce the spread of the disease onto the Leech Lake Reservation.

Due to the recent re-listing of gray wolves on the endangered species list, it is imperative that the Frontier Project consider potential impacts to gray wolves from the anticipated timber harvest and other ecosystem impacts from other components of the facility.

Public Water Wetlands

The EAW gives very little consideration to Project impacts on wetlands, dismissing the potential elimination of Public Water Wetlands. The EAW indicates that “[t]wenty-six (26) of

the delineated 31 wetlands are proposed to be permanently filled or excavated as a result of the proposed project (48.8 acres of delineated wetlands with 28.46 acres of total unavoidable impact).” The EAW goes on to identify two Public Water Wetlands that the Project will fill. There is no discussion of the specific impacts on the Public Water Wetlands. The EAW concludes without support that the Project does not trigger a mandatory EIS for eliminating Public Water Wetlands because the Project will reduce the size but not entirely fill Public Water Wetlands. This conclusion fails to consider Minnesota Court of Appeals precedent that further analysis of Public Water Wetland impacts is necessary to determine the impacts on Public Water Wetlands.

An EIS is mandatory when a proposed project will change the characteristics of a Public Water Wetland in ways that it will no longer meet the definition of a Public Water Wetland. A Public Water Wetland is any “type 3, 4, and 5 wetlands, as defined in United State Fish and Wildlife Service Circular No. 39 (1971 edition), not included within the definition of public waters, that are ten or more acres in size in unincorporated areas or 2-1/2 or more acres in incorporated areas.”³⁷ Changes to a Public Water Wetland reducing the size below ten acres in unincorporated areas or 2-1/2 acres in incorporated areas, or changing the qualities of the wetland so that it is no longer a type 3, 4, nor 5 Circular No. 39 wetland are the elimination of a Public Water Wetland.

Impacts much less direct than partially filling a Public Water Wetland can result in eliminating a Public Water Wetland. In *Minnesota Center for Environmental Advocacy v. Big Stone County Board of Commissioners*, the Minnesota Court of Appeals determined that indirect impacts to a Public Water Wetland resulting in a type 2 wetland following the project would

³⁷ Minn. Stat. § 103G.005, subd. 15a (2021).

eliminate the Public Water Wetland.³⁸ The court is clear that when a wetland would no longer meet the definition of Public Water Wetland following a project when it did before, the project triggers a mandatory EIS.³⁹ The court does not discuss other impacts to Public Water Wetlands that may trigger a mandatory EIS, but it can be reasonably inferred that enough information needs to be considered in an EAW to understand the potential impacts on Public Water Wetlands. The analysis of impacts to PWWs in the EAW is totally inadequate to determine whether the identified PWWs will remain PWWs following construction because the EAW simply identifies the acres to be filled without any analysis of hydrological impacts.

Partially filling a wetland will inevitably alter the hydrological functions that create the specific features. The EAW concludes that filling 8.73 acres of a 14.27-acre Public Water Wetland, leaving 5.53 acres, and filling 1.65 acres of a 5.67-acre Public Water Wetland, leaving 3.72 acres, will not eliminate Public Water Wetlands. There is no discussion of whether either Public Water Wetland is in an incorporated or unincorporated area, which changes the acreage required to meet the definition of Public Water Wetland. Part of the Project is in the incorporated area of the City of Cohasset, but portions, specifically portions of the railroad spur, are in an unincorporated area. At a minimum the EAW must identify whether the impacted Public Water Wetlands are in an unincorporated area.

Whether the portions of the Public Water Wetlands that remain after being filled as proposed maintain the other characteristics necessary to be Public Water Wetlands is not addressed at all in the EAW. Analysis of the hydrological impacts of filling substantial portions of delicate wetland habitats is necessary to determine whether the project will eliminate Public Water Wetlands. The RGU cannot allow the project to go forward without more information on

³⁸ See *Minn. Ctr. for Envtl. Advoc. v. Big Stone Cty*, 638 N.W.2d 198 (Minn. Ct. App. 2002).

³⁹ *Id.* at 204.

how the Project will impact Public Water Wetlands. The EAW clearly identifies direct impacts to Public Water Wetlands and it is necessary to understand how the proposed impacts will change the characteristics that meet the definition of Public Water Wetland. Allowing a Project to proceed after identifying direct impacts to Public Water Wetlands recklessly disregards the substantial probability that Public Water Wetlands will be eliminated.

To ensure that the Project will not eliminate Public Water Wetlands, the burden of proof should be shifted to the proposer preparing the EAW. Requiring the proposer to prove that their proposed impacts will not eliminate a Public Water Wetland will avoid any unnecessary risk. The RGU can shift the burden effectively by either ordering an EIS based on Minnesota Rule 4410.4400 subpart 20 or requiring further analysis of the impacts on Public Water Wetlands that conclusively show that the remaining portions of the Public Water Wetlands will still meet the definition for Public Water Wetlands. The benefit of requiring an EIS over further analysis in the EAW is the required alternatives analysis. Analyzing alternatives to the proposed design could reduce the impacts to Public Water Wetlands by finding an alternative design that is cost effective and avoids impacts to Public Water Wetlands completely.

Eagle Nest Destruction

The Leech Lake Band of Ojibwe learned of Huber's intent to destroy eagle nests when reviewing the Environmental Assessment Worksheet prepared for Huber and submitted to City of Cohasset. This document includes a statement:

The US Fish & Wildlife Service has been contacted about the permit for removal of the bald eagle nests. They indicated that mitigation will be necessary to help offset loss of the nests. Because eagles and nest sites are so abundant in Itasca County, it will not be necessary to compensate by creating an artificial nest. Instead, they said they would accept mitigation in the form of payment to an eagle conservation organization. Details of the mitigation will be resolved during application and approval of the appropriate permit.

Nest removal should occur during the season when eagles are not actively nesting (September – December).⁴⁰

The Leech Lake Band is concerned that technical assistance represented in this statement is incorrect and has sent Huber down the wrong path.

At the outset, the Service has a mitigation policy that sequentially includes avoidance, minimization, rectification, reduction over time, and finally, compensation for negative impacts.⁴¹ Huber’s mitigation proposal skips over avoidance and minimization requirements, as discussed above, and should be denied for this reason.

Second, permit issuance is not automatic. Prior to issuing any nest take permit, the Service must consider multiple criteria, including (a) purpose for the take (b) if the removal is consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units and the persistence of local populations throughout the geographic range of each species; (c) if there is a practicable alternative to removing the nest; and (d) if required, proposed mitigation.⁴²

After the Service considers avoidance and minimization, federal regulation provides authority for permits when “the activity necessitating the take or the mitigation for the take will, with reasonable certainty, provide a net benefit to eagles.”⁴³ Huber’s proposed mitigation is to make a \$2000 donation to the University of Minnesota’s Raptor Center. This is a trivial sum that would not rehabilitate one eagle, and much less as measured against the destruction of two eagle nests and surrounding nesting habitat.

⁴⁰ Frontier Project Environmental Assessment Worksheet, 27–28 (Sept. 17, 2021).

⁴¹ See, 46 Fed. Reg. 7644 and 40 CFR 1508.1.

⁴² See Frequently Asked Questions About a Federal Permit for Take of an Eagle Nest, Sept. 2018.

⁴³ 50 CFR 22.27

In addition, the technical assistance is incorrect because any nest removal under 50 CFR 22.27(a)(1)(iv) must include compensatory mitigation where the permitted activity itself does not provide a net benefit to eagles. This is stated in 22.27(b)(8)(iii) and made clear in the preamble to the revised 2016 regulations. “If the activity itself has a net benefit, compensatory mitigation would not be required. For example, a nest might be flooded during a riparian restoration project undertaken to provide improved habitat for eagles. Where the activity itself does not benefit eagles, the net benefit must be through compensatory mitigation.”⁴⁴ Compensatory mitigation is significantly more demanding and must conform to the standards at Section 22.26(c)(1)(iii). Primarily, compensatory mitigation must be determined based on application of all practicable avoidance and minimization measures. These factors noted above will be detrimental to the eagle populations and therefore this issue needs to be evaluated in a biological assessment and and EIS.

Additional Mandatory EIS Triggers

An EIS must be prepared for the Huber Frontier Project because it meets or exceeds the threshold in several mandatory EIS categories under Minnesota Rules Part 4410.4400. Although Huber has received an exemption from an EIS triggered solely by Gross Floor Space, this special law is void because it violates Article XII of the Minnesota Constitution. In addition, because the Frontier Project includes multiple EIS-triggering components, an EIS must be prepared regardless of whether the project meets or exceeds thresholds in specific mandatory categories.

Minnesota Rules 4410.4400, subpart 11 provides that an EIS must be prepared for any industrial facility that exceeds certain gross square footage. Because Cohasset is a fourth-class city, an EIS is required if the facility exceeds 500,000 square feet. Huber’s proposal to construct

⁴⁴ 81 Fed. Reg. 91508.

a 750,000 square foot facility exceeds this threshold. Last year the Minnesota Legislature enacted a special exemption as follows:

FACILITATE ENGINEERED WOOD PRODUCT MANUFACTURING FACILITY; ITASCA COUNTY.

Notwithstanding any law to the contrary, a corporation or other legal business entity that proposes an economic development project to build an engineered wood product manufacturing facility in Itasca County and that receives a written offer of financial incentives to be provided for that project from both the Department of Employment and Economic Development and the Department of Iron Range Resources and Rehabilitation anytime during 2021 is exempt from the requirement to conduct a mandatory environmental impact statement that is triggered solely by the proposed facility's gross floor space area. The business entity is still required to conduct an environmental assessment worksheet (EAW) for any mandatory EAW categories, along with any subsequent environmental permitting required for the project after environmental review is complete. For any work in wetlands that cannot be avoided or further minimized for this project, the business entity must conduct all required wetland permitting and agree to mitigate for any wetlands impacts at a ratio of 1.5 times the required mitigation ratio determined by regulatory agencies. Any wetland credits must be purchased in the same watershed.⁴⁵

This special law is void because it violates Article XII, Section 1 of the Minnesota Constitution, which provides that the legislature shall pass no local or special law granting to any private corporation any special or exclusive privilege, immunity or franchise.

Huber's special law is manifestly arbitrary, as it applies a series of unrelated conditions designed so that no corporation other than Huber could be in position to take advantage of this special law. In addition, there is no reasonable relationship between the classification and the subject matter of the legislation (exemption from environmental regulation). What constitutes a proper basis of classification is determined by employing a three point "rational basis" test. "[I]f (a) the classification applies to and embraces all who are similarly situated with respect to conditions or wants justifying appropriate legislation; (b) the distinctions are not manifestly

⁴⁵ Minnesota Session Law, 1st Special Session, Chapter 6, Section 129.

arbitrary or fanciful but are genuine and substantial so as to provide a natural and reasonable basis justifying the distinction; and (c) there is an evident connection between the distinctive needs peculiar to the class and the remedy or regulations therefore which the law purports to provide."⁴⁶ Because Huber's special exemption violates Article XII of the Minnesota Constitution, an EIS must be prepared based on the square footage of the proposed facility.

Several additional mandatory EIS categories are potentially applicable to the Frontier Project and are not addressed in the EAW. The RGU should require Huber to consider all potentially applicable mandatory EIS categories and demonstrate, through sufficient analysis, whether these mandatory EIS categories are triggered.

Land Conversion in Shorelands

An EIS must be prepared for any project that permanently converts 40 or more acres of forested or other naturally vegetated land in a sensitive shoreland area or 80 or more acres of forested or other naturally vegetated land.⁴⁷ "Shoreland" is defined under Part 4410.0200 by reference to 6120.2500 Subpart 15, and means any land within 1,000 feet from the ordinary high water level of a lake, pond, or flowage. The proposed project site is immediately adjacent to a small lake on its southeast corner and the project would convert more than 80 acres of naturally vegetated land, thus an EIS is required. The lake is readily apparent on the EAW maps, in particular Figure 7, Surface Hydrology, where it is designated as a Watercourse. On the Cohasset Zoning Map in Appendix B the body of water is designated as Lakes & Rivers. The proposed project is within 1,000 feet of the high water level of this waterbody and is converting more than 80 acres of forested or other naturally vegetated land, and therefore a mandatory EIS should be ordered under this mandatory EIS category.

⁴⁶ *Wichelman v. Messner*, 250 83 N.W.2d 800, 824 (Minn. 1957).

⁴⁷ Minn. R. 4410.4400, subd. 27.

Public waters and public water wetlands

An EIS must be prepared for any project that will eliminate a public water or public waters wetland. A public water wetland is any “type 3, 4, and 5 wetlands, as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), not included within the definition of public waters, that are ten or more acres in size in unincorporated areas or 2-1/2 or more acres in incorporated areas.”⁴⁸

The EAW argues that the permanent wetland impacts will result in a reduction in size but not the elimination of Public Waters Wetlands, and therefore do not trigger a mandatory EIS. This is incorrect.⁴⁹ In *Minnesota Center for Environmental Advocacy v. Big Stone County Board of Commissioners*, the court determined that the wetland in question would be eliminated because a significant reduction in size would change the wetland category.⁵⁰ A public water wetland that is reduced to less than 2.5 acres in incorporated areas or to less than 10 acres in unincorporated areas following a project would also be eliminated even if it remained a type 3, 4, or 5 wetlands.

Paper or pulp processing.

An EIS must be prepared for any construction of a new paper or pulp processing mill. Pulp is defined in the Merriam-Webster Dictionary as “material prepared by chemical or mechanical means from various materials (such as wood or rags) for use in making paper and cellulose products.”⁵¹ Oriented Strand Board is a cellulose product under Minnesota law.⁵² The Oriented Strand Board Production Incentive, defines “Oriented strand board” as a material

⁴⁸ Minn. Stat. 103G.005, subd. 15a.

⁴⁹ See *Big Stone Cty. Bd. of Commissioners*, N.W.2d at 203–04.

⁵⁰ *Id.*

⁵¹ Pulp, Merriam Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/pulp>.

⁵² Minn. Stat. § 41A.21.

manufactured into panels using forest resources. “Forest resources” is defined as raw wood logs and material primarily made up of cellulose, hemicellulose, or lignin, or a combination of those ingredients. Oriented Strand Board is a cellulose product prepared by mechanical and chemical means from wood products and falls under the definition of paper or pulp processing mill. Therefore, an EIS must be prepared for the Huber facility based on Minnesota Rules 4410.4400, subpart 10.

Fuel conversion facilities.

An EIS must be prepared for construction of any new fuel conversion facility for converting coal, peat, or biomass sources to gaseous, liquid, or solid fuels if the facility has the capacity to use 250,000 dry tons or more per year of input.⁵³ The EAW describes Huber plans to use “biomass fuel” as the primary source of fuel for two enormous drying furnaces. The dual fuel burners will be fed with wood, dust burners, feedstock bark, fines/trim waste and sander dust. The dust burners can also be fired with natural gas. Although the biomass fuel capacity is not described in the EAW, it likely exceeds 250,000 dry tons given the facility’s capacity. Clearly the Frontier Project contemplates converting biomass into solid fuel to fire the dryers and other equipment. Huber must provide analysis regarding its biomass fuel conversion at the facility to determine whether this mandatory EIS category applies to the Frontier Project.

Transmission lines.

An EIS must be prepared for construction of any high-voltage transmission line with a capacity of 200 kilovolts or more.⁵⁴ The EAW does not describe the transmission line capacity, only that it will be constructed by Minnesota Power. The transmission line is a connected action essential to the Huber facility and must be considered as a part of the overall project. Under

⁵³ Minn. R. 4410.440, subp. 5.A.

⁵⁴ Minn. R. 4410.4400, subp. 6.

4410.2000, connected actions must be considered in total when determining the need for an EIS and in preparing the EIS. More information is necessary to determine whether this mandatory EIS category is applicable to the Frontier Project and the burden of proof should be on Huber to show that the proposed transmission lines will not meet the threshold for this category.

Industrial facilities with multiple components.

An EIS must be prepared for any industrial project which includes multiple components in the mandatory EIS categories, regardless of whether the project exceeds any threshold specified in specific mandatory categories.⁵⁵ The multiple components that trigger 11C include: Subpart 5: Fuel conversion facilities; Subpart 6: Transmission lines; Subpart 10: Paper or pulp processing; and Subpart 20: Public waters and public water wetlands.

Subpart 11C states for projects with multiple components, the entire project must be compared to the Gross Floor Space thresholds specified in items A and B to determine the need for an EIS. As noted above, Huber's special exemption from Gross Floor Space thresholds is void as unconstitutional. Even if this special law were valid, by its terms Huber is exempt from the requirement to conduct a mandatory EIS that is triggered solely by the proposed facility's gross floor space area. Under Subpart 11C, the trigger is multiple components within the mandatory categories and an additional comparison to Gross Floor Space Thresholds. For this reason, an EIS must be prepared for the project under subpart 11C. Although Huber has a legislative exemption from Subpart 11B's mandatory EIS based on square footage of an industrial facility, it is not exempt from subpart 11C requirements for an EIS for an industrial facility with multiple components.

RGU Selection, Bias, and Pre-judgment

⁵⁵ Minn. R. 4410.4400, subp. 11.C.

It has recently come to the attention of Leech Lake that there was extensive collaboration between Huber and their various representatives, Minnesota agencies, Minnesota legislators, the Governor's Office, and the designated RGU, the City of Cohasset, prior to any public notification regarding the proposed project. The communications that Leech Lake has had the opportunity to review to this point indicate collusion between agencies, the governor's office, legislators, and Huber to avoid environmental review requirements, including permits, and to ensure that the City of Cohasset was selected as the RGU. Contrary to existing law on environmental review procedures. The emails attached were received through Minnesota Data Practice Act requests and should be made part of the administrative record for this project. It is not possible to know that all communications regarding the Frontier Project involving Minnesota elected or appointed officials or staff have been provided to date. Based on the ongoing nature of communications between Huber and state entities, Leech Lake reserves the right to supplement the attached communications as new information is received and reviewed. A very important aspect of the environmental review process is a neutral evaluation of the environmental effects from the project. Based on the review documents it does not appear that any of the potential RGUs, the City of Cohasset, Minnesota Pollution Control Agency, Department of Natural Resources, nor the Environmental Quality Board, can provide a neutral evaluation because these entities were all involved in the closed door deals that brought the Frontier Project to the current process.

Conclusion

The Frontier Project manufacturing facility is proposed to be located one mile east of the Leech Lake Reservation, consuming 614 million board feet of timber annually, with most timber necessarily harvested from the Leech Lake Reservation or the 1855 Treaty area. Constructed on

federal wetlands connected to the Mississippi River and Blackwater Creek within the 1855 Treaty Territory of the Leach Lake Band of Ojibwe, it raises significant concerns regarding negative impacts to treaty hunting, fishing and wild rice gathering rights. The Huber plant would be a significant source of harmful air pollution, with emissions exceeding 250 tons of multiple pollutants annually, with negative impacts to human health, loss of culturally significant wildlife, detriments to water quality, and loss of wetlands through atmospheric deposition of pollutants. The Environmental Assessment Worksheet prepared for the Frontier Project fails to adequately consider treaty rights, environmental justice, or to adequately identify significant environmental effects related to timber harvest, wetlands, culturally significant species, or air quality; without any analysis of avoidance, mitigation, or alternatives. For these reasons, the Frontier Project requires an Environmental Impact Statement pursuant to the Minnesota Environmental Policy Act based on significant environmental effects, cumulative impacts from timber harvest and air emissions, and destruction of Public Water Wetlands.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Benoit', with a stylized flourish at the end.

Benjamin Benoit
Interim Division Director
Division of Resource Management
Leech Lake Band of Ojibwe

Enclosures:
Leech Lake Band of Ojibwe Reservation Business Council Resolution No. 01-73

Leech Lake Band of Ojibwe Reservation Business Council Resolution No. 2020-06
Numerous emails and text messages