



1250 West Century Avenue  
Mailing Address:  
P.O. Box 5601  
Bismarck, ND 58506-5601  
(701) 530-1600

June 30, 2021

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE, Room 1A  
Washington, D.C. 20426

Re: WBI Energy Transmission, Inc.  
North Bakken Expansion Project  
Docket Nos. CP20-52-000 and CP20-52-001  
Request for Notice to Proceed with Construction

Dear Ms. Bose:

On June 1, 2021, the Federal Energy Regulatory Commission (FERC or Commission) issued an Order Issuing Certificate (Order) in the above referenced dockets authorizing WBI Energy Transmission, Inc. (WBI Energy) to construct and operate its North Bakken Expansion Project (Project) in Burke, McKenzie, Mountrail and Williams Counties, North Dakota. On June 8, 2021, WBI Energy submitted its response to the Environmental Conditions included in the Appendix to the Order including its Implementation Plan.

WBI Energy acknowledged at the time of the filing it had not yet received a right-of-way grant from the U.S. Department of the Interior, Bureau of Land Management (BLM) in accordance with Ordering Paragraph (B)(3) and Environmental Condition 10 of the Order, and that it must make a filing affirming that the parties have executed firm service agreements for the volumes and service terms equivalent to those in the precedent agreements in accordance with Ordering Paragraph (B)(4) of the Order.

WBI Energy herewith submits for filing the following information:

- In accordance with Ordering Paragraph (B)(3) and Environmental Condition 10, a right-of-way grant from the BLM, exhibits and related correspondence are included as Attachment A to this filing.
- In accordance with Ordering Paragraph (B)(4), an affirmative statement, certified by a senior company official, states that WBI Energy has executed firm service agreements for volumes and service terms equivalent to those in its precedent agreements filed as Exhibit I to WBI Energy's February 14, 2020 Abbreviated Application for a Certificate of Public Convenience and Necessity (Application) and as Supplemental Market Data to Exhibit I

filed October 23, 2020. The affirmative statement is included as Attachment B to this filing.

Therefore, WBI Energy now has met all conditions of the Order necessary to request written authorization from the Director of the Office of Energy Projects, or the Director's designee, to proceed with construction of all Project facilities. WBI Energy respectfully requests such authorization by **July 2, 2021** to maintain the Project schedule laid out in WBI Energy's Implementation Plan filed on June 8, 2021.

Should you have any questions or comments regarding this filing, please call the undersigned at (701) 530-1563.

Sincerely,

/s/ Lori Myerchin

Lori Myerchin  
Director, Regulatory Affairs and  
Transportation Services

Attachments

Courtesy Copies:

Dawn Ramsey, FERC Environmental Project Manager (via email)  
Shannon Crosley, FERC Environmental Deputy Project Manager (via email)  
Official Service List

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 30th day of June, 2021.

By /s/ Lori Myerchin  
Lori Myerchin  
Director, Regulatory Affairs and  
Transportation Services  
WBI Energy Transmission, Inc.  
1250 West Century Avenue  
Bismarck, ND 58503  
Telephone: (701) 530-1563

# Attachment A



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
North Dakota Field Office  
99 23<sup>rd</sup> Avenue West, Suite A  
Dickinson, North Dakota 58601  
<http://www.blm.gov/montana-dakotas>

June 28, 2021

In Reply Refer To:  
NDM 111706

WBI Energy Transmission, Inc.  
c/o Marc Dempewolf  
2010 Montana Ave.  
Glendive, Montana 59330

Dear Sir/Madam:

Enclosed are two copies of an unsigned right-of-way (ROW) grant offer (BLM Form 2800-14) for your natural gas transmission pipeline (the North Bakken Expansion Project) right-of-way, serial number NDM 111706. The total public land involved contains 24.908 acres.

Also enclosed are two copies of an unsigned temporary use permit (TUP), serial number NDM 111706-01, for your proposed temporary construction area and access road. The total public land involved contains 11.134 acres.

Please review the grant and permit and, if they meet with your approval, please have your designated approval officer sign and date all copies and return to the address shown above. Upon receipt of the signed documents and the fees discussed below, the Bureau of Land Management (BLM) will issue the ROW grant, absent any other unresolved issues.

Per 43 CFR 2884.17, there is a cost recovery agreement in place for processing and monitoring your category 6 ROW application. Monitoring fees are included in this agreement. The initial deposit of \$30,000 was received on March 16, 2020. We will notify you when additional funds are required.

Rent for use of public lands must be paid in advance of such use and prior to issuance of the right-of-way grant. Rent for linear rights-of-way is based on an established schedule that is adjusted annually based on the Implicit Price Deflator, Gross Domestic Product. You may obtain a copy of the rent schedule from this office or by accessing [www.blm.gov](http://www.blm.gov).

Your grant qualifies for annual billing. The initial rent due is from July 01, 2021 to December 31, 2021 in the amount of \$422.38. Alternatively, you may choose to pay upfront for a 10-year period, from July 01, 2021 to December 31, 2030, in the amount of \$8,025.13. You may also

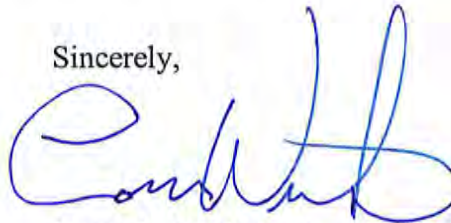
choose to pay upfront for the entire term of your grant (30 years), from July 01, 2021 to December 31, 2050, in the amount of \$24,920.13.

The rental fee for the three-year term of your TUP is \$1,135.35.

The total amount requested herein is \$1,557.73 for the partial year for your ROW grant and the full term of your TUP. (If you would like to pay for the first 10 years of your ROW grant, the total would be \$9,160.48. The total including the full 30 year term of your ROW grant would be \$26,055.48.) Please make your check or money order payable to the Bureau of Land Management.

Please return **BOTH** signed copies of the grant, **BOTH** signed copies of the TUP, and the fees discussed above to our office. If you have any questions you may contact Lisa Scheirer, Realty Specialist, at 701-227-7711 or lscheirer@blm.gov.

Sincerely,



Loren C. Wickstrom  
Field Manager

Enclosure (2)

- Two (2) Copies of ROW Grant NDM 111706 (10 pp each)
- Two (2) Copies of TUP NDM 111706-01 (10 pp each)



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
North Dakota Field Office  
99 23<sup>rd</sup> Avenue West – Suite A  
Dickinson, North Dakota 58601-2619  
[www.blm.gov/montana-dakotas](http://www.blm.gov/montana-dakotas)

In Reply Refer To:  
NDM 111706

June 28, 2021

## DECISION MEMORANDUM FOR THE RECORD

FROM: Loren C. Wickstrom  
Field Manager

SUBJECT: Determination of Right of Way Grant/Land Use Authorization Bond Determination for WBI Energy Transmission, Inc Right-of-Way Grant, NDM 111706

In accordance with IM 2019-013, the BLM has reviewed the application for the WBI Energy Transmission, Inc right-of-way grant, NDM 111706. Based upon this review, a bond is not required for the following reasons:

- There is no BLM surface involved in the project. All federal lands are managed by the US Forest Service and the US Army Corps of Engineers.
- Any bonds needed will be determined and required by the other agencies.
- As a category 6 right-of-way, actual costs are managed through the established cost recovery agreement.

### DECISION

BOND IS REQUIRED

REQUIRED BOND, WHICH IS XX% OF RECLAMATION COST ESTIMATE

BOND IS NOT REQUIRED

**United States Department of the Interior  
Bureau of Land Management  
North Dakota Field Office**

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**Decision Record**

For

North Bakken Expansion Project Right-of-Way Grant  
DOI-BLM-MT-C030-2021-0027-Other\_NEPA  
NDM 111706

**Decision**

It is my decision to adopt the North Bakken Expansion Project Environmental Analysis (EA) and to issue a right-of-way (ROW) grant to WBI Energy Transmission, Inc. (WBI), for a term of 30 years, expiring on December 31, 2050. The ROW grant is for a new 24-, 20-, and 12-inch diameter natural gas transmission pipeline project (the North Bakken Pipeline Project, referred to as the Project), including a new interconnect with the Northern Border Pipeline Company across U.S. Army Corps of Engineers (USACE) and U.S. Forest Service (USFS) managed public lands in McKenzie County, North Dakota as described in the Project as proposed by the applicant in the EA.

Pursuant to Section 28 of the Mineral Leasing Act (MLA), the Department of the Interior (delegated to the Bureau of Land Management (BLM)) has the authority to grant ROW's on federal lands administered by more than one federal agency for the transport of oil and gas or other mineral resources. Pursuant to 40 CFR 1506.3(c), the BLM, along with the USACE and USFS, served as cooperating agencies in the preparation of the Federal Energy Regulatory Commission (FERC) EA. The EA meets all BLM NEPA requirements.

The ROW grant will include, as stipulations, all of the mitigation measures attached herein as Exhibit A. The federal lands involved with this Project are as follows:

Fifth Principal Meridian, Williams County, North Dakota

T. 154 N., R. 96 W., Sec. 18, S2SWSE;

T. 154 N., R. 96 W., Sec. 19, Lots 3-4, E2SW;

T. 154 N., R. 96 W., Sec. 30, 1896 GLO Depicted Missouri River Bed, Lots 2-5.

Fifth Principal Meridian, McKenzie County, North Dakota

T. 153 N., R. 97 W., Sec. 1, SWSE, SESW;

T. 153 N., R. 97 W., Sec. 12, E2SW, SWSW;

T. 153 N., R. 97 W., Sec. 13, W2NW;



T. 153 N., R. 97 W., Sec. 14, NE;

T. 154 N., R. 97 W., Sec. 25, 1896 GLO Depicted Missouri River Bed, Lot 7;

T. 154 N., R. 97 W., Sec. 36, NE, NW.

It is the responsibility of the ROW holder to obtain all necessary permits, and to comply with all applicable federal, state, local, and tribal laws, rules, policies, regulations, and agreements.

### **Authorities**

Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. §185); 43 CFR 2881.11; 40 CFR 1506.3(c)

### **Rationale for Decision**

The decision to issue the ROW grant to WBI meets the BLM's purpose and need to respond to the application as identified in section 1.4 of the EA, and is based on the findings contained in the EA. The EA shows that there will be no undue or unnecessary environmental impacts to the environment caused by the project as proposed by the applicant while adhering to the stipulations set forth under the ROW grant. The project will allow for the transportation of increasing levels of natural gas production to Midwestern markets as well as assisting in the reduction of natural gas flaring in the region.

The Project was posted to ePlanning on March 08, 2021. FERC's responses to public comments on the EA can be found in their Order which is posted to ePlanning (<https://eplanning.blm.gov/eplanning-ui/project/2011196/510>).

The Project, as proposed by the applicant with mitigation measures, has been reviewed and found to be in conformance with prescribed management actions and standards and guidelines for protecting resources from surface-disturbing activity, as set forth in Section 28 of the MLA.

### **Terms and Conditions/Stipulations**

Mitigation measures are attached herein as Stipulations (Exhibits B(1), B(2), and B(3)).

### **Compliance and Monitoring**

Federal agencies with jurisdiction over the land encumbered by the Project are responsible for compliance inspections and monitoring as needed to satisfy their management responsibilities.

### **Appeal of the Decision**

A BLM decision to issue a ROW may be appealed under regulations in 43CFR 2801.10 in accordance with part 4 of 43 CFR. A BLM decision affecting a ROW application carries the "full force and effect" of the decision. Under full force and effect the decision can be implemented immediately even if the decision is appealed to the IBLA. An affected party has the opportunity to file a petition for a stay with an appeal to the IBLA. The decision to issue a ROW in full force and effect requires information on petitions for stay to be included with the decision notification. The decision may be appealed to the

Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and information on BLM Form 1842-1. If an appeal is taken, the notice of appeal must be filed in the North Dakota Field Office at 99 23<sup>rd</sup> Avenue Suite A, Dickinson, North Dakota 58601 within 30 days from receipt of the decision issuing the decision. The appellant has the burden of showing that the decision appealed from is in error.

If a petition (request) is filed pursuant to regulation 43 CFR 2801.10 for a stay (suspension) of the effectiveness of the decision during the time that the appeal is being reviewed by the Board, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with the North Dakota Field Office. If a stay is requested, the requester has the burden of proof to demonstrate that a stay should be granted.

#### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.



6/28/21

Loren C. Wickstrom  
Field Manager  
BLM North Dakota Field Office

**United States Department of the Interior  
Bureau of Land Management  
North Dakota Field Office**

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## **Finding of No Significant Impact**

For

North Bakken Expansion Project Right-of-Way Grant  
DOI-BLM-MT-C030-2021-0027-Other\_NEPA  
NDM 111706

### **Introduction**

The Environmental Assessment (EA) analyzed the issues related to granting a Mineral Leasing Act (MLA) right-of-way to WBI Energy Transmission, Inc. (WBI) for a proposed new 24-, 20-, and 12-inch diameter natural gas transmission pipeline project, including a new interconnect with the Northern Border Pipeline Company and compressor station in McKenzie County. The pipeline would transport up to 250,000 million cubic feet per day of natural gas from processing plants in northwestern North Dakota to the interstate Northern Border pipeline. The entire length of the project is about 93.5 miles, however the only federal lands crossed would be 2.0 miles of federal lands managed by the U.S. Army Corps of Engineers (USACE) and 2.1 miles of federal lands managed by the U.S. Forest Service (USFS). This project would allow for the transportation of increasing levels of natural gas production to Midwestern markets. It would also assist in the reduction of flaring of natural gas in order to meet established state-mandated natural gas capture targets.

Pursuant to Section 28 of the Mineral Leasing Act (MLA), the Department of the Interior (delegated to the Bureau of Land Management (BLM)) has the authority to grant ROW's on federal lands administered by more than one federal agency for the transport of oil and gas or other mineral resources. Pursuant to 40 CFR 1506.3(c), the BLM, along with the USACE and USFS, served as cooperating agencies in the preparation of the Federal Energy Regulatory Commission (FERC) EA.

The EA considered the No Action Alternative and several system and route alternatives as listed in part C.4 of the EA, as well as the proposed Project. None of the system or route alternatives provide a significant environmental advantage over the proposed Project. The proposed Project would allow the development of natural gas resources while ensuring protection of federal resources. The BLM determined that the selected alternative, the Project, would not have significant individual or cumulative adverse effects. The BLM, therefore, issues a Finding of No Significant Impact (FONSI) and Decision Record (DR).

In conjunction with the USACE and the USFS, as well as the mitigation measures outlined in the EA, the BLM will adopt the mitigation measures outlined in Exhibits B(1), B(2), and B(3) to be included as conditions of the right-of-way grant.

## **Finding of No Significant Impact Determination**

Based upon a review of the EA (incorporated herein by reference and included on the ePlanning site, <https://eplanning.blm.gov/eplanning-ui/project/2011196/510>), and the supporting documents, I have determined that this project is not a major federal action and will not significantly impact the quality of the human environment, individually or cumulatively with other actions in the general area. No environmental effects meet the definition of significance in context or intensity as defined in 40 CFR 1508.27. An environmental impact statement is not needed. This finding is based on the context and intensity of the project as described below.

### **Context**

The Proposed Project contains actions involving approximately 25 acres of public land, and by itself, does not have international, national, regional, or statewide importance.

### **Intensity**

The ten significance criteria from 40 CFR 1508.27, and listed below, have been considered in evaluating intensity for this proposal.

#### **1. Impacts may be both beneficial and adverse.**

None of the environmental effects discussed in detail in the EA and associated appendices are considered significant. Mitigation measures to reduce or eliminate adverse impacts were identified in the analysis and will be included as stipulations to the right-of-way grant. Beneficial impacts include reduced emissions from flaring, increased employment, tax revenue, and improved roads in the area.

#### **2. The degree to which the selected alternative will affect public health or safety.**

The pipeline will be in a Class 1 safety designation, meaning that it is in an area, extending 220 yards on either side of the centerline, with 10 or fewer buildings intended for human occupancy. The regulations for this designation will be followed. Population changes will be monitored, all safety regulations will be followed, and the pipeline will be regularly monitored and tested.

#### **3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wilderness, wild and scenic rivers, or ecologically critical areas.**

The location of the natural gas pipeline has been subject to cultural resource inventories. The historic and cultural resources of the area have been reviewed by an archaeologist, and there are no concerns at this time provided the site avoidance and protection measures identified and discussed in *Avoidance and Monitoring Plan: WBI Energy Transmission, Inc. North Bakken Expansion Project, Burke, McKenzie, Mountrail, and Williams Counties, North Dakota – Revised Report* (Malloy, Stanyard, Thomas 2021) are followed.

There are also no concerns regarding effects on parks lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

**4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.**

No unique or appreciable scientific controversy has been identified regarding the effects of the Proposed Project. The environmental analysis did not show any highly controversial effects to the quality of the human environment.

**5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.**

The analysis did not show any unique or unknown risks to the human environment. The project is not unique or unusual because BLM and the State of North Dakota have approved similar actions in the same geographic area. The environmental effects to the human environment are analyzed in the environmental assessment. No regulatory thresholds will be crossed. There are no known predicted effects on the human environment that are considered to be highly uncertain or involve unique or unknown risks.

**6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.**

The actions considered in the selected alternative were considered by the interdisciplinary team within the context of past, present, and reasonably foreseeable future actions. No precedent with significant effects is being set with this type of project.

**7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts – which include connected actions regardless of land ownership.**

The environmental analysis revealed that the action may incrementally contribute to cumulative effects but these effects would not result in any significant cumulative effects. Mitigation measures will prevent any long-term significant effects.

**8. The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.**

The project will not adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places, nor will it cause loss or destruction of significant scientific, cultural, or historical resources.

**9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973, or the degree to which the action may adversely affect: 1) a proposed to be listed endangered or threatened species or its habitat, or 2) a species on BLM's sensitive species list.**

A Biological Assessment was completed under Section 7 of the ESA and submitted to the FWS for concurrence in October of 2020. A concurrence was received in November of 2020 that the

project had a “may affect, but is not likely to adversely affect”, the endangered interior least tern (*Sterna antillarum*), pallid sturgeon (*Scaphirhynchus albus*), whooping crane (*Gus americana*), threatened Dakota skipper (*Hesperia dacotae*), piping plover (*Charadrius melodus*) and northern long-eared bat (*Myotis septentrionalis*). A “no effect” concurrence was also received for the threatened rufa red knot (*Calidris cantus rufa*) and designated critical habitat for Dakota skipper. Mitigation measures have been taken to avoid any listed species or its habitat.

**10. Whether the action threatens a violation of a federal, state, local, or tribal law, regulation or policy imposed for the protection of the environment, where non-federal requirements are consistent with federal requirements.**

The project does not violate any relevant/applicable federal, state, local or tribal law or requirement imposed for the protection of the environment. Federal, State, and local interests were given the opportunity to participate in the environmental analysis process through private landowner meetings, open house meetings, and public scoping sessions. A Notice of Intent was mailed to all interested or potentially interested parties. Consultation has been completed with the North Dakota Department of Game and Fish, the North Dakota Parks and Recreation Department, the North Dakota Department of Health, Division of Water Quality, the North Dakota State Water Commission, the State Historical Society of North Dakota, the North Dakota State Lands Board, the North Dakota Department of Health, Division of Air Quality, the Natural Resources Conservation Service – North Dakota, the Tribal Historic Preservation Officers, and the U.S. Fish and Wildlife Service. Furthermore, the Project is consistent with applicable land management plans, policies, and programs.



Loren C. Wickstrom  
Field Manager  
BLM North Dakota Field Office

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Issuing Office  
**North Dakota Field Office**

Serial Number  
**NDM 111706**

**RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT**

1. A (right-of-way) (permit) is hereby granted pursuant to:

- a.  Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);
- b.  Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);
- c.  Other (describe) \_\_\_\_\_

2. Nature of Interest:

- a. By this instrument, the holder WBI Energy Transmission, Inc. receives a right to construct, operate, maintain, and terminate a natural gas transmission pipeline (the North Bakken Expansion Project) on public lands (or Federal land for MLA Rights-of-Way) described as follows:

**U.S. Bureau of Land Management (BLM) – Public Domain (PD) Lands**

**Fifth Principal Meridian, Williams County, North Dakota**

- T. 154 N., R. 96 W., Sec. 18, S2SWSE;
- T. 154 N., R. 96 W., Sec. 19, Lots 3-4, E2SW;
- T. 154 N., R. 96 W., Sec. 30, 1896 GLO Depicted Missouri River Bed, Lots 2-5.

**Fifth Principal Meridian, McKenzie County, North Dakota**

- T. 153 N., R. 97 W., Sec. 1, SWSE, SESW;
- T. 153 N., R. 97 W., Sec. 12, E2SW, SWSW;
- T. 153 N., R. 97 W., Sec. 13, W2NW;
- T. 153 N., R. 97 W., Sec. 14, NE;
- T. 154 N., R. 97 W., Sec. 25, 1896 GLO Depicted Missouri River Bed, Lot 7;
- T. 154 N., R. 97 W., Sec. 36, NE, NW.

- b. The right-of-way or permit area granted herein is 50 feet wide, 21,700.272 feet long and contains 24.908 acres, more or less. If a site type facility, the facility contains n/a acres.
- c. This instrument shall terminate on December 31, 2050, 30 years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.
- d. This instrument  may  may not be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.
- e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. Rental:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

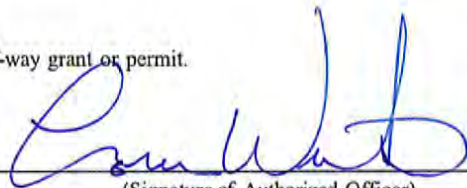
4. Terms and Conditions:

- a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations parts 2800 and 2880.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.
- c. Each grant issued pursuant to the authority of paragraph (1)(a) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibit(s) A, B(1), B(2), and B(3), dated 03/30/2021, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant or permit.



(Signature of Holder)



(Signature of Authorized Officer)

Vice President-Operations WBI Energy

(Title)

NIDPO FIELD MANAGER

(Title)

6-28-21

(Date)

6/28/21

(Effective Date of Grant)



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Issuing Office  
**North Dakota Field Office**

Serial Number  
**NDM 111706-01**

**RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT**

1. A (right-of-way) (permit) is hereby granted pursuant to:

- a.  Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);
- b.  Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);
- c.  Other (describe) \_\_\_\_\_

2. Nature of Interest:

a. By this instrument, the holder WBI Energy Transmission, Inc. receives a right to construct, operate, maintain, and terminate a temporary construction workspace and access road on public lands (or Federal land for MLA Rights-of-Way) described as follows:

**U.S. Bureau of Land Management (BLM) – Public Domain (PD) Lands**

**Fifth Principal Meridian, McKenzie County, North Dakota**

- T. 153 N., R. 97 W., Sec. 1, SWSE, SESW;
- T. 153 N., R. 97 W., Sec. 12, E2SW, SWSW;
- T. 153 N., R. 97 W., Sec. 13, W2NW;
- T. 153 N., R. 97 W., Sec. 14, NE;
- T. 154 N., R. 97 W., Sec. 36, NE, NW.

- b. The right-of-way or permit area granted herein is n/a feet wide, n/a feet long and contains n/a acres, more or less. If a site type facility, the facility contains 11.134 acres.
- c. This instrument shall terminate on \_\_\_\_\_, 3 years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.
- d. This instrument  may  may not be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.
- e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. Rental:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

- a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations parts 2800 and 2880.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.
- c. Each grant issued pursuant to the authority of paragraph (1)(a) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibit(s) A, B(1), B(2), and B(3), dated 03/30/2021, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant or permit.

  
 \_\_\_\_\_  
 (Signature of Holder)

  
 \_\_\_\_\_  
 (Signature of Authorized Officer)

WBI Energy Vice President-Operations  
 \_\_\_\_\_  
 (Title)

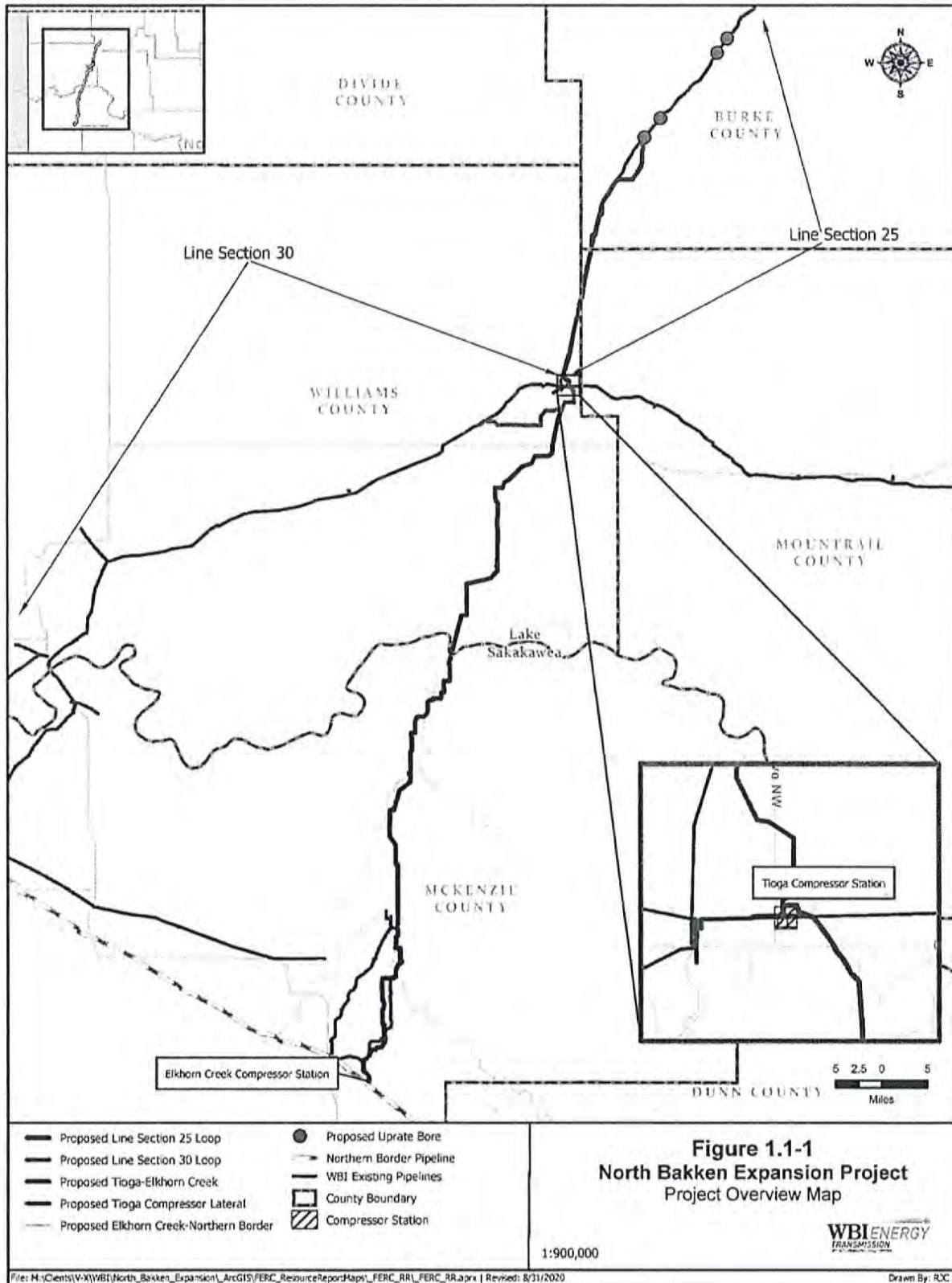
NIDFO FIELD MANAGER  
 \_\_\_\_\_  
 (Title)

6-28-21  
 \_\_\_\_\_  
 (Date)

6/28/21  
 \_\_\_\_\_  
 (Effective Date of Grant)

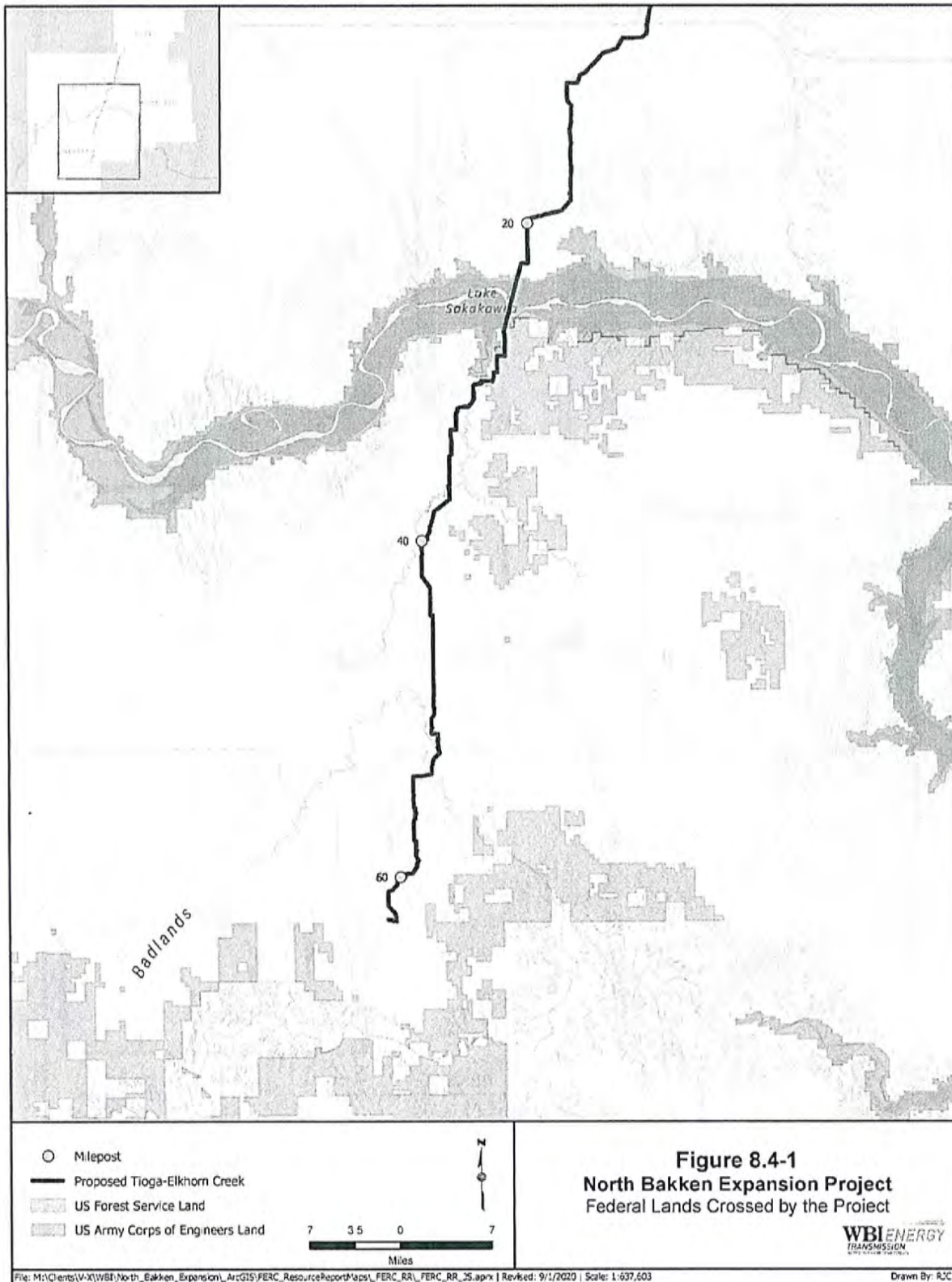
WBI Energy Transmission, Inc.  
North Bakken Expansion Project  
Docket No. CP20-52-000

Supplemental Filing – Project Reroute Updates to Resource Report Information and  
Associated Environmental Assessment Sections

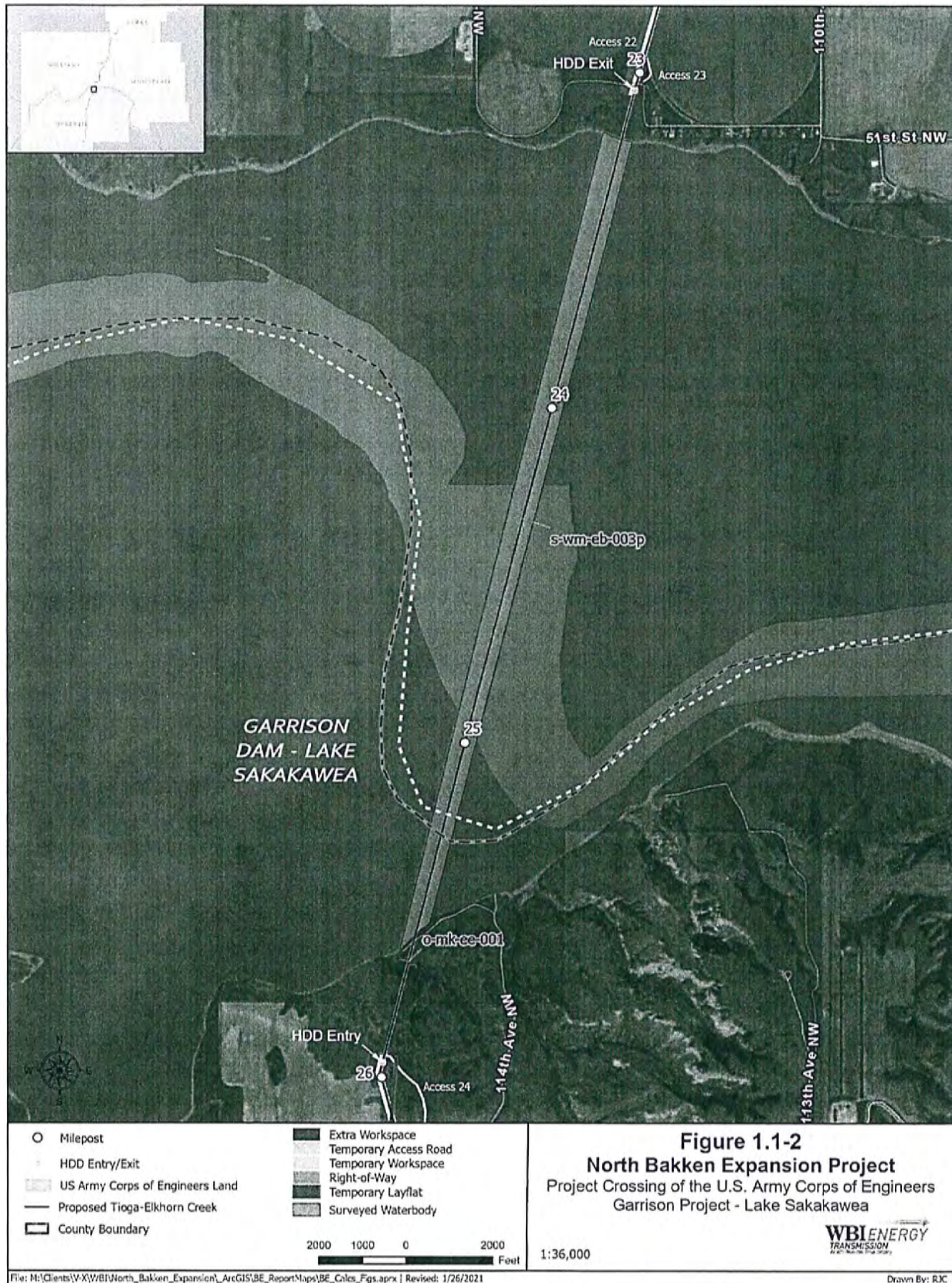


WBI Energy Transmission, Inc.  
North Bakken Expansion Project  
Docket No. CP20-52-000

Supplemental Filing – Project Reroute Updates to Resource Report Information and  
Associated Environmental Assessment Sections



North Bakken Expansion Project  
Plan of Development



North Bakken Expansion Project  
Plan of Development



## Exhibit B (1)– Stipulations of the ROW Grant

1. The holder shall comply with the FERC license/permit requirements and procedures established for this project.
2. The right-of-way is issued subject to all valid existing rights.
3. The holder will conduct all activities associated with the construction, operation, maintenance, and termination of the right-of-way within the authorized limits of the right-of-way.
4. The holder will perform all construction, operation, maintenance, and termination activities on the right-of-way in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public, and will immediately alleviate any health or safety hazards.
5. The holder will be responsible for the prevention and suppression of fires on federal land which are caused by himself, employees, contractors, or subcontractors.
6. No construction, routine maintenance, or reclamation activities will be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of 2-3 inches deep, the soil will be deemed too wet to adequately support construction equipment and operations must cease.
7. Any cultural resource (historic or prehistoric site or object) discovered by the holder, or any person working on their behalf, on public or Federal land will be immediately reported to the authorized officer. Holder will suspend all operations in the immediate area of such discovery until written authorization to proceed is made by the authorized officer. An evaluation of the discovery will be made by the appropriate specialist to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder is responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the appropriate specialist after consulting with the holder.
8. An OPM qualified Archaeologist, will erect a high visibility, temporary construction fence along the edges of workspaces in the vicinity of the sites. Signage attached to the fencing will state that the area is an Exclusion Zone, off-limits to all personnel and within which construction activity is prohibited. The Avoidance and Monitoring Plan must be followed for the sites on National Forest System (NFS) lands and the maps within this plan show where the fence will need to be placed. This fencing will need to remain in place the entire construction period from the pre-work meeting through the final reclamation of the construction area.
9. The holder shall follow the site avoidance and protection measures described in the WBI Energy Transmission, Inc. *Avoidance and Monitoring Plan*.

10. The holder shall immediately report any paleontological resources discovered by any person working on public lands during reclamation activities.
11. The right-of-way will be maintained in a sanitary condition at all times. Waste materials at the site will be disposed of promptly at an approved waste disposal site. "Waste", as used in this paragraph, will mean all discarded matter of any kind.
12. The holder shall protect all survey monuments found. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the responsible party shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management monuments or references are obliterated during reclamation activities, the responsible party shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The responsible party shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the responsible party shall be responsible for the survey cost.
13. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the responsible party shall obtain from the appropriate specialist written approval of a plan (Pesticide Use Proposal) showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers and any other information deemed necessary by the authorized officer. Emergency use of the pesticides shall be approved in writing prior to such use.
14. The holder will be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder will be responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations).
15. All construction, maintenance, and reclamation equipment to be used in connection with this project shall first be cleaned thoroughly to minimize the introduction of new noxious weed species to the area.
16. No signs of advertising devices will be placed on the premises or on adjacent public lands, except those posted by or at the direction of the authorized officer.
17. Prior to any discharge, hydrostatic testing water will be tested and processed, if necessary, to ensure that the water meets local, State or Federal water quality standards.



Prior to discharge of hydrostatic testing water from the pipeline, the holder shall design and install a suitable energy dissipater at the outlets, and design and install suitable channel protection structures necessary to ensure that there will be no erosion or scouring of natural channels within the affected watershed as a result of such discharge. The holder will be held responsible for any erosion or scouring resulting from such discharge. Sandbags, rock, or other materials or objects installed shall be removed from the site upon completion of hydrostatic testing.

18. If during any phase of the construction, operation, or termination of the pipeline or related facilities any oil or other pollutant should be discharged from the pipeline system, or from containers or vehicles impacting Federal lands, the control and total removal, disposal, and cleanup of such oil or other pollutant, wherever found, shall be the responsibility of the holder, regardless of fault. Upon failure of holder to control, cleanup, or dispose of such discharge on or affecting Federal lands, or to repair all damages to Federal lands resulting therefrom, the authorized officer may take such measures as he deems necessary to control and cleanup the discharge and restore the area, including, where appropriate, the aquatic environment and fish and wildlife habitats, at the full expense of the holder. Such action by the authorized officer shall not relieve the holder of any liability or responsibility.
19. The holder shall meet Federal, State, and local emission standards for air quality.
20. The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the responsible party shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by, or stored on the reclamation area. (See 40 CFR §§ 702-799, and especially provisions on polychlorinated biphenyls, 40 CFR §§ 761.1 – 761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, §102(b). A copy of any report required or requested by any Federal agency or State government officer concurrent with the filing of the reports to the involved Federal agency or State government.
21. The holder will indemnify the United States against any liability for damage to life or property arising from the occupancy or use of public lands under the grant.
22. The maximum limitation for such strict liability damages shall not exceed two million, seven hundred thirty-six thousand U.S. dollars (\$2,736,000), or as annually adjusted by the BLM, for any one event, and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which damage or injury occurred. This section would not impose strict liability for damage or injury resulting primarily from the negligent acts or omissions of the United States.

23. The holder of the right-of-way grant or the holder's successor in interest will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.
24. The holder shall comply with the construction practices and mitigating measures established by 33 CFR 323.4, which sets forth the parameters of the "nationwide permit" required by Section 404 of the Clean Water Act. If the proposed action exceeds the parameters of the nationwide permit, the holder shall obtain an individual permit from the appropriate office of the Army Corps of Engineers and provide the authorized officer with a copy of the same. Failure to comply with this requirement shall be cause for suspension or termination of this right-of-way grant.
25. Pursuant to 43 CFR §2807.17(a) and 43 CFR §2807.17(3)(c), BLM may suspend or terminate the grant if the holder does not comply with applicable laws and regulations or any terms, conditions, or stipulations of the grant, or if the holder abandons the right-of-way. Failure on the part of the holder to use the right-of-way for its authorized purpose for any continuous five-year period creates a presumption of abandonment.
26. Ninety days prior to termination of the right-of-way, the holder will contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree to an acceptable termination and reclamation plan. The authorized officer will approve the plan in writing prior to commencing any abandonment and rehabilitation activities. This plan will include, but is not limited to, removal of facilities, drainage structures, or surface material; re-contouring; replacement of topsoil; or seeding.
27. Any conflict between two or more stipulations, or interpretation of any stipulation, will be resolved by the BLM authorized officer.
28. During construction on NFS lands, if project activities are scheduled to occur during the time frame of February 1st through August 15, an additional raptor survey will be required to determine if there are any nesting raptor species of concern within ½ mile of the project area. The additional survey may result in new COA(s) with timing limitations for project activities to protect newly discovered raptor nesting sites.
29. A Timing Limitation will apply for 1 mile from active Sharp-tailed Grouse display grounds. No surface use is allowed from March 1 through June 15 on NFS lands. This stipulation applies to drilling, testing, and new construction projects, but does not apply to operation and maintenance of production facilities. The purpose of this design criteria is to prevent abandonment of display grounds and reduced reproductive success.
30. To reduce the likelihood of disrupting adult DASK during the flight period (June 10 to July 25), WBI Energy will not conduct any clearing, grading, or construction activities on NFS lands.
31. Prior to a prework on NFS lands, WBI Energy's survey contractor would stake the pipeline centerlines and the limits of the construction right-of-way and ATWS areas.

Wetland boundaries and other environmentally sensitive areas also would be marked at this time.

32. One instance of a sensitive plant species (Hooker's townsendia) was identified during field surveys, which would be bored under to avoid impacts on the species.
33. WBI Energy would use a combination of HDD and/or guided bore crossing methods and installation of orange construction exclusion fencing and/or silt fencing to demarcate exclusion zones/avoidance areas at occurrences of potential DASK reproductive habitat within or adjacent to Project workspace. Implementation of these measures would prevent construction equipment and temporarily stockpiled soil from encroaching into the habitat. Areas identified as potential foraging habitat adjacent to or within the Project area would also be excluded from construction activities using a combination of orange construction exclusion fencing and/or silt fencing to demarcate avoidance areas during the DASK annual flight period.
34. If an inadvertent return occurs during HDD boring on NFS lands, WBI will immediately contact a USFS representative.

**EXHIBIT B (2) for NFS Lands**  
**Construction, Maintenance, & Reclamation Stipulations**  
**For**  
**Special Use (SU) Commercial & Noncommercial Pipelines**  
**Including Related Facilities**

These stipulations are included as a basis for control of construction, reclamation, operation, and maintenance of the pipeline right-of-way and related facilities. These controls are within the constraints of the 2001 Northern Great Plains Final Environmental Impact Statement and the Dakota Prairie Grasslands Land and Resource Management Plan and associated Record of Decision signed July 31, 2002.

**Definitions Applicable To This Permit**

Holder: is defined as the Permittee (permit holder), and their representatives, employees, workers, contractors, and subcontractors.

Right-of-way: Land authorized to be used or occupied for the construction, operation, maintenance, and termination of a project or facility passing, over, upon, under, or through such land.

**01. Operations**

**A. Area of Operations:** The Area of Operations is the permitted right-of-way (ROW), which is 50 feet plus an additional 25 feet during construction.

**B. Subleasing, Requirements:** The holder, in the exercise of the privileges granted by this permit, shall require that employees, sublessees, contractors, subcontractors, or renters and their employees comply with all applicable conditions of this permit and that the conditions of this permit be made a part of all subleases, contracts, subcontracts, or rental agreements. This clause shall not be construed as authorizing such subleases, contracts, subcontracts, or rental agreements unless specifically authorized elsewhere in the permit.

**C. Subsistence, Local Residents.** The holder shall use care not to damage any fish, wildlife, or biotic resources in the general area of the right-of-way upon which persons living in the area rely for subsistence purposes; and the holder will comply promptly with all requirements and orders of the authorized officer to protect the interests of such persons.

**D. Pre-work Meeting(s):** The pre-work meeting shall be held prior to any ground disturbing activities and after One Call is completed (Reference stipulation 02 A, below). Attendees will include, at minimum, the Holder or their authorized representative, the contractor, and the authorized Forest Service officer. The Holder is responsible for scheduling and holding this meeting in a timely manner sufficient for resolving any potential problems prior to actual disturbance. A minimum 48-hour advance notice is required. The Forest Service shall be notified in the event the established starting date is changed. The Forest Service will then determine if another pre-work conference is necessary.

**Post Pre-work Delays:** The Holder must notify the Forest Service forty-eight (48) hours prior to commencing operations or resuming operations following any temporary cessation, delay, or down time in which seven or more days has elapsed.

**02. Facilities (Equipment & Accessories)**

**A. Existing Facilities & Improvements:** The Holder shall protect, in place, all existing facilities and/or improvements; underground flow lines, pipelines, electric lines (overhead and underground), etc.; and shall repair or replace any damage as a result of actions or operations from this permit. One Call is

required prior to any project activities. When construction or maintenance of a line and/or related facilities occurs within an existing right-of-way, it is the Holder's responsibility to notify the other Holder of any easement, project work agreement, special use permit or encroachment permit on the affected portion of the line.

**B. Excessive Facilities or Materials:** Facilities and/or materials not approved in the permit and located within the permitted area are excessive facilities and/or materials and shall be promptly removed.

**C. Condition & Maintenance:** All facilities and associated accessories shall be functional and maintained to prevent resource damage or shall be promptly removed.

**03. Vehicle Travel:** The Holder has the right of ingress to and egress from the permit area along existing roads and trails.

**04. Pesticide(s):** Pesticide to control insects and rodents will not be used without the prior written approval of the District Ranger.

**05. Pipelines:**

**A. Construction:** The starting and ending points, the center line location, and all designed sections will be construction staked prior to the pre-work field meeting to ensure compliance with the survey and design. Construction right-of-way width shall not exceed (50) fifty feet

All lines shall be installed ten (10) feet from existing lines unless otherwise authorized by the Forest Service due to topographic or spacing constraints, and will be buried at a minimum depth of four (4) feet below the surface.

Non-ferrous pipe that is not encased must have an electrically conductive wire or other means of locating the pipe while it is underground.

Use Horizontal Directional Drilling (HDD) rather than open trench construction when crossing wetlands unless approved by the Army Corps of Engineers. All Federal, State and County permits are required prior to crossing. Locate construction to avoid placement of fill in wetlands along the route. Replace unavoidable loss of wetland habitat by restoring an equal acreage of functionally restoring equivalent wetland habitat.

Topsoil shall be stripped from areas requiring excavation for a level working surface, such as side slopes and creek crossings. All excavated topsoil shall be protected to reduce potential mixing with subsoil material. Excavated topsoil infested with noxious weeds or exotic species shall be stored separately from other topsoil and periodically treated with herbicides if sprouting of either is detected. Stockpiled topsoil will be replaced and evenly spread over exposed subsoil to the extent practicable.

Obtain borrow materials from certified weed free sites. Borrow materials must come from pits or sites that have been inspected and certified as weed free sites by the McKenzie County Weed Board, and approved by the Forest Service prior to use.

All vehicles and equipment used in this project will be cleaned with a high pressure hose prior to entering the NFS lands to prevent the spread of noxious weeds. Likewise, all equipment must be cleaned prior to leaving the project site if operating within infested areas. Remove all mud, dirt, and plant parts from all equipment before moving into the project area. This does not apply to service vehicles that will stay on the roadway, traveling frequently in and out of the project area.

The ROW disturbed during construction will be restored to near preconstruction conditions immediately following the construction. Reseed disturbed upland areas with the approved Forest Service seed mix immediately after construction to reduce erosion. Minimize vegetation disturbance to reduce impacts to

suitable sensitive species habitat and native vegetation communities in general, and also to reduce spread of invasive species.

**B. Erosion Control:** The Holder shall prevent and control soil erosion and landslides by taking prompt action to stabilize and establish vegetation on eroded or washed areas.

The checked (✓ or X) reference sections are the erosion, runoff, and sediment controls that will apply to this permit and shall be incorporated into all power line construction, operation, and maintenance as applicable and determined by the Forest Service.

Control #	OPERATIONAL AREAS				
	#1 Facility Construction	#2 Road Construction	#3 Pipeline/Power line Construction	#4 Facility Reclamation	#5 Road/Line Reclamation
E1. Geotextiles	X	X	X	X	X
E2. Gradient Terraces	X				
E3. Mulching		X	X	X	X
E4. Riprap	X	X		X	X
E5. Seeding	X	X	X	X	X
E6. Soil Roughening			X	X	X
E7. Chemical Stabilization					
E8. Dust Control					
R1. Check Dams	X	X		X	
R2. Fiber Rolls	X	X	X	X	X
R3. Grass Lined Channels		X		X	
R4. Permanent Slope Diversions & Waterbars			X	X	X
R5. Temporary Diversion Dikes	X				
S1. Brush Bales			X	X	X
S2. Compost Filter Socks		X	X	X	X
S3. Sediment Traps	X			X	X
S4. Silt Fences	X	X	X	X	X
S5. Straw Bales				X	

During construction, when areas of the line need to be leveled for equipment and safety, the cut and fill ratios will be as follows:

Slopes	Fill	Cut
3:1	< 4 feet (1.3 meters)	< 10 feet (3 meters)
2:1	> 4 feet (1.3 meters)	10-20 feet (3-6 meters)
< 2:1	Forest Service Approval	Forest Service Approval

Abnormal situations, such as exceptionally difficult terrain, will take special considerations to be approved in writing by the District Ranger.

**Contouring:** All earth cut or fill slopes favorable to vegetation or other areas on which ground cover is destroyed in the course of construction, reconstruction, or heavy maintenance will be reclaimed and revegetated. All slopes and contours will be shaped and smoothed near the original contour. Care will be taken to eliminate all potential concentrations of water on the disturbed area.

**Water Bars:** After contouring, water bars will be constructed at approximately the following intervals:

% Slope	Water Bar Intervals - Feet
0-2	200

2-4	100
4-5	75
+5	50

- When utility lines are laid vertically down a slope, adjacent water bars should spill water to the opposite sides of the disturbed area to avoid concentration of water.
- All water bars should extend at least 5 feet beyond the disturbed area.
- Water bars should not be constructed in locations that will cause water to drain on fill slopes.

**C. Valves & Risers:** Installation, replacement, and/or removal of valves and risers shall be approved in writing by the Forest Service prior to ground disturbance. All entry points on any culvert riser or wood structure, which allow human access to a buried line or valve(s), shall be kept closed.

**D. Line Markers:** Markers shall be installed over each line where it is necessary to indicate the presence of a line at a road, highway, railroad, fenceline, property boundary, and stream crossings, along the remainder of the line at locations where there is a probability of damage or interference, and in sufficient numbers along the remainder of the buried line so that the line location and direction is adequately known. Markers shall be maintained so that they can be easily read and are not obscured.

Markers shall include the following information in letters a minimum of one (1) inch high and one quarter inch wide: 1) the word "Warning", "Caution", or "Danger"; and 2) "Name of product transported Pipeline"; 3) Name of the Operating Company; and 4) Emergency phone number including area code where the operating company can be reached.

**E. Weather:** All construction activities are subject to immediate suspension during periods of wet weather. The normal wet season in this area is from March 1 to June 1. No construction will be allowed between these dates without the Forest Service's approval. This pertains to USFS lands only.

During below-freezing weather, when the topsoil and subsoil are frozen solid, all construction activities will be suspended immediately unless approval to proceed has been granted by the District Ranger. If winter construction is approved, additional stipulations will be in effect which will be provided to the company by the Forest Service. Snow and/or ice will not be incorporated into the trench.

**F. Cattle:** A minimum of two (2) pass-throughs for every mile of open trench to allow cattle access to either side of the line will be provided during construction.

**G. Completion & Final Inspection:** The holder will contact the Forest Service when the construction activity is completed. The Forest Service will then make a final inspection and document its acceptance or will identify the specific items, which do not meet acceptable standards.

**H. Maintenance:** The Holder is responsible for maintaining all lines so as to prevent and/or repair settling, washouts, erosion, and loss of vegetative cover. The borrowing of fill or replacement materials from National Forest System lands is not allowed.

**I. Abandonment:** Prior to abandonment of any pipeline or related facility, the Holder shall notify the Forest Service of the need for abandonment and shall provide an Abandonment Plan, which specifies how the Holder intends to flush and/or purge the line of all products, intends to cap or seal the line, plans for removal of all surface facilities, and plans for reclamation of all disturbed areas. The Holder shall be responsible for any environmental review required for the abandonment of any pipeline(s) and/or facilities and the payment of any costs of such environmental review. The Abandonment Plan shall be approved by the Forest Service prior to any abandonment work. Upon Forest Service acceptance of abandonment work and associated site reclamation, the Forest Service may remove abandoned-in-place pipe or related facilities right-of-way area from special use authorizations. However, Forest Service consent to the abandonment of pipeline and/or facilities in place shall not relieve the Holder of the obligation and/or costs to remove or to alter such pipeline and/or facilities in the future in the event

that the Forest Service determines removal or alteration is necessary for the health and safety of the public or protection of National Forest System resources, in which case the Holder shall perform such work at no cost to the Forest Service. This provision shall survive the expiration, revocation or termination of this permit.

**06. Plats: As Built**

As-built survey plats will be submitted to the Forest Service upon completion of all power lines prior to the work being accepted. The holder shall submit to the Authorized Officer, within 180 days of placing into service, a geographic information system layer using North American Datum 83 Geographic Coordinate System (GCS) and in an Environmental Systems Research Institute (ESRI) Shape File format showing the location of the line centerline.



As-built survey plats will be submitted to the U.S. Forest Service upon completion of all power lines, and will be prepared as follows:

- **Use D.1 Special Use: for all Special Use As-Built Plat Requirements**
- **Use D.2 Sundry: for all Sundry Notice As-Built Plat Requirements.**

**Note:** If the project is located both on-lease and off-lease, then the as-built plat will be completed as specified under D.1 Special Use As-Built Plat Requirements. No exceptions.

**Note:** SIZE OF PLAT: 8 ½" x 11". If larger size is necessary, holder will be responsible for providing full size and/or reduced copies. Multiple page plats are preferred over reduced sheets.

Minimum requirements for Linear R-O-Ws including road, pipeline, powerline and underground cable plats on National Forest System lands:

ITEM	D.1 Special Use	D.2 Sundry
<b>Size of Plat 8½ X 11 Inches</b>	Yes	Yes
<b>Title Block</b>		
Name of Project	Yes	Yes
Kind of Use	Yes	Yes
Size & Type of R-O-W (example 2" gas pipeline)	Yes	Yes
Material (steel, plastic with tracer wire, etc.)	Yes	Yes
Origin and Destination (for pipelines)	Yes	Yes
Depth of Line	Yes	Yes
Name of Applicant/Holder	Yes	Yes
Name of Preparer	Yes	Yes
Date	Yes	Yes
Bar Scale (1" = 2000' minimum)	Yes	Yes
Drawn by (name)	Yes	Yes
Signed, sealed, & dated by licensed engineer or surveyor in the State of ND	Yes	Yes
<b>Approval Block: See Below</b>	Yes	Yes
<b>Vicinity Map: minimum ½"=1 mile (example Forest Map)</b>	Yes	Yes
<b>Plat Shall Show</b>		
Basis of Bearing	Yes	
Legend explaining any symbol	Yes	Yes
Sections, Township, Range, Meridian, North Arrow	Yes	Yes
R-O-W centerline description & stations & stations at P.I.s (metes and bounds, etc.)	Yes	
Property boundaries & land ownership along the R-O-W (Private, State, Forest Service & other Federal Agencies)	Yes	Yes
Adjacent existing improvements within 50' of centerline. Parallel R-O-Ws need only be shown every ¼ mile (i.e. fences, pipelines, trails, roads, etc.).	Yes	Yes
R-O-W width and length	Yes	Yes
Length of line on Forest Service by Section	Yes	Yes
Total Acres on Forest Service by Section	Yes	Yes
Corner ties at ownership changes and at point of either or both the beginning and ending. Identify the corner monument being tied to (stone, brass cap, etc.)	Yes	
Road Locations		Yes

**Note:** APPROVAL BLOCK:

Reviewed by: \_\_\_\_\_  
 Approved by: \_\_\_\_\_

Forest Service

Date: \_\_\_\_\_  
 Date: \_\_\_\_\_

**07. Safety:** The Holder shall maintain structures, facilities, improvements, and equipment in a safe and neat manner and must take appropriate measures to protect the public from hazardous sites or conditions resulting from the operations.

The Holder shall take all measures necessary to protect the health and safety of all persons affected by its activities performed in connection with the construction, operation, maintenance, or termination of the right-of-way, and shall promptly abate as completely as possible any physical or mechanical procedure, activity, event, or condition, existing or occurring at any time: (1) that is susceptible to abatement by the holder, (2) which arises out of, or could adversely affect the construction, operation, maintenance, or termination of all or any part of the utility line, and (3) that causes or threatens to cause: (a) a hazard to the safety of workers or to public health or safety, or (b) serious and irreparable harm or damage to the environment (including but not limited to areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resource). Holder shall immediately notify the authorized officer of all serious accidents, which occur in connection with such activities.

Activities associated with this permit shall not interrupt the free flow of traffic along any roads.

## **08. Seed Mixtures & Seeding**

❖ **A. Mixtures:** Use of Pure Live Seed (PLS) for calculating seed mixtures.

- Planting is based on approximately 50 seed per square foot and/or 12-16 pounds PLS per acre.
- All of the seed mixtures in this guide give the rate of PLS for each species per acre. These rates were derived using three basic figures: percent of each species desired by composition, number of seeds per pound according to species, and total number of PLS per square foot.
- The following equation should be used to calculate how much seed is needed to provide the required pounds of PLS needed.

$$\% \text{ Purity} \times \text{Germination Rate} \% = \% \text{ PLS}$$
$$\text{Pounds of PLS Desired divided by \% PLS} = \text{Pounds of Seed Required}$$

An example of this is: 10 lbs. of PLS is required. The given seed lot for this species has a purity of 95% and a germination rate of 85%. How many pounds of seed will be necessary to have 10 PLS?

$$.95 \text{ (Purity)} \times .85 \text{ (germination rate)} = .81 \text{ (\% PLS)}$$
$$10 \text{ (required poundage)} \text{ divided by } .81 \text{ (\% PLS)} = 12.3$$

*12.3 pounds of seed will be necessary to provide 10 lbs PLS of seed.*

- ❖ Cultivars listed in the second column are preferred, but local seed collections grown for harvest are acceptable if performance and origin are certified or documented. All seed sources should be derived from local collections or a general area extending 300 miles north and 200 miles south of the area to be reclaimed, and within similar elevation and precipitation zones as western North Dakota, ie from Jamestown on the east to Billings, MT on the west.
- ❖ Seeding depth should be one-half inch or less for drilled seed.
- ❖ For broadcast seeding, multiply pounds of each species seeded by 1.5. Seed bed should be thoroughly worked and firm.

- ❖ Best average seeding dates for cool and warm season mixes is May – June. Earlier or later (fall dormant) seeding is likely to result in poor establishment of warm season species and is therefore discouraged.
- ❖ Seed mix may need to be adjusted due to site characteristics and/or lack of available seed for some species. In the latter case, adjust species seeding rates by formulas below table to obtain approximately 50 seed per square foot and/or 12-16 lbs. of PLS per acre for drilled seed and 18-24 lbs. per acre for broadcast seeding.

### Seeding Rate Guidelines Scenario #13 All Sites

Species	Preferred Cultivar, Ecotype, or Germplasm	Common Name	A % of Mix	B Number Seed per lb.	C Number Seed per ft <sup>2</sup>	D Number Seed per acre	E Drilled PLS lb./acre
<b>Cool Season Grasses:</b>							
<i>Elymus canadensis</i>	Mandan	Canada wildrye	0.15	115,000	7.5	326,700	2.8
<i>Nassella viridula</i>	Lodorm	Green needlegrass	0.20	180,000	10.0	435,600	2.4
<i>Pascopyrum smithii</i>	Rodan	Western wheatgrass	0.25	112,000	12.5	544,500	4.9
<b>Warm Season Grasses</b>							
<i>Bouteloua gracilis</i>	Bad River	Blue grama	0.10	750,000	5.0	217,800	0.3
<i>Calamovilfa longifolia</i>	Goshen	Prairie sandreed	0.10	275,000	5.0	217,800	0.8
<i>Schizachyrium scoparium</i>	Badlands	Little bluestem	0.10	286,000	5.0	217,800	0.8
<b>Alternate Warm Season</b> (for one of above species)							
<i>Bouteloua curtipendula</i>	Pierre	Sideoats grama	0.10	180,000	5.0	217,800	1.2
<b>Forbs</b>							
<i>Dalea purpurea</i>	Local <sup>1</sup>	Purple prairieclover	0.04	290,000	1.8	78,408	0.25
<b>OR</b>							
<i>Dalea candida</i>	Antelope <sup>1</sup>	White prairieclover	0.04	278,000	1.8	78,408	0.3
<i>Helianthus pauciflorus</i>	Bismarck <sup>1</sup>	Stiff sunflower	0.03	85,000	1.4	60,984	0.7
<b>OR</b>							
<i>Solidago rigida</i>	Local <sup>1</sup>	Stiff goldenrod	0.03	656,000	1.4	60,984	0.1
<i>Echinacea angustifolia</i>	Bismarck <sup>1</sup>	Purple coneflower	0.03	120,000	1.4	60,984	0.5
<b>OR</b>							
<i>Ratibida columnifera</i>	Local <sup>1</sup>	Prairie coneflower	0.03	737,000	1.4	60,984	0.1
<b>Totals</b>			100%		49.6	Forbs 13.4 Alternate Forbs (12.5)	

#### Seeding Rates Formulas

A - % of Mix

B - Number of seeds per lb.

- C - Number of seeds per ft<sup>2</sup> (C = A x 50)  
D - Number of seeds per acre (D = C x 43560)  
E - Drilled Pure Live Seed (PLS) lb./acre (E = D / B)

**B. Report of Seeding & Certification:** The seed mixture shall be lab tested to identify the noxious and invasive weed seed present and certified weed free by the Seed Company. A copy of the certification including the purity and viability of the seed mix shall be supplied to the Forest Service prior to planting. Upon completion of the initial planting, and any additional plantings, a Report of Seeding (Stipulation #10) from the Holder or the seeding contractor shall be submitted to the Forest Service verifying that the seeding is completed.

09. Report of Seeding (Revised 05/07/2007)

REPORT OF SEEDING

01. SITE SEEDED

Holder Name:			
Site Name & SU Permit #:			
¼ ¼ :	Sec:	Twn:	Rng:

02. SEEDING COMPANY

Company Name:
Date Seed Mixture Sent To Forest Service:
Date Site Seeded:

03. SEEDING METHODS

✓	Seed Bed Preparation	✓	Equipment Used	✓	Seeding Techniques
	Ripped Seed Bed		Grass Seeder		Parallel To Contours
	Disked Seed Bed		Small Grain Seeder		Criss-Cross Pattern
	Firm		Large Grain Seeder		Mulching
	Free of Clods		Hand Seeded		

04. Drill Row Spacing (Inches):
05. Seeding Depth (Inches):
06. Approximate Acres Seeded:

07. I hereby certify that I, or persons under my direct supervision, have seeded this site, and the mixture has been certified weed free. A copy of the seed mixture certification, including the seed mixture is attached.

Seeding Company Representative	Date
Forest Service Reviewer	Date Received

NOTE: ✓ The appropriate boxes and fill in the blanks as applicable for all 7 items above. Sign and send the original to the Forest Service Ranger District. Faxed copies must be followed by the original.

**C. Mulches:** A variety of mulching techniques may be required on disturbed slopes to hold seed. These sites will be mulched using certified weed free clean straw or native grass hay. Mulching should not include native hay unless livestock have been excluded from the hayed site. Mulching must be approved by the Forest Service prior to any uses and shall meet Best Management Practices for Erosion Control, which includes E3 Mulches.

**D. Geotextiles:** Seed and soil blankets, known as erosion control fabric and/or other names, may be used to stabilize disturbed areas. Geotextiles must be approved by the Forest Service prior to any use and shall meet Best Management Practices for Erosion Control, which includes E1 Geotextiles.

**E. Fertilizers:** Fertilizers may be used with prior written approval from the District Ranger.

**10. Survey Monuments:** The Holder shall protect, in place, all public land survey monuments, private property corners, and Forest Service boundary markers. In the event that any such land markers or monuments are destroyed in the exercise of their rights, depending on the type of monument destroyed, the Holder shall see that they are reestablished or referenced in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States", (2) the specifications of the county surveyor, or (3) the specifications of the Forest Service.

#### **11. Wastes on USFS Lands**

**A. Trash, Garbage, Junk, Debris, etc.:** During construction, portable dumpsters will be used for all trash. All trash, debris, garbage, junk, etc, will be hauled off site; no burning or burying will be allowed. Containers used to store garbage shall have adequate covers and will be promptly emptied. Doors, covers, and/or lids will be kept closed.

**B. Hydrocarbon Spills:** In the event of any loss of hydrocarbons from any equipment, the Forest Service shall immediately be notified. Hydrocarbon cleanup operations will be reviewed by the Forest Service representative and his/her recommendations for action followed. Hydrocarbon cleanup operations will be approved by an authorized Forest Service representative.

Use chemical spill prevention and containment (i.e., especially near wetlands or water bodies). Storage facilities for materials capable of causing water pollution, if accidentally discharged, shall be located so as to prevent any spillage into waters or channels leading into water that would result in harm to fish and wildlife or to human water supplies.

**12. Wildlife And Livestock:** No harassment of wildlife and livestock. Notify the Forest Service if livestock need to be moved.

Minimize vegetation disturbance to reduce impacts to suitable sensitive species habitat and native vegetation communities in general, and also to reduce spread of invasive species.

Report the discovery of any sensitive or watch plants within the project area to the McKenzie Ranger District office. Protect sensitive plant populations discovered after project approval which may include last minute alterations of the project design or access route in order to avoid negative impacts to such populations. This will be coordinated with the Forest Service Botanist.

Construction near streams and rivers should follow these guidelines: The natural stream flow and drainage patterns of creeks and rivers should not be altered by construction activities; channelization, diversion, and damming of the creeks and rivers should be avoided.

### 13. Standards for O&G Fences, Braces, & Gates

**General:** Fences are designed to protect livestock, wildlife, vegetation, soils, and facilities. Fences will be 4 strands, 12½ gauge (minimum) barbed wire with horizontal design corner and line braces. Steel posts will be used in the fenceline where terrain is fairly level. On slopes greater than 2:1 (50% slope) there will be 1 wood post for every 3 steel posts. Gates (14 feet minimum) are required.

#### Braces

**Corner Braces:** will be installed whenever a horizontal change in fence direction occurs. Corner braces will consist of 3 upright posts and 2 horizontal poles. Corner braces for segments on slopes 2:1 or greater, will consist of 5 upright posts and 4 horizontal poles.

**Line Braces:** will be installed when vertical changes occur. Line braces will consist of 2 upright posts and 1 horizontal pole.

**Gate Braces:** Gate braces will consist of 2 upright posts and 1 horizontal pole on each side of the gate. Gate sticks will be wooden, round, and a minimum of 2 inches on the small end. Smooth wire will be used for all bales on the ground posts, as well as the loop for opening the gate.

**Upright Posts (wood):** All upright brace posts will have a minimum diameter of 6 inches and a minimum length of 8 feet and shall be set at a minimum depth of 42 inches and tamped firmly. Fill is to be tamped in 6" lifts.

**Horizontal Poles:** All horizontal wooden brace (poles) will be a minimum diameter of 4 inches and a minimum length of 8 feet.

**Brace Wires & Twists:** #9 smooth wire will be used between brace posts and twisted tight, leaving a twist stick (wood, rod, or pipe) inserted in the center of the twist. Twist sticks will be 18 to 24 inches in length.

#### Wires & Spacing

**Barbed Wire:** The barbed wire will be a minimum 12½ gauge. Wire must be taut with due consideration for contraction and expansion. Wire should never be kinked or nicked. Staples should hold the wire close to the post. No more than ¼ mile of wire is to be stretched at one time. Dead end on corners and gates on the end of the brace opposite from direction of pull with wire ends wrapped around posts twice and twisted back on stretched wire. Barbed wire will not be used for purposes other than the-top 3 main strands. Smooth Wire of the same gauge shall be used for the bottom strand.

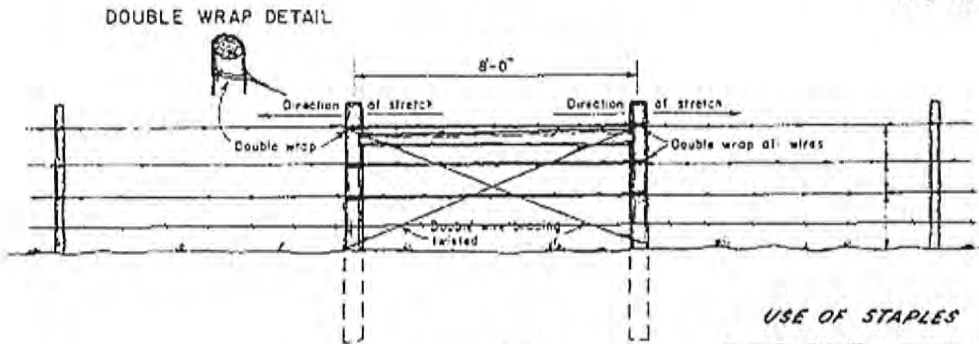
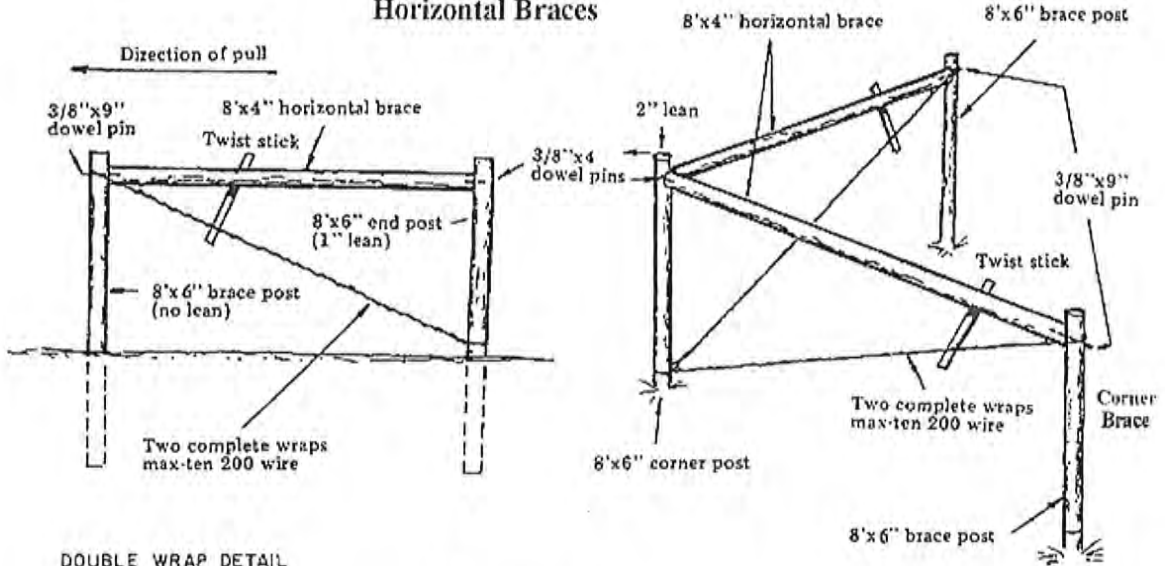
**Barbed Wire Spacing:** Wire spacing from the ground up will be: 1st strand (smooth) at 16 inches, 2nd strand at 22 inches, 3rd strand at 28 inches, and 4th strand at 40 inches.

**Depressions:** Where fences cross depressions, extra wires may be needed. Wires crossing depressions shall be weighted down with rocks and tie-downs to take the strain off the staples and posts.

**Smooth Wire:** excluding the 4 main strands and the 4 strands on individual gates, #9 smooth wire will be used for all other wire needs including but not limited to braces, gates, anchors, etc.

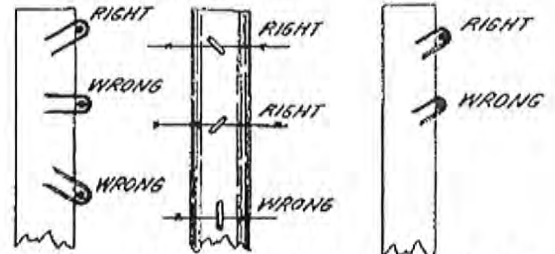
**Fence (Non-Brace) Posts:** All posts will be in a straight line between stretch stations or brace sections and spaced 16½ feet apart. Fence post height is 48 inches excluding braces. Wood posts will be a minimum length of 6½ feet and a minimum diameter of 3 inches at the small end and firmly set a minimum of 30 inches in the ground. Steel posts will be set at a depth so that the anchor plates (flanges or fins) will be at least 3-4 inches below ground surface.

### Horizontal Braces



LINE BRACE

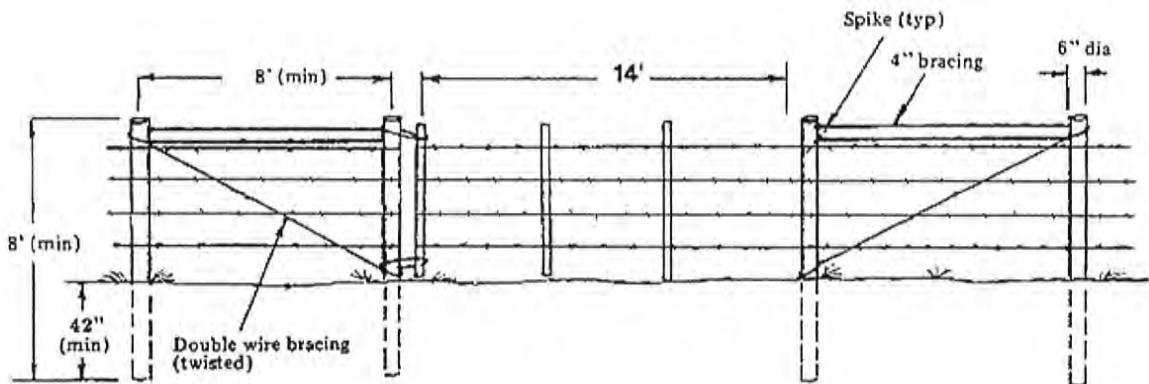
### USE OF STAPLES



Drive Staples at angle. Leave wire loose in Staple.

Do not drive Staple parallel to side of post.

Leave Wire loose in Staple



Single panel end and gate brace.



## 14. Fire Prevention & Suppression Requirements for USFS Lands

**A. General:** A HOLDER is defined as the Permittee (permit holder), or Lessee and/or Operator and their representatives, employees, workers, contractors, and subcontractors.

1. Compliance to the stipulations in this exhibit shall not preclude the holder from complying with any other Federal, State, County, or municipal laws, ordinances, or regulations pertaining to fire prevention and suppression.
2. The Normal Fire Season for the Medora and McKenzie Ranger Districts will be from April 1 to October 31 of each year. If conditions warrant, the District Ranger may begin or extend the fire season as deemed necessary. The District Ranger may also amend, add, or delete any requirement as deemed necessary.
3. It is the Holder's responsibility to obtain and know the daily Wildfire Danger. For information on restrictions or prohibitions contact local fire officials, the State Fire Marshal, or the North Dakota Division of Emergency Management.
4. The Holder shall do everything reasonable within their power and shall require their employees, contractors, and employees of contractors to do everything reasonable within their power, both independently and upon request of the Forest Service to prevent and suppress fires on or near the lands to be occupied under a Permit or Plan. Self-inspections are encouraged.
5. It is the Holder's responsibility to call the local or rural fire department(s) if suppression help is needed.
6. The Holder is responsible for all suppression costs and damages as a result of any fire resulting from their operations and/or practices.
7. The Holder shall promptly report all fires to the Forest Service and will also cooperate with the Forest Service in completing a follow-up Fire Report.

**B. Fires:** With the exception of approved facilities, no open fires (fires for warming, burning wastes, brush disposal, debris, etc.) are allowed unless approved in writing from the District Ranger.

**C. Smoking:** All smoking will be done inside of vehicles or in areas cleared of flammable material when the "Fire Danger" exceeds "Moderate".

**D. Fireworks:** Fireworks are prohibited on public lands.

**E. Exhaust & Arrester Systems:** Each internal combustion engine shall be provided with a spark arrester or spark arresting device approved by Forest Service. Exceptions where Forest Service may approve mufflers or other equipment in lieu of spark arresters qualified and rated under Forest Service standard 5100-1a are: (a) small multi-position engines, such as chain saws, shall meet Society of Automotive Engineers J335b standards, (b) passenger-carrying vehicles and light trucks may have baffle-type muffler with tail pipe, (c) heavy-duty trucks may have a vertical stack exhaust system with muffler, provided the exhaust stack extends above the cab of the vehicle, (d) an exhaust driven turbocharger is considered to be a satisfactory spark arrester. Internal combustion engine exhaust systems, arresters and other devices shall be properly installed and maintained.

**F. Catalytic Converters:** The Holder shall take extra precautionary measures when driving off-road with vehicles equipped with catalytic converters. Such measures shall include but are not limited to: avoiding driving over or through vegetation tall enough to come into contact with the converter, avoid parking in vegetation tall enough to come into contact with the converter, and keep all debris from building up around or on the exhaust system.

**G. Chainsaws:** The sawyer shall have a shovel (round point #0 or equal) and a Fire extinguisher, containing not less than eight (8) ounces of extinguisher fluid or a dry chemical powder type of not less than one (1) pound capacity. The Holder shall carry the extinguisher at all times. All refueling shall be done on bare soils. Chainsaws will have a manufacturer approved or equivalent spark arrester.

**H. Required Fire Suppression Equipment:** any vehicle and/or piece of equipment used off-road will be equipped with an operational, charged, Type ABC fire extinguisher; a shovel (round point #0 or equal); and one of the following (per person):

1. A five (5)-gallon standard galvanized metal, fiberglass, or rubberized backpack water container, with hand pump attached, to be filled at all times.
2. Burlap bags in a ten (10) gal. Or larger container of water
3. Fire swatter/fire brooms.

Minimum fire extinguisher sizes are identified in the following table. Aerosol canned suppressants will not be considered adequate fire extinguishers for vehicles.

Vehicle Type	Minimum Size ABC Fire Extinguisher
Pickups & Cars	2 Pound
Trucks > 1 Ton GVW	5 Pound
Earth Moving Equipment (Dozers, Scrapers, Motor Patrol, Etc.)	10 Pound
Welding Equipment	10 Pound
Miscellaneous Equipment	10 Pound

**I. Welding:** Welding and use of cutting torches or cutoff saws will be permitted only in areas that have been cleared or are free of all material capable of carrying fire. Flammable debris and vegetation must be removed from within a minimum ten (10) foot radius of all welding and cutting operations. There will be no welding when winds exceed twenty (20) miles per hour.

When the "Fire Danger" exceeds "Moderate", each welding crew will have available in the immediate working or project area, 1). The required fire suppression equipment; 2). A ground tanker of not less than three hundred (300) gallon capacity with a pump capable of pumping twenty (20) gallons per minute at one hundred (100) pounds per square inch (PSI) and not less than one hundred (100) feet of hose; and 3). A road grader or dozer, which will be kept in the immediate working or project area when welding, is being performed on pipelines or flowlines.

**J. Fire Suppression Plan:** Upon request from the District Ranger, the holder shall submit a Fire Suppression Plan to be included as part of the Permit Package or Plan of Operations. It shall contain the following:

1. The names, phone numbers and mobile numbers of the holder's primary and secondary contact person(s) responsible for fire suppression.
2. Crew size(s) including supervisor(s), foremen, etc.
3. A complete listing of fire suppression equipment.
4. The names and numbers of the local/area fire departments and 2 contact names for each.
5. Location(s) of staging area(s) for water tankers and/or tenders if required.
6. Preventative measures for storage of aircraft fuel(s) at landing zones or staging areas if used.
7. A topographic map with a scale of 2.64 inches to the mile or one (1) inch equals two thousand (2000) feet will be attached with this exhibit to show the following if applicable: (a) Location(s) of all proposed water sources for fire suppression, and (b) Location(s) of all Staging Areas for water tankers and/or tenders.
8. Must be signed and dated by the holder or holder's authorized representative.

**K. Failure to Comply:** Failure to comply may result in immediate suspension of operations.

## 15. Vegetative Control, Application of Herbicides

**NOTE:** Herbicides used for vegetative control are generally pre-emergence short-term (less than one year duration) herbicides that will kill all vegetation including grasses and forbs. Therefore, it is extremely important that these herbicides not be used to control noxious weeds and/or invasive species, within those areas of the road where native vegetative cover is being established under interim or final reclamation.

### Chemical Treatment

The following mitigation measures shall apply to the ground application of all herbicides:

#### General

All chemical treatments must be approved in writing by the Forest Service prior to any surface application. A copy of the approval must be present on the site being treated. Failure to produce a copy of the approval may result in immediate shut down of operations.

#### Applications, Forms, Monitoring

Companies using herbicides for vegetative control or for control of noxious weeds and/or invasive species must annually complete, submit, and have approved prior to use the following documents:

- a. Pesticide-Use Proposal (Form FS-2100-2).
- b. Pesticide-Use Proposal Attachment A, Supplemental Information (Form DPG-2100-2A).
- c. Spill Incident Response Plan for transporting herbicides.

A current and blank copy of forms 2100-2 and 2100-2A can be obtained from the Forest Service District Office upon request.

Do not combine vegetative control use with control of noxious weeds and/or invasive species use on the same forms. Separate forms must be submitted for each.

#### Herbicides

Only approved herbicides, as specified within the 2007 Dakota Prairie Grasslands Noxious Weed Management Project can be used for chemical treatment. Since this listing may change from year to year, it is the Holder's responsibility to request and submit use for the most current listing of approved herbicides. An approved current listing of vegetative control herbicides can be obtained from the Forest Service District Office upon request.

#### Ground Application

- Herbicides must be applied under the supervision of a certified herbicide applicator under the laws of the State of North Dakota.
- Herbicides must be applied consistent with the instructions on the label.
- No herbicide will be applied directly to surface water or where surface water from treated areas can run into live water sources.
- A buffer of at least one hundred (100) feet from bodies of water must be maintained.
- The buffer width would be determined based on soil, slope, etc.
- No spraying of liquid formulations will be done if temperatures exceed eighty (80) degrees.
- No spraying of liquid formulations will be done if the wind velocity exceeds ten (10) mph or per herbicide labeling directions.
- If boom spraying is done, boom pressure will not exceed forty (40) psi to minimize drift.
- Herbicide use will be permitted only within the areas identified within the applications.
- A sign saying the area has been treated with herbicides will be posted in areas receiving treatments at least one full day (unless the herbicide label says longer) after the treatment.

#### Monitoring

- The Forest Service will monitor the herbicide use in the form of random compliance inspections.
- All monitoring will be done under the direction of a Forest Service employee who is a licensed Commercial Pesticide Applicator.

**Year End Report**

- When you have completed your herbicide treatment for the season and prior to October 31 of each year, you must submit the following information for each site treated and for each herbicide applied on National Forest System lands:
  - Date of application
  - Formulation/trade name
  - EPA registration number
  - Name of active ingredient
  - Pounds of active ingredient applied to the site
  - Acres treated on the site
  - In the case of a combination of herbicides being used, you will need to submit the information for each herbicide in the mixture.
  - Failure to submit the reports will delay the permitting of this year's Pesticide Use Proposal.

**Sites to Be Abandoned**

- Noxious weeds should be sprayed prior to reclamation of the site and during the monitoring of the site until released. Use caution not to use herbicides that will have a detrimental effect to any seeding requirements.

**WBI Pipeline  
Real Estate Contracting Officer Decision Concerning  
Bureau of Land Management Proposed ROW Grant  
Associated with the Use of Army Lands at the Garrison Project, North Dakota  
Terms & Conditions**

I have reviewed the proposed Right of Way Grant (NDM-111706) and Temporary Use Permit (NDM-111706-01) to be granted by the Bureau of Land Management (BLM) to WBI Energy Transmission, Inc. (WBI) pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), and concur with the Grant and Permit across property under the control of the Corps of Engineers (USACE) at the Garrison Project, North Dakota, subject to the following Terms and Conditions:

**1. BLM will:**

- Provide documentation to USACE confirming receipt of annual payments from WBI (for Army portion, overseen by USACE) and confirming deposit in appropriate Treasury account.
- Comply with the terms of the Mineral Leasing Act requiring annual payment of monetary consideration.
- Review and address the applicability of Executive Order 13658 (regarding minimum federal wage requirements) and EO 13706 (regarding sick leave for federal contractors). If determined applicable, BLM will include appropriate language in the ROW grant.

**2. BLM will include in the Right-of-Way Grant the following conditions:**

**a. Late Payments:**

"Any payments due under the terms of this Grant must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, as amended (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due."

**b. Notices:**

"With regard to the Federal Lands located at the Garrison Project, North Dakota, all correspondence and notices to be given pursuant to this grant shall be in writing and addressed, if to the Holder, to WBI Energy Transmission, Inc., 2010 Montana Avenue,

Glendive, Montana 59330, and, if to the Corps of Engineers, to the U. S. Army Engineer District, Omaha, Attention: Chief, Real Estate Division, 1616 Capitol Avenue, Omaha, NE 68102, or as may from time to time otherwise be directed by the parties. Notices shall be mailed by certified mail, postage prepaid, return receipt requested, addressed to the addresses above. The effective date of the notice shall be the earlier of the actual date of receipt or the date the addressee is notified of the attempted delivery of the certified mail, whether or not the addressee actually accepts delivery.”

**c. Condition of Premises:**

“The Holder acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the United States.”

**d. Environmental Condition of Property**

“A copy of the Environmental Condition of Property, dated February 25, 2021, documenting the known history of the Garrison North Dakota Project property with regard to the storage, release or disposal of hazardous substances is maintained at the Garrison Project Office and available upon request. Upon expiration, revocation or termination of this Grant, another environmental condition of property shall be prepared which will document the environmental condition of the property at that time. A comparison of the two surveys will assist the Authorized Officer in determining any environmental restoration requirements. Any such requirements will be completed by the Holder in accordance with the restoration requirements herein.”

**e. Transfers and Assignments:**

“Without prior written approval by the Authorized Officer and the Department of the Army, Real Estate Contracting Officer, Omaha District, the Holder shall neither transfer nor assign this Grant or any part thereof nor grant any interest, privilege or license whatsoever in connection with this Grant. The provisions and conditions of this Grant shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the Holder.”

**f. Disclaimer:**

“That it is understood that this instrument is effective only insofar as the rights of the United States in the said property are concerned, and that the Holder shall obtain such permission as may be necessary on account of any other existing rights. It is understood that the granting of this Right-of-Way does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344), or any other permit or license which may be required by Federal, state or local statute in connection with the

use of the premises. The grant of this Right-of-Way pursuant to 30 U.S.C. § 185 shall grant no immunity from the operation of the Federal antitrust laws.”

**g. Other Agency Agreements:**

“It is understood that the provision of the Grant shall not abrogate or interfere with any agreements or commitments made or entered into between the Holder and any other agency of the United States with regard to financial aid to the Holder in connection with the installation, operation, or maintenance of said pipeline.”

**h. Relocation of Facilities:**

“In the event all or any portion of the Premises occupied by said Facilities at the Garrison Project, North Dakota, shall be needed by the Department of the Army, or in the event the existence of said Facilities shall be considered detrimental to governmental activities, the Holder shall, from time to time, upon notice to do so, and as often as so notified, promptly seek authorization from the Federal Energy Regulatory Commission, or other applicable entity, to remove said Facilities, or portion thereof, to such other location or locations as may be designated by the Department of the Army. And in the event said Facilities shall not be removed or relocated within ninety (90) days after any aforesaid notice, the Department of the Army, after receipt of required approvals, may cause the same to be done at the expense of the Holder.”

**i. Hazardous Waste or Fuel Spill:**

“In accordance with 43 CFR 2880, § 2885.11(b)(12), the Holder shall certify its compliance with all requirements of the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. 11001 et seq.”

**j. Site-Specific Conditions:**

- (1) “The grantee shall comply with the requirements outlined in the Federal Energy Regulatory Commission’s Environmental Assessment dated December 2020, subsequent Finding of No Significant Impact signed by the Department of the Army on April 1, 2021 and Department of the Army Permit Conditions, Permit No. NWO-2019-525-BIS, dated April 16, 2021.”
- (2) “Prior to the initiation of HDD work on or under USACE lands, the Holder shall notify the Garrison Project Natural Resource Office (Garrison Project), at (701) 654-7761.”
- (3) “Prior to accessing federal waters, all equipment entering the water must be free of aquatic nuisance species (ANS), mud, standing water and aquatic vegetation. All equipment must be cleaned and inspected by a representative of the North Dakota Game and Fish Department (NDGF) for ANS. Contact the NDGF ANS

Coordinator, two weeks prior to construction, to schedule an inspection. The Holder shall provide proof of the inspection to the Garrison Project within three (3) days of the inspection. Upon leaving the water, all equipment must be cleaned of aquatic vegetation and drained of water immediately upon coming ashore. Drain plugs must be left open during transportation. All state regulations concerning ANS must be observed.”

- (4) “Upon project completion all materials are required to be removed from the project area.”
- (5) “If archeological resources are discovered during work, all activity must cease, and the Garrison Project Archeological staff shall be notified immediately at (701) 654-7744.”
- (6) “The Surface Use Plan of Operations, including the HDD execution plan as reviewed and approved does not require shoreline related work that could potentially impact threatened and endangered species. In the event that there is a deviation from the approved execution plan, and shoreline work is necessary for environmental protection and safe execution of HDD and/or any related cleanup, the Holder will be required to provide monitoring that follows the provided Qualified Biologist SOW guidelines.”

April 20, 2021

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Date

*Rick L. Noel*

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**RICK L. NOEL**  
Chief Civil Branch, Real Estate Division  
Real Estate Contracting Officer



## **FINDING OF NO SIGNIFICANT IMPACT**

### **NORTH BAKKEN EXPANSION PROJECT ENVIRONMENTAL ASSESSMENT**

**WBI ENERGY TRANSMISSION, INC. DOCKET NO. CP20-52-000  
MCKENZIE, WILLIAMS, MOUNTRAIL, AND BURKE COUNTIES, NORTH DAKOTA  
MARCH 2021**

In accordance with the National Environmental Policy Act of 1969, as amended, the Federal Energy regulatory Commission (FERC) has prepared an environmental assessment (EA) for the North Bakken Expansion Project proposed by WBI Energy Transmission, Inc. (WBI Energy). WBI Energy requests authorization to construct, modify, operate, and maintain a new natural gas pipeline and associated facilities in McKenzie, Williams, Mountrail, and Burke Counties, North Dakota to transport up to 250,000 million cubic feet per day of natural gas from the Williston Basin in northwest North Dakota to a new interconnect with Northern Border Pipeline Company's existing mainline. WBI Energy's proposed facilities, referred to as the North Bakken Expansion Project (or Project), would include 92.5 miles of new 24-, 20-, and 12-inch-diameter pipeline, pipeline looping, and 0.5 mile of pipeline replacement; uprates to WBI Energy's existing Line Section 25; construction of one new compressor station and modifications to one existing compressor station; installation of new and modifications to existing delivery, receipt, and transfer stations; and installation of block valves, pig launcher/receiver stations, and other associated appurtenances. Additionally, the Project involves a proposed horizontal directional drill (HDD) crossing of Lake Sakakawea and associated U.S. Army Corps of Engineers, Omaha District (USACE)-managed real estate. Because the proposed project would require construction within the Garrison Dam/Lake Sakakawea Project, a Section 10 Permit, a Section 408 permission, and a consent to easement to the Bureau of Land Management (BLM) are required. The scope of this FONSI is limited to the proposed pipeline crossing of Lake Sakakawea and any directly connected actions.

Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) prohibits the unauthorized creation of any obstruction to the navigable capacity of any waters of the United States (WOUS). Lake Sakakawea (Missouri River) is a navigable WOUS. Utility lines constructed under navigable WOUS without discharge of dredged or fill material require a Section 10 permit. Nationwide Permit (NWP) 12 authorizes the placement of a utility line under a navigable WOUS provided certain conditions are met.

Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 408) (Section 408) prohibits any person to take possession of, make use of, build upon, alter, deface, destroy, move, injure, or in any manner whatever impair the usefulness of any work built by the United States for navigation or flood control without prior USACE permission. This permission may only be granted if the appropriate USACE official determines the occupation or use will not be injurious to the public interest and will not impair the usefulness of such work.

FERC is the lead federal agency for the preparation of this EA. The USACE, the U.S. Bureau of Land Management (BLM), and the U.S. Forest Service (USFS) participated as cooperating agencies in the preparation of this EA. The federal cooperating agencies may adopt this EA per 40 CFR 1501.3 if, after an independent review of the document, they conclude that their requirements and/or regulatory responsibilities have been satisfied. This FONSI serves as the USACE decision document. The USACE has independently evaluated and verified the information and analysis undertaken in the EA and takes full responsibility for the scope and content contained herein. A list of preparers and reviewers may be found in Section F of the EA.

The Final EA, incorporated herein by reference, evaluated various alternatives that would allow WBI Energy to construct, modify, operate, and maintain a new natural gas pipeline and associated facilities in McKenzie, Williams, Mountrail, and Burke Counties, North Dakota to transport up to 250,000 million cubic feet per day of natural gas from the Williston Basin in northwest North Dakota to a new interconnect with Northern Border Pipeline Company's existing mainline. The Preferred Alternative for the North Bakken Expansion Project includes:

- The construction of 92.5 miles of new 24-, 20-, and 12-inch-diameter pipeline, pipeline looping, and 0.5 mile of pipeline replacement; upgrades to WBI Energy's existing Line Section 25; construction of one new compressor station and modifications to one existing compressor station; installation of new and modifications to existing delivery, receipt, and transfer stations; and installation of block valves, pig launcher/receiver stations, and other associated appurtenances. Additionally, the Project involves a proposed HDD crossing of Lake Sakakawea and associated USACE-managed real estate.

In addition to the No Action Alternative, three Systems Alternatives, and two Major Route Alternatives were evaluated. The three Systems Alternatives included the Alliance Pipeline System Alternative, the Northern Border Pipeline System Alternative, and the North Badlands System Alternative. The two Major Route Alternatives included the Western Alternative, and the Eastern Alternative. Refer to Section C of the EA for more detailed information on alternative formulation and selection. Although most of the system and pipeline route alternatives appear to be technically feasible, they were eliminated from further consideration because none of them provide a significant environmental advantage over the Preferred Alternative.

For all alternatives, the potential effects were evaluated, as appropriate. A summary assessment of the potential effects of the recommended plan are listed in Table 1:

**Table 1: Summary of Potential Effects of the Recommended Plan**

	Insignificant effects	Insignificant effects as a result of mitigation*	Resource unaffected by action
Aesthetics	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Air quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Aquatic resources/wetlands	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Noxious Weeds	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fisheries	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Wildlife	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Migratory Birds	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Threatened/Endangered species/critical habitat	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vegetation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Historic properties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other cultural resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Floodplains	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hazardous, toxic & radioactive waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Land use	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Navigation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Noise levels	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Socioeconomics	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Environmental justice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Soils	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tribal trust resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Surface Water Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Groundwater Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paleontological Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mineral Resources	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

All practicable and appropriate means to avoid or minimize adverse environmental effects were analyzed and incorporated into the recommended plan. Best management practices (BMPs) as detailed in the EA will be implemented, if appropriate, to minimize impacts.

- Prior to construction, all project personnel shall be trained on environmental permit requirements and environmental specifications, including fuel handling and storage, cultural resource protection methods, stream and wetland crossing requirements and sensitive species protection measures.
- Should construction occur during the nesting season for piping plovers and interior least terns (generally between April 1st and August 15th), a qualified wildlife biologist shall survey the area for the presence of piping plovers and/or interior least terns and their nesting habitat prior to the start of construction. If interior least terns or piping plovers are observed during these preconstruction surveys, WBI Energy shall contact the USFWS to determine what, if any, avoidance/minimization measures should be implemented.
- WBI Energy would train Project Environmental Inspectors in whooping crane identification prior to the start of construction. If individual cranes are observed along the project right-of-way during construction, WBI Energy would notify the USFWS of the

location of the observance, the cranes would be left undisturbed, and construction within 1 mile of the cranes would cease until they vacate the area, at which time construction activities would resume.

- In accordance with the "Avoidance and Monitoring Plan WBI Energy Transmission, Inc. North Bakken Expansion Project, Burke, McKenzie, Mountrail, and Williams Counties, North Dakota," as approved by the ND SHPO, site 32WI976 will be avoided by the HDD design of the project. If an inadvertent return were to occur in proximity to 32WI976, a site-specific cleanup plan would be implemented that identifies how the area would be accessed for cleanup purposes to limit the potential for any disturbance to the site. The contractor responsible for Archeological monitoring associated with this project will maintain a valid USACE Archeological Resources Protection Act (ARPA) permit, as well as a valid ND State issued ARPA permit.

No compensatory mitigation is required as part of the Preferred Alternative.

Public, state, agency, and tribal review of the draft EA was completed on 18 January 2021. All comments submitted during the public review period were responded to and no significant comments remain unresolved.

Pursuant to section 7 of the Endangered Species Act of 1973, as amended, USACE has made a determination based on information provided by FERC that the Preferred Alternative would have no effect on the gray wolf, red knot, or Dakota skipper critical habitat. It was also determined that the Preferred Alternative may affect but is not likely to adversely affect the northern long-eared bat, interior least tern, piping plover, piping plover critical habitat, whooping crane, pallid sturgeon, or Dakota skipper. The USFWS concurred with the FERC's determination on 17 November 2020.

Pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, the U.S. Army Corps of Engineers determined that historic properties located on USACE lands would not be adversely affected by the recommended plan. The State Historical Society of North Dakota concurred with the determination on 11 March 2021.


There would be no placement of fill associated with this project, therefore, there would be no Section 404 Permit or associated Section 401 Water Quality Certification. However, since the project does include the placement of a structure (natural gas pipeline) beneath a navigable water, a Section 10 Permit is required. Authorization of a Section 10 Permit will be covered by Nationwide Permit 12 which authorizes the placement of utility lines under navigable waters of the United States. All conditions will be followed.

All applicable environmental laws have been considered and coordination with appropriate agencies and officials has been completed.

After evaluating the anticipated physical, environmental, economic, and social effects of the preferred alternative, it is my determination that allowing a real estate easement for construction of portions of the North Bakken Expansion Project on Corps managed lands would not constitute a major federal action that would significantly affect the quality of the human environment. All applicable laws, executive orders, regulations, and local government plans were considered in evaluation of alternatives.

The preferred alternative has been reviewed by the appropriate Federal, State, and local resource agencies, Tribes, and the general public. There are no significant unresolved issues; therefore, preparation of an Environmental Impact Statement is not required.

01 APR 2021  
Date

  
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Mark R. Himes, P.E.  
Colonel, Corps of Engineers  
District Commander



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
NORTH DAKOTA REGULATORY OFFICE  
3319 UNIVERSITY DRIVE  
BISMARCK ND 58504

April 16, 2021

North Dakota Regulatory Office

NWO-2019-525-BIS

Mr. Greg Huncovsky  
WBI Energy Transmission, Inc.  
1250 W. century Avenue  
Bismarck, North Dakota 58503

Dear Mr. Huncovsky:

We have reviewed your request for Department of the Army (DA) authorization for the pre-construction notification (PCN) that was submitted to this office for the North Bakken Expansion Project. The PCN is for the Missouri River, Lake Sakakawea crossing portion of the proposed approximate 62.8-miles of a 24-inch diameter natural gas pipeline. The proposed Missouri River crossings will be horizontal directional drilled (HDD) for a length of 15,393-feet and approximately 250-feet below the bottom of the lakebed. The HDD entry and exit pits would be located on uplands, outside the riverbanks. The pipeline crossing will be located in Sections 19 and 30, Range 96 West and Sections 25 and 36, Range 97 West, Township 154 North, Williams and McKenzie Counties, North Dakota, at approximate Missouri River mile 1509.5.

Based on the information provided to this office we have determined that this project and associated work with this pipeline crossing project is authorized by Nationwide Permit Number 12 Utility Line Activities, found in the January 13, 2021 Federal Register (86 FR 2744), Reissuance of 12 existing Nationwide Permits (NWP) and four new NWP as well as the reissuance of NWP general conditions and definitions with some modifications. Enclosed is the fact sheet that fully describes the Nationwide Permit and lists the General and Regional Conditions that must be adhered to for this authorization to remain valid. Please note that deviations from the original plans and specifications of the project could require additional authorization from this office.

This determination is applicable only to the permit program administered by the US Army Corps of Engineers. It does not eliminate the need to obtain other applicable Federal, State, Tribal and local permits as required. Within 30 days after completion of the authorized work, you are required to sign the enclosed Compliance Certification page and return it to this office.

In accordance with General Condition 27, you must comply with the following special conditions:

1. The permittee shall comply and implement the Horizontal Directional Drilling Installation Plan included in the Pre-Construction Notification (PCN) and any subsequent addendums. The plans were included in the application package that was

submitted, including the Horizontal Direction Drilling Installation Plan, dated August 10, 2020, Revision 2.

2. Nationwide Permit General Condition No. 12 of the attached Nationwide Permit Fact Sheet states: "Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides".

3. Removal of vegetation, including trees located in or adjacent to waters of the United States, shall be limited to that which is absolutely necessary for construction of this project. All woody debris shall be removed to an upland, non-wetland site.

4. The applicant shall notify the District Engineer if extra workspace areas used for equipment and material staging and spoil storage are located in waters of the U.S. not previously identified in the application or design plans.

5. WBI Energy Transmission is responsible for insuring that whoever performs, supervises, or oversees any portion of the physical work associated with the construction of the project has a copy of, is familiar with, and complies with all the terms and conditions of this permit.

6. The permittee must receive written approval from the District Engineer before proceeding with any alternative installation methods that are not described in the previously submitted plans with your application. For example, if you are unable to directionally drill under Lake Sakakawea or other previously designated waterways, you must provide written notification to our office and receive approval for any alternative method. This may require a new permit review and an Individual Permit.

7. The permittee understands and agrees that if future operation by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

8. The facility shall not prohibit or interfere with future work, construction of weirs, or dikes, undertaken by the United States Government for navigation purposes.

9. The permitted structures shall be removed, at no cost to the United States Government, when deemed necessary for actions required by the United States Government (bankline repairs, construction of new structures, dredging, etc.).

10. Nationwide Permit General Condition No. 21 of the attached Nationwide Permit Fact Sheet states: "Permittees that discover any previously unknown historic, cultural or archaeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places"

WBI Energy Transmission is responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit, including the Regional Conditions specific to projects undertaken in North Dakota. If a contractor or other authorized representative will be accomplishing the work authorized by this Nationwide Permit on their behalf, it is recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

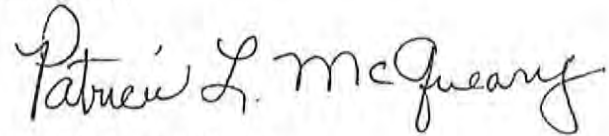
This verification will be valid until **March 14, 2026**. If the nationwide permit is modified, suspended, or revoked prior to this date, but is reissued without modification or the activity complies with any subsequent modification, this authorization remains valid until the expiration date. All of the other remaining nationwide permits are scheduled to be modified, reissued, or revoked prior to March 18, 2022. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice when the nationwide permits are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions.

The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey). If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.



If you have any questions concerning this determination, please contact Mr. Jason Renschler of this office by letter or telephone at (701) 255-0015 ext. 2010 and reference project identification number **NWO-2019-525-BIS**.

Sincerely,

A handwritten signature in black ink that reads "Patricia L. McQueary". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Patricia L. McQueary  
State Program Manager  
North Dakota

Enclosures:

- Fact Sheet #12
- Compliance Certification



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## Nationwide Permit 12: Utility Line Activities (2021)

Activities required for the construction, maintenance, repair, and removal of oil and natural gas pipelines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

*Oil or natural gas pipelines:* This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of oil and natural gas pipelines. There must be no change in pre-construction contours of waters of the United States. An "oil or natural gas pipeline" is defined as any pipe or pipeline for the transportation of any form of oil or natural gas, including products derived from oil or natural gas, such as gasoline, jet fuel, diesel fuel, heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

*Oil or natural gas pipeline substations:* This NWP authorizes the construction, maintenance, or expansion of substation facilities (e.g., oil or natural gas or gaseous fuel custody transfer stations, boosting stations, compression stations, metering stations, pressure regulating stations) associated with an oil or natural gas pipeline in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

*Foundations for above-ground oil or natural gas pipelines:* This NWP authorizes the construction or maintenance of foundations for above-ground oil or natural gas pipelines in all waters of the United States, provided the foundations are the minimum size necessary.

*Access roads:* This NWP authorizes the construction of access roads for the construction and maintenance of oil or natural gas pipelines, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of



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non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize oil or natural gas pipelines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Oil or natural gas pipelines routed in, over, or under section 10 waters without a discharge of dredged or fill material may require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the oil or natural gas pipeline activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

*Notification:* The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) A section 10 permit is required; (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States; or (3) the proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (vs. conduct repair or maintenance activities) along the majority of the distance of the overall project length. If the proposed oil or gas pipeline is greater than 250 miles in length, the pre-construction notification must include the locations and proposed impacts (in acres or other appropriate unit of measure) for all crossings of waters of the United States that require DA authorization, including those crossings authorized by an



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NWP would not otherwise require pre-construction notification. (See general condition 32.) (Authorities: Sections 10 and 404)

*Note 1:* Where the oil or natural gas pipeline is constructed, installed, or maintained in navigable waters of the United States (*i.e.*, section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the oil or natural gas pipeline to protect navigation.

*Note 2:* For oil or natural gas pipeline activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Oil or natural gas pipeline activities must comply with 33 CFR 330.6(d).

*Note 3:* Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the oil or natural gas pipeline must be removed upon completion of the work, in accordance with the requirements for temporary fills.

*Note 4:* Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such oil or natural gas pipelines will require a section 404 permit (see NWP 15).

*Note 5:* This NWP authorizes oil or natural gas pipeline maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

*Note 6:* For NWP 12 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

## **General Conditions**

### **1. Navigation.**

(a) No activity may cause more than a minimal adverse effect on navigation.



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(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

## **2. Aquatic Life Movements.**

No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

## **3. Spawning Areas.**

Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

## **4. Migratory Bird Breeding Areas.**

Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

## **5. Shellfish Beds.**

No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

## **6. Suitable Material.**

No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).



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## **7. Water Supply Intakes.**

No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

## **8. Adverse Effects From Impoundments.**

If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

## **9. Management of Water Flows.**

To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (*e.g.*, stream restoration or relocation activities).

## **10. Fills Within 100-Year Floodplains.**

The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

## **11. Equipment.**

Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

## **12. Soil Erosion and Sediment Controls.**

Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

## **13. Removal of Temporary Structures and Fills.**

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.



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#### **14. Proper Maintenance.**

Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

#### **15. Single and Complete Project.**

The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

#### **16. Wild and Scenic Rivers.**

(a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

#### **17. Tribal Rights.**

No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

#### **18. Endangered Species.**

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or



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critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with





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“incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac/> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

## **19. Migratory Birds and Bald and Golden Eagles.**

The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

## **20. Historic Properties.**

(a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.



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(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify



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the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

## **21. Discovery of Previously Unknown Remains and Artifacts.**

Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

## **22. Designated Critical Resource Waters.**

Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity



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proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

### **23. Mitigation.**

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.*, on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement,



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maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory



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mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

## **24. Safety of Impoundment Structures.**

To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with



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established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

## **25. Water Quality.**

(a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

## **26. Coastal Zone Management.**

In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

## **27. Regional and Case-By-Case Conditions.**

The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.



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## **28. Use of Multiple Nationwide Permits.**

The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

## **29. Transfer of Nationwide Permit Verifications.**

If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

## **30. Compliance Certification.**

Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:





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(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

### **31. Activities Affecting Structures or Works Built by the United States.**

If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

### **32. Pre-Construction Notification.**

(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or



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(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.
- (ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete



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crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide



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documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms



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and conditions of the NWP, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

### **District Engineer's Decision**

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that



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will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) That the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's



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submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

### **Further Information**

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).



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**Regional Conditions  
Omaha District  
State of North Dakota**

The following Nationwide permit (NWP) regional conditions will be used in the State of North Dakota for NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58. Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment to address local resources concerns.

**A. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO ALL NWPS FOR LIMITED REVOCATION OF NWPS**

For all NWPs, permittees must notify the Corps in accordance with General Condition 32 Preconstruction Notification (PCN) requirements for regulated activities located within or comprised of the following:

**1. Wetlands Classified as Peatlands:**

For purposes of this condition, peatlands are permanently or seasonally waterlogged areas with a surface accumulation of peat (organic matter) 30 centimeters (12-inches) or more thick. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Any peat-covered areas, including fens, bogs, and muskegs, are all peatlands.

- a. Reserved
- b. All NWPs listed above are revoked for use in peatlands.

**2. Waters Adjacent to Natural Springs:**

PCN required for any regulated activity located within 100 feet of the water source in natural spring areas. For purposes of this condition, a spring source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source. Springs do not include drain tile outlets.

**3. Bank Stabilization Activities:**

PCN required for any regulated activity that involves bank stabilization impacting an area greater than 1/10 of an acre below the Ordinary High Water Mark or includes features that extend out from the existing bank line greater than 25% of the bankfull channel width.

**4. Specific Waterways:**

PCN required for any regulated activity occurring in or under the Missouri River, including Lake Sakakawea and Lake Oahe. In addition, a PCN is required for any activity occurring in an off channel area (e.g. marinas and bays) of any of these waterways.



**B. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO SPECIFIC NWP.**

5. Reserved

**C. BEST MANAGEMENT PRACTICES**

**Best Management Practices**

In addition to Regional Conditions 1 through 5, additional required best management practices apply to NWPs within the Omaha District. These follow and are available at: <https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nation-Wide-Permit-Information/>



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**2021 Nationwide Permits  
Regional Conditions  
Omaha District  
Required Best Management Practices**

The following Nationwide Permit (NWP) regional condition best management practices are required for Montana, Nebraska, North Dakota, South Dakota, and Wyoming in the Omaha District for NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58. Regional conditions are placed on Nationwide Permits to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns.

**A. REQUIRED BEST MANAGEMENT PRACTICE APPLICABLE TO MONTANA,  
NEBRASKA, NORTH DAKOTA, SOUTH DAKOTA, AND WYOMING**

**1. Suitable Material**

Permittees are reminded of General Condition No. 6 which prohibits use of unsuitable material. A list of materials prohibited or restricted as fill material in waters of the United States can be found at:

<http://www.nwo.usace.army.mil/Media/FactSheets/FactSheetArticleView/tabid/2034/Article/12320/prohibited-restricted-materials.aspx>

**B. NORTH DAKOTA REQUIRED BEST MANAGEMENT PRACTICES**

**2. Minimum Culvert Width:**

For all NWPs in jurisdictional streams, the culvert opening width of a stream crossing shall not be less than the mean bank to bank width as measured from the Ordinary High Water Mark in the affected stream reach. In stable stream channels, the Ordinary High Water Mark is often found at the point where over-bank flow begins during a flood event. In incised stream channels that do not frequently access a floodplain or upper terrace, the Ordinary High Water Mark is generally located within the entrenched channel. The Ordinary High Water Mark may be identified by observing indicators such as a distinct change in slope, a change in vegetation characteristics, or a change in sediment characteristics, see 33 CFR 328.3(e).

**3. Culvert Countersink Depth:**

For all NWPs in jurisdictional streams and a stable stream bed, culvert stream crossings shall be installed with the culvert invert set below the natural stream channel flow line according to the table below. This regional condition does not apply in instances where lowering of the culvert invert would allow a headcut to migrate upstream of the project into an unaffected stream reach or the result in lowering the elevation of the stream reach.

<b>Culvert Type</b>	<b>Drainage Area</b>	<b>Minimum Distance Culvert Invert Shall Be Lowered Below Stream Flow Line</b>
All culvert types	<100 acres	Not required
Pipe diameter <8.0 ft	100 to 640 acres	0.5 ft
Pipe diameter <8.0 ft	>640 acres	1.0 ft
Pipe diameter >8.0 ft	All drainage sizes	20% of pipe diameter
Box culvert	All drainage sizes	1.0 ft

a. The stream flow line shall be defined as the longitudinal average of the low flow stream channel.

b. The slope of the culvert should be parallel to the slope of the stream flow line.

c. The culvert invert depression depth shall be measured at the culvert for culverts installed at a slope less than the slope of the stream flow line.

#### **4. Spawning Areas:**

Spawning areas and seasons can be accessed on the North Dakota Game and Fish Department's website at: <http://gf.nd.gov/gnf/conservation/docs/spawning-restriction-exclusions.pdf>

#### **5. Intake Structures:**

a. Intake screens with a maximum mesh opening of ¼-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed ½-foot per second.

b. Pumping plant sound levels will not exceed 75 dB at 50 feet.

c. Intakes located in Lake Sakakawea, above river mile 1519, and on the Yellowstone River, are subject to the following conditions:

i. The intakes shall be floating.

ii. At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.

iii. If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.

iv. If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to ¼-foot per second.

d. Intakes located in Lake Sakakawea, below river mile 1519, and the Missouri River below Garrison Dam are subject to the following conditions:

- i. The intakes shall be submerged.
- ii. At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
- iii. The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
- iv. If the 20-foot depth is not attainable, then the intake velocity shall be limited to ¼-foot per second with intake placed at the maximum practicable attainable depth.
- e. Intakes and associated Utility lines that are proposed to cross sandbars in areas designated as piping plover critical habitat are prohibited.
- f. Any temporary open trench associated with utility lines are to be closed within 30 days of excavation. This time limit may be extended by notifying the North Dakota Regulatory Office and receiving a written response that the extension is acceptable.

**6. Boat Docks:**

To ensure that the work or structure shall not cause unreasonable obstruction to the free navigation of the navigable waters, the following conditions are required:

- a. No boat dock shall be located on a sandbar or barren sand feature. The farthest point riverward of a dock shall not exceed a total length of 30 feet from the Ordinary High Water Mark. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.
- b. Any boat dock shall be anchored to the top of the high bank.
- c. Any boat dock located within an excavated bay or marina that is off the main river channel may be anchored to the bay or marina bottom with spuds.
- d. Section 10 Waters located in the State of North Dakota area:
  - i. Bois de Sioux River
  - ii. James River Missouri River
  - iii. Red River of the North
  - iv. Upper Des Lacs Lake
  - v. Yellowstone River



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**2021 Nationwide Permits  
Regional Conditions  
State of North Dakota  
Section 401 Water Quality Certification**

The following Nationwide permit (NWP) regional conditions pertaining to Section 401 Water Quality Certification (WQC) will be used in the State of North Dakota for NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58.

The Environmental Protection Agency is responsible for providing WQC for activities that occur on Indian Lands in the State of North Dakota.

The North Dakota Department of Environmental Quality is responsible for providing WQC for Section 404 activities that occur in the State of North Dakota, excluding Indian Lands.

WQC by NWP follows:

- **NWP 12 – Oil or Natural Gas Pipeline Activities**
  - EPA denied for all activities.
  - NDDEQ denied for activities affecting Class I, IA, II and III rivers and streams, and classified lakes listed in Appendixes I and II of the State Water Quality Standards and certified for activities affecting all other waters in the State.
- **NWP 21 – Surface Coal Mining Activities**
  - EPA denied for all activities.
  - NDDEQ certified for all activities.
- **NWP 29 – Residential Developments**
  - EPA denied for all activities.
  - NDDEQ certified with the condition that the project will not result in a stream bank loss exceeding 300 linear feet in Class I, IA, II and III rivers and streams. Projects that cannot meet the condition will require an individual certification.
- **NWP 39 – Commercial and Institutional Developments**
  - EPA denied WQC for all activities.
  - NDDEQ certified with the condition that the project will not result in a stream bank loss or relocation of 150 linear feet of any river or stream. Projects that cannot meet the condition will require an individual certification.
- **NWP 40 – Agricultural Activities**
  - EPA denied WQC for all activities.
  - NDDEQ certified with the condition that the project will not result in a stream bank loss or relocation of 150 linear feet of any river or stream. Projects that cannot meet the condition will require an individual certification.
- **NWP 42 – Recreational Facilities**
  - EPA denied WQC for all activities.

-NDDEQ certified with the condition that the project will not result in a stream bank loss or relocation of 150 linear feet of any river or stream. Projects that cannot meet the condition will require an individual certification.

- **NWP 43 – Stormwater Management Facilities**

- EPA denied WQC for all activities.
  - NDDEQ certified for all activities.

- **NWP 44 – Mining Activities**

- EPA denied WQC for all activities.
  - NDDEQ certified for all activities.

- **NWP 48 – Commercial Shellfish Mariculture Activities**

- EPA waived WQC for all activities.
  - NDDEQ certified for all activities.

- **NWP 50 – Underground Coal Mining Activities**

- EPA denied WQC for all activities.
  - NDDEQ certified for all activities.

- **NWP 51 – Land-Based Renewable Energy Generation Facilities**

- EPA denied for all activities.
  - NDDEQ certified for all activities.

- **NWP 52 – Water-Based Renewable Energy Generation Pilot Projects**

- EPA denied WQC for all activities.
  - NDDEQ certified with the condition that a copy of the PCN is provided to NDDEQ for projects in, over or under Class I, IA, II and III rivers and streams, and classified lakes for compliance purposes.

- **NWP 55 – Seaweed Mariculture Activities**

- EPA denied WQC for all activities.
  - NDDEQ N/A

- **NWP 56 – Finfish Mariculture Activities**

- EPA denied WQC for all activities.
  - NDDEQ N/A

- **NWP 57 – Electric Utility Line and Telecommunications Activities**

- EPA denied for all activities.
  - NDDEQ certified for all activities.

- **NWP 58 – Utility Line Activities for Water and Other Substances**

- EPA denied WQC for all activities.
  - NDDEQ certified with the condition that the lines do not carry oil and gas production water, produced water, or brine water. Pipelines that carry oil or gas production water,

produced water, or brine water, collectively called saltwater pipelines, in, over or under Class I, IA, II and III rivers and streams, and classified lakes require individual certification with conditions based on the specific waterbody, location on the water, type of construction, and safety controls applied prior, during, or after construction.

# Attachment B



UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

WBI Energy Transmission, Inc.      )

Docket Nos. CP20-52-000  
CP20-52-001


**AFFIRMATIVE STATEMENT**

In compliance with Ordering Paragraph B(4) of the June 1, 2021 “Order Issuing Certificate” in the above-referenced dockets, the undersigned hereby affirms that the parties have executed firm service agreements for volumes and service terms equivalent to those in the precedent agreements filed as Exhibit I to WBI Energy’s February 14, 2020 Abbreviated Application for a Certificate of Public Convenience and Necessity and Supplemental Market Data to Exhibit I filed October 23, 2020 for the North Bakken Expansion Project.

Dated this, 30<sup>th</sup> day of June, 2021.

By   
Rob L. Johnson  
Executive Vice President, Commercial

Subscribed and sworn to before me this 30<sup>th</sup> day of June, 2021.

  
Carmen Fish, Notary Public  
Burleigh County, North Dakota  
My Commission Expires: 01/03/2024

