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Of Counsel



April 28, 2017

VIA EMAIL to bradleya.johnson@wi.gov

Bradley Johnson
Wisconsin Department of Natural Resources
5301 Rib Mountain Drive
Wausau, WI 54401

Re: Meteor Timber LLC wetland fill application, Docket Nos. IP-WC-2016-42-00902, IP-WC-2016-42-00141, IP-WC-2016-42-01514, -1516, 01517, 01518, 01519, 01520, 01521, 01522, 01523, 01524

Dear Mr. Johnson:

Thank you for the opportunity to comment on Meteor Timber's proposal to construct a new industrial sand processing facility and rail site ("AK Knapp site") that would destroy 16.25 acres of pristine forested wetlands in Monroe County, Wisconsin. Midwest Environmental Advocates submits these comments on behalf of the Ho-Chunk Nation.

The Ho-Chunk Nation is one of the strongest indigenous Nations in the United States. The Nation's land extends throughout the Midwest, including significant tribal and trust lands in Wisconsin. There are many Ho-Chunk members throughout the state, and their history and culture is tied to Wisconsin. Ho-Chunk members and lands are dispersed throughout the area of Wisconsin most heavily impacted by industrial sand mining. The Nation's government is dedicated to protecting their people and lands for this and future generations. The expansive and permanent destruction of the landscape, including wetlands, for industrial sand mines threatens the Nation's people, land, and cultural heritage.

Midwest Environmental Advocates is a nonprofit environmental law center that works to ensure clean water, air, land, and government for this generation and the next.

MIDWESTADVOCATES.ORG

612 W MAIN STREET, SUITE 302 P 608.251.5047
MADISON, WISCONSIN 53703 F 608.268.0205

Exhibit B

As explained below, the Department of Natural Resources (“DNR”) should not issue a wetland fill permit to Meteor Timber because it has not established that the AK Knapp site is the least environmentally damaging practicable alternative, does not include an adequate compensatory mitigation plan, and is not in the public interest.

This project would result in more wetland destruction than any other single industrial sand facility in the state. In fact, the wetland destruction would amount to 60% of the total wetland acres that have been filled by the industrial sand mining industry to date. What makes the amount of wetland destruction even worse is that the site contains a very large area of contiguous, undisturbed, high-quality wetlands. Over 13 acres of the wetlands slated for destruction are classified as hardwood or coniferous swamps. This wetland type is ranked as rare and imperiled in Wisconsin, and it is very difficult, if not impossible, to replace once destroyed.

The DNR should not issue a wetland fill permit to Meteor Timber so that it can enter into the speculative industrial sand market. As its own economic analysis makes clear, industrial sand is subject to the volatile energy market that is currently lagging.¹ While Meteor Timber might have an economic incentive to enter into this speculative market, this company’s potential profits do not warrant the permanent destruction and fragmentation of a large area of high quality wetlands.

I. Alternatives Analysis

The DNR may issue a wetland discharge permit only if “[t]he proposed project represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts.”² Meteor Timber has not established that its proposed project represents the least environmentally damaging practicable alternative, and thus is not entitled to a wetland discharge permit.

The amount of high quality wetlands that this project would destroy must inform the depth of the agencies’ analysis of Meteor Timber’s application. Wisconsin law provides that the DNR “shall impose a level of scrutiny and require an applicant to provide an amount of information that is commensurate with the severity of the environmental impact of the project.” In this case, the proposed project would have severe and irreversible environmental impacts, and warrants a high level of scrutiny by the DNR.

Meteor Timber’s proposal does not hold up to careful scrutiny because it lacks a sufficient analysis of alternatives that would avoid or minimize wetland impacts, and does not include an adequate analysis of off-site alternatives.

A. Meteor Timber’s project will not result in a demonstrable public economic benefit

¹ Weld Riley ltr to Bradley Johnson, DNR (Aug. 24, 2016), Attachment 2a (John T. Boyd Report).

² Wis. Stat. § 281.36(3n)(c)1.

The DNR sent a letter to Meteor Timber on October 20, 2016, confirming that DNR would conduct a limited review of practicable alternatives based on the DNR's determination that the proposed project will result in a "demonstrable economic public benefit."³ Under this limited review, the DNR will consider only "those practicable alternatives that are located at the site of the discharge and that are located adjacent to that site."⁴

As an initial matter, Meteor Timber has not established that its proposed project will result in a demonstrable economic public benefit. "Demonstrable economic public benefit" is defined as "an economic benefit to the community or region that is measurable, such as increased access to natural resources, local spending by the proposed project, employment, or community investment."⁵ Meteor Timber highlights the positive aspects of its proposed project, but does not address the economic harm that it will cause, which negates the public benefits.

Numerous individuals at the public hearing raised concerns about the net negative economic impact of the proposed project. Mr. David Epstein, CEO of Mosser Lee / LabTech, testified at the public hearing that Meteor Timber's project would harm local businesses, including the tourism industry that is critical to that region. Other Wisconsin residents that live near other industrial sand mines warned of the decline in their property value as a result of nearby industrial sand mines.

Meteor Timber presents studies that are favorable to its argument that the proposed project will result in an economic benefit, but there are many studies to the contrary. UW-Extension published a short fact sheet entitled "The Economics of Frac Sand Mining" in which it summarizes existing economic impact studies and concludes:

- Property values tend to decline near surface mines and haul routes;
- Mining dependent local economies tend to be more unstable; and
- When mining operations slow production or close, workers are less competitive for other employment opportunities and can become a hindrance to future economic growth.⁶

Similarly, another study in May of 2013, *The Economic Benefits and Costs of Frac-Sand Mining in West Central Wisconsin*, concluded that the mining industry frequently fails to produce sustained economic benefit for local communities.⁷ This study notes that the negative impacts of mining on the landscape and quality of life "can discourage the in-migration of new residents and businesses as well as discourage visitors and undermine the local potential for an expanding visitor economy."⁸

³ Wis. Stat. § 281.36(3n)(a)1.a.

⁴ Wis. Stat. § 281.36(3n)(a)1.

⁵ Wis. Stat. § 281.36(1)(am).

⁶ Attachment 1, UW Extension, *The Economics of Frac Sand Mining*.

⁷ Attachment 2, Power & Power, *The Economic Benefits and Costs of Frac-Sand Mining in West Central Wisconsin* (May 2013).

⁸ Attachment 2 at 23.

Meteor Timber's studies, however, focus on the economic benefits of industrial sand mining, but do not accurately evaluate the economic costs to other sectors of the economy or property values. For example, Meteor Timber relies heavily on the number of direct and indirect jobs created by the sand mining industry. But the boom and bust nature of mining results in economic harm to the community even if it initially creates some jobs, as noted by UW-La Crosse professor of economics, John Nunley.

There is a large amount of literature in my field of labor economics that show layoffs cause lasting harm. Some of the estimates indicate workers affected by, for example, plant closings can lose up to 20-30 percent of the lifetime earnings. A mine opening, hiring people and then laying people off could be very harmful to their future employment prospects and lifetime earnings.⁹

Meteor Timber's economic analysis confirms the "volatile nature" of the industrial sand market that goes up and down with the energy market.¹⁰ Indeed this economic analysis notes that some sand mines in Wisconsin have shut down in recent years as sand proppant consumption went from 119 million tons in 2014 to 68 million tons in 2016.¹¹

Further, arguments by Meteor Timber's attorney in a July 22, 2016, letter to the DNR do not establish a public economic benefit. Meteor Timber argues that annual payments to the Towns of Grant and Knapp provide a measurable economic benefit to the community. But these payments, which are required by development agreements with each town, may simply provide compensation to the towns for the costs of Meteor Timber's proposed project rather than an economic windfall for the community. For example, additional traffic for the facility will require road improvements that the town may be responsible for. Additionally, Meteor Timber highlights the wetland preservation in its mitigation plan as a public benefit. But the definition of demonstrable public economic benefit is increased access to natural resources, and Meteor Timber does not plan to make this wetland preserve open to the public.

Meteor Timber has not established a demonstrable public economic benefit sufficient to warrant a more limited analysis of alternatives. The economic public benefit of this project is, at best, debatable. Thus, the DNR should require Meteor Timber to demonstrate that its project is the least environmentally damaging practicable alternative considering all other alternatives, both on and off site.

B. Inadequate analysis of alternative sites

Meteor Timber has not provided a sufficient analysis of alternatives. The alternative analysis is conclusory and tailored to favor Meteor Timber's preferred alternative: the AK Knapp site.

⁹ Attachment 3, Jordon Simonson, *Analyzing the economic benefits of sand mining and the social costs*, Jackson County Chronicle (Apr. 19, 2017).

¹⁰ Weld Riley ltr to Bradley Johnson, DNR (Aug. 24, 2016), Attachment 2a at 4 (John T. Boyd Report).

¹¹ Riley ltr to Johnson, Attach. 2a at 6.

Meteor Timber does not detail precise wetland impacts of alternatives, and instead simply asserts that otherwise feasible alternatives would result in unspecified wetland impacts as well.

Meteor Timber also fails to analyze in any detail the feasibility of purchasing an existing, inactive rail site or exploring an alternative mine site that would make other rail sites feasible. There are at least two existing, inactive industrial sand facilities that include a rail loadout just south of Tomah, and there are several others to the north and west of Meteor Timber's planned mine site. Meteor Timber must analyze whether it is feasible to use or expand an existing rail loadout instead of building a new one.

Meteor Timber's economist, John T. Boyd, speculates that it is not feasible for Meteor Timber to purchase an existing, inactive sites because these "high cost, heavily leveraged operations" were quickly established with little or no planning, and come with "inherent mistakes" that may be impossible to remedy.¹² It is certainly in Meteor Timber's interest to make this assertion, but relying on generalizations about inactive facilities in Wisconsin instead of looking at feasible sites nearby does not provide the specificity required for a project that would impact a large area of high-quality wetlands.

Meteor Timber also must evaluate the alternative of using a different mine site than the one planned, which would allow it to use other rail loadout site alternatives. Meteor Timber's alternative analysis examines only alternative rail and processing sites, but does not examine whether an alternative mine site would make other rail and processing sites economically viable.¹³ It is not sufficient for Meteor Timber to rely on conclusory assertions that alternatives are too costly and that the AK Knapp site is the only feasible alternative. This self-serving analysis does not hold up to the level of scrutiny warranted for a project of this magnitude.

Further, Meteor Timber has not established that some of the alternatives that it analyzed are not feasible. For example, the alternative "Site 2-Millston A" would result in far less wetland or no wetland impacts, and the only barrier to this site is access because it is on the other side of the UP mainline. As DNR noted in a June 9, 2016, request for more information, "If the UP doesn't want [Meteor Timber] to have a mainline crossing here, [Meteor Timber] will need to investigate the possibility of acquiring other property on the west side of this site where you could drop finished product that could be conveyed over or under Hwy 12 and the UP mainline to this site." But instead of doing that investigation, Meteor Timber relied on a letter from UP that said, "the overhead conveyor over multiple yard tracks and main will not fly."¹⁴ It

¹² Riley ltr to Johnson, Attach. 2a at 6.

¹³ Wetland Permit Application, AK Knapp Transload Site, Meteor Timber, LLC (Mar. 18, 2016). We note that a subsequent economic analysis by John T. Boyd, Riley ltr to Johnson, Attach 2a at 10-11, assumes that Meteor Timber would have to pay a mineral royalty at other mining sites. The economic analysis does not analyze other properties Meteor Timber owns to determine if they contain Mt. Simon formation reserves. The economic analysis also unduly constrains the analysis of alternatives by presuming that any mine site would need to be located near the proposed AK Knapp site. Riley Ltr to Johnson, Attach 2a at 11. This analysis is circular since Meteor Timber argues that it is the processing facility and rail that must be located at the AK Knapp site because of its proximity to the mine, not the other way around.

¹⁴ Riley ltr to Johnson, Attach 6.

is likely that DNR did not further pursue this item, despite the deficient explanation, because DNR determined that it would conduct a limited alternative analysis.

We request DNR reconsider the decision to conduct a limited alternatives analysis and request more information from Meteor Timber. In addition to the Site 2 investigation, DNR needed the following information to evaluate Meteor Timber's investigation of alternative sites:

- A detailed description of the maximum distance that Meteor Timber could truck sand and still have a viable project;¹⁵
- Evaluation of other contiguous parcels owned by Monroe and Jackson Counties with few wetlands on them where Meteor Timber could site a loop track;¹⁶
- A detailed analysis of the return required to make this project economically viable;¹⁷ and
- The viability of purchasing a sand source closer to an alternative rail site that has less wetland impacts.¹⁸

Without this additional information or investigation, DNR cannot assess whether the AK Knapp site is the least environmentally damaging practicable alternative.

II. Compensatory Mitigation

In an attempt to balance the negative environmental impacts of its project, Meteor Timber makes much of the supplemental environmental benefits of its compensatory mitigation plan. These aspects of its proposal cannot hide the deficiencies in Meteor Timber's compensatory mitigation proposal.

First, the compensatory mitigation plan will not replace the damage that this project will do to a rare and imperiled wetland community type: the hardwood or coniferous swamp. Meteor Timber proposes to preserve a large area of forested wetlands, but will not create or restore any forested swamp as part of its project. This does not comply with the state goal of a net gain of wetlands in Wisconsin.

Second, the compensatory mitigation plan does not adequately account for the temporal loss in wetland functions at this site. Both the on-site mitigation and any credit purchase will not immediately replace the loss of flood storage capacity, pollution attenuation, and habitat currently provided by this site.

Third, Meteor Timber's compensatory mitigation plan relies heavily on permittee-responsible mitigation, which is the least preferred type of mitigation for good reason. Experience has shown that it is very difficult to successfully create and restore wetlands. Further, this type of

¹⁵ Bradley Johnson, DNR, ltr to Meteor Timber, LLC, item 8 (June 9, 2016).

¹⁶ Johnson ltr to Meteor Timber, item 8.

¹⁷ Johnson ltr to Meteor Timber, item 11.

¹⁸ Johnson ltr to Meteor Timber, item 18 (Meteor Timber did not respond to this item).

mitigation is difficult to enforce and relies on the solvency and expertise of the business. Given the boom and bust nature of the mining industry, it is very risky for DNR to permit wetland destruction based on Meteor Timber's plan to fund, conduct, and enforce the wetland creation and preservation needed to mitigate the damage.

III. Endangered and Threatened Species

Additionally, this site provides habitat for several threatened and endangered species, including the Eastern Massasauga Rattlesnake and the Western Slender Glass Lizard. Meteor Timber asserts that species such as the Eastern Massasauga Rattlesnake and the Western Slender Glass Lizard are not present on this site, but this assumption is not supported by good science.

Meteor Timber's consultant conducted an endangered species survey in mid-April, when the rattlesnake may still be hibernating and difficult to spot. Meteor Timber's survey is further suspect because another study done about 20 years ago found 7 rattlesnakes on this very site.¹⁹ While we understand that DNR may have conducted its own analysis of the site, that information is not in the public record.

Given the reliable evidence that this site used to provide critical habitat to threatened and endangered species, and may still, the potential environmental harm associated with this project is too great and warrants denial of the wetland fill permit. At the very least, the DNR should wait to make a permit decision until it can review the Biological Opinion of the U.S. Fish & Wildlife Service, which is expected to be complete in mid-June 2016.

For these reasons, we ask the DNR to deny Meteor Timber's application to fill these high quality wetlands. The application does not meet regulatory standards for approval because it will result in significant adverse environmental impacts, does not represent the least environmentally damaging practicable alternative, does not include an adequate compensatory mitigation plan, and is not in the public interest.

Thank you for your consideration of our comments. Please contact me if you have questions or need more information.

¹⁹ Attachment 4, Christopher H. Danou, *Habitat Use and Movement Patterns of the Eastern Massasauga Rattlesnake in Wisconsin*, thesis (May 1997).

Sincerely,

/s/

Sarah Geers
Staff Attorney
Midwest Environmental Advocates

Carolyn Grzelak
Legislative Attorney
Ho-Chunk Nation
P.O. Box 667
Black River Falls, WI 54615
(715)-284-9343

cc: Sam Woboril, U.S. Army Corps of Engineers