

July 19, 2016

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



Dear Mr. Nitschke:

Re: Case No: PU-16-415

Attached you will find Basin Electric Power Cooperative's (**Basin Electric**) July 15, 2016 response to concerned landowners associated with our AVS to Neset 345 kV Transmission Project (PU-11-696). The correspondence from the landowners was received by Basin Electric on June 27, 2016 and was filed with the North Dakota Public Service Commission (**PSC**) on June 30, 2016.

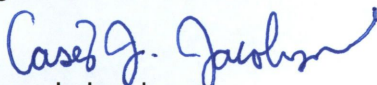
In Basin Electric's response, we pointed out many of the concerns were related to easement terms and conditions or were premature due to our reclamation contractor arriving at their property the week of June 13. We have suggested to the landowners that after Basin Electric has completed our reclamation work, they re-assess the project area for any shortcomings. We suggested the landowners contact Basin Electric right-of-way representatives and a meeting will be scheduled on-site to review the impacted areas to determine what issues may still need to be addressed.

Of the concerns that suggested that Basin Electric has acted improperly, there are, in our opinion, valid and sound reasons for our past, current and future actions on these properties that are outlined by category in the July 15, 2016 response.

In summary, Basin Electric incorporated methodologies in our field construction processes such that we minimize impacts, etc. of our disturbances to the best we can and have incorporated landowner preferences, where possible into account that would normally have been considered beyond the minimum requirements. Unfortunately, there have been factors including weather, difficult terrain, limited access, coordination of multiple contractors/employees; etc., that have influenced our disturbance to the lands. Basin Electric has and will continue to strive to get reclamation "right". On the Dahl's land, as with other landowners, our reclamation efforts are still on-going on the nearly 200 mile linear project.

After your review of Basin Electric's response outlined in the attached letter, should the PSC have further questions and or require additional information, please contact me at your convenience.

Regards,

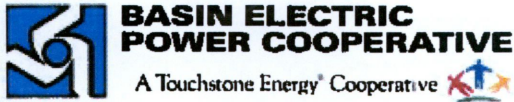

Casey J. Jacobson
Senior Staff Counsel

cjj/ds/enclosure

cc: Matthew Kelly, Tarlow & Stonecipher, PLLC w/o attachments

2 PU-16-415 Filed: 7/19/2016 Pages: 9
Response to landowner complaint

Basin Electric Power Cooperative
Casey Jacobson, Senior Staff Counsel



July 15, 2016

SENT VIA EMAIL

Matt J. Kelly
Tarlow & Stonecipher, PLLC
1705 West College Street
Bozeman, MT 59715

Re: Dahl properties

Dear Mr. Kelly:

On June 27, 2016, you provided me a copy of a letter which you indicated you would be sending to the North Dakota Public Service Commission ("PSC") on July 1, 2017. We have since learned this letter was sent to the PSC on June 30, 2016. The following is our response to the claims you detail in the letter. I have addressed each of these issues in your choice of words on the headings so there's no confusion on what Basin Electric Power Cooperative ("Basin Electric") is referring to when addressing your claims.

I. Dahl Properties and Location of Line

The issue of the location of the transmission line has been long since settled and if you are interested in learning about why it was not beneficial to locate this line near the existing Western Area Power Administration (WAPA) line, please refer to the PSC's website as there was extended testimony at the PSC hearings on why Basin Electric could not locate the line near the WAPA line for reliability purposes.

II. Trespass

Your client, Mr. Nathan Dahl did provide Basin Electric with survey permission on his land which I have attached to this letter. Thus, your statements that Basin Electric only obtained legal access after initiating eminent domain proceedings against them is inaccurate. Based on this survey permission, Basin Electric's contractor did conduct an archeological survey in 2014 on Mr. Nathan Dahl's land.

Regarding the archeological record (32MZ2836) you referenced in the letter, this site is located on the land for which Mr. Nathan Dahl provided survey permission for.

III. Construction Access

Your statement asserts Basin Electric is breaching their agreement on temporary access. The wording in the settlement agreement between Basin Electric and the Dahls was "off-easement access areas on the Dahls' property necessary to construct or maintain the transmission line." The easement also contains an ingress/egress

provision. At no point did Basin Electric limit any of our off right-of-way access as being construction only or temporary in nature.

IV. Destructive Construction Practices

a. Rolling Topsoil

Basin Electric's contractor did roll the topsoil back to avoid compacting the topsoil in with the subsoil. After construction activity is concluded the topsoil is then rolled back into the finished grade and this will be done in a manner outlined in the PSC permit. This is a practice that is typically used in the construction industry to minimize compaction to the soils and is consistent with PSC requirements regarding reclamation and preservation of existing topsoil.

Regarding the additional topsoil, you indicated Basin Electric agreed to bring into the Dahl land. Basin Electric recognizes this arrangement and the additional topsoil will be brought this fall.

b. Multiple Roads

The easement contains a general ingress/egress provision, and thus allowed the construction of roads that were necessary to construct the line. The access route maps exchanged at the time of settlement were designated "preliminary estimates" and the parties agreed that "reasonable changes may be made after review by Basin Electric and its contractors."

c. Widening Existing Roads

It was necessary to widen the existing roads to bring equipment into the area to construct the line. Road widening is a standard industry practice in the construction of high voltage transmission line projects and was necessary to effectuate ingress/egress from the property.

d. Wrecking Water Crossing

Your picture depicts additional material our contractor, GSW added to this crossing so we dispute your statement that the crossing is not suitable for agriculture equipment. Further, the crossing was sufficient for Basin Electric's contractor GSW's large equipment and thus should be sufficient for any farm equipment your client may bring through this crossing.

Your statements regarding the culverts and the water line are unclear. Basin Electric's engineering staff has reviewed the culvert installation and roadway improvement and concluded that the work done was appropriate.

e. Tracking through Wetland

It should be pointed out that due to the rugged topography and the presence of the wetland, the Project never intended to have construction equipment in the wetland area. Subsequently, Basin Electric's contractor needed to access this

area to complete the transmission line. Unfortunately, the wetland area was where one roll of conductor ran out and a new roll of conductor needed to be spliced in. Basin Electric staff recently evaluated the wetland area and in our opinion, bringing additional equipment in to remove the tracks, would cause more damage. We do not anticipate that this track will be a permanent impact to this wetland and we will continue to monitor this area.

f. Tracking though Project Avoidance Area

Basin Electric's contractor did ignore the flagging and moved equipment into this marked area. However, in June of 2015, WAPA, as the lead agency on Section 106 consultation, concluded that the site did not need protection as it was determined to be ineligible to the National Historic Registry, as such, there is no protection granted by law (Federal or State). The flagging denoting the restricted area that was installed prior to initiating construction activity was based on premise that the "site" was to be protected until the eligibility determination was finalized by WAPA. With WAPA's conclusion, Basin Electric could have removed the flagging and no avoidance area would have been present. Basin Electric's contractor "impacted the site" in the fall of 2015. Thus, Basin Electric's contractor did not damage a "cultural site". I have attached a letter from Basin Electric's archeological consultant that discussed this issue further.

g. Theft of Scoria

Basin Electric's contractor did remove scoria from Mr. Nevin Dahl's stockpile. After acknowledging their mistake, the Contractor and Mr. Dahl entered discussions to agree on a quantity removed and a reimbursement value. It is our belief that the issue was satisfactorily resolved between the contractor and Mr. Dahl. If Mr. Dahl can quantify any amounts removed for which he has not been reimbursed, please advise and Basin Electric will investigate further if necessary.

h. General Mess

Your letter mentioned trash, disturbed topsoil, clay left on the topsoil and slash which was not removed. Your photographs were taken prior to any reclamation efforts occurring on your client's land. Basin Electric's reclamation contractor started on the Dahl's land the week of June 13, 2016. The contractor has leveled the disturbed soil and has tilled and seeded the disturbed areas around the structures. We ask for your client's patience and understanding of the Project's sequential nature of reclamation.

i. Inaccurate Tree Count

Basin Electric's consultant, who performed the tree and shrub survey, re-verified the tree count on the Dahl's property as was itemized in the February 25, 2016 letter to Mr. Nevin Dahl and confirmed its accuracy.

July 15, 2016

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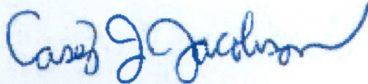
j. Recent Access

The recent access to the property was due to our reclamation efforts on the Project. A portion of the lands traversed was on a publicly available section line of which your client planted over with crop.

V. Conclusion

While many of your claims are private contractual matters outside the scope of PSC jurisdiction, Basin Electric is interested in addressing your client's concerns, and resolving them to the best of its ability. As stated above, our reclamation contractor has engaged in extensive reclamation efforts on the Dahl's land in the recent months and efforts are still ongoing. Pursuant to the Certification of Order Conditions, Basin Electric is committed to restore areas affected by the activities to as nearly as is practicable to the condition as it existed prior to the beginning of construction. After you review this letter, I would suggest an onsite meeting with you, your clients, Basin Electric and if appropriate, our reclamation contractor to address any issues you may still have regarding any of the above items.

Regards,



Casey J. Jacobson
Senior Staff Counsel

cjj/ds
enclosures

Basin Electric Power Cooperative
1717 East Interstate Avenue
Bismarck ND 58503-0564
701-223-0441

SURVEY PERMIT

The undersigned hereby consents and authorizes the entry for BASIN ELECTRIC POWER COOPERATIVE, its employees and agents to make surveys, examinations, photographs, tests, soundings, borings and soil samplings. Any damage to the property described below by such entry will be promptly compensated and/or restored to as good as or better condition by BASIN ELECTRIC POWER COOPERATIVE. The right of entry granted hereunder is not an easement and does not obligate the undersigned to grant an easement.

Legal Description panels in Sections 12 & 13 - T148-R99

County McKenzie State ND

Name of Owners(s)	Mailing Address
<u>Nathan Dahl</u>	<u>120 Evergreen Ln.</u>
	<u>Watford City, ND 58054</u>

Does Owner live on property? NO Telephone Number H-701-842-4545
C-701-770-5600

Is property rented? Some of it If so, on what basis? Cash ✓ Crop ✓ Lease

Does Tenant live on property? NO

Tenant Name, Address, Telephone Number Nevin Dahl - Cropland (701) 842-3807
WADE Wilson - Pasture (701) 842-3430

Remarks and/or instructions for survey party: Walk & map
If you have questions concerns or problems

Permission to survey was granted by [Signature] - Nathan Dahl

who can be called and/or located at (701) 770-5600

Date 4/19/12 Agent SHANNA LABER



Metcalf Archaeological Consultants, Inc.

Beyond Compliance Archaeology

Est. 1980

Tuesday, July 12, 2016

RE: Cultural Resource Site 32MZ2836

Dear Mr. Miller,

Background:

Basin Electric Power Cooperative intends to construct a 345 kV overhead transmission line in Dunn, McKenzie, Mercer, Mountrail, and Williams Counties, North Dakota. Basin contracted Metcalf Archaeological Consultants, Inc. (Metcalf) to conduct a cultural resource inventory of the project area. Western Area Power Administration (WAPA), on behalf of the U.S Department of Agriculture Rural Utilities Service (RUS), is the lead federal regulatory agency for this undertaking and as such, is responsible for complying with the National Historic Preservation Act (NHPA), Public Law 89-665, as amended and its implementing regulations, 36CFR Part 800.

The purpose of the cultural resource inventory was to locate any cultural resources within the undertaking's area of potential effect (APE), determine whether those resources qualify for inclusion in the National Register of Historic Places (NRHP), and assess the effect that the undertaking may have on those cultural resources that do qualify for inclusion in the NRHP. Metcalf ensured that all work complied with *North Dakota SHPO Guidelines Manual for Cultural Resource Inventory Projects*.

On May 3, 2014 the inventory crossed through the north half of Section 13 in T148N, R99W, and crews documented a historic site (Map 1). Site 32MZ2836 is comprised of a single depression measuring 10 feet by 15 feet, and a small scatter of flat window glass and coal. Integrity of the site is poor, having been impacted by erosion, cattle activity, fence construction, and the deterioration and/or removal of standing structures and buildings. Metcalf recommended this site as *not eligible* for inclusion in the National Register of Historic Places and that no further research was necessary.

Following the Programmatic Agreement with WAPA, over the course of report writing, Metcalf felt it was prudent to have construction avoid the site, prior to WAPA concurrence with our recommendation of *not eligible*. No towers were planned within the site boundaries and there was ample room for construction traffic to go around the site. June 11, 2015, WAPA responded to our draft report with comments, but did not have any corrections or stipulations about site 32MZ2836. Because WAPA had no questions or concerns about this site, it was implied that they concurred with our recommendation, and Metcalf released the avoidance stipulation for construction. On May 2, 2016, the final report detailing the recommendation for this site was accepted by WAPA.

BISMARCK, NORTH DAKOTA
EAGLE, COLORADO

GOLDEN, COLORADO (HQ)
SALT LAKE CITY, UTAH

BOZEMAN, MONTANA
GRAND JUNCTION, COLORADO

MAC@MetcalfArchaeology.com
MetcalfArchaeology.com

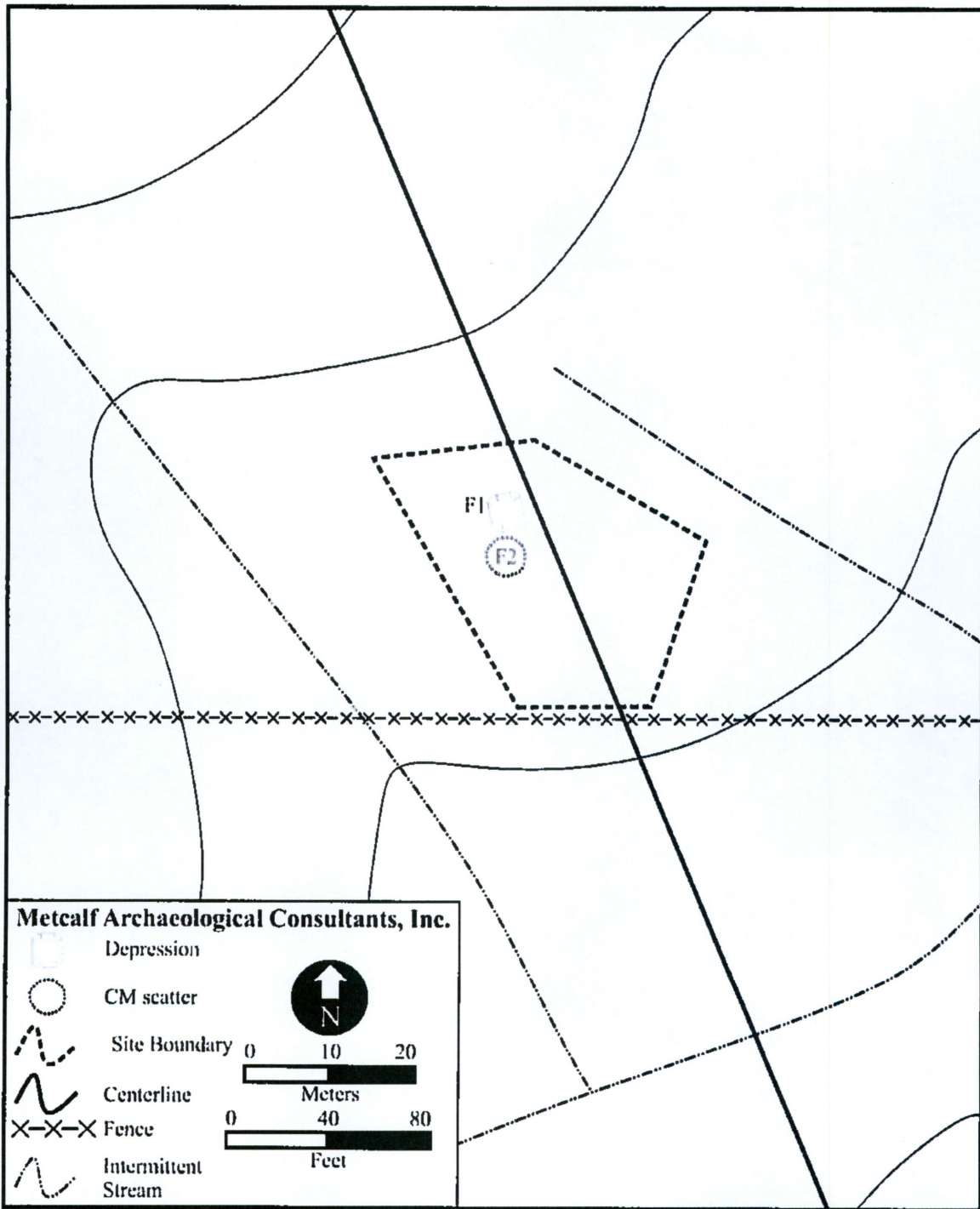
Incident Report:

Basin Electric flagged the site as was appropriate in the Project's cultural protection measures. The opportunity to remove the site from the field flagging was missed by the Project team. Subsequently, Basin Electric's contractor inadvertently drove through the site in September 2015. Metcalf informed Basin Electric that the site does not require damage assessment as it does not meet the NRHP eligibility threshold for significance as the above referenced status describes.

Sincerely,

A handwritten signature in cursive script, appearing to read "Damita Engel".

Damita Engel
Regional Manager



Map 1: Sketch map of site 32MZ2836, north of the half-section line in Section 13, T148N, R99W in McKenzie County, North Dakota. (Note CM Scatter refers to the glass and coal scatter).