

**MEMORANDUM OF UNDERSTANDING  
AMONG  
THE U.S. ARMY CORPS OF ENGINEERS,  
THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES,  
THE BOIS FORTE BAND OF CHIPPEWA, AND U. S. STEEL – MINNESOTA  
ORE OPERATIONS,  
FOR THE PROPOSED  
KEETAC EXPANSION PROJECT  
IN NORTHEASTERN MINNESOTA**

This Memorandum of Understanding (MOU) is made and entered into this date, October 14, 2009, by and among the U.S. Army Corps of Engineers (USACE), the Minnesota Department of Natural Resources (DNR), the Bois Forte Band of Chippewa, and U. S. Steel – Minnesota Ore Operations (U. S. Steel) for the purposes of preparing a joint state-federal Environmental Impact Statement (EIS) on the environmental impacts of the proposed Keetac Expansion mining and processing project near Keewatin, Minnesota, referred to hereafter as the proposed project.

**WHEREAS**, U. S. Steel proposes to expand its open pit taconite mine and to restart an idled production line at its taconite mine and processing facility near Keewatin, Minnesota;

**WHEREAS**, the proposed project requires preparation of a mandatory state Environmental Assessment Worksheet (EAW) under Minnesota Rules 4410.4300(11)(C), which designates the DNR as the Responsible Governmental Unit (RGU);

**WHEREAS**, U.S. Steel and the DNR have agreed that a discretionary EIS will be prepared in accordance with Minnesota Rules 4410.2100(2) and that the DNR will be the RGU for the EIS;

**WHEREAS**, the DNR is responsible for ensuring the proposed project's compliance with the Minnesota Environmental Policy Act (MEPA; Minn. Stat. ch. 116D);

**WHEREAS**, the proposed project will require a permit from the USACE under Section 404 of the Clean Water Act (33 U.S.C. § 1344);

**WHEREAS**, the proposed project is a major Federal action significantly affecting the quality of the human environment, requiring the preparation of a Federal EIS pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4347) and its implementing regulations (40 C.F.R. parts 1500-1508);

**WHEREAS**, the USACE is responsible for complying with NEPA;

**WHEREAS**, the proposed project would be conducted within the territory ceded in the Treaty of 1855;

**WHEREAS**, the Bois Forte Band of Chippewa is a federally recognized Native American Tribe that has requested to serve as a cooperating agency for the NEPA process;

**WHEREAS**, the USACE, the DNR, the Bois Forte Band of Chippewa, and U.S. Steel have a common interest in preparing an EIS that satisfies both state and Federal requirements;

**NOW THEREFORE**, the USACE, the DNR, the Bois Forte Band of Chippewa, and U.S. Steel agree as follows:

### **GENERAL**

This MOU describes the respective responsibilities of, and procedures to be used by, the aforementioned parties. The goals of the USACE, the DNR, the Bois Forte Band of Chippewa, and U.S. Steel are:

- to evaluate the proposed project in accordance with NEPA (42 U.S.C. §§ 4321-4347), NEPA's implementing regulations (40 C.F.R. parts 1500-1508), and MEPA (Minn. Stat. ch. 116D);
- to objectively identify, examine, and analyze the potential environmental, social, and economic impacts of the proposed project and reasonable alternatives in order to avoid, minimize, and/or mitigate the adverse impacts of the proposed project;
- to appropriately identify, examine and analyze the potential impacts to resources of interest to Native American tribes;
- to identify information that assists U. S. Steel in making project-related decisions;
- to ensure public involvement in the preparation and review of the EIS;
- to ensure that sufficient information is provided to assist the USACE, the DNR, and other Federal, state and local agencies in regulatory decisions; and
- to reduce duplication of effort for the USACE, the DNR, the Bois Forte Band of Chippewa, and U. S. Steel.

### **RESPECTIVE RESPONSIBILITIES**

The USACE and the DNR agree to:

- Jointly develop a scope of work for EIS preparation and evaluate the DNR's selection of a third-party contractor to prepare the EIS.
- Utilize the DNR's third-party contractor process for EIS preparation.
- Jointly prepare an EIS to evaluate the proposed project in accordance with NEPA (42 U.S.C. §§ 4321-4347), NEPA's implementing regulations (40 C.F.R. parts 1500-1508), and MEPA (Minn. Stat. ch. 116D).
- Involve the Bois Forte Band of Chippewa as a Cooperating Agency in the EIS preparation, and incorporate the Bois Forte Band of Chippewa's input to the maximum extent possible.
- Complete a final EIS that contains the positions of both the USACE and the DNR, and complies with their respective legal requirements.
- Report periodically on the progress of the joint EIS to U. S. Steel, with particular regard to identifying issues and matters that may result in delays, and to advise on proposed actions/measures to minimize delays.

#### **U.S. ARMY CORPS OF ENGINEERS (USACE)**

The USACE will serve as co-lead agency in the EIS preparation with the DNR. The USACE will conduct scoping jointly with the DNR, pursuant to both NEPA and MEPA, and provide input to the DNR for the EIS scope of work. The USACE will assist the DNR in third-party consultant selection by reviewing the Request for Proposals, reviewing the proposals submitted, and participating in consultant evaluation and interviews. The USACE will provide input to the DNR on consultant requirements and the acceptability of consultant candidates. The USACE will not be a party to the contract between the DNR and the third-party contractor. The USACE will coordinate with other Federal agencies (e.g. the U. S. Environmental Protection Agency, the U.S.D.A. Forest Service, and the U. S. Fish and Wildlife Service), and will consult with Native American tribes, as appropriate, in the preparation of the EIS. The USACE will schedule and hold agency and public meetings jointly with the DNR pursuant to NEPA and MEPA. The USACE will determine whether the EIS satisfies NEPA and will prepare the Federal Record of Decision. The USACE, in conjunction with the DNR, and in consultation with the cooperating agency and U. S. Steel, shall determine appropriate schedules for review and comment on draft documents prior to issuance of the draft EIS and prior to issuance of the final EIS.

#### **MINNESOTA DEPARTMENT OF NATURAL RESOURCES**

The DNR will serve as the other co-lead agency in the EIS preparation. The DNR will conduct scoping jointly with USACE, pursuant to both NEPA and MEPA, and propose a preliminary scope for the EIS. The DNR will include NEPA-related issues, submitted by the USACE, in the proposed scope. The DNR will assume the lead role in third-party

consultant selection, enter into a contract with the consultant, and perform all requisite contract oversight. The DNR will enter into a cost agreement with U. S. Steel to obtain funds to cover third-party consultant fees, and other EIS-related costs incurred by the DNR. The DNR will assume primary responsibility for managing the EIS preparation and review. The DNR will coordinate with other state agencies (e.g., the Pollution Control Agency, the Department of Health, and the Department of Transportation) and will participate with the USACE at any public meetings, public hearings, or other public involvement pursuant to NEPA and MEPA. The DNR will be responsible for determining EIS adequacy pursuant to MEPA, and prepare the state Record of Decision. The DNR, in conjunction with the USACE, and in consultation with the cooperating agency and U. S. Steel, shall determine appropriate schedules for review and comment on draft documents prior to issuance of the draft EIS and prior to issuance of the final EIS.

### **THE BOIS FORTE BAND OF CHIPPEWA**

The Bois Forte Band of Chippewa will serve as a cooperating agency in the EIS preparation and will provide input to the USACE and the DNR to address the Bois Forte Band of Chippewa issues in the document.

### **CONFLICT RESOLUTION PROCEDURES**

Every effort will be made for the USACE, the Bois Forte Band of Chippewa, and the DNR to reach mutual agreement regarding the issues addressed in the joint EIS. In the event that conflicts arise between the USACE, the Bois Forte Band of Chippewa and the DNR on any aspect of this effort, the following procedures will be used, in sequence, to attempt to resolve these conflicts.

- The agency points of contact will make a concerted effort to resolve the dispute.
- Matters unresolved by the agency points of contact will be referred to the Commissioner or his/her designee, the USACE District Engineer or his/her designee, and the Bois Forte Band of Chippewa Chairperson or his/her designee for resolution.
- In the event that unresolved issues remain, the agency/tribal positions will be presented in the EIS and any public summaries. Should disagreement remain over issues, impacts, or alternatives to be included and analyzed, the respective agency/tribe promoting inclusion or analysis of the issue shall be responsible for its analysis and documentation.

### **SELECTION OF A THIRD-PARTY CONSULTANT**

The USACE and the DNR will formulate criteria for selecting a third-party consultant in consultation with U. S. Steel. The criteria will satisfy requirements imposed upon the USACE and the DNR by the statutes and regulations applicable to selecting a consultant for EIS preparation.

## **TIME TO PREPARE EIS**

To facilitate the preparation of a joint EIS, U. S. Steel consents to DNR exceeding the rule-designated EIS preparation timelines, which are found in Minnesota Rules 4410.2000 to 4410.2800, and consents to the proposed schedule provided in Attachment 1 to this MOU. However, the parties acknowledge that the attached schedule is a best-case scenario, assuming no delays in the process, and may be exceeded.

## **EFFECTIVE DATE**

The MOU will be effective upon execution by all parties hereto.

## **AMENDMENT**

The MOU may be amended only by written agreement of all parties.

## **EXPIRATION OR TERMINATION**

Unless specifically terminated by either the USACE or the DNR, this MOU will remain in effect until issuance of the state Record of Decision on the Adequacy of the EIS and the federal Record of Decision. Agency termination of the MOU is accomplished upon written notice to the other agency, the cooperating agencies, and U. S. Steel.

U.S. Steel or the cooperating agency may withdraw from this agreement upon written notice to both the USACE and DNR. Any such termination by U.S. Steel does not negate U.S. Steel's obligation to reimburse the State for any costs incurred to date by the third-party contractor and in closing out the third-party contract. In addition, any such termination does not negate U. S. Steel's obligation to provide information to the USACE and the DNR for their permit evaluations.

## **FUNDING**

All obligations of the USACE under this agreement are subject to and dependent upon the appropriation and allocation of sufficient funds to the St. Paul District for such purposes.

All obligations of the DNR are contingent upon receipt of appropriations from the Legislature and/or other funds allotted or lawfully available for preparation of the EIS.

## **JUDICIAL REVIEW**

Nothing in this MOU shall affect any otherwise available review of agency action. This MOU is intended only to facilitate preparation of a joint EIS and does not create any right, benefit, or legal obligation, substantive or procedural, enforceable at law or equity against the DNR, the USACE, or any other party to this MOU.

## **LIABILITY**

Each party to this MOU shall be liable for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees or agents. Nothing in this agreement shall be deemed to be a waiver by any of the parties of any applicable state or federal immunities or limits of liability.

## **POINTS OF CONTACT**

The agency points of contact may be changed at the discretion of the respective agencies with written notice to the other. The points of contact for this MOU are:

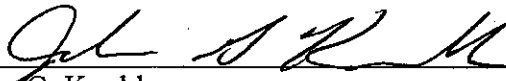
Jon Ahlness, U.S. Army Corps of Engineers, St. Paul District, Regulatory Branch, 190 5<sup>th</sup> Street East, Suite 401, St. Paul, MN 55101

Bill Johnson, Minnesota Department of Natural Resources, Division of Ecological Services, Box 25, 500 Lafayette Road, St. Paul, MN 55155


Rose Berens, Bois Forte Band of Chippewa, Bois Forte Heritage Center, 1500 Bois Forte RD, Tower, MN 55790

Michael Rhoads, U.S. Steel – Minnesota Ore Operations, P.O. Box 217, Keewatin, MN 55753

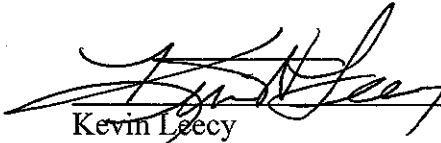
BY THEIR SIGNATURES, THE UNDERSIGNED ATTEST THAT THEY HAVE THE AUTHORITY TO COMMIT TO THIS MOU ON BEHALF OF THE PARTIES THAT THEY REPRESENT.

  
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John G. Kunkle  
Lieutenant Colonel, Corps of Engineers  
Acting District Engineer


24 Sep 08  
Date

  
\_\_\_\_\_  
Mark Holsten  
Commissioner  
Minnesota Department of Natural Resources

10.14.08  
Date

  
\_\_\_\_\_  
Kevin Leecy  
Chairperson  
Bois Forte Band of Chippewa

09.28.08  
Date

  
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Michael Williams  
Vice President of Midwest Operations  
United States Steel Corporation

September 26, 2008  
Date

Attachment 1: Proposed EIS Schedule

<b>Phase I: EIS Scoping</b>	
Publish Notice of Intent (NOI) to prepare an EIS.	
Finalize Scoping EAW/Draft Scoping Decision Document (DSDD).	
Publish Scoping EAW/DSDD; initiate public review and comment period.	
End of public comment period; adopt Final Scoping Decision.	
Retain Consultant/Contractor to assist in scoping process and preparation of EIS	
Time allotted: completed within 4 months from publication of NOI.	
<b>Phase II: Draft EIS</b>	
Prepare working Draft EIS Version I.	
Agency review of working Draft EIS Version I.	
Submit comments to consultant; revised Draft EIS Version II prepared.	
Finalize Draft EIS for public review.	
Publish Draft EIS and public review and comment period.	
Time allotted: completed within 6 months from adoption of Scoping Decision.	
<b>Phase III: Final EIS</b>	
Prepare responses to comments on Draft EIS and develop additional information as required.	
Publish Final EIS for public review and comment.	
Time allotted: completed within 2 months of closure of DEIS comment period.	
<b>Phase IV: Record of Decision</b>	
Adopt State EIS Adequacy Decision; publish Federal Record Of Decision.	
Time allotted: completed within 1 month of closure of FEIS comment period.	
Total time allotted Phases I-IV: 13 months.	