



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

July 15, 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
Variance Request for Project Modifications

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 July 8, 2021, the Commission authorized WBI Energy to proceed with construction of all Project facilities.

Pursuant to Environmental Condition No. 5 of the Order, WBI Energy is hereby submitting a Level 3 variance request to modify Project survey protocols for migratory birds and piping plovers due to a mid- to late-July construction commencement (V30). A project variance request form and attachment are included with this filing and provides the information required for FERC staff to review and approve the request.

WBI Energy respectfully requests approval of this variance request by Monday, July 19, 2021 in order to continue with Project work in this area.

Pursuant to 18 CFR § 385.2010 of the Commission's regulations, copies of this filing is being served to each person whose name appears on the official service list for this proceeding.

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 15th day of July 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

North Bakken Expansion Project Variance Request Form



Variance Request Number: V30

Anticipated Variance Level (1, 2, or 3): 3 (project-wide)

Date Approval Needed: 7/19/2021

Date Submitted to FERC: 7/15/2021

Date FERC Approved: TBD

FERC Approval No.: TBD

Request Prepared By: Tina Lyons, ERM	Landowner: N/A
Pipeline/Facility: Project-wide	Tract Number: N/A
Spread: Project-wide	
County(ies): Project-wide	In or within 50 feet of a wetland? N/A
Milepost(s): N/A	
Net Acreage Affected: N/A	In or within 50 feet of a waterbody? N/A
Current Land Use/ Vegetative Cover: N/A	In or within 50 feet of another environmentally sensitive area? N/A

Description of Nearby Features/Resources (Wetland, Waterbody, T&E Habitat, Invasive Species Area, Residence, Cultural Site, etc. [include distance(s)]):
 N/A

Variance From: Permit Plan/Procedure Workspace Drawing Mitigation Measure Other

Detailed Description of Variance: Attachments? Yes No Number of Attachments: 1




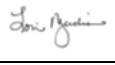
WBI Energy is requesting modifications to the project survey protocols for migratory birds and piping plovers. These changes have been approved by the U.S. Fish and Wildlife Service (USFWS) and are documented in the call log and email correspondence attached to this variance request form.

For migratory birds, WBI Energy proposes to conduct one single comprehensive nesting bird survey in mid- to late-July prior to initiating construction. If nests are identified during surveys, WBI Energy would stop work up to 0.1 mile from the nest and would resume when chicks have fledged or the nest has failed. The USFWS has concurred that a single comprehensive survey would be adequate to document presence/ absence of active nests within the project area because most upland bird species will have fledged by mid- to late-July; therefore, any nests identified within the project area will likely be inactive.

For piping plover, WBI Energy proposes to implement the 2019 USFWS piping plover survey guidelines received via email from USFWS staff on September 5, 2019. This guidance states, **"If mobilization, equipment staging, and construction activities are initiated between July 15 and August 31, surveys should be performed for 3 days during the week prior to equipment staging, if no piping plovers are seen; there are no further survey requirements."** USFWS staff confirmed via email on July 13, 2021 that this guidance is still applicable and can be implemented by WBI Energy for the project. This guidance is included in the attached correspondence.

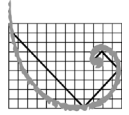
Variance Justification:

Because construction activities are not starting until mid- to late-July, most upland bird species will have fledged; therefore, any migratory bird nests identified within the project area will likely be inactive. Therefore, one single comprehensive nesting bird survey in mid- to late-July should be sufficient to document presence/absence of active nests. Additionally, the late start of construction activities meets the USFWS 2019 piping plover survey guidelines described above and provided in the attached correspondence pertaining to mobilization, equipment staging, and construction activities initiated between July 15 and August 31. These survey protocol changes were approved by the USFWS on June 25, 2021 and July 13, 2021 (see attached call log, email correspondence, and piping plover survey guidelines).


For WBI Energy Use Only			
Additional Surveys Required		Surveyed Corridor Description	Additional Surveys Completed
Cultural Survey:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No
T&E Survey:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No
Wetland/Waterbody:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No
Filed Survey Report(s) Documenting Survey Coverage (include FERC accession number(s)):			
This variance request is for project-wide modifications to migratory bird and piping plover survey protocols and does not involve a request for additional workspace.			
Sign-off (as appropriate)	Name (print)	Approval Signature	Conditions or Notes (See Attached)
Project Manager	Dave Linn		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Engineering	Allison Stephens		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Land Agent *			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Environmental Manager	Jill Linn		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Regulatory Affairs	Lori Myerchin		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Lead Environmental Inspector **	N/A		<input type="checkbox"/> Yes <input type="checkbox"/> No
Third Party Compliance Monitor	N/A		<input type="checkbox"/> Yes <input type="checkbox"/> No
Third Party Compliance Manager	N/A		<input type="checkbox"/> Yes <input type="checkbox"/> No
Other – Position:	N/A		<input type="checkbox"/> Yes <input type="checkbox"/> No
*Where request would affect areas outside of previously approved work areas, signature denotes approval gained from affected landowner(s) **Or designated Environmental Inspector for facility(ies)			
VARIANCE CONDITIONS OR NOTES			
Name: Wade Nielson		Title: Land Agent	Organization: WBI Energy Transmission, Inc.
Conditions or Notes: No landowner approval is required as all surveys would occur within approved work areas.			
Name:		Title:	Organization:
Conditions or Notes:			
Name:		Title:	Organization:
Conditions or Notes:			
Name:		Title:	Organization:
Conditions or Notes:			

Call Log

Log of Telephone Conversation



ERM

Call To/From Whom	To: Jerry Reinisch
Phone number	(701) 425-2133
Company	U.S. Fish and Wildlife Service (USFWS)
ERM Contact	Justin Moffett
Phone number	(971) 645-9941
Date	06/25/2021
Time of Conversation	3:00 pm PST
Reference	North Bakken Expansion Project – Pre-construction surveys for piping plover and migratory bird surveys
Signature	

LOG OF CONVERSATION

Mr. Moffett contacted Jerry Reinisch to discuss the required scope of pre-construction surveys for piping plover and migratory birds.

- **Plover surveys**- Mr. Reinisch stated U.S. Fish and Wildlife Service (FWS) requires 7 consecutive days of survey prior to construction. When I asked about the FWS survey guidelines stating 3 days of survey is adequate if construction begins after July 15, he said he had never heard of any FWS guidance allowing only 3 days of survey. He also stated that the water level in Lake Sakakawea is very low this year and shore birds (including piping plovers) are very abundant. That said, surveys are only focused on nesting birds (not birds foraging through the area) and any young should be hatched and fully fledged by August 1. If any nesting birds or eggs are observed during pre-construction surveys he recommends calling him and U.S. Army Corps of Engineers to discuss what (if any) additional monitoring may be needed to document that the birds have hatched and fledged prior to starting construction.
 - **UPDATE:** Following my call with Mr. Reinisch, I located a September 5, 2019 email (attached) from his colleague Jessica Johnson at FWS containing the Agency's survey piping plover survey guidelines. The guidelines state "*If mobilization, equipment staging, and construction activities are initiated between July 15 and August 31, surveys should be performed for 3 days during the week prior to equipment staging, if no piping plovers are seen; there are no further survey requirements.*" I emailed Mr. Reinisch and Ms. Johnson on July 12, 2021 requesting they confirm if the 2019 guidance is still valid. Ms. Johnson responded via email on July 13, 2021 confirming the guidance is valid.

- **Migratory birds**- I explained to Mr. Reinisch that WBI Energy would like to conduct a single comprehensive nesting bird survey in mid- to late-July prior to initiating construction. Mr. Reinisch agreed that a single comprehensive survey would be adequate to document presence/absence of active nests within the project area. He stated that most upland bird species will have fledged by mid- to late-July, therefore any nests identified within the project area will likely be inactive. However, if any active nests are observed during the mid- to late-July survey in areas where planned construction activities will not occur until August or September, he recommends visiting those nests again prior to initiating construction activities to confirm they are abandoned for the season.

Andrea Thornton

From: Justin Moffett
Sent: Tuesday, July 13, 2021 7:10 AM
To: Johnson, Jessica N; Reinisch, Jerry D; Becker, Drew N
Cc: Tina Lyons; Andrea Thornton; Linn, Jill (Jill.Linn@wbienergy.com)
Subject: RE: [EXTERNAL] FW: North Bakken- Piping Plover survey guidelines

Thank you Jessica.

Justin T. Moffett, PWS
Principal Consultant

Environmental Resources Management (ERM)

O 971-279-6922 **M** 971-645-9941

E Justin.Moffett@erm.com | **W** www.erm.com

Read [ERM's 2020 Sustainability Report](#) and [Foundation Annual Review 2020](#)

From: Johnson, Jessica N <jessica_n_johnson@fws.gov>
Sent: Tuesday, July 13, 2021 7:08 AM
To: Justin Moffett <Justin.Moffett@erm.com>; Reinisch, Jerry D <jerry_reinisch@fws.gov>; Becker, Drew N <Drew_Becker@fws.gov>
Cc: Tina Lyons <Tina.Lyons@erm.com>; Andrea Thornton <Andrea.Thornton@erm.com>; Linn, Jill (Jill.Linn@wbienergy.com) <Jill.Linn@wbienergy.com>
Subject: RE: [EXTERNAL] FW: North Bakken- Piping Plover survey guidelines

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Justin,

Yes, you can use the August 28, 2019 document. We will be meeting with the Corps this fall to discuss our buffers, dates, etc., so the guidance might change after that.

-Jessica

Jessica Johnson
Environmental Contaminants Specialist
U.S. Fish and Wildlife Service
3425 Miriam Avenue
Bismarck, ND 58501
Phone: 701-355-8507
Cell: 720-626-5250

From: Justin Moffett <Justin.Moffett@erm.com>
Sent: Monday, July 12, 2021 6:08 PM
To: Reinisch, Jerry D <jerry_reinisch@fws.gov>; Johnson, Jessica N <jessica_n_johnson@fws.gov>
Cc: Tina Lyons <Tina.Lyons@erm.com>; Andrea Thornton <Andrea.Thornton@erm.com>; Linn, Jill

(Jill.Linn@wbienergy.com) <Jill.Linn@wbienergy.com>

Subject: [EXTERNAL] FW: North Bakken- Piping Plover survey guidelines

Importance: High

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Hi Jerry,

I wanted to circle back with you about our conversation on June 25 where I inquired about FWS guidance on piping plover surveys. Specifically I asked whether FWS guidance allowed for just 3 days of pre-construction surveys, instead of 7 days, if construction activities begin after July 15. You said you were not aware of any such guidance. However, when I dug back through my files I discovered the email below and attached document that Jessica Johnson sent us after our August 28, 2019 project meeting in Bismarck. The guidance Jessica provided does in fact state that "*If mobilization, equipment staging, and construction activities are initiated between July 15 and August 31, surveys should be performed for 3 days during the week prior to equipment staging, if no piping plovers are seen; there are no further survey requirements*".

Can you please confirm that this guidance is still valid? If this guidance has been revised since 2019, can you please provide an updated version?

We would appreciate a prompt response as WBI is preparing an information submittal to the FERC.

Thank you.

Justin T. Moffett, PWS

Principal Consultant

Environmental Resources Management (ERM)

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E Justin.Moffett@erm.com | **W** www.erm.com

Read [ERM's 2020 Sustainability Report](#) and [Foundation Annual Review 2020](#)

From: Jessica Johnson <jessica_n_johnson@fws.gov>

Sent: Thursday, September 5, 2019 8:10 AM

To: Justin Moffett <Justin.Moffett@erm.com>; Jerry Reinisch <jerry_reinisch@fws.gov>; Scott Larson <scott_larson@fws.gov>

Cc: Linn, Jill <Jill.Linn@wbienergy.com>; Huncovsky, Greg <Greg.Huncovsky@wbienergy.com>; Andrea Thornton <Andrea.Thornton@erm.com>; Leslie Rodman-Jaramillo <leslie.rodmanjaramillo@erm.com>

Subject: RE: [EXTERNAL] WBI Energy: North Bakken Expansion ESA Consultation Mtg Notes

Hello,

Attached are our piping plover survey guidelines.

-Jessica

Jessica Johnson

Environmental Contaminants Specialist

U.S. Fish and Wildlife Service
3425 Miriam Avenue
Bismarck, ND 58501
Phone: 701-355-8507
Cell: 720-626-5250

From: Justin Moffett <Justin.Moffett@erm.com>
Sent: Tuesday, September 03, 2019 12:53 PM
To: Jerry D. Reinisch (jerry_reinisch@fws.gov) <jerry_reinisch@fws.gov>; Jessica Johnson (jessica_n_johnson@fws.gov) <jessica_n_johnson@fws.gov>; Scott Larson (scott_larson@fws.gov) <scott_larson@fws.gov>
Cc: Linn, Jill (Jill.Linn@wbienergy.com) <Jill.Linn@wbienergy.com>; Huncovsky, Greg <Greg.Huncovsky@WBIEnergy.com>; Andrea Thornton <Andrea.Thornton@erm.com>; Leslie Rodman-Jaramillo <leslie.rodmanjaramillo@erm.com>
Subject: [EXTERNAL] WBI Energy: North Bakken Expansion ESA Consultation Mtg Notes

Jerry, Jessica, and Scott,
Attached are Jill's and my notes from our meeting last Wednesday (8/28). Please review them and let us know if you have any comments or additional information to add.
Thank you.

Justin T. Moffett, PWS
Principal Consultant

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In order to reduce the likelihood of disturbing nesting piping plovers, the applicant has proposed that if construction occurs during breeding season (April 1 to August 31), a qualified wildlife biologist will survey all sandbars and shoreline within a ½ mile or line of sight (whichever is the shorter distance) from the project area. We recommend surveys be performed during daylight hours, for minimum two hour survey periods, beginning one half-hour prior to sunrise. Evening surveys should end approximately one half-hour after sunset.

If construction commences between April 1 and July 15, surveys should be performed daily for 7 days prior to mobilization, equipment staging, and construction. Daily survey periods should occur at different 2-hr periods of each day and if no piping plovers are seen the frequency may be reduced to once a week (Monday morning) in the event that no construction activities occur during the weekend. Monday morning surveys may cease after the end of the nest initiating period (July 15). If construction will occur for 7 days per week, from sunrise to sunset, then no further survey work is required once construction commences and if plovers were not detected during the 7-day preconstruction survey period.

If mobilization, equipment staging, and construction activities are initiated between July 15 and August 31, surveys should be performed for 3 days during the week prior to equipment staging, if no piping plovers are seen; there are no further survey requirements.

Monitoring is not required for construction activities occurring outside the April 1 to August 31 timeframe or if the sandbars and shoreline are inundated with water. If piping plovers are observed within ½ mile or line of sight of the Project, work must cease and the Service must be contacted immediately. Work cannot resume or commence until individuals leave the site or it is determined there is no risk for disturbance. The surveys provide assurance that adverse effects to piping plovers would avoided or minimized during construction.