

Draft Compatibility Determination

Title

Draft Compatibility Determination for a water pipeline from L.G. Everist quarry to the Minnesota River

Refuge Use Category

Rights-of-way and Rights to Access

Refuge Use Type(s)

Right-of-way

Refuge

Big Stone National Wildlife Refuge

Refuge Purpose(s) and Establishing and Acquisition Authority(ies)

Big Stone National Wildlife Refuge (Big Stone NWR, Refuge) was established on May 21, 1975, when the U.S. Corps of Engineers transferred approximately 10,540 acres to the U.S. Fish and Wildlife Service (FWS, Service). Legal authorities used for establishment of the Refuge include the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e), Refuge Recreation Act (16 U.S.C. 460k-460k-4), Emergency Wetlands Resources Act (16 U.S.C. 3901), Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j), and the Migratory Bird Conservation Act (16 U.S.C. 715-715d, 715e, 715f-715r). The purposes of Big Stone NWR are derived from its enabling authorities and include:

...shall be administered by him [Secretary of the Interior] directly or in accordance with cooperative agreements ... and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon, ...6 16 U.S.C. 1:1 664 (Fish and Wildlife Coordination Act)

...suitable for (1) incidental fish and wildlife-oriented recreational development, (2) the protection of natural resources, (3) the conservation of endangered species or threatened species ...6 16 U.S.C. 1:1 460k-1 0 ... the Secretary ... may accept and use ... real ... property. Such acceptance may be accomplished under the terms and conditions of restrictive covenants imposed by donors ...6 16 U.S.C. 1:1: 460k-2 (Refuge Recreation Act (16 U.S.C. 1:1 460k-460k-4), as amended).

...the conservation of the wetlands of the Nation in order to maintain the

public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions ...6 16 U.S.C. 1:1 3901 (b), 100 Stat. 3538 (Emergency Wetlands Resources Act of 1986)

...for the development, advancement, management, conservation, and protection of fish and wildlife resources ...6 16 U.S.C. 1:1 742f(a)(4) 0... for the benefit of the United States Fish and Wildlife Service, in performing its activities and services. Such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude ...6 16 U.S.C. 1:1 742f(b)(1) (Fish and Wildlife Act of 1956)

... for use as an inviolate sanctuary, or for any other management purpose, for migratory birds. 6 16 U.S.C. 1:1 715d (Migratory Bird Conservation Act)

National Wildlife Refuge System Mission

The mission of the National Wildlife Refuge System (Refuge System, NWRS) is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (Pub. L. 105-57; 111 Stat. 1252).

Description of Use

Is this an existing use?

No. The previous right-of-way involved an underground pipe that was never installed. This proposed right-of-way involves a temporary pipeline laid across the surface of the land. The underground right-of-way will expire in 2026 and will not be renewed.

What is the use?

Right-of-way (utility). The right to use and possibly alter the landscape through construction, maintenance, and operation of an above ground water pipeline deployed on an as needed basis.

Is the use a priority public use?

No

Where would the use be conducted?

The use will be conducted within Township NW ¼ SE ¼, 121 North, Range 46 West, Section 26. Starting at approximately 45°15'31.28"N, 96°23'37.42"W and running south for approximately 135 feet. The width of the right-of-way will be no wider than 50 feet. The area affected primarily consists of reed canary grass (*Phalaris arundinacea*)

with a small percentage of the area also containing cattails (*Typha spp.*) and some sedges (*Carex spp.*). There are trees along the riparian area, however no trees will be cut for this right-of-way.

When would the use be conducted?

The right-of-way would be utilized during periods of drought, usually between the months of July and October.

How would the use be conducted?

When the right-of-way needs to be used, a path will be mowed to the edge of the river. Mowing will be completed with a small agricultural tractor (<75 Horsepower) or smaller pieces of equipment that will minimize soil disturbance. A temporary piping system will be placed across the surface of the land and into the river. The pumps will run as needed until the drought ends. The rate and quantity of pumping will be regulated by the Minnesota Department of Natural Resources (MN DNR) through an existing permit (#76-4024). A Special Use Permit will be required each year that the right-of-way is to be used.

Why is this use being proposed or reevaluated?

A previous right-of-way was approved in 1976, however that permit included an underground pipeline. L.G. Everist has applied for a new right-of-way to change the pipeline to the surface of the ground. Additionally, their existing right-of-way is set to expire in 2026.

Availability of Resources

This review requires staff time from several individuals within the Service. Additionally, it will take more staff time to address comments from the public after the public commenting period. Each year, or each time the right-of-way is to be used, staff at the Refuge will need to coordinate with L.G. Everist, issue a special use permit, monitor the use of the Refuge and monitor water levels within the historic Minnesota River channel. No special equipment or facilities are expected to be needed. The applicant will accrue all responsibilities to maintain the water line. Staff will monitor usage of the refuge through current funding capacity. No additional funding is needed.

Anticipated Impacts of the Use

Potential impacts of a proposed use on the refuge's purpose(s) and the Refuge System mission

The area to be used for the right-of-way consists primarily of non-native, invasive plant species. The proposed use will not impact native species. The water withdraw

from the river will be regulated by the MN DNR as they have jurisdiction over the water. The right-of-way will be used infrequently. Based on water withdraw reports to the MN DNR, L.G. Everist has never pumped water out of this river channel in the past 30 years. There is only a small likelihood each year that they will have to pump from this river channel.

Short-term impacts

No negligible short-term impacts on the refuge habitat, vegetation, or wildlife are anticipated when, and if, the pipeline is utilized due to its small footprint and anticipated short duration of deployment. In addition, this area consists primarily of non-native, invasive reed canary grass which has formed a monoculture with limited plant and wildlife diversity. Since reed canary grass is found throughout the riparian area, both upstream and downstream, there is no concern with spreading this species as a result of this right-of-way. The right-of-way will be utilized during periods of drought, so the riparian area will be dry and relatively firm. This will reduce the amount of rutting and soil disturbance from the mowing and pipeline installation. The noise generated by the pumping units are not anticipated to be any louder than the ongoing mining operations at the quarry where the water is to be used, thus no additional impacts to nearby wildlife are anticipated. This includes any federally listed or candidate species, as indicated through the intra-service section 7 consultation on file for this project. No historic structures are present on or near the project area. The footprint of the right-of-way has already been cleared by the Midwest Regional Historic Preservation Officer (see RHPO Clearance form on file), documenting no short-term impacts to cultural resources are expected because of this project. Having a small footprint and a temporary use window, it is not likely that any visitor use will be impacted in the short term.

Long-term impacts

This right-of-way will be used infrequently. The existing right-of-way has not been used since 1976 though L.G. Everist was close to deploying the pumps and pipeline in 2022 due to an extreme drought. There have not been any withdraws from this area in the past 30 years, so the long-term impacts or cumulative impacts to the refuge and riparian area in the future are expected to continue to be very small given the infrequent use. The infrequent use of the right-of-way will not cause the population of any plant or wildlife species to decline or shift in their range. No historic structures are present near the project area - the footprint of the right-of-way has already been cleared by the Midwest Regional Historic Preservation Officer and no long-term impacts to cultural resources are expected because of this project. Due to this project having a small footprint and a temporary use window, it is not likely that any visitor use will be impacted in the long term.

Public Review and Comment

The draft compatibility determination will be available for public review and comment for 14 calendar days from (05/12/2023) to (05/30/2023). The public will be made aware of this comment opportunity through newspapers, radio, postings at the refuge headquarters, letters to tribes and on the refuge website. A hard copy of this document will be posted at the Refuge Headquarters (44843 Co Rd 19, Odessa, MN 56276). It will be made available electronically on the refuge website (<https://www.fws.gov/refuge/big-stone>). Concerns expressed during the public comment period will be addressed in the final.

Determination

Is the use compatible?

Yes

Stipulations Necessary to Ensure Compatibility

If it is not a compatible use, delete this text and the number list option and use this boilerplate text: "The use cannot be modified with stipulations sufficient to ensure compatibility."

1. The right-of-way cannot be disked. Any bare soil exposed during deployment, removal or maintenance operations will be seeded immediately with a fast-growing native species of grass such as Canada wildrye (*Elymus canadensis*).
2. No pesticides will be allowed for the establishment or maintenance of the right-of-way.
3. L.G. Everist must adhere to the MN DNR water appropriations permit #76-4024.
4. All state and federal laws still apply.
5. All refuge policies and regulations still apply.
6. All fees/requirements of the ROW application process must be satisfied.
7. The pipeline will be removed from the area as soon as the drought ends or by November 15 each calendar year, whichever comes first.
8. If the removal of any trees becomes necessary to place the pipeline or maintain this ROW, this will be discussed at the time the Special Use Permit is applied for and will require approval from the refuge.
9. A Special Use Permit outlining parameters and stipulations is required for all maintenance activities and will include provisions that ensure disturbance to wildlife and public use, impacts to habitat and other resources, is avoided, or minimized.
10. In the event that temporary use outside of ROW boundaries is necessary, the applicant must request and receive written approval prior to conducting any

disturbance activity from the refuge.

11. No annual or routine management activities will be permitted that disturbs or alters soils or vegetation unless written permission is obtained from the refuge.
12. No fuel storage tanks will be used or stored on the ROW without prior approval by the refuge. Fuel storage tanks will have temporary containment and spill prevention measures in place.

Justification

The stipulations outlined above would help ensure that the use is compatible at Big Stone National Wildlife Refuge. The right-of-way, as outlined in this compatibility determination, would not conflict with the national policy to maintain the biological diversity, integrity, and environmental health of the refuge. Based on available science and best professional judgement, the Service has determined that the right-of-way at Big Stone National Wildlife Refuge, in accordance with the stipulations provided here, would not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose of Big Stone National Wildlife Refuge.

Signature of Determination

Refuge Manager Signature and Date

Signature of Concurrence

Assistant Regional Director Signature and Date

Mandatory Reevaluation Date

2033

Literature Cited/References

U.S. Fish and Wildlife Service. 2012. Big Stone National Wildlife Refuge: Comprehensive Conservation Plan and Environmental Assessment. Available URL: <https://ecos.fws.gov/ServCat/DownloadFile/44159>

Figure(s)

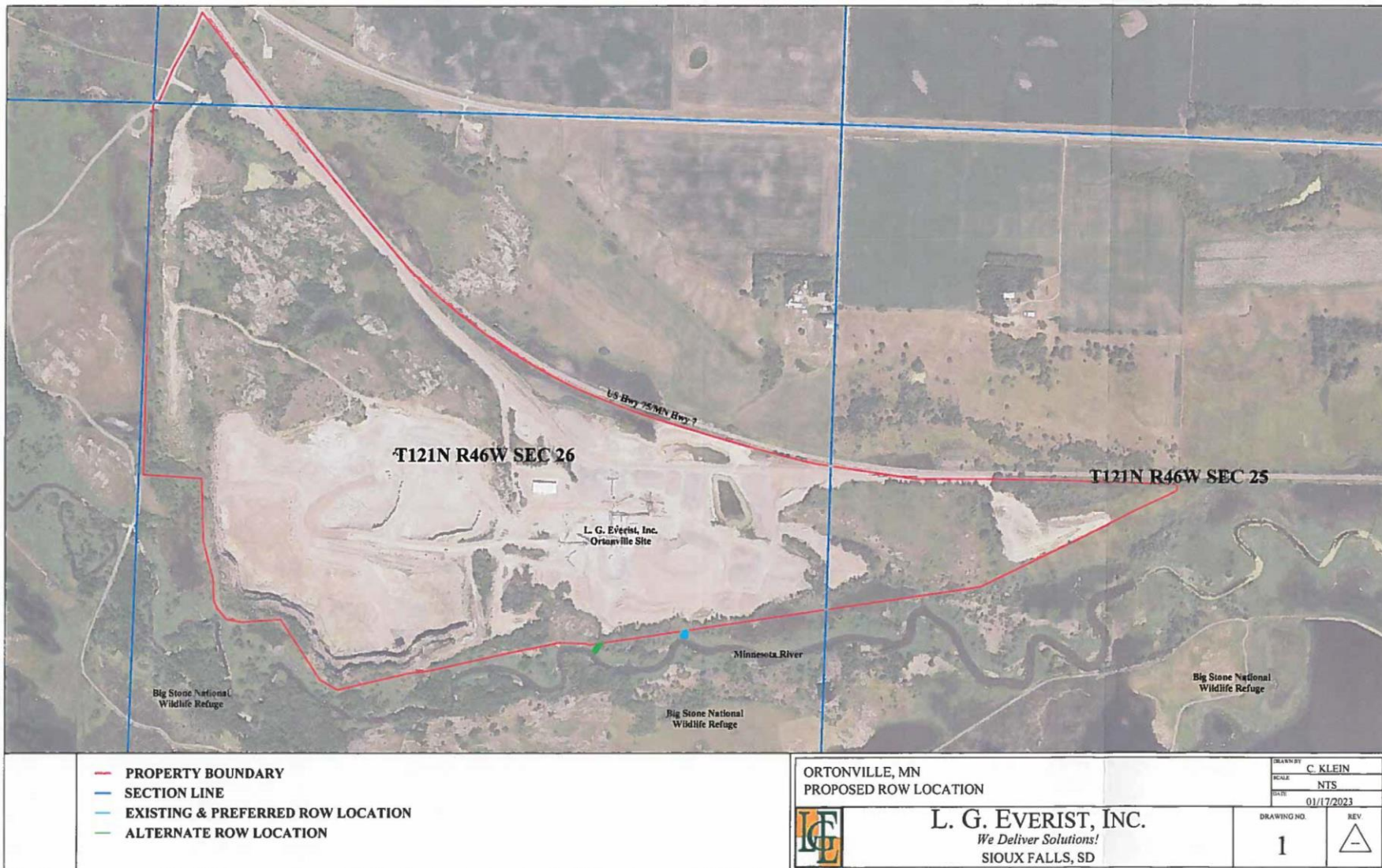


Figure 1. Map of the quarry and location of the right-of-way through the Refuge to the Minnesota River

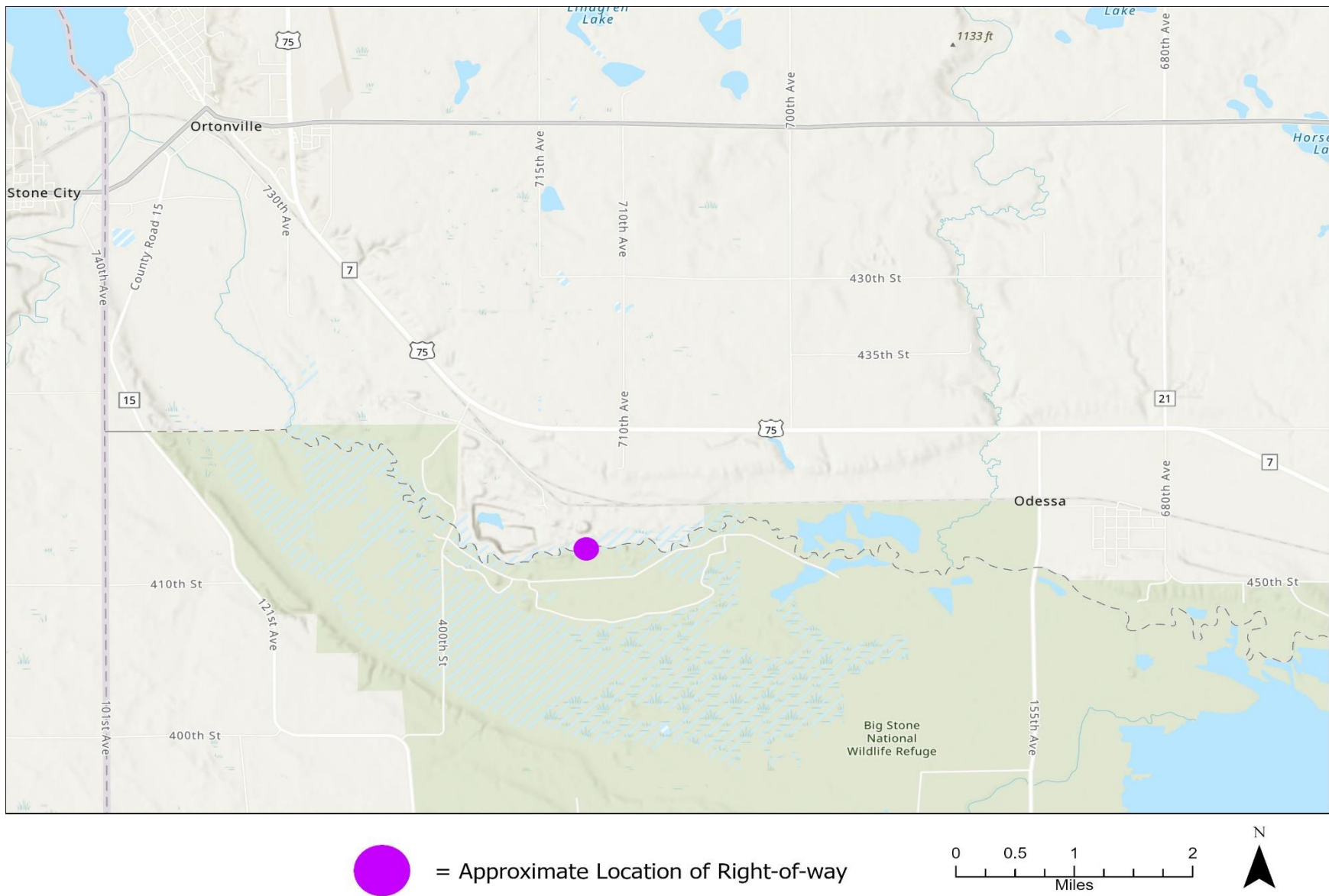


Figure 2. Map depicting the approximate location of the Right-of-way in juxtaposition to the towns of Odessa, MN and Ortonville, MN.