

September 2, 2016

Matt J. Kelly, Attorney  
Tarlow & Stonecipher, PLLC  
1705 West College Street  
Bowman, Montana 59715-4913


Re: Dahl Brother's Properties, Case No. PU-16-415

Dear Mr. Kelly:

Thank you for your letter of June 30, 2016 regarding the Dahl brothers' properties, which are crossed by Basin Electric's recent 345 kV Electric Transmission line permitted by the Commission in Case No. PU-11-696. Staff has reviewed your submission and contacted the company regarding the issues. After a number of communications with the Company and receipt of Basin Electric's response, Staff believes that these issues are generally either related to easement terms or reclamation that is yet to be completed. While concerning, Staff has concluded that action may be premature.

The Commission is not the proper forum for interpreting easements, so I am afraid the Commission cannot be of assistance in resolving easement disputes. The Commission does have jurisdiction regarding construction and reclamation. However, it is our understanding that reclamation on the Dahl properties is ongoing such that the issues should be resolved upon completion. If issues remain after reclamation is complete or we can be of any other assistance please feel free to contact us.

Sincerely,



John Schuh  
Staff Attorney

## MEMORANDUM

To: John Schuh  
Fr: Jerry Lein  
Da: July 18, 2016  
Re: Dahl Complaint, Case No. PU-16-415.

### Staff Recommendation:

Generally, the concerns raised by the Dahls are either related to easement terms or premature because reclamation has not yet been completed. Staff proposes to send the attached letter advising that the Commission does not have jurisdiction to resolve easement disputes and recommending they reassess reclamation issues after reclamation is completed.

### Discussion:

On June 30, 2016 the Commission received a letter from counsel representing Nathan and Nevin Dahl. The Dahl brothers own adjoining ranches near the North Unit of Theodore Roosevelt National Park in McKenzie County. Basin Electric invoked eminent domain in order to cross the Dahl's lands with its 345 kV electric transmission line that was sited by the Commission in Case No. PU-11-696. Eminent Domain was litigated and eventually settled. The Dahls ask the Commission to investigate Basin's activities on their land and assist them in getting Basin to "respect their property rights and to treat the land with a modicum of respect."

Basin Electric received the same correspondence from the Dahls on June 27 and provided a copy of a response it sent to the Dahls on July 16, 2016. Basin pointed out that many of the concerns raised were related to easement terms or were premature because reclamation had not yet been completed. A Summary of Allegations and Basin's response sent to the Dahls follows:

1. **Trespass:** Despite denial of access, Basin trespassed to conduct an archeological study, which was recorded May 3, 2014 before the court order granting access issued June 23, 2015. Dahls provided a copy of an archeological site form.

**Basin Response:** Basin provided a Survey Permit from Navin Dahl dated 4/10/2012.

2. **Construction Access:** The Dahls granted separate temporary construction access easements and allege recent activities are occurring within the construction access easements after construction is complete.

**Basin Response:** Access easement was not temporary or limited to construction-only.

3. **Rolling Topsoil:** Basin rolled a layer of topsoil off the cultivated field despite instructions to leave the topsoil in place. Basin has not brought in additional topsoil as it agreed to do.

**Basin Response:** Basin will deliver additional topsoil this fall.

4. **Multiple Roads:** Dahls agreed to reasonable deviations from mapped access under the access easement, but Basin used any other access it deemed necessary.

**Basin Response:** Easement language allowed construction of roads as necessary to construct the line.

5. **Widening Existing Roads:** Basin often drove off existing roads causing extensive widening.

**Basin Response:** Widening was allowed and necessary to bring in equipment.

6. **Wrecking Water Crossing:** Basin narrowed and raised a water crossing making it unsuitable for agricultural machinery and left culverts below water line.

**Basin Response:** Basin disputes crossing not suitable for agriculture equipment as was sufficient for large construction equipment.

Engineering staff reviewed culvert installation and roadway improvement and concluded the work done was appropriate.

7. **Tracking through Wetland:** Basin drove bulldozer through wetland leaving ruts.

**Basin Response:** Conductor needed to be spliced at that location causing wetland to be impacted. Basin believes repairing the rut would cause additional damage to the wetland and will monitor what should be a temporary impact.

8. **Tracking through archeological site:** Equipment through archeological area.

**Basin Response:** Contractor did ignore flagging, but no damage was done. The site had previously been determined ineligible and flags should have been removed as avoidance was no longer recommended.

9. **Theft of Scoria:** Stole scoria though ultimately paid for it.

**Basin Response:** Contractor mistake. Basin believes it to be fully resolved.

10. **General mess:** Pictures showing trash, disturbed topsoil, etc.

**Basin Response:** Pictures were taken prior to week of June 13, 2016 when reclamation contractor started on the Dahl's land.

11. **Inaccurate Tree Count.** Nevin Dahl disputes Basin's claim that only 370 trees had been removed from his land.

**Basin Response:** The number has been verified by Basin's consultant.

12. **Recent Access:** A few weeks ago Basin drove over planted crops, left ruts in pasture and left trash behind.

**Basin Response:** This access was for reclamation work. Public section line had been planted over.

JRL

att: Proposed Letter

**CERTIFICATE OF SERVICE**

I, John Schuh, hereby certify that I served by regular mail on September 2, 2016 a true and correct copy of the foregoing **Letter with attached Memorandum** upon Matt J. Kelly and Casey Jacobson.

Dated September 2, 2016



John Schuh