



September 4, 2001

Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, D.C. 20426

Dear Secretary:

On behalf of the Friends of the Boundary Waters Wilderness, please accept the following comments on the **Preliminary Draft Environmental Assessment (PDEA) for the Winton Hydroelectric Project, FERC Project No. 429**. We appreciate the opportunity to participate in the relicensing process and request that our comments be placed in the official record for this project.

As an organization dedicated to the protection and restoration of wilderness values to the Boundary Waters Canoe Area Wilderness and surrounding Quetico-Superior Ecosystem, we have several serious concerns regarding the project's compliance and ecological effects that were not adequately addressed in the PDEA. Until these issues are addressed, and our concerns satisfied, we cannot support the relicensing of the Winton Project.

COMMENTS ON LEGAL REQUIREMENTS FOR THE WINTON HYDRO PDEA
I. The PDEA Fails To Analyze Impacts That Must Be Considered Under Federal Law

As is correctly noted in the PDEA, FERC may only relicense the Project after making a finding that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired.

The PDEA fails to analyze adequately the effects of relicensing under any of the alternatives on the purposes expressed by federal statutes. This provision also requires that the project be consistent with the Superior National Forest Land and Resources Management Plan ("Forest Plan"). The discussion on Forest Plan compliance included in the PDEA does not provide sufficient documentation of consistency with forest goals.

- **The Shipstead Act**

The Shipstead Act provides that in order to preserve the shore lines, rapids, waterfalls, beaches, and other natural features of the region in an unmodified state of nature, no further alteration of the natural water level of any lake or stream within or bordering upon the designated area shall be authorized.

Because the requested license may result in further alteration of the natural water levels of lakes located within the Shipstead area, and because the Projects' maintenance of water levels above

the natural levels will result in flooding public lands, the PDEA must analyze whether relicensure under any of the proposed alternatives will result in any further alteration of the natural water levels of Birch or Garden Lake.

In order to analyze the effects of relicensure on the natural water levels of the affected lakes, the EA must address what the natural levels of the lakes would be in absence of the project and the degree of alteration of those levels imposed by each of the alternatives. The PDEA does not analyze such effects within the framework of the Shipstead Act's requirements.

- **The Wilderness Act and The BWCAW Act**

As is acknowledged in the PDEA, the Project will have an effect on lands and waters contained within the BWCAW. The Wilderness Act and the BWCA Wilderness Act provide the framework for management of the BWCAW. Thus, the FPA requires that FERC analyze the effect of relicensure in the context of the Wilderness Act.

While the PDEA does mention that the BWCAW is a wilderness area, the PDEA lacks any meaningful analysis as to whether the proposed terms of relicensure are consistent with the wilderness character of the BWCAW and, in fact, whether relicensure is appropriate at all. For example, the PDEA addresses only recreational impacts. However, the Wilderness Act and BWCA Wilderness Act are designed to ensure that wilderness attributes other than those associated with recreation are preserved.

- **Forest Plan**

The PDEA does not sufficiently demonstrate the Project's compliance with the Forest Plan for the Superior National Forest. The section "Forest Plan Compliance" provides a lengthy description of forest management areas but devotes only one sentence to the relationship between the plan and the Project alternatives. This sentence merely states, "alternatives considered in this analysis are consistent with Forest Plan goals and objectives." An explanation that includes supporting evidence and examples of consistency needs to follow that statement.

Additionally, the Forest Plan used for analysis is 15 years old and has expired. Therefore, Minnesota Power should work with the USFS to ensure that any proposed action will be consistent with the new plan currently being drafted.

II. The PDEA Fails To Include Alternatives Necessary To A Full Analysis Of Impacts That Must Be Considered Under Federal Law

The PDEA indicates that FERC has rejected without analysis any alternative based on Project abandonment and any alternative that includes allowing Birch Lake to function at natural water levels. As discussed above, the FPA requires FERC to consider whether and under what terms relicensure is consistent with the purposes set out in the Shipstead Act, the BWCAW Act and the Wilderness Act. Consideration of these alternatives is necessary for a full consideration of the impacts of the Project on public lands.

III. The Collaborative Team Constitutes An Illegal Federal Advisory Committee

The Collaborative Team convened to work with Minnesota Power and FERC on the Winton Hydro Relicensing process does not include any representation of the viewpoint of wilderness advocacy organizations such as the Friends. As discussed above, FERC is obligated to consider

the effects of relicensure on the wilderness attributes of the BWCAW. Such a viewpoint is highly relevant to the relicensure decision and thus the Friends requests immediate appointment to the Collaborative Team.

COMMENTS ON ECOLOGICAL EFFECTS OF THE WINTON HYDRO PROJECT

I. The PDEA Fails to Analyze Several Effects on Aquatic Biological Diversity

It is now widely accepted that dams are a major contributing factor to the fragmentation of riverine ecosystems and a serious threat to aquatic biodiversity. Dams cause an array of primary effects including the destruction of riverine habitat, interception of nutrient flows, and obstruction of movement of aquatic species. In addition to these problems, dams create a cascade of secondary and cumulative effects, which include the loss of river-dependent species, decreased nutrient supply to downstream habitats, and genetic deterioration of migratory organisms.

Given that dams can cause great harm to aquatic ecosystems, and given that FERC must give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational resources, and the preservation of other aspects of environmental quality, the Winton PDEA lacks sufficient analysis with respect to a number of resources.

- **Effects on Freshwater Mussels**

The Winton Hydroelectric Project has tremendous potential to affect populations of freshwater mussels in the Kawishiwi River basin. Mussels are extremely sensitive to water pollution and streambed alterations, and therefore can be devastated by dams and impoundments that change downstream water flow. According to The Nature Conservancy, the U.S. boasts more species of freshwater mussels than anywhere else in the world. However, more than two-thirds of these species are of conservation concern, with 11.8 percent of species being presumed or possibly extinct.

The Friends is particularly concerned about the project's effects on the creek heelsplitter (*Lasmigona compressa*), a Regional Forester Sensitive Species and a species of Special Concern in Minnesota. The PDEA fails to explain how the Project will ensure that drawdown does not strand immobile mussels, that adequate lotic habitat is maintained, and that the habitat needs and passage of host fish are provided.

It is our understanding that a comprehensive study on mussel populations in the Winton Project area is in progress. Once this study is completed, it is imperative that the PDEA be amended to include new information and adequately discuss potential effects and mitigation measures. We especially encourage the installation of fish ladders to ensure passage at Birch Dam of the mussels' host fish.

- **Effects on Loons**

The common loon (*Gavia immer*) constructs nests close to the water line, where fluctuation in reservoir water levels could either flood the nest or strand the incubating mother. Despite the potential for detrimental effects on nesting loons, the PDEA provides no discussion of this issue. The Final EA should address loon nesting success under the proposed operation as compared to natural conditions (i.e. absence of the Winton Hydro Project).

II. The PDEA Fails to Fully Address Shoreline Erosion

- **Erosion Study**

The erosion study conducted by the USFS and Minnesota Power excluded Friday Lake due to the lake's inaccessibility by motorboat. The Friends believes that the study of erosion on Friday Lake, which is located within the BWCAW, is essential to accurately assess the Project's effects on the wilderness. Friday Lake is accessible by canoe, and therefore, a survey of the lake is possible and must be completed prior to any decision regarding relicensing.

- **Erosion Control Plan**

Minnesota Power's intent to create a Natural Resources Fund and an Erosion Control Plan is commendable, however, the Friends wants to ensure that erosion control does not result in any secondary effects of the Project's operation. For example, if wave action from elevated water levels causes erosion, and Minnesota Power's mitigation activities cause a loss of habitat, then this loss may be attributed to the Project's operation. Indeed, the PDEA acknowledges that some erosion control activities may reduce the nesting habitat of species such as swallows and kingfishers. The PDEA needs to address this and other secondary effects that may occur as a result of erosion and erosion control. Specifically, the amount of potential habitat loss should be quantified, and the potential impact on shoreline-dependent species addressed.

Again, we thank you for the opportunity to provide input on this project. We look forward to receiving further information.

Sincerely,

Sarah Strommen
Policy Director

Elizabeth H. Schmiesing
Secretary, Board of Directors