



Fargo office: 4334 18th Avenue S.W.
Suite 200, P.O. Box 9156
Fargo, ND
58106-9156
Fax: 701-232-4108

Fergus Falls office: 215 S. Cascade Street
P.O. Box 496
Fergus Falls, MN
56538-0496
Fax: 218-998-3165

1-866-410-8780 • www.ottertail.com

RECEIVED

January 12, 2010

JAN 12 2010

Reply to Fergus Falls office
Direct: 218-998-7152

PUBLIC SERVICE COMMISSION

VIA OVERNIGHT MAIL

Mr. Darrell Nitschke
Director of Administration / Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard Avenue
Bismarck, ND 58505-0480

Re: Otter Tail Power Company
230 kV Electric Transmission Line - Sargent Cty
Siting Application
Case No. PU-09-674

Dear Mr. Nitschke:

Enclosed for filing, please find an original and ten copies of Otter Tail's Application for Waiver of Procedures and Time Schedules and check in the amount of \$5,000 in regards to the above-referenced matter. Also enclosed is an Affidavit of Gary Welharticky.

If you have any questions, please feel free to contact me at any time.

Sincerely,

Mark B. Bring
Associate General Counsel
MBB/nlo

Enclosures

4 **PU-09-674** Filed: 1/12/2010 Pages: 65
**Application for Consolidated Application, Time
Schedule / Waiver of Procedures**

Otter Tail Power Company

Mark B. Bring, Assoc. Gnl. Counsel

Nasdaq: OTTR

STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION

**Otter Tail Power Company,
230 kV Transmission Line - Sargent Cty
Siting Application**

Case No. PU-09-674

APPLICATION FOR WAIVER OF PROCEDURES AND TIME SCHEDULES

BACKGROUND

Pursuant to NDCC § 49-22-07.1 and NDAC chapter 69-06-03, on September 23, 2009, Otter Tail Power Company submitted a letter of intent to reroute a portion of Otter Tail Power Company's Hankinson-Ellendale 230 kilovolt transmission line in Sargent County. The Commission was requested to waive the requirement in NDAC § 69-06-03-01 that the letter of intent precede, by one year, the filing of an application for a certificate of corridor compatibility.

On September 30, 2009, Otter Tail wrote the state agencies and officers entitled by NDAC § 69-06-01-05 to notice of jurisdictional transmission facility routing plans, as well as the U.S. Fish & Wildlife Service, the U.S. Army Corps of Engineers, and the U.S. Department of Agriculture – Natural Resources Conservation Service, requesting by October 19, 2009 comments or suggestions regarding the proposed reroute.

Otter Tail received numerous replies. Several agency responses made recommendations with which Otter Tail would be able to abide, if required.

On November 30, 2009, Otter Tail again wrote the U.S. Army Corps of Engineers, seeking permission for the project. The U.S. Army Corps of Engineers on January 5, 2010 authorized Otter Tail to proceed with the proposed project in accordance with the terms and conditions of the Department of Army Nationwide Permit No. 12, found in the March 12, 2007 Federal Register (72 FR 11092), Reissuance of Nationwide Permits.

Taken together, the agency responses suggest no adverse effect or significant impact on the environment, or upon the welfare of the citizens of North Dakota, from Otter Tail's proposed reroute. Furthermore, both of the landowners from whom easement rights are necessary to construct the proposed reroute have been contacted, and as of July 10, 2009, each agreed to provide easements to Otter Tail for the reroute.

On October 14, 2009, the Commission unanimously agreed to waive the requirement in NDAC § 69-06-03-01 that the letter of intent precede, by one year, the filing of an application for a certificate of corridor compatibility. The Commission also assessed a filing fee of \$5,000.00 due upon filing of an application.

APPLICATION

Pursuant to NDCC § 49-22-07.2, NDAC chapter 69-06-06, and the Commission's Energy Conversion and Transmission Facility Siting Application Guidelines for Waiver of Procedures and Time Schedules (November 1979) (hereinafter, "Application Guidelines"), Otter Tail now files this Application for a Waiver of Procedures and Time Schedules on the bases that the proposed reroute justifies findings that the "length, design, location, or purpose ... will produce minimal adverse effects" and "that a demonstrable emergency exists which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility's system" under NDCC § 49-22-07.2.

Otter Tail further requests, pursuant to NDCC §§ 49-22-07.2 and 49-22-13, that the Commission waive the requirement of the filing of an application for a certificate of corridor compatibility and route permit, and the requirement of a public hearing, and forthwith issue a certificate and route permit with such conditions as the Commission may require.

A. DESCRIPTION

The Hankinson-Ellendale 230 kV transmission line is approximately 83.8 miles in length. The transmission facility is an integral component of the 230 kV transmission system, integrating baseload electric generation at the Big Stone Plant in eastern South Dakota and the Hoot Lake Plant in western Minnesota, and wind generation in southeastern North Dakota; and serving retail load in southeastern North Dakota, northeastern South Dakota, and western Minnesota. Otter Tail is proposing to reroute only a 0.53 mile portion near Fiala Lake in Sargent County, west and south of Forman in Section 14, Township 130 North (Forman), Range 56 West. A map showing the location of the proposed facility was attached to the Letter of Intent filed in this docket. The 0.53 mile portion of the Hankinson-Ellendale 230 kV transmission line to be rerouted consists of K-framed wood structures, which would likely be replaced by H-framed wood or steel structures.

The anticipated construction and operation schedule for the proposed reroute is February-May 2010, dates that minimize the probability of a line outage due to spring ice floes.

There are presently no immediate plans for future expansion of the proposed 0.53 miles of facility. However, there may be other portions of the 83.8 mile Hankinson-Ellendale 230 kV transmission line affected by high water conditions which may in the future require reroute.

B. NEED FOR FACILITY

The Application Guidelines call for an analysis of the need for the proposed facility based on present and projected demand for the product or products to be produced by the proposed facility, including the most recent system studies supporting the analysis of the need; a description of any feasible alternative methods of serving the need; a statement justifying any deviations from the most recent Ten-Year Plan which the proposed facility may present.

The need for the proposed facility is strictly as a mechanism to preserve Otter Tail's existing ability to integrate generation to serve load. There are no other feasible alternative methods of serving the need. The deviation from the ten-year planning horizon is necessary on account of the emergency condition of the existing facility.

C. COST

The estimated total cost of construction is \$260,000.

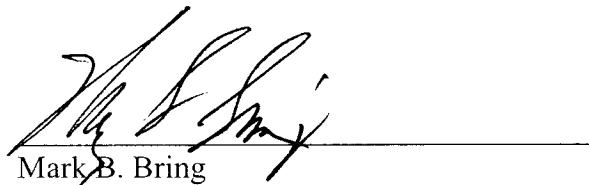
D. WAIVER REQUEST

Because Otter Tail has demonstrated that the proposed reroute is of such a length, design, location, and purpose that it will produce minimal adverse effects, and because Otter Tail has further demonstrated that compliance with the procedures and time schedules of the Act and rules promulgated pursuant to it would jeopardize Otter Tail's system, Otter Tail requests that the Commission waive the requirement of the filing of an application for a certificate of corridor compatibility and route permit, and the requirement of a public hearing, and forthwith issue a certificate and route permit with such conditions as the Commission may require.

Date: 1/12/2010

Respectfully submitted:

OTTER TAIL POWER COMPANY



Mark B. Bring
Otter Tail Corporation
Associate General Counsel
215 South Cascade Street
Fergus Falls, MN 56537
Phone (218) 998-7152

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Otter Tail Power Company,
230 kV Transmission Line – Sargent Cty
Siting Application**

Case No. PU-09-674

AFFIDAVIT OF GARY WELHARTICKY

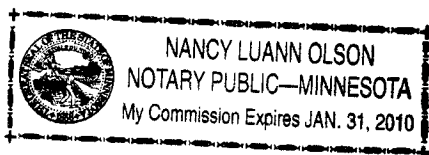
1. I am employed by Otter Tail Power Company as Transmission Maintenance Specialist, and I make this affidavit on the basis of my own personal knowledge and belief as to the matters contained herein.
2. Otter Tail has provided retail electric service in North Dakota since 1909.
3. Otter Tail is a Minnesota corporation duly authorized to do business in the State of North Dakota as a foreign corporation, and is doing business in the State of North Dakota as a public utility subject to the jurisdiction of and regulation by the Commission under NDCC Title 49, as amended.
4. The proposed project is accurately depicted in the attachments to the Letter of Intent and the Application for Waiver of Procedures & Time Schedules filed with the Commission in this case.
5. Attached hereto as Exhibit A are photographs taken June 5, 2009, which accurately depict the fragile condition of the existing facility on that date.
6. Based on my professional experience, I believe the effect of high water conditions, seasonal ice action and high winds during spring months, in conjunction with the fragile condition of the existing facility, constitute an emergency that requires immediate construction of the proposed reroute, and that adherence to the procedures and time schedules typically required by North Dakota law may jeopardize Otter Tail's 230 kV high-voltage network.
7. The anticipated construction and operation schedule for the proposed reroute is February-May 2010, dates that minimize the probability of a line outage due to spring ice floes.
8. Attached as Exhibit B hereto are copies of easements Otter Tail has acquired from each of the two landowners from whom easement rights will be necessary to construct the proposed reroute.
9. Attached hereto as Exhibit C is a copy of a September 30, 2009 letter sent by Otter Tail to each of the state agencies and officers entitled to notice under NDAC article 69-06, and to the U.S. Fish & Wildlife Service, the U.S. Army Corps of Engineers, and the U.S. Department of Agriculture – Natural Resources Conservation Service.

10. Attached hereto as Exhibit D are responses received by Otter Tail to the letter referenced in paragraph 9.
11. Attached hereto as Exhibit E is a copy of a November 30, 2009 letter and application for a department of the Army permit for the project sent by Otter Tail to the U.S. Army Corps of Engineers
12. Attached hereto as Exhibit F is a response received by Otter Tail to the letter and application referenced in paragraph 11, authorizing Otter Tail to proceed with the proposed project in accordance with the terms and conditions of the Department of Army Nationwide Permit No. 12, found in the March 12, 2007 Federal Register (72 FR 11092), Reissuance of Nationwide Permits.
13. Based on my professional experience, the agency responses appear to disavow any concern that the proposed reroute will have an adverse effect or significant impact on the environment, or upon the welfare of the citizens of North Dakota, and these findings appear to be accurate and well-founded. Moreover, Otter Tail would be willing to abide by recommendations made in agency responses, if required by the Commission.


Name

Subscribed and sworn to before me this 12 day of January, 2010.

(NOTARIAL SEAL)





Notary Public

EXHIBIT A

Otter Tail's photographs of the existing facility

Dated: June 5, 2009





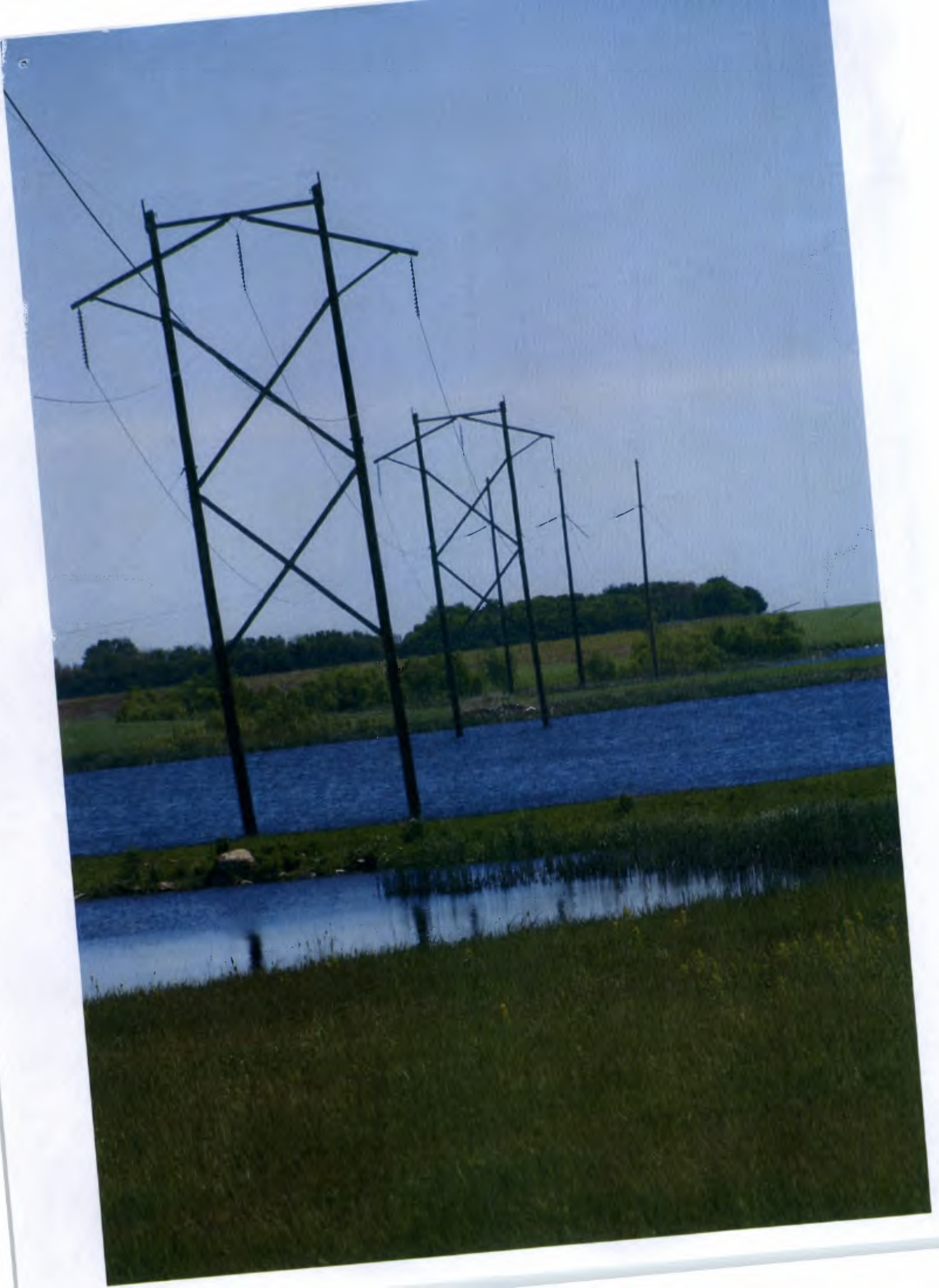
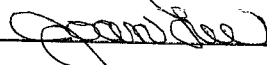


EXHIBIT B

Otter Tail's Right of Way Easements

OFFICE OF COUNTY RECORDER
State of North Dakota)
County of Sargent)

I hereby certify that the within instrument was filed in this office for record on 9/30/2009 at 10:10 AM, and was duly recorded as Document Number 146649


Recorder
By _____ Deputy

Fee: \$ 13.00 OTTER TAIL POWER COMPANY LAND MANAGER
PO BOX 496 FERGUS FALLS, MN 56538-0496

RECORDED
INDEXED
COMPARED



This instrument was drafted by
OTTER TAIL POWER COMPANY
215 South Cascade
Fergus Falls, Minnesota 56537
218-739-8200

RIGHT OF WAY EASEMENT

Easement No. **109188**
W. O. No. **103807**

KNOW ALL MEN BY THESE PRESENTS, That the undersigned **David J. Fiala, a single person, of Forman, North Dakota**, (hereinafter called the Grantor), in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, do(es) hereby grant and warrant unto the **Otter Tail Power Company**, a Minnesota corporation, of Fergus Falls, Minnesota, (hereinafter called Otter Tail), and its successors and assigns, a right of way and easement for a period of Ninety nine (99) years, for the construction, operation, maintenance, increase in capacity, repair or removal of electric transmission line, or distribution lines both overhead or underground including the pole structures, crossarms, wires, guy wires, braces, anchors, and other fixtures and fiber optics communication apparatus in connection therewith, together with the right to permit the attachment of other wires to the poles or in a common trench for purposes of telecommunication or cable communication systems; to be located within a strip of land **120 feet wide**, along, upon, under, over, and across the following described real property situated in the **County of Sargent, and State of North Dakota**, to wit:

The Northwest Quarter (NW1/4) of Section Fourteen (14), Township One Hundred Thirty (130), Range Fifty Six (56).

The location of the centerline of the strip of land to be located more specifically as follows:

Commencing at the west quarter corner of Section Fourteen (14), Township One Hundred Thirty (130), Range Fifty Six (56), thence northerly along the west section line of said Section 14 for a distance of 258.70 feet to the point of beginning; thence north 89 degrees 56 minutes 37 seconds east for a distance of 96.05 feet; thence north 77 degrees 59 minutes 30 seconds east for a distance of 2009.2 feet; thence south 58 degrees 43 minutes 39 seconds east for a distance of 671.22 feet and terminating at the quarter section line.

The Grantor also hereby grants to Otter Tail, its successors and assigns, the right and authority to cut down, top, trim, or by mechanical or chemical methods, eliminate any trees or shrubbery within 60 feet of the above-described centerline which, in the opinion of Otter Tail, may be now or in the future necessary for the construction, operation, and maintenance of said electric transmission line.

Grantor reserves the right to cultivate, use, and occupy said land, except that without the prior written approval of Otter Tail, the Grantor shall not erect any structures, hay, or straw stacks, or other objects permanent or temporary, except fences, or plant any trees thereon.

OFFICE OF COUNTY RECORDER
State of North Dakota)
County of Sargent)

I hereby certify that the within instrument was filed in this office for record on 9/30/2009 at 10:05 AM, and was duly recorded as Document Number 146648

By [Signature] Recorder
By [Signature] Deputy

Fee: \$ 13.00 OTTER TAIL POWER COMPANY LAND MANAGER
PO BOX 496 FERGUS FALLS, MN 56538-0496

RECORDED
INDEXED
COMPARED



This instrument was drafted by
OTTER TAIL POWER COMPANY
215 South Cascade
Fergus Falls, Minnesota 56537
218-739-8200

RIGHT OF WAY EASEMENT

Easement No. **109187**
W. O. No. **103807**

KNOW ALL MEN BY THESE PRESENTS, That the undersigned **Doris Armistead, a single person, of Fargo, North Dakota**, (hereinafter called the Grantor), in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, do(es) hereby grant and warrant unto the **Otter Tail Power Company**, a Minnesota corporation, of Fergus Falls, Minnesota, (hereinafter called Otter Tail), and its successors and assigns, a right of way and easement for a period of Ninety nine (99) years, for the construction, operation, maintenance, increase in capacity, repair or removal of electric transmission line, or distribution lines both overhead or underground including the pole structures, crossarms, wires, guy wires, braces, anchors, and other fixtures and fiber optics communication apparatus in connection therewith, together with the right to permit the attachment of other wires to the poles or in a common trench for purposes of telecommunication or cable communication systems; to be located within a strip of land **120 feet wide**, along, upon, under, over, and across the following described real property situated in the **County of Sargent, and State of North Dakota**, to wit:

The Northeast Quarter (NE1/4) of Section Fourteen (14), Township One Hundred Thirty (130), Range Fifty Six (56).

The location of the centerline of the strip of land to be located more specifically as follows:

Commencing at the north quarter corner of Section Fourteen (14), Township One Hundred Thirty (130), Range Fifty Six (56), thence south along the quarter section line of said Section 14 for a distance of 2254.14 feet to the point of beginning; thence south 58 degrees 43 minutes 39 seconds east for a distance of 139 feet and there terminating.

The Grantor also hereby grants to Otter Tail, its successors and assigns, the right and authority to cut down, top, trim, or by mechanical or chemical methods, eliminate any trees or shrubbery within 60 feet of the above-described centerline which, in the opinion of Otter Tail, may be now or in the future necessary for the construction, operation, and maintenance of said electric transmission line.

Grantor reserves the right to cultivate, use, and occupy said land, except that without the prior written approval of Otter Tail, the Grantor shall not erect any structures, hay, or straw stacks, or other objects permanent or temporary, except fences, or plant any trees thereon.

The Grantor also hereby grants to Otter Tail, and it agents, the right of ingress and egress

over and across the land adjacent to the above-described property, by means of existing field roads and lanes, if any, otherwise, by the use of the most reasonable and feasible route, together with the right to locate such guy wires and anchors as may be necessary outside of the above-described strip.

It is mutually understood and agreed that this grant of easement covers all of the agreements and stipulations between the parties hereto and that no representation or verbal statements have been made, modifying, adding to, or changing the terms hereof.

The Grantor covenants with Otter Tail, its successors and assigns, that the Grantor is the owner of the lands described herein, and has good right to sell and convey an easement in the manner and form aforesaid.

IN WITNESS WHEREOF, The Grantor has signed this grant of easement this 10th day of July, 2009.

Doris Armistead
Doris Armistead

STATE OF North Dakota
COUNTY OF Cass)SS

On this 10th day of July, 2009, before me a Notary Public, personally appeared **Doris Armistead**, a single person, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that she executed the same as her free act and deed.



Notary Public Jenean Baumann
County of Cass State of North Dakota
My Commission Expires Feb. 1st, 2013

EXHIBIT C

Otter Tail's Letter to State Agencies and Officers Entitled to Notice

Dated: September 30, 2009



Fargo office:	Fergus Falls office:
4334 18th Avenue S.W.	215 S. Cascade Street
Suite 200, P.O. Box 9156	P.O. Box 496
Fargo, ND	Fergus Falls, MN
58106-9156	56538-0496
Fax: 701-232-4108	Fax: 218-998-3165

1-866-410-8780 • www.ottetail.com

September 30, 2009

**Reply to Fergus Falls office
Direct: 218-998-7152**

Mr. Paul Govig
North Dakota Community Service Director
1600 East Century Avenue, Suite 2
PO Box 2057
Bismarck, ND 58502-2057

Dear Mr. Govig:

Otter Tail Power Company is proposing to reroute a small portion of the 83.8 mile Hankinson-Ellendale 230 kilovolt transmission line that runs through Fiala Lake in Sargent County. This is to request your comments or suggestions about the reroute, relative to your agency's areas of authority.

The reroute would involve only a 0.53 mile portion of transmission line in Sargent County, west and south of Forman in Section 14 in Township 130 North (Forman), Range 56 West. The portion to be rerouted consists of K-framed wood structures, which would likely be replaced by H-framed wood or steel structures.

Since the transmission facilities were constructed in 1966, the surface area of Fiala Lake has developed and significantly increased. Two structures that at one time were only in a low-lying area are now surrounded by the lake. During spring, the structures are exposed to large ice floes. Recurring seasonal ice pressure on these structures warrants prompt action to avoid a power emergency.

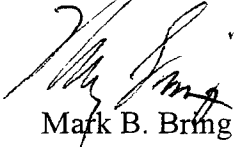
The enclosed map depicts the proposed route. The proposed corridor is one-half mile on either side of the proposed route. The anticipated construction and operation schedule is February-May of 2010.

The Hankinson-Ellendale transmission facility is an integral component of the 230 kV transmission system, integrating baseload electric generation at the Big Stone Plant in eastern South Dakota and the Hoot Lake Plant in western Minnesota, and wind generation in southeastern North Dakota; and serving retail load in southeastern North Dakota, northeastern South Dakota, and western Minnesota. In light of the urgency of this matter, input on the proposal is requested by October 19, 2009.

September 30, 2009
Page 2

Thank you for your attention to this matter. If you have any questions, please feel free to contact me at (218) 998-7152.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark B. Bring". The signature is written in a cursive style with a large initial "M".

Mark B. Bring
Associate General Counsel
MBB:nlo

Enclosure

Mr. Larry Taborsky, Director
North Dakota Aeronautics Commission
PO Box 5020
Bismarck, ND 58502-5020

Mr. Wayne Stenehjem, Attorney General
North Dakota Office of Attorney
General
600 E. Boulevard Ave.
Dept. 125
Bismarck, ND 58505

Mr. Doug Goehring
Agriculture Commissioner
ND Department of Agriculture
600 E Boulevard Ave. Dept. 602
Bismarck, ND 58505-0020

Mr. Francis G. Ziegler, P.E.
Director
ND Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700

Mr. Paul Lucy, Director
ND Department of Commerce
Economic Development & Finance
Division
P.O. Box 2057
Bismarck, ND 58502-2057

Mr. Wayne Kutzer
Director & Executive Officer
Department of Career & Technical
Education
State Capitol 15th Floor
600 East Boulevard Avenue, Dept. 270
Bismarck, ND 58505-0610

Mr. Terry Steinwand, Director
North Dakota Game and Fish
Department
100 N. Bismarck Expressway
Bismarck, ND 58501-5095

Mr. Lynn D. Helms, Director
North Dakota Department of Mineral
Resources Geological Survey
600 East Boulevard Avenue
Bismarck, ND 58505-0840

Dr. Terry Dwelle
State Health Officer
North Dakota Department of Health
600 East Boulevard Avenue
Bismarck, N.D. 58505-0200

Mr. Albert I. Berger, President
State Historical Society of ND
612 East Boulevard Avenue
Bismarck, ND 58505

Ms. Carol K. Olson, Executive Director
Department of Human Services
600 East Boulevard Avenue, Dept 325
Bismarck, N.D. 58505-0250

Mr. Scott Davis, Executive Director
NDIAC Affairs Commission
600 East Boulevard Avenue
1st Floor - Judicial Wing, Room 117
Bismarck, ND 58505-0300

Ms. Maren Daley, Executive Director
Job Service North Dakota
PO Box 5507
Bismarck, ND 58506-5507

Ms. Lisa K. Fair McEvers
Commissioner of Labor
600 East Boulevard Avenue, Dept 406
Bismarck, ND 58505-0340

Mr. Gary Preszler, Land Commissioner
ND State Land Department
1707 North 9th Street
P. O. Box 5523
Bismarck, ND 58506-5523

Ms. Pam Sharp, Director
ND Office of Management & Budget
600 East Blvd. Ave., Dept. 110
Bismarck, ND 58505-0400

Mr. Douglass A. Prchal, Director
ND Parks and Recreation Department
1600 E. Century Avenue, Suite 3
Bismarck, ND 58503

Mr. Scott Hochhalter
Soil Conservation Specialist
ND State Soil Conservation Committee
2718 Gateway Avenue, Unit #104
Bismarck, ND 58503

Mr. Dan Cimarosti, State Program
Manager
U.S. Army Corps of Engineers
1513 S. 12th St.
Bismarck, ND 58504

Mr. John Glover
Acting State Conservationist
USDA – NRCS
220 East Rosser Avenue
P.O. Box 1458
Bismarck, ND 58502-1458

Mr. Jeffrey Towner
Field Supervisor
U. S. Fish & Wildlife Service
3425 Miriam Ave.
Bismarck, ND 58501-7926

Mr. Dale Frink, State Engineer
North Dakota State Water Commission
900 East Boulevard Avenue, Dept 770
Bismarck, ND 58505-0850

The Honorable John Hoeven
Office of Governor John Hoeven
State of North Dakota
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0001

Mr. Paul Govig
North Dakota Community Service
Director
1600 East Century Avenue, Suite 2
PO Box 2057
Bismarck, ND 58502-2057

EXHIBIT D

Responses to Otter Tail's Letter to
State Agencies and Officers Entitled to Notice



North Dakota Department of Transportation

Francis G. Ziegler, P.E.
Director

John Hoeven
Governor

October 14, 2009

Mark B. Bring
Associate General Counsel
Ottetail Corporation
P.O. Box 9156
Fargo, ND 58106-9156

REROUTE AND REPLACE TRANSMISSION, DICKEY AND RICHLAND COUNTIES,
HANKINSON AND ELLENDALE, NORTH DAKOTA

We have reviewed your September 30, 2009, letter.

This project should have no adverse effect on the North Dakota Department of Transportation (NDDOT) highways; however, if the utilities cross a state highway, are along the state highway, or in accordance to N.D.C.C. 24-01-42 placed within 100 feet of the highway centerline, a permit will need to be obtained from NDDOT.

Additionally, if because of this project any work needs to be done on highway right-of-way, appropriate permits and risk management documents will need to be obtained from the Department of Transportation District Engineers, John Thompson at 701-845-8800 and Robert Walton at 701-239-8903.

RONALD J. HENKE, P.E - DIRECTOR, OFFICE OF PROJECT DEVELOPMENT

57:rjh:js

c: John Thompson, Valley City District Engineer
Bob Walton, Fargo District Engineer



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
1513 SOUTH 12TH STREET
BISMARCK ND 58504-6640

October 19, 2009

North Dakota Regulatory Office

[NWO-2009-2510-BIS]

Otter Tail Power Company
Attn: Mark. B. Bring, Associate General Counsel
215 South Cascade Street
P.O. Box 496
Fergus Falls, Minnesota 56538-0496

OCT 22 2009

Dear Mr. Bring:

This is in response to a letter received October 2, 2009 requesting Department of the Army, U.S. Army Corps of Engineers (Corps) comments regarding the reroute of the 83.8 mile Hankinson-Ellendale 230 kilovolt transmission line that runs through Fiala Lake in Sergeant County and in particular, the reroute of 0.53 mile portion of the transmission line west and south of Forman, North Dakota in Section 14, Township 130 North, Range 56 West.

Corps regulatory offices administer Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. Section 10 of the Rivers and Harbors Act regulates work impacting navigable waters. Work over, in, or under navigable waters is considered to have an impact. Section 404 of the Clean Water Act regulates the discharge of dredge or fill material (temporarily or permanently) in waters of the United States. Waters of the United States may include, but are not limited to, rivers, streams, ditches, coulees, lakes, ponds, and their adjacent wetlands. Fill material includes, but is not limited to, rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mines or other excavation activities and materials used to create any structure or infrastructure in the waters of the United States.

Please submit a location map and completed Corps permit application (copy enclosed) describing all proposed work and construction methodology, to the letterhead address if a Section 10/404 permit is required.

Do not hesitate to contact this office by letter or telephone (701-255-0015) if we can be of further assistance.

Sincerely,

Daniel E. Cimarosti
Regulatory Program Manager
North Dakota

Enclosure

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT
(33 CFR 325)

OMB APPROVAL NO. 0710-0003
EXPIRES: 31 August 2012

Public reporting burden for this collection of information is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters, Executive Services and Communications Directorate, Information Management Division and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please **DO NOT RETURN** your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers; Final Rule 33 CFR 320-332. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This Information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of a public notice as required by Federal law. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued. One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE
--------------------	----------------------	------------------	------------------------------

(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME: First - Middle - Last - Company - E-mail Address -	8. AUTHORIZED AGENT'S NAME AND TITLE (an agent is not required) First - Middle - Last - Company - E-mail Address -
--	---

6. APPLICANT'S ADDRESS. Address - City - State - Zip - Country -	9. AGENT'S ADDRESS Address - City - State - Zip - Country -
--	---

7. APPLICANT'S PHONE NOS. W/AREA CODE. a. Residence b. Business c. Fax	10. AGENT'S PHONE NOS. W/AREA CODE a. Residence b. Business c. Fax
---	---

STATEMENT OF AUTHORIZATION

11. I hereby authorize, _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

APPLICANT'S SIGNATURE

DATE

NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions)

13. NAME OF WATERBODY, IF KNOWN (if applicable)

14. PROJECT STREET ADDRESS (if applicable)

Address

15. LOCATION OF PROJECT

City -

State -

Zip -

Latitude: °N
Longitude: °W

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions)

State Tax Parcel ID Municipality
Section - Township - Range -

17. DIRECTIONS TO THE SITE

18. Nature of Activity (Description of project, include all features)

19. Project Purpose (Describe the reason or purpose of the project, see instructions)

USE BLOCKS 20-23 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards:

Type	Type	Type
Amount in Cubic Yards	Amount in Cubic Yards	Amount in Cubic Yards

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)

Acres
Or
Liner Feet

23. Description of Avoidance, Minimization, and Compensation (see instructions)

24. Is Any Portion of the Work Already Complete? Yes No IF YES, DESCRIBE THE COMPLETED WORK

25. Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody (if more than can be entered here, please attach a supplemental list).

Address --
City -- State -- Zip --

26. List of Other Certifications or Approvals/Denials Received from other Federal, State, or Local Agencies for Work Described in This Application.

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED
--------	----------------	-----------------------	--------------	---------------	-------------

* Would include but is not restricted to zoning, building, and flood plain permits

27. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT

DATE

SIGNATURE OF AGENT

DATE

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

Block 20. Reasons for Discharge. If the activity involves the discharge of dredged and/or fill material into a wetland or other waterbody, including the temporary placement of material, explain the specific purpose of the placement of the material (such as erosion control).

Block 21. Types of Material Being Discharged and the Amount of Each Type in Cubic Yards. Describe the material to be discharged and amount of each material to be discharged within Corps jurisdiction. Please be sure this description will agree with your illustrations. Discharge material includes: rock, sand, clay, concrete, etc.

Block 22. Surface Areas of Wetlands or Other Waters Filled. Describe the area to be filled at each location. Specifically identify the surface areas, or part thereof, to be filled. Also include the means by which the discharge is to be done (backhoe, dragline, etc.). If dredged material is to be discharged on an upland site, identify the site and the steps to be taken (if necessary) to prevent runoff from the dredged material back into a waterbody. If more space is needed, attach an extra sheet of paper marked Block 22.

Block 23. Description of Avoidance, Minimization, and Compensation. Provide a brief explanation describing how impacts to waters of the United States are being avoided and minimized on the project site. Also provide a brief description of how impacts to waters of the United States will be compensated for, or a brief statement explaining why compensatory mitigation should not be required for those impacts.

Block 24. Is Any Portion of the Work Already Complete? Provide any background on any part of the proposed project already completed. Describe the area already developed, structures completed, any dredged or fill material already discharged, the type of material, volume in cubic yards, acres filled, if a wetland or other waterbody (in acres or square feet). If the work was done under an existing Corps permit, identify the authorization, if possible.

Block 25. Names and Addresses of Adjoining Property Owners, Lessees, etc., Whose Property Adjoins the Project Site. List complete names and full mailing addresses of the adjacent property owners (public and private) lessees, etc., whose property adjoins the waterbody or aquatic site where the work is being proposed so that they may be notified of the proposed activity (usually by public notice). If more space is needed, attach an extra sheet of paper marked Block 24.

Information regarding adjacent landowners is usually available through the office of the tax assessor in the county or counties where the project is to be developed.

Block 26. Information about Approvals or Denials by Other Agencies. You may need the approval of other federal, state, or local agencies for your project. Identify any applications you have submitted and the status, if any (approved or denied) of each application. You need not have obtained all other permits before applying for a Corps permit.

Block 27. Signature of Applicant or Agent. The application must be signed by the owner or other authorized party (agent). This signature shall be an affirmation that the party applying for the permit possesses the requisite property rights to undertake the activity applied for (including compliance with special conditions, mitigation, etc.).

DRAWINGS AND ILLUSTRATIONS

General Information.

Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map, a Plan View or a Typical Cross-Section Map. Identify each illustration with a figure or attachment number.

Please submit one original, or good quality copy, of all drawings on 8½ x11 inch plain white paper (electronic media may be substituted). Use the fewest number of sheets necessary for your drawings or illustrations.

Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view, or cross-section). **While illustrations need not be professional (many small, private project illustrations are prepared by hand), they should be clear, accurate, and contain all necessary information.**

United States Department of Agriculture



Natural Resources Conservation Service
P.O. Box 1458
Bismarck, ND 58502-1458

October 15, 2009

Mark B. Bring
Associate General Counsel
Ottertail Corporation
215 S. Cascade Street
P.O. Box 496
Fergus Falls, MN 56538-0496

OCT 22 2009

RE: Reroute Otter Tail Power Line Hankinson-Ellendale, small portion above ground transmission lines. Reroute around Fiala Lake, Sargent County, ND

The Natural Resources Conservation Service (NRCS) has reviewed your letter concerning the proposed construction of rerouting 0.53 miles of overhead transmission line around Fiala Lake in Sargent County. We offer the following comments based on the information you provided to us for these projects:

- 1. To the extent possible, all natural drainage patterns should be maintained. Land use that may be affected during construction should be returned to the original land use cover.
- 2. Avoid construction through wetlands whenever possible to minimize environmental impacts. The local Natural Resources Conservation Service (NRCS) District Conservationist in each county can provide wetland inventory maps as needed. Nearby wetlands could be affected by sedimentation due to erosion during construction. Erosion control measures should be in effect during all periods of construction.
- 3. This project should have no significant impact on existing soil and water conservation practices in the area.

NRCS has a major responsibility with the Farmland Protection Policy Act (FPPA) in documenting conversion of farmland (i.e., prime, statewide importance and local importance) to non agriculture use. Your proposed project does not convert important farmland; therefore, FPPA does not apply and no further action is needed.

Thank you for the opportunity to review and comment on this project. Should you require additional information, discussion, or clarification, please contact Donald E. Felch at 701-530-2023.

Sincerely,

A handwritten signature in black ink, appearing to read "John Glover".

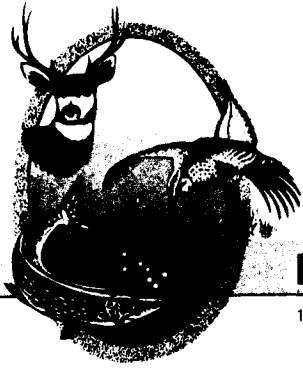
ACTING

JOHN GLOVER
Acting State Conservationist

cc:

Thomas L. Jones, DC, NRCS, Forman, ND
Michael D. Collins, ASTC (FO), Devils Lake, ND

OCT 15 2009



"VARIETY IN HUNTING AND FISHING"

NORTH DAKOTA GAME AND FISH DEPARTMENT

100 NORTH BISMARCK EXPRESSWAY BISMARCK, NORTH DAKOTA 58501-5095 PHONE 701-328-6300 FAX 701-328-6352

October 13, 2009

Mark B. Bring
Associate General Counsel
Otter Tail Corporation
PO Box 496
Fergus Falls, MN 56538-0496

Dear Mr. Bring:

RE: Hankinson-Ellendale 230-kV Transmission Line
Fiala Lake Reroute

The North Dakota Game and Fish Department has reviewed this project for wildlife concerns.

The National Wetland Inventory indicates various wetlands within the proposed project corridor. We recommend that steps be taken to protect any wetlands that cannot be avoided, above-ground appurtenances not be placed in wetland areas, and existing drainage patterns be maintained.

We recommend that overhead lines be marked when sited in close proximity to large wetland complexes to minimize possible avian impacts. The publication "Mitigating Bird Collisions with Power Lines: the State of the Art in 1994" provides a range of management options which can be used to reduce avian collisions.

We do not believe this project will have any significant adverse effects on wildlife or wildlife habitat provided impacts to wetland areas are avoided or replaced in kind and disturbed areas are reclaimed to pre-project conditions.

Sincerely,

A handwritten signature in black ink that reads "Steve Ryke". The signature is written in a cursive, flowing style.

(for) Michael G. McKenna
Chief
Conservation & Communication Division

js



Community Services Economic Development & Finance Tourism Workforce Development

October 13, 2009

OCT 15 2009

Mark B. Bring
Associate General Counsel
Ottertail Corporation
215 S. Cascade Street
Fergus Falls, MN 56538-0496

RE: Rerouting of the Hankinson-Ellendale 230 kilovolt transmission line running through Fiala Lake in Sargent County, North Dakota.

Dear Mr. Bring:

This office supports reroute of the transmission line in the above referenced project in light of the transmission lines importance to integrating both baseload and wind generated power in southeast North Dakota into the electrical grid.

While we are not aware of any environmental property, concerns, or issues within the boundaries of the proposed project, we would defer to the North Dakota Game & Fish Department, the ND Parks & Recreation Department, the State Historical Society of North Dakota, and the North Dakota Health Department for their input. According to your letter it appears you have already initiated this process.

The North Dakota Public Service Commission is the authority which issues permits for locating power plant and transmission lines within the state.

With regards to land use, approvals are granted by the local land use/zoning authorities.

Sincerely,

Paul Govig, Director
ND Division of Community Services

sk

We lead North Dakota's efforts to attract, retain and expand wealth.



October 8, 2009

Mr. Mark B. Bring
Associate General Counsel
Otter Tail Corporation
P.O. Box 496
Fergus Falls, MN 56538-0496

OCT 14 2009

Re: Rerouting a 0.53 Mile Portion of the Hankinson-Ellendale Transmission Line
Sec 14, T 130N, R 56W, Sargent County, North Dakota

Dear Mr. Bring:

This department has reviewed the information concerning the above-referenced project submitted to Dr. Terry Dwelle under date of September 30, 2009, with respect to possible environmental impacts.

This department believes that environmental impacts from the proposed construction will be minor and can be controlled by proper construction methods. With respect to construction, we have the following comments:

1. All necessary measures must be taken to minimize fugitive dust emissions created during construction activities. Any complaints that may arise are to be dealt with in an efficient and effective manner.
2. Care is to be taken during construction activity near any water of the state to minimize adverse effects on a water body. This includes minimal disturbance of stream beds and banks to prevent excess siltation, and the replacement and revegetation of any disturbed area as soon as possible after work has been completed. Caution must also be taken to prevent spills of oil and grease that may reach the receiving water from equipment maintenance, and/or the handling of fuels on the site. Guidelines for minimizing degradation to waterways during construction are attached.
3. Projects disturbing one or more acres are required to have a permit to discharge storm water runoff until the site is stabilized by the reestablishment of vegetation or other permanent cover. Further information on the storm water permit may be obtained from the Department's website or by calling the Division of Water Quality (701-328-5210). Also, cities may impose additional requirements and/or specific best management practices for construction affecting their storm drainage system. Check with the local officials to be sure any local storm water management considerations are addressed.

Mr. Mark Bring

2.

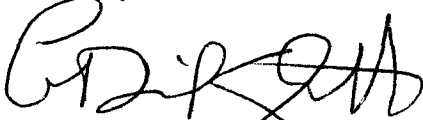
October 8, 2009

The department owns no land in or adjacent to the proposed improvements, nor does it have any projects scheduled in the area. In addition, we believe the proposed activities are consistent with the State Implementation Plan for the Control of Air Pollution for the State of North Dakota.

These comments are based on the information provided about the project in the above-referenced submittal. The U.S. Army Corps of Engineers may require a water quality certification from this department for the project if the project is subject to their Section 404 permitting process. Any additional information which may be required by the U.S. Army Corps of Engineers under the process will be considered by this department in our determination regarding the issuance of such a certification.

If you have any questions regarding our comments, please feel free to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "L. David Glatt", written over a circular stamp.

L. David Glatt, P.E., Chief
Environmental Health Section

LDG:cc
Attach.



Construction and Environmental Disturbance Requirements

These represent the minimum requirements of the North Dakota Department of Health. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect the waters of the State of North Dakota. All projects will be designed and implemented to restrict the losses or disturbances of soil, vegetative cover, and pollutants (chemical or biological) from a site.

Soils

Prevent the erosion of exposed soil surfaces and trapping sediments being transported. Examples include, but are not restricted to, sediment dams or berms, diversion dikes, hay bales as erosion checks, riprap, mesh or burlap blankets to hold soil during construction, and immediately establishing vegetative cover on disturbed areas after construction is completed. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, or land resources will be protected against compaction, vegetation loss, and unnecessary damage.

Surface Waters

All construction which directly or indirectly impacts aquatic systems will be managed to minimize impacts. All attempts will be made to prevent the contamination of water at construction sites from fuel spillage, lubricants, and chemicals, by following safe storage and handling procedures. Stream bank and stream bed disturbances will be controlled to minimize and/or prevent silt movement, nutrient upsurges, plant dislocation, and any physical, chemical, or biological disruption. The use of pesticides or herbicides in or near these systems is forbidden without approval from this Department.

Fill Material

Any fill material placed below the high water mark must be free of top soils, decomposable materials, and persistent synthetic organic compounds (in toxic concentrations). This includes, but is not limited to, asphalt, tires, treated lumber, and construction debris. The Department may require testing of fill materials. All temporary fills must be removed. Debris and solid wastes will be removed from the site and the impacted areas restored as nearly as possible to the original condition.

John Hoeven
Governor

Lisa K. Fair McEvers
Commissioner



State Capitol - 13th Floor
600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

nd.gov/labor
nd.gov/humanrights

October 5, 2009

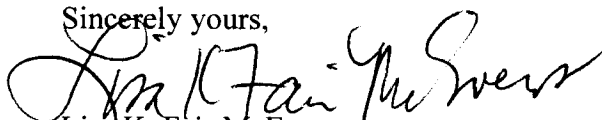
Mr. Mark B. Bring
Associate General Counsel
Otter Tail Corporation
215 S. Cascade Street
P.O. Box 496
Fergus Falls, MN 56538

Dear Mr. Bring,

Thank you for your letter of September 30, 2009, requesting input on a proposed reroute of a portion of a transmission line in Sargent County. The North Dakota Department of Labor enforces wage and hours laws, investigates allegations of discrimination in employment, housing, public services, public accommodations and credit transactions.

The Department of Labor has no authority to issue any permits regarding land or environmental concerns, and can offer no input on your proposal.

Sincerely yours,


Lisa K. Fair McEvers
Commissioner

OCT 08 2009



www.jobsnd.com

John Hoeven, Governor • Maren L. Daley, Executive Director

PO Box 5507 • Bismarck, ND 58506-5507

October 5, 2009

Mr. Mark B. Bring
Associate General Counsel
215 S. Cascade Street
P.O. Box 496
Fergus Falls, Minnesota 56538-0496

RE: Proposed Hankinson-Ellendale Project
Sargent County, North Dakota

Dear Mr. Bring:

Job Service North Dakota administers the employment service and unemployment insurance programs.

We have no comments regarding the proposed project and have no applicable permits that are required from Job Service North Dakota.

Sincerely,

A handwritten signature in cursive script that reads "Maren Daley".

Maren Daley
Executive Director

OCT 08 2009



**STATE
HISTORICAL
SOCIETY
OF NORTH DAKOTA**

John Hoeven
Governor of North Dakota

**North Dakota
State Historical Board**

Chester E. Nelson, Jr.
Bismarck - President

Gereld Gerntholz
Valley City - Vice President

Richard Kloubec
Fargo - Secretary

Albert I. Berger
Grand Forks

Calvin Grinnell
New Town

Diane K. Larson
Bismarck

A. Ruric Todd III
Jamestown

Sara Otte Coleman
*Director
Tourism Division*

Kelly Schmidt
State Treasurer

Alvin A. Jaeger
Secretary of State

Douglass Prchal
*Director
Parks and Recreation
Department*

Francis Ziegler
*Director
Department of Transportation*

Merlan E. Paaverud, Jr.
Director

*Accredited by the
American Association
of Museums*

October 2, 2009

Mr. Mark Bring
Associate General Counsel
215 South Cascade Street
PO Box 496
Fergus Falls, MN 56538-0496

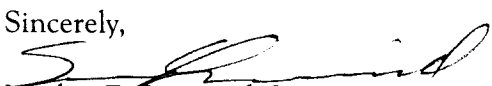
ND SHPO REF: 10-0011 .53 mile re-route of the Hankinson-Ellendale 230 kV transmission line in a portion of NW ¼ [T130N R56W Section 14] Sargent County, North Dakota

Dear Mr. Bring,

We reviewed ND SHPO REF: 10-0011 .53 mile re-route of the Hankinson-Ellendale 230 kV transmission line in a portion of NW ¼ [T130N R56W Section 14] Sargent County, North Dakota. We concur with a "No Historic Properties Affected" determination, provided the project is of the nature specified and in the mapped location.

Thank you for the opportunity to review this project. If you have any questions please contact Susan Quinnell, Review and Compliance Coordinator at (701) 328-3576, e-mail squinnell@nd.gov

Sincerely,


Merlan E. Paaverud, Jr.
State Historic Preservation Officer (North Dakota)
and
Director
State Historical Society of North Dakota

OCT 07 2009



John Hoeven, Governor
Douglass A. Prehal, Director
1600 East Century Avenue, Suite 3
Bismarck, ND 58503-0649
Phone 701-328-5357
Fax 701-328-5363
E-mail parkrec@nd.gov
www.parkrec.nd.gov

October 12, 2009

Mark B. Bring
Ottetail Corporation
P.O. Box 496
Fergus Falls, MN 56538-0496

OCT 23 2009

Re: Transmission Line Reroute Proposal

Dear Mr. Bring:

The North Dakota Parks and Recreation Department has reviewed the above referenced project proposal to reroute a portion of the Hankinson-Ellendale transmission line located in Section 14, T130N, R56W, Sargent County.

Our agency scope of authority and expertise covers recreation and biological resources (in particular rare species and ecological communities). The project as defined does not affect state park lands that we manage or Land and Water Conservation Fund recreation projects that we coordinate.

The North Dakota Natural Heritage biological conservation database has been reviewed to determine if any plant or animal species of concern or other significant ecological communities are known to occur within an approximate one-mile radius of the project area. Based on this review, there are no known occurrences within or adjacent to the project area.

Because this information is not based on a comprehensive inventory, there may be species of concern or otherwise significant ecological communities in the area that are not represented in the database. The lack of data for any project area cannot be construed to mean that no significant features are present. The absence of data may indicate that the project area has not been surveyed, rather than confirm that the area lacks natural heritage resources.

Regarding any reclamation efforts, we recommend that any impacted areas be revegetated with species native to the project area.

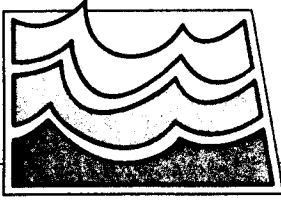
Thank you for the opportunity to comment on this project. Please contact Kathy Duttonhefner (701-328-5370 or kgduttonhefner@nd.gov) of our staff if additional information is needed.

Sincerely,

Jesse Hanson, Coordinator
Planning and Natural Resources Division

R.USNDNHI*2009-266

.....
Play in our backyard!



North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850
701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696 • INTERNET: <http://swc.nd.gov>

November 17, 2009

Mark Bring
Otter Tail
PO Box 496
Fergus Falls, MN 56538-0496



Dear Mr. Bring

This is in response to your request for review of environmental impacts associated with the proposal to reroute a small portion of the 83.8 mile Hankingson-ElIndale 230 kilovolt transmission line that runs through Fiala Lake in Sargent County.

The proposed projects have been reviewed by State Water Commission staff and the following comments are provided:

- The property is not located in an identified floodplain and it is believed the project will not affect an identified floodplain.
- All waste material associated with the project must be disposed of properly and not placed in identified floodway areas.
- No sole-source aquifers have been designated in ND.

There are no other concerns associated with this project that affect State Water Commission or State Engineer regulatory responsibilities.

Thank you for the opportunity to provide review comments. If you have any questions, please call me at 328-4969.

Sincerely,

Larry Knudtson
Research Analyst

LJK:ds/1570

EXHIBIT E

Otter Tail Power Company's Letter to Department of Army Corps of Engineers

Dated November 30, 2009

215 South Cascade Street
PO Box 496
Fergus Falls, Minnesota 56538-0496
218 739-8200
www.otpco.com

bc: Gary Welharticky

November 30, 2009



Ms. Toni R. Erhardt
Department of the Army
Corps of Engineers, Omaha District
1513 South 12th Street
Bismarck, ND 58504

SUBJECT: OTTER TAIL POWER COMPANY
FIALA LAKE REROUTE OF EXISTING POWER LINES

Enclosed are an application and supporting documents for a reroute of existing power poles and transmission lines. The reroute site is located in Sargent County, Forman Township, southwest of Forman, ND. Rising lake levels in the area have elevated the risk of damage to power poles from ice. Otter Tail Power Company proposes to removed two structures from Lake Fiala and reroute the transmission line around the lake. Rip-rap will also be placed by one existing pole for stabilization and protection from ice. Easements have been obtained from the two affected landowners.

Work on this project is expected to commence in mid February dependent upon weather conditions. Construction should be completed by the end of March. Thank you for your assistance on this project.

If you have any questions concerning this application or its supporting documents, please contact me at 218-739-8349 or email at pvukonich@otpco.com

Sincerely,

A handwritten signature in cursive script that reads "Paul Vukonich".

Paul Vukonich
Environmental Compliance Specialist
Otter Tail Power Company

Enclosures

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT (33 CFR 325)	OMB APPROVAL NO. 0710-003
---	----------------------------------

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, Searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-003), Washington, DC 20503. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authority: 33 USC 401, Section 10; 1413, Section 404. Principal Purpose: These laws require permits authorizing activities in, or affecting, navigable waters of the United States; the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Routine uses: Information provided on this form will be used in evaluating the application for a permit. Disclosure: Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED
--------------------	----------------------	------------------	-------------------------------

(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME Otter Tail Power Company	8. AUTHORIZED AGENT'S NAME & TITLE (an agent is not required)
6. APPLICANT'S ADDRESS PO Box 496 Fergus Falls, MN 56538-0496	9. AGENT'S ADDRESS
7. APPLICANT'S PHONE NUMBERS WITH AREA CODE a. Residence b. Business 218-739-8349	10. AGENT'S PHONE NUMBERS WITH AREA CODE a. Residence b. Business

11. STATEMENT OF AUTHORIZATION

I hereby authorize _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

_____ DATE

APPLICANT'S SIGNATURE

NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions) Fiala Lake Reroute	
13. NAME OF WATERBODY, IF KNOWN (if applicable) Fiala Lake	14. PROJECT STREET ADDRESS (if applicable)
15. LOCATION OF PROJECT Sargent COUNTY ND STATE	
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions) Site is located in the north 1/2 of Section 14 Township 130 North (Forman), Range 56 West in Sargent County, ND	
17. DIRECTIONS TO THE SITE From the intersection of ND highways 11 and 32 (south of Forman, ND), drive 2 miles west on highway 11 and then 2 miles south.	

18. NATURE OF ACTIVITY (Description of project, include all features)

See attachment

19. PROJECT PURPOSE (Describe the reason or purpose of the project, see instructions)

The project is being performed to remove structures from eventually being destroyed by ice action on Fiala Lake. Planned construction is weather dependent, but likely will occur from 2/15/2010 to 3/26/2010.

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. REASON(S) FOR DISCHARGE

Only material to be placed in water at edge of lake is crushed rock backfill that is mixed with native soil removed from drill holes for setting new poles, and placement of rip-rap to protect existing pole at water's edge.

21. TYPE(S) OF MATERIAL BEING DISCHARGED AND THE AMOUNT OF EACH TYPE IN CUBIC YARDS

Rock backfill mixed with native soil will be placed by new structures for stabilization and support. No more than 4-5 cubic yards of the crushed rock/native soil mix will be placed in the waterbody.
Rip-rap placed around existing structure might reach 30 cubic yards.

22. SURFACE AREA IN ACRES OF WETLANDS OR OTHER WATERS FILLED (see instructions)

Rip-rap placed in water is estimated to cover no more than 0.005 acres. It will be placed with a backhoe or loader.

23. IS ANY PORTION OF THE WORK ALREADY COMPLETE? YES NO IF YES, DESCRIBE THE WORK

24. ADDRESSES OF ADJOINING PROPERTY OWNERS, LESSEES, ETC. WHOSE PROPERTY ADJOINS THE WATERBODY (If more than can be entered here, please attach a supplemental list)

David Fiala: 12966 93rd Street SE Forman, ND 58032 Phone: 701-724-6405
Doris Armistead: 3553 Woodbury Court S. Fargo, ND 58103-6273

25. LIST OF OTHER CERTIFICATIONS OR APPROVALS/DENIALS RECEIVED FROM OTHER FEDERAL, STATE, OR LOCAL AGENCIES FOR WORK DESCRIBED IN THIS APPLICATION

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED
Easements have been obtained for location of rerouted line from the two affected landowners: Doris Armistead and David Fiala.					

No denials or issues expressed by other agencies.

* Would include but is not restricted to zoning, building and flood plain permits.

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

	<u>10/30/2009</u>	_____	_____
SIGNATURE OF APPLICANT	DATE	SIGNATURE OF AGENT	DATE

Terry Graumann, Manager; Environmental Services

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, factitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

Block 18

Two structures of two poles each are being moved out of Fiala Lake. The structures will be accessed on frozen ground or ice therefore no access road will be needed to be built. The obsolete structures will be cut off above the water and reflectorized markers will be attached to them.

Twelve new poles are being installed in the new route around the lake. Twenty-two anchor rods will be installed on a pole near the edge of the water (see Drawing 3). The helix anchors will be screwed into the lake bed. Each anchor rod has a diameter of 1.5 inches and all roads will be placed within a 70-foot radius.

Excavations will be 12 drilled holes 42 inches in diameter and 11 feet deep. Removed material will be re-installed along with crushed rock to provide a firm base around the newly installed poles.

Rip-rap will be placed by the structure to which the anchors are being installed (see Drawing 2). Rip-rap placed in the water will cover less than 0.005 acres. It will be placed with a backhoe or loader.



Project: Fiala Lake Reroute
Applicant: Otter Tail Power Company

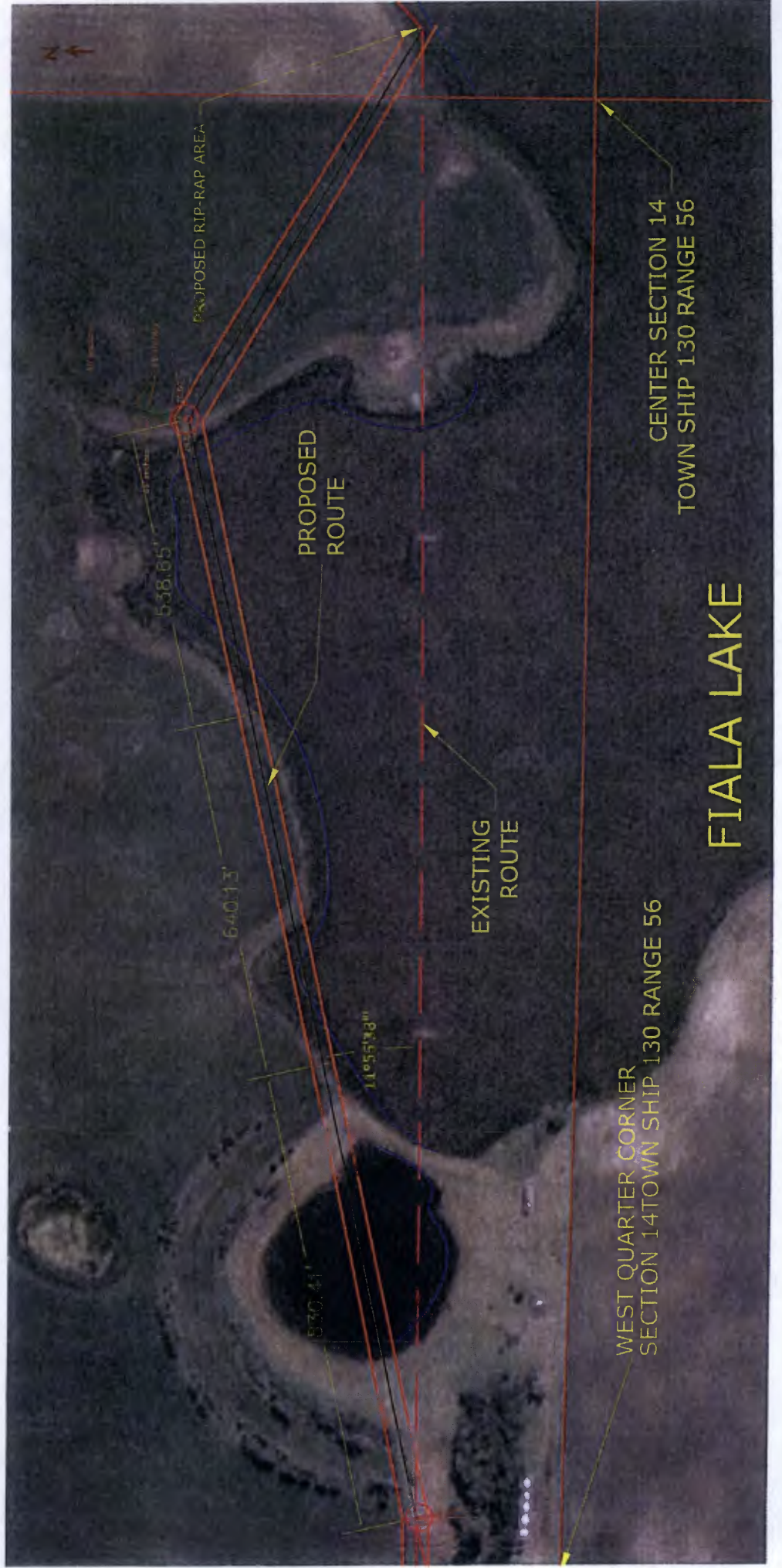
Drawing 1
Vicinity Map

Site Location

WISCONSIN L. PLAN VIEW

PROJECT: FIALA LAKE REROUTE

APPLICANT: OTTER TAIL POWER COMPANY



DRAWING 5 - DETAIL OF ANCHOR INSTALLATION

PROJECT: FIALA LAKE REROUTE

APPLICANT: OTTER TAIL POWER COMPANY

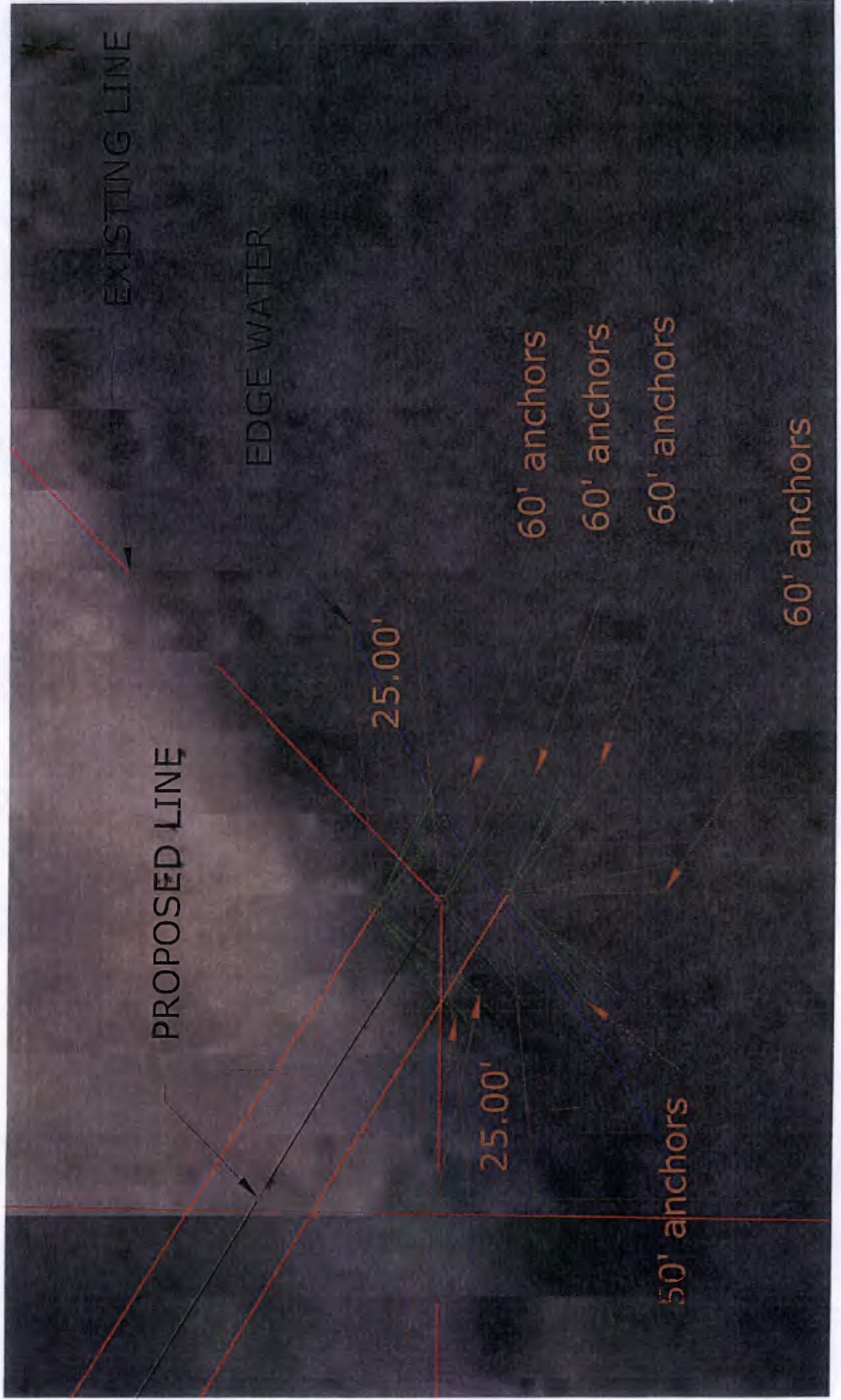


EXHIBIT F

Department of Army Corps of Engineers Letter to Otter Tail Power Company

Dated January 5, 2010



DEPARTMENT OF THE ARMY
 CORPS OF ENGINEERS, OMAHA DISTRICT
 NORTH DAKOTA REGULATORY OFFICE
 1513 SOUTH 12TH STREET
 BISMARCK ND 58504-6640
 January 5, 2010

North Dakota Regulatory Office

[NWO-2009-2510-BIS]

Otter Tail Power Company
 ATTN: Paul Vukonich, Environmental Compliance Specialist
 PO Box 496
 Fergus Falls, Minnesota 56538-0496

Dear Mr. Vukonich:

1. **Project Authorization.** We have reviewed your November 30, 2009 request submitted on behalf of **Otter Tail Power Company** for Department of the Army (DA) authorization to reroute an existing overhead power line away from Lake Fiala. As described, one pole on the Lake's edge will be protected from ice damage with fill and rock riprap.

An Approved Jurisdictional Determination (JD) has not been completed for the project site. You may request this office complete an Approved JD prior to your commencement of any work in the waterways. Completion of such a JD may require coordination with Corps Headquarters and the US Environmental Protection Agency. If you do not want the Corps to complete an Approved JD, you may proceed with the proposed project in accordance with the terms and conditions of Department of the Army Nationwide Permit No. 12, found in the March 12, 2007 Federal Register (72 FR 11092), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General and Regional Conditions and the Section 401 Water Quality Certification Requirements, if applicable, that must be complied with. **Please note any deviations from the original plans and specifications of your project could require additional authorization from this office.** This verification will be valid until **January 5, 2012.**

2. **Project Location.** The project is located in the N½ of Section 14, Township 130 North, Range 56 West, Sargent County, North Dakota.

3. **Project Compliance Certification.** *In compliance with General Condition 26, you are required to submit the following project compliance certification within thirty (30) days of project completion. [Please check all applicable statements]*

- I certify that I have completed the project as permitted.
- I certify that I have completed a modified version of the project.
- I certify that I have completed all required mitigation.

Permittee's Signature: _____ Date: _____

4. **Other Authorizations.** 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 Federal, state, tribal, and local approvals before beginning work.

5. **Responsibility.** You are responsible for all work accomplished in accordance with the terms and conditions of this Nationwide Permit. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit on your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the 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.

6. **Other Special Conditions.**

Endangered Species

That the permittee shall report any threatened or endangered species at the project site. Notification shall be made to the North Dakota Regulatory Office by telephone or fax within 24 hours. Written confirmation shall be provided within 48 hours if deemed necessary by the North Dakota Regulatory Office.

Cultural Resources

That the permittee and/or the permittee's contractor, or any of the employees, subcontractors or other persons working in the performance of a contract or contract(s) to complete the work authorized herein, shall cease work immediately and report the discovery of any previously unknown historic or archeological remains to the North Dakota Regulatory Office. Notification shall be by telephone or fax within 24 hours of the discovery and, in writing, within 48 hours. The North Dakota Regulatory Office will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places. Work shall not resume until notified by the North Dakota Regulatory Office.

Spawning Season

That no regulated activity within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota or on the North Dakota Game and Fish Department's website as a North Dakota Public Fishing Water shall occur between 15 April and 1 June. No regulated activity within the Red River of the North shall occur between 15 April and 1 July.

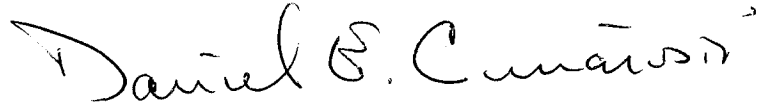
7. **Additional Information.**

Suitable Material and 1978 Stream Evaluation Map: Permittees are reminded that General Condition No. 6 prohibits the use of unsuitable material. In addition, organic debris, some building waste, and materials excessive in fines are not suitable material. Specific verbiage on prohibited materials and the 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at: <https://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>.

8. **Customer Service Survey.** 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://per2.nwp.usace.army.mil/survey.html>. 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.

9. **Points-of-Contact.** If you have any questions concerning this determination, please contact **Toni R. Erhardt** of this office by letter or telephone at 701-255-0015 and reference Authorization Number **NWO-2009-2510-BIS.**

Sincerely

A handwritten signature in black ink that reads "Daniel E. Cimarosti". The signature is written in a cursive style with a large initial 'D' and a small 'E'.

Daniel E. Cimarosti
State Program Manager
North Dakota

Enclosure

**U.S. Army Corps of Engineers
North Dakota Regulatory Office
1513 South 12th Street
Bismarck, North Dakota 58504
Telephone (701) 255-0015 Fax (701) 255-4917**

IMPORTANT INSTRUCTIONS FOR OUR PERMIT CUSTOMERS

Notice of the Reissuance of Nationwide Permits was published in the Federal Register [72 FR 11092] on March 12, 2007. The Nationwide Permits went into effect on March 19, 2007. Project compliance certification is required by General Condition 26. The following instructions are provided to clarify the information contained within the nationwide permit authorization letter and attachments.¹

STEP 1

Review the permit authorization and be sure you understand the terms and conditions for the authorization to remain valid. If you do not understand, or have any questions, please do not hesitate to contact this office at the above address.

STEP 2

Complete your project in accordance with the permit terms and conditions. [Remember that any deviation from the original plans and specifications of your project could require additional authorization from this office.]

STEP 3

Within thirty (30) days of project completion, please complete the permit compliance certification contained within your permit authorization letter. A photocopy of the first page (marked with a colored COPY stamp) has been provided for this purpose. Mark the applicable statements, sign and date where indicated, and forward the COPY to this office at the above address.

¹There is no charge associated with any aspect of this nationwide authorization or the follow-up compliance certification.



COPY

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
1513 SOUTH 12TH STREET
BISMARCK ND 58504-6640
January 5, 2010

North Dakota Regulatory Office

[NWO-2009-2510-BIS]

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ATTN: Paul Vukonich, Environmental Compliance Specialist
PO Box 496
Fergus Falls, Minnesota 56538-0496

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- I certify that I have completed all required mitigation.

Permittee's Signature: _____ Date: _____

4. **Other Authorizations.** 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 Federal, state, tribal, and local approvals before beginning work.

**FACT SHEET
NATIONWIDE PERMIT 12
(2007)**

UTILITY LINE ACTIVITIES. Activities required for the construction, maintenance, repair, and removal of utility lines 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.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

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.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line 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 into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges 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 utility lines 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). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or

under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line 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, 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. 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 any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: 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 utility line must be removed upon completion of the work, accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

General Conditions: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

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

(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 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. Culverts placed in streams must be installed to maintain low flow conditions.

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's 4 and 48.

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).

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 and storm water management activities, 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.

13. Removal of Temporary Fills. 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.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. Wild and Scenic Rivers. No 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. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. 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.

17. Endangered Species. (a) No activity is authorized under any NWP which is likely to 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 destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, 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 designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. 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. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

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

(e) Authorization of an activity by a 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 "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical

habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

18. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, 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 may be affected by the proposed work 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 resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and 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 or that consultation under Section 106 of the NHPA has been completed.

(d) 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. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) 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, explaining 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.

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 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, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are 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) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are 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 some other form of mitigation would be more environmentally appropriate and provides a project-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 minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) 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 project 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 a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. 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. 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 compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of 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 effects of the project to the minimal level.

21. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality. *Specifically in North Dakota, the North Dakota Department of Health has denied certification for projects under this Nationwide Permit proposed to cross **all classified rivers, tributaries and lakes**; individual certification for project in these waterways must be obtained by the project proponent prior to authorization under this Nationwide Permit. For utility line crossings of all other waters, the Department of Health has issued water quality certification provided the attached Construction and Environmental Disturbance Requirements are followed.*

22. Coastal Zone Management. *Not Applicable.*

23. 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 section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not 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.

25. 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)

26. Compliance Certification. Each permittee who received a NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

27. Pre-Construction Notification. *See attached pages.*

28. 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.

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.

General Condition 27. 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, as a general rule, 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
- (2) Forty five 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 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that 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 (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot 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 project;
- (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; 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. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);
- (4) The PCN must include a delineation of special aquatic sites and other waters of the United States 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 of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(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 NWP's and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. 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, but 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.

(3) In cases 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.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: 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 the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are 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 effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. 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 plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project 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 effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

**2007 NATIONWIDE PERMITS
REGIONAL CONDITIONS
STATE OF NORTH DAKOTA
OMAHA DISTRICT – CORPS OF ENGINEERS**

The U.S. Army Corps of Engineers has adopted the following regional conditions for activities authorized by nationwide permits within the State of North Dakota. However, the pre-construction notification requirements defined below are not applicable to Nationwide Permit 47.

1. Wetlands Classified as Fens

All Nationwide Permits, with the exception of 3, 5, 20, 32, 38, 45, and 47, are revoked for use in fens in North Dakota. For nationwide permits 3, 5, 20, 32, 38, and 45 permittees must notify the Corps in accordance with General Condition 27 (Notification) prior to initiating any regulated activity impacting fens in North Dakota.

Fens are wetlands that develop where a relatively constant supply of ground water to the plant rooting zone maintains saturated conditions most of the time. The water chemistry of fens reflects the mineralogy of the surrounding and underlying soils and geological materials. The substrate is carbon-accumulating, ranging from muck to peat to carbonates. These wetlands may be acidic to alkaline, have pH ranging from 3.5 to 8.4 and support a range of vegetation types. Fens may occur on slopes, in depressions, or on flats (i.e., in different hydrogeomorphic classes; after: Brinson 1993).

2. Waters Adjacent to Natural Springs

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 27 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in North Dakota. For purposes of this condition, a spring source is defined as any location where there is artesian 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.

3. Missouri River, including Lake Sakakawea and Lake Oahe within the State of North Dakota

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 27 (Notification) prior to initiating any regulated activity in the Missouri River, including Lake Sakakawea and Lake Oahe, within the State of North Dakota.

4. Historic Properties

That the permittee and/or the permittee's contractor, or any of the employees, subcontractors or other persons working in the performance of a contract(s) to complete the work authorized herein, shall cease work and report the discovery of any previously unknown historic or archeological remains to the North Dakota Regulatory Office. Notification shall be by telephone or fax within 24 hours of the discovery and in writing within 48 hours. Work shall not resume until the permittee is notified by the North Dakota Regulatory Office.

5. Spawning Condition

That no regulated activity within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota or on the North Dakota Game and Fish Department's website as a North Dakota Public Fishing Water shall occur between 15 April and 1 June. No regulated activity within the Red River of the North shall occur between 15 April and 1 July.

Additional Information

Permittees are reminded that General Condition No. 6 prohibits the use of unsuitable material. In addition, organic debris, some building waste, and materials excessive in fines are not suitable material.

Specific verbiage on prohibited materials and the 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at:
<https://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>



Construction and Environmental Disturbance Requirements

These represent the minimum requirements of the North Dakota Department of Health. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect the waters of the State of North Dakota. All projects will be designed and implemented to restrict the losses or disturbances of soil, vegetative cover, and pollutants (chemical or biological) from a site.

Soils

Prevent the erosion of exposed soil surfaces and trapping sediments being transported. Examples include, but are not restricted to, sediment dams or berms, diversion dikes, hay bales as erosion checks, riprap, mesh or burlap blankets to hold soil during construction, and immediately establishing vegetative cover on disturbed areas after construction is completed. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, or land resources will be protected against compaction, vegetation loss, and unnecessary damage.

Surface Waters

All construction which directly or indirectly impacts aquatic systems will be managed to minimize impacts. All attempts will be made to prevent the contamination of water at construction sites from fuel spillage, lubricants, and chemicals, by following safe storage and handling procedures. Stream bank and stream bed disturbances will be controlled to minimize and/or prevent silt movement, nutrient upsurges, plant dislocation, and any physical, chemical, or biological disruption. The use of pesticides or herbicides in or near these systems is forbidden without approval from this Department.

Fill Material

Any fill material placed below the high water mark must be free of top soils, decomposable materials, and persistent synthetic organic compounds (in toxic concentrations). This includes, but is not limited to, asphalt, tires, treated lumber, and construction debris. The Department may require testing of fill materials. All temporary fills must be removed. Debris and solid wastes will be removed from the site and the impacted areas restored as nearly as possible to the original condition.