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LAND & RESOURCE

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October 13, 2005

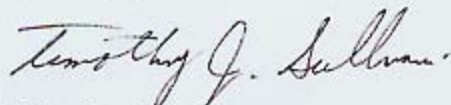
Dear Bill,

We are residents of Otter Tail County and members of the Dead Lake Association, Inc. We ask that this letter be part of the record of public responses to the EIS scoping of Blue Heron Bay – for both the proposed cluster development and subdivision projects.

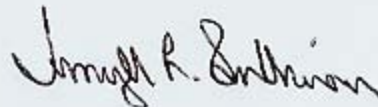
Attached is page 11 of the 13 page ruling by the Court of Appeals decision, dated February 1, 2005, File No. C7-03-630, regarding the requirement for an Environmental Impact Statement for Blue Heron Bay projects. Judge Halbrooks stated: "We determine that the adverse environmental effects of the project here *have not* been adequately identified and evaluated in sufficient detail. We therefore reverse and remand for a more complete study of the environmental consequences of the proposed development on Dead Lake, fully examining each of the issues originally raised in the EAW, but with particular attention paid to that which was virtually absent in the EAW – the impact of increased boating activities." This statement clearly states that the study must include each of the issues, not a limited scope.

Thank you for including these comments in the record.

Sincerely,



Timothy J. Sullivan



Terryll L. Sullivan

cc: Commissioner Syd Nelson  
Commissioner Malcolm Lee  
Commissioner Bob Block  
Commissioner Dennis Mosher  
Commissioner Roger Froemming

gathering and analytical process.” *Minn. Ctr. For Env'tl. Advocacy*, 644 N.W.2d at 468 (citing Minn. Stat. § 116D.04, subds. 1a(c), 2a (2000)). In interpreting the National Environmental Policy Act (NEPA)—the federal equivalent of MEPA—the U.S. Supreme Court has explained, “[i]f the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350, 109 S. Ct. 1835, 1846 (1989) (emphasis added). We determine that the adverse environmental effects of the project here have not been adequately identified and evaluated in sufficient detail. We therefore reverse and remand for a more complete study of the environmental consequences of the proposed development on Dead Lake, fully examining each of the issues originally raised in the EAW, but with particular attention paid to that which was virtually absent in the EAW—the impact of increased boating activities. See Minn. R. 4410.2300 (2003) (listing the content requirements of an EIS).

Finally, appellant also argues that this case must be reversed and remanded to the county for further review because the developer failed to disclose to the county that high levels of groundwater nitrates existed in Dead Lake. According to appellant, “when the MPCA imposed a 10 parts per million nitrate limit on effluent, the developer immediately responded by stating that it already knew of the existence of nitrates in the ground water at the level of 40 parts per million.” Appellant claims that this already high level of nitrates will only be exacerbated by (1) the lateral flow of wastewater, resulting in a discharge of nutrient-rich water into the lake; (2) “daylighting,” or the pushing of nitrate-contaminated water into the lake; and (3) phosphates that will be discharged from the lake sediment caused by an increase in boat usage. But given our decision to require an EIS, we need not address this issue and order that the county consider this information as well when completing the EIS.

Given our restrictive standard of review, we do not reach our conclusion lightly and emphasize that this decision is based on the peculiar factual circumstances of this particular

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