



Department of
Environmental Services/Zoning

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To: Janet Reiter, County Attorney
John Moosey, County Administrator
From: Mary Darragh Schmitz, Environmental Services Director
Subject: Comments on LS Power Development Agreement & Project

mdo

Following are some comments from our office that may be pertinent to the LS Power developer's agreement with the County. We are also forwarding some thoughts about the project as a whole, which may or may not be appropriately addressed in the developer's agreement.

First and foremost, the County, and this Department, has the primary regulatory authority for the Wetland Conservation Act. This department has WCA authority in every city and township in the County, with the exception of Wyoming. Therefore, any draining, filling, or excavation planned for site construction or routing of pipes that impacts wetlands must be approved through this Department. The authority is cited below as follows:

In 1992, the Chisago County Board of Commissioners, by resolution adopted the Minnesota Wetland Conservation Act Rules or Chapter 8420 and subsequently delegated enforcement authority to the Chisago County Department of Environmental Services. The rule cite for enabling authority is 8420.200 Subpart 1A. The local government unit responsible for making exemption, wetland type, wetland boundary, and no-loss determinations and approving replacement and wetland banking plans shall be determined according to items A-D.

- A. Outside the seven-county metropolitan area, the LGU is the county or city in which the drain or fill activity is located, or its delegate. (In this instance this office is the delegate.)

The following comments were developed as the bill was being debated. It may or may not be too late to address these in the developer's agreement, but we wanted to share our concerns with you as negotiations continue with LS Power. Some of these provisions were in an earlier version of the bill, but were dropped in the final version:

- at least 50% of the facility's peak daily water use will be supplied through reuse and recycling.
- any harm to an aquifer or surface water as a result of construction or operation and maintenance of the facility will be mitigated.
- construction or operation and maintenance of the facility will not add to the impairment of any Federal Clean Water Act section 303d listed lake, river or stream segment and operation will be fully consistent with the recommendations of a Total Maximum Daily Load study.

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- construction or operation and maintenance of the facility will not withdraw any water from the Mount Simon Hinckley aquifer which is inconsistent with the recommendations of the county geologic and hydrogeologic atlas.
- construction or operation and maintenance of the facility will be consistent with the Minnesota Endangered Species Act and will not result in an unauthorized taking of any state or federally listed endangered species.
- construction or operation and maintenance of the facility will be consistent with the provisions of the 1989 Minnesota Groundwater Protection Act and the intent of M.S. 103G.271.
- construction or operation and maintenance of the facility will be consistent with the recommendations of any state or federally funded watershed study.
- construction or operation and maintenance of the facility will have in place a Wellhead Protection Plan approved by the Commissioner of the Minnesota Department of Health.
- construction or operation and maintenance of the facility will be consistent with the water quality goals of the receiving waters, especially those designated as wild and scenic under the federal Wild and Scenic Rivers Act of 1968.

Sections 3.2 and 4.2.2 of the draft developer's agreement discuss reimbursement of expenses for professionals to review, evaluate and monitor the project. It appears that this only applies to professionals outside of County employment. I believe it is possible that a significant amount of time related to project analysis may be spent by me, Jeff Fertig, and Jerry Spetzman. Would it be possible to secure reimbursement for County staff time related to this project?

Additionally, we have a few questions regarding the project itself that we would like answered:

- has any electric generation facility been built to date that uses wastewater effluent as the preferred water source? If so, please share any data with the County. If not, please provide an analysis documenting why the reuse of effluent will be successful as a preferred water source.
- please explain why the use of the Chisago Lakes wastewater treatment plant outfall is preferred to an outfall located at the site of the plant. Will the discharge be treated to a higher standard?
- does the sewage treatment process at the Chisago Lakes wastewater treatment plant properly treat any contaminants contained in the returning wastewater from the electric generation facility including thermal pollution? Please provide any data regarding this question.

Finally, I believe it would be helpful and useful if our department could fill a liaison role for this project, especially with the Chisago Lakes Joint Sewage Treatment Commission.

Thank you for the opportunity to submit these comments to you. We are available any time to provide assistance to you as this project moves forward.

cc: Jeff Fertig
Jerry Spetzman