

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Ellen Anderson
J. Dennis O'Brien
Phyllis Reha
David Boyd
Betsy Wergin

Chair
Commissioner
Commissioner
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Commissioner

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Boise, ID 83702

SERVICE DATE: October 27, 2011
DOCKET NO. IP-66851/WS-10-1238

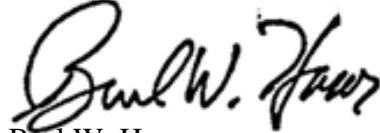
In the Matter of Big Blue Wind, LLC 36 Megawatt Large Wind Energy Conversion System in Faribault County, Minnesota

The above entitled matter has been considered by the Commission and the following disposition made:

Granted approval of the Big Blue Wind, LLC Avian and Bat Protection Plan as amended by the Supplemental Filing and by the recommended additions outlined in the U.S. Fish and Wildlife comment letter dated October 19, 2011.

The Commission agrees with and adopts the recommendations of the Department of Commerce which are attached and hereby incorporated in the Order.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**COMMENTS AND RECOMMENDATIONS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
ENERGY FACILITY PERMITTING STAFF**

DOCKET NO. IP-6851/WS-10-1238

Meeting Date: October 27, 2011.....Agenda Item # 1

Company: **Big Blue Wind Farm, LLC**

Docket No. **IP-66851/WS-10-1238**

**In the Matter of Big Blue Wind, LLC 36 Megawatt Large Wind Energy
Conversion System in Faribault County, Minnesota.**

Issue(s): Should the Commission approve the permittee's Avian and Bat Protection Plan compliance filing?

DOC Staff: Jamie MacAlister and Larry Hartman.....651-297-1335

Relevant Documents

Avian and Bat Protection PlanOctober 4, 2011
Avian and Bat Protection Plan Supplemental Filings.....October 19, 2011
Order Issuing a Site Permit for Big Blue Wind Farm, LLC.....August 17, 2011

The enclosed materials are the work papers of the Department of Commerce Energy Facility Permitting Staff (EFP). They are intended for use by the Public Utilities Commission and are based on information already in the record unless otherwise noted.

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Documents Attached

1. Comment Letter from the United States Fish and Wildlife Service
2. Project Boundary Map

See eDocket filings (10-1238) at <https://www.edockets.state.mn.us/EFiling/search.jsp>, or the Commission website at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=30587> for project related documents.

Statement of the Issues

Should the Commission accept the Avian and Bat Protection Plan (ABPP) and Supplemental Filings as submitted by Big Blue Wind Farm, LLC?

Introduction and Background

The Minnesota Public Utilities Commission (Commission) issued a site permit to Big Blue Wind Farm, LLC (Big Blue Wind or Permittee) to construct a 36 Megawatt Large Wind Energy Conversion System (LWECS) in Faribault County on August 17, 2011, pursuant to Minnesota Rules chapter 7854.

Under the site permit, Big Blue Wind must develop an Avian and Bat Protection Plan (Section 6.7) with a special provision to include an Eagle Protection Plan (Section 13. 1) for the purposes of addressing avian and bat protection measures during construction and operation of the wind farm. Pursuant to the Site Permit issued on August 17, 2011, the Avian and Bat Protection Plan must be approved by the Commission prior to construction.

Regulatory Process and Procedures

Pursuant to Minnesota Rule 7854.1000 Final Permit Decision, subp. 4 Conditions, the Commission may include conditions in a site permit that are reasonable to protect the environment, enhance sustainable development, and promote the efficient use of resources. For the Big Blue Wind, LLC site permit, the permit has a condition for an ABPP with a special condition for Bald Eagles and requires Commission approval.

Permit Condition 6.7 (Avian and Bat Protection Plan) states:

"The Permittee shall prepare an Avian and Bat Protection Plan in consultation with the Commission, DNR, and the United States Fish and Wildlife Service (USFWS). The plan shall be approved by the Commission prior to construction. The plan shall address steps to be taken to identify and mitigate impacts to avian and bat species during the construction phase and the operation phase of the Project. The plan shall also include formal and informal monitoring, training, wildlife handling, documentation (e.g., photographs), and reporting protocols for each phase of the Project."

Permit Condition 13.1 Avian and Bat Protection Plan Special Provision states:

"The Avian and Bat Protection Plan in Section 6.7 shall include an Eagle Protection Plan and survey plans and protocols to conduct post-construction bald eagle surveys. The post-construction bald eagle surveys shall be conducted for a minimum of one year. The results of the post-construction bald eagle surveys shall be submitted to the Commission. Based on those results, the Commission may modify conditions in this permit pursuant to Section 11.2. (Modification of Conditions).

Big Blue Wind submitted the ABPP to the Commission on October 4, 2011, and supplemental filings on October 19, 2011.

EFP Staff Analysis and Comments

Pursuant to Permit Condition 6.7, Big Blue Wind has developed the Avian and Bat Protection Plan (ABPP) in consultation with the Commission, Department of Natural Resources (DNR), and the U. S. Fish and Wildlife Service (USFWS). Consultation efforts included, but were not limited to, conference calls, review and comments on drafts of the ABPP, and the development of supplemental information by the Permittee for construction monitoring and training protocol. DNR submitted informal comments on the Avian and Bat Protection Plan acknowledging its role in the development of the ABPP and had no additional comments or information requests. The U.S. Fish and Wildlife Service submitted formal comments on the ABPP and requested additional clarification on specific sections and rewording of some sections to be consistent with Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA). EFP staff agrees with these comments and provide the following analysis and comments on the ABPP.

The purpose of the Avian and Bat Protection Plan is to identify and mitigate impacts to avian and bat species during the construction and operation phases of the project. ABPPs are recent permit conditions beginning in 2010, and only a handful of projects have been required to develop and submit these plans. According to Section 6.7 of the Site Permit, the ABPP shall include, "formal and informal monitoring, training, wildlife handling, documentation (e.g., photographs), and reporting protocols for each phase of the project." Based on the project and the expected risk-level determined by pre-construction site analysis, the ABPP may or may not have formal monitoring requirements. Likewise, a Permittee may need to address specific species in the ABPP if the data indicate the presence of State or Federal threatened, endangered, or special concern avian and bat species.

More than 90 percent of the Project area is used for agricultural purposes.¹ The Project area also contains Reinvest in Minnesota Easements (RIM) lands. There are no biologically significant areas or public lands within or adjacent to the project boundary and no known Important Bird Areas, migratory flyways, bat hibernacula, or other factors that would increase risk factors for avian and bat species. The Guckeen Wildlife Management Area and Pilot Grove Lake Waterfowl Production Area are located within five miles of the Project boundary.

Big Blue Wind retained Western EcoSystems Technology, Inc. (WEST) to conduct pre-construction wildlife studies. WEST conducted fixed-point bird use surveys, incidental wildlife

¹ Site Application, December 2010.

observation and raptor nest surveys during 2011.² Over 50 unique bird species were observed during the surveys, which is common for an agricultural landscape.

A bald eagle's nest was located in section 35 of the Project area and two unidentified raptor nests were documented outside of the Project area. The eagle nest is more than two miles from the nearest turbine.³ The bald eagle is federally protected under the BGEPA. No other state threatened, endangered, or species of special concern or federally listed species were observed. The Permittee conducted Eagle flight path surveys and monitored eagle nest activity until the young fledged. The turbine layout has taken current eagle nesting information into consideration, and no turbines have been sited within two miles of the existing nest. Eagle use surveys and nesting activity monitoring will continue throughout the construction process and continue for a minimum of one year once the project is operational.

Acoustic bat monitoring data are still being analyzed, with the final report expected in December of 2011. In addition to pre-construction avian and bat surveys, Big Blue Wind will conduct one year of post-construction fatality monitoring. All data and reports resulting from these surveys and on-going monitoring will be submitted to the Commission, DNR, and USFWS.

EFP concludes that Big Blue Wind has consulted with EFP, DNR, and USFWS, as per Permit Conditions 6.7 and 13.1, in developing the Avian and Bat Protection Plan. Supplemental information has been filed in response to EFP questions, notably on the development of training protocol for construction crews. The training protocol includes information on identifying bald eagles and provides monitoring and reporting protocol for all avian, bat, and other wildlife species based on the timing and type of construction activities.

Based on the data received to date, the one year post-construction fatality monitoring for avian and bat species, the two year post-construction monitoring for Bald Eagles, and overall low-risk for impacts to avian and bat species, EFP staff believes that the Avian and Bat Protection Plan as amended by the Supplemental Filings satisfies Permit Conditions 6.7. and 13.1.

Commission Decision Options

- A. Grant approval of the Big Blue Wind, LLC Avian and Bat Protection Plan as amended by the Supplemental Filing.
- B. Grant approval of the Big Blue Wind, LLC Avian and Bat Protection Plan as amended by the Supplemental Filing and by the recommended additions outlined in the U.S. Fish and Wildlife comment letter dated October 19, 2011.
- C. Deny approval of the Big Blue Wind, LLC Avian and Bat Protection Plan as amended by the Supplemental Filing.
- D. Make some other decision deemed more appropriate.

EFP staff recommendation: Option B.

² Avian and Bat Protection Plan, Section 2.2.

³ Avian and Bat Protection Plan, Section 3.4.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Twin Cities Field Office
4101 American Blvd E.
Bloomington, Minnesota 55425-1665

October 19, 2011

Jamie MacAlister
Planner
Minnesota Department of Commerce
Division of Energy Resources
85 7th Pl E, Suite 500
St. Paul, MN 55101

Re: Big Blue Wind Project Avian and Bat Protection Plan Review
Faribault County, Minnesota
PUC Docket: IP6851/WS-10-1238
FWS TAILS #32410-2011-CPA-0040

Dear Ms. MacAlister:

This is in response to the Department of Commerce and the project proponent's request for comments on the Avian and Bat Protection Plan (ABPP) for the proposed Big Blue Wind Farm in Faribault County, Minnesota. The proposed project includes the installation of 18 wind turbines, and associated infrastructure including roads, transmission lines, and staging areas. Below we have outlined our comments and recommended additions to specific sections of the ABPP.

Section 3.4: This section should clearly state how long construction will be halted if the bald eagles currently nesting in the project area leave during construction. Procedures to contact the Service, should bald eagles be disturbed during construction, should also be outlined in this section.

Section 4.1.1 Monitoring Protocol

The ABPP should state that all fatality monitoring protocol developed for the proposed project will be provided to the Service prior to beginning the fatality monitoring. Golden Eagle monitoring protocols should be coordinated with USFWS.

Please note that a separate permit from the Service's Migratory Bird Division will be necessary to collect the carcasses of any migratory bird (Special Purpose Miscellaneous, 50 CFR 21.27). Issuance of this permit will also need to be coordinated with state wildlife officials.

Sections 4.1.3 Reporting and 4.4 Operations Personnel Training

The wording for bulleted item (a) should be reworded to non-listed as opposed to non-protected avian or bat species. All migratory bird species are provided protection under the Migratory Bird Treaty Act (MBTA). The Service recommends that an additional bulleted item be added as follows; (d) one or more dead or injured bald or golden eagle.

Section 4.2. Post-construction monitoring should include spring surveys (before leaf-on) for new eagle or other raptor nests. Nest surveys are most efficiently done using helicopters; however, use of a helicopter is not required. The Service's Bald Eagle Guidelines (2007) and the Post-Delisting Monitoring Plan for the Bald Eagle (2009) detail appropriate flight height and survey protocol for helicopters and airplanes. If any new eagle nests are found, FWS should be notified immediately.

The project proponent has indicated that they will be monitoring for eagle nests throughout the life of the permit/project. Prior to implementation of this monitoring, please provide the Service with the proposed protocol. This should include, but not be limited to; specific survey intervals, staff qualifications, and at what point will the Service be notified.

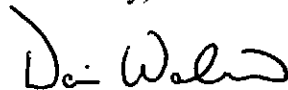
Section 4.5 Adaptive Management – Identification and Minimization of Impacts

If biologists or operations personnel document increased bald eagle use within the proposed project area the Service's Twin Cities Field Office will be contacted immediately. The project proponent should state if they are open to operational changes (curtailment, etc.) and/or applying for an eagle use permit if eagle activity changes around turbines/new nests are built.

A statement should be included regarding re-initiation of consultation with the Service should any currently listed species be identified within the project area, or should any new species be listed under the Endangered Species Act that may be affected by the project. The Adaptive Management section should address potential mitigation activities should a listed species be identified within the proposed project area prior to or during the operational phase of the project, or if higher than anticipated avian or bat fatality is documented during initial post – construction monitoring.

Thank you for the opportunity to provide comments on the proposed project. Please contact Rich Davis, Fish and Wildlife Biologist, at (612) 725-3548, ext. 2214, or Mags Rheude, Wildlife Biologist, at (612) 725-3548, ext. 2202 if we can be of further assistance.

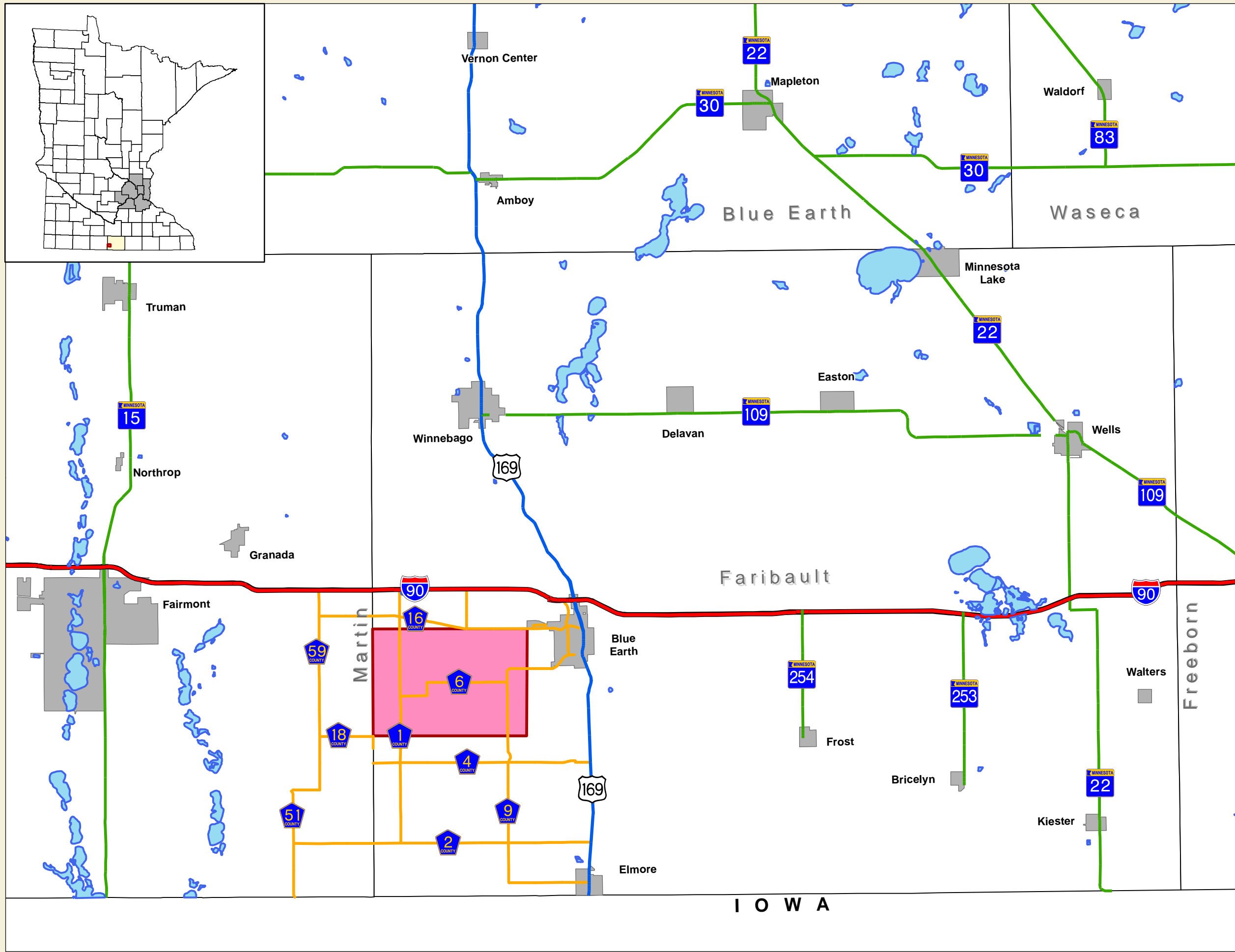
Sincerely,



FWS Tony Sullins
Field Supervisor

cc: Larry Harrison – USFWS Migratory Bird Permit Office
Barry Christiansen - USFWS Windom WMD
Kevin Mixon - MN DNR
Jamie Schrenzel - MN DNR
Scott Thelen – Pinnacle Engineering, Inc

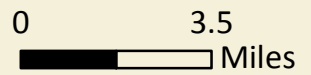
**Regional
Location Map
Map 1**



Legend

- Interstate Trunk Highway
- U.S. Trunk Highway
- Minnesota Trunk Highway
- County Highway
- Project Boundary
- Municipal Boundaries
- County Boundary
- Lakes
- Rivers

Source: MnDNR, MnDOT



**LARGE WIND ENERGY
CONVERSION SYSTEM**
Big Blue Wind Farm
Faribault County, Mn



December, 2010

Map Document: (\\varserver1\gis\PRV\101673\ESR\101673-Regional Location Map 1.x17.mxd) 12/2/2010 - 4:47:09 PM