

**MEMORANDUM TO:** Office of the Secretary

**FROM:** Dawn Ramsey

**SUBJECT:** North Bakken Expansion Project (Docket No. CP20-52-000)  
Compliance Monitoring Work Plan

**DATE:** August 9, 2021

Please place the attached email in the public file for the above docket:

Enclosed is the Third-Party Compliance Monitoring Work Plan for the North Bakken Expansion Project (CP20-52-000).

**COMPLIANCE MONITORING PROGRAM WORK PLAN**  
**for the**  
**North Bakken Expansion Project**



**PEPARED BY:**

**CARDNO, INC.**

**DOCKET NO. CP20-52**

**AUGUST 2021**

**COMPLIANCE MONITORING PROGRAM  
for the  
NORTH BAKKEN EXPANSION PROJECT**

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## **1.0 INTRODUCTION**

In December 2020, the Federal Energy Regulatory Commission (FERC or Commission) staff issued an Environmental Assessment (EA) for the North Bakken Expansion Project (Project). The Commission issued an Order approving the Project on June 1, 2021. WBI Energy Transmission, Inc. (WBI Energy) agreed to fund a third-party compliance monitoring program (CMP) during construction. The CMP will involve the use of a third-party inspection contractor to work under the direction of Commission staff for the sole purpose of monitoring compliance with the Project's environmental conditions and mitigation measures. In compliance with the specific requirements of this agreement, this CMP will:

- Establish a program to implement the CMP that will consist of a "Compliance Team" that includes an estimated two full-time on-site Compliance Monitors (with potential for a third monitor if needed), Assistant Compliance Manager, and a Compliance Manager to direct and coordinate the Compliance Monitors, manage the reporting system, and provide technical support to the FERC staff;
- Provide continuous information to FERC staff, and other agencies as authorized, regarding compliance-related issues and their resolution;
- Provide for coordination with WBI Energy's environmental inspection program;
- Develop a systematic strategy for the review and approval by the Compliance Monitors, Compliance Manager, and/or FERC Project Manager of proposed variances to certain construction activities as may be requested by WBI Energy based on site-specific conditions;
- Maintain files for the daily inspection reports submitted by the Compliance Monitors as well as a weekly summary report and weekly reports from WBI Energy's environmental inspection team (EI Team); and
- Discuss how the monitoring program can be coordinated with the monitoring or reporting that may be required by other federal (e.g., U.S. Forest Service and U.S. Army Corps of Engineers) and state agencies.

The following sections describe how the objectives of the Monitoring Program will be met.

## **2.0 COMPLIANCE MONITORING TEAM**

The Compliance Monitoring Team will consist of an estimated two Compliance Monitors, a Compliance Manager, Assistant Compliance Manager, and other support personnel as needed, to accomplish the objectives of the program.

The Compliance Monitoring Team will concentrate on WBI Energy's implementation of the environmental mitigation measures that were either proposed by WBI Energy as part of its application to FERC and related filings, included in conditions stipulated by the Commission in its Certificate, or as stated in WBI Energy's Implementation Plan or other post-certificate filings. WBI Energy will incorporate its commitments and FERC conditions into its construction alignment sheets and environmental documents.

## **2.1 Compliance Monitors**

The primary responsibility of the Compliance Monitors will be to observe and document implementation of the required mitigation measures for FERC staff. This effort will indirectly confirm how well WBI Energy's (Environmental Inspectors (EIs) are monitoring compliance. The Compliance Monitors will communicate with WBI Energy's Lead EI on a regular basis. At a minimum, the Compliance Monitors will maintain daily contact with WBI Energy's EI Team. Construction activities will be inspected on a daily basis by the Compliance Monitors, and environmentally sensitive areas will be regularly inspected to ensure protection of the resources. The Compliance Monitors will provide interpretation and clarification to the EI Team in the field regarding specific FERC-related issues or conditions included in the Certificate. In addition, the Compliance Monitors will be provided with authority to approve Level 1 Variance Requests (see Section 3.1). The Compliance Monitors (and the whole Compliance Team) are an extension of the FERC staff and their activities are solely directed by FERC staff.

The Compliance Monitors will work full-time (assumed six days per week) and will be responsible for visiting and monitoring construction activities. It is estimated that the Compliance Monitors will work approximately 10 hours per day to monitor construction, travel to and from the work site, and prepare the necessary reports and documentation.

The Compliance Monitors will be responsible for preparing the Daily Monitoring reports as described in Section 4.0.

## **2.2 Compliance Manager**

The Compliance Manager will oversee the management of the Compliance Monitoring Program. This will involve coordination with the Compliance Monitors and FERC staff on compliance activities, and communication with FERC staff and WBI Energy's Environmental Lead, or Chief/Lead EI, and/or EIs. The Compliance Manager will also be responsible for providing guidance to the Compliance Monitors and information to the FERC Environmental Project Manager on environmental compliance issues, assisting the Compliance Monitors in reviewing and providing decisions for Level 1 Variance Requests, and conducting review of Level 2 Variance Requests. The Compliance Manager will report directly to and confer with the FERC Environmental Project Manager on a regular basis, and serve as the point of contact between FERC staff and WBI Energy regarding compliance monitoring efforts. The Compliance Manager will also serve as the local point of contact between FERC staff and permitting agencies, private landowners, and special interest groups regarding compliance monitoring efforts for the Project.

Since the Compliance Manager's role will involve coordination with the Compliance Monitors, FERC staff, and WBI Energy, as well as review and approval for Variance Requests, the Compliance Manager will be assisted by an Assistant Compliance Manager and support staff as needed who will be familiar with the Project and associated construction requirements. If the Compliance Manager is unavailable for any length of time, the Assistant Compliance Manager will fulfill the required duties.

The Compliance Manager will also be responsible for reviewing and finalizing the Daily Monitoring Reports and preparing the Weekly Summary Reports, as described in Section 4.0.

### 3.0 VARIANCE REQUESTS

During normal pipeline construction, unforeseen or unavoidable site conditions can result in the need for variances from proposed mitigation measures, including those measures identified in the company's filings, the FERC *Upland Erosion Control, Revegetation and Maintenance Plan* (Plan) and *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures), or from environmental conditions stipulated in the FERC Certificate or other FERC documents.

To improve the level of compliance with the environmental requirements of the Project, assist FERC staff by screening Variance Requests, and reduce the time and potential construction delays associated with approvals to implement appropriate alternative mitigation, criteria have been developed to delegate limited levels of FERC-authorized decision-making authority to the Compliance Monitors and Compliance Manager. The criteria are discussed below.

#### 3.1 Rationale for Decision Authority

Variance Requests that exceed predetermined criteria will require direct notification to, and approval by, FERC staff. However, when the criteria levels described below are applied, Variance Requests can be categorized into three distinct groups:

- **Level 1** – Variance Requests that can be reviewed and approved or denied by the Compliance Monitors;
- **Level 2** – Variance Requests that can be reviewed and approved or denied by the Compliance Manager in consultation with the FERC Project Manager, as appropriate; and
- **Level 3** – Variance Requests that require review and approval or denial by FERC staff.

This process will allow FERC staff to delegate the more routine Variance Requests to the Compliance Team and reduce the number of filed Variance Requests for review by FERC staff without compromising environmental compliance.

#### 3.2 Decision Authority - Compliance Monitor

Review and approval of Level 1 Variance Requests are those that are relatively straightforward, such as those pertaining to many of the mitigation measures outlined in the FERC's Plan and Procedures and included in WBI Energy's Implementation Plan that require achievement of a particular level of performance, and generally within the certificated workspaces. As representatives of FERC, the Compliance Monitors will have approval authority for certain issues that arise during construction. This approval authority will be limited to variances that do not:

- Increase impacts to sensitive environmental resources;
- Alter performance-based requirements;
- Contradict other federal or state agency requirements; or
- Affect new or unwilling landowners.

Although a Level 1 Variance Request may modify previously approved mitigation due to site-specific conditions, the performance results of implementing the requested variance will be similar to, or more environmentally protective than, the original mitigation measure.

If WBI Energy and the Compliance Monitors determine that a Level 1 Variance Request is required, WBI Energy's Spread Lead EI or designee will prepare a Level 1 Variance Request and will give it to the Chief Environmental Inspector for WBI Energy's internal approval process.

If the request form is complete, and suitable for approval based upon field review and other information, the Compliance Monitor will sign the Variance Request. The Compliance Monitor will document approval of all Level 1 Variance Requests and transmit the approved Variance Request Form and any supporting documentation to the Compliance Manager for document management. The variance may be implemented in the field as soon as the Variance Request is approved and signed.

### **3.3 Decision Authority - Compliance Manager**

Variance Requests that exceed the authority limits described for the Compliance Monitors will require review and approval, as appropriate, by the Compliance Manager. The Compliance Manager will review Level 2 Variance Requests in consultation with FERC staff, as necessary. Variance Requests of this type will typically involve the review of supplemental documents, correspondence, and records. In general, Level 2 Variance Requests will:

- Involve more than performance-based mitigation;
- Require the use of workspace or access roads outside of the previously approved work areas, but within the previous survey corridor;
- Require the use of workspace or access roads outside of the previously approved work areas and outside of the previous survey corridor, but with surveys completed by WBI Energy indicating no new impacts on environmental resources (may require consultation with FERC staff); and
- Must not affect new or unwilling landowners.

When all supporting documentation and information has been obtained, the WBI Energy Environmental Project Manager or designee will prepare a Level 2 Variance Request, including supporting documentation and photographs, for submittal to the Compliance Manager for review.

The Compliance Manager will complete a detailed review of supporting documentation for Level 2 Variance Requests that meet the above criteria and will consult with FERC staff as needed. This review will be completed as soon as practicable after receipt of the completed Level 2 Variance Request, field inspection by the Compliance Monitor, and appropriate supporting documentation.

If approved, the Compliance Manager will sign and forward an electronic copy of the approved Level 2 Variance Request to WBI Energy's Environmental Project Manager or Field Inspection Coordinator and retained for document management. The variance may be implemented in the field as soon as the approved Variance Request is received. If denied, the Compliance Manager will contact WBI Energy's Environmental Project Manager or Field Inspection Coordinator to discuss the reasons for the denial.

### **3.4 Decision Authority - FERC Staff**

If a Variance Request exceeds the Compliance Monitors' and Compliance Manager's decision-making authority, as described previously, WBI Energy's Chief Environmental Inspector and/or Environmental Project Manager or designee will be informed that the Variance Request must be

submitted as a Level 3 Variance Request. Examples of Variance Requests requiring FERC staff review and approval include, but are not limited to, those that involve:

- Requested workspaces located outside of the previously surveyed corridor resulting in new impacts on environmental resources;
- Certain Project-wide or spread-wide changes to mitigation measures or construction and restoration procedures;
- Addition of certain permanent, aboveground facilities; and/or
- Project modifications requiring additional resource surveys and agency approvals and that affect resources of sufficient sensitivity or magnitude to warrant approval as a Level 3 Variance by the FERC Environmental Project Manager.

WBI Energy will prepare the appropriate supporting documentation and will file with the Secretary of the Commission a Level 3 Variance Request. Typically, the draft Level 3 Variance Request should be submitted to the Compliance Manager for review, who will subsequently forward the request to the FERC Environmental Project Manager for preliminary review before posting the final version to the docket. FERC staff will review and approve Variance Requests that exceed the approval authority of the Compliance Manager, with support from the Compliance Manager as needed, and issue a formal approval or denial letter.

## **4.0 REPORTING AND DOCUMENTATION**

Daily Monitoring Reports and Weekly Summary Reports will be completed on a regular basis throughout construction of the Project. The basis of all reporting will be the daily site inspections conducted by the Compliance Monitors. The Compliance Team will develop a reporting and document management system capable of implementing the reporting and documentation requirements described below. At the conclusion of the Project, a summary report will be prepared to present the results of the individual reports issued during construction.

### **4.1 Daily Monitoring Reports**

In general, each Compliance Monitor will complete site visits and associated daily monitoring reports for approximately two to three (or more) sites per day once construction is proceeding at full pace, with the results of each site visit documented in a one- to two-paragraph-long summary (or longer as needed) accompanied by photographs (as appropriate). Occasionally, fewer site visits per day may be accomplished if there is a need to perform a more thorough inspection in specific areas. The daily monitoring reports will document and summarize the level of compliance observed during the daily inspection activities. Digital photographs will also be included in the Daily Monitoring Reports, as appropriate, to provide a visual record of conditions at particular locations along the Project work site. Each Daily Monitoring Report prepared by the Compliance Monitors will be assigned a Compliance Level, as described below.

- Communication,
- Acceptable,
- Problem Area,
- Noncompliance, and
- Serious Violation.



Communication – This report will be prepared when necessary to document and track relevant meetings or discussions between the Compliance Monitor and agencies, landowners, company representatives, or EIs.

Acceptable – An Acceptable report will be submitted when a Compliance Monitor determines that an inspected area or activity complies with the Project specifications and all mitigation measures have been adequately implemented.

Problem Area – A Compliance Monitor will prepare a Problem Area report to record an observation that a location or activity does not meet the definition of acceptable, but is not (or not yet) a Noncompliance. The Problem Area category will be used to report on a range of events and observations including a location where the Project is not out of compliance with the specifications but, in the judgment of the Compliance Monitor, damage to resources could occur if corrective actions are not taken.

If a problem area is resolved in a timely manner, it will not be considered a noncompliance. If a problem area is found to be a repeat situation or multiple occurrences of a similar nature, and is not corrected within the established timeframe, or results in resource damage because timely corrective action failed to occur, the Compliance Monitor may document the problem area as a Noncompliance. The Compliance Monitor will inform the EI verbally about the problem before issuing the problem area report; alternatively, the Compliance Monitor may allow the Lead EI/EI to issue it as a WBI Energy self-reported problem area report. Problem Areas will be documented by the Compliance Monitor. The EI and Compliance Monitor shall discuss a timeframe for resolution. The EI will maintain a list of problem areas identified and the corrective actions taken.

Noncompliance – A Noncompliance report will be issued when a Compliance Monitor observes an activity that violates (is not in compliance with) the Project plans or specifications, results in damage to resources, or places sensitive resources at unnecessary risk.

The Compliance Monitor will notify an EI about a Noncompliance before issuing a Noncompliance report, which will include the name of the EI and time of notification; alternatively, the Compliance Monitor may allow the Lead EI/EI to issue it as a WBI Energy self-reported Noncompliance report. In a follow-up report, the Compliance Monitor will document the resolution/corrective action of the Noncompliance.

Serious Violation – A report of Serious Violation will be issued by a Compliance Monitor immediately upon observing an activity that does not comply with the Project specifications and causes substantial harm to sensitive resources or poses a serious threat to sensitive resources.

A Serious Violation report requires that the Compliance Manager and the FERC's Office of Energy Projects' Division of Gas, Environment and Engineering's staff to participate in a conference call with WBI Energy's Environmental Manager and Field Environmental Manager to discuss the violation, the proper corrective actions, and possible follow-up enforcement actions that could be imposed. If the Serious Violation occurs on federal land, the designated federal land management agency representative will be notified to participate in the conference call. Once the Company documents the resolution of a Serious Violation, a Compliance Monitor will inspect the area and verify that the issue has been adequately resolved.

## **4.2 Weekly Summary Reports**

The Compliance Manager will electronically submit a draft Weekly Summary Report to the FERC staff for review, prior to posting on the FERC docket. The Weekly Summary Reports will document construction activities and summarize in tabular format the number of Daily Monitoring Reports prepared during the reporting period, as well as cumulatively. The report will also summarize the number of noncompliance reports and Level 1 and Level 2 Variance Requests approvals issued during the reporting period as well as other pertinent information. Weekly monitoring reports, which are essentially summaries of the daily reports, will be posted to the FERC docket after review by FERC staff and subsequently finalized by the Compliance Team (typically within about 1 to 2 weeks after the end of the weekly period).

## **5.0 STOP WORK AUTHORITY**

FERC has authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction, including issuance of stop work orders. FERC may delegate this authority to the Compliance Monitors to stop specific activities that are causing or have the potential to cause harm to sensitive environmental resources. However, it is anticipated that most stop work orders should be issued by WBI Energy's EI staff. Stop work orders will typically only be issued by the Compliance Monitors when a WBI Energy environmental inspector was not readily accessible and sensitive resources were being harmed or at immediate risk of harm. Work stoppages will be related to specific activities and/or specific areas unless there is a spread-wide or Project-wide concern. The Director of the Office of Energy Projects will communicate with WBI Energy if a Project-wide stop work order is required.