Compatibility Determination

Title

Compatibility Determination for Right-of-Way (ROW) and construction of overhead 230-kV transmission line on grassland conservation easement in Divide County, North Dakota.

Refuge Use Category

Rights-of-way and Rights to Access

Refuge Use Type(s)

Utilities

Refuge

Crosby Wetland Management District

Refuge Purpose(s) and Establishing and Acquisition Authority(ies)

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 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)

"…for conservation purposes … "7 U.S.C. § 2002 (Consolidated Farm and Rural Development Act)

"…for the benefit of wetlands-associated migratory birds…" 16 U.S.C. 4401-4414 (NAWCA).

Establishing and Acquisition Authorities: Migratory Bird Conservation Act, as amended (16 U.S.C. 715-715r); Migratory Bird Hunting and Conservation Stamp Act, as amended (16 U.S.C. 718-718j); North American Wetlands Conservation Act (NAWCA), as amended (16 U.S.C. 4401-4414); Fish and Wildlife Act (16 U.S.C. 742f); Land and Water Conservation Fund Act, as amended (916 U.S.C. 4601-9); Consolidated Farm and Rural Development Act (7 U.S.C. 2002).

Grassland Easement Purpose:

“The purpose of this easement is to protect the habitat quality…and such lands shall be maintained to provide cover, especially nesting cover, and food for a varied array of aquatic, terrestrial, and avian wildlife, particularly waterfowl and threatened and endangered species.” (North Dakota Grassland Easement contract).

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?

No

What is the use?

The use is a utility right-of-way (ROW), which is defined as the right to use and possibly alter the landscape through construction, maintenance, and operation of water or fuel pipeline, power line, telecommunications line or tower, or other utility.

Basin Electric Power Cooperative (BEPC) is proposing to construct, maintain, and operate power lines, towers, and other utility equipment for a 230-kV transmission line across Divide County. This use would involve allowing installation and maintenance of 2 single pole structures on one grassland easement tract. The 2 single pole structures are necessary for construction of the transmission line and consist of a total occupancy of 17.72 square feet, or approximately 0.00041 acres. A temporary access route (approximately 611 feet in length and 16 feet wide) outside of the ROW would also be necessary for installation equipment to reach the site.

Is the use a priority public use?

No

Where would the use be conducted?

The line would cross one quarter mile of grassland easement 277C,1-3 in T. 160 N.,

R. 97 W., Section 17, Divide County. This grassland easement has a history of agricultural use and cropping, and it has been restored to a mix of tame and native grasses.

When would the use be conducted?

Construction is slated to commence in summer 2026 and is anticipated to conclude by fall/winter 2027. Installation would proceed in phases, starting with the construction of concrete pier footings, followed by the erection of the structures and the stringing of lines. Mobilizing equipment, installation of two structures, and reseeding of vegetation is expected to result in two to three weeks of activity total on-site. Upon the completion of the BEPC line construction, the ROW permit would enable operation and maintenance of the infrastructure for a duration of 50 years.

Following the initial construction phase, occasional inspections and minimal maintenance may be necessary within the proposed ROW to access and repair any lines or infrastructure that may sustain damage or degradation. The typical maintenance schedule includes aerial inspections conducted three times a year, one ground-based inspection every two years, and a comprehensive climbing inspection of each structure every five years.

How would the use be conducted?

A Special Use Permit (SUP) would initially be issued to facilitate the short-term disturbance and construction of the two power poles on the easement-protected grassland. The ROW permit would authorize the long-term occupancy and maintenance of these two structure locations.

Basin Electric provided a biological inventory report that included habitat surveys for Threatened and Endangered (T&E) species. They were also required to complete ESA consultation to identify and implement appropriate mitigation measures for all T&E species potentially impacted by this project. Mitigation measures such as presence surveys, flight diverters, fencing, timing restrictions, and work buffers will be utilized.

Disturbance would be limited to the confines of the project corridor and identified ingress/egress route. Structures are steel monopoles, 100 to 110 feet in height, that may be secured to concrete foundations or directly embedded into the soil. This design reduces the need for guy wires and minimizes potential collision hazards on the landscape, as well as limiting perching opportunities for avian predators. Avian flight diverters are being deployed on lines to minimize collision risk to whooping cranes and other avian species, as recommended by Avian Power Line Interactive Committee (APLIC, 2012). The project plan calls for Basin Electric to perform nest

surveys prior to the initiation of construction to identify and avoid migratory bird nests within the project corridor during the construction phase of the project and future maintenance windows. They will also implement a combination of presence monitoring, timing restrictions, work zone buffers, and silt fencing.

Construction crews will utilize a truck-mounted auger or a tracked vehicle equipped with a power auger to drill holes for either poured concrete foundations or direct embed of monopoles at the two designated structure locations. Excess soil generated will be disposed of off-site.

Structures will be transported to the site by truck and assembled on location. Davit arms, insulators, and other necessary appurtenances will be attached while the structures remain on the ground. Erection crews will deploy cranes or large boom trucks to position the structures into position.

To mitigate damage to grasslands, the contractor will restrict movement within the project corridor. Preservation of native grassland will be prioritized wherever feasible. Soil protection, along with erosion and sediment control measures, will be implemented prior to construction and maintained throughout the process. In areas where vegetation is removed, revegetation will occur promptly using an approved seed mix to minimize erosion and restore grassland habitat.

Ongoing communication and coordination will be maintained between the Service and Basin Electric Power Cooperative throughout the construction and restoration phases. This collaboration will help ensure that any impacts to easement-protected grasslands are avoided or minimized wherever possible.

For grassland easements, less than fee interests, the Service requires that special use permits be secured for ROW activities that may temporarily affect property interests acquired by the United States. If the requested ROW or its routine maintenance might permanently impact these federal interests, a ROW permit application must be submitted.

Should future construction be necessary for maintenance repairs or replacements, access will occur and be authorized through special use permits that may be secured to authorize temporary access and/or impacts occurring outside of the designated ROW. All construction, monitoring, and maintenance must be done in compliance with the “Stipulations Necessary to Maintain Compatibility” below.

Why is this use being proposed or reevaluated?

Saskatchewan Power Corporation (SaskPower), a generation and transmission

provider in Saskatchewan, has signed a 20-year agreement with Southwest Power Pool (SPP), the area's Regional Transmission Organization (RTO), to expand the transmission line capacity between Saskatchewan and the United States. The increased capacity will enable the import and export of up to 650-megawatt (MW) of electrical power. SaskPower will continue the construction of the transmission lines from the border to a new substation in Canada, approximately five miles north of the border. SPP, as the RTO that administers bulk electric transmission system reliability upgrades and generation interconnections in this area, identified deficiencies in the transmission capability between the United States and Canada based on the request for additional transmission services from SaskPower. This Project would also increase the stability of electrical grids for both the United States and Canada by increasing its resilience and providing additional power transmission redundancy.

In the course of this project, Basin Electric has made significant efforts to minimize impacts to Service lands. The cooperative recognizes the importance of preserving these lands and strives to balance the need for infrastructure development with environmental and community considerations. However, the complexity of the landscape, particularly the multitude of easement-protected parcels in the region, presents challenges that make it impractical to completely eliminate any effects on Service interests. This initiative, therefore, not only aims to enhance electric service reliability but also seeks to do so in a manner that is considerate of the surrounding environment. Basin Electric is committed to engaging with stakeholders throughout this process to ensure that all interests are considered as they move forward with this essential expansion of electrical capacity.

Availability of Resources

To effectively administer this project, resources such as staff time will be essential for reviewing, communicating, and coordinating with BEPC throughout the planning, installation, and restoration phases. This will ensure that any impacts on Service interests are either avoided or minimized. We anticipate that the preparation of the CD and associated compliance documents, along with coordination with other offices, public involvement, ROW permit processing, and monitoring, will require approximately 40 hours of Service staff time. Following project completion, no ongoing resource needs are expected. Currently, staff availability and funding are adequate to support this endeavor All costs associated with the monitoring and maintenance of the ROW will be the responsibility of BEPC.

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." The project proponents have put in place many mitigation measures to protect migratory birds, bats, threatened and endangered species, and cultural resources, as identified by reviews under the National Historic Preservation Act, the Endangered Species Act, and the National Environmental Policy Act. The Service reviewed the structure locations on all wetland easement tracts and conducted site visits with representatives of Basin Electric when necessary to verify that no protected wetland basins will be impacted by poles. Because the Service's interest on wetland easements is limited to the individual wetland basins, and Basin Electric avoided all impacts to these protected wetland basins, the Service has no jurisdiction over poles being placed on upland areas of wetland easement tracts and therefore they were excluded from further analysis.
No significant beneficial or adverse short-term, long-term, or cumulative impacts are associated with the proposed use as outlined in this CD. The short-term temporary impacts and any long-term impacts are considered negligible with respect to the mission of the Service and the established purpose for which the grassland easement was purchased, specifically for the conservation of vegetative cover, as described in the grassland easement contract.

Short-term impacts

Temporary wildlife disturbance due to construction activity will be minimal as installers will be present for only a short amount of time in any one area. Due to the noise levels and human presence during construction, wildlife may temporarily be displaced to adjacent similar habitats but are expected to resume full use of the area, once construction is complete (Beale 2007, Berger 2010).

The Service would require, as part of the special use permits issued, stipulations that ensure the impacts to protected grasslands from the construction and maintenance of these structures will be short-term and minimal (see "Stipulations Necessary to Ensure Compatibility" below). Protected grasslands will be impacted in the short-term from the surface disturbance required to install the structures and lines. Most impacts resulting from traffic and trampling will recover on their

own by the next growing season. If activity results in removal of vegetation, the area will be reseeded at the earliest opportunity with a seed mix approved by the Wetland Management District Manager. Reseeded areas typically recover within a growing season or two, depending on moisture and other natural variables. Any grading or alterations to topography due to the installation of the temporary access route will be returned to pre-work conditions; potentially including recontouring of slopes and reseeding of vegetation.

The ground-based monitoring and potential maintenance activities could introduce short-term impacts to the grasslands, primarily due to traversing the grass easement. This potential disturbance will be negated by the expected maintenance schedule that includes aerial inspections conducted three times a year, one ground-based inspection every two years, and a comprehensive climbing inspection of each structure every five years. The minimal short duration for ground-based inspections and maintenance repairs may disturb resident wildlife for less than one day every five years. Careful planning and management of monitoring practices to mitigate any adverse effects on the grassland ecosystem will result in minimal, short-term impacts. Implementing best management practices will preserve the integrity of the habitat while fulfilling monitoring requirements.

Long-term impacts

This determination indicates that the long-term disturbance resulting from the footprint of the two structures will be minimal. The occupancy of two structures at approximately 17.72 square feet culminates an expected total footprint of about 0.00041 acres, as calculated from specifications for the individual poles provided in the project footprint and structure design diagrams (Attachment I). The total acreage protected by this easement contract is 385 acres; thus impacts due to installation of the structures affect 0.0001% of the acres encumbered by the easement. The only right acquired by the Service as described in the grassland easement contract is the right to conserve vegetation, specifically nesting cover and forage. Thus, the impact to the Service's acquired interest on this easement is minor.

While the structures are in place, we anticipate that their presence would have negligible impacts on the mission of the Service and the intended objectives for which the grassland easement was originally established. Notably, project area encompasses habitat with the potential to support more than 100 breeding waterfowl pairs per square mile, as indicated by the Service's Habitat and Population Evaluation Team's Duck Pair Thunderstorm Map updated in 2021 and

the process cited in Reynolds et al. (2006). Given this context, the occupancy of 0.00041 acres by the structures would, at most, affect approximately 0.000064 breeding pairs of ducks, underscoring the minimal ecological footprint of the project.

BEPC has recognized that necessary operations may impact the environment, including avian and bat species. BEPC has developed an Avian and Bat Protection Plan (ABPP) with the overall goal of minimizing avian and bat mortality. The ABPP provides guidelines for the implementation of cooperative policy and their commitment to compliance with regulatory requirements protecting wildlife and making reasonable and prudent efforts to minimize impact and mortality of avian and bat species while building and maintaining electric generation and transmission facilities. Please refer to Attachment II: Basin Electric Cooperative Avian and Bat Protection Plan.

Public Review and Comment

The draft compatibility determination will be available for public review and comment for 14 days from February 13 to February 27, 2026. The document will be available via both electronic and print modes of distribution, in an effort to reach the widest range of users of both digital and non-digital media. Documents were posted on the websites of Crosby Wetland Management District, as well as made available in the office (10100 Hwy 42 NW, Crosby, North Dakota) for individuals who require assistance obtaining copies for review. Announcements are also published in the Crosby newspaper The Journal, which is designated as the official newspaper for publication of legal notices in Divide County. Comments may be submitted by email to District manager Scott Williams at scott_a_williams@fws.gov.

Determination

Is the use compatible?

Yes

Stipulations Necessary to Ensure Compatibility

1. Issuance of a special use permit does not preclude the requirements for obtaining a Service ROW permit or any necessary permits or approvals from other County, State, or federal agencies and from local landowners.
2. The permit is issued subject to the revocations and appeals procedure contained in Title 50, Part 25 of the Code of Federal Regulations.
3. 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. Construction mats, crane mats, or similar ground protection will be used to prevent or minimize ground disturbance, particularly during wet or soft soil conditions. Any disturbed areas will be leveled, seeded, and restored to pre-work condition as specified by the Refuge Manager. Spoil will be discarded off site.
5. Sec. 106 will have SHPO Concurrence and Sec. 7 Consultation shall be completed before construction commences.
6. The authorization under the special use 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.
7. District staff will monitor installation and restoration activities for compliance with conditions of the special use permit. At any time, District staff may accompany the surveyors to determine potential impacts.
8. The Wetland Management District manager can terminate or modify the terms of a special use permit if the permittee is out of compliance or to ensure wildlife and habitat protection.
9. In accordance with the Archeological Resources Protection Act (16 U.SC. 470aa), the removal or disturbance of archeological or historic artifacts is prohibited. The excavation, disturbance, collection, or purchase of historical or archaeological specimens or artifacts on refuge lands is prohibited. If evidence of historical, archaeological, or paleontological sites are discovered during the activities authorized by the SUP, the permittee shall immediately stop activities and contact the Wetland Management District manager.
10. Additional stipulations may be added to address specific concerns with individual projects.

Justification

The many mitigation efforts the project proponents have in place to protect migratory birds, bats, threatened and endangered species, and cultural resources (described above in “How the use will be conducted?” section), as well as the “Stipulations Necessary to Ensure Compatibility” will ensure minimal impacts to the purpose for which this easement was acquired and the mission of the National Wildlife Refuge System, which is in conserving vegetative coverage on these grassland easements. The installation of this transmission line will not interfere with the biological diversity, integrity, and environmental health of the district, as the footprint of this transmission line is minimal when compared to the amount of land protected under conservation easements in the district.

If these structures had existed at the time of the grassland easement acquisition, the ecosystem's beneficial grassland attributes would still qualify, as the property is within an approved county and holds high potential value for wildlife. Current restrictions on mowing, haying, and grass seed harvesting remain in effect to protect grassland nesting species, including ducks and sharp-tailed grouse, ensuring they can complete their nesting cycles before any disturbance occurs. The agreement mandates the maintenance of permanent vegetative cover such as forbs, grasses, and low shrubs, and prohibits cultivation of the grassland.

Given the extent of the Service's fee title and easement holdings in the area (approximately 11,000 acres of fee-title lands and 60,000 acres of conservation easements in the proposed project area), it is impractical to completely avoid impacts on Service interests. The Service collaborated with the applicant to mitigate these impacts wherever possible with only 0.00041 acres of grassland easement interests being impacted in the long-term. The construction and maintenance is expected to result in minimal and temporary disturbances to the affected grassland easements, with restoration anticipated by the next growing season.

As proposed, the project will not materially interfere with or detract from the purpose for which the easements were acquired, nor from the mission of the National Wildlife Refuge System. It is crucial that, where feasible and without compromising any preservation goals or adversely affecting the land interests held by the Service, the Service accommodates proposed uses aimed at enhancing electricity distribution, improving quality of life, and ensuring safety for residents in rural America.

List of Attachments:
Attachment I: Basin Electric Power Cooperative Grassland Easement Impacts Table
Attachment II: Basin Electric Cooperative Avian and Bat Protection Plan

Signature of Determination

Wetland Management District Manager Signature and Date

Signature of Concurrence

Assistant Regional Director Signature and Date

Mandatory Reevaluation Date

2036

Literature Cited/References

Avian Power Line Interaction Committee (APLIC). 2012. Reducing Avian Collisions with Power Lines: The State of the Art in 2012. Edison Electric Institute and APLIC. Washington, D.C.

Beale, C., 2007. The Behavioral Ecology of Disturbance Responses. *International Journal of Comparative Psychology*, 20(2). https://escholarship.org/uc/item/43m7b2d5

Berger, R.P., 2010. Fur, Feathers, Fins & Transmission Lines: How transmission lines and rights-of-way affect wildlife. Third Edition. Manitoba Hydro. 97 pp. https://www.hydro.mb.ca/environment/pdf/fur_feathers_fins_and_transmission_lines.pdf