MATL EA Comments

Ring, Tom

From: Jerry McRae [mcraefarms@yahoo.com]
Sent: Friday, August 27, 2010 7:33 AM
To: Ring, Tom
Subject: matl ammendment

tom,

what is it you can't understand about harvest. my family and i are offended by your obvious attempt to force 3 special route changes through during a time when those of us you are trying to destroy have no time to fight back. you are clearly misleading people that these route changes are being made mainly because of wetlands and i certainly hope that everyone with wetlands has the same opportunity to change the route to avoid their wetlands. your job description should definitely be changed to that of matl's little helper and they should obviously be paying your salary rather than the taxpayer landowners who you mislead and lie to.
it is clearly your choice to add these route changes at this time to this ammendment to avoid having clearly labeled route change ammendments which can be handled one at a time and misleading landowners would not be so easy for you. when public employees spin the law to meet their own goals and agendas, it is definitely time for the public to say no.

jerry mcrae

Comment 1

Comment 2

Comment 3

Comment 4

Comment 1 The Department of Environmental Quality (Department) is required under state law to process applications for amendments in a timely manner. The Department has only 30 days to review the application, prepare an Environmental Assessment, allow an opportunity for public comment, respond to comment, and prepare a final decision. The Department does not have authority to take additional time to process an amendment application. In this case, MATL waived the 30-day timeframe and allowed the Department to delay its decision until September 22nd.

Comment 2 Alternative 2 described in the EA would allow the approved route to be widened in three areas giving more room to avoid intermittent streams or wetlands. The EA was mailed to everyone with land crossed by the MATL line and they have had an opportunity to comment. No other proposed widening of the selected final location was submitted.

Comment 3 Your opinion is noted.

Comment 4 Comment noted.

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SEP 03 2010
DEQ / EMB

Ring, Tom

From: Jerry McRae [mcraefarms@yahoo.com]
Sent: Friday, September 03, 2010 7:58 AM
To: Ring, Tom
Subject: COMMENTS ON MATL AMENDMENT

SEPTEMBER 2, 2010
MR. RING
COMMENTS ON THE MATL AMENDMENT CONCERNING WETLANDS FROM JERRY MCRAE

1. THE EA CONCLUDES THAT EVEN MODIFIED BY THE TWO ALTERNATIVES, THE AMENDMENT WOULD RESULT IN A MATERIAL INCREASE IN IMPACT. I SUPPORT THE NO ACTION ALTERNATIVE FOR THIS REASON. Comment 5
2. THE REASONS GIVEN BY MATL TO SUPPORT THE AMENDMENT ARE WEAK AND DO NOT BALANCE OUT THE INCREASED IMPACT. MAKING MORE MONEY IS NOT A VERY GOOD REASON AT THIS POINT IN TIME. Comment 6
3. THE LANDOWNER SHOULD BE INCLUDED IN ANY MEETINGS CONCERNING PRIVATE WETLANDS. THE DECISIONS MADE IN THESE MEETINGS BETWEEN MATL AND THE STATE INSPECTOR SHOULD HAVE INPUT FROM THE OWNER OF THE WETLAND. Comment 7
4. ALTERNATIVE 2 SHOULD BE MADE TO INCLUDE ANY LANDOWNER WHO CAN MEET THE SAME STANDARDS AS THE 3 WHO ARE FIRST TO DELINEATE THEIR OWN WETLANDS AND ASK FOR ROUTE CHANGES. AS SOON AS THE REST OF US CHOSE OUR WETLANDS, WE SHOULD BE GIVEN A CHANCE TO SAVE THEM BY ROUTING AROUND THEM ALSO. MITIGATION SHOULD BE FAIR AND GRANTED TO ALL WHO MEET THE STANDARD OF CHOOSING A WETLAND AND ROUTING AROUND IT. Comment 8
5. BECAUSE THE 500 FOOT CORRIDOR IS NOW A HALF MILE WIDE CORRIDOR, IT IS IMPOSSIBLE TO COMMENT ON THE ROUTE CHANGE BECAUSE NO ONE KNOWS WHERE THE POLES ARE GOING TO GO. ROUTE CHANGES SHOULD BE A 500 FOOT CORRIDOR SO OTHER LANDOWNERS WILL KNOW HOW IT AFFECTS THEM AND COMMENT ACCORDINGLY. WHY NOT STUDY WHERE THE BEST PLACE IS TO GO AROUND THESE IMPORTANT WETLANDS AND SAY WHERE THE NEW 500 FOOT CORRIDOR IS GOING TO BE? IS THE LAUBAUCH ROUTE CHANGE TOO CLOSE TO THE MISSILE SITE?? WILL THE GUY WIRES OR PULL UP ZONES BE ON MY LAND? Comment 9 Comment 10 Comment 11 Comment 12
6. I HAVE BEEN TOLD BY DEQ THAT THE WETLAND STUDY IS DONE NORTH OF CUTBANK HOWEVER THE EA SAYS ONLY PARTIAL RESULTS HAVE BEEN PROVIDED... WHICH IS IT AND WHY IS CONSTRUCTION BEGINNING WITHOUT THE WETLAND SURVEY BEING DONE? WHAT DOES THE CERTIFICATE SAY ABOUT WETLAND SURVEY BEING DONE BEFORE CONSTRUCTION BEGINNING? Comment 13 Comment 14
7. THE WETLAND SURVEY SHOULD BE DONE BEFORE THIS EA IS COMPLETED SO THAT YOU ARE STUDYING A KNOWN ITEM. YOU ARE MAKING DECISIONS BASED ON GUESSES OF WHERE THE WETLANDS ARE. Comment 15
8. AS A WETLAND OWNER I AM BEING ASKED TO TRUST A STATE INSPECTOR TO DECIDE ABOUT MY WETLANDS. THE STATE INSPECTOR IS GOING TO BE THE SAME GUY THAT DESIGNED THE LAUBAUCH ROUTE TO AIM FOR ONE OF THESE IMPORTANT WETLANDS, THE SAME GUY THAT NOW MAKES THE DECISION TO REROUTE TO MISS THAT ONE AND GO THROUGH ANOTHER ONE HALF MILE OVER. I SUPPORT THE NO ACTION ALTERNATIVE..... IT IS THE ONLY SURE WAY TO PROTECT MY PROPERTY FROM POLITICS AND TO PREVENT THE DESTRUCTION OF MY WETLANDS. Comment 16

JERRY MCRAE

& ID

Comment 5 Comment noted.

Comment 6 Comment noted.

Comment 7 Comment noted. Landowners will be invited to attend these field inspections.

Comment 8 Comment noted. Based on this and other comments, the Department has decided not to select Alternative 2.

Comment 9 Comment noted. Based on this and other comments, the Department has decided not to select Alternative 2.

Comment 10 Comment noted. Based on this and other comments, the Department has decided not to select Alternative 2.

Comment 11 Comment noted. Based on this and other comments, the Department has decided not to select Alternative 2.

Comment 12 Since the line crosses some of your land, it is possible that guy wires would be necessary and access would cross your property.

Comment 13 MATL has presented results of the wetland survey to the Department for the portion of the project north of the Marias River Substation. The Department has received wetland survey results for only a small portion of the approved location south of the Marias River Substation.

Comment 14 Appendix A of the Environmental Specifications is being amended to state: "MATL would delineate wetlands within the previously approved 500 foot wide location, and would submit this information to the State Inspector prior to requesting approval to begin temporary construction activities in a delineated wetland." Thus, before construction can begin in an area, the wetland survey must be completed in that area.

Comment 15 Comment noted. The Department is making its decision based on the information available, within the period allowed by law to process an application for an amendment.

Comment 16 Comment noted. The Department has modified Alternative 1 to clarify that the Department's Director will make this determination based on recommendations received from the State Inspector, MATL, the landowner, and other agencies having jurisdiction over wetlands.

Ring, Tom

From: Peter & Judy Ellis [pcellis@3rivers.net]
Sent: Thursday, September 02, 2010 2:42 PM
To: Ring, Tom
Subject: MATL Amendment

Dear Tom,

Clearly the landowners affected by this power line, including myself, know the geology and hydrology of the land involved as well as, if not more so, than the professional planners of the line. Please require Alternative 2 to the amendment to the Environmental Impact Statement. It will be in our best interest as landowners, as well as possibly mitigate potential water and environmental impacts caused by the MATL line in the future. The experience Mr. Maurer has had trying to convince MATL to move the line is very similar to mine. I have attended meetings and drawn a slight alternative on the map with the guidance of MATL representatives where it crosses my land. They seem to be very receptive at the meetings, yet every updated map that is ever sent to me, or is on display at various meetings has the original alignment, not the slight change I wanted. I plan to meet with the right-a-way agent very soon. Again, this issue will be brought up.

Comment 17

Comment 18

Sincerely,
Peter C. Ellis
Conrad, Montana 59425
pcellis@3rivers.net

86,10

Comment 17 Comment noted.

Comment 18 Comment noted.

Ring, Tom

From: Jim Nelson [nelsonjl46@yahoo.com]
Sent: Monday, August 30, 2010 8:44 PM
To: Ring, Tom
Subject: MATL DEQ Amendment

Tom,

Comment 19

I oppose the MATL Co. being able to amendment the original requirements to stay at least 50 feet away from all wetland and streams.

They are proposing to cross three wetlands and four streams on my property. I have tried to tell that some places are not crossable. They tend to not believe me or they just don't care.

They will have to put in at least one culvert to cross a stream to gain access to one field and maybe more, depending on how heavy their equipment is.

Some of these areas are extremely swampy, animals even get stuck in these areas.

They cross my land in sections 8, 9, 10, 14 and 15 twnship 30 N R4W. Sections 8 and 9 are the ones with the problems.

They need to contact me so I can address these concerns with them.

Thank You,

James L. Nelson August 30, 2010

8.'10

1

Comment 19 Mr. Nelson has advised the Department on several occasions that MATL's proposed centerline would span a wetland on his property south of Bullhead Coulee. He has indicated that when the US Air Force buried a missile cable through the wetland, their equipment and some personnel became deeply mired in the liquefied soil. The Department has relayed this information to MATL. Information available to the Department indicates that this wetland can be spanned by the line, but that access around the large wetland and several smaller wetlands associated with drainages may require off ROW access or some sort of stream crossings; such as a bridge to span the smaller wetlands. Alternative 1 has been modified to allow landowners to provide input following a field inspection, to help determine whether there is a reasonable alternative to allowing temporary construction activities in wetlands. The Department anticipates a field review in this area.

MATL LLP

September 3, 2010

Mr. Richard Opper, Director
c/o Tom Ring
Montana Department of Environmental Quality
Facility Siting Program
PO Box 200901
Helena, Montana 59602-0901

RECEIVED
SEP 03 2010
DEQ
DIRECTOR'S OFFICE

Director Opper,

Co-Permittees Montana Alberta Tie Ltd. and MATL LLP ("MATL") appreciate the effort DEQ has undertaken to examine our request for Amendment to the MATL Certificate. Through this comment letter, we hope to clear up some apparent misunderstanding regarding MATL's request, express our continued interest in avoiding all but necessary impacts to landowners and protected resources, and identify a workable solution to keep this important project moving forward in construction.

Through this comment letter on the Draft EA issued by DEQ on August 24, 2010, MATL provides DEQ with a solid legal foundation and economic impact basis for dismissal of Alternatives 1, 2, and 3; our continued justification and support for our original amendment request; and a potential fourth alternative if DEQ finds our original amendment incomplete or unacceptable. In short, our abiding concern remains that the EA alternatives fall short of addressing our most immediate and pressing need for the establishment of clearly articulated criteria to be used in the decision-making process regarding approvals for unavoidable temporary wetland crossings. This alone would fully satisfy MATL in this matter.

Comment 20

We also note that while the compensatory mitigation for temporary impacts as proposed by DEQ in the EA is not required under any state or federal statute and therefore seems unnecessary for this project, we could consider employing this novel measure, if needed, as a means to keep the project moving forward.

In the interest of moving forward in a productive manner in this amendment process, MATL offers the following discussion items in this letter:

- A restatement of our original intent for the purposes of clearing up any confusion in the purpose of the MATL amendment request;
- Identification of the various legal and procedural challenges presented by the Alternatives provided in the EA;
- Further clarity on our original amendment request by articulating a set of evaluation criteria which could be utilized; and
- Opportunity for an additional alternative which may satisfy our needs as well as provide DEQ with a net gain in wetlands.

30 WEST 14TH ST., SUITE 204
HELENA, MT 59601
OFFICE 406-443-6430 FAX 406-443-6462

Comment 20 Thank you for your comment.

Director Richard Opper
EA Comment
September 3, 2010

Intent of the MATL request for Amendment to the MFSA Certificate

MATL's proposed Amendment was simply intended to clarify conflicting language between the EIS and the Certificate, and within the Certificate itself. Our requested modification is limited to clarifying MATL's ability to incur unavoidable, temporary impacts on delineated wetlands during construction, and to allow some construction activities and structure placement within the 50-foot buffer zone around delineated wetlands. These temporary impacts are already approved on a series of wetlands along the Marias North section by the U. S. Army Corps of Engineers (USACE) by virtue of a federal permit issued on May 21, 2010. We have not been able to receive the Section 318 permit from the Montana DEQ for these federally permitted sites because of the conflicting language. This, along with our concern that the Marias South portion would incur similar delays without clarity in the decision-making process, led us to propose the amendment. To be clear, this clarifying amendment would not result in any additional impacts beyond those contemplated and disclosed in the EIS, nor would it affect the location or design of the facility as approved.

Comment 21

In response to our amendment request, DEQ has prepared an EA including alternatives which would allow permanent impacts to wetlands and allow examination of additional alternatives outside the previously-approved corridor. There was never any intent on MATL's part to expand the scope of the project or entertain changes in location or design. The allowance for permanent impacts and modifications to the route outside the approved corridor is unnecessary for our purposes, and we expressly confirm that there is no need for it in this amendment.

Comment 22

MATL sees no nexus between the expanded study area proposed in the EA and MATL's Amendment request for clarification on the process for considering temporary wetland impacts. The proposal in the EA to expand the study area is inconsistent with the analysis conducted in both the MFSA process and the MEPA/NEPA process, and MATL and its customers are unable to accept the risk of appeal and concomitant delays that this proposal could create at the state or federal level.

To restate, MATL would like only to bring conflicting language in the Certificate into concert with the detailed analysis in the EIS and the language in the Certificate consistent with our assumptions throughout the MFSA and NEPA/MEPA processes.

MATL Assessment of DEQ's Proposed Alternatives

Before examining the Alternatives presented in the EA, MATL wants the record to reflect that we disagree with the "tentative conclusion" in the EA that MATL's proposed amendment would result in a "material increase in environmental impact." The EA contains no demonstrated findings to support that conclusion and MATL requests that DEQ revisit this issue. Certainly the USACE permit to temporarily impact five wetlands on the Marias North portion of the route argues persuasively to the contrary. In addition, the EIS assessed this issue and the appropriate mitigation measures for temporary construction impacts, and concluded that they were acceptable, yet the current EA concludes otherwise without any analysis to support the change in this determination.

Comment 23

The following provides MATL's assessment of the additional compelling challenges and difficulties presented by the Alternatives in the EA:

Comment 21 MATL did not initially receive a 318 permit because they did not apply for one. When most applicants initially apply for a Certificate under MFSA, they also apply for the other permits needed from the Department. This allows the Department to process all the applications under the timelines prescribed in Section 75-20-216(3), MCA. "…, the Department shall issue, within 9 months following the date of acceptance of an application, any decision, opinion, order, certification, or permit required under the laws, other than those contained in this chapter, administered by the Department. A decision, opinion, order, certification, or permit, with or without conditions, must be made under those laws. Nevertheless, the Department retains authority to make the determination required under 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the board and pursuant to rules adopted by the Department, the Department shall provide an opportunity for public review and comment."

Note that under 75-20-216(5), MCA, for projects subject to joint review by the Department and a federal land management agency, the Department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency. BLM land was crossed by the project allowing the Department to time its decision to more closely correspond to the timing of the federal record of decision.

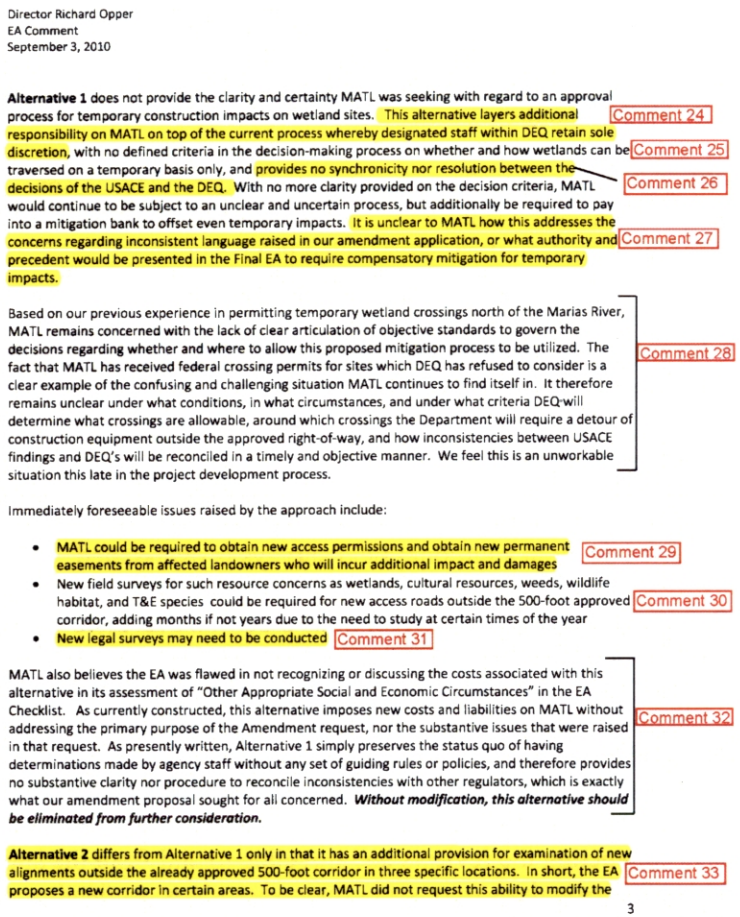
With no application for a 318 permit in hand before the Certificate of Compliance was issued, the Department assumed that MATL was not proposing to work in streams or wetlands when water was present in these state waters. Further, with the information available from the National Wetlands Inventory, at the time the Certificate was issued, it seemed likely that the line could be constructed without working in streams or wetlands when water was present. Thus,

without an application, a 318 permit was not issued at the time the Certificate was issued.

However, the Department required a wetland survey (delineation) and MATL presented the results of this survey for the portion of the project north of the Marias River Substation and a few areas south of it. On June 30, 2010, the Department issued a 318 permit for a portion of the project north of the Marias River Substation (one wetland crossing in Glacier County, Montana).

Comment 22 The Department has modified Alternative 1 to allow only temporary construction activities in wetlands.

Comment 23 Given the nature of the temporary impacts to wetlands, the Department has determined that it cannot definitely determine whether or not there would be a material increase in impacts to wetlands as a result of the proposed amendment.



Director Richard Opper
EA Comment
September 3, 2010

Alternative 1 does not provide the clarity and certainty MATL was seeking with regard to an approval process for temporary construction impacts on wetland sites. This alternative layers additional responsibility on MATL on top of the current process whereby designated staff within DEQ retain sole discretion, with no defined criteria in the decision-making process on whether and how wetlands can be traversed on a temporary basis only, and provides no synchronicity nor resolution between the decisions of the USACE and the DEQ. With no more clarity provided on the decision criteria, MATL would continue to be subject to an unclear and uncertain process, but additionally be required to pay into a mitigation bank to offset even temporary impacts. It is unclear to MATL how this addresses the concerns regarding inconsistent language raised in our amendment application, or what authority and precedent would be presented in the Final EA to require compensatory mitigation for temporary impacts.

Comment 24
Comment 25
Comment 26
Comment 27

Based on our previous experience in permitting temporary wetland crossings north of the Marias River, MATL remains concerned with the lack of clear articulation of objective standards to govern the decisions regarding whether and where to allow this proposed mitigation process to be utilized. The fact that MATL has received federal crossing permits for sites which DEQ has refused to consider is a clear example of the confusing and challenging situation MATL continues to find itself in. It therefore remains unclear under what conditions, in what circumstances, and under what criteria DEQ will determine what crossings are allowable, around which crossings the Department will require a detour of construction equipment outside the approved right-of-way, and how inconsistencies between USACE findings and DEQ's will be reconciled in a timely and objective manner. We feel this is an unworkable situation this late in the project development process.

Comment 28

Immediately foreseeable issues raised by the approach include:

- MATL could be required to obtain new access permissions and obtain new permanent easements from affected landowners who will incur additional impact and damages
- New field surveys for such resource concerns as wetlands, cultural resources, weeds, wildlife habitat, and T&E species could be required for new access roads outside the 500-foot approved corridor, adding months if not years due to the need to study at certain times of the year
- New legal surveys may need to be conducted

Comment 29
Comment 30
Comment 31

MATL also believes the EA was flawed in not recognizing or discussing the costs associated with this alternative in its assessment of "Other Appropriate Social and Economic Circumstances" in the EA Checklist. As currently constructed, this alternative imposes new costs and liabilities on MATL without addressing the primary purpose of the Amendment request, nor the substantive issues that were raised in that request. As presently written, Alternative 1 simply preserves the status quo of having determinations made by agency staff without any set of guiding rules or policies, and therefore provides no substantive clarity nor procedure to reconcile inconsistencies with other regulators, which is exactly what our amendment proposal sought for all concerned. ***Without modification, this alternative should be eliminated from further consideration.***

Comment 32

Alternative 2 differs from Alternative 1 only in that it has an additional provision for examination of new alignments outside the already approved 500-foot corridor in three specific locations. In short, the EA proposes a new corridor in certain areas. To be clear, MATL did not request this ability to modify the

Comment 33

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Comment 24 While the State Inspector would conduct any needed wetland inspections, Alternatives 1 and 2 do not anticipate that the State Inspector would make the final decision. The Inspector would conduct the inspection, evaluate what options are available at an individual site, and report his findings to the Department's decision maker, the Director. The decision would be conveyed to MATL through the State Inspector.

The Department has modified Alternative 1 to clarify that the Department's Director would determine whether there is a reasonable alternative to allowing temporary construction activity in wetlands. The determination would take into consideration the recommendations of the State Inspector, MATL, the landowner and other agencies having jurisdiction over wetlands.

Comment 25 Alternatives 1 and 2 provide a list of factors that may be considered in determining whether there is a reasonable alternative allowing temporary construction activity in wetlands; including the cost of such alternative. Alternatives 1 and 2 provide a process by which this information would be submitted, and alternatives evaluated, allowing a decision maker to make an informed decision.

Comment 26 There are no provisions in the Major Facility Siting Act that require the Department to conform its decision to that of the Corps of Engineers. The Department has authority to require more stringent protections than required by federal agencies.

Comment 27 See the response to Comment 20 for a discussion of the Department's authority.

Comment 28 MATL's frustrations are noted. North of the Marias River, MATL submitted information to the Department regarding the location and extent of delineated wetlands within 500 feet of the

reference centerline. MATL identified 10 wetlands that they believed would have to be impacted but did not identify ways to avoid these impacts. The Department and MATL jointly field reviewed these areas in the spring of 2010 after first reviewing the proposed access routes using air photos. As a result of this review the Department concluded that reasonable alternatives existed that would allow 7 wetlands to be avoided by either using existing off right-of-way (ROW) access roads or by routing cross country access around the wetlands. No reasonable alternative access routes were found to completely avoid crossings of three delineated wetlands. One of these could be spanned by a bridge, another would use a matted crossing, and most impacts could be avoided at a third crossing by re-routing access slightly.

Alternatives 1 and 2 propose similar field reviews for potentially affected wetlands south of the Marias River. The Department believes that the decision should be made based on a balancing of factors relevant to whether there is a reasonable alternative to allowing disturbance of wetlands rather than a rigid application of criteria involving the cost or length of the alternatives; or whether the alternatives fit within the existing corridor.

Comment 29 It is possible that off ROW access would have to be obtained. Generally access would be along the ROW but in certain cases, the final EIS anticipated that some access would have to be located outside the transmission line ROW. The Final EIS for the project noted "As a result of relatively flat topography and associated agricultural land uses that predominate in the Project study area, MATL anticipates only minimum development of access roads to construct, operate, and maintain the proposed Project. The majority of the Project right-of-way would be easily accessed from public roads, existing two track roads, and farm fields. MATL does not anticipate maintenance of these access points with the exception of gate installations at key locations, if necessary. MATL proposes that disturbances resulting from access requirements would be reclaimed to conditions similar to what existed pre-project or to those conditions specified by landowners during easement-lease negotiations. Obstacles to travel along the right-of-way would potentially include:

- Slopes greater than 5 percent forcing the contractor to construct temporary access roads,
- Coulees or intermittent stream channels,
- Flowing streams and rivers, or wetlands,
- Areas with highly erodible soils,
- Areas providing habitat for sensitive wildlife or plant species,
- Pipelines, railroad tracks, irrigation ditches, or other linear features, and
- Heritage or archaeological sites."

Comment 30 Comment noted. The Department believes the projected delay in additional field surveys is over-stated.

Comment 31 MATL is correct in its assertion that there would be costs associated with surveys and reviewing the crossings. However because MATL has not submitted the results of wetland delineations south of the Marias River it is difficult to estimate these costs. During the spring of 2010 when the Department reviewed the wetlands north of the Marias River Substation, the Department's archaeologist, land use specialist and program leader spent about two days conducting the reviews and traveling to and from the sites. About 2 person days were spent reviewing plans, wetland delineations, maps and air photos in the office. This was for approximately 40 miles of line. Making the general assumption, that wetland access challenges north of the Marias River Substation are similar to those challenges south of that point, the Department's estimates that costs would be about $8,000. The Department acknowledges that MATL may also incur some additional costs.

Comment 32 Alternative 1 addresses the primary purpose of the amendment request by allowing MATL to conduct temporary construction activity in wetlands where there is no reasonable alternative to doing so. Alternative 1 has been modified to clarify the field review procedures used to determine whether there is a reasonable alternative. The Department acknowledges there are additional costs to MATL to the extent MATL would be required to offset temporary disturbances of wetlands by making contributions to a wetland bank or creating new wetlands itself. A compensatory cost of about $35,000 for an acre of developed wetland is a reasonable estimate. Recognize that for temporary construction activity in one acre of wetland, MATL would only be required to acquire .2 acres of banked wetlands. Wetland banks usually have a minimum transaction of 1 acre. MATL would pay for the Department's additional costs that are estimated to be about $8,000. MATL's costs are not known. See responses to comments 26 and 28 regarding consistency with federal agencies and use of MATL's proposed criteria to determine reasonableness of alternatives.

Comment 33 Comments noted. Based on this and other comments, the Department has decided not to select Alternative 2.

approved corridor, and simply cannot support the proposition to do so now. We attach a legal memorandum as an appendix to this comment letter, which outlines the serious and determinative legal challenges to the approach outlined in Alternative 2 of the EA. In short, we believe the alternative is ***ultra vires*** for the reason outlined in the memorandum, and ***should be eliminated from further consideration***.

Comment 33 continued

Assuming for the sake of argument that a different interpretation of the law on this matter could be reached, MATL has three major procedural concerns with this prospect:

Comment 34

1- Through the MEPA process, DEQ independently generated and selected the currently approved route alignment in the three locations noted in the EA (Maurer, Laubach and Salois) and identified them as part of the Preferred Alternative in the EIS. As the Preferred Alternative, these locations have presumably already been analyzed by DEQ and determined to be the least impactful to all resource and landowner concerns. To suggest realignment at this stage, and on something as narrow as wetland impacts, may call into question the analysis on the entire route. We suspect that this was not DEQ's intent and we believe DEQ should reaffirm their decision recorded in the NEPA/MEPA process.

2- Since DOE and DEQ issued a joint Record of Decision, and DEQ issued the Certificate of Compliance under MFSA in October 2008, MATL has been moving forward in reliance on that Certificate to obtain easements from landowners and finalize line design based on the approved 500-foot corridor. In addition to DEQ's requirements for analysis under MEPA, it is our understanding that any modifications outside the approved corridor in the EIS would need to be analyzed by DOE under NEPA. DEQ has a 30-day limit under MFSA, but DOE has no such constraint and would need to re-open the EIS in some fashion to examine alternatives and impacts not previously disclosed. This could result in a substantial and deleterious delay to the project, and its customers, that simply cannot be afforded at this late stage.

3- If the intent of the alignment revisions presented in the EA is to avoid impacts to delineated wetlands on those select properties, MATL would observe that the same result could be reached under MATL's proposal. All permanent impacts from pole placement and access road location have been and will continue to be avoided throughout the design process. MATL is also willing to consider complete avoidance of these select wetlands during construction as long as reasonable alternatives to the temporary disturbance are available, as discussed later in this letter. The sole intent of our amendment was to establish a process for the reasoned determination of just that limited approach. Alternative 2 fails to consider these factors and merely shifts the burden for reconciling landowner concerns around the FEIS Preferred Alternative onto MATL.

It is also unclear to MATL how the process surrounding the EA arrived at a decision to allow alignment and study area revisions in only three specific locations while ignoring the countless requests made by other landowners for substantial alignment shifts that may ostensibly produce similar results in wetland avoidance or impact minimization. We are concerned that this appears arbitrary and capricious and could give rise to appeals. MATL did not seek this change, is unwilling to accept the liability this presents to the project, and feels it is a significant enough change to warrant call for much higher analysis and public engagement were it to be selected. We are concerned that this is an untenable solution to the

Comment 35

Comment 34 Comment noted. Based on this and other comments, the Department has decided not to select Alternative 2.

Comment 35 Comment noted. Based on this and other comments, the Department has decided not to select Alternative 2.

Comment 35 continued

amendment request due to procedural concerns, exposure to legal challenge, and implications on project schedule which could affect not only MATL's project financing, but the investment and financing arrangements of the wind farms relying on the completion of this project by a date certain before the Production Tax Credit eligibility expires.

Comment 36

In addition to our concerns about legal process and appropriate regulatory and public review of these proposed new alignments, the substantial cost implications must be considered as part of any EA. New alignments outside the approved 500-foot corridor would likely require:

- New access permissions and new permanent easements from several affected landowners – which will take several months.
- New field surveys for such environmental considerations as wetlands, cultural resources, weeds, wildlife habitat, and T&E species for all areas outside the approved 500-foot corridor. These surveys would take several months to coordinate, conduct, and review with regulatory agencies and may be delayed until spring due to seasonal review requirements
- New legal surveys
- Additional public and regulatory agency engagement
- New mapping for engineering and resource identification
- New geotechnical drilling for subsurface risk assessment
- New route, structure, and line design
- New procurement for areas that have already been ordered, purchased and/or delivered to the site (particularly for sites in the northerly portion of the corridor)

Comment 37

We also note that the EA fails to demonstrate that Alternative 2 does not "result in a substantial change in the location of all or a portion of the transmission line." By its very nature, a modification of the alignment outside the NEPA/MEPA study corridor, and area approved under the MFSA Certificate, ***is*** a "substantial change in location." Compared to MATL's amendment proposal, this is a substantial and quantifiable change and likely to trigger an amendment to the EIS and federal ROD requiring substantial study and consequential delay to do so. To avoid risk of appeal, MATL believes this should be a major factor in your decision, as in our judgment it clearly is a substantial change in location.

Comment 38

MATL further disagrees with the conclusions reached in the EA Checklist on this alternative. Specifically, the EA asserts that Alternative 2 would not materially increase impacts, yet even the brief analysis presented in the EA does little to nothing to support this conclusion. In the EA Checklist, it is noted that impacts "***could*** be reduced" to wetlands, intermittent streams, and water quality. This is not a positive statement to support the overall assertion and could give rise to challenge. The bigger concern, however, comes from the EA's identification of a potential **increase** in impacts to erosive soils affecting terrestrial, avian and aquatic life and habitat; cultural resources; aesthetics; fuel usage; agricultural activities; and traditional lifestyles. The EA Checklist further states that "Unavoidable adverse impacts could ***increase*** under Alternative 2 as more cropland could be crossed diagonally in all three areas and the line could become visible in a wider area where it would cross the bench in one area." "Reversible adverse impacts could ***increase*** under Alternative 2 as more cropland could be crossed diagonally in all three areas and the line could become visible in a wider area where it would cross the bench in area one. These impacts could be reversed upon decommissioning." (emphasis added)

Comment 36 Comment noted. Based on this and other comments, the Department has decided not to select Alternative 2.

Comment 37 Comment noted. Based on this and other comments, the Department has decided not to select Alternative 2.

Comment 38 Comment noted. Based on this and other comments, the Department has decided not to select Alternative 2.

Director Richard Opper
EA Comment
September 3, 2010

There is no apparent justification or consistent application of criteria to determine whether there is a "material increase" in impact. The analysis methodology and conclusions reached in the EA are unsupported and therefore provide open opportunity for challenge. Again, MATL never asked for adjustments in the approved corridor in its application for amendment, and should not be subject to the risks of an alternative it never requested. Of particular concern is the inclusion of one corridor modification proposed on property containing no delineated wetlands, and thus cannot be justified under this amendment process which is directed solely at issues surrounding reasonable and temporary wetland impacts during construction. Comment 39 Comment 40

Based on the legal review provided in the attached memo, and the noted concerns above, without material and substantial modification, ***this alternative should be eliminated from further consideration*** as it is fraught with unsupported determinations, and, we believe its conclusions and proposals contrived and arbitrary. Comment 41

Alternative 3 – No Action appears to be a stiffening of requirements under the existing Certificate, and would preclude any further discussion of circumstances under which mitigation could be used to offset unavoidable impacts, such as placement of a pole in the 50-foot buffer around Hay Lake. Again we note that the inconsistency in the permit language and the EIS study conclusions would continue, and therefore represent an essential miscarriage to MATL. ***This alternative should be eliminated from further consideration*** as it amounts to complete avoidance of a material issue with conflicting language in the EIS and Certificate. Comment 42

Restatement of MATL's request and desire to move forward

MATL remains willing and committed to working with DEQ and the various state and federal regulatory partners on this project to identify a workable solution that provides necessary protection to important resources in this corridor, preserves the integrity of the multi-year regulatory review process this project has undergone, and maintains the viability of the project for successful construction and operation. MATL continues to believe that our original amendment request accomplishes these goals and does so without any material increase in environmental impact beyond that fully contemplated in the DOE and DEQ FEIS issued in 2008. Comment 43

Through our amendment, MATL is seeking to identify a collaborative process in which our objective engineering expertise and economic considerations are factored into the determination of what is "reasonable and practicable" with regard to avoidance, minimization, and compensation under standard approaches to wetland mitigation. To date, MATL has complied with the spirit and intent of all state and federal regulations regarding wetland impacts and mitigation. All state and federal guidance regarding wetland impacts points towards a three-tiered approach: avoidance, minimization and compensation, in that order. MATL has accomplished the following:

Avoidance: Throughout the design process, MATL has avoided all permanent impacts to wetlands throughout the project corridor through the placement of poles and access roads outside all delineated wetlands. Comment 44

Comment 39 Comment noted. The statement in the Draft Department Conclusions that Alternative 2 would not materially alter the findings has been deleted from the Department's Final Conclusion.

Comment 40 Comment noted. Based on this and other comments, the Department has decided not to select Alternative 2.

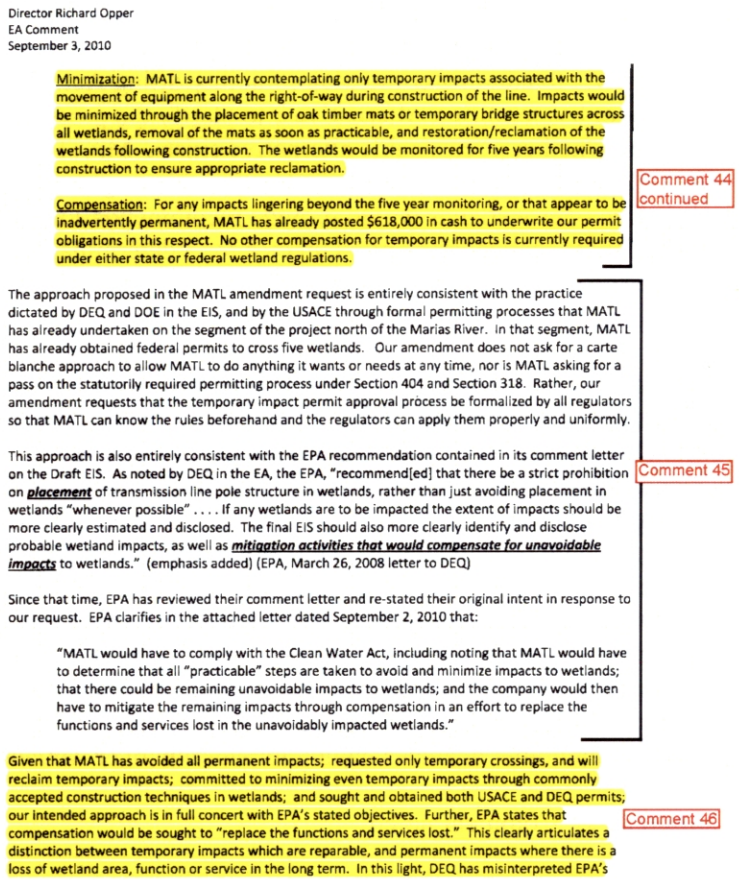
Comment 41 Comment noted. Based on this and other comments, the Department has decided not to select Alternative 2.

Comment 42 As stated in the draft EA, "The No Action Alternative (Alternative 4) would mean that the language in the Certificate and Environmental Specifications would remain unchanged."

Comment 43 Comment noted. See response to Comment 23.

Comment 44 The Department is applying the three-tiered approach (avoidance, minimization, and compensation) differently than MATL. Rather than just avoiding permanent impacts to wetlands as MATL suggests, the Department believes that it is prudent to avoid even temporary impacts to wetlands unless there is no reasonable alternative. The Department will consider engineering and the costs to MATL in determining whether a reasonable alternative exists.

The calculated bond did not anticipate any additional reclamation associated with allowing temporary construction activity in wetlands.



Director Richard Opper
EA Comment
September 3, 2010

Minimization: MATL is currently contemplating only temporary impacts associated with the movement of equipment along the right-of-way during construction of the line. Impacts would be minimized through the placement of oak timber mats or temporary bridge structures across all wetlands, removal of the mats as soon as practicable, and restoration/reclamation of the wetlands following construction. The wetlands would be monitored for five years following construction to ensure appropriate reclamation.

Compensation: For any impacts lingering beyond the five year monitoring, or that appear to be inadvertently permanent, MATL has already posted $618,000 in cash to underwrite our permit obligations in this respect. No other compensation for temporary impacts is currently required under either state or federal wetland regulations.

Comment 44 continued

The approach proposed in the MATL amendment request is entirely consistent with the practice dictated by DEQ and DOE in the EIS, and by the USACE through formal permitting processes that MATL has already undertaken on the segment of the project north of the Marias River. In that segment, MATL has already obtained federal permits to cross five wetlands. Our amendment does not ask for a carte blanche approach to allow MATL to do anything it wants or needs at any time, nor is MATL asking for a pass on the statutorily required permitting process under Section 404 and Section 318. Rather, our amendment requests that the temporary impact permit approval process be formalized by all regulators so that MATL can know the rules beforehand and the regulators can apply them properly and uniformly.

This approach is also entirely consistent with the EPA recommendation contained in its comment letter on the Draft EIS. As noted by DEQ in the EA, the EPA, "recommend[ed] that there be a strict prohibition on ***placement*** of transmission line pole structure in wetlands, rather than just avoiding placement in wetlands "whenever possible" . . . . If any wetlands are to be impacted the extent of impacts should be more clearly estimated and disclosed. The final EIS should also more clearly identify and disclose probable wetland impacts, as well as ***mitigation activities that would compensate for unavoidable impacts*** to wetlands." (emphasis added) (EPA, March 26, 2008 letter to DEQ)

Comment 45

Since that time, EPA has reviewed their comment letter and re-stated their original intent in response to our request. EPA clarifies in the attached letter dated September 2, 2010 that:

> "MATL would have to comply with the Clean Water Act, including noting that MATL would have to determine that all "practicable" steps are taken to avoid and minimize impacts to wetlands; that there could be remaining unavoidable impacts to wetlands; and the company would then have to mitigate the remaining impacts through compensation in an effort to replace the functions and services lost in the unavoidably impacted wetlands."

Given that MATL has avoided all permanent impacts; requested only temporary crossings, and will reclaim temporary impacts; committed to minimizing even temporary impacts through commonly accepted construction techniques in wetlands; and sought and obtained both USACE and DEQ permits; our intended approach is in full concert with EPA's stated objectives. Further, EPA states that compensation would be sought to "replace the functions and services lost." This clearly articulates a distinction between temporary impacts which are reparable, and permanent impacts where there is a loss of wetland area, function or service in the long term. In this light, DEQ has misinterpreted EPA's

Comment 46

7

Comment 45 The Department understands that MATL is not asking for a carte blanche approach regarding disturbance of wetlands. MATL's proposed amendment is not consistent with the practice dictated in the EIS. The EIS provided for a 50 foot buffer around wetlands. While MATL's proposed amendment may be consistent with the USACE permitting process, the Department is not required to be consistent with the federal process in its issuance and amendments of certificates of compliance under MFSA. Moreover, MATL's proposed amendment – to the extent it is designed to just avoid permanent disturbance of wetlands – is inconsistent with EPA's position. EPA has stated that "wherever possible, placement of new structures constructed and associated construction activities would occur outside wetland areas." (EPA letter dated September 2, 2010.)

Comment 46 The Department does not believe that MATL's proposed amendment is in full concert with EPA's stated objectives. In its letter dated September 2, 2010, EPA reiterated that all "practicable" steps are taken to avoid and minimize impacts to wetlands. EPA did not distinguish between temporary impacts that are irreparable and permanent impacts where there is a loss of wetland area, as MATL suggests.

position by instituting an outright prohibition on any and all wetland impacts, even temporary impacts commonly permitted. Comment 46 continued

To provide more certainty, objectivity, and accountability for all parties, MATL proposes that each proposed wetland crossing be reviewed by an interagency panel during a one-day working session to identify all crossing locations and potential detours to work around wetlands. This panel would consist of representatives from the U.S. Department of Energy, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, DEQ's water quality division, with technical and cost considerations provided by MATL. MATL will prepare external, independent cost estimates and impact calculations to inform the regulatory entities in their collective decision on how to proceed. Comment 47

MATL also proposes the following criteria to be used by the panel in formulating its final determination:

- If a given workaround exceeds the greater of $5,000 in total costs (as independently determined by the contractor), or two times the cost of purchasing the appropriate wetland bank credits for the involved crossing, it should be considered to be unreasonable and the crossing would be eligible for permit approval as appropriate under Section 318.
- If a given workaround requires negotiation of additional easement area from a landowner not currently engaged by MATL in negotiations, the workaround should be considered unreasonable and the crossing would be eligible for permit approval as appropriate under Section 318.
- If a given workaround exceeds one mile in length, the workaround should be considered unreasonable and the crossing would be eligible for permit approval as appropriate under Section 318.
- In the event that MATL disagrees with a decision made by the MFSA program administrators, MATL may request review of that decision by the Director, who will then make the final decision for the Agency.

Comment 48

Pursuant to §75-1-201(5)(b), MCA, MATL requests a meeting prior to DEQ's final decision to mutually develop the final evaluation criteria to be utilized for the remainder of the project. Comment 49

MATL Proposed Alternative 4

If MATL's original amendment approach is not acceptable to the DEQ, MATL is willing to consider the purchase of wetland credits on a much diminished basis, namely a rate of 0.2 acres to 1.0 acre of temporary disturbance, so long as clearly articulated decision standards as a predicate to that purchase are established and fairly employed. Compensatory mitigation for temporary crossings is not required under any state or federal law regulating wetlands. We think that adopting this 'permanent mitigation for temporary impacts' as a solution sets a precedent which is too wide a solution for the circumstance, and therefore less than appropriate. But, we are willing to entertain this approach in the interest of keeping the project moving forward on schedule. Comment 50

Comment 47 The Department does not agree with the interagency panel approach in determining whether there is a reasonable alternative to disturbing wetlands because the Department has the sole authority to administer the Major Facility Siting Act. The Department has modified Alternative 1 to clarify the procedure to determine whether a reasonable alternative exists. MATL, the affected landowners, the State Inspector, and other agencies having jurisdiction over wetlands would provide recommendations after a field review to the Department's Director for a determination. Engineering concerns and cost considerations may be considered along with other factors in making this determination.

Comment 48 The Department believes that the decision is properly made based on a balancing of factors relevant to whether there is a reasonable alternative to allowing temporary construction in wetlands rather than a rigid application of criteria involving the cost and length of the alternative and whether MATL is currently in negotiation with the landowner. The cost and length of the alternative and the wishes of the landowner are certainly among the factors that should be balanced in making this determination. The Department has modified Alternative 1 to clarify that the Department's Director would make the final determination based on recommendations of the State Inspector, MATL, the affected landowner and other agencies having jurisdiction over wetlands.

Comment 49 Comment noted.

Comment 50 Comment noted.

Accordingly, MATL proposes the following modifications to language provided by DEQ. If amended, this would become part of MATL Alternative 4:

"If environmental impacts at construction sites, or access locations, ~~or guy wire location,~~ or costs associated with a detour make wetland avoidance unreasonable as determined by DEQ in coordination with representatives from the U.S. Department of Energy, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, DEQ's water quality division, with technical and cost considerations provided by MATL, ~~DEQ would require~~ MATL would be required to provide compensatory mitigation for the wetland acreage affected at the rate of 0.2 acre per 1.0 acre of impact. DEQ would make the final determination based on the recommendations of the panel, and consideration of the following criteria:

- If a given workaround exceeds the greater of $5,000 in total costs (as independently determined by the contractor), or two times the cost of purchasing the appropriate wetland bank credits for the involved crossing, it should be considered to be unreasonable and the crossing would be eligible for permit approval as appropriate under Section 318.

- If a given workaround requires negotiation of additional easement area from a landowner not currently engaged by MATL in negotiations, the workaround should be considered unreasonable and the crossing would be eligible for permit approval as appropriate under Section 318.

- If a given workaround exceeds one mile in length, the workaround should be considered unreasonable and the crossing would be eligible for permit approval as appropriate under Section 318.

- In the event that MATL disagrees with a decision made by the MFSA program administrators, MATL may request review of that decision by the Director, who will then make the final decision for the Agency.

Comment 50 continued

Under this Alternative, MATL would still propose that each wetland crossing be reviewed by the above-noted panel during a one-day working session to identify all crossing locations and potential detours to work around wetlands, and that DEQ retain complete authority over the Section 318 process. MATL will prepare external, independent cost estimates and impact calculations to inform the regulatory partners in their collective decision on how to proceed.

As noted above, pursuant to §75-1-201(5)(b), MCA, MATL requests a meeting prior to DEQ's final decision to mutually develop the final evaluation criteria to be utilized for the remainder of the project.

Clarifying Note:

Since the submittal of our amendment request, MATL has discovered additional text in the Certificate that would require deletion. The full paragraph on the top of page 10 should be deleted as follows:

> "~~The line would cross a portion of one standing water body greater than 20 acres in size, Hay Lake. The area would be spanned and no construction would be allowed within 50 feet of the wetland.~~"

Director Richard Opper
EA Comment
September 3, 2010

This deletion should occur in correlation with the selection of any of the advanced alternatives in the Final EA and DEQ Amendment decision.

Comment 50 continued

Conclusion

MATL appreciates that DEQ has not made a definitive decision with regard to the impacts associated with our initial and limited amendment request. Although we disagree with the "tentative conclusion" outlined in the EA and believe our amendment is acceptable as submitted, our revised approach outlined in Alternative 4 would result in an overall improvement in wetland habitat as MATL would, only if required, be purchasing a limited amount of wetland credits at an agreed rate, to offset temporary impacts.

Comment 51

We strongly seek to avoid completely the unintended and deleterious consequences of opening new corridors with insufficient analysis which exposes us all to the risk of appeal by persons whose corridor amendment requests were not considered in the EA Checklist and additional and unknown amounts of further regulatory study. We strongly urge that the corridor remain as it is and that your decision only address precisely that which was asked, which would be fully in compliance with the MCA as outlined in our attached legal memorandum.

The vast majority of the construction impacts will be reclaimed by the end of the five-year monitoring period, and new wetlands will have been created elsewhere in addition to those fully restored. Even lingering or permanent impacts could be replaced at a higher level than the impacted acreage if a reasonable approach is taken in determining which wetlands are suitable for crossing.

Director Opper, MATL sincerely appreciates your attention to this project over the past several years. We have been operating in good faith on the approvals given by your agency, and those of your federal partners on this project. We ask that you give serious consideration to this request for clarification and, only if required, the unprecedented limited mitigation we are willing to consider, and give this important project a firm set of guidelines to allow a clear path forward.

Sincerely

Johan van t' Hof

MATL LLP

Attach.

cc: Anthony Como, DOE
Tim Meeks, WAPA
U.S. Senator Max Baucus
U.S. Senator Jon Tester
Governor Brian Schweitzer

Comment 51 See response to Comment 48. In regard to the legal memorandum attached to MATL's comments, based on the legal memorandum and other comments received, the Department has decided not to select Alternative 2.

Comment 52 Comment noted.

Comment 53 Comment noted.

86.10

NaturEner

September 2, 2010

Mr. Tom Ring
Montana Department of
Environmental Quality
Facility Siting Program
1520 East Sixth Avenue
Helena, MT 59620-0901

Re: Amendment to MATL Certificate of Compliance

Dear Mr. Ring:

We are writing you regarding the proposed amendment to the Montana Alberta Tie Ltd. ("MATL") Certificate of Compliance for the construction of an international 230-kV merchant transmission line (the "MATL Line"). MATL's proposed amendment would allow it to conduct construction activities in and within 50 feet of wetlands. Structures would still be located outside wetlands. The draft Environmental Assessment, dated August 24, 2010, prepared by the Department of Environmental Quality ("MDEQ"), presents three options to MATL in response to its proposed amendment.

We are writing to request MDEQ to either approve MATL's proposed amendment or adopt Alternative 1 or a variation thereof. NaturEner is familiar with the approach described in Alternative 1 and supports the idea of offsetting all impacted wetlands within the permitted corridor with a contribution to a qualified Montana wetland mitigation bank. We have used this approach in other areas as it is a customary widely accepted approach for our industry across the country.

Comment 52

We are concerned that the adoption of the other alternatives, as described in the draft Environmental Assessment would cause substantial delays to the construction of the MATL Line. We cannot emphasize enough the negative impact such delays in completion of the MATL Line could be have on the construction of NaturEner's wind generation project ("Project").

Comment 53

NaturEner requires a construction period of approximately 12 to 18 months for the completion of the 300 MW Project, and cannot begin construction of the Project until such time as there is certainty regarding the in-service date of the MATL Line. Production tax

credits ("PTCs"), essential to the financial viability of wind generation projects, expire and are no longer available to wind generation projects that are not in commercial operation by December 31, 2012. If our project is not fully operational before that date, we cannot possibly finance and build the 309 MW wind farm contemplated to be interconnected to the MATL Line near Hay Lake, Montana. Comment 53 continued

As a result of a FERC approved open season, NaturEner is the holder of all of the south to north transmission scheduling rights on the MATL Line ("TSRs"). Payments in respect of the TSRs will constitute nearly all of the revenues initially available to MATL to repay its $161,000,000 loan from the Western Area Power Authority for the construction and long term financing of the MATL Line.

As described in the draft Environmental Assessment, Alternatives 2 and 3 could cause substantial delay to MATL's construction, putting the construction of the wind farm, and thus the financial viability of the MATL Line in jeopardy, because NaturEner would not be able to construct a wind generation project to connect to it before the expiration of the availability of PTCs. Comment 54

We urge you to either approve MATL's proposed amendment or adopt Alternative 1, or some variation thereof, to resolve the wetlands issues and MATL's application for the Amendment of the Compliance Certificate. Comment 55

Sincerely,

NaturEner USA, LLC

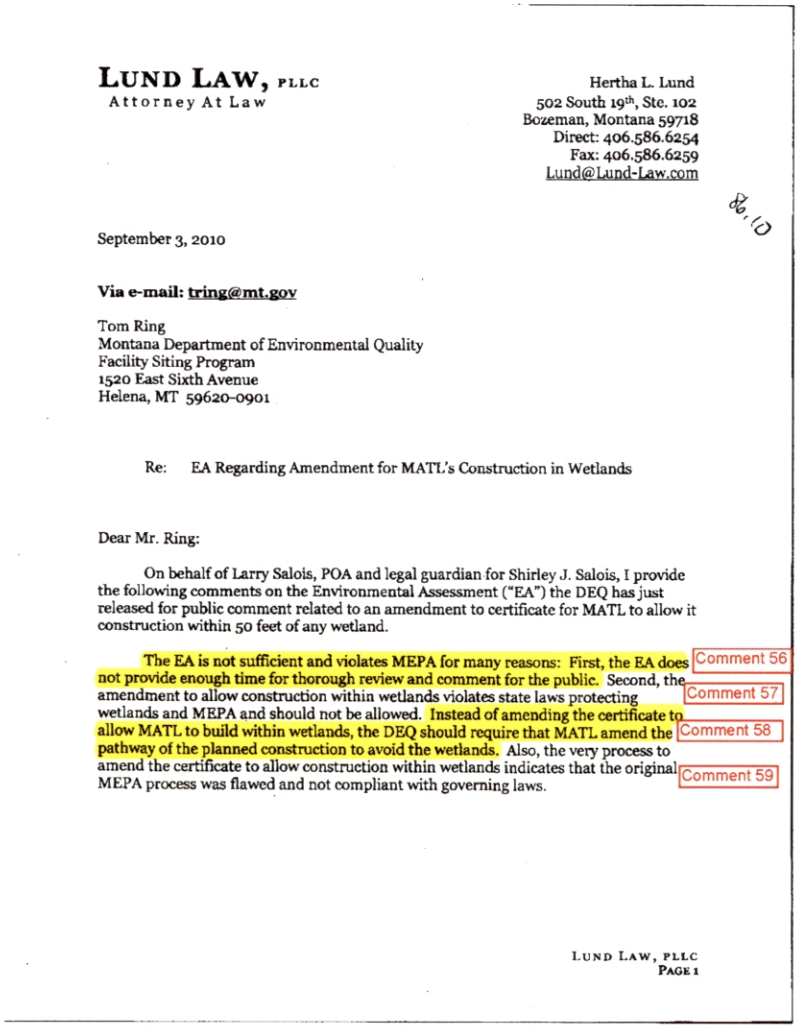
Bill C. Alexander

Bill Alexander

Cc: Richard H. Opper
Jose Maria Sanchez Seara

Comment 54 Comment noted. Based on this and other comments the Department has decided not to select Alternative 2.

Comment 55 Comment noted.



LUND LAW, PLLC
Attorney At Law

Hertha L. Lund
502 South 19th, Ste. 102
Bozeman, Montana 59718
Direct: 406.586.6254
Fax: 406.586.6259
Lund@Lund-Law.com

8.10

September 3, 2010

Via e-mail: tring@mt.gov

Tom Ring
Montana Department of Environmental Quality
Facility Siting Program
1520 East Sixth Avenue
Helena, MT 59620-0901

Re: EA Regarding Amendment for MATL's Construction in Wetlands

Dear Mr. Ring:

On behalf of Larry Salois, POA and legal guardian for Shirley J. Salois, I provide the following comments on the Environmental Assessment ("EA") the DEQ has just released for public comment related to an amendment to certificate for MATL to allow it construction within 50 feet of any wetland.

The EA is not sufficient and violates MEPA for many reasons: First, the EA does not provide enough time for thorough review and comment for the public. Second, the amendment to allow construction within wetlands violates state laws protecting wetlands and MEPA and should not be allowed. Instead of amending the certificate to allow MATL to build within wetlands, the DEQ should require that MATL amend the pathway of the planned construction to avoid the wetlands. Also, the very process to amend the certificate to allow construction within wetlands indicates that the original MEPA process was flawed and not compliant with governing laws.

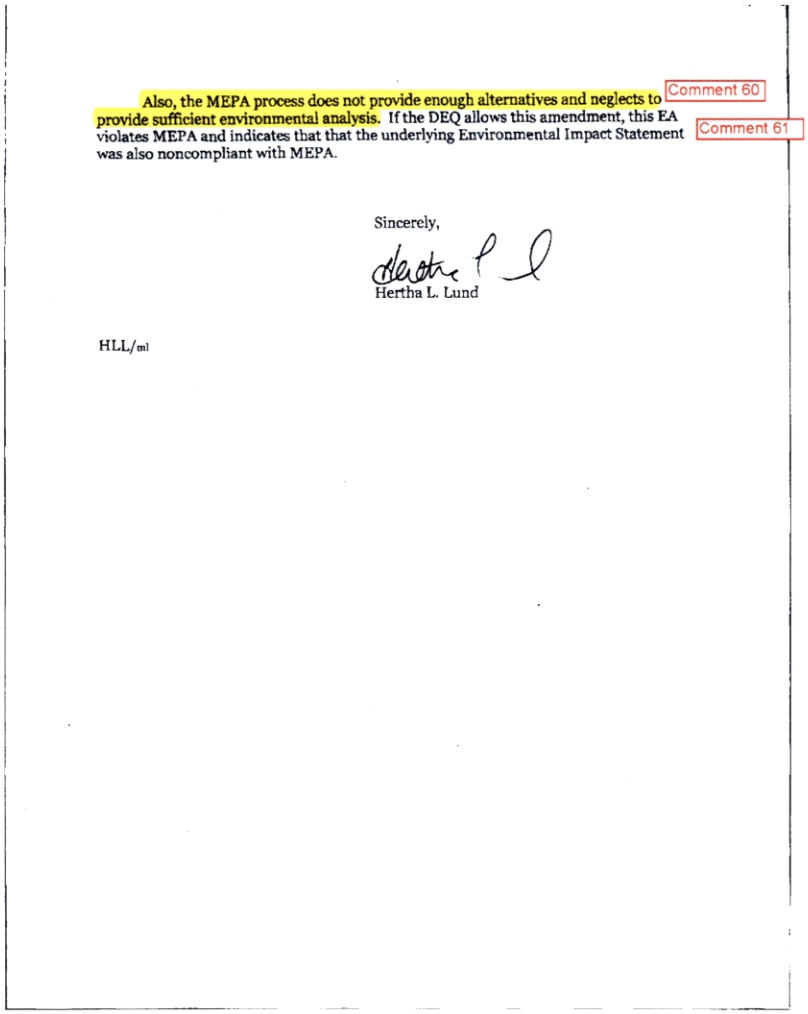
Comment 56
Comment 57
Comment 58
Comment 59

Comment 56 Under 75-20-219, MCA, once a notice to amend a Certificate has been submitted to the Department, the Department has only 30 days to review the application, prepare an EA, submit it for a brief public review, and make a decision. The statutory timeframes in MFSA supersede the timelines typical of reviews conducted under the Montana Environmental Policy Act.

Comment 57 The comment does not identify any state laws that specifically provide protection to wetlands.

Comment 58 Comment noted. The Department does not have the authority to require MATL to submit an amendment.

Comment 59 Your opinion is noted.



Also, the MEPA process does not provide enough alternatives and neglects to provide sufficient environmental analysis. If the DEQ allows this amendment, this EA violates MEPA and indicates that that the underlying Environmental Impact Statement was also noncompliant with MEPA.

Comment 60

Comment 61

Sincerely,

Hertha L. Lund

HLL/ml

Comment 60 The Department believes that a reasonable range of alternatives was considered and that sufficient environmental analysis was performed.

Comment 61 Comment noted. The Department respectfully disagrees.

Somerfeld & Sons Land & Livestock
550-15th Lane NE Power, MT 59468
406-463-2561

RECEIVED
SEP 02 2010
DEQ / EMB

August 30, 2010

DEQ Environmental Management Bureau
c/o Tom Ring
P.O. Box 200901
Helena, MT 59620-0901

8/10

RE: MATL Wetlands Amendment

Dear Mr. Ring,

We are concerned with the proposed language in the Wetland Amendment for the MATL Tie Line, the proposed language is confusing and it is not clear what the company has in mind. Comment 62

Have all the wetlands been identified? Our property has not been documented as of this letter, how can any amendment regarding wetlands be adopted without a completed study? Comment 63

If this amendment is granted, are all other landowners who may be affected by the yet-to-be determined wetlands going to be able to have a change in the corridor? If not, why? Comment 64

The Certificate on file should be left as it is written to protect the wetlands along the entire route, all wetlands are important. Comment 65

Thank you for your consideration of this letter.

Sincerely,

David J. Somerfeld
Leona M. Somerfeld

Comment 62 Comment noted.

Comment 63 An applicant may seek an amendment at any time after a Certificate of Compliance has been issued. In this case MATL has submitted the results of wetland surveys on the Somerfeld and Sons property. Wetlands are included in the 500 foot wide approved location including two wetland ponds which do not encompass the entire corridor and wetlands associated with four intermittent streams which are somewhat remote and may not be avoidable. For more information please see the map available at http://svc.mt.gov/deq/wmamatlamendment/ and zoom in on the area described in your comment.

Comment 64 Comment noted. Based on comments received, the Department has decided not to select Alternative 2.

Comment 65 Comment noted.

8.6.10

August 27, 2010

RECEIVED
SEP 02 2010
/ EMB

Tom Ring
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620

Subject: Draft MATL Certificate of Compliance Amendment

Dear Mr. Ring;

We read the "Draft" Montana Alberta Tie LTD (MATL) Certificate of Compliance Amendment for Construction Activities in Wetlands, Environmental Assessment. We have had discussions with MATL representatives about moving the power line ½ mile east of the existing proposed line. Gene Kammerman of DJ&A reviewed the Grossman and Mauer properties and proposed a revised alignment. Gene outlined the changes in a letter and a map showing the proposed changes dated August 5, 2009. A copy of Gene's map is shown on the last page of the August 24, 2010 Draft Environmental Assessment. His proposed revised alignment moved the line ½ mile east of the existing alignment. Gene's realignment benefits both Grossman and Mauer properties and the line is moved off the wetland. As Bruce Mauer pointed out in his letter to you dated August 17, 2010, "Everyone, including MATL people, think our proposed alternative route is better than the current route," … .

Comment 66

Reviewing your Draft Environmental Assessment, we like "Alternative 2" because it widens the approved corridor in an attempt to avoid wetlands and streams. We have talked and worked with MATL Representatives and would like to have the line remain on Section 17, Grossman property. The benefits of moving the line to Gene's proposed route are;

1.) It is approximately ½ mile east, away from the wetland.
2.) Eliminates the costs associated with moving the line to another property owner.
3.) Eliminates one (possibly two) major angle in the alignment.
4.) Reduces right-of-way costs approximately $20,000.
5.) It is more construction friendly.

Thank you for your time and consideration.

Sincerely,

Mary Lou & Toney Grossman

Comment 66 Comment noted. This is the area involved with the southernmost widened approved location (Area 1) considered under Alternative 2.

MONTANA ALBERTA TIE LTD

INTERNAL MEMORANDUM

&.5

RECEIVED
SEP 02 2010
DEQ / EMB

Date: August 05, 2009

To: James McCorquodale, Land Manager

From: Gene S. Kammerman, Right-of-Way Manager

Project: 5486 - Montana Alberta Tie Ltd.
Parcel No.: 025TE115 + 17 Others
Landowners: Bruce Maurer and Toney Grossman

Re: **REPORT** - Proposed Alignment Revision of the Transmission Line

Comment 67

Dear James:

I called Bruce Maurer as you requested in your e-mail on June 29, 2009 and set up an appointment with him to identify and document his proposal for a realignment of the transmission line.

On June 30, 2009 I met and traveled with Bruce and his neighbor Toney Grossman to review the existing alignment and a proposed route that would have less impact upon the neighbors, existing oil and water lines and provide a better alignment for construction.

Some of the considerations to support the proposed realignment:

- The transmission line is presently designed to be ½ mile from two homes. Neither landowner wants the line this close to their homes. The proposed alignment will move it another ½ mile further from these two homes.
- Two landowners have requested the new alignment and another two support the action.
- **Ten parcels will be deleted** (three are access parcels only).
- **Only one parcel will be added.** (same owner as another parcel who supports the project)
- **Six parcels will be revised.**
- New alignment appears to be more construction friendly.
- Bruce Maurer talked with Tom Ring who said that he supports the proposed revision and said that it should only require a minor modification to the EIS.
- We have been given permission for access from each landowner. However, the potential newly-added parcel should be numbered and access permission obtained from the existing landowner.
- This results in a reduction of approximately $20,000 in right-of-way costs.
- No obvious environmental issues are involved.
- The proposed alignment eliminates one major angle in the alignment.
- The proposed alignment extends the previous three-mile tangent another 1000 feet or so.

Both Bruce (406-463-2506) and Toney (406-463-2570) offered assistance to support this action to obtain permission for the proposed realignment as shown on the enclosed plat.

If you have any questions please call me at 1-800-398-3522. Thank you and have a great day!

c Bruce Maurer and Toney Grossman
Enclosure

800, 615 Macleod Trail S.E., Calgary, Alberta, Canada, T2G 4T8
Phone: (403) 264-4465 Fax: (403) 265-1299
Website: www.matl.ca

Comment 67 Comment noted. The Department, however, has decided not to select Alternative 2.

Ronald & Debbie Laubach
1199 Wilson Road
Power, MT 59468

August 30, 2010

Montana Dept of Environmental Quality
Attn: Tom Ring and Craig Jones
P.O. Box 200901
Helena, MT 59620-0901

Comment 68

Dear Tom and Craig,

We would like to request a change in the MATL route going across our property at T24N, R2E, Sec7. As we have indicated during numerous discussions, we would like to see the pole placement moved to the south and west borders of our property.

By changing the route across our property, crossings of two intermittent streams (wetlands) would be eliminated; whereas, a narrower and less intrusive crossing of wetlands further to the west would be accomplished. This route change would certainly benefit the wild game, bird (pheasant and grouse) population, and the overall environment.

This new proposed route would also enable the placement of the poles to be approximately 1320 feet from the building sites as opposed to the mere 200 feet as it was previously proposed and would also eliminate the need to farm around the poles and guide wires in the middle of our farm land.

We appreciate your concern in regard to the wetlands of this project. We appreciate any help you can give us in this matter.

Sincerely,

Ron + Debbie Laubach

Ron and Debbie Laubach

RECEIVED
SEP [illegible] 2010
MEPA/NRB

Comment 68 Comment noted. This is the area involved with the middle widened location (Area 2) considered under Alternative 2. The Department has decided not to select Alternative 2.

09/03/2010 12:48 FAX 4064632585 S. D. LANDS, INC. 002/002

RECEIVED SEP 03 2010 DEQ / EMB

RECEIVED SEP ~~07~~ 2010 03 DEQ / EMB

9-3-2010

To Whom it may concern.

Comment 69

This is a follow-up regarding my phone conversation with Tom Ring this morning.

I am in favor of the corridor Expansion on the North side of the Diamond Valley Highway (#379) (Figure #2 Draft) only. I am not in favor of the expansion where the line would cross and proceed south of the Valley Highway (379). At that point the line should proceed on the East side of 22nd Lane only.

There are already several other power lines on the west side of 22nd Lane. With any more power lines Added on the west side of 22nd Lane farming would be impossible. Aerial Spraying will not be possible as well as Ground Application. I would like wetland pole placement to be allowed if it makes farming practices easier. I don't Like the idea of totally eliminating that practice. If pole placement can be along a wetland coulee instead of inside a farm field I would prefer ~~that~~ to have that option.

Regards,

Steven F. Dahlman (Pres.) S.D. Lands, Inc.

H- 406-463-2369
C- 406-868-9781

Box 294
Dutton, MT 59433

Comment 69 Comment noted. This is the area involved with the middle widened location (Area 2) considered under Alternative 2. The Department has decided not to select Alternative 2.

MATL Amendment

9824 24th Ln NE
Power Mt 59468
25 Aug 2010

Craig Jones
Mt Dept Environmental Quality
Po box 200901
Helena, Mt 59620

Dear Mr. Jones,

Comment 70

We are agreeable to a possible route for the MATL power transmission Line through our Land in E½ SE¼ Section 17, T23N, R2E and Section 21, T23N, R2E, Teton County, Montana. Hopefully, this will facilitate your efforts to work out an acceptable corridor for the MATL Line.

Sincerely,

Thelma M. Wheeler
WILMA M. Wheeler

Myron A. Wheeler
Myron A. Wheeler

RECEIVED
AUG 2 [illegible] 2010
DEQ / EMB

Comment 70 To the south of the proposed expanded approved location on the Laubach property the width of the approved location has not changed since approval of the Certificate of Compliance and is not proposed for change. In the area south of the Laubach property, MATL will work with the landowners to obtain an easement for the transmission line within the approved location.

August 29, 2010

Mr. Tom Ring
Montana Department of Environmental Quality
Facility Siting Program
PO Box 200901
Helena, MT 59602-0901

Dear Tom:

This is a comment concerning the MATL certificate of compliance amendment for construction activities in wetlands.

Comment 71

I think Alternative 2 would be the best course of action. It stands to reason that if the line avoids as many wetlands as possible, less long term damage will be done to the total amount of wetlands encountered.

Besides the wetland issue, Alternative 2 would locate the line in areas that would resolve some concerns for affected landowners.

Sincerely,

Bruce Maurer

Bruce Maurer, Sec.
Maurer Farms, Inc.
Power, Montana 59468

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Comment 71 Comment noted. This comment applies to the southernmost (Area 1) considered under Alternative 2. The Department has decided not to select Alternative 2.

ATTACHMENT 1

August 17, 2010

Mr. Tom Ring
DEQ Environmental Management Bureau
P. 0. Box 200901
Helena, Montana 59601-0901

Comment 72

Dear Tom:

Since last June, I have been trying with no luck, to get MATL to move their power line farther away from our farmstead with four houses and Toney and Mary Lou Grossman's home. No one has a reason this line must go within 1500 feet of our place when there are three miles between us and the next house to the east, but MATL says they will not ask for an amendment to change the line because they can't take a chance of objections slowing down the process. In January, I got statements which I gave to MATL, from everyone who would possibly be affected by this move saying they didn't object, and now MATL has filed an amendment concerning wetlands.

Everyone, including MATL people, think our proposed alternative route is better than the current route, and now with the new emphasis on wetlands, there is even more reason to change. There is a fairly large wetland on Grossman's that the line is scheduled to go through which I have indicated on the enclosed map. This time of year you can tell from the green grass that the wet area is much larger than the area with standing surface water.

On our land, the line is supposed to make a corner right by an alkali spot half way down a steep hill which would necessitate putting two poles close together to keep the wire high enough above ground on the hill. It is hard to tell if the corner post or guy wires would be in the alkali spot now, but they surely would within ten years the way this spot is growing.

I am enclosing a map, which incidentally was drawn by Gene Kammerman of DJ&A, of the proposed change on which I have marked in red the wet areas.

Thank you for your consideration.

Bruce Maurer, Sec.
Maurer Farms, Inc.
Power, Montana 59468

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Comment 72 Comment noted. The Department has decided not to select Alternative 2.

TO: Tom Ring, DEQ
FROM: Katrina Martin
DATE: 3 September 2010
RE: MATL Application to Amend 2008 Certificate of Compliance

Comments on MATL'S Application and DEQ's EA

1. MATL'S Application

Page 2, ¶3: Reasons for Proposed Amendment Request. Applicants state the proposed amendment is "... intended to make the conditions governing the construction and maintenance of the Line consistent with the environmental analysis that occurred in the FEIS." If that is the case, Applicants need to amend the Certificate to reflect the actual design specifications of the Line they are building. The environmental analysis that occurred in the FEIS was based upon typical and average size of the pole structures that will be far exceeded by the actual structures landowners are now being informed will be used on their property. Comment 73

Page 4, ¶3B: MATL misstates it is "nearing the commencement of construction." Everyone knows that on the date of the Application (11 August 2010) MATL was boasting its construction activities were well underway. Comment 74

¶i: The challenge of Hay Lake must have been obvious to the Applicants from the time of their initial Certificate Application years ago; perhaps better planning on their part would have protected them from being surprised by this apparent challenge. Applicants say "... additional issues requiring moderate and prudent flexibility may arise." That is why the Certificate specifies a 500 foot corridor in which Applicants can operate. Comment 75

¶iii: MATL states: "At a minimum, the extra mileage associated with long "work-around" routes may create greater land disturbances, greater impacts to farming and ranching operations, greater erosion, higher levels of dust and emissions, an increased threat of spreading noxious weeds, and aggravated landowner relations." All of those concerns are also implicated by the much larger pole structures the Applicant is now saying it will use to construct the Line. Significantly taller, larger pole structures will obviously disturb more land and have greater negative impacts in the transport, storage, installation, reclamation, and operation of the Line. The noxious weed problem will be much greater in an area with guy wires supporting a 140' structure than what is required for an 65-90 foot structure. Aggravated landowner relations would be severely exacerbated by the Applicants' blanket proposal to impact any and all wetlands whenever it feels the necessity to do so, **especially since such wetlands have yet to be delineated on a large portion of the Line**. Comment 76

Page 5, ¶C: Just because the US Army Corps of Engineers (those who built and operated the levees in and around New Orleans) are willing to allow negative impacts to wetlands, doesn't mean the Montana Department of Environmental Quality has to do the same. The Montana Constitution, from with DEQ gets its legal mandate, contains a strong and specific provision regarding protection of our state's precious environment. There is no valid reason for a policy Comment 77

Comment 73 Comment noted.

Comment 74 Comment noted.

Comment 75 Comment noted.

Comment 76 Comment noted. The alternative selected by the Department would allow temporary construction activities in wetlands only where there was not a reasonable alternative. Where a field review is conducted to determine the existence of a reasonable alternative, the Department's modified alternative allows landowners to provide a recommendation.

Comment 77 Comment noted. See response to Comment 45.

which devolves to the lowest common denominator.

Page 7, ¶D: The Applicants state the original Certificate Application and the FEIS were based upon "MATL-proposed specification and industry standard construction practices." In light of recent events, industry standard practices can hardly engender confidence in things being done properly with reference to environmental protection. The Applicants wonder how the 50-foot buffer zone and "no construction" condition came about. Like the rest of the Certificate's provisions, it resulted from the statutorily mandated BALANCING of factors described in the FEIS. DEQ's narrative in the FEIS contains numerous and varied factors which the Applicants now complain are inconsistent because they have discovered they did not get just what they expected from the document. Well, landowners got narrative to support their positions in this matter, but that did not mean they got exactly what they wanted in every respect. DEQ is legally required to engage in a balancing of factors, which is precisely what it did in the Certificate. To now suggest the staffers did not understand what the document said, that it is inconsistent, is rubbish. Just because the Applicants do not like the clear and unambiguous prohibition on construction activities within 50' of wetlands does not mean it should be abandoned based upon targeted and perhaps out-of-context extractions from the lengthy and comprehensive description of factors in the FEIS. Comment 78

Page 8, ¶D: The Applicants continue in this vein alleging DEQ "error" and mischaracterization as proper basis for the need for this Amendment. Applicants had every right to carefully review the Certificate when it was issued and raise such concerns prior to signing the document; they did not. They also had every opportunity to appeal the Certificate if there were errors contained therein; they did not. Instead they now seek to undermine important environmental protections by twisting and nitpicking certain passages from the FEIS. Comment 79

Page 9, ¶D: The Applicants again state that the Amendment is required to make the Certificate "... accurately reflect the analysis, assumptions, and activities discussed in the FEIS and disclosed to the public and the decision maker." If the Line were to be constructed and accurately reflect the analysis, assumptions, and activities discussed in the FEIS, and disclosed to the public and the decision maker, the pole structures would be 65-90' in height – not the now planned 130-160' height. Comment 80

The Applicants finally do state the clear reason for the requested Amendment at the bottom of the page: "It is also necessary to give effect to the Certificate and its finding that the Project is in the public interest – a finding and an authorization which may otherwise be made substantially less valuable if this amendment were not to be adopted." Without the amendment they will make less money. If they are not allowed to disturb and possibly destroy wetlands along the route, their profits might go down. At least they are honest in this admission. Comment 81

2. EA

§3.1 I believe the language of the Proposed Action is much too confusing and overly broad. It appears to allow the Applicants unlimited rights to disturb and possibly destroy areas in and around wetlands. As described above, the alleged reasons which form the basis for the Amendment do not adequately or appropriately support the Proposed Action. Comment 82

Comment 78 Comment noted.

Comment 79 Comment noted.

Comment 80 Comment noted.

Comment 81 Comment noted.

Comment 82 Comment noted. The alternative selected by the Department does not give MATL unlimited rights to disturb or destroy areas around wetlands.

§3.2 Discussion of Alternative 1

¶A.

- "No poles placed within a stream" – should there be more specifics as to high water/low water, etc.; what about guy wires? Comment 83
- "no construction disturbance" – should there be mention of "operation and maintenance" here? Comment 84
- field inspections – landowners should be involved in all phases of this process: the determination of necessity for a field review, attendance and input regarding "reasonable alternatives"at the review, opportunity to comment on alternatives, etc. Comment 85
- DEQ must not only be allowed to identify certain alternatives, it must be allowed to proscribe and enforce chosen alternatives Comment 86
- "costs" alone should not be the basis for a finding that wetland avoidance is unreasonable Comment 87

¶C. Why delete this entire section? Is the existing language not important, or will it be covered by some other provision? Comment 88

§3.2 Discussion of Alternative 2

These proposed changes do not appear to take into account any effect on contiguous landowners. It seems as though an EA on route changes should include such discussion. One of the changes brings the corridor much closer to a military installation which I believe is governed by some statute or regulation specifying acceptable distances – was that analyzed? Comment 89

General Comments on the EA

The language related to the Proposed Action is complex and not clear. It is impossible to know what or how to comment when careful reading of the proposed language yields only confusion. This cannot be a good way to establish public policy. Comment 90

How can a blanket amendment regarding wetlands be adopted when the Department admits wetlands along the entire 130 mile route are not yet delineated? Landowners do not even know if they might be impacted by this change; how can they comment, and how can this be acceptable public participation? Comment 91

Are other landowners who may be in the same situation as those whose suggestions for route changes have been incorporated in the EA going to be able to request a widening of the corridor to suit their needs as well? If not, how can the process be considered equitable? Comment 92

Comment 83 Comment noted. The prohibition on placement of poles within a stream prohibits placement of such structures below the normal high-water mark as denoted by a change in vegetation and also applies to guy wires supporting the pole.

Comment 84 Comment noted. Language in the Department's decision also allows the Director to take into consideration the need for access during operation and maintenance activities.

Comment 85 Comment noted. Language in the Department's decision would require MATL to invite landowners to any field reviews.

Comment 86 Comment noted. See the Department's decision.

Comment 87 Comment noted. Cost is not the only factor to be considered. See the Department's decision.

Comment 88 Under Alternative 1 the language has been deleted because construction activities could be allowed within the 50-foot buffer of streams, but storm water controls would have to be implemented under the Montana Water Quality Act, which is not preempted by the Major Facility Siting Act.

Comment 89 Comment noted. Based on this and other comments, the Department has decided not to select Alternative 2.

Comment 90 Comment noted.

Comment 91 The Department does not yet have delineations of all the wetlands south of the Marias River Substation, but must make a decision within 30 days of receipt of the amendment application, unless MATL requests an extension. Thus, the alternative selected by the Department's lays out a process under which a variety of

factors may be considered before allowing temporary construction activities in wetlands. Where a field review is conducted to determine the existence of a reasonable alternative, the alternative allows landowners to provide a recommendation. When the remaining wetland delineations are submitted to the Department, they will be posted to the following web site: http://svc.mt.gov/deq/wmamatlamendement/

Comment 92 Comment noted. Based on this and other comments, the Department has decided not to select Alternative 2.

There is reference to the use of "mats" in the application, but nothing is mentioned in the EA about their use. Is the language in Alternative 1 going to be used to specify particular kinds of mitigation such as mats? If so, what other types of mitigations might be implemented and shouldn't the EA discuss them? Comment 93

Thank you for the opportunity to comment on this important matter.

Katrina Wilson Martin
1720 24th Ln NE
Dutton, MT 59433

Please do not publish, or distribute in any way, my e-mail address. Thank you.

Comment 93 If there is no reasonable alternative to avoiding temporary construction activities in wetlands, the Department would consider measures, including the use of temporary mats, that would be placed through wetlands and bridges spanning the wetlands.

Ring, Tom

From:
Sent: Friday, September 03, 2010 2:56 PM
To: Ring, Tom
Subject: MATL Amendment

Tom: Hi! My comments weren't the final version--didn't hit save the last time! So please include as a final paragraph:

The process here seems incomplete and does not follow the constitutional and statutory law enacted to protect our environment. The only proper alternative is the NO ACTION alternative. Comment 94

Thanks, Katrina

This message was sent using IMP, the Internet Messaging Program.

Comment 94 Comment noted.

SHEFFELS FARMS, Inc.
PO Box 1545 Great Falls, MT 59403-1545
Office: (406) 761-8805 Shop: (406) 761-4882

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DEQ / EMB

September 7, 2010

Mr. Tom Ring
Facility Siting Program
Montana Department of Environmental Quality
PO Box 200901
Helena, MT 59620-0901

Re: Montana Alberta Tie Ltd. 230 kV Transmission Line Amendment for Construction Activities in Wetlands

Dear Mr. Ring;

I'm not quite sure what the intent of the wetlands amendment is to accomplish. It appears the original certificate was well thought out and adequately protects wetlands. Comment 95

If minor line realignment can be accomplished to the benefit of the landowners, that should be done. MATL has had ample time to apply for changes it might desire. It appears the amendment would give MATL a blank check to do whatever they want while crossing wetlands. I doubt that was the objective of the original Certificate of Compliance, or good policy. Comment 96

This request comes at a busy time of year for most of the landowners affected: hopefully they can address the situation adequately. As you well know MATL has not been exactly timely in regard to requests from landowners. A letter we sent to them in February of this year was not answered until August. I'm not sure a precedent setting change in their Certificate of Compliance should be made in a hasty manner. Comment 97

Thank you.

Sheffels Farms, Inc.

Jim Sheffels

Comment 95 Comment noted.

Comment 96 Your comment in regard to MATL's proposed amendment is noted. Under the alternative selected by the Department, MATL would only be allowed to conduct temporary construction activity in wetlands where there is no reasonable alternative. The Department's Director would make that determination.

Comment 97 Comment noted.