

Draft Compatibility Determination

Title

Draft Compatibility Determination for WBI Energy Right-of-Way Permit Renewals

Refuge Use Category

Rights-of-way and Rights to Access

Refuge Use Type(s)

Right-of-way Permit renewals for an existing natural gas pipeline owned by WBI Energy, a subsidiary of Montana-Dakota Utilities (MDU) Resources Group, Inc.

Refuge

The Roosevelt Waterfowl Production Area and the Strand Waterfowl Production Area, both located in Stutsman County, ND and administered by the Chase Lake Prairie Project Wetland Management District; and the McLain Waterfowl Production Area located in Barnes County, ND and administered by the Valley City Wetland Management District. Both Districts are within the Eastern North Dakota Wetland Management Complex.

Refuge Purpose and Establishing and Acquisition Authority

Migratory Bird Hunting and Conservation Stamp Act (16 USC 718[c])

Migratory Bird Conservation Act 16 USC 715d(2)

Migratory Bird Conservation Act 16 USC 715i(a)

Fish and Wildlife Act 16 USC 742f

Chase Lake Prairie Project Wetland Management District

...as Waterfowl Production Areas subject to” ...all of the provisions of such Act [Migratory Bird Conservation Act] ...except the inviolate sanctuary provisions...” 16 U.S.C. 718(c) (Migratory Bird Hunting and Conservation Stamp) “... for any other management purpose, for migratory birds.” 16 U.S.C. 715d (Migratory Bird Conservation Act.)

Valley City Wetland Management District

...as Waterfowl Production Areas subject to” ...all of the provisions of such Act [Migratory Bird Conservation Act] ...except the inviolate sanctuary provisions...” 16 U.S.C. 718(c) (Migratory Bird Hunting and Conservation Stamp) “...for conservation...of...wildlife resources” 16 U.S.C. 742f (Fish and Wildlife Act)” ...for conservation purposes...” 7 U.S.C. 2002 (Agricultural Act of 1961 and Consolidated Farm and Rural Development Act).

National Wildlife Refuge System Mission

The mission of the National Wildlife Refuge System, otherwise known as 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 (Pub. L. 105-57; 111 Stat. 1252).

Description of Use

Is this an existing use? What is the use?

Yes, this is an existing use. Two 50-year right-of-way permits were issued on May 5, 1970 to Montana-Dakota Utilities (MDU) by the Secretary of the Interior acting through his authorized representative, the Regional Director, Bureau of Sport Fisheries and Wildlife, to use and occupy certain lands (three Waterfowl Production Areas referenced above). In 2012, WBI Energy was created as a subsidiary to MDU Resources to specialize in natural gas; WBI Energy now operates the pipeline that crosses the three WPAs.

WBI Energy has applied for renewal of the right-of-way permits for the existing 8-inch natural gas pipeline crossing the Roosevelt and Strand WPAs; and for the existing 6-inch natural gas pipeline crossing the McLain WPA. The original right-of-way permits were for "...the construction, operation, and maintenance" of the natural gas pipeline. The width of the rights-of-way during construction was not to exceed 50 feet (being 25 feet on either side of the centerline). Upon completion of construction, the rights-of-way reverted to a width of two (2) feet (being one (1) foot on either side of the centerline) and stipulated that future pipeline maintenance would require the permittee to coordinate with the refuge manager in charge.

The proposed right-of-way permit renewals would contain a minor modification by changing the width from 2 feet to 50 feet, 25 feet on either side of the centerline of the right-of-way. Future pipeline maintenance would still require coordination with the refuge manager in charge. Besides occupancy, the only use that would be authorized by these ROW permit renewals would be access by foot to annually inspect for pipeline leaks; no vehicle access would be allowed without a Special Use Permit.

The issuance of right-of-way permits across units of the National Wildlife Refuge System is governed by the provisions of 50 CFR §29.20. As referenced in 50 CFR §29.25: rights-of-way granted under authority of section 28 of the Mineral Leasing Act of 1920, as amended, for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, the grant may be for a term not to exceed 30 years and the right-of-way may not exceed

50 feet, plus the area occupied by the pipeline and its related facilities unless the Regional Director finds, and records the reasons for their finding, that, in their judgment, a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. The previous permit for this right-of-way was a 50-year permit, and the applicant understands the new permit is limited to 30 years. If changes to the permit or the permitted structure are required, a new compatibility determination will be completed. Even though a mandatory compatibility re-evaluation will not be required for 30 years, refuge managers have the option to re-evaluate the permitted action when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a comprehensive conservation plan.

Is the use a priority public use?

No, this use is not considered one of the legislated priority wildlife-dependent public uses of the National Wildlife Refuge System (i.e., hunting, fishing, wildlife observation and photography or environmental education and interpretation).

Where would the use be conducted?

As shown on Attachments #1, #2, and #3, and described here, the pipeline crosses the Strand and Roosevelt WPAs in Stutsman County, North Dakota; and the McLain WPA in Barnes County, North Dakota. These WPAs are administered out of the Eastern North Dakota Wetland Management District Complex.

Strand WPA (Figure 1) 8-inch pipeline

T. 140 N., R. 67 W., Section 7, SE1/4, Stutsman County, North Dakota:

The right-of-way permit would be 50 feet wide, being 25 feet on each side of the following described centerline:

Beginning at Station 158+79 on the South Section Line 617 feet West of the Southeast Corner of said Section 7; thence North 0° 30' West a distance of 1265 feet; thence North 20° 02' West a distance of 878 feet; then North 2° 28' East a distance of 498 feet to Station 185+20, a point on the North line of the Southeast Quarter, 920 feet West of the East Quarter Corner of said Section 7.

The said tract of land has a total footage of 2641 feet² and contains 3.03 acres more or less.

Roosevelt WPA (Figure 2) 8-inch pipeline

T. 143 N., R. 67 W., Section 28, E1/2, Stutsman County, North Dakota:

The right-of-way permit would be 50 feet wide, being 25 feet on each side of the following described centerline:

Beginning at Station 960+43, a point on the South Section Line, 2257 feet East of the Southwest Corner of said Section 28; thence North 17° 00' East a distance of 1265 feet to Station 972+99, a point on the Westline of the East Half of said Section 28 where the survey enters the government land; thence continuing North 17° 00' East a distance of 533 feet; thence North 23° 34' East a distance of 2833 feet; thence North 14° 41' East a distance of 1020 feet to Station 1016+85, a point on the North Section Line, 1123 feet west of the Northeast Corner of said Section 28.

The said tract of land has a total footage of 4386 feet² and contains 5.03 acres more or less.

McLain WPA (Figure 3) 6-inch pipeline

T. 140 N., R. 61 W., Section 28, SE1/4, Barnes County, North Dakota:

The right-of-way permit would be 50 feet wide, being 25 feet on each side of the following described centerline:

Beginning at Station 6090+05, a point on the West Section Line, 1175 feet North of the Southwest Corner of Section 29; thence North 86° 19' East a distance of 4232 feet; thence North 89° 32' East a distance of 3259 feet; thence South 58° 02' East a distance of 560 feet to Station 6170+56, a point on the West line of Lot 1 of said Section 28 where the survey enters the government land; thence continuing South 58° 02' East a distance of 198 feet; thence South 65° 22' East a distance of 433 feet; thence North 88° 25' East a distance of 759 feet to Station 6184+46, a point on Lot 1 of said Section 28 where the survey leaves government land; thence continuing North 88° 25' East a distance of 1320 feet to Station 6197+66, a point on the East Section Line 882 feet North of the Southeast Corner of said Section 28.

The said tract of land has a total footage of 1390 feet² and contains 1.06 acres more or less.

When would the use be conducted?

The occupancy of these lands would occur year-round. Walking access to conduct inspections would occur annually during the growing season.

How would the use be conducted?

The natural gas pipeline crossing the three WPAs is already in place; no new construction would be required. This proposed use is only for the renewal of the expired ROW permits, and for a minor modification of the permit parameters.

Specifically, expanding the right-of-way width from 2 feet to 50 feet to allow for reasonable pedestrian access for inspections. Walking access would be allowed for annual inspections of the pipeline routes across the WPAs. Future pipeline maintenance needs would still require coordination with the refuge manager.

Why is this use being proposed or reevaluated?

WBI Energy requires these ROW permits to continue to supply natural gas to the region. WBI Energy provides natural gas for many industrial uses in the area and brings gas to many towns in the area including but not limited to Valley City, Jamestown, Mandan, Bismarck, Dickinson, Minot, Grafton, and many smaller towns throughout the state.

Availability of Resources

Wetland Management District staff responsibilities for projects by non-Service entities will be primarily limited to the following: determining appropriateness and compatibility through compatibility determinations, co-preparation of Special Use Permit(s) and other compliance documents (e.g., Section 7 of the Endangered Species Act of 1973, Section 106 of the National Historic Preservation Act, National Environmental Policy Act), and monitoring of project implementation to ensure impacts and conflicts remain within acceptable and compatible levels over time. Facilities and staff are currently available to provide access, maintain public use facilities, manage hunting and fishing opportunities/resources, as well as to issue Special Use Permits for activities such as, but not limited to, archeological investigations, commercial recording, special events, and work outside of the issuance of right-of-way permit. Staff resources are deemed adequate to manage this use at anticipated use levels.

Anticipated Impacts of the Use

Potential impacts of a proposed use on the refuge's purpose(s) and the Refuge System mission

The effects and impacts of the proposed use to refuge resources, whether adverse or beneficial, are those that are reasonably foreseeable and have a reasonably close causal relationship to the proposed use. This CD includes the written analyses of the environmental consequences on a resource only when the impacts on that resource could be more than negligible and therefore considered an “affected resource.” Wildlife, aquatic species, threatened and endangered species, water quality, habitat and vegetation will not be more than negligibly impacted by the action and have been dismissed from further analyses.

Short-term impacts

Habitats in the existing permit area are primarily a mix of native and introduced grasslands and wetland. Monitoring of the pipeline integrity has occurred over the last 50 years and no maintenance requiring ground disturbance has been necessary.

In compliance with pipeline safety requirements, the ground above the pipeline locations must be inspected annually for evidence of pipeline leaks (WBI Energy has a gas control department that continuously monitors the pressures and flows of the pipeline. Along with strategically placed manual valves, WBI Energy also uses remote valves that can be operated in the case of emergency). Renewal of the ROW permits would authorize continued pedestrian access on the WPAs to perform the required inspections which could result in temporary disturbance to wildlife which may be present at the time.

An Intra-Service Section 7 review revealed a total of 8 threatened, endangered, or proposed threatened or endangered species in the proposed right of way areas. Issuance of the ROW permits would have no effect on the Northern long-eared bat or the Dakota Skipper and is not likely to adversely affect the Piping Plover, Rufa Red Knot and Whooping Crane. The renewal of the ROW permits would not jeopardize the Monarch Butterfly, Suckley's cuckoo bumble bee or the Western regal fritillary which are three proposed threatened or proposed endangered species that would not result in jeopardy or the species by renewal of the right of way permit. There are no critical habitats within the project area.

A Cultural Resource review was completed and there is no potential to effect historic sites or cultural resources within the right-of-way. The Zone Archeologist has concurred with this determination.

Long-term impacts

Regulations (50 CFR §25.21 (h)) prescribe that when evaluating compatibility in the reauthorization of these historic right-of-way, that the analysis of impacts will be based on existing conditions with the use in place, not from a pre-use perspective. In other words, only modifications from the historic permitted use are to be analyzed for impacts.

The 6 & 8 -inch pipelines are being maintained with no expected modifications or changes to the existing infrastructure, the rights-of-way are not deviating from the existing alignment, and no additional acres of FWS fee-title lands will be impacted by these right-of-way permit renewals. Therefore, the renewal of the ROW permits would result in no long-term impacts.

Public Review and Comment

The draft compatibility determination will be available for public review and comment for 30 days from **6/11/2025 to 7/10/2025**. The public will be made aware of this comment opportunity through hard copies will be posted at the office headquarters/ visitor center at Arrowwood National Wildlife Refuge (7780 10th St. SE, Pingree ND 58476 701-285-3341), Chase Lake Wetland Management District (5924 19th St. SE, Woodworth ND 58476 701-752-4218) and Valley City Wetland Management District with copies available upon request. It will be made available electronically on the refuge/WMD websites: (<https://www.fws.gov/refuge/arrowwood>), (<https://www.fws.gov/refuge/chase-lake-wetland-management-district>), and (<https://www.fws.gov/refuge/valley-city-wetland-management-district>). Please contact the refuge if you need the documents in an alternative format. Concerns expressed during the public comment period will be addressed in the final.

Determination

Is the use compatible?

Yes

Stipulations Necessary to Ensure Compatibility

1. Adhere to all applicable terms and conditions set forth in the renewed right-of-way permit as granted and referenced in 50 CFR §29.20.
2. WBI Energy Transmission Inc. shall submit an application to obtain a Special Use Permit from the refuge manager in advance of any maintenance tasks to ensure compliance with Federal policies and regulations and to ensure disturbances to wildlife, habitat, and other resources are avoided or minimized. Maintenance activities are those activities necessary to allow for continued, safe operation of the existing 6 & 8-inch pipelines. In cases of emergencies, that notification will be done as soon as reasonably practicable.
3. The permit is for the specific use described and may not be construed to authorize any other use within the permit area unless approved in writing by the Regional Director upon determination by the Service project manager that the additional use is a compatible use. This includes any actions that may require modification of the permit.
4. The Service will continue habitat management as required within the rights-of-way; the permit holder would need to advise if Service management operations would interfere with their permitted work.

Justification

The stipulations outlined above would help ensure that the use is compatible on the Roosevelt, Strand and McLain Waterfowl Production Areas. The renewal of the ROW permits to WBI Energy for the continued presence and operation of the natural gas pipelines and for pedestrian access for annual inspections in accordance with pipeline safety standards would not conflict with the national policy to maintain the biological diversity, integrity, and environmental health of the refuge units. Based on available science and best professional judgement, the Service has determined that the renewal of the right-of-way permits across the Roosevelt & Strand Waterfowl Production Areas of the Chase Lake Wetland Management District and the McLain Waterfowl Production Area of the Valley City Wetland Management District, in accordance with the stipulations provided here, would not materially interfere with, or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the Chase Lake or Valley City Wetland Management Districts .

Signature of Determination

Refuge Manager Signature and Date

Signature of Concurrence

Assistant Regional Director Signature and Date

Mandatory Reevaluation Date

2055

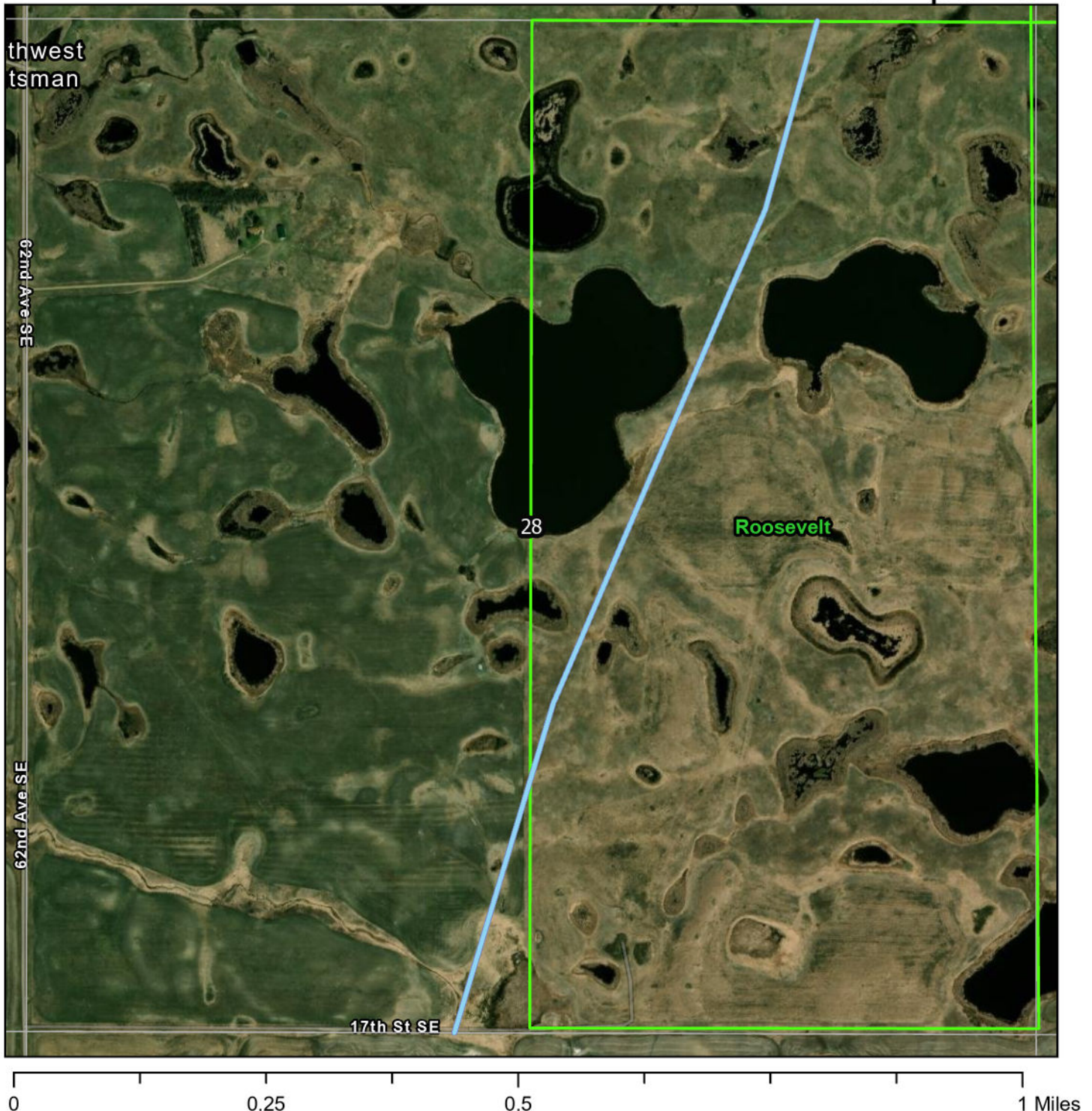


U.S. Fish & Wildlife Service

Stutsman County
T. 143, R. 67, Sec 28 E1/2

Roosevelt WPA

WBI Energy
Gas Pipeline



Legend

- WPA Boundary
- Section Lines
- Gas Pipeline_WBI Energy



U.S. Fish & Wildlife Service

Stutsman County
T. 140, R. 67, Sec 7 S1/2

Strand WPA

WBI Energy
Gas Pipeline



Legend

WPA Boundary

Section Lines

Gas Pipeline_WBI Energy

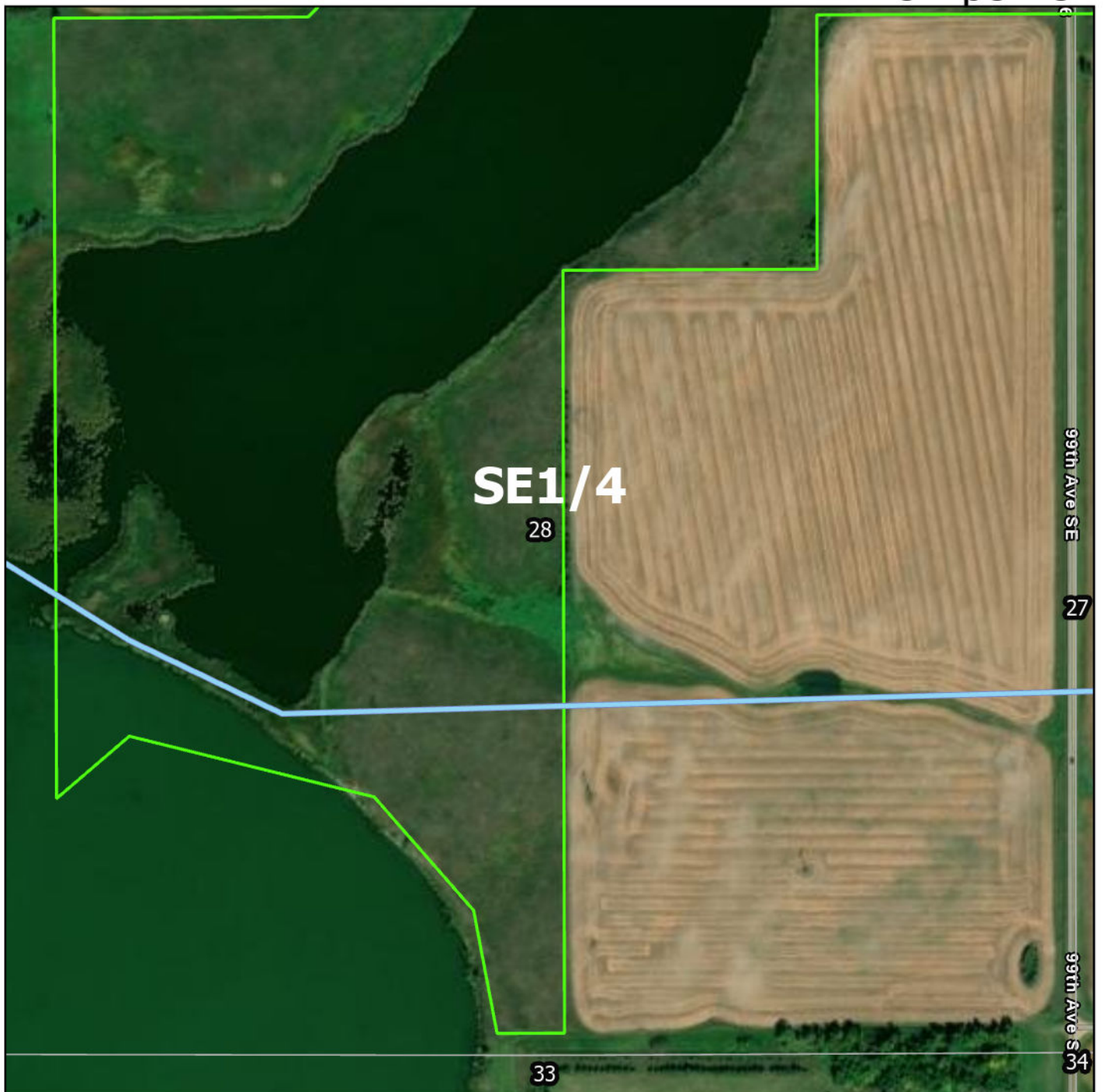


U.S. Fish & Wildlife Service

Barnes County
T. 140, R. 61, Sec 28 SE1/4

McLain WPA

WBI Energy
Gas Pipeline



Legend

- Gas Pipeline_WBIEnergy
- WPA Boundary
- Section Lines