

**COMPATIBILITY DETERMINATION  
for  
PUBLIC AND PRIVATE  
BURIED UTILITY LINES  
OCCURRING ON  
FWS  
EASEMENT PROPERTIES  
or Fee-Owned WPA's**

**Use:** Projects associated with buried utility lines and/or cables where impacts to Service lands and interests are only temporary and minor. Requests from utility companies, rural water systems, and minor impacts associated with some highway improvement projects, and certain requests from private landowners. The use covered by this compatibility determination is in conjunction with the Region 6 Policy Memorandum of April 5, 2002, entitled "Rights-of Way and Permits for Minor Disturbance Projects". See Exhibit XII-7 for a copy of the Policy Memorandum.

**Station Names:**

**South Dakota Wetland Management Districts:**

Lake Andes WMD, SD  
Madison WMD, SD  
Huron WMD, SD  
Waubay WMD, SD  
Sand Lake WMD, SD  
Lacreek NWR, SD

**North Dakota Wetland Management Districts:**

Tewaukon WMD, ND  
Kulm WMD, ND  
Arrowwood WMD, ND  
Valley City WMD, ND  
Chase Lake WMD, ND  
Audubon WMD, ND  
Long Lake WMD, ND  
J Clark Salyer WMD, ND  
Devils Lake WMD, ND  
Lostwood WMD, ND  
Crosby WMD, ND

**Montana Wetland Management Districts:**

Medicine Lake WMD, MT  
 Bowdoin WMD, MT  
 Benton Lake WMD, MT  
 Northwest Montana WMD, MT

**Establishing and Acquisition Authorities:**

Waterfowl Production Areas Wetland Easements, Grassland Easements - The Migratory Bird Hunting and Conservation Stamp Act, March 16, 1934, (16 USC Sec. 718-718h, 48 Stat. 452) as amended August 1, 1958, (PL 85-585; 72 Stat. 486) for acquisition of “Waterfowl Production Areas”; the Wetlands Loan Act, October 4, 1961, as amended (16 USC 715k-3 - 715k-5, Stat. 813), funds appropriated under the Wetlands Loan Act are merged with duck stamp receipts in the fund and appropriated to the Secretary for the acquisition of migratory bird refuges under the provisions of the Migratory Bird Conservation Act, February 18, 1929, (16 USC Sec. 715, 715d - 715r, as amended.

FmHA deed restricted properties - Consolidated Farm and Rural Development Act - (7 USC Para. 2002).

Tall Grass Prairie Tracts - Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l-4 through 460l-11)

**Refuge Purpose(s):**

“...as Waterfowl Production Areas” subject to “...all of the provisions of such Act [Migratory Bird Conservation Act] ...except the inviolate sanctuary provisions...” 16 USC 718(c) (Migratory Bird Hunting and Conservation Stamp)

“...for any other management purpose, for migratory birds.” 16 USC 715d (Migratory Bird Conservation Act)

“...for conservation purposes...” 7 USC 2002 (Consolidated Farm and Rural Development Act)

**National Wildlife Refuge System Mission:**

“The Mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans” (National Wildlife Refuge System Administration Act of 1966, as amended) [16 USC 668(dd)-668(ee)].

### **Description of Use:**

Wetland Management Districts receive frequent requests from utility companies to cross fee and easement properties with buried pipelines, electric cables, communications lines, natural gas lines, and/or rural or potable water lines or systems. These requests are generally part of an overall area-wide project to provide better services to the people residing in the area. When these types of projects are proposed in the Prairie Pothole Region, it may not be possible to avoid all Service land interests (fee and easement), and therefore, some Service property interests may be temporarily impacted during the construction period. This use includes requests for projects on wetland, grassland, FmHA, or conservation easements or fee-owned Waterfowl Production Areas. Construction methods may include cable-plowing, utilizing a vibrating cable-plow, or narrow trenching equipment. In each case, the surface disturbance is minimal, and the temporary cable or trenching scar will grow over with grass or marsh vegetation within a year or two.

A second area covered by this Compatibility Determination is requests received to temporarily alter upland sites in conjunction with highway maintenance projects to improve highway safety. These activities may be outside the existing highway right-of-way, but a formal ROW expansion is not needed because of the only temporary impacts to Service interests. An example of this type of request is for back-sloping a hill adjacent to the ROW to remove a snow catch area. Construction methods here include stripping away the vegetation and topsoil, removing enough of the hill to satisfy the sloping requirements, re-spreading the topsoil, and reseeding the vegetation to the manager's specifications.

It is expected that the use will be conducted as a one time event in the summer season when frost no longer exists and conditions have dried sufficiently to minimize grass disturbance. There is little to no future maintenance.

### **Availability of Resources:**

Financial and staff resources are determined to be sufficient at each field station to administer these requests. Staff time will be needed to evaluate the proposed use, to prepare the site-specific permits, and to insure compliance with the permit authorization and stipulations, as well as checking for satisfactory restoration of any disturbed sites after the reseeded areas have had a chance to grow in.

No specialized equipment will be necessary, as the work requirement associated with these projects is monitoring and compliance checking only. Actual work, including restoration needs, will be completed by the applicant as specified by the wetlands manager.

**Anticipated Impacts of the Use:**

The uses authorized under this compatibility determination must result in impacts that are only very minor and temporary in nature. In other words, there will be NO long term negative impacts to Service land or water interests.

Examples of work authorized under this Compatibility Determination include:

- trenched and backfilled areas to accommodate buried pipelines and cables
- buried utility lines or PVC water lines using a cable plow
- excavated trenches using a backhoe equipped with a “trenching” bucket (approximately 8 inches wide).
- use of crawler-type equipment to shave hills and back-sloping associated with highway safety projects which may extend beyond the existing ROW.

Anticipated impacts are as follows:

- temporary disturbance to the grassland area during and for a period of time following the backfilled trench
- some wildlife may be temporarily displaced during the actual construction
- water quality may be temporarily and slightly reduced due to possible silt deposition if a rainstorm washes the exposed areas for a short period of time after backfilling the trenches or washing of the exposed back-sloped areas.

There will be no long-term impacts nor will there be any cumulative impacts to Service lands or interests.

**Public Review and Comment:**

The period of public review and comment began April 10, 2005 and ended April 17, 2005.

Posted notices were made in public places for each of the field stations listed on this Compatibility Determination. This method was selected because the proposed activity is considered minor, incidental, infrequent, with only short-term disturbance, and/or displacement of wildlife. No comments were received as a result of the posted notices.

**Determination:**

**Compatibility Threshold:** Material Interference of Detraction from the Purposes and/or Mission of the NWRs.

\_\_\_\_\_ Use is Not Compatible

XXX Use is Compatible with the Following Stipulations

**Stipulations Necessary to Ensure Compatibility:**

1. Issuance of a permit does not preclude the requirements for obtaining necessary permits and/or approvals from other County, State, or Federal Agencies and from local landowners.
2. The permit is issued subject to the revocation and appeals procedure contained in Title 50, Part 25 of the Code of Federal Regulations.
3. The proposed activity will result in no impacts to wetlands protected by FWS easements. No wetlands or any part thereof will be filled with any material, leveled by any equipment, drained by any means including pumping or by diverting water, or burned.
4. Any work within protected wetland basins will be backfilled and compacted to the normal contour of the wetland bottom. No excess, non-compacted fill will be permitted.
5. Upland impacts to areas protected by FWS grassland easements will be only temporary. Any disturbed areas will be leveled, seeded, and restored to pre-work condition as specified by the Refuge Manager.
6. Additional stipulations may be added to address specific concerns with individual projects.
7. The authorization under the permit issued in accordance with this determination is for the initial construction only; any future maintenance or repairs will require additional consultation with the Wetland Management District office, and will require a supplemental permit issued prior to the initiation of any remedial work.

**Justification:**

There will be minimal and temporary disturbance to the wetland and grassland resource protected by the Service's fee or easement by this activity. The use will not detract from or materially interfere with the mission or purpose of the NWRS. The uses covered by this CD are considered NOT to be an economic use under the guidelines found in 50CFR29.1.

Prior to issuing any permit, the manager will have worked with the applicant to avoid as many impacts as possible, and then to minimize any impacts to Service interests. The impacts are deemed to be minor and only temporary, and complete site restoration will occur, usually with the next growing season.

Where possible, and without compromising any preservation program goal or objective, and without affecting (in the long term) any land interest held by the Service, it is critically important that field stations be able to accommodate these requested uses which are designed to improve highway safety or the quality of life in rural America.

**Mandatory 10-Year Reevaluation Date:**

10 years from the date of APPROVAL signature.

Enter Reevaluation Date: \_\_\_\_\_

populations and their habitats, and will include cultural resources. Research applicants will submit a proposal that outlines: 1) objectives of the study; 2) justification for the study; 3) detailed methodology and schedule; 4) potential impacts on refuge complex wildlife and/or habitat, including disturbance (short- and long-term), injury, or mortality; 5) personnel required; 6) costs to the refuge complex, if any, and; 7) end products (i.e. reports, publications). Research proposals will be reviewed by refuge complex staff, the regional office branch of refuge biology and others, as appropriate. Evaluation criteria will include, but not be limited to, the following:

- Research that will contribute to priority management activities will have higher priority than other requests.
- Research that will conflict with higher priority research, monitoring, or management programs may not be granted.
- Research projects that can be done off-site, are less likely to be approved.
- Research which causes undue disturbance or is intrusive, will likely not be granted. Level and type of disturbance will be carefully weighed when evaluating a request.
- Research evaluation will determine if any effort has been made to minimize disturbance through study design, including considering adjusting location, timing, scope, number of permittees, study methods, number of study sites, etc.
- Refuge complex staff may deny proposal when it is impossible for the refuge complex to monitor researcher activity.
- The length of the project will be considered and agreed upon before approval. Projects will not be open-ended, and will be reviewed annually (at a minimum).

**Availability of Resources:**

Direct costs to administer research activities are primarily in the form of staff time and transportation. It is estimated that current staff is adequate to manage small and short-term research projects. Proposals will only be accepted if funding and personnel are available to adequately monitor all research activities.

**Anticipated Impacts of Use:**

Minimal impact to wildlife and habitats in the refuge complex will be expected with research studies. Some level of disturbance is expected with all research activities since most researchers will be entering areas that are normally closed to the public and may be collecting samples or handling wildlife. SUP conditions will include special conditions to ensure that impact to wildlife and habitats are kept to a minimum.

**Determination:**

Research is compatible.

**Stipulations Necessary to Ensure Compatibility:**

- If the proposed research methods would impact or potentially impact refuge complex resources (habitat or wildlife), it must be demonstrated that the research is necessary (i.e. critical to survival of a species, will enhance restoration activities of native species, will help in control of invasive species or provide valuable information that will guide future refuge complex activities), and the researcher must identify the issues in advance of the impact.
- Highly intrusive or manipulative research is generally not permitted in order to protect native wildlife populations and habitats in which they live.
- Research that does not involve birds will be conducted outside of the breeding season of avian species in all possible circumstances.
- Project leader can suspend/modify conditions/ terminate on-refuge research that is already permitted and in progress, should unacceptable impacts or issues arise or be noted.

**Justification:**

Research projects will contribute to the enhancement, protection, use, preservation, and management of native refuge complex wildlife populations and their habitats. In view of the potential impacts research

Signatures:

<u>Submitted:</u> <u>Michael J. Bryant</u> Michael Bryant, Project Leader Lake Andes WMD	<u>3/10/2005</u> Date
<u>Thomas H. Tornow</u> Tom Tornow, Project Leader Madison WMD	<u>3-10-05</u> Date
<u>Harris J. Hoistad</u> Harris Hoistad, Project Leader Huron WMD	<u>3-10-05</u> Date
<u>Larry O. Martin</u> Larry Martin, Project Leader Waubay WMD	<u>3-10-05</u> Date
<u>Gene Williams</u> Gene Williams, Project Leader Sand Lake WMD	<u>3-10-05</u> Date
<u>Tom Koerner</u> Tom Koerner, Project Leader Lacreek NWR	<u>3-10-05</u> Date
<u>Jack Lalor</u> Jack Lalor, Acting Project Leader Tewaukon WMD	<u>4/26/05</u> Date
<u>Dave Azure</u> Dave Azure, Acting Project Leader Kulm WMD	<u>3-10-05</u> Date
<u>Kim D. Hanson</u> Kim D. Hanson, Project Leader Arrowwood WMD Chase Lake WMD Valley City WMD	<u>3/10/05</u> Date
<u>Gary Williams</u> Gary Williams, Acting Project Leader Audubon WMD	<u>3/10/05</u> Date

Paul Van Ningen  
Paul Van Ningen, Project Leader  
Long Lake WMD  
Date 3/10/2005

Theodore W. Gutzke  
Tedd Gutzke, Project Leader  
Clark Salyer WMD  
Date 3/10/2005

Roger Hollevoet  
Roger Hollevoet, Project Leader  
Devils Lake WMD  
Date 3/10/05

Fred G. Giese  
Fred G. Giese, Project Leader  
Lostwood WMD  
Crosby WMD  
Date 04/26/05

Michael Rabenberg  
Michael Rabenberg, Acting Project Leader  
Medicine Lake WMD  
Date 04/26/05

Carmen R. Luna  
Carmen Luna, Project Leader  
Bowdoin WMD  
Date 4/26/05

David Gilland  
David Gilland, Project Leader  
Benton Lake WMD  
Date 4/26/05

Steve Kallan  
Steve Kallan, Project Leader  
NW Montana WMD  
Date 4/26/05

Review:

Lloyd Jones  
Lloyd Jones  
Regional Compatibility Coordinator  
Date 4-27-05

Steve Bunn  
4/28/05

Rodney F. Krey  
Refuge Supervisor  
Date 4/28/05

Approval:

Ronald D. Shupe  
Ronald D. Shupe, Region 6  
Acting Chief of Refuges  
Date 3/15/2005