

September 26, 2024

VIA Electronic Filing

Ms. Debbie-Ann Reese, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Subject: **Response to Agency License Recommendations**
White River Hydroelectric Project (FERC Project No. 2444-042)

Dear Acting Secretary Reese:

Per the Commission's delegated letter of Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions dated June 14, 2024 ([Accession #20240614-3020](#)), Northern States Power Company – Wisconsin (NSPW) hereby submits its response to the comments and recommendations provided by the U.S. Fish and Wildlife Service (FWS), U.S. Department of Interior (DOI), Bad River Band of Lake Superior Tribe of Chippewa Indians (Bad River Tribe), and Wisconsin Department of Natural Resources (WDNR).¹

The responses are organized in table format that displays the agencies' comments and recommendations and NSPW's corresponding responses. The comment response table is enclosed as Appendix 1.

Should you have any questions, please contact Matthew Miller at 715-737-1353 or matthew.j.miller@xcelenergy.com.

Sincerely,

Scott Crotty

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Crotty
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Scott Crotty
Senior Hydro Operations Manager

Enclosure

cc: Mary Manydeeds, Bureau of Indian Affairs (BIA)
Harold Peterson, BIA
David Thomson, National Park Service (NPS)
Alyssa Wethy, NPS
Darin Simpkins, FWS
Jennifer Frozema, DOI
Frankie Green, FWS
Naomi Tillison, Bad River Tribe
Cheryl Laatsch, WDNR
Shawn Puzen, Mead & Hunt

¹ NSPW previously responded to the FWS comments via e-filing on August 30, 2024 ([FERC Accession No. 20240830-5202](#)). The responses provided in that filing are included in the enclosed table; however, NSPW subsequently modified its original responses as included herein with the modifications in red font.

Appendix 1 – Reply Comment Table

#	Stakeholder & Description	Comment	NSPW
1	US Fish and Wildlife Service (USFWS or FWS) Comment 1 07/24/2024	<p>Recommendation 1. Project Operations</p> <p>The USFWS agrees with the continued operation of the project developments as run-of-river with no hydroelectric (hydro) peaking.</p> <p>Rationale: Hydro peaking produces fluctuating water levels in the project tail water and reservoir, which adversely affect fish and other aquatic life. Under run-of-river operation, the reservoir, tail water, and downstream areas undergo changes similar to those occurring in an unimpounded river flowing under natural hydrological conditions, and the resulting habitats mimic those to which fish and other aquatic life have adapted. Reducing water level fluctuations also minimizes adverse impacts to wetland, shallow water, and shoreline habitats important to fish and wildlife resources.</p>	<p>Comment noted. NSPW proposes to continue operating the Project in a run-of-river mode.</p>
2	FWS Comment 2 07/24/2024	<p>Recommendation 2. General Fish Protection</p> <p>The Licensee should maintain trash racks above the intake(s) of the powerhouse(s) to minimize fish entrainment and turbine mortality. The service recommends installing trash racks with a maximum of one inch clear horizontal spacing between bars to minimize juvenile fish entrainment.</p> <p>The Licensee should maintain average normal inflow velocities immediately upstream of the trash rack(s) of the powerhouse(s) to be no greater than two feet per second to protect fish from impingement and entrapment.</p> <p>Rationale: Numerous entrainment and turbine mortality studies conducted over the past 30 years in Wisconsin and Michigan have shown that thousands of fish are entrained annually at hydro projects and that a portion of these fish entrained (2 to 20 percent, plus) are killed by the turbines (FERC 1995). Further, study results show that mainly small fish (6 inches or less in length) pass through hydro projects on an annual basis.</p>	<p>The FWS recommendations are arbitrary. Throughout this relicensing proceeding, the FWS has not made any recommendation for 1-inch trashrack spacing, recommended any studies regarding the trashrack spacing, nor have they recommended intake approach velocities of <2 feet per second.</p> <p>As discussed in Section 6.1.2.2 of Exhibit E of the Final License Application (FLA), the Project currently features a trashrack with 1.25-inch clear spacing. The intake approach velocity is estimated at 1.18 feet per second and therefore already meets the FWS recommended average normal intake velocities. A two-inch fish would likely have a minimum burst swim speed of approximately 1.2 feet per second. Therefore, most fish species greater than two inches in length exposed to the intake velocities at the Project are likely to escape impingement and entrapment.¹</p> <p>FWS has not provided any Project specific information that indicates the existing trashracks (spacing or intake velocity) are adversely impacting fish populations or that reducing the clear spacing to 1.0 inch would result in any benefit to fish populations. Therefore, based upon the information included in the FLA, the additional cost to install new trashracks with 1.0-inch clear space is not warranted.</p> <p>Lastly, when the same recommendations were made by the FWS during the relicensing of NSPW's Cornell Project, the comments were described in the FWS' own words as "boiler plate." See Accension #20240410-5186.</p>
3	FWS Comment 3 07/24/2024	<p>Recommendation 3. Operational Compliance Monitoring</p> <p>The USFWS recommends the Licensee develop an operational compliance plan for project operations at the White River Hydroelectric Project. The Licensee should develop a plan to monitor compliance with project operations, employing mechanisms to accurately document inflow to and discharge from the developments in the project, water temperatures upstream, within and below the project, and sediment transport dynamics downstream of the project. Staff gauges should be installed showing the reservoir operating bands stipulated in the license. Automatic water level recorders should be installed to record headwater and tailrace elevations and daily turbine operations, headwater and tailrace channel elevations, and flow releases in cubic feet per second through the powerhouses and spillways. The plan should be developed after consultation with the Service, include a schedule for implementation, documentation of consultation with the Service, copies of comments and recommendations on the completed plan, and specific</p>	<p>In Section 5.8 of Exhibit E of the FLA, NSPW proposed to develop an operations monitoring plan to "document how it will comply with the operational requirements of the license, including reservoir elevation and minimum flow requirements. The plan will include the following:</p> <ul style="list-style-type: none"> • Locations of headwater monitoring gages, • Frequency of monitoring, • Procedures for maintaining and calibrating monitoring equipment, • Standard operating procedures to be implemented outside of normal operating conditions, such as scheduled or emergency facility shutdowns or maintenance activities, • Schedule for installing and operating the monitoring equipment, and • Procedures to remove ice from the spillway as a planned deviation."

¹ US Fish and Wildlife Service (USFWS). 1989. Water velocity standards at power plant intakes: traditional and alternate rationales. Research Information Bulletin No. 89-61. White River Hydroelectric Project FERC Project No. 2444

	<p>descriptions of how the Service's comments are accommodated by the plan. The Licensee should allow a minimum of 30 days for the Service to comment and make recommendations before filing the plan with FERC. If the Licensee does not adopt a recommendation, the filing should include the Licensee's reasons, based on project-specific information. The plan should be submitted to FERC within three years of issuance of the new license.</p> <p>Rationale: These recommendations are intended to demonstrate compliance with the rules of project operation as stated in the above recommendations for Project Operations. Compliance at all times with prescribed operating rules is necessary to provide suitable living conditions for fish and wildlife, and to protect the habitats upon which they depend (e.g., spawning areas).</p>	<p>Project controls have been upgraded for automatic operation of the generators and spillway gates based on feedback from the headwater probe. NSPW is proposing to update or replace the reservoir staff gage so it displays the water elevation required by the license. Tailwater monitoring devices are unnecessary because there is no requirement to maintain a specific tailwater elevation. The minimum flow for the Project is released through a 12-inch pipe that diverts flow from within the main penstock and discharges to the bypassed reach. The combined flows passing through the powerhouse and bypassed reach are documented via a USGS gaging station located in the tailrace immediately downstream of the powerhouse.</p> <p>The current monitoring methods and instrumentation at the Project are sufficient to ensure compliance with the reservoir elevation and minimum flow requirements for the protection of aquatic resources in the White River. Monitoring inflows and outflows as a means to ensure compliance with project operations, as recommended by FWS, would not provide any additional benefits from the current monitoring procedures.</p> <p>FWS has not provided any evidence that Project operations is adversely affecting water temperatures within the Project reservoir or below the White River Dam. The water quality study conducted in 2022 and described in Section 5.4.3.1 of Exhibit E of the FLA, indicated that although continuous temperature monitoring identified water temperatures exceeding cold water temperature standards in the months of June, July, and August, the incoming water also exceeded those same standards. Monitoring results indicated that water temperatures below the Project were slightly lower than those entering the Project reservoir, and therefore are not adversely impacted by Project operations. FWS and DOI have not provided any evidence that additional monitoring is necessary or would provide any benefit. Therefore, their recommendation for continuous water quality monitoring is not justified.</p> <p>Monitoring downstream sediment transport dynamics as a provision of an operation compliance monitoring plan, as recommended by FWS, lacks any evidentiary basis. FWS and DOI have not specified the purpose of such monitoring, nor did they explain how sediment transport dynamics would be monitored/measured at the Project. Additionally, they have not explained how monitoring sediment transport dynamics relates to operation compliance or would otherwise provide a project-related benefit. Lastly, there is no evidence in the record suggesting that current or proposed project operations, other than drawdowns that expose a portion of the original stream channel, have the potential to affect sediment transport dynamics in the White River. Therefore, with the mitigation measures already proposed for such drawdowns, as included in Section 6.4.1.4 of Exhibit E of the FLA, there would be no apparent benefit to understanding sediment transport dynamics downstream of the Project.</p>
<p>4</p> <p>FWS Comment 4 07/24/2024</p>	<p>Recommendation 4. Lake Sturgeon Migration and Conservation</p> <p>To meet resource management and species recovery needs, the USFWS recommends the Licensee provide a means to facilitate the safe, timely, and effective upstream and downstream movement of Lake Sturgeon around project developments.</p> <p>Rationale: The Project affects Lake Sturgeon population from both the White River and Bad River to which it flows. Both rivers contain historic spawning areas identified by natural resource professionals and tribes. Variability in flows affects spawning area and the Project impedes downstream passage and prevents upstream passage on the White River.</p> <p>The long-range population goal is to re-establish a self-sustaining, naturally reproducing Lake Sturgeon population within the White and Bad Rivers. Because Lake Sturgeon migrate long distances upstream during spawning season and back downstream post-spawn, barriers to fish passage are considered to be one of the most significant obstacles to restoration of the Lake Sturgeon population in the basin. In the late 1990's, management agencies agreed that Lake</p>	<p>This FWS recommendation is arbitrary. Throughout this relicensing proceeding, FWS has not provided any information, study results, or management plans for Lake Sturgeon within the White or Bad Rivers. FWS did not request any studies nor provide any indication that Lake Sturgeon were of any concern at the Project. Lastly, FWS has also not provided any evidence that Lake Sturgeon historically utilized the White River upstream of the Project dam.</p> <p>Since no information was provided to support this FWS request, NSPW researched existing Lake Sturgeon data for the White and Bad Rivers to include in the FLA. NSPW was able to locate the following documents:</p> <ul style="list-style-type: none"> A Great Lakes Indian Fish and Wildlife Commission (GLIFWC) report entitled "Name" (Lake Sturgeon) Project on the White River in Wisconsin during 2001" (https://glifwc.org/Fisheries/GreatLakes/Name%20Project%20during%202001.pdf) A 2003 Great Lakes Fishery Commission publication entitled "A Lake Sturgeon Rehabilitation Plan for Lake Superior" (https://www.glfc.org/pubs/mlisc/2003_02.pdf)

	<p>Sturgeon could not recover naturally on their own. Re-connecting river habitat by improving fish passage and reintroducing Lake Sturgeon into the basin were primary actions needed to restore the population.</p>	<ul style="list-style-type: none"> A FWS publication entitled "Status of the 2010 Lake Sturgeon Spawning Population in the Bad and White Rivers, Wisconsin (https://meridian.allenpress.com/fwm/article-supplement/433037/psf/40_39960922019-fwm-005_s171) A FWS article entitled Population status and demographics of Lake Sturgeon in the Bad and White rivers, Wisconsin (https://meridian.allenpress.com/fwm/article/10/2/442/433037/Population-status-and-demographics-of-Lake) <p>The 2001 GLIFWC report states "The area below the White River Dam was likely the upper limit for spawning by Lake Sturgeon in the river because according to a historical account in the June 3, 1882 edition of the Ashland Press, a falls of 16 feet existed on the river at the present dam location." The study concluded that the physical habitat (substrate and depth) was suitable for Lake Sturgeon to spawn successfully during 2001 from the dam to downstream of the powerhouse.</p> <p>The 2003 Lake Sturgeon Rehabilitation Plan did not identify any specific measures for the White River, but rather gave general criteria to consider during hydroelectric project relicensing. These criteria included maintaining run-of-river flows, ensuring adequate flows within bypassed channels, and implementation of appropriate water regimes for Lake Sturgeon reproduction and survival. These considerations were addressed during the development of the final license application.</p> <p>The 2010 FWS study states, "However, it is uncertain whether Lake Sturgeon would historically ascend past the current dam site during spawning runs, as suitable spawning habitats are not present upstream of the dam." The study also indicates that there are suitable substrate and flow conditions for Lake Sturgeon located 1-2 km downstream of the dam.</p> <p>The 2019 FWS article states the following, "Spawning in the White River occurs 49 rkm from Lake Superior and immediately downstream of the White River hydro generating station, which has been a run-of-the-river operation from 1907 to present day. A natural falls existed at the site of the present-day dam, but it is uncertain whether Lake Sturgeon could or would ascend these falls before construction of the dam and hydro generating station."</p> <p>The information included in the aforementioned documents does not support the FWS speculation that upstream and downstream passage are necessary to provide access to historic Lake Sturgeon spawning areas present prior to the dam's construction, nor does the FWS present any evidence the lack of passage creates an adverse impact upon the Lake Sturgeon population. Regardless, the FWS has reserved fishway prescription authority under Section 18 of the Federal Power Act in comment 7.</p>
<p>5</p> <p>FWS</p> <p>Comment 5</p> <p>07/24/2024</p>	<p>Recommendation 5. Protection of Native Species and their Habitats</p> <p>The Service supports Northern States suggestion to develop and invasive species monitoring plan, but further recommends that management actions be implemented to prevent the spread of invasives species including the installation of signage and boat washing stations.</p> <p>Rationale: Invasive species often impact native species through competition for limited resources or displacement from natural habitats. Recreational users of natural resources unknowingly spread invasive species from site to site across the country by transporting them on equipment, such as boats and trailers. The installation of signage would educate recreational users of potential spread and impacts of invasive species and boat washing stations would prevent the spread of invasive species.</p>	<p>In Section 6.4.1.1 and Section 6.4.2.3 of Exhibit E of the FLA, NSPW proposed to develop an invasive species monitoring plan and conduct biennial monitoring over the term of the license. There is existing invasive species signage at the Boat Landing/Canoe Portage Take-out recreation site. The Licensee has proposed to maintain (or replace, if necessary) the existing signage throughout the term of the next license. As noted in Section 8.3.4.1 of Exhibit E of the FLA, the use of the boat landing is limited.</p> <p>Considering the limited recreational use at the site, existing invasive species signage, and the lack of evidence demonstrating that Project operations has contributed to the spread of invasive plants; or adversely impacted recreation; the costs associated with the establishment of a boat washing station are not justified. Indeed, a new boat washing station would require installation of a new well to provide a clean water source. Lastly NSPW does not propose any changes in Project operation or maintenance that would contribute to the spread of invasive plant species.</p>

<p>6</p> <p>FWS Comment 6 7/24/2024</p>	<p>Recommendation 6. Agency Consultation It is recommended that the Licensee consult with the U.S. Fish and Wildlife Service (Service) Bureau of Indian Affairs (BIA), and Wisconsin Department of Natural Resources (WDNR) on matters affecting fish and wildlife resources and National Parks Service (NPS) and WDNR on recreational Use throughout the term of the new license. Rationale: Issues frequently come up throughout the term of a license, such as power outages, low flows, and unexpected emergencies that may pose a threat to fish and wildlife and recreation resources in the vicinity of the project. It is recommended that the Licensee consult on matters which may affect fish and wildlife and recreation resources.</p>	<p>Throughout the relicensing process, NSPW provided potentially interested parties the opportunity to consult and provide comments. In the FLA, NSPW proposed to consult with the FWS, the Bad River Tribe, and other appropriate natural resource agencies on matters affecting fish and wildlife or recreation as they showed interest during the relicensing process.</p>
<p>7</p> <p>FWS Comment 7 07/24/2024</p>	<p>ENERGY POLICY ACT OF 2005 Since January of 2001, the Department has exercised Section 18 of the FPA in accordance with its Mandatory Conditions Review Policy (MCRP), which provided license applicants and interested parties the opportunity to review and comment on the Department's fishway prescriptions. However, on August 8, 2005 Congress enacted the Energy Policy Act (EPA) of 2005 Pub. L. No. 109-58, which mandates new processes whenever the Department prescribes fishways pursuant to Section 18 of the FPA. On November 17, 2005, the Department published interim final regulations implementing EPA, 43 C.F.R. § 45.1 <i>et seq.</i>, 70 Fed. Reg. 69804, which became effective upon publication in the Federal Register. Because the new procedures mandated by EPA effectively subsume or supersede the MCRP, the Department is no longer implementing the MCRP (70 Fed. Reg. 69804). Additionally, the Department is only reserving the Secretary's Section 18 authority in this licensing proceeding, so the Department will not provide hearing or alternative review processes at this time (43 C.F.R. § 45.1 <i>et seq.</i>, 70 Fed. Reg. 69806). The Department will provide such processes if (and when) the Department exercises its reserved Section 18 authority during the term of the license issued in this proceeding. <i>Id.</i> Interested parties may file reply comments in accordance with FERC's regulations, 18 C.F.R. § 4.34(b), and the Ready for Environmental Analysis Notice, which has yet to be issued on this proceeding.</p> <p>Reservation of Fishway Prescription Authority The Department hereby submits the following reservation of Section 18 authority for inclusion in any license to be issued in this licensing proceeding, FERC No. 10853. "Pursuant to Section 18 of the Federal Power Act, as amended, the Department of the Interior, as delegated to the U.S. Fish and Wildlife Service, reserves the authority to prescribe the construction, operation and maintenance of fishways at the White River Hydroelectric Project, FERC No. 2444, including measures to determine, ensure, or improve the effectiveness of such fishways."</p> <p>Rationale: It should be noted that the USFWS is not exercising the Department's authority to prescribe fishways, but rather, is reserving its authority to prescribe fishways as may be deemed necessary during the term of the new license. The USFWS must reserve the authority to prescribe fishways as may be warranted for some unforeseen future need, such as a new species concern,</p>	<p>Comment noted.</p>

		<p>technology, lack of adequate fish passage to meet resource management needs, or to improve the effectiveness of existing fishways.</p>	
8	<p>FWS Comment 8 09/08/2023</p>	<p>The USFWS recognizes the White River as an important public waterway in Northwestern Wisconsin that is critical to the biological and recreational resources of the area, including resource and cultural needs of the Bad River Band of the Lake Superior Tribe of Chippewa Indians. A functional White River system has been identified by resource agencies and the Tribe as necessary for the continued recovery of the Lake Sturgeon. As such, the service has identified providing/facilitating upstream and downstream fish passage and maintaining river flows as being the highest priorities for the river system.</p>	<p>See NSPW's response to FWS Comment 4, above.</p>
G-1	<p>DOI Comment G-1 8/13/2024</p>	<p>ENERGY POLICY ACT OF 2005 Since January of 2001, the Department has exercised Section 18 of the FPA in accordance with its Mandatory Conditions Review Policy (MCRP), which provided license (sic) Licensees and interested parties the opportunity to review and comment on the Department's fishway prescriptions. However, on August 8, 2005 Congress enacted the Energy Policy Act of 2005 (EPAct), Pub. L. No. 109-58, which mandates new processes whenever the Department prescribes fishways pursuant to Section 18 of the FPA. On November 17, 2005, the Department published interim final regulations implementing EPAct, 43 C.F.R. § 45.1 et seq., 70 Fed.Reg. 69804, which became effective upon publication in the Federal Register.</p> <p>Because the new procedures mandated by EPAct effectively subsume or supersede the MCRP, the Department is no longer implementing the MCRP. 70 Fed.Reg. 69804. Additionally, the Department is only reserving the Secretary's Section 18 authority in this licensing proceeding, so the Department will not provide hearing or alternative review processes at this time. 43 C.F.R. § 45.1(c), 70 Fed.Reg. 69806. The Department will provide such processes if (and when) the Department exercises its reserved Section 18 authority during the term of the license issued in this proceeding. Id. Interested parties may file reply comments in accordance with FERC's regulations, 18 C.F.R. § 4.34(b), and the Ready for Environmental Analysis Notice, which has yet to be issued on this proceeding.</p> <p>Reservation of Fishway Prescription Authority The Department hereby submits the following reservation of Section 18 authority for inclusion in any license to be issued in this licensing proceeding, FERC No. 10853.</p> <p>Pursuant to Section 18 of the Federal Power Act, as amended, the Department of the Interior, as delegated to the U.S. Fish and Wildlife Service (Service), reserves the authority to prescribe the construction, operation and maintenance of fishways at White River Hydroelectric Project, FERC No. 2444, including measures to determine, ensure, or improve the effectiveness of such fishways.</p> <p>Justification: It should be noted that the Service is not exercising its authority to prescribe fishways, but rather, is reserving its authority to prescribe fishways as may be deemed necessary during the term of the new license. The Service must reserve the authority to prescribe fishways as may be warranted for some unforeseen future need, such as a new species concern, technology, lack of adequate</p>	<p>Comment noted.</p>

10j-1	Department of Interior Comment 10j-1 08/13/2024	<p>fish passage to meet resource management needs, or to improve the effectiveness of existing fishways.</p> <p>10j-Recommendation 1. Project Operations The Department agrees with the continued operation of the project developments as run-of-river with no hydroelectric (hydro) peaking.</p> <p>Justification: Hydro peaking produces fluctuating water levels in the project tail water and reservoir, which adversely affect fish and other aquatic life. Under run-of-river operation, the reservoir, tail water, and downstream areas undergo changes similar to those occurring in an unimpounded river flowing under natural hydrological conditions, and the resulting habitats mimic those to which fish and other aquatic life have adapted. Reducing water level fluctuations also minimizes adverse impacts to wetland, shallow water, and shoreline habitats important to fish and wildlife resources.</p>	Comment noted. NSPW has proposed to continue operating the Project in a run-of-river mode.
10j-2	Department of Interior Comment 10j-2 08/13/2024	<p>10j-Recommendation 2: Agency Consultation It is recommended that the Licensee consult with the U.S. Fish and Wildlife Service, Bureau of Indian Affairs (BIA), Tribes, and Wisconsin Department of Natural Resources (WDNR) on matters affecting fish and wildlife resources and National Park Service (NPS) and WDNR on recreational use throughout the term of the new license.</p> <p>Justification: Issues frequently come up throughout the term of a license, such as power outages, low flows, and unexpected emergencies that may pose a threat to fish and wildlife and recreation resources in the vicinity of the project. It is recommended that the Licensee consult on matters which may affect fish and wildlife and recreation resources, and work with Stakeholders to draft and maintain a Sturgeon Management Plan that will be reviewed no less than annually to determine if any changes in operational/maintenance releases of reservoir water prior to and during the typical sturgeon spawning season need to be implemented. The Sturgeon Management Plan should include details on managing the lake sturgeon population to ensure that the number and age classes of spawning fish continues to increase.</p>	See NSPW's response to FWS Comment 6 above.
10j-3	Department of Interior Comment 10j-3 08/13/2024	<p>10j-Recommendation 3. General Fish Protection The Licensee should maintain trash racks above the intake(s) of the powerhouse(s) to minimize fish entrainment and turbine mortality. The Service recommends installing trash racks with a maximum of one inch clear horizontal spacing between bars to minimize juvenile fish entrainment.</p> <p>The Licensee should maintain average normal inflow velocities immediately upstream of the trash rack(s) of the powerhouse(s) to be no greater than two cubic feet per second to protect fish from impingement and entrapment.</p> <p>Justification: Numerous entrainment and turbine mortality studies conducted over the past 30 years in Wisconsin and Michigan have shown that thousands of fish are entrained annually at hydro projects and that a portion of these fish entrained (2 to 20 percent, plus) are killed by the turbines</p>	See NSPW's response to FWS Comment 2 above.

		<p>(FERC 1995). Further, study results show that mainly small fish (6 inches or less in length) pass through hydro projects on an annual basis.</p>	
<p>10j-4</p>	<p>Department of Interior Comment 10j-4 08/13/2024</p>	<p>10j-Recommendation 4. Operational Compliance Monitoring The Department recommends that the Licensee develop an operational compliance plan for project operations at White River Hydroelectric Project. The Licensee should develop a plan to monitor compliance with project operations, employing mechanisms to accurately document inflow to and discharge from the developments in the project. Staff gauges should be installed showing the reservoir operating bands stipulated in the license. Automatic water level recorders should be installed to record headwater and tailrace elevations, and records of daily turbine operations, headwater and tailrace channel elevations, and flow releases in cubic feet per second through the powerhouse and spillways. The plan should be developed after consultation with the Service, include a schedule for implementation, documentation of consultation with the Service, copies of comments and recommendations on the completed plan, and specific descriptions of how the Service's comments are accommodated by the plan. The Licensee should allow a minimum of 30 days for the Service to comment and make recommendations before filing the plan with FERC. If the Licensee does not adopt a recommendation, the filing should include the Licensee's reasons, based on project-specific information. The plan should be submitted to FERC within three years of issuance of the new license.</p> <p>Justification: These recommendations are intended to demonstrate compliance with project operation as stated in the above recommendations for Project Operations. Compliance at all times with prescribed operating rules is necessary to provide suitable living conditions for fish and wildlife, and to protect the habitats upon which they depend (e.g., spawning areas).</p>	<p>See NSPW's response to FWS Comment 3 above.</p>
<p>10j-5a</p>	<p>Department of Interior Comment 10j-5a 8/13/2024</p>	<p>10j-Recommendation 5(a). Lake Sturgeon Protection, Migration and Conservation To meet resource management and species recovery needs, the Department recommends that the Licensee provide a means to facilitate the safe, timely, and effective upstream and downstream movement of lake sturgeon around project developments and take measures to create an environment where sturgeon thrive in the reach of the river below the Project.</p> <p>According to the Michigan Department of Natural Resources spawning sturgeon prefer clean, gravel shoals and stream rapids from mid-April to late May in waters temperatures between 55 to 64 degrees. Operations of the dam post spawning season also have an impact to populations. Brousseau and Goodchild (1989) describe how fluctuating flows in a spillway channel can adversely impact lake sturgeon populations. Low and/or fluctuating flows immediately after spawning affects success as eggs experience variable water temperatures, low oxygen concentrations, and exposure to the atmosphere. Fry become trapped in shallow pools and are subjected to heavy mortality through predation, temperature stress, and oxygen depletion. Payne (1987) reported that water level fluctuations between dams, both seasonal and periodic, cause decreased production and loss of species from some stream reaches.</p> <p>Justification: The Project affects lake sturgeon populations from both the White River and Bad River to which it flows. Sturgeon are a sustenance food source and are culturally significant to the Tribes, the ability</p>	<p>See NSPW's response to FWS Comment 4 above.</p> <p>The DOI has provided no evidence that Lake Sturgeon spawned or traveled upstream of the waterfall that was present at the Project site prior to the construction of the White River Dam. Therefore, the establishment of upstream and downstream passage is not justified.</p> <p>The Project is operated in a run-of-river mode where project outflows approximate the sum of inflows to the Project reservoir. A minimum flow of 16 cfs is also provided in the bypass reach to protect aquatic habitat. Any fluctuation in outflows from the Project are the result of fluctuating inflows, which mimics natural conditions if the dam were not present.</p> <p>Although DOI quotes from the 2003 Lake Sturgeon Rehabilitation Plan for Lake Superior, any barriers to migration or spawning. Only the Black, Michipicoten, and Wolf Rivers in Ontario were referenced in this manner. Rather, the 2003 plan recommends that general relicensing criteria be established at hydroelectric facilities to ensure run-of-river flows in riverine reaches, adequate flow in the bypass of bypassed reaches, and appropriate annual water regime for Lake Sturgeon reproduction and survival. NSPW's proposed Project operation meets these recommendations. The DOI's desire for fish passage is speculative because it has not provided any evidence that continued operation of the Project would adversely impact Lake Sturgeon populations. Therefore, DOI's recommendation for Lake Sturgeon protection, migration and conservation are not justified.</p>

		<p>to harvest lake sturgeon is of great significance to the Tribes. Treaty rights retained by the Tribes and upheld by federal courts allow for hunting, fishing, and gathering to occur. Both rivers contain historic spawning areas identified by natural resource professionals and tribes.</p> <p>Variability in flows affects spawning areas and the Project impedes downstream passage and prevents upstream passage on the White River.</p> <p>The long-range population goal is to re-establish a self-sustaining, naturally reproducing lake sturgeon population within the White and Bad Rivers. Quoting the 2003 Lake Sturgeon Rehabilitation Plan for Lake Superior, "Management of lake sturgeons should include the protection and rehabilitation of habitat for all life stages in 17 tributaries, 16 embayments, and corridors for movement throughout the nearshore area. Achievement of the rehabilitation goal will require regulation of the harvest to maintain annual exploitation rates at less than 5%, continued development of sea lamprey management technologies to ensure minimal negative impact on lake sturgeons, protection of existing habitat, restoration of degraded habitat, provision of passage upstream and downstream of man-made barriers, and increased public awareness." Because Lake Sturgeon migrate long distances upstream during spawning season and back downstream post-spawn, barriers to fish passage are considered to be one of the most significant obstacles to restoration of the Lake Sturgeon population in the basin. In the late 1990s, management agencies agreed that Lake Sturgeon could not recover naturally on their own. Re-connecting river habitat by improving fish passage and reintroducing Lake Sturgeon into the basin were primary actions needed to restore the population. The Department recommends these principles be followed in the protection of lake sturgeon during Project operations.</p>	<p>Due to input from the DOI and Bad River Tribe, NSPW is revising its original proposal to pass all woody debris downstream. NSPW is proposing instead to collect woody debris and remove it from the reservoir for disposal in an upland location, unless it cannot be removed in a safe manner. Woody debris that has the potential to endanger worker safety or dam safety will continue to be sluiced downstream. This proposal will significantly reduce both the overall volume of woody debris passed downstream and the likelihood of significant changes to tailwater elevations due to sluicing.</p>
<p>10j-5b</p>	<p>Department of Interior Comment 10j-5b 08/13/2024</p>	<p>10j-Recommendation 5(b)</p> <p>Rapid changes in tailwater discharges during critical times can result in significant negative impacts to the aquatic resources of the tailwater area. These impacts can include restriction on fish from the tailwater area, the flushing downstream of fish eggs and fry as well as catastrophic drift of benthic macroinvertebrates. Rapid reduction in the tailwater after sluicing can result in exposure of fish eggs and fry, and the trapping of fish in the shallow pools or side channels. FERC recommends a restriction to +/- 0.3 feet in tailwater elevation during sluicing operations however, this may not be adequate for the purpose of decreasing temperature in downstream water during the critical spawning period for sturgeon. The Department recommends FERC consider the impacts of sluicing operations during critical spawning periods or that the timing and water levels and amount be a part of the Sturgeon Management Plan subject to annual reviews by the WIDNIR, the Service, and Tribes, as well as being documented in a debris management plan. Tribes must consent to water level changes per their treaty rights.</p>	<p>The Project is operated in a run-of-river mode whereby discharge measured immediately downstream of the Project tailrace approximates the sum of inflows to the Project reservoir. A minimum flow of 16 cfs is passed at all times in the ¼ mile-long bypass reach to protect aquatic resources.</p> <p>As noted in Section 6.1.1-1 of Exhibit E of the FLA, historic fish sampling was conducted by WDNR within the reservoir, tailrace, and bypass reach during the last relicensing proceeding (1988-1989). From that effort, no Lake Sturgeon were identified within the reservoir or downstream of the Project dam, including the bypass reach. Likewise, a fisheries study completed at the Project in 2022, including the bypass reach and tailrace areas downstream of the Project dam, did not identify any Lake Sturgeon.</p>
<p>10j-5c</p>	<p>Department of Interior Comment 10j-5c 08/13/2024</p>	<p>10j-Recommendation 5(c):</p> <p>The Department also requests that sturgeon populations be monitored and studied to ensure they are improving and retaining a viable reproductive population. Monitoring for Dissolved Oxygen and Water Temperature immediately downstream of both dams throughout the term of the license in areas defined to be conducive to sturgeon spawning should occur every two weeks between March 15th to May 15th and results should be shared with stakeholders. Studies assessing the sturgeon population and assessment of how flows through the Project impact the population should be conducted every three years.</p>	<p>The Project is operated in a run-of-river mode whereby discharge measured immediately downstream of the Project tailrace approximates the sum of inflows to the Project reservoir. A minimum flow of 16 cfs is passed at all times in the ¼ mile-long bypass reach to protect aquatic resources.</p> <p>As noted in Section 6.1.1-1 of Exhibit E of the FLA, historic fish sampling was conducted by WDNR within the reservoir, tailrace, and bypass reach during the last relicensing proceeding (1988-1989). From that effort, no Lake Sturgeon were identified within the reservoir or downstream of the Project dam, including the bypass reach. Likewise, a fisheries study completed at the Project in 2022, including the bypass reach and tailrace areas downstream of the Project dam, did not identify any Lake Sturgeon.</p>

		<p>Although the fisheries studies mentioned above did not identify Lake Sturgeon within the Project boundary, a FWS Article entitled <i>Population status and demographics of Lake Sturgeon in the Bad and White rivers, Wisconsin</i> (https://meridian.allenpress.com/fwm/article/10/2/442/433037/Population-status-and-demographics-of-Lake) stated the following, "Spawning in the White River occurs 49 rkm from Lake Superior and immediately downstream of the White River hydro generating station, which has been a run-of-the-river operation from 1907 to present day."</p> <p>The DOI has provided no documentation that Lake Sturgeon spawned or traveled upstream of the waterfall that was present at the Project site prior to the construction of the White River Dam.</p> <p>The DOI did not identify Lake Sturgeon as a species of concern or request any studies regarding the species during the licensing proceeding. The DOI has not provided any evidence that continued Project operation would adversely affect the species. Therefore, sturgeon population assessments requested by DOI are not justified.</p> <p>The DOI requests monitoring of dissolved oxygen (DO) and water temperatures downstream of "both" dams between March 15 and May 15 throughout the term of the license. The White River Project features only one dam.</p> <p>As identified in the FLA, a water quality monitoring study was conducted at the Project in 2022. Continuous monitoring of DO and temperature was conducted between the months of May and October. All DO readings recorded upstream and downstream of the dam met state water quality standards. As noted in Section 5.4.3.1 of Exhibit E of the FLA, no water temperatures were observed during the month of May which exceeded the state temperature standard of 72 degrees F. While no continuous monitoring was completed in the months of March or April², water temperatures are generally lower and DO generally higher during this timeframe than in the month of May. Furthermore, there is no history of low DO observations at the Project. The DOI has not provided any evidence that monitoring of water temperatures or DO is necessary or would provide any benefit. Therefore, water quality monitoring is not justified to protect the Lake Sturgeon population.</p> <p>Since the project operates in a run-of-river mode, which approximates natural flow conditions, it is not necessary to assess how flows through the Project impact Lake Sturgeon populations.</p>	<p>See NSPW's response to DOI Comment 10j-5b above.</p>
10j-5d	<p>Department of Interior Comment 10j-5d 08/13/2024</p>	<p>10j-Recommendation 5(d): The Department requests that FERC carefully consider the impacts of the Licensee's proposal to allow woody debris to pass through the dam. Rather than improving fish habitat, in practice this will lead to downstream logjams that will be detrimental to fish populations. Furthermore, this will create a downstream flooding risk.</p>	<p>See NSPW's response to DOI Comment 10j-5b above.</p>
10j-6	<p>Department of Interior Comment 10j-6 08/13/2024</p>	<p>10j-Recommendation 6. Protection of Native Species and their Habitats The Service supports Northern States suggestion to develop and invasive species monitoring plan, but further recommends that management actions be implemented to prevent the spread of invasive species including the installation of signage and boat washing stations.</p> <p>Justification: Invasive species often impact native species through competition for limited resources or displacement from natural habitats. Recreational users of natural resources unknowingly spread</p>	<p>See NSPW's Response to FWS Comment 5 above.</p>

² The cold-water acute temperature standards for March and April are 69 degrees F and 70 degrees F, respectively. White River Hydroelectric Project FERC Project No. 2444

	<p>invasive species from site to site across the country by transporting them on equipment, such as boats and trailers. The installation of signage would educate recreational users of potential spread and impacts of invasive species and boat washing stations would prevent the spread of invasive species.</p> <p>The Department recommends that the Licensee install a boat washing station at the reservoir. Boat washing stations should be installed at each of the upstream boat access points to remove invasive mollusk species that would otherwise be transported between these and other reservoirs/lakes (Bleitz 2021).</p>	<p>On June 7, 2024, NSPW submitted its response (FERC Accession No. 20240607) to the Commission's May 29, 2024 additional information request. The submittal, in part, provided information on cinder use at the Project, including results from the chemical testing of cinders as well as the WDNR authorization for their use. The WDNR provided NSPW with an initial Conditional Grant of Exemption for the Use of Bottom Ash (Cinders) as a Dam Gate Sealant in 2007. The exemption indicated that the use of cinders on specified outstanding resource waters (ORW), or exceptional resource waters (ERW) posed "no significant impact" to the affected surface waters. The grant of exemption was renewed in 2009 for a period of 10 years and again in 2018 for an additional 10-years.</p> <p>The WDNR December 17, 2020 comment is in conflict with the exemptions allowing use of cinders issued by the WDNR.</p>
<p>10j-7 Department of Interior Comment 10j-7 08/13/2024</p>	<p>10j-Recommendation 7: The Department recommends that FERC consider the environmental impacts of any chemical used for the sealing of spillway gates. The use of certain chemical agents could have potentially unfavorable impacts to the river and its fish. The Department concurs with the Wisconsin Department of Natural Resources who indicated in a comment sent to FERC on December 17, 2020 they opposed the use of cinder ash for sealing the spillway gates.</p>	<p>In Section 7.3.2 of Exhibit E of the FLA, NSPW proposes to develop a Historic Properties Management Plan (HPMP) within one year of license issuance in consultation with the Wisconsin SHPO, Bad River Tribe, and any other interested Native American Tribe. The plan will include measures necessary to protect cultural resources and minimize any adverse impacts that may result from Project operations.</p> <p>The White River Project did not contribute to downstream flooding during the 2016 flood event as the Project is operated in a run-of-river mode with little storage capacity in the reservoir. The flood conditions experienced downstream of the Project were due entirely to an extreme precipitation event. Since the Project is operated in a run-of-river mode, all inflow from the event was passed downstream, just as it would have been if the dam were not present. NSPW's January 6, 2017 filing provides a summary of the extreme flood event. While not mentioned in the report, NSPW's research of USGS streamflow data during the event revealed that the Bad River contributed the vast majority of flood waters that impacted the downstream village of Odanah, WI. Based on USGS data, the Bad River contributed approximately 39,000 cfs of the approximately 50,000 cfs that impacted Odanah. Since Project operations did not contribute to the downstream flooding in 2016, there is no justification to expand the APE farther downstream.</p> <p>Consultation with the tribes included in the distribution list is included in Volume 4 of the FLA. NSPW will provide any interested THPO with an unredacted copy of the Archaeological Survey Report upon request. During development of the HPMP, NSPW will send an invitation to all tribes on the distribution list to ensure they have the opportunity to participate in the development of the plan.</p>
<p>10a-1 Department of Interior Comment 10a-1 08/13/2024</p>	<p>10a-Recommendation 1: Cultural Resources The Department recommends that FERC designate an appropriate Area of Potential Effect (APE) so as to thoroughly analyze direct and indirect impacts to Tribal cultural resources. The Department understands that FERC has a process in place for addressing cultural resource concerns in the relicensing proceeding and intends to develop a historic properties management plan to protect historic properties. The Project is sited within traditional lands of the Ojibwe people, and may impact important cultural sites and resources that reside within the project boundary that are culturally important to the Tribes.</p> <p>Justification: The Department encourages FERC to include Tribal Historic Preservation Officers (THPOs) in the process to define the APE. Given the downstream impacts of water releases during the 2016 flood as well as the proposed construction of an oil pipeline downstream of the project, the possibility for adverse effects to historic resources extends past the physical footprint of the Project and the APE must account for that, particularly downstream.</p> <p>The license application states the Phase 1 Archaeological Survey was shared with the Wisconsin State Historic Preservation Office, but did not indicate if the survey was shared with THPOs. Consultation with all potential stakeholders should occur in order to facilitate the development of a comprehensive Historic Properties Management Plan.</p>	<p>In Section 7.3.2 of Exhibit E of the FLA, NSPW proposes to develop an HPMP within one year of license issuance in consultation with the Wisconsin SHPO, Bad River Tribe, and any other interested Native American Tribe. The plan will include measures necessary to protect cultural resources, including access to culturally significant sites as identified by the tribes.</p>
<p>10a-2 Department of Interior Comment 10a-2</p>	<p>10a-Recommendation 2: Access to culturally significant sites within Project boundaries.</p>	<p>In Section 7.3.2 of Exhibit E of the FLA, NSPW proposes to develop an HPMP within one year of license issuance in consultation with the Wisconsin SHPO, Bad River Tribe, and any other interested Native American Tribe. The plan will include measures necessary to protect cultural resources, including access to culturally significant sites as identified by the tribes.</p>

	<p>08/13/2024</p>	<p>The Department recommends that FERC include a license article requiring the Licensee to allow the Tribes to access specific lands within the Project boundary that are culturally significant to the Tribes. The Department recommends that FERC and the Licensee consult with the Tribes to determine the specific dates and locations for which access is required.</p> <p>Justification:</p> <p>There was once a waterfall at the present location of White River Dam. This site is considered a sacred site of cultural importance to the Tribes. Per Executive Order 13007, FERC is required to "accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners" and "avoid adversely affecting the physical integrity of such sacred sites." The Department requests that the license capture a requirement that the Licensee will allow continued access to the lands adjacent to these sites so Tribal citizens can conduct ceremonies, prayers, etc. in peace, undisturbed and consistent with their cultural traditions. The Department recommends FERC and the Licensee consult with the Tribes to obtain a schedule of times and places for access.</p>	<p>The majority of NSPW-owned property within the Project boundary is open to public recreation. The only property restricted from public access is the inside of the powerhouse, the top of the dam structure itself, and the substation. These areas are restricted to the public due to safety and security concerns. Therefore, the need to provide the Tribes access to NSPW property is unnecessary.</p>
<p>10a-3</p>	<p>Department of Interior Comment 10a-3 08/13/2024</p>	<p>10a-Recommendation 3: Perform maintenance activities on the Project in a manner which maximizes protection of culturally important species.</p> <p>The Department recommends FERC require the Licensee to perform maintenance activities on the Project in a manner which provides the maximum protection of plant and animal species of cultural importance to the Tribes. Specifically, the Licensee should identify the spatial extent of where culturally important species occur within the Project; keep invasive species under control that could displace culturally important species; not conduct foliar application of herbicides in proximity to the known locations; reduce woody growth as necessary to maintain the level of canopy closure; and at critical life stages (e.g., flowering), protect these species from mowing or other activities that could reduce population viability. Tribes should be consulted on maintenance releases and drawdowns, which should be timed to not harm wild rice populations downstream.</p> <p>Justification:</p> <p>The 1842 Treaty secures the rights for the members of the Tribes to gather culturally important plants within the Ceded Territories. The Licensee should reach out to each Tribe to verify which plant species are culturally important to that tribe and are within the Project boundary or might be impacted by Project operations.</p>	<p>The Tribes have not identified any specific species as culturally significant. However, NSPW provided a list of species believed to be of cultural importance to Tribes and the local community in Section 7.2.4 of Exhibit E of the FLA. With the implementation of proposed environmental mitigation measures as proposed in Exhibit E, no adverse impacts to culturally significant species are anticipated.</p> <p>In Section 5.8 of Exhibit E of the FLA, NSPW proposes to consult with the Bad River Tribe, USFWS, and WDNR prior to conducting any planned deviations from normal operations (including maintenance drawdowns).</p>
<p>10a-4</p>	<p>Department of Interior Comment 10a-4 08/13/2024</p>	<p>10a-Recommendation 4: Tribal Engagement during the planning and implementation phases of License Articles related to Natural Resources or Ground Disturbance</p> <p>The Department recommends that FERC include Tribes as part of the consultation process with the Wisconsin Department of Natural Resources and/or U.S. Fish and Wildlife Service in the post-licensing planning and implementation phases of license articles related to natural resource protection such as, but not limited to, articles related to: Bald Eagles, sturgeon, fishery habitat restoration, maintenance drawdowns, soil erosion, and the removal of invasive aquatic and terrestrial plants. The Tribes receive little of the electrical generation benefits from the operation of the Project but suffer a significant loss of traditional fishing and cultural practices due to the existence and operation of its existence. The Department encourages meaningful and effective</p>	<p>See NSPW's response to FWS Comment 6 regarding consultation.</p> <p>As noted in the environmental analysis (EA) for the Cornell Project (FERC No. 2639), issued on September 10, 2024 (FERC Accession No. 20240910-3022), FERC identifies Environmental Justice (EJ) communities in the following manner:</p> <p>"According to CEQ's <i>Environmental Justice Guidance and Promising Practices</i>, minority populations are those groups that include American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic. Following the recommendations set forth in <i>Promising Practices</i>, FERC uses the 50 percent and the meaningfully greater analysis methods to identify minority populations. Using this methodology, minority populations are defined in this EA where either: (a) the aggregate minority</p>

<p>10a-5</p>	<p>Department of Interior Comment 10a-5 08/13/2024</p>	<p>communications with the Tribes' staff (both cultural and natural resources) will open discussion and encourage participation with the Licensee to help ensure early identification and resolution of issues or concerns.</p> <p>Justification: Per Executive Order 12898 FERC is required to address environmental justice "by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States," and FERC is also required to "collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence" and to "communicate to the public the risks of those consumption patterns." Additionally Executive Order 13895 requires FERC to "consult with members of communities that have been historically underrepresented in the Federal Government and have been underserved by, or subject to discrimination in, Federal policies and programs". Finally, Executive Order 14091 requires FERC to "yield equitable outcomes for all Americans, including underserved communities."</p> <p>Exhibit E of the application indicates no environmental justice communities are within the project boundaries, and that there are no environmental justice impacts from the project's operations. The 1842 Treaty ceded lands in the northern third of Wisconsin, but retained hunting, fishing, and gathering rights within those lands. The entirety of the project boundary is within these ceded lands.</p> <p>The Department respectfully requests FERC to be mindful of its responsibilities of this Executive Order by taking steps to engage with and communicate with Tribes (both natural and cultural resources staff) on issues that impact them. Secondly, The Department requests FERC to ensure that the Licensee meet the spirit of this Executive Order by engaging and communicating with tribal staff throughout the licensing proceeding and to continue those efforts into post-license implementation.</p>	<p>population of the block groups in the affected area exceeds 50 percent; or (b) the aggregate minority population in the block group affected is 10 percent higher than the aggregate minority population percentage in the county. The guidance also directs low-income populations to be identified based on the annual statistical poverty thresholds from the U.S. Census Bureau. Using <i>Promising Practices</i>' low-income threshold criteria method, low-income populations are identified as census block groups where the percent low-income population in the identified block group is equal to or greater than that of the county."</p> <p>Using the above methodology, NSPW did not identify any EJ communities within a 1 mile radius of the current or proposed Project boundaries.</p>
<p>10a-5</p>	<p>Department of Interior Comment 10a-5 08/13/2024</p>	<p>10a-Recommendation 5: Evaluate potential impacts and identify ways to avoid and mitigate impacts to the White River and Bad River National Rivers Inventory (NRIs).</p> <p>The Department recommends that FERC evaluate the potential effects and identify ways to avoid and mitigate any impacts of Project operation and maintenance alternatives on the White River and Bad River NRIs in the environmental document. The Department also recommends that FERC consult with the NPS.</p> <p>Justification: The White River and Bad River are connected waterways. Water flowing through the White River NRI segment, passes through the Project, and connects downstream with the Bad River NRI segment and, finally, with Lake Superior. It is important to ensure river and channel integrity of these NRI segments and to ensure proper drainage through this sensitive watershed.</p>	<p>The Project is operated in a run-of-river mode where discharge measured immediately downstream of the tailrace approximates the sum of inflows to the Project reservoir. This mode of operation closely simulates natural river flow conditions as if the dam were not present. With the implementation of the proposed environmental mitigation measures outlined in Exhibit E of the FLA, no adverse impacts to the White or Bad Rivers' NRIs are anticipated.</p>

		<p>As stated in a previous comment letter, both the White River and Bad River have segments listed on the NRI with a nexus to the Project. Rivers listed on the NRI are potential candidates for Wild and Scenic River designation under the Wild and Scenic Rivers Act, section 5(d)(1) and related guidance. Potentially, an elevated level of public interest exists in relation to one or both of these NRI segments.</p> <p>FERC and the Applicant must avoid and mitigate any adverse or potential adverse impacts to free flow, water quality, and the Outstandingly Remarkable Values (ORVs) for which the NRI river segments possess. Impacts on the above could foreclose options to designate any portion of the NRI segment as Wild and Scenic. The Department recommends consultation if NRI segments are or may be impacted by Project operations or maintenance. The NPS provides consultation instructions for NRI segments via the following link: Consultation Instructions – Rivers.</p> <p>The White River is a large tributary of the Bad River. The NRI segment headwaters in Bayfield County and ends at the impoundment (the Project) at the crossing of County Road 112 in Ashland County, totaling 43 river miles. The White River flows "through an area of high hills in the lower reaches and many miles through the very wild Bibon Swamp." The ORVs for this NRI segment are recreational and scenic and has outstanding water quality and trout water in the upper reaches. The NRI segment is also a popular canoe route.</p> <p>The Bad River NRI segment is within a heavily forested watershed in northern Wisconsin. It flows from the town of Mellen through Copper Falls State Park and the Bad River Indian Reservation before emptying into Lake Superior, for a total of 51 river miles. The ORVs for the Bad River are geologic and scenic.</p>	
<p>10a-6</p>	<p>Department of Interior Comment 10a-6 08/13/2024</p>	<p>10a-Recommendation 6: Evaluate potential impacts and identify ways to avoid and mitigate impacts to the Kakagon Sloughs NNL.</p> <p>The Department recommends that FERC evaluate the potential effects and identify ways to avoid and mitigate Project operation and maintenance alternatives on the Kakagon Sloughs NNL in the environmental document. The Department also requests that FERC consult with the Bad River Band of the Lake Superior Tribe of Chippewa Indians and NPS.</p> <p>Justification: As stated in the NPS letter dated 12/12/2023, the Kakagon Sloughs was designated an NNL by the U.S. Secretary of the Interior in 1973. The Kakagon Sloughs is under tribal management and jurisdiction of the Bad River Band of the Lake Superior Tribe of Chippewa Indians. The sloughs complex is "representative of a true freshwater delta by virtue of its large size, complex mixture of marsh, bog and dune vegetation types, and undisturbed condition. The site is one of the largest natural manoomin, or wild rice, estuaries in the Lake Superior Basin [and] a wetland site of international importance under the Ramsar Convention."</p>	<p>The Kakagon Sloughs NNL covers a total of 2,849.5 acres as shown in the map provided in NSPW's June 7, 2024 submittal (FERC Accession 20240607-5040) responding to FERC's May 29, 2024 Additional Information Request. As shown in the map, the Bad River intersects only a small corner of the NNL, approximately 3 river kilometers (rkm) before it enters Lake Superior, and approximately 45 rkm downstream of the White River Project. The project is operated in a run-of-river mode where flows measured immediately below the project tailrace approximate the sum of inflows to the Project reservoir. Therefore, from a hydraulic perspective, there is no impact to the Kakagon Sloughs NNL from Project operations.</p> <p>In Section 5.8 of Exhibit E of the FLA, NSPW proposes to consult with the Bad River Tribe, USFWS, and WDNR prior to conducting any planned deviations (including maintenance drawdowns) from run-of-river operations. This will afford the Tribe and resource agencies the opportunity to make recommendations to mitigate any potential environmental impacts from said deviations.</p>

<p>10a-7</p>	<p>Department of Interior Comment 10a-7 08/13/2024</p>	<p>10a-CONCLUSION The Department recognizes the White River as an important public waterway in Northwestern Wisconsin that is critical to the biological and recreational resources of the area, including resource and cultural needs of the Tribes. A functional White River system has been identified by resource agencies and the Tribes as necessary for the continued recovery of the Lake Sturgeon. As such, the Department has identified that providing/facilitating upstream and downstream fish passage and maintaining river flows as being the highest priorities for the river system.</p>	<p>NSPW acknowledges that the White River is an important waterway within Northwestern Wisconsin. NSPW has proposed to continue operating the Project in a run-of-river mode where outflows immediately downstream of the Project tailrace approximate the inflows to the Project reservoir.</p> <p>The DOI has provided no evidence that Lake Sturgeon spawned or traveled upstream of the waterfall that was present at the Project site prior to the construction of the White River Dam. Therefore, upstream and downstream passage of Lake Sturgeon are not justified because there is no evidence that Project operations or maintenance has an adverse impact upon the species.</p> <p>The Commission may not issue a 20-year license as requested by the Bad River Tribe. The minimum license term that may be issued is 30 years. The Federal Power Act (FPA) Section 15 (e)³ states the following:</p> <p><i>"Except for an annual license, any license issued by the Commission under this action shall be for a term which the Commission determines to be in the public interest, but not less than 30 years, nor more than 50 years, from the date on which the license is issued."</i></p> <p>On October 19, 2017, FERC issued a <i>Policy Statement on Establishing License Terms for Hydroelectric Projects</i> (FERC Accession No. 20171019-3058). The policy established a 40-year default license term for original and new licenses for hydropower projects located at non-federal dams. It also set forth under what conditions the Commission would consider issuing a license with a term of less than 40 years. There are three circumstances where the Commission will consider issuing a license for more or less than 40 years.</p> <ol style="list-style-type: none"> 1) To coordinate license terms for projects located in the same river basin. 2) A longer or shorter license term may be issued if explicitly agreed-upon in a generally-supported comprehensive settlement agreement. 3) A longer license term may be considered, provided that doing so is consistent with coordinating license terms within a basin when a license applicant specifically requests a longer license term based on significant measures expected to be required under the new license, or significant measures implemented during the previous license term that were not required the license or other legal authority. <p>NSPW requested a standard 40-year license term in its FLA. The Bad River Tribe's reasoning for a shorter license term (climate change, downstream WQS, modification of run-of-river operations, and safety and hazard concerns), does not meet the standards set forth in the Commission's October 19, 2017 policy statement and therefore, should not be considered in determining the license term.</p>
<p>1</p>	<p>Bad River Tribe Comment 1 08/13/2024</p>	<p>Recommendation 1: The new license be issued for a maximum of 20-year, not a 40-year timeframe, to allow more frequent review and input of the Bad River Tribe and other stakeholders.</p> <p>Justification: The Northwoods is expected to see (and is already experiencing) increases in unpredictable severe precipitation events, ambient air and water temperatures changes, longer growing seasons, decreased water levels, more intense water level fluctuations, extended periods of drought, and an expected decline in ice cover and snow accumulation. These create long-term concerns over wetland habitat loss and wildlife occupancy and success, nutrient enrichment, erosion, and the increase of sedimentation. Modifications to operations and maintenance might need to be made to be protective of the Tribe's treaty rights, historic properties, water quality, and downstream uses due to these changes—thus, a shorter license timeframe is necessary to allow the Tribe a chance to reevaluate impacts of dam operations on downstream water quality and uses and hopefully lessen potential environmental justice issues that would otherwise arise with a longer license period.</p>	<p>"Except for an annual license, any license issued by the Commission under this action shall be for a term which the Commission determines to be in the public interest, but not less than 30 years, nor more than 50 years, from the date on which the license is issued."</p> <p>On October 19, 2017, FERC issued a <i>Policy Statement on Establishing License Terms for Hydroelectric Projects</i> (FERC Accession No. 20171019-3058). The policy established a 40-year default license term for original and new licenses for hydropower projects located at non-federal dams. It also set forth under what conditions the Commission would consider issuing a license with a term of less than 40 years. There are three circumstances where the Commission will consider issuing a license for more or less than 40 years.</p> <ol style="list-style-type: none"> 1) To coordinate license terms for projects located in the same river basin. 2) A longer or shorter license term may be issued if explicitly agreed-upon in a generally-supported comprehensive settlement agreement. 3) A longer license term may be considered, provided that doing so is consistent with coordinating license terms within a basin when a license applicant specifically requests a longer license term based on significant measures expected to be required under the new license, or significant measures implemented during the previous license term that were not required the license or other legal authority. <p>NSPW requested a standard 40-year license term in its FLA. The Bad River Tribe's reasoning for a shorter license term (climate change, downstream WQS, modification of run-of-river operations, and safety and hazard concerns), does not meet the standards set forth in the Commission's October 19, 2017 policy statement and therefore, should not be considered in determining the license term.</p>
<p>2</p>	<p>Bad River Tribe Comment 2 08/13/2024</p>	<p>Recommendation 2: Fly ash and cinders should not be allowed for use for sealing the spillway.</p> <p>Justification: This recommendation is in-line with the recommendation made from WDNR Staff (comment to FERC on December 17, 2020) and BIA (most recent comment letter submitted August 2024), that the use of fly ash/cinders, as regulated as solid waste, no longer be allowed at the dam. Other, natural lightweight aggregates can be used effectively for the purpose stated. The monitoring and testing documents that the Applicant has submitted under the Fly Ash/Cinders Monitoring Plan shows that: (1) there are heavy metals above human health thresholds within some of the cinders/fly ash sources that then resulted in exceedances of NR105 acute toxicity</p>	<p>See NSPW Response to DOI Comment 10a-1.</p>

License Recommendations and NSPW Responses

		<p>criteria at some of the dam sites where those cinders/fly ash were used (e.g., same sites with exceedances included Chippewa River @ Chippewa Falls, Chippewa Flowage @ Winter Dam, and Flambeau River @ Turtle Flambeau Flowage Dam); (2) water sampling was not conducted at the White River Hydroelectric Dam to determine whether the fly ash/cinders resulted in impacts to water quality; and, (3) also shows that there is a lack of testing for emerging contaminants of concern like PFAS, etc., being completed either on the source material or on water samples collected at use sites. Since the sampling of the impacts of cinder/fly ash have been inadequate, especially on the White River which flows onto the Reservation and into the Bad River and Lake Superior, even when source testing shows that there are elevated levels of contaminants in the cinder/fly ash itself, FERC should no longer allow the use of the material to seal the spillway.</p>	
<p>3</p> <p>Bad River Tribe Comment 3 08/13/2024</p>		<p>Recommendation 3: The licensee should work in cooperation with tribal and state natural resources departments along with USFWS and GJFWC to develop a Lake Sturgeon and other tribal significant fishes plan to monitor key species that utilize the river within the licensed area.</p> <p>Justification: The White River is one of the three largest rivers on the Bad River Reservation and confluences with the largest river on the Reservation (Bad River) between the Diaperville and Old Odanah communities. The White River has distinct Lake Sturgeon and Walleye populations that differ genetically from the Bad River. Tribal members fish for these species and other native fishes in spring and fall when fish migrate up and down river to and from Lake Superior. In addition to these native species, anadromous non-native salmonids utilize the White River dam area for spawning purposes. Tribal and nontribal members enjoy harvesting these fish. It is important to keep healthy reproduction of these fish within the dam area and work with all agencies who have stakeholders with interest in the fisheries.</p>	<p>Throughout the relicensing process, no entity provided evidence indicating that Lake Sturgeon spawned or traveled upstream of the waterfall that was present at the Project site prior to the construction of the White River Dam. Similarly, no entity proposed any studies to determine the status of the Lake Sturgeon population downstream of the Project dam or provided any evidence that the Lake Sturgeon population is adversely affected by Project operations. Lake Sturgeon spawning has been documented to successfully occur downstream of the Project and the continued run-of-river operation, as proposed by NSPW, will assure the continued spawning success downstream. Therefore, development of a Lake Sturgeon plan is not justified.</p>
<p>4</p> <p>Bad River Tribe Comment 4 08/13/2024</p>		<p>Recommendation 4: Consultation with the Tribal Historic Preservation Office (THPO) is necessary to identify measures to avoid, minimize, and/or mitigate impacts to historic properties, cultural resources, and/or culturally significant sites. Access must be allowed to culturally significant sites within the Project boundaries.</p> <p>Justification: Consultation with the THPO within MNRD is necessary to identify measures to avoid, minimize, and/or mitigate impacts to historic properties, cultural resources (e.g., culturally significant plants, etc.). Please contact Lawrence Plucinski at thpo@badriver-nsn.gov to arrange this consultation. Please refer to BIA's comment letter submitted in August 2024 for more details regarding access to culturally significant sites.</p>	<p>See NSPW's Response to DOI Comment 10a-2.</p>
<p>5</p> <p>Bad River Tribe Comment 5 08/13/2024</p>		<p>Recommendation 5: Maintenance activities and other activities that fall outside of normal run-of-river operation of the dam should include tribal engagement, participation, and review in planning stages to ensure these activities are protective of the Tribe's treaty rights, historic properties, water quality, and downstream uses, including the cultural uses of the waters downstream (e.g., ceremonial, subsistence fishing and other harvesting).</p> <p>Justification: MNRD has previously participated in commenting on maintenance events requiring reservoir drawdown and has the capacity to participate in reviewing these plans in the future to continue implementing the Tribe's antidegradation policy in the Tribe's Water Quality Standards approved under the Clean Water Act and to advocate for the consideration of avoiding, minimizing, and/or mitigating downstream effects. Please refer to our previous comment letters regarding</p>	<p>In Section 5.8 of Exhibit E of the FLA, NSPW proposes to consult with the Bad River Tribe, USFWS, and WDNR prior to conducting any planned deviations (including maintenance drawdowns) from run-of-river operations.</p>

License Recommendations and NSPW Responses

6	Bad River Tribe Comment 6 08/13/2024	<p>impacts of past drawdowns on Reservation when such events have not been managed properly—which is another reason that MNRD should be involved in reviewing these activities.</p> <p>Recommendation 6 : Development of the Operation Compliance Monitoring Plan, Invasive Species Monitoring Plan, and the Historic Properties Management Plan should include tribal participation, engagement, and review during their drafting to ensure these activities are protective of the Tribe's treaty rights, historic properties, water quality, and downstream uses, including the cultural uses of the waters downstream (e.g., fishing and other harvesting). In addition to the development of these plans, the license should require the implementation of the plans, and tribal engagement should also continue during the implementation phases.</p> <p>Justification: As iterated throughout our previous comment letters, the Tribe has a vested interest and authority in the lands in the White River Watershed impacted by the licensing of this dam, including the land and water downstream or the historic properties within or connected to the project area. Involvement of the Tribe in the development of these planning documents can help mitigate potential environmental justice issues that arise from the existence and operation of the facility as well as ensure FERC is fulfilling their federal trust responsibilities.</p>	<p>In Section 5.8 of Exhibit E of the FLA, NSPW proposes to consult with the Bad River Tribe, USFWS, and WDNR during the development of the Operation Compliance Monitoring Plan.</p> <p>In Section 6.4.1.1 and Section 6.4.2.3 of Exhibit E of the FLA, NSPW proposes to consult with the Bad River Tribe and WDNR during the development of an aquatic and terrestrial invasive species plan.</p> <p>In Section 7.3.2 of Exhibit E of the FLA, NSPW proposes to develop an HPMP within one year of license issuance in consultation with the Wisconsin SHPO, Bad River Tribe, and any other interested Native American Tribes. The plan will include the measures necessary to protect cultural resources within the APE.</p>
7	Bad River Tribe Comment 7 08/13/2024	<p>Recommendation 7: The Tribe's Emergency Management Director and the Tribe's Mashkizibibi Natural Resources Department Director must be listed as contact persons in any operation and planning documents for the dam to ensure that the Tribe receives appropriate notification of any scheduled or unscheduled (i.e., emergency) changes in dam operation to allow for appropriate response from the Tribe to be implemented. Furthermore, the emergency response plan for the dam should be provided to the Tribe for review and feedback.</p> <p>Justification: Releases of water from the White River Dam can cause disruption to tribal harvests and other uses, damage to ecosystems downstream, and/or human health and safety concerns if a release is large enough and/or comprised of adverse water quality. Notification to the Tribal Emergency Management Director and MNRD Director will ensure that appropriate steps can be taken to either schedule/plan known activities to mitigate their impact downstream, such as evacuating residences or issuing alerts to the community through the Tribe's NIXLE Alert System in the case of an emergency. Furthermore, the Tribe's Pre-Disaster Mitigation Plan (approved by the Tribe and FEMA in 2018) identified the need for the Tribe and Xcel Energy to develop a partnership to plan for water resources from the dam to help mitigate future flooding impacts. Providing the Tribe the opportunity to review and give input on the emergency response plan for the dam can help mitigate future flooding impacts to the downstream communities and improve emergency response preparedness efforts, which can result in improved public safety and better protection of the natural and cultural resources</p>	<p>The White River Project has a fully developed Emergency Action Plan (EAP) that includes annual testing and training. NSPW will include the Tribe's Emergency Management Director and Mashkizibibi Natural Resources Department Director as contact persons for the Tribe in the EAP. The EAP is activated in the event of an imminent or potential failure of the facility. There are no high flow notifications associated with the EAP.</p> <p>Since the Project is operated in a run-of-river mode, and has a very limited reservoir storage capacity, it does not have the capability to attenuate downstream flows during high flow or flood conditions. All inflow to the Project reservoir is passed downstream per the run-of-river mode of operation.</p>
8	Bad River Tribe Comment 8 08/13/2024	<p>Recommendation 8: The passage of woody debris from the impoundment into the bypass reach should not be allowed.</p> <p>Justification: The White River on-Reservation already has an abundance of large and small woody debris within the channel that come from natural sources. Recent field work from 2024 reported at least one log jam within the river stretched nearly a football field in length, and aerial photography collected in September 2022 clearly shows at least 7 log jams on the Reservation along the White River. Large flow events, like the 2016 flood, can push this woody debris into</p>	<p>See NSPW's response to DOI Comment 5b.</p>

9	Bad River Tribe Comment 9 08/13/2024	<p>downstream infrastructure or sensitive ecological habitats causing damage and public safety issues. The MNRD feels that there is enough natural woody debris within the system to allow it to function well ecologically without adding additional woody debris as the Applicant proposes, and as such the previous method of clearing woody debris from the spillway should be adhered to. An evaluation of potential impacts is necessary if FERC is considering approving this request.</p> <p>Recommendation 9: Additionally, MNRD supports the comments submitted by the Bureau of Indian Affairs (BIA) in their August 2024 comment letter as such that they align with our comments. MNRD did meet with NPS and Bureau of Indian Affairs (BIA) staff to discuss these points prior to the submission of the BIA letter.</p>	<p>Comment noted.</p>
1	WDNR Comment 1 8/8/2024	<p>Comment 1: The Wisconsin Department of Natural Resources (the department) appreciates the opportunity to participate in the licensing processes associated with the White River hydroelectric project. We offer the following comments and recommendations to protect, mitigate, and/or enhance the natural resources. The department will issue the state water quality certification requiring various management plans. The management plans will provide a clear process for communications and reporting, demonstrate compliance with state regulations, and have adaptability over the life of the new license. Various management plans may include:</p> <ul style="list-style-type: none"> • Operations Plan • Invasive Species Plan • Water Quality Plan • Recreation Plan • Listed Species Protection 	<p>NSPW requested a water quality certification (WQC) for the White River Project from WDNR on August 6, 2024. NSPW will continue to negotiate with WDNR regarding conditions that are necessary to ensure the continued operation of the project will not adversely affect appropriately promulgated state water quality standards.</p> <p>40 CFR Part 121.3 (a) states that a certifying authority's evaluation to determine whether the activity will comply with applicable water quality requirements is limited to the water quality-related impacts from the activity subject to the Federal license or permit, including the activity's construction and operation. Therefore, only conditions that are necessary to assure that the activity complies with applicable water quality requirements may be included in the WQC.</p> <p>In Section 5.8 of Exhibit E of the FLA, NSPW proposes to develop an Operations Monitoring Plan in consultation with the Bad River Tribe and WDNR.</p> <p>In Section 6.4.1.1 and Section 6.4.2.3 of Exhibit E of the FLA, NSPW proposes to develop an aquatic and terrestrial invasive species plan in consultation with the Bad River Tribe and WDNR. Invasive species management at the Project would be more appropriately addressed under Section 10a or 10j recommendations from the state or federal fish and wildlife agency than in the WQC. Under 40 CFR Part 121.3(a), any condition listed in the WQC regarding invasive species should be limited to addressing only aquatic species.</p> <p>A water quality study was completed at the Project in 2022. The study showed that the water temperatures in the months of June, July, and August did not meet cold water temperature standards. However, the waters entering the Project reservoir also exceeded the cold-water temperature standard. Although waters leaving the Project downstream of the tailrace did not meet the temperature standard, they were lower than the water temperatures entering the Project reservoir. Therefore, water temperatures are not adversely impacted by Project operations. All other water quality parameters met promulgated state water quality standards. Since the Project is not adversely impacting water quality, NSPW does not believe that a water quality plan or additional water quality monitoring is justified.</p> <p>In Section 8.5 of Exhibit E of the FLA, NSPW proposes to review and update or replace existing Part 8 signs at the Boat Landing and Canoe Portage Take-out site and the Canoe Portage Trail and Put-in site. Additionally, NSPW proposes to continue routine maintenance of these sites and the Tailwater Fishing Area site throughout the term of the new License. Due to the limited number of recreation sites and limited number of proposed improvements, NSPW does not believe that a recreation plan is necessary and therefore, has not proposed said plan. Recreation concerns at the Project would be more appropriately addressed as Section 10a or 10j recommendations from the state or federal fish and wildlife agency than in the WQC. Under 40 CFR Part 121.3(a), any conditions regarding recreation listed in the WQC should be limited to those amenities that adversely affect water quality.</p>

License Recommendations and NSPW Responses

			<p>In Sections 6.4.2.1 and 6.4.2.2 of Exhibit E of the FLA, NSPW proposes specific measures to protect listed species. Listed species protection at the Project would be more appropriately addressed as Section 10a or 10j recommendations from the state or federal fish and wildlife agency rather than in the WQC. Under 40 CFR Part 121.3(a), any condition listed in the WQC regarding listed species should be limited to addressing aquatic species.</p>
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