

**BASIN ELECTRIC  
POWER COOPERATIVE**

1717 EAST INTERSTATE AVENUE  
BISMARCK, NORTH DAKOTA 58503  
PHONE: 701-223-0441 FAX: 701-557-5336



July 14, 2014

Darrell Nitschke  
Executive Director  
North Dakota Public Service Commission  
600 East Boulevard; Dept. 408  
Bismarck, ND 58505-0480

Re: Case No. PU-11-696  
Basin Electric Power Cooperative  
AVS-Neset 345-kV Transmission Project - Siting Application

Dear Mr. Nitschke:

Enclosed, please find an original and five (5) copies of associated permits supporting Basin Electric Power Cooperative's AVS to Neset 345-kV Transmission Project. The files have been submitted electronically to Case No. PU-11-696 Docket.

The following is a list of appropriate permits, authorizations that the Project has received:

- McKenzie County Conditional Use Authorization
- United States Fish and Wildlife Section 7 Consultation Concurrence
- Section 106 Programmatic Agreement

The Rural Utilities Services' Final Environmental Impact Statement is located on Rural Utilities Services website at: <http://www.rurdev.usda.gov/UWP-AVS-Neset.html>.

For inquiries regarding the filing, please contact me at (701) 557-5635.

Sincerely,

Cris Miller  
Senior Environmental Project Specialist

/ser

Enclosures

cc: Casey Jacobson  
Amanda Wangler



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
North Dakota Ecological Services Field Office  
3425 Miriam Avenue  
Bismarck, North Dakota 58501  
(701) 250-4481, ndfieldoffice@fws.gov

**MAY 22 2014**

In reply, please reference TAILS #: 2012-CPA-0100

Mr. Matt Marsh  
Environmental Manager  
Western Area Power Administration  
Upper Great Plains Regional Office  
P.O. Box 35800  
Billings, MT 59107-5800

Dear Mr. Marsh:

This is in response to your March 26, 2014, letter and accompanying March 2014 Biological Assessment (BA) requesting informal consultation for the Antelope Valley Station (AVS) to Neset Transmission Line Project. Your letter also included a request for an informal conference concerning the potential effects determination for the candidate and proposed species. Although the Rural Utilities Service (RUS) is the responsible federal agency, the Western Area Power Administration (Western) has been designated by RUS as the lead for Section 7 consultation. The U.S. Fish and Wildlife Service (Service) offers the following comments under the authority of and in accordance with the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*).

Western previously submitted a letter to the Service dated January 21, 2014, requesting concurrence with the effects determination to listed species in the November 2013 BA. However, to address newly proposed and candidate species, Western notified the Service (by email dated March 18, 2014) of the intent to engage in voluntary informal conferencing on the following candidate and proposed species for the project:

Sprague's pipit ( <i>Anthus spragueii</i> )	Candidate
Northern long-eared bat ( <i>Myotis septentrionalis</i> )	Proposed
Dakota skipper ( <i>Hesperia dacotae</i> )	Proposed
Rufa red knot ( <i>Calidris canutus rufa</i> )	Proposed

The Service accepted (by email, dated March 20, 2014) Western's request for informal conferencing. Western subsequently revised the BA (March 2014) to address the new status of these species and, per Western policy, treated the candidate and proposed species as if they were listed species for the analysis of effects. The Service believes this approach meets the needs for informal conferencing on these species.

As documented in the BA, Western has determined that the proposed AVS project would have “no effect” on the threatened gray wolf (*Canis lupus*), the endangered pallid sturgeon (*Scaphirhynchus albus*), or the endangered black-footed ferret (*Mustela nigripes*). In addition, Western has determined that the project “may affect, but is not likely to adversely affect” the Sprague’s pipit, the threatened piping plover (*Charadrius melodus*), designated critical habitat for the piping plover, the endangered interior least tern (*Sternula antillarum*), the endangered whooping crane (*Grus americana*), the Northern long-eared bat, the Dakota skipper, and the rufa red-knot.

During the past year, the Service provided comments on September 20, 2013, to Western concerning the August 2013 Draft BA and on January 2, 2014, concerning the November 2013 Draft BA. Additionally, the Service, Western, and the project proponent, Basin Electric, have held a number of productive meetings that resulted in modifications to the effects analysis and determinations on the whooping crane. Specifically, Western has provided a comprehensive analysis and rationale in Appendix B for their Line Marking Plan. Approximately 93 percent of the total alignment (over 253 miles of the line, with exception of 21 miles through the Badlands) will be marked with bird flight diverters on the static wire. The line marking measures proposed are expected to increase the visibility of the tap line to enhance visual cues for migrating whooping cranes, piping plovers, interior least terns, and Sprague’s pipit and, therefore, minimize the potential for collision with the line.

Based upon the project description, conservation measures identified in Section 1.3, the analysis of potential effects to each species and associated avoidance and minimization measures, and Section 1.4 – Line Marking Plan and associated rationale (Appendix B), the Service has concluded that the effects to the above-mentioned federally-listed species are either insignificant or discountable. Therefore, the Service concurs with your determinations.

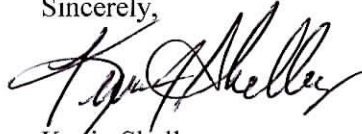
Additionally, the Service concurs with your effects determinations of “may affect, but is not likely to adversely affect” for the Sprague’s pipit, Northern long-eared bat, Dakota skipper, or rufa red-knot. Accordingly, this letter constitutes the Service’s Conference Report and this terminates the conference procedures. If any candidate or proposed species are listed in the future, and no changes have occurred in the project design and construction, the Service recommends Western submit a request to the Service to adopt this conference report as a concurrence for the newly listed species to insure Western’s compliance with the interagency coordination procedures pursuant to Section 7 of the Act.

The BA also indicates “no effect” determinations for the gray wolf, pallid sturgeon, and the black-footed ferret. There is no requirement under the implementing regulations of the Act (50 CFR Part 402) for action agencies to receive Service concurrence with “no effect” determinations, therefore, the responsibility for “no effect” determinations remains with Western. Accordingly, we recommend Western retain the documentation and analysis for these listed resources in your decisional record.

Pursuant to the implementing regulations of the Act (50 CFR 402.13), this letter concludes informal consultation on the subject action. This action should be re-analyzed if: (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not considered in this consultation; (2) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the consultation; or (3) a new species is listed or critical habitat is designated that may be affected by this project.

The Service appreciates your efforts to insure the conservation of trust species as part of our joint responsibilities under the Act. If further information is needed, please contact Mr. Roger Collins (701-355-8502 or 701-391-0040) or myself at 701-355-8512.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Shelley". The signature is fluid and cursive, with the first name "Kevin" written in a larger, more prominent script than the last name "Shelley".

Kevin Shelley  
Acting Assistant Field Supervisor  
North Dakota Field Office

cc: USFWS, Ecological Services, ND/SD ES (S. Larson)  
USDA, RUS, Bismarck (Attn: T. Bohan)

May 19, 2014

Basin Electric Power Cooperative  
1717 E Interstate Ave  
Bismarck ND 58503

This is to confirm that, at their May 16th meeting, the McKenzie County Board of Commissioners approved the Conditional Use Permit request for an Electric Transmission Line to be located in T145N R98W, T146 R98, T147N R98W, T147N R99W, T148N R98W, T148N R99W, T149N R98W, T149N R99W, T150N R99W, T150N R101W, T151N R99W, T151N R100W, T152N R100W, T152N R101W, T152N R102W, T153N R101W. In addition, two laydown yards in Section 27 of T151N R100W and in Sections 25 and 26 of T147N R99W

Keep in mind that the following conditions were placed on the project:

1. Any substations that may be a part of this transmission line or added in the future would need a separate conditional use permit application submitted.
2. A final "as built" site plan needs to be submitted to the Planning Department to be placed in the file.

If you have any questions, please feel free to call.

Sincerely,



Jill Edson  
McKenzie County

**PROGRAMMATIC AGREEMENT  
AMONG  
THE WESTERN AREA POWER ADMINISTRATION,  
THE RURAL UTILITIES SERVICE,  
THE U.S. FOREST SERVICE,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
AND  
THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICE  
REGARDING  
THE AVS-NESET 345 kV TRANSMISSION LINE PROJECT  
TO BE CONSTRUCTED IN  
MERCER, DUNN, BILLINGS, MCKENZIE, WILLIAMS AND MOUNTRAIL COUNTIES,  
NORTH DAKOTA**

**WHEREAS**, in accordance with the Rural Electrification Act of 1936 (7 U.S.C. §§ 901-950b), the Rural Utilities Service (RUS) is authorized to provide federal financial assistance for the development of electric infrastructure in rural America; and

**WHEREAS**, Basin Electric Power Cooperative, Inc. (Basin Electric) intends to request federal financing assistance from RUS to modify four (4) existing substations-Antelope Valley Station (AVS), Charlie Creek, Williston and Neset, and to construct approximately 278 miles of transmission line - 265 miles of new 345 kilovolt (kV) transmission line and 13 miles of new 230 kV line - along with five (5) new substations (Blue, Judson, Tande, Redand White), and ancillary facilities, such as access roads, and temporary construction work and staging areas, in Mercer, Dunn, Billings, McKenzie, Williams and Mountrail Counties, North Dakota (AVS-Neset Project); and

**WHEREAS**, in accordance with the Federal Power Act, 16 U.S.C. Chapter 12, the Western Area Power Administration (Western) is authorized to provide interconnections among electric facilities; and

**WHEREAS**, Basin Electric has requested that Western authorize an interconnection between the Williston Substation and the Williston to Charlie Creek 230 kV transmission line; and

**WHEREAS**, the U.S. Forest Service (USFS) is considering a request by Basin Electric for the AVS-Neset Project to cross lands managed by that federal agency; and

**WHEREAS**, RUS, Western and USFS (the Agencies) have determined that the individual federal actions which each may take would make the AVS-Neset Project an undertaking subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470, and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800); and

**WHEREAS**, RUS and USFS have agreed, in accordance with 36 CFR § 800.2(a)(2), that Western will be the lead federal agency for the purposes of review under 36 CFR Part 800 (Section 106 review); and

**WHEREAS**, RUS has been designated as the lead agency for review under the National Environmental Policy Act (NEPA) conducted pursuant to 7 CFR Part 1794; and

**WHEREAS**, based on the NEPA analysis conducted pursuant to 7 CFR Part 1794, RUS will select a 1000-foot wide corridor within which the AVS-Neset Project can be constructed; and

**WHEREAS**, the North Dakota Public Service Commission approved the 150-foot-wide right-of-way (ROW) designated as original Alternative A for construction of the AVS-Neset Project; and

**WHEREAS**, the North Dakota Public Service Commission still must consider approval of the 150-foot-wide right-of-way (ROW) designated as original Alternative B; and

**WHEREAS**, Western has determined that the area of potential effects (APE) for the direct effects of this undertaking consists of the 150-foot-wide ROW, beginning at the AVS near Beulah, North Dakota and terminating at the Neset Substation near Tioga, North Dakota, as well as all Project-related access roads, associated appurtenances, such as substations, and ancillary facilities, such as temporary construction work and staging areas that may be located outside of the ROW and may not be contiguous; and

**WHEREAS**, Western also has established an APE for indirect (visual) effects that is one-half mile wide from the centerline on either side of the ROW; and

**WHEREAS**, in accordance with 36 CFR § 800.4(b)(2) and 36 CFR § 800.5(a)(3), respectively, Western is phasing identification and evaluation of historic properties and application of the criteria of adverse effect because the AVS-Neset Project consists of a corridor where access has been restricted in certain cases; and

**WHEREAS**, in accordance with 36 CFR § 800.14(b)(1)(ii), execution of a Programmatic Agreement (PA) is appropriate because effects on historic properties cannot be fully determined prior to approval of the Project; and

**WHEREAS**, RUS has agreed to manage the development and execution of this PA on behalf of Western; and

**WHEREAS**, in consultation with the SHPO, Western has determined that the AVS-Neset Project could have an adverse effect on historic properties (that is, properties which are listed on or eligible for listing on the National Register of Historic Places (NRHP)); and

**WHEREAS**, on January 31, 2012, Western invited the Flandreau Santee Sioux Tribe, the Santee Sioux Nation, the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, the Spirit Lake Nation, the Fort Belknap Indian Community, the Standing Rock Sioux Tribe (SRST), the Leech Lake Band of Ojibwe, the Three Affiliated Tribes of the Fort Berthold Reservation, the Lower Sioux Indian Community, the Turtle Mountain Band of Chippewa, the Minnesota Chippewa Tribe, the Upper Sioux Indian Community, the Prairie Island Indian Community, and the White Earth Band of Ojibwe to participate in consultation for the AVS-Neset Project; and

**WHEREAS**, the Leech Lake Band of Ojibwe declined the invitation to participate in consultation; and

**WHEREAS**, the White Earth Band of Ojibwe declined the invitation to participate in consultation, but asked to be kept informed of the progress of Section 106 review; and

**WHEREAS**, the remaining twelve (12) Indian tribes did not respond to the January 31, 2012 invitation; and

**WHEREAS**, in February 2013, the SRST asked to participate in consultation for the AVS-Neset Project; and

**WHEREAS**, in April 2013, Western confirmed consulting party status for the SRST; and

**WHEREAS**, in September 2013, the Sisseton Wahpeton Oyate (SWO) requested and was granted consulting party status; and

**WHEREAS**, the SRST and the SWO have participated in consultation and have been invited to sign this PA as concurring parties; and

**WHEREAS**, Basin Electric has participated in consultation and has been invited to sign this PA as an invited signatory; and

**WHEREAS**, the Killdeer Mountain Alliance (KMA) has participated in consultation and has been invited to sign this PA as a concurring party; and

**WHEREAS**, the Center for Heritage Renewal at North Dakota State University (Center) has participated in consultation and has been invited to sign this PA as a concurring party; and

**WHEREAS**, the American Battlefield Protection Program (ABPP) has participated in consultation and has been invited to sign this PA as a concurring party; and

**WHEREAS**, Mr. and Mrs. Craig Dvirnak have participated in consultation and have been invited to sign this PA as concurring parties; and

**WHEREAS**, on March 25, 2014, RUS, on behalf of Western, invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation, in accordance with 36 CFR § 800.6(a)(1)(i)(C), providing the specified documentation; and

**WHEREAS**, via email dated April 10, 2014, the ACHP advised RUS that it would participate in consultation; and

**WHEREAS**, pursuant to 36 CFR § 800.6(a)(1)(iii), on May 6, 2014, the ACHP formally notified Western of its decision to participate in consultation; and

**WHEREAS**, the ACHP, North Dakota SHPO, SRST, SWO, Basin Electric, KMA, Center, ABPP and the Dvirnaks are considered "consulting parties;" and

**WHEREAS**, definitions of the terms used in this PA are defined in 36 CFR § 800.16;

**NOW, THEREFORE**, the Agencies, the ACHP, and the North Dakota SHPO agree that the undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the undertakings on historic properties.

### **STIPULATIONS**

The Agencies will ensure that the following stipulations are carried out.

#### **I. STANDARDS AND CONDITIONS**

- A. Archeological, historical, or architectural studies, including visual effects analysis, required by the Agencies under the terms of this PA will be carried out by or under the direct supervision of a professional who, at a minimum, meets the Secretary of the Interior's

- Professional Qualification Standards* (48 FR 44716, September 29, 1983) in the appropriate field.
- B. Studies to identify and evaluate historic properties of importance to Indian tribes will be carried out by or under the direct supervision of an individual who possesses the requisite knowledge and expertise as recognized by the SRST and SWO, and who has been identified as a tribal cultural specialist by those tribes.
  - C. Basin Electric will not initiate construction of any segment of the AVS-Neset Project until Section 106 review conducted in accordance with the terms of this PA has been satisfied for that segment.
  - D. In order to ensure that the terms of this PA are properly coordinated and implemented, Basin Electric will establish and facilitate open communication between its engineers, environmental contractors, tribal cultural specialists, and professional archeologists during the performance of the phased identification and treatment, and phased construction of AVS-Neset Project components.
  - E. Western, in consultation with RUS and USFS, may identify and invite other parties to participate in consultation during implementation of the terms of this PA. A copy of Western's invitation and the party's affirmative response will be attached to this PA. The newly participating party will be considered to be one of the consulting parties in addition to those listed in the Preamble to this PA.

## II. IDENTIFICATION AND TREATMENT

### A. Identified Historic Properties

1. The Agencies and the North Dakota SHPO have agreed to treat the Killdeer Mountains, Medicine Hole (32DUX370) and, as described in the Final Environmental Impact Statement (FEIS), the Killdeer Mountain Battlefield (KMB) historic property as eligible for listing on the NRHP for the purposes of Section 106 review for the AVS-Neset Project only.
  2. The Agencies and SHPO agree that because of its religious significance to Indian tribes, particularly its acknowledged use for vision quests, the boundaries of Killdeer Mountain are sufficiently expansive to fall within the boundary of indirect APE.
  3. The Agencies and SHPO further agree that due to costs and schedules it is not reasonable to definitively identify the boundaries of the KMB historic property at this time.
  4. In accordance with 36 CFR § 800.5(b) and (c), within thirty (30) days of execution of this PA the Agencies will formally propose for consulting party review that the AVS-Neset Project will have no adverse effect on Killdeer Mountain, Medicine Hole, or the KMB historic property. After consideration of objections filed in accordance with 36 CFR § 800.5(c)(2) and (3), should the Agencies agree that the AVS-Neset Project will have an adverse effect on any of the above historic properties, they will consult with the consulting parties to identify appropriate treatment in accordance with Stipulation II.G of this PA.
- B. Phasing: For each construction component of the AVS-Neset Project, Basin Electric will complete the requirements of Stipulations II through VII as directed by the Agencies.
- C. Design Changes: Each and every change in the location of AVS-Neset Project components is subject to review under the terms of this PA. Basin Electric will submit any proposed design change which might alter the scope of the APE for direct and indirect effects to the Agencies for their review. The Agencies, in consultation with the consulting parties, will determine if, pursuant to 36 CFR § 800.4(b)(1), further study is needed to identify affected historic properties for the specific design change. Identification and treatment of historic

properties for design changes will be implemented by Basin Electric in accordance with the terms of this PA.

- D. **Identification:** For each construction component of the AVS-Neset Project, Basin Electric will conduct study of the APE, as directed by the Agencies, to identify historic properties which might be affected by the AVS-Neset Project pursuant to the regulatory standard established by 36 CFR § 800.4(b)(1). Thus far, this effort has produced the following studies:
1. In order to identify known historic properties and other cultural resources in the APE, at the direction of Western Basin Electric completed a Class I literature review of a large study area which contains the APE.
  2. In September 2012, Basin Electric initiated, and will continue to implement, Class II (Reconnaissance) and Class III (Pedestrian) cultural resources surveys of the ROW, reroutes, access roads, substations and laydown areas wherever access has been granted by the private landowner. Findings to date are described in the interim report titled, *Basin Electric Power Cooperative's Antelope Valley Station to Neset 345 kV Transmission Line: A Class II and Class III Cultural Resource Inventory in Dunn, McKenzie, Mercer, Mountrail and Williams Counties, North Dakota, Interim Report* (April 2013). This survey includes subsurface testing of structure locations only within the eight (8) miles which cross the 2010 KMB study area, and any other parts of the APE that would be impacted by construction activities.
  3. The findings of Basin Electric's geophysical survey (metal detection inventory) of eight (8) miles of the centerline of the ROW which may cross the Killdeer Mountain Engagement historic property is presented in the report titled, *Draft Basin Electric Power Cooperative's Antelope Valley State To Neset 345 kV Transmission Line: 2013 Supplemental Investigations Through The Killdeer Mountain Battlefield Study Area in Dunn County North Dakota* (February 2014).
  4. In October 2013, Basin Electric initiated and will continue to conduct a survey of the APE to identify historic properties of importance to the SRST and the SWO. This survey is being performed by the SRST's preferred tribal cultural specialist (Basin Electric's contractor). The preferred tribal cultural specialist has completed study of the Project segment between AVS and the Missouri River wherever permission to access for survey had been granted in November, 2013. The Tribal Cultural Survey resumed in the Spring of 2014.
  5. Western, in consultation with RUS, USFS and the consulting parties, may require that Basin Electric conduct a study of the APE for indirect effects to identify historic properties which might experience adverse visual effects resulting from construction of the AVS-Neset Project.
  6. As directed by Western, Basin Electric will conduct evaluation studies, as appropriate, in accordance with 36 CFR § 800.4(c)(1).
- E. **Interim Reporting:** When the studies described in Stipulation II.D have been completed for a particular constructive component or components, Basin Electric will prepare a draft interim report to submit to Western which will then distribute it to RUS, USFS and the consulting parties.
1. The interim report will
    - a. Describe the historic properties and other cultural resources identified and the methods of identification;
    - b. Identify those resources for which additional study might be needed;

- c. Include recommendations regarding the NRHP eligibility of identified cultural resources;
    - d. Illustrate the geographic relationship between the identified historic properties and other cultural resources, the APE, the ROW, and the proposed structures and other AVS-Neset Project-related ground disturbance; and
    - e. Propose treatment, including those measures which would avoid adverse effects,
  2. When determined acceptable by the Agencies, Western will submit the draft interim report to the consulting parties for their review. The consulting parties will have thirty (30) days from receipt to provide written comments to Western on the draft interim report.
  3. Western will ensure that written comments submitted in a timely manner are considered in preparation of the final interim report. Western will provide one copy of the final interim report to the other Agencies and consulting parties.
- F. Avoidance: The avoidance of adverse effects to historic properties is the treatment preferred by Western, RUS and USFS. Accordingly, Basin Electric will seek agreement with Western, RUS, USFS and the consulting parties on the identification of historic properties and implementation of appropriate and reasonable avoidance measures.
  1. Whenever the Western and the consulting parties agree, Basin Electric will incorporate agreed upon avoidance measures into the draft interim report required under Stipulation II.D, and AVS-Neset Project plans and specifications.
  2. Wherever Western and a consulting party(ies) cannot reach agreement, the objection will be resolved in accordance with Stipulation IX.
- G. Treatment
  1. Pursuant to 36 CFR § 800.4(c)(2) and 36 CFR § 800.5(a), Western, in consultation with RUS, USFS and the consulting parties, will determine if historic properties are located in the direct and indirect effects APEs, and, when present, if they will be adversely affected by construction of a AVS-Neset Project phase. When Western determines that adverse effects cannot be avoided, it will consult with RUS, USFS and the consulting parties to identify those treatment measures, which are in the public interest and will minimize or mitigate such effects to historic properties.
  2. When the Agencies and the consulting parties agree on treatment measures to address adverse effects to historic properties for an AVS-Neset Project phase, Basin Electric will prepare a Treatment Plan (Plan) describing the agreed upon measures, the manner in which they will be carried out, and a schedule for their implementation.
  3. Disputes regarding treatment, including but not limited to the adequacy or implementation of treatment measures, will be resolved by the Agencies in accordance with Stipulation IX.
  4. Western will ensure that the Plan takes into account applicable State, tribal and professional standards and guidance.
  5. When treatment consists of or includes data recovery, the Plan will identify the specific research questions to be addressed by data recovery with an explanation of their relevance, the archeological methods to be used, and provisions for public interpretation and education subject to confidentiality restrictions required by 36 CFR § 800.6(a)(5).
  6. Basin Electric will submit the Plan to the SHPO and consulting parties for review. These parties will have thirty (30) days from receipt to submit a written review. The

Agencies will take into account timely comments and recommendations submitted by the consulting parties.

7. The Agencies will ensure that Basin Electric implements all approved Plans prior to beginning construction of that Project component.

#### H. Protection During Construction

1. Prior to beginning construction of the AVS-Neset Project component, Basin Electric will mark identified stone features and historic properties within the APE for that phase. The marked areas will include the location of the stone feature or historic property as well as a fifty (50) foot buffer around it.
  2. Basin Electric will consult with the consulting parties to determine the manner in which each stone feature or historic property will be marked.
  3. Basin Electric will include the requirement to avoid marked areas, designated as "exclusion areas," as defined in Stipulation II.H1 and 2 in construction contracts.
  4. Anytime project construction will or is likely to occur within the fifty (50) foot buffer, Western, and Basin Electric will consult with the SRST, the SWO and other consulting parties as appropriate to determine additional protective measures to be implemented.
  5. Basin Electric will ensure that construction contracts stipulate that all work will be done within the ROW or areas as designed by Basin Electric.
- I. Post-Construction Protection: To ensure the protection of these stone features and historic properties post-construction, Basin Electric will designate their location including the 50 foot buffer as "exclusion areas" on Operation and Maintenance maps of the permanent right-of-way. Basin Electric will avoid all marked exclusion areas during performance of operations and maintenance activities.

### III. U.S. FOREST SERVICE LANDS

- A. Prior to the release of funding for construction of any component of AVS-Neset Project that will cross USFS lands, Western will document for RUS the manner in which the terms of this PA on USFS lands have been implemented.
- B. RUS may release financial assistance for the construction of a component of AVS-Neset Project that will cross USFS lands once the terms of this PA have been implemented on USFS lands and a special use permit has been issued by the USFS.

### IV. CURATION

- A. Any artifacts, materials, or records removed from federal land that are not subject to the Native American Graves Protection and Repatriation Act (NAGPRA) will be curated by the federal agency in accordance with 36 CFR Part 79. The USFS will curate any artifacts, materials, or records not subject to NAGPRA at the State Historical Society of North Dakota (SHSND) Museum.
- B. Basin Electric will return all artifacts and materials recovered through implementation of the terms of this PA from nonfederal lands to the respective landowner. The respective landowner may then elect to donate the artifacts and materials to a local curation facility acceptable to the SHPO/ SHSND.

### V. CONFIDENTIALITY

- A. The Agencies will protect information about historic properties, including location information or information provided by Indian tribes to assist in the identification of such properties, especially properties of religious and cultural significance to Indian tribes, to the

extent allowable under Section 304 of the National Historic Preservation Act, 16 U. S. C. § 470w3, 36 CFR § 800.11(c) and other applicable legal requirements.

- B. The Agencies will work with the SRST, SWO and Basin Electric to develop and implement additional measures to protect location information about important tribal cultural resources.

#### **VI. POST- REVIEW UNANTICIPATED DISCOVERIES ON FEDERAL LANDS**

- A. Basin Electric will treat the unanticipated discovery of cultural resources and human remains on Federal lands in accordance with Appendix I, *Unanticipated Discovery Plan and Discovery of Human Remains Protocols, Northern Region, USDA*, v1, September 2011, of the Region I Heritage Protection Plan.
- B. When the post-review unanticipated discovery contains human remains, NAGPRA [25 U.S.C. 3001 et. seq.] and its implementing regulations (43 CFR Part 10) also apply.

#### **VII. POST- REVIEW UNANTICIPATED DISCOVERIES ON NONFEDERAL LANDS**

- A. If previously unidentified historic properties or unanticipated effects to historic properties are discovered during AVS-Neset Project construction on non-federal lands, Basin Electric's construction contractor will immediately halt all activity within a one hundred (100) foot radius of the discovery; notify Basin Electric of the discovery; and implement interim measures to protect the discovery from looting and vandalism.
- B. Immediately upon receipt of the notification required in Stipulation VII.A, Basin Electric, with the assistance of an individual meeting the professional standards in Stipulation I will inspect the construction site to
  1. Determine the extent of the discovery;
  2. Ensure that construction activities have halted;
  3. Clearly mark the one hundred (100) foot buffer area surrounding the discovery;
  4. Implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
  5. Notify the Agencies, the ACHP, the North Dakota SHPO, SRST and the SWO. The points of contact for such notification are listed in Attachment 3.
- C. Basin Electric may resume construction outside of the one hundred (100) foot buffer area surrounding the discovery as marked in Stipulation VII.B.3 once all of the terms of Stipulation VII.B. have been completed.
- D. Upon receipt of the notification, Western and RUS will treat the discovery in accordance with 36 CFR § 800.13(b)(3) and (c). The consulting parties will have 48 hours from receipt of the notification submitted in accordance with 36 CFR § 800.13(b)(3) to respond.
- E. When the discovery may contain human remains, Basin Electric's construction contractor will comply with the requirements of Stipulation VII.A. Immediately upon receipt of notification from its construction contractor, Basin Electric will comply with Stipulation VI.B, notify the Intertribal Reinterment Committee of the discovery of human remains, and comply with the requirements of North Dakota Century Code § 23-06-27 and 55-03 as well as North Dakota Administrative Code Chapter 40-02-03.
- E. Basin Electric may resume construction activities in the area of the discovery once the terms of Stipulation VII have been implemented.
- F. Basin Electric will ensure that the requirements of Stipulation VII are incorporated into all construction contracts.

#### **VIII. REPORTING**

- A. Until construction is complete, every six (6) months following the execution of this PA, Basin Electric will submit a written report electronically to signatories and consulting parties.
- B. The report will describe:
  - 1. The period covered by the report;
  - 2. Progress on implementation of the terms of the PA during that period of time;
  - 3. The Project schedule and any proposed scheduling changes;
  - 4. Any proposed design changes;
  - 5. Progress on development of construction plans and specifications by construction component;
  - 6. Construction completed during the period;
  - 7. Status of identification efforts and implementation of treatment conducted pursuant to Stipulation II; and
  - 8. The treatment of any post-review discoveries pursuant to Stipulations VI and VII.

#### **IX. DISPUTE RESOLUTION**

- A. Should any signatory or consulting party to this PA object in writing at any time to any actions proposed or the manner in which the terms of this PA are implemented, the Agencies, within the limits of their individual authority, will consult with such party to resolve the objection. If the Agencies agree that the objection cannot be resolved, they will forward all documentation relevant to the dispute, including the resolution they propose, to the ACHP.
- B. Upon receipt of adequate documentation, the ACHP will provide the Agencies with its advice or comment on the resolution of the objection within thirty (30) days.
  - 1. Prior to reaching a final decision on the dispute, the Agencies will prepare a written response that takes into account any timely advice or comment regarding the dispute received from the ACHP and other consulting parties, and provide them with a copy of this written response. The Agencies will proceed according to their final decision.
  - 2. If the ACHP does not provide its advice regarding the dispute within thirty (30) days, the Agencies may make a final decision on the dispute and proceed accordingly. Prior to reaching a final decision, the Agencies will prepare a written response that takes into account any timely comments from the consulting parties to the PA regarding the dispute, and provide them and the ACHP with a copy of such written response.
- C. The responsibility of the Agencies to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.
- D. If at any time during the implementation of the measures stipulated in this PA an objection should be raised by the public, the signatory in receipt of the objections will notify the other signatories and consult with the objecting party to seek resolution. If the Agencies determine that the objection cannot be resolved, then they will seek the advice or comment of ACHP in accordance with Stipulation IX.A and B.

#### **X. TERM OF AGREEMENT**

- A. The terms of this PA will expire September 30, 2024 unless the signatories agree to extend its term prior to expiration.
- B. Six (6) months prior to September 30, 2024, Basin Electric will notify the Agencies and other consulting parties of the impending expiration. The Agencies may consult with the consulting parties to reconsider the terms of the PA and amend it in accordance with

Stipulation XI. The Agencies will notify the consulting parties as to the course of action each will pursue.

- C. The PA will terminate when all of its stipulations have been carried out and all AVS-Neset Project phases are in service.

**XI. AMENDMENT**

- A. This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date it is executed by all of the signatories and filed with ACHP.
- B. Prior to reaching agreement, the signatories, led by Western, will consult with the consulting parties on the terms of any proposed amendment to this PA.

**XII. TERMINATION**

- A. If any signatory to this PA determines that its terms will not, or cannot be carried out, that signatory will immediately consult with the other signatories to attempt to develop an amendment in accordance with Stipulation XI. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.
- B. Once the PA has been terminated, and prior to work continuing on the AVS-Neset Project, the Agencies must either:
  - 1. Execute an agreement pursuant to 36 CFR Part 800; or
  - 2. Request, take into account, and respond to the comments of ACHP pursuant to 36 CFR § 800.7. The Agencies will notify the consulting parties as to the course of action each will pursue.

**EXECUTION** of this PA by the Agencies and the ND SHPO, and implementation of its terms evidence that the Agencies have taken into account the effects of this undertaking on historic properties and afforded the ACHP a reasonable opportunity to comment.

Programmatic Agreement  
AVR-Nasat 345 KV Transmission Line Project  
June 19, 2014

Signatories:

Western Area Power Administration

By: Robert J. Marzke Date: 6/20/14  
Robert J. Marzke, Regional Manager  
Upper Great Plains Region

US Department of Agriculture Rural Utilities Service

By: Mark S. Plank Date: 6/20/14  
Mark S. Plank, Director  
Engineering and Environmental Staff  
Water and Environmental Programs

US Department of Agriculture U.S. Forest Service

By: Dennis D. Neitzke Date: 6/20/2014  
Dennis D. Neitzke, Supervisor  
Dakota Prairie Grasslands

Advisory Council on Historic Preservation

By: John M. Fowler Date: 7/2/14  
John M. Fowler, Executive Director

North Dakota State Historic Preservation Office

By: Merlan E. Paaverud, Jr. Date: 6-23-14  
Merlan E. Paaverud, Jr., State Historic Preservation Officer

Programmatic Agreement  
AVS-Neset 345 kV Transmission Line Project  
June 19, 2014

**Invited Signatory:**

**Basin Electric Power Cooperative, Inc.**

By Claire M. Olson Date: 23 June 2014  
Claire M. Olson, Senior Vice President and General Counsel

Programmatic Agreement  
AVS-Neset 345 kV Transmission Line Project  
June 19, 2014

**Tribal Concurring Parties:**

**Sisseton Wahpeton Oyate of the Lake Traverse Reservation**

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

**Standing Rock Sioux Tribe**

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

**Other Concurring Parties:**

**Mr. Craig and Mrs. Rhonda Dvirnak**

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

**American Battlefield Protection Program**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Paul Hawke, Director

**Killdeer Mountain Alliance**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
G. Edward Dickey

**North Dakota State University Center for Heritage Renewal**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Professor Tom Isern, Director