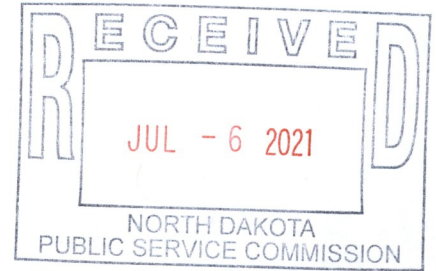




June 28, 2021

Patrick Fahn
Director, Public Utilities Division
Public Service Commission
State of North Dakota
600 East Boulevard Avenue Dept 408
Bismarck, ND 58505-0480



RE: Notice of Noncompliance
Project: 12.75-inch Crude Oil Pipeline – McKenzie County
Case No.: PU-16-420


On June 18, 2021, Caliber Midstream received a notice of noncompliance from the Public Service Commission (PSC). The letter indicates that the Tree and Shrub Mitigation Specifications in the Order have not been documented.

The crude oil project corridor and route did not encounter any trees and/or shrubs requiring removal as indicated in the submitted permit application and in the as-built inspection report. There was no execution of the mitigation plan because there was no removal of trees and shrubs. No replacements were planted so no annual follow up inspections were completed. The submitted application to the PSC documented and recorded the number of trees and shrubs for this route. Confirmation of no trees and shrubs is also documented in the final as-built report. The requested documentation by the notice of noncompliance is provided in referenced documents that are part of the case record for the Caliber Bear Den Interconnect issued Certificate of Corridor Compatibility and Route Permit Certificate. The links to those documents is provided in this response.

Caliber Midstream has met the compliance requirements of the Tree and Shrub Mitigation Specifications that are part of the Order as provided in the reference documents on file. Please feel free to contact me at 720- 630-2658 if you should have any questions or need further information.

Sincerely,

 Recoverable Signature

X 

Carol Butero
Director of Regulatory, Safety and Compliance
Signed by: Carol Butero



Case # PU-16-420:

Docket #1 <https://psc.nd.gov/database/documents/16-0420/001-010.pdf>

Docket #26 <https://psc.nd.gov/database/documents/16-0420/026-010.pdf>

Docket # 56 <https://psc.nd.gov/database/documents/16-0420/056-020.pdf>

Application for Certificate of Corridor Compatibility and Route Permit:

The Application for Certificate of Corridor Compatibility and Route Permit dated July 1, 2016, was submitted to the NDPSC by Cardno Inc on behalf of Caliber Midstream (Docket #1: and Docket #26). In Docket # 1, section 3.5.8 (page 45 of 438) and section 4.5.8 (page 97 of 438) provide summary of no trees, woodlands, or wooded areas in the proposed ROW. Appendix A, Section A.5.5 (page 158 of 438) provides a count of trees and shrubs along with the narrative 'there is no impact along the ROW'.

Application Section 3.5.8:

3.5.8 Impact on Wetlands, Woodlands, and Wooded Areas

One freshwater pond and one freshwater emergent wetland were noted within the survey area. Impacts to these wetlands are expected to be minimal, and a SWPPP has been developed to prevent contamination. Operation of the transmission line is not expected to negatively impact these wetlands. No trees, woodlands, or wooded areas lie within the proposed ROW. See Appendix A for more information.

Application Section 4.5.8:

4.5.8 Impact on Wetlands, Woodlands, and Wooded Areas

One freshwater pond and one freshwater emergent wetland were noted within the survey area. Impacts to these wetlands are expected to be minimal, and a SWPPP has been developed to prevent contamination. Operation of the transmission line is not expected to negatively impact these wetlands. No trees, woodlands, or wooded areas lie within the proposed route. See Appendix A for more information.

Application Appendix A Section A.5.5:
A.5.5 Trees, Sapling, and Shrub Count

The majority of the survey area and ROW are devoid of woody vegetation due to the dominance of cropland and grazing. Limited amounts of mature trees (primarily cottonwoods and American elm (*Ulmus americana*)) were found within the survey area, as part of either shelterbelts or along stream banks. The shrub stands identified in the field were primarily restricted to the upland buffers around crop lands, on sloped areas that were unfit for crop production. The riparian buffers (features WV-4, WV-5, and WV-6) were found along the banks of SMK-002.

Table 8-4 Woody Vegetation

Feature	Type	Species	Survey Area		ROW	
			Number*	Acreage**	Number*	Acreage**
WV-1	Shelterbelt	Cottonwood	1	-	1	-
WV-2	Shelterbelt	Cottonwood	1	-	0	-
WV-3	Shrub Stand	Saskatoon serviceberry	65%	0.003	N/A	N/A
		American plum	30%		N/A	
WV-4	Riparian Shrub	Western snowberry	75%	0.020	N/A	N/A
		Russian olive	5%		N/A	
WV-5	Riparian Tree	American Elm	1	-	0	-
WV-6	Riparian Tree	American Elm	1	-	0	-
Total			2	0.023	0	0.000
* - For shrub stands, percentages are estimated in lieu of numbers. ** - For single trees, acreage was not calculated since it was negligible. For shrub stands, acreage reflects the entire stand. N/A – Indicates no woody vegetation from the feature occurs in the ROW.						

Due to the locations of the delineated woody vegetation stands with respect to the latest proposed pipeline route, none of the woody vegetation will be affected by construction activities. The only feature that occurs within the construction ROW is WV-1, which is a cottonwood near WMK-002 and 22nd Street NW which is expected to be crossed via HDD, which will result in no impact to surface features.

As-built inspection report for the Caliber Bear Den Interconnect Pipeline Project:

The As-built inspection report for the Caliber Bear Den Interconnect Pipeline Project dated August 24, 2017, was submitted to the NDPSC by Wenck Associates (Docket #56). In this report, Section 3.5.5 Tree & Shrub Mitigation stated that during the project siting a tree and shrub count was done and the area impacted by construction would not require removal of any trees or shrubs so no need for replacement. The report further summarizes, based on inspection it appeared that major woody areas were avoided.

As Built Report Section 3.5.5:
3.5.5 Tree & Shrub Mitigation

It appeared that in general, major woody areas were avoided through Project siting. A tree and shrub count was done within the area expected to be impacted by construction which stated the woody vegetation would not be affected by construction activities in the latest proposed pipeline route (Docket #1, #26, Application and Addendum). Caliber stated during the site inspection that no trees and shrubs were removed during construction, so there will be no need for tree and shrub replacement.