

Appendix X – Agency Correspondence (Other than Comments on Draft EIS)



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Upper Mississippi River National Wildlife and Fish Refuge
51 E. Fourth Street - Room 101
Winona, Minnesota 55987



February 23, 2012

Stephanie A. Strength
Environmental Protection Specialist
Engineering and Environmental Staff
Rural Utilities Service
1400 Independence Ave. SW
Mail Stop 1571, Room 2242
Washington, DC 20250

Dear Ms. Strength:

As a cooperating agency in preparation of National Environmental Policy Act documentation for the CAPX2020 project, we are appreciative of your efforts to produce an environmental impact statement for the project which provides full and fair disclosure of impacts to deciding officials within the U.S. Department of Agriculture, Rural Utilities Service (USDA-RUS).

As a follow-up to our telephone conversation on February 22, 2012 we are providing information to assist USDA-RUS with responding to public comments regarding the decision to not include expansion of an expired right-of-way across the Upper Mississippi River National Wildlife and Fish Refuge (Refuge) as an alternative project route.

As discussed on February 22nd and reiterated through multiple communications over several years with the project applicant and your agency, expansion of the expired right-of-way across the Black River bottoms is not an appropriate use of Refuge lands. Enclosed you will find further description, rationale and justification for why expansion of the expired right-of-way is not an appropriate use of the national wildlife refuge. This appropriate use finding is only applicable to the 345kv line issue at the Black River bottoms.

If you require any clarification on the enclosed documents, please contact me or Deputy Refuge Manager Tim Yager at (507) 452-4232.

Sincerely,

Kevin S. Foerster
Refuge Supervisor

Attachments

cc: Tony Sullins, TCFO

Why is expansion of the existing Q1 line (route) not considered an alternative in the Federal EIS for the proposed 345 kV line?

An existing 161 kV power line (known as the Q1 line and operated/maintained by Dairyland Power, Inc.) crosses the Upper Mississippi River National Wildlife and Fish Refuge (Refuge) on an expired right-of-way. The right-of-way permit for the Q1 line was issued by the Bureau of Land Management (BLM) in 1951. Prior to December 19, 1969, permits for rights-of-way across lands under the primary jurisdiction of the U.S. Fish and Wildlife Service (Service) were issued by the BLM in accordance with regulations now published in 43 CFR 2800. After December 19, 1969, the Service's basic authority for granting right-of-way permits and/or easements is the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee).

The expired Q1 right-of-way was authorized in 1951 for a period not to exceed 50 years. As noted in the U.S. Fish and Wildlife Service decision document dated December 12, 1950, the right-of-way "*...shall be limited specifically to an area lying within 20 feet on both sides of the centerline of the proposed right-of-way as shown in the application and on the maps therewith designated*" drawing of *Power Line for Easement on Federal Lands, La Crosse County Wisconsin, No L-91, Reference Drawing P-16 SHT 14 S.*" In effect, this permitted a 40-foot wide by approximately 5,000-foot long corridor on the Refuge through the Black River Bottoms near the Village of Trempealeau, WI and the Village of Holmen, WI.

The project applicant contacted the Upper Mississippi River National Wildlife and Fish Refuge as early as 2006 to explore opportunities/alternatives for utilizing the expired Q1 right-of-way in constructing a new 345 kV power line as part of the CAPX2020 project. As described by the project applicant, utilization of the expired right-of-way would require expansion of the "footprint" of the expired right-of-way. It should be noted that the right-of-way expired in 2001 and is nearly 60 feet beyond the authorized 40-foot corridor. The expanded right-of-way for the CAPX2020 project would require a significant increase to an approximate 155-foot wide by 5,000-foot long corridor.

"Renewal" and/or reissuance of a right-of-way permit for the existing Q1 line as well as expansion of the expired right-of-way to accommodate a new, larger 345 kV line would be subject to review/evaluation following policy and procedures established in the Fish and Wildlife Service Manual, Chapter 603 FW 1, Appropriate Refuge Uses. This chapter provides a national framework for determining appropriate refuge uses. In addition, this chapter provides the policy and procedure for Refuge Managers to follow when deciding if uses are appropriate on a refuge. Refuge Managers are delegated authority to decide if a new or existing use is an appropriate refuge use. If an existing use is not appropriate, the Refuge Manager will eliminate or modify the use as expeditiously as practicable. If a new use is not appropriate, the Refuge Manager will deny the use without determining compatibility. This threshold "appropriate use" finding can aide project applicants from

needlessly and wastefully dedicating resources to projects that simply are not feasible or appropriate.

The appropriate use policy also clarifies and expands on the compatibility policy established under the National Wildlife Refuge System Improvement Act of 1997. The Fish and Wildlife Service Manual, Chapter 603 FW 2, Compatibility describes when Refuge Managers should deny a proposed use without determining compatibility. When we find a use appropriate, we must then determine if the use is compatible before we allow it on a refuge. This policy applies to all proposed and existing uses in the National Wildlife Refuge System (Refuge System) where we have jurisdiction over the use.

Refuges are managed in accordance with an approved comprehensive conservation plan (CCP). The CCP describes the desired future conditions of the refuge or refuge planning unit and provides long-range guidance and management direction to accomplish the purpose(s) of the refuge and the Refuge System mission. We prepare CCPs with State fish and wildlife agencies, public involvement, and include a review of the appropriateness and compatibility of existing refuge uses and any planned future public uses. If, during preparation of the CCP, we identify previously approved uses we can no longer consider appropriate on the refuge, we will clearly explain our reasons to the public and describe how we will eliminate or modify the use. When uses are reviewed during the CCP process, the appropriateness finding is documented using FWS Form 3-2319 and maintained in refuge files. The documentation for both appropriateness findings and compatibility determinations should also be included in the documentation for the CCP. The CCP for the Upper Mississippi River National Wildlife and Fish Refuge was completed in October 2006. The CCP can be viewed at www.fws.gov/midwest/planning/uppermiss/index.html.

When a refuge manager finds that a proposed use is not appropriate, the finding is documented for the refuge files using FWS Form 3-2319. This finding does not require refuge supervisor concurrence. However, if outside the CCP process a refuge manager finds that an existing use is not appropriate, the finding requires refuge supervisor concurrence.

Attached is Form 3-2319 which documents the Refuge's finding that expansion of the expired right-of-way through the Black River bottoms to accommodate a new 345 kV transmission line is not an appropriate use. A discussion of the rationale behind this determination is also included.

FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Upper Mississippi River National Wildlife and Fish Refuge

Use: CapX 2020 345 kV Transmission Line Proposal - Black River

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✓	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✓	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?		✓
(d) Is the use consistent with public safety?	✓	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?		✓
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✓	
(g) Is the use manageable within available budget and staff?		✓
(h) Will this be manageable in the future within existing resources?		✓
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?		✓
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?		✓

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will generally not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes No

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate

Appropriate

Refuge Manager: *J. M. [Signature]*

Date: February 24, 2012

If found to be Not Appropriate, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found Not Appropriate outside the CCP process, the refuge supervisor must sign concurrence.

If found to be Appropriate, the refuge supervisor must sign concurrence.

Refuge Supervisor: *[Signature]*

Date: February 24, 2012

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

Kevin S. Foerster
Refuge Supervisor

Rationale for appropriate use determination regarding expansion of the expired right-of-way (Q1 line) through the Black River bottoms of the Upper Mississippi River National Wildlife and Fish Refuge to accommodate a new 345 kV transmission line.

Refuge Manager's determine appropriateness of use based on 10 criteria. A discussion of the Refuge's position in regards to expansion of the expired Q1 right-of-way through the Black River bottoms to accommodate a new 345 kV transmission line follows.

a) Do we have jurisdiction over the use? If we do not have jurisdiction over the use or the area where the use would occur, we have no authority to consider the use.

YES. The expired Q1 right-of-way through the Black River bottom is on/over lands owned in fee title by the Department of the Interior and managed as part of the Upper Mississippi River National Wildlife and Fish Refuge. The Refuge has full jurisdiction over uses of this expired right-of-way and adjacent lands.

b) Does the use comply with all applicable laws and regulations? The proposed use must be consistent with all applicable laws and regulations (e.g., Federal, State, tribal, and local). Uses prohibited by law are not appropriate.

YES. It is unknown at this time if the proposed 345 kV line is compliant with all applicable laws and regulations. However, for the purposes of this analysis it is assumed that construction of the new 345 kV line at any location would only be permitted and/or funded if it were found to be consistent with all applicable laws and regulations. Accordingly, we answered yes.

c) Is the use consistent with applicable Executive orders and Department and Service policies? If the proposed use conflicts with an applicable Executive order or Department or Service policy, the use is not appropriate.

NO. It is the policy of the Fish and Wildlife Service (see Fish and Wildlife Service Manual, Chapter 340 FW 3, Rights-of-Way and Road Closings) to discourage the types of uses embodied in right-of-way requests. On areas in the National Wildlife Refuge System, if a right-of-way cannot be certified as compatible with the purposes for which a unit was established, it cannot be granted without authorization by Congress. The National Wildlife Refuge System Improvement Act of 1997 mandates the maintenance of biological integrity, diversity and environmental health on units of the National Wildlife Refuge System. Consistent with its purpose, each refuge is required to protect and, where appropriate, restore natural, historic ecological conditions including associated processes (such as natural forest succession/regeneration). Historic conditions are those which were present prior to substantial, human-related changes to the landscape (see Fish and Wildlife Service Manual, Chapter 601 FW 3.6D). By their nature, right-of-ways and some construction projects can cause habitat fragmentation; reduce habitat quality; degrade habitat quality through introduction of contaminants; disrupt migration corridors; alter hydrology; facilitate introduction of alien, including invasive, species;

and disturb wildlife (see response to item e below). Proposed refuge uses which would conflict with the legal requirement to maintain biological integrity, diversity and environmental health are not appropriate or compatible (see Fish and Wildlife Service Manual, Chapter 603 FW 2.5). Additionally, Executive Order 11988 – Floodplain Management, discourages the construction and/or placement of infrastructure within floodplains of rivers.

d) Is the use consistent with public safety? If the proposed use creates an unreasonable level of risk to visitors or refuge staff, or if the use requires refuge staff to take unusual safety precautions to assure the safety of the public or other refuge staff, the use is not appropriate.

YES.

e) Is the use consistent with refuge goals and objectives in an approved management plan or other document? Refuge goals and objectives are designed to guide management toward achieving refuge purpose(s). These goals and objectives are documented in refuge management plans, such as CCPs and step-down management plans. Refuges may also rely on goals and objectives found in comprehensive management plans or refuge master plans developed prior to passage of the Improvement Act as long as these goals and objectives comply with the tenets and directives of the Improvement Act. If the proposed use, either itself or in combination with other uses or activities, conflicts with a refuge goal, objective, or management strategy, the use is generally not appropriate.

NO. The Upper Mississippi River National Wildlife and Fish Refuge was established by an Act of Congress on June 7, 1924 as a refuge and breeding place for migratory birds, fish, other wildlife, and plants. The Refuge encompasses approximately 240,000 acres of Mississippi River floodplain in a more-or-less continuous stretch of 261 river-miles from near Wabasha, Minnesota to near Rock Island, Illinois.

The 1924 act set forth the purposes of the Refuge as follows:

a. as a refuge and breeding place for migratory birds included in the terms of the convention between the United States and Great Britain for the protection of migratory birds, concluded August 16, 1916, and

b. to such extent as the Secretary of Agriculture may by regulations prescribe, as a refuge and breeding place for other wild birds, game animals, fur-bearing animals, and for the conservation of wild flowers and aquatic plants, and*

c. to such extent as the Secretary of Commerce may by regulations prescribe as a refuge and breeding place for fish and other aquatic animal life.”*

**changed to Secretary of the Interior pursuant to reorganization and transfer of functions in 1939 (16 USC 721-731).*

The Refuge is an invaluable natural legacy recognized by Congress as part of a nationally significant ecosystem. It is: a National scenic treasure – river, backwaters, islands, and forest framed by 500-foot high bluffs; National Scenic Byways on both sides; designated as a Globally Important Bird Area; a continentally significant migration corridor/flyway; and designated a floodplain Wetland of International Importance by the Ramsar Convention on Wetlands.

The Refuge is a part of the National Wildlife Refuge System which includes more than 556 national wildlife refuges and 38 wetland management districts totaling over 148 million acres of lands and waters set aside for fish and wildlife habitat. The Refuge System is administered by the U.S. Fish and Wildlife Service, Department of the Interior.

The Refuge Improvement Act of 1997 mandates that the Secretary of the Interior, and thus the Service, prepare Comprehensive Conservation Plans for all units of the National Wildlife Refuge System by October, 2012. The CCP for the Refuge was completed in 2006 and guides management of the Refuge through 2021. The CCP ensures that management and administration of the Refuge meets the mission of the Refuge System, the purpose for which the Refuge was established, and the goals for the Refuge.

The mission of the National Wildlife Refuge System set forth in the Refuge Improvement Act of 1997 is:

“To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.”

The 1924 Refuge act set forth the purposes of the Refuge, which remain valid to this day, and guide planning, management, administration, and use of the refuge:

“a. as a refuge and breeding place for migratory birds included in the terms of the convention between the United States and Great Britain for the protection of migratory birds, concluded August 16, 1916, and

b. to such extent as the Secretary of Agriculture may by regulations prescribe, as a refuge and breeding place for other wild birds, game animals, fur-bearing animals, and for the conservation of wild flowers and aquatic plants, and

c. to such extent as the Secretary of Commerce may by regulations prescribe as a refuge and breeding place for fish and other aquatic animal life.”

The vision for the Refuge provides a simple statement of the desired, overall future condition of the Refuge. From the vision flow more specific goals which in turn provide the framework to craft more detailed, and measurable objectives which are the heart of the CCP. The vision and goals are also important in developing alternatives, and are

important reference points for keeping objectives and strategies meaningful, focused, and attainable.

Refuge Vision: The Upper Mississippi River National Wildlife and Fish Refuge is beautiful, healthy, and supports abundant and diverse native fish, wildlife, and plants for the enjoyment and thoughtful use of current and future generations.

Refuge Goals:

- 1. Landscape. We will strive to maintain and improve the scenic qualities and wild character of the Upper Mississippi Refuge.*
- 2. Environmental Health. We will strive to improve the environmental health of the Refuge by working with others.*
- 3. Wildlife and Habitat. Our habitat management will support diverse and abundant native fish, wildlife, and plants.*
- 4. Wildlife-Dependent Public Use. We will manage public use programs and facilities to ensure high quality and sustainable hunting, fishing, wildlife observation, wildlife photography, interpretation, and environmental education opportunities for a broad cross-section of the public.*
- 5. Other Recreational Use. We will provide opportunities for the public to use and enjoy the Refuge for traditional and appropriate non-wildlife-dependent recreation that is compatible with the purpose for which the Refuge was established and the mission of the Refuge System.*
- 6. Administration and Operations. We will seek adequate funding, staffing, and facilities, and improve public awareness and support, to carry out the purposes, vision, goals, and objectives of the Refuge.*

Expansion of the expired right-of-way across the Black River bottoms to accommodate a new 345 kV line would not contribute to the purposes of the Refuge or the Refuge System. In fact, expansion of the expired right-of-way would detract from the Refuge purpose and Refuge goals. Some of the anticipated effects of expansion of the expired right-of-way are discussed below. A description and discussion of the significance of the forest community and species composition in the Black River bottoms can be found on page 130, Chapter 7 of the Final Environmental Impact Statement, CapX2020 Alma-La Crosse 345 kV Transmission Project, Volume 1, Public Service Commission of Wisconsin, Wisconsin Department of Natural Resources, January 2012.

Scenic qualities. Power lines present a significant visual intrusion on scenic viewsheds such as those found in the Black River bottoms.

Invasive Plants. Invasive plants continue to pose a major threat to native plant communities on the Refuge and beyond. Invasive plants displace native species and often have little or no food value for wildlife. The result is a decline in the carrying capacity of the Refuge for native fish, wildlife, and plants. Control of invasive plants on a predominantly floodplain environment is extremely challenging due to difficulty of access and the rapid dispersal of plants. In addition, control has been hampered by staff and funding limits for basic inventory, direct control, and research into species-specific biological controls. An invasive plant, reed canary-grass is abundant within the expired Q1 right-of-way. Reed canary-grass is a “disturbance adapted” species which aggressively colonizes natural areas which are disturbed by both natural and human activities. Removal of woody vegetation through cutting, mowing and/or pesticide application is an example of disturbance activities which encourage establishment of invasive species such as reed canary-grass, European buckthorn, Japanese knotweed and others. Expansion of the expired Q1 right-of-way through the Black River bottoms would increase the risk of negative interactions between invasive plants and adjacent forested/grassland habitats.

Threatened and Endangered Species. There is currently one federally-listed threatened or endangered species (Higgins’ Eye pearlymussel) and two candidate species (eastern massasauga rattlesnake and sheepsnake mussel) confirmed on the Refuge. One candidate species, the spectaclecase mussel, may occur on the Refuge but there are no recent records. Threatened and endangered species are issues due to their often precarious population status, and the need for special considerations and protection which influences Refuge use and management activities. The eastern massasauga rattlesnake is known to inhabit the forested/grassland habitats found in the Black River bottoms, the location of the expired Q1 right-of-way.

Nationally Important Species. The American Bald Eagle was removed from Federal designation as a threatened species in 2007. However, the bald eagle remains protected under the Golden and Bald Eagle Protection Act and is a nationally important species. Moreover, it is the symbol of the United States of America. Bald eagles are known to nest, roost and feed within the Black River bottoms. The Black River forest is prime nesting habitat for bald eagles. There are currently three active bald eagle nests within 0.75 miles of the expired Q1 right-of-way. As is the case with many species of birds, as discussed below, transmission lines present a significant hazard.

Migratory Birds. The floodplains forests on and adjacent to the Mississippi River, including the Black River bottoms, provide critical migration habitat for many neotropical migrants. Continuous forest corridors which are relatively unfragmented, like the forest community in the Black River bottoms, and free of hazards are important for these migrants. Transmission lines greatly increase the risk of bird strikes, especially for migrant species which may be unfamiliar with the presence of power lines. Additionally, local/resident birds may avoid areas where power lines are present due to the day to day hazard present.

***Forest Management.** The Refuge includes approximately 51,000 acres of floodplain forests, one of the largest contiguous areas of floodplain forest in the Midwest. This habitat is critical to the river ecosystem, providing habitat for a variety of wildlife including songbirds, wood ducks, bald eagles, red-shouldered hawks, herons, egrets, and numerous mammals and amphibians. It also provides scenic beauty, a welcome place for recreation, protects soils, and improves water quality.*

The floodplain forest of the Refuge has undergone a series of changes since Refuge establishment. A more diverse forest gave way to a more monotypic forest dominated by silver maple. The current forest is even aged, growing old, and in many cases, not regenerating itself. In many areas, reed canary grass is replacing former forest areas by choking tree regeneration. If current trends continue, there could be a marked loss of forest within the Refuge and elsewhere in the river floodplain. As discussed under Invasive Species above, the expired Q1 right-of-way provides a corridor for invasion of adjacent forest habitat by invasive species.

***Habitat Fragmentation.** Many species, but in particular forest interior species, prefer large unbroken tracts of habitat. Transmission lines which pass through habitats result in habitat fragmentation, whereby a large contiguous habitat is divided. The expired Q1 right-of-way through the Black River bottoms has damaged and fragmented the floodplain forest. Expanding the expired right-of-way through the Black River bottoms would lead to further unacceptable habitat fragmentation.*

f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed? If we have already considered the proposed use in a refuge planning process or under this policy and rejected it as not appropriate, then we should not further consider the use unless circumstances or conditions have changed significantly. If we did not raise the proposed use as an issue during a refuge planning process, we may further consider the use.

***YES.** Expansion of the expired right-of-way through the Black River bottoms was not considered as a proposed use during preparation of the CCP for the Refuge.*

g) For uses other than wildlife-dependent recreational uses, is the use manageable within available budget and staff? If a proposed use diverts management efforts or resources away from the proper and reasonable management of a refuge management activity or wildlife-dependent recreational use, the use is generally not appropriate. In evaluating resources available, the refuge manager may take into consideration volunteers, refuge support groups, etc. If a requested use would rely heavily on volunteer or other resources, the refuge manager should discuss the situation with the refuge supervisor before making an appropriateness finding. The compatibility policy also addresses the question of available resources (603 FW 2.12A(7)).

***NO.** Powerline right-of-ways require frequent and recurring management of vegetation through herbicide application, cutting, mowing and/or other vegetation control actions. These vegetation management activities are typically conducted by the utility company*

but do require oversight by Refuge staff to ensure compliance with any stipulations set forth in the right-of-way permit. In many cases, work conducted within right-of-ways also requires access and/or additional work outside of the right-of-way. Work outside of right-of-ways, if permissible, is permitted through issuance of a special use permit from the refuge. The commitment of staff can be minimal and manageable within existing resources, however, in this case the presence of important natural resources (T&E species, nesting bald eagles, etc. and the potential for invasion of adjacent refuge lands by invasive plants) would require substantial commitment of staff resources and time to ensure compliance with right-of-way stipulations and any special use permit requirements. Those resources are currently not available.

h) Will the use be manageable in the future within existing resources? If the use would lead to recurring requests for the same or similar activities that will be difficult to manage in the future, then the use is not appropriate. If we can manage the use so that impacts to natural and cultural resources are minimal or inconsequential, or if we can establish clearly defined limits, then we may further consider the use.

NO. Powerline right-of-ways require frequent and recurring management of vegetation through herbicide application, cutting, mowing and/or other vegetation control actions. These vegetation management activities are typically conducted by the utility company but do require oversight by Refuge staff to ensure compliance with any stipulations set forth in the right-of-way permit. In many cases, work conducted within right-of-ways also requires access and/or additional work outside of the right-of-way. Work outside of right-of-ways, if permissible, is permitted through issuance of a special use permit from the refuge. The commitment of staff can be minimal and manageable within existing resources, however, in this case the presence of important natural resources (T&E species, nesting bald eagles, etc. and the potential for invasion of adjacent refuge lands by invasive plants) would require substantial commitment of staff resources and time to ensure compliance with right-of-way stipulations and any special use permit requirements. Those resources are unlikely to be available in the future.

Due to the size, location and landscape juxtaposition the Refuge will likely receive future requests for various civil service infrastructure projects (powerlines, gas lines, railroads, highways, etc.). As per the appropriate use policy and procedure, all requested uses will be considered on a case-by-case basis, and in some cases the proposed impacts may be minimal and therefore considered appropriate. However, expansion of an expired right-of-way across a biologically diverse and relatively unfragmented portion of the Refuge does not have minimal impacts and has and will continue to require a significant commitment of Refuge staff time and resources to manage. Therefore, if expansion of the expired right-of-way were to be considered appropriate, it is not unreasonable to assume that future similar requests would follow and/or potentially increase. This would increase the demand for currently unavailable (see criteria g above) resources needed to manage similar requests.

i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources? If not, we will generally not further consider the use.

NO. Expansion of the expired right-of-way through the Black River bottoms to accommodate a 345 kV line would not contribute to the public's understanding and appreciation of the Refuges' natural and cultural resources. It is damaging to the natural and cultural resources of the Refuge. In particular, the scenic quality and values of the Black River bottoms would be compromised by the right-of-way.

j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D), compatible, wildlife-dependent recreation into the future? If not, we will generally not further consider the use.

NO. The Refuge stretches over 260 river miles and encompasses approximately 240,000 acres providing a wide range of wildlife-dependent recreational opportunities for the visiting public. Eleven criteria for "quality" wildlife-dependent recreation are defined in the Fish and Wildlife Service Manual, 605 FW1, Section 1.6 and include providing opportunities for the public to experience wildlife. Although open to the public, the Black River Bottoms does not provide improved access (i.e. paved trails and roads) that would encourage high public use. Therefore, it provides a unique opportunity for the public to conduct wildlife-dependent recreation in a relatively isolated setting. The Black River bottoms is one of the largest contiguous tracts of floodplain forest in the region, particularly when adjacent State of Wisconsin protected lands are also considered. Expansion of the expired right-of-way would impact wildlife-dependent recreational opportunities due to reduced habitat quality which directly impacts wildlife species upon which recreation is based. Additionally, the scenic qualities of the Black River bottoms would be compromised by the presence of a much larger right-of-way clearing. Allowing an expansion of the expired right-of-way would impair the quality of the visitor experience and likely reduce the public's opportunity to experience wildlife.

Hagerty, Mary

From: Strength, Stephanie - RD, Washington, DC <Stephanie.Strength@wdc.usda.gov>
Sent: Tuesday, March 06, 2012 4:43 PM
To: Zufolo, Jessica - RD, Washington, DC; Plank, Mark - RD, Washington, DC; Hagerty, Mary
Subject: FW: Update on proposal for 345kv crossing on NWFR at Black River
Attachments: CAPX2020 Deny without Compatibility discussion.docx

FYI

From: Kevin_Foerster@fws.gov [mailto:Kevin_Foerster@fws.gov]
Sent: Tuesday, March 06, 2012 1:35 PM
To: Strength, Stephanie - RD, Washington, DC
Cc: tony_sullins@fws.gov; David_Cottingham@fws.gov; Rick Schultz
Subject: Update on proposal for 345kv crossing on NWFR at Black River

Dear Ms. Strength,

As a follow up to our conference call yesterday, and at the direction of Refuge Chief Jim Kurth, the Washington Office Refuge policy staff reviewed the Federal Register notice associated with our Appropriate Refuge Use Policy. They found a segment in the preamble (response to comments) that said in effect "***Rights-of way will continue to be handled through the compatibility and right of way permit processes, not this policy.***" This excerpt is from the Federal Register Vol 71, No. 122 Monday June 26, 2006, Page 36415. Accordingly, we will not use the Appropriate Use checklist for ROW issues. Nonetheless, the questions from the checklist are remarkably similar to those found in the Compatibility Policy - "**Denying a proposed use without determining compatibility" (603 FW 2 - 2.10D). Please note that we have applied the same rationale to answering those questions in the compatibility policy.**

- We have not received a formal request for either the 345kv ROW or expired 161kv ROW. A formal request would need to be consistent with 50 CFR 29.21 and would be directed our our Regional Director. Our analysis is based on a request from USDA Rural Utilities Service to review a possible routing alternative for a 345kv line, and is provided to save applicants time and effort as they seek to identify feasible alternatives. We have consistently transmitted the message to the applicants that any proposal to expand an expired ROW to accomodate a new 345kv line would be denied at the field and regional levels.

- Our analysis leads to the conclusion that a proposed 345kv new right of way alignment through the Black River should not be considered because:

The use is not consistent with Fish and Wildlife Service policy (see attached). There are practicable alternatives to routing through the refuge. "It is the policy of the Service to discourage the types of uses embodied in right-of-way requests" (340 FW 3, 3.3 Right of Way Policy)

The use is not consistent with Refuge goals and management objectives (see attached)

The use is not manageable within available budget and staff (see attached)

The use would lead to recurring requests for same or similar activities that will be difficult to manage in the future (see attached)

The use conflicts with refuge resource objectives (see attached).

- These findings lead us to conclude that this proposed alignment should not be considered in the Final EIS. These responses follow the decision points managers are asked to review when considering uses (603 FW2 2.10 D)

- Should the applicant submit a formal ROW request to our Regional Director, we would follow the procedures outlined in 50 CFR 29.21, the Right of Way Policy (340 FW 3) and the Compatibility Policy (603 FW 2).

The attachment contains the Compatibility Flowchart and supporting rationale.

(See attached file: CAPX2020 Deny without Compatibility discussion.docx)

Kevin Foerster, Refuge Manager
Upper Mississippi River National Wildlife and Fish Refuge
and
Refuge Supervisor
USFWS, Region 3
507-494-6218 office

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Why is expansion of the existing Q1 line (route) not considered an alternative in the Federal EIS for the proposed 345 kV line?

An existing 161 kV power line (known as the Q1 line and operated/maintained by Dairyland Power, Inc.) crosses the Upper Mississippi River National Wildlife and Fish Refuge (Refuge) on an expired right-of-way. The right-of-way permit for the Q1 line was issued by the Bureau of Land Management (BLM) in 1951. Prior to December 19, 1969, permits for rights-of-way across lands under the primary jurisdiction of the U.S. Fish and Wildlife Service (Service) were issued by the BLM in accordance with regulations now published in 43 CFR 2800. After December 19, 1969, the Service's basic authority for granting right-of-way permits and/or easements is the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee).

The expired Q1 right-of-way was authorized in 1951 for a period not to exceed 50 years. As noted in the U.S. Fish and Wildlife Service decision document dated December 12, 1950, the right-of-way “...shall be limited specifically to an area lying within 20 feet on both sides of the centerline of the proposed right-of-way as shown in the application and on the maps therewith designated” *drawing of Power Line for Easement on Federal Lands, La Crosse County Wisconsin, No L-91, Reference Drawing P-16 SHT 14 S.* In effect, this permitted a 40-foot wide by approximately 5,000-foot long corridor on the Refuge through the Black River Bottoms near the Village of Trempealeau, WI and the Village of Holmen, WI.

The project applicant contacted the Upper Mississippi River National Wildlife and Fish Refuge as early as 2006 to explore opportunities/alternatives for utilizing the expired Q1 right-of-way in constructing a new 345 kV power line as part of the CAPX2020 project. As described by the project applicant, utilization of the expired right-of-way would require expansion of the “footprint” of the expired right-of-way. It should be noted that the right-of-way expired in 2001 and is nearly 60 feet beyond the authorized 40-foot corridor. The expanded right-of-way for the CAPX2020 project would require a significant increase up to an approximate 155-foot wide by 5,000-foot long corridor.

“Renewal” and/or reissuance of a right-of-way permit for the existing Q1 line as well as expansion of the expired right-of-way to accommodate a new, larger 345 kV line would be subject to review/evaluation following policy and procedures established in the Fish and Wildlife Service Manual, Chapter 603 FW 2, Compatibility. This chapter provides policy for determining compatibility of proposed and existing uses of national wildlife refuges. The compatibility policy applies to all proposed and existing uses of national wildlife refuges where we have jurisdiction over such uses. Refuge managers will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge unless the refuge manager has determined that the use is a compatible use.

Statutory authorities for requiring uses of national wildlife refuges to be compatible is provided by the following:

A. National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd-668ee (Refuge Administration Act). This law states that "The Secretary is authorized, under such regulations as he may prescribe, to -- (A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible" and that ". . . the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety." The law also provides that, in administering the National Wildlife Refuge System, ". . . the Secretary is authorized to . . . Issue regulations to carry out this Act." A significant directive of the Refuge Administration Act is to ensure that we maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System for present and future generations of Americans. We are now using the term "ecological integrity" in lieu of the phrase "biological integrity, diversity, and environmental health." Uses that we reasonably may anticipate to conflict with pursuing this directive to maintain the ecological integrity of the System are contrary to fulfilling the National Wildlife Refuge System mission and are therefore not compatible. Fragmentation of the National Wildlife Refuge System's wildlife habitats is a direct threat to the integrity of the National Wildlife Refuge System, both today and in the decades ahead. Uses that we reasonably may anticipate to reduce the quality or quantity or fragment habitats on a national wildlife refuge will not be compatible.

B. Refuge Recreation Act of 1962, 16 U.S.C. 460k-460k-4 (Refuge Recreation Act). This law requires that any recreational use of a national wildlife refuge must be compatible with the primary purposes for which the refuge was established.

C. Alaska National Interest Lands Conservation Act of 1980, P.L. 96-487, 94 Stat. 23-71 (ANILCA). Section 304 of ANILCA adopted the compatibility standard of the Refuge Administration Act for Alaska refuges.

We require a compatibility determination for all refuge uses including rights-of-way and must include in the analysis consideration of all associated facilities, structures, and improvements, including those constructed or installed by us or at our direction. This requirement applies to all such facilities, structures, improvements, and refuge actions associated with uses that we approve on or after the effective date of this policy and to the replacement or major repair or alteration of facilities, structures, and improvements associated with already approved uses.

Refuges are managed in accordance with an approved comprehensive conservation plan (CCP). The CCP describes the desired future conditions of the refuge or refuge planning unit and provides long-range guidance and management direction to accomplish the purpose(s) of the refuge and the Refuge System mission. We prepare CCPs with State

fish and wildlife agencies, public involvement, and include a review of the appropriateness and compatibility of existing refuge uses and any planned future public uses. If, during preparation of the CCP, we identify previously approved uses we can no longer consider compatible on the refuge, we will clearly explain our reasons to the public and describe how we will eliminate or modify the use. When uses are reviewed during the CCP process, the compatibility determination is documented. The documentation for compatibility determinations should also be included in the documentation for the CCP. The CCP for the Upper Mississippi River National Wildlife and Fish Refuge was completed in October 2006. The CCP can be viewed at www.fws.gov/midwest/planning/uppermiss/index.html.

Section 2.10 D of the compatibility policy describes when refuge managers should deny a proposed use without determining compatibility. The refuge manager should deny a proposed use without determining compatibility if **any** of the following situations exist:

- (a) The proposed use conflicts with any applicable law or regulation (e.g., Wilderness Act, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act);
- (b) The proposed use conflicts with any applicable executive order, or written Department of the Interior or Service policy;
- (c) The proposed use conflicts with the goals or objectives in an approved refuge management plan (e.g., comprehensive conservation plan, comprehensive management plan, master plan or step-down management plan);
- (d) The proposed use has already been considered in an approved refuge management plan and was not accepted;
- (e) The proposed use is inconsistent with public safety;
- (f) The proposed use is a use other than a wildlife-dependent recreational use that is not manageable within the available budget and staff; or
- (g) The proposed use conflicts with other resource or management objectives provided that the refuge manager specifies those objectives in denying the use.

A compatibility determination should be prepared for a proposed use **only** after the refuge manager has determined that we have jurisdiction over the use and has considered items (a) through (g) above. A flowchart is used to assist refuge managers with determining when to deny a proposed use without completing compatibility.

To assist USDA-RUS with responding to public comments regarding not including expansion of the expired Q1 right-of-way through the Black River bottoms, we have answered the questions in the compatibility determination flowchart (see next page). Additional rationale for the answers to the questions on the flowchart is also provided

Rationale for answers provided on Compatibility Determination Flowchart (see page 4) regarding expansion of the expired right-of-way (Q1 line) through the Black River bottoms of the Upper Mississippi River National Wildlife and Fish Refuge to accommodate a new 345 kV transmission line.

Proposed Use: Expansion of the expired Q1 right-of-way through the Black River bottoms to accommodate a new 345 kV transmission line.

1 - Is the use a “refuge use”?

YES (continue to second question). A refuge use is defined as: a recreational use (including refuge actions associated with a recreational use or other general public use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-National Wildlife Refuge System entity. In this case, the CAPX2020 consortium of power utilities is considering routing of a 345 kV transmission line through the Black River bottoms across lands owned in fee title by the Department of the Interior and managed as part of the Upper Mississippi River National Wildlife and Fish Refuge.

2 - Is the use an emergency?

NO (continue to third question).

3 - Does the Service have jurisdiction over the use?

YES (continue to fourth question). The expired Q1 right-of-way through the Black River bottom is on/over lands owned in fee title by the Department of the Interior and managed as part of the Upper Mississippi River National Wildlife and Fish Refuge. The Refuge (Service) has full jurisdiction over uses of this expired right-of-way and adjacent lands.

4 - Does the use conflict with any law or regulation?

NO (continue to fifth question). It is unknown at this time if the proposed 345 kV line is compliant with all applicable laws and regulations. However, for the purposes of this analysis it is assumed that construction of the new 345 kV line at any location would only be permitted and/or funded if it were found to be consistent with all applicable laws and regulations. Accordingly, we answered no.

5 - Does the use conflict with any Executive Order, or Department or Service policy?

YES (DENY USE, but for the purposes of this discussion continue to question 6). It is the policy of the Fish and Wildlife Service (see Fish and Wildlife Service Manual, Chapter 340 FW 3, Rights-of-Way and Road Closings) to discourage the types of uses embodied in right-of-way requests. On areas in the National Wildlife Refuge System, if a right-of-way cannot be certified as compatible with the purposes for which a unit was

established, it cannot be granted without authorization by Congress. The National Wildlife Refuge System Improvement Act of 1997 mandates the maintenance of biological integrity, diversity and environmental health on units of the National Wildlife Refuge System. Consistent with its purpose, each refuge is required to protect and, where appropriate, restore natural, historic ecological conditions including associated processes (such as natural forest succession/regeneration). Historic conditions are those which were present prior to substantial, human-related changes to the landscape (see Fish and Wildlife Service Manual, Chapter 601 FW 3.6D). By their nature, right-of-ways and some construction projects can cause habitat fragmentation; reduce habitat quality; degrade habitat quality through introduction of contaminants; disrupt migration corridors; alter hydrology; facilitate introduction of alien, including invasive, species; and disturb wildlife. Proposed refuge uses which would conflict with the legal requirement to maintain biological integrity, diversity and environmental health are not appropriate or compatible (see Fish and Wildlife Service Manual, Chapter 603 FW 2.5). Additionally, Executive Order 11988 – Floodplain Management, discourages the construction and/or placement of infrastructure within floodplains of rivers.

6 - Does the use conflict with any refuge goal or objective?

YES (DENY USE, for the purposes of this discussion continue to question 7). *The Upper Mississippi River National Wildlife and Fish Refuge was established by an Act of Congress on June 7, 1924 as a refuge and breeding place for migratory birds, fish, other wildlife, and plants. The Refuge encompasses approximately 240,000 acres of Mississippi River floodplain in a more-or-less continuous stretch of 261 river-miles from near Wabasha, Minnesota to near Rock Island, Illinois.*

The 1924 act set forth the purposes of the Refuge as follows:

- a. as a refuge and breeding place for migratory birds included in the terms of the convention between the United States and Great Britain for the protection of migratory birds, concluded August 16, 1916, and*
- b. to such extent as the Secretary of Agriculture* may by regulations prescribe, as a refuge and breeding place for other wild birds, game animals, fur-bearing animals, and for the conservation of wild flowers and aquatic plants, and*
- c. to such extent as the Secretary of Commerce* may by regulations prescribe as a refuge and breeding place for fish and other aquatic animal life.”*

**changed to Secretary of the Interior pursuant to reorganization and transfer of functions in 1939 (16 USC 721-731).*

The Refuge is an invaluable natural legacy recognized by Congress as part of a nationally significant ecosystem. It is: a National scenic treasure – river, backwaters, islands, and forest framed by 500-foot high bluffs; National Scenic Byways on both sides; designated as a Globally Important Bird Area; a continentally significant

migration corridor/flyway; and designated a floodplain Wetland of International Importance by the Ramsar Convention on Wetlands.

The Refuge is a part of the National Wildlife Refuge System which includes more than 556 national wildlife refuges and 38 wetland management districts totaling over 148 million acres of lands and waters set aside for fish and wildlife habitat. The Refuge System is administered by the U.S. Fish and Wildlife Service, Department of the Interior.

The Refuge Improvement Act of 1997 mandates that the Secretary of the Interior, and thus the Service, prepare Comprehensive Conservation Plans for all units of the National Wildlife Refuge System by October, 2012. The CCP for the Refuge was completed in 2006 and guides management of the Refuge through 2021. The CCP ensures that management and administration of the Refuge meets the mission of the Refuge System, the purpose for which the Refuge was established, and the goals for the Refuge.

The mission of the National Wildlife Refuge System set forth in the Refuge Improvement Act of 1997 is:

“To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.”

The 1924 Refuge act set forth the purposes of the Refuge, which remain valid to this day, and guide planning, management, administration, and use of the refuge:

“a. as a refuge and breeding place for migratory birds included in the terms of the convention between the United States and Great Britain for the protection of migratory birds, concluded August 16, 1916, and

b. to such extent as the Secretary of Agriculture may by regulations prescribe, as a refuge and breeding place for other wild birds, game animals, fur-bearing animals, and for the conservation of wild flowers and aquatic plants, and

c. to such extent as the Secretary of Commerce may by regulations prescribe as a refuge and breeding place for fish and other aquatic animal life.”

The vision for the Refuge provides a simple statement of the desired, overall future condition of the Refuge. From the vision flow more specific goals which in turn provide the framework to craft more detailed, and measurable objectives which are the heart of the CCP. The vision and goals are also important in developing alternatives, and are important reference points for keeping objectives and strategies meaningful, focused, and attainable.

Refuge Vision: The Upper Mississippi River National Wildlife and Fish Refuge is beautiful, healthy, and supports abundant and diverse native fish, wildlife, and plants for the enjoyment and thoughtful use of current and future generations.

Refuge Goals:

- 1. Landscape. We will strive to maintain and improve the scenic qualities and wild character of the Upper Mississippi Refuge.*
- 2. Environmental Health. We will strive to improve the environmental health of the Refuge by working with others.*
- 3. Wildlife and Habitat. Our habitat management will support diverse and abundant native fish, wildlife, and plants.*
- 4. Wildlife-Dependent Public Use. We will manage public use programs and facilities to ensure high quality and sustainable hunting, fishing, wildlife observation, wildlife photography, interpretation, and environmental education opportunities for a broad cross-section of the public.*
- 5. Other Recreational Use. We will provide opportunities for the public to use and enjoy the Refuge for traditional and appropriate non-wildlife-dependent recreation that is compatible with the purpose for which the Refuge was established and the mission of the Refuge System.*
- 6. Administration and Operations. We will seek adequate funding, staffing, and facilities, and improve public awareness and support, to carry out the purposes, vision, goals, and objectives of the Refuge.*

Expansion of the expired right-of-way across the Black River bottoms to accommodate a new 345 kV line would not contribute to the purposes of the Refuge or the Refuge System. In fact, expansion of the expired right-of-way would detract from the Refuge purpose and Refuge goals. Some of the anticipated effects of expansion of the expired right-of-way are discussed below. A description and discussion of the significance of the forest community and species composition in the Black River bottoms can be found on page 130, Chapter 7 of the Final Environmental Impact Statement, CapX2020 Alma-La Crosse 345 kV Transmission Project, Volume 1, Public Service Commission of Wisconsin, Wisconsin Department of Natural Resources, January 2012.

Scenic qualities. *Power lines present a significant visual intrusion on scenic viewsheds such as those found in the Black River bottoms.*

Invasive Plants. *Invasive plants continue to pose a major threat to native plant communities on the Refuge and beyond. Invasive plants displace native species and often have little or no food value for wildlife. The result is a decline in the carrying capacity of the Refuge for native fish, wildlife, and plants. Control of invasive plants on a*

predominantly floodplain environment is extremely challenging due to difficulty of access and the rapid dispersal of plants. In addition, control has been hampered by staff and funding limits for basic inventory, direct control, and research into species-specific biological controls. An invasive plant, reed canary-grass is abundant within the expired Q1 right-of-way. Reed canary-grass is a “disturbance adapted” species which aggressively colonizes natural areas which are disturbed by both natural and human activities. Removal of woody vegetation through cutting, mowing and/or pesticide application is an example of disturbance activities which encourage establishment of invasive species such as reed canary-grass, European buckthorn, Japanese knotweed and others. Expansion of the expired Q1 right-of-way through the Black River bottoms would increase the risk of negative interactions between invasive plants and adjacent forested/grassland habitats.

Threatened and Endangered Species. *There is currently one federally-listed threatened or endangered species (Higgins’ Eye pearl mussel) and two candidate species (eastern massasauga rattlesnake and sheepsnout mussel) confirmed on the Refuge. One candidate species, the spectaclecase mussel, may occur on the Refuge but there are no recent records. Threatened and endangered species are issues due to their often precarious population status, and the need for special considerations and protection which influences Refuge use and management activities. The eastern massasauga rattlesnake is known to inhabit the forested/grassland habitats found in the Black River bottoms. Wisconsin’s Natural Heritage Inventory (NHI) confirms the presence of the eastern massasauga rattlesnake (EMR) in Trempealeau and LaCrosse Counties, WI in the Black River bottoms (see <http://www.dnr.state.wi.us/org/land/er/biodiversity/index.asp?mode=info&Grp=49&SpecCode=ARADE03011>). In Trempealeau and La Crosse Counties, EMR occurrences have been documented in the townships along portions of the proposed route. Data sharing agreements with Wisconsin Department of Natural Resources limits us to reporting EMR locations to only the county level (not township level). The NHI database is a record of existing sources of information and is more accurate for occurrences on lands with public access. EMR is also known to exist on private lands in the Black River bottoms. Wisconsin’s State Wildlife Action plan identifies several activities to protect and restore EMR on private lands in the Black River Bottoms (see <http://www.dnr.state.wi.us/org/land/er/wwap/explore/profiles.asp?mode=detail&species=ARADE03011§ion=threats>).*

On-Refuge surveys for EMR have not been completed in the last 5 years, but are planned when staffing and funding allows. The Refuge’s Comprehensive Conservation Plan includes objectives with both targeted and non-targeted benefits for EMR. The habitat conditions within the expired Q1 right-of-way appear suitable for EMR.

Nationally Important Species. *The American Bald Eagle was removed from Federal designation as a threatened species in 2007. However, the bald eagle remains protected under the Golden and Bald Eagle Protection Act and is a nationally important species. Moreover, it is the symbol of the United States of America. Bald eagles are known to nest, roost and feed within the Black River bottoms. The Black River forest is prime nesting*

habitat for bald eagles. There are currently three active bald eagle nests within 0.75 miles of the expired Q1 right-of-way. As is the case with many species of birds, as discussed below, transmission lines present a significant hazard.

Migratory Birds. The floodplains forests on and adjacent to the Mississippi River, including the Black River bottoms, provide critical migration habitat for many neotropical migrants. Continuous forest corridors which are relatively unfragmented, like the forest community in the Black River bottoms, and free of hazards are important for these migrants. Transmission lines greatly increase the risk of bird strikes, especially for migrant species which may be unfamiliar with the presence of power lines. Additionally, local/resident birds may avoid areas where power lines are present due to the day to day hazard present.

Forest Management. The Refuge includes approximately 51,000 acres of floodplain forests, one of the largest contiguous areas of floodplain forest in the Midwest. This habitat is critical to the river ecosystem, providing habitat for a variety of wildlife including songbirds, wood ducks, bald eagles, red-shouldered hawks, herons, egrets, and numerous mammals and amphibians. It also provides scenic beauty, a welcome place for recreation, protects soils, and improves water quality.

The floodplain forest of the Refuge has undergone a series of changes since Refuge establishment. A more diverse forest gave way to a more monotypic forest dominated by silver maple. The current forest is even aged, growing old, and in many cases, not regenerating itself. In many areas, reed canary grass is replacing former forest areas by choking tree regeneration. If current trends continue, there could be a marked loss of forest within the Refuge and elsewhere in the river floodplain. As discussed under Invasive Species above, the expired Q1 right-of-way provides a corridor for invasion of adjacent forest habitat by invasive species.

Habitat Fragmentation. Many species, but in particular forest interior species, prefer large unbroken tracts of habitat. Transmission lines which pass through habitats result in habitat fragmentation, whereby a large contiguous habitat is divided. The expired Q1 right-of-way through the Black River bottoms has damaged and fragmented the floodplain forest. Expanding the expired right-of-way through the Black River bottoms would lead to further unacceptable habitat fragmentation.

7 - Has the use been considered and rejected in a refuge plan?

NO (continue to question 8). Expansion of the expired right-of-way through the Black River bottoms was not considered as a proposed use during preparation of the CCP for the Refuge.

8 - Is the use consistent with public safety?

YES (continue to question 9).

9 - For uses other than wildlife-dependent recreational uses, is the use manageable within available budget and staff?

NO (DENY USE, but for the purposes of this discussion continue to question 10). Powerline right-of-ways require frequent and recurring management of vegetation through herbicide application, cutting, mowing and/or other vegetation control actions. These vegetation management activities are typically conducted by the utility company but do require oversight by Refuge staff to ensure compliance with any stipulations set forth in the right-of-way permit. In many cases, work conducted within right-of-ways also requires access and/or additional work outside of the right-of-way. Work outside of right-of-ways, if permissible, is permitted through issuance of a special use permit from the refuge. The commitment of staff can be minimal and manageable within existing resources, however, in this case the presence of important natural resources (T&E species, nesting bald eagles, etc. and the potential for invasion of adjacent refuge lands by invasive plants) would require substantial commitment of staff resources and time to ensure compliance with right-of-way stipulations and any special use permit requirements. Those resources are currently not available and unlikely to be available in the future.

Due to the size, location and landscape juxtaposition the Refuge will likely receive future requests for various civil service infrastructure projects (powerlines, gas lines, railroads, highways, etc.). As per the compatibility policy and procedure, all requested uses will be considered on a case-by-case basis, and in some cases the proposed impacts may be minimal and therefore considered compatible. However, expansion of an expired right-of-way across a biologically diverse and relatively unfragmented portion of the Refuge does not have minimal impacts and has and will continue to require a significant commitment of Refuge staff time and resources to manage. Therefore, if expansion of the expired right-of-way were to be considered compatible, it is not unreasonable to assume that future similar requests would follow and/or potentially increase. This would increase the demand for currently unavailable (see above) resources needed to manage similar requests.

10 - Does the use conflict with other resource or management objectives?

YES (DENY USE). Expansion of the expired right-of-way through the Black River bottoms to accommodate a 345 kV line would not contribute to the public's understanding and appreciation of the Refuges' natural and cultural resources. It is damaging to the natural and cultural resources of the Refuge. In particular, the scenic quality and values of the Black River bottoms would be compromised by the right-of-way.

The Refuge stretches over 260 river miles and encompasses approximately 240,000 acres providing a wide range of wildlife-dependent recreational opportunities for the visiting public. Eleven criteria for "quality" wildlife-dependent recreation are defined in the Fish and Wildlife Service Manual, 605 FW1, Section 1.6 and include providing

opportunities for the public to experience wildlife. Although open to the public, the Black River Bottoms does not provide improved access (i.e. paved trails and roads) that would encourage high public use. Therefore, it provides a unique opportunity for the public to conduct wildlife-dependent recreation in a relatively isolated setting. The Black River bottoms is one of the largest contiguous tracts of floodplain forest in the region, particularly when adjacent State of Wisconsin protected lands are also considered. Expansion of the expired right-of-way would impact wildlife-dependent recreational opportunities due to reduced habitat quality which directly impacts wildlife species upon which recreation is based. Additionally, the scenic qualities of the Black River bottoms would be compromised by the presence of a much larger right-of-way clearing. Allowing an expansion of the expired right-of-way would impair the quality of the visitor experience and likely reduce the public's opportunity to experience wildlife.

Based on the answers provided to questions 5, 6, 9 and 10 above, it is clear that a proposed expansion of the expired Q1 right-of-way to accommodate a new 345 kV line across the Black River bottoms would be denied without completing compatibility.

To assist with focusing the project applicant and reviewing agencies on viable alternatives, alternatives which include expansion of the expired Q1 right-of-way should be eliminated from consideration.