

RECORD OF DECISION

**Bemidji to Grand Rapids 230 kV Transmission Line Project
Beltrami, Hubbard, Cass and Itasca Counties, Minnesota**

**RURAL UTILITIES SERVICE
U.S. Department of Agriculture**

**Minnkota Power Cooperative
North Dakota 20**

**Prepared by:
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I. Summary of the Agency's Decision

The Rural Utilities Service (RUS), U.S. Forest Service Chippewa National Forest (CNF), US Army Corps of Engineers (USACE), and Leech Lake Band of Ojibwe Division of Resource Management (LLBO DRM) cooperated in the development of a Final Environmental Impact Statement (Final EIS) for the proposed Bemidji to Grand Rapids 230 kV Transmission Line Project ("Project") in Minnesota. The Final EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §§ 4321 et seq.), and in accordance with the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR 1500-1508) and RUS regulations (7 CFR § 1794).

RUS is the lead federal agency as defined at 40 CFR § 1501.5, and CNF and USACE are cooperating agencies. LLBO DRM accepted an invitation to participate as a cooperating agency. As the lead federal agency, and as part of its broad environmental review process, RUS must take into account the effect of the proposal on historic properties in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C § 470f) and its implementing regulation "Protection of Historic Properties" (36 CFR Part 800). Pursuant to 36 CFR § 800.2(d)(3), RUS is using its procedures for public involvement under NEPA, in part, to meet its responsibilities to solicit and consider the views of the public during Section 106 review. Accordingly, comments submitted in the EIS process also informed RUS's decision making in Section 106 review.

To minimize duplication of effort pursuant to 40 CFR § 1506.2, RUS prepared the Final EIS jointly with the Minnesota Department of Commerce, Office of Energy Security (OES) in compliance with its federal responsibilities under NEPA and other federal statutes and regulations, and with OES's state responsibilities under the Minnesota Environmental Policy Act and the Minnesota Power Plant Siting Act.

The Final EIS evaluated the potential environmental impacts of and alternatives to the Project as proposed by Minnkota Power Cooperative, Inc. (Minnkota) for RUS financing to construct the

230 kilovolt (kV) transmission line between the Wilton Substation near Bemidji, Minnesota and the Boswell Substation near Grand Rapids, Minnesota, which will cross portions of Beltrami, Hubbard, Itasca, and Cass counties. This Project includes modifying the Wilton and Boswell substations, constructing a new 115 kV breaker station at Nary Junction, Minnesota, and depending on the route alternative selected for the Project, upgrading the existing or constructing a new substation in the Cass Lake, Minnesota area. The Project is being jointly developed by Minnkota, Otter Tail Power Company, and Minnesota Power (The Utilities).

As RUS, CNF, USACE, LLBO DRM and OES will be making separate and distinct decisions regarding their actions (e.g., CNF's decision relates to issuance of a Special Use Permit, while RUS's decision relates to whether or not to provide financial assistance), these agencies have decided to issue separate Records of Decision (RODs). Of the agencies involved in the EIS preparation, CNF issued its Record of Decision on October 10, 2010, and the Minnesota Public Utilities Commission issued its order adopting OES's proposed Route Permit for the Project on November 5, 2010. USACE will issue a ROD at the end of their permitting process (Individual Permit). LLBO DRM will issue a decision following approval from the Tribal Council. This document is the Record of Decision for RUS.

RUS's ROD is in response to Minnkota's request for financing assistance in constructing the proposed Project.

RUS published a Notice of Intent to prepare an EIS on July 18, 2008. RUS issued notices in the Federal Register announcing availability of the Draft EIS on March 3, 2010, and the Final EIS on September 15, 2010. The U.S. Environmental Protection Agency (USEPA) acknowledged receipt of the Draft EIS on March 5, 2010, and the Final EIS on September 17, 2010, from RUS in the Federal Register.

RUS has considered Minnkota's purpose and need for the Project, and have evaluated reasonable alternatives to the Project, the potential impacts of the Project on the environment, relevant financial and engineering constraints of the Project, and other associated issues and find that the Final EIS is consistent with federal regulations and meets the standard for an adequate statement.

II. Introduction

Minnkota's proposed Project is to construct a 230 kilovolt (kV) transmission line between the Wilton Substation near Bemidji, Minnesota and the Boswell Substation near Grand Rapids, Minnesota, which will cross portions of Beltrami, Hubbard, Itasca, and Cass counties. The Project involves modifying the Wilton and Boswell substations, constructing a new 115 kV breaker station at Nary Junction, Minnesota, and depending on the route alternative selected, upgrading the existing or constructing a new substation in the Cass Lake, Minnesota area. The Project is being jointly developed by Minnkota, Otter Tail Power Company, and Minnesota Power (the Utilities).

This document is RUS's ROD for the EIS prepared for Minnkota's proposed Project. The ROD states the decision, the rationale for the decision, and all alternatives considered in reaching the decision. It also includes a discussion of preferences among alternatives based on relevant factors, and describes how those factors were balanced in reaching the decision.

The purpose of the Project is for the Applicants to meet projected future electric demand and to maintain electric transmission reliability standards in accordance with the requirements of the North American Electric Reliability Corporation (NERC). The Project as proposed provides increased voltage support not only to the Bemidji to Grand Rapids area, including the Leech Lake Reservation, but is also required to improve regional transmission reliability throughout the Red River Valley and north central Minnesota. Refer to the FEIS, pp. 2-3, and the Alternative Evaluation Study, Section 1.2, for additional detail.

III. Background

To meet projected future demand and maintain transmission reliability in the Bemidji and greater Red River Valley areas, Minnkota has submitted an application to RUS for financing assistance to construct a 230 kV transmission line and related facilities, as described in Section II above.

As part of the loan application process, Minnkota was required to prepare an Alternative Evaluation Study (AES) and Macro-Corridor Study (MCS) pursuant to 7 CFR § 1794.5. These studies were reviewed and approved by RUS, and posted on the agency's website in June 2008. Additionally, a Scoping Report/Decision, published on the agency's website in December 2009, provides a summary of the issues raised through public scoping activities and identified the issues and alternatives the Federal and Tribal entities cooperating in the preparation of the EIS determined to be appropriate for further assessment in the EIS. Each of these documents was incorporated into the EIS and have been considered in the RUS decision.

IV. Alternatives Development and Evaluation

A. Alternatives Dismissed from Detailed Consideration

A list of the alternatives reviewed prior to this decision follows. The list contains the alternatives evaluated in chapter 2.3 of the Final EIS and eliminated from further study, and the rationale for their elimination. Alternatives were also evaluated in the AES, MCS, and the RUS Scoping Decision/Report (available on RUS' website: <http://www.usda.gov/rus/water/ees/eis.htm>). These alternatives were determined not to be reasonable in meeting the purpose and need of the proposed Project for the reason(s) stated.

The AES assessed different technological alternatives such as no action, load management, conservation, baseload generation, and several transmission alternatives. The AES was released for public review and comment in June 2008.

Since the AES determined there was a need for a new 230 kV transmission line between Bemidji and Grand Rapids, MN, the MCS was developed to identify Macro-Corridors within which the transmission line could be built. Upon consultation with a broad range of stakeholders, including local, state, and federal agencies, and tribes with an interest in the Project area, the Utilities identified a total of four Macro-Corridors. These are referred to as the "North Macro-Corridor," "South Macro-Corridor," "Non-CNF Macro-Corridor," and the Utilities' preferred "Central

Macro-Corridor.” The first two alternative Macro-Corridors were identified as potential locations for the Project because they mostly (South Macro-Corridor) or completely (North Macro-Corridor) avoid passing through the Leech Lake Reservation . The Non-CNF Macro-Corridor was identified as an alternative for consideration because it completely avoids the CNF. There are no practicable route alternatives that avoid impacting waters of the United States, wetlands, or floodplains. The MCS was released for public review and comment in June 2008, with a revised version released on September 2, 2008.

Through the Scoping Decision, both the South Macro-Corridor and Non-CNF Macro-Corridor were eliminated from further consideration in the EIS, leaving three routes within two Macro-Corridors for consideration in the EIS.

Alternatives Eliminated from Further Study

Generation Sources	Rationale for Elimination
Demand Side Management (energy conservation, energy efficiency, and load management)	DSM is currently implemented by the Applicants and load forecasts include estimated expectations of demand reduction. DSM does not therefore meet the purpose and need.
Central Station Generation	Project area is generation-rich, so adding new generation would require adding transmission lines of a similar size and location to the Project.
Distributed Generation	Project area is generation-rich, so adding new generation would require adding transmission lines of a similar size and location to the Project.
Transmission System Alternatives: Three Separate Scenarios Considered	All of the transmission system alternatives have inferior electric performance and worse cost-to-benefit profiles compared to the Project.
Additional Macro-Corridor Alternatives: Southern Macro-Corridor	Macro-Corridor has high potential for scenic impacts, is likely to have greater wetland impacts than routes other than Route Alternative 3 and does not avoid the

	CNF or Leach Lake Reservation.
Additional Macro-Corridor Alternatives: Non-CNF Macro-Corridor	Macro-Corridor has the greatest amount of new corridor of all alternatives considered, and is the longest alternative. Impacts include crossing the greatest number of wetlands and forested wetlands.
Underground Transmission Alternative	Increased costs, reliability issues and outage/maintenance periods. Additionally, impacts to wetlands are generally greater than with overhead construction.

B. Alternatives Evaluated in Detail

The Final EIS provided a detailed analysis of the following alternatives:

- No Action Alternative
- Action Alternatives
 - Route Alternative 1
 - Route Alternative 2
 - Route Alternative 3
 - Route Alternative 4 (Agency's Preferred, addressed in Sections IV.D and VII)

Under the No Action Alternative, RUS would not approve financing and Minnkota would not likely construct the proposed Project.

Under the Action Alternatives (Route Alternatives 1-4), Minnkota would construct the 230 kV transmission line and associated facilities, and RUS would consider financing the proposed Project.

1. No Action Alternative (No Build Alternative)

The No Action or No Build Alternative provides a baseline for comparison of the action alternatives. This alternative is evaluated in accordance with the Council on Environmental Quality NEPA regulations (40 CFR § 1502.14) requiring review of No Action Alternative.

Under this alternative, the Project would not be constructed. RUS would not finance the Project, and there would be no change to the existing environment.

2. Route Alternative 1

Route Alternative 1 follows the Great Lakes Transmission Company (Great Lakes) pipeline right-of-way (ROW) for a large portion of the route (see Attachment A Map of Proposed and Alternate Routes). The Utilities had originally identified this as their proposed or preferred route. Refer to the Final EIS, pp. 29-32 and Appendix C, for the location and description of this alternative.

3. Route Alternative 2

Route Alternative 2 generally follows U.S. Highway 2 and the Enbridge pipeline ROWs across the LLR and CNF. Refer to the Final EIS, pp. 32-34 and Appendix C, for the location and description of this alternative.

4. Route Alternative 3

Route Alternative 3 avoids the Highway Corridor through the Chippewa National Forest and avoids bisecting the LLR. The longest of the routes evaluated fully, this route follows transmission and road ROWs for most of its length. While it does not avoid the CNF, it avoids the U.S. Highway 2 corridor within the CNF and LLR boundaries. This alternative would not include any improvements to the transmission system in the Cass Lake area. As such, an additional transmission line would eventually need to be constructed between Bemidji and Cass Lake in order to eliminate the reliability issue identified in the Cass Lake area. Refer to the Final EIS, pp. 35-36 and Appendix C, for the location and description of this alternative.

C. Alternatives Not Selected and RUS's Rationale

No Action Alternative (No Build Alternative)

The No Action or No Build Alternative does not meet the purpose and need for the project. Please see Table ES-2 of the Final EIS (pp. ES-13 to ES-25) for further discussion of the

differences between the Agency Preferred Alternative (Alternative Route 4), other Route Alternatives, and the No Action/No Build Alternative.

Route Alternative 1

Route Alternative 1 was not selected as the Agency or Environmentally Preferred Alternative due to several critical impacts. Route Alternative 1 crosses spiritually and culturally significant areas for the LLBO, particularly the Ten Section and Cuba Hill areas. It is also possible that some of the traditional cultural resources associated with this alternative could meet the criteria for listing on the National Register of Historic Properties (NRHP) as properties to which the LLBO attaches religious and cultural significance. In addition, the alternative crosses the Pike Bay Experimental Forest, where the research branch of the Forest Service conducts long term and ongoing research. The Forest Plan states that generally no new special use permits are allowed through the Pike Bay Experimental Forest (FEIS pp. 432-433). Route Alternative 1 also includes the Goblin Fern study area, as well as critical habitat for Goshawk nesting. Finally Route Alternative 1 parallels the Great Lakes Gas pipeline, which thus far has been managed to have a minimal footprint. Expanding this corridor by locating the Project in Route Alternative 1 would result in a loss of closed forest canopy. As a result of all these considerations, Route Alternative 1 is the least desirable of the proposed route alternatives and was not selected.

Route Alternative 2

Route Alternative 2 is the shortest route considered, and as such this route impacts less total acres and fewer resources. Of the action alternatives, this alternative crosses the least amount of wetlands and water courses. Another consideration with this alternative is the high scenic value along its entire length due to the presence of the U.S. Highway 2 corridor south of the route (Forest Plan, p. 2-45 and p. 2-46 Fig SC-1).

While Route Alternative 2 follows a similar alignment and is shorter than Route Alternative 4, Route Alternative 4 is designed to minimize some of the impacts identified with Route Alternative 2. For example, Route Alternative 2 has greater impacts to the visual corridor along US Highway 2 than Route Alternative 4 because the centerline for Route 4 would be primarily

south of the Enbridge pipeline and thus further from US Highway 2. Route Alternative 2 also bisects the St. Regis Superfund site in Cass Lake, a known contamination area. Route Alternative 4 will run along the western, southern, and eastern boundaries of the Superfund site, thereby reducing any interference with remediation activities. Route Alternative 2 also cuts through the communities of Cass Lake and Ball Club, thereby impacting more residences than Route Alternative 4. In summary, Route Alternative 2 was not selected due to its impacts on remediation efforts at the Superfund site and the high scenic value along US Highway 2, and its cumulative impact with existing ROW for trails; railways, local communities and other utilities.

Route Alternative 3

While Route Alternative 3 avoids the US 2 Highway corridor through the CNF and bisecting the LLR, it is the longest of the routes evaluated in detail in the Final EIS. The route follows transmission and road ROWs for most of its length (see FEIS p. 20 pp. 35-36 and Appendix C maps for the location and description of this alternative, respectively). Route Alternative 3 was developed in response to the LLBO's desire to avoid the Leech Lake Reservation, thereby minimizing impacts to fishing, hunting and gathering on ceded lands. Since the LLBO DRM has hunting and gathering interests on many of the lands included in this route, impacts to those lands are also of importance to the LLBO.

The benefits identified for this alternative include having the fewest known archaeological sites, paralleling existing ROW for the majority of its length, and avoiding the Cuba Hill and Ten Section area identified as spiritually and culturally significant by the LLBO. Conversely, this alternative is the longest of the three routes and has considerably more impacts to wetlands, water bodies, water courses, soils, forested areas, residences, and biological resources. This route is also inferior to all other routes in terms of electrical performance. Locating the Project in Route Alternative 3 would not address the reliability issues identified in the Cass Lake area since the route does not run through or near Cass Lake. As a result, an additional future 115 kV line would need to be constructed to the Cass Lake area. Because of these reasons, this route was not selected.

D. RUS's Preferred Alternative

RUS has selected Route Alternative 4 as the preferred alternative. This involves the construction, operation, and maintenance of the Bemidji to Grand Rapids 230 kV Transmission Line Project as described in the analysis of Route Alternative 4 in the Bemidji to Grand Rapids 230 kV Transmission Line Project Final EIS, issued September 17, 2010 in the Federal Register. This includes mitigation measures to prevent or minimize both short-term and long-term impacts on resources from construction and operation of the Project, such as the use of shorter poles to reduce the scenic impact at the pinch point between Pike Bay and Cass Lake (ROD Attachment D, Mitigation Measures).

E. Environmentally Preferred Alternative

The identification of an environmentally preferred alternative is required by NEPA (40 CFR § 1505.2(b)). The environmentally preferred alternative is that alternative which has the least impact on the physical and biological environment and which best protects, preserves, and enhances historic, cultural, and natural resources. The No Action Alternative best meets this definition, however, the no action alternative does not meet the purpose and need. Of the action alternatives that meet the purpose and need, Route Alternative 4 with the mitigation included in Attachment D is the environmentally preferred alternative (see Final EIS Section 5.2 for further detail).

V. Public Involvement

A. Notice

1. Scoping

A Notice of Intent (NOI) describing the proposed Project was published by RUS in the Federal Register (FR) on July 18, 2008 (73 FR 41312-41313), and in newspapers local to the Project. The NOI announced the intent to prepare an EIS for the proposed Project, described the proposed Project, provided scoping meeting locations and dates, started a 30-day comment period, and

provided contacts for further information about the proposed Project and for submitting scoping comments. The NOI also acknowledged that OES would be a co-lead and the following agencies would be cooperating agencies: CNF, USACE and LLBO DRM. The public scoping meetings were held August 11-15, 2008. Meetings were held at the Blackduck Community Center in Blackduck; Cass Lake Palace Casino in Cass Lake; Morse Town Hall in Deer River; Hampton Inn in Bemidji; and Hiawatha Beach Resort in Walker. Approximately 120 people attended the public meetings. More than 120 comments were received. The comment period was to end on August 28, 2008. On September 15, 2008, a letter was sent to the public and posted on RUS' website providing notice of an extension of the comment deadline to September 30, 2008.

2. Draft EIS

RUS published its Notice of Availability (NOA) for the Draft EIS in the Federal Register on March 3, 2010 (75 FR 9573-9574), and in newspapers local to the Project. The USEPA published its receipt of the Draft EIS in the Federal Register on March 5, 2010 (75 FR 10254-10255). The 45-day public comment period began on this date. RUS and OES, as lead agencies, held public meetings to receive comments on the Draft EIS on March 16-18, 2010 at the Hampton Inn in Bemidji; American Legion Vets Club in Deer River; Senior Center in Blackduck; and the Leech Lake Tribal College in Cass Lake. Because the proposed Project may involve action in floodplains or wetlands, RUS's NOA also served as notice of a proposed floodplain or wetland action by RUS consistent with Executive Orders 11988 and 11990.

3. Final EIS

EPA published its receipt of the Final EIS in the Federal Register on September 17, 2010. RUS published its NOA of the Final EIS in newspapers local to the Project and the Federal Register on September 15, 2010. The 30-day comment period ended on October 18, 2010.

B. Comments Received

The comments received from scoping identified the need for clarification of identified issues, including the crossing of the LLR, description of the proposed Project, route alternatives, biological resources (flora and fauna), aesthetics, water resources, land use, socio-economics, and safety and health. Refer to Final EIS, pp. 13-18 and Appendix A; and RUS Scoping Decision and Appendix B, Scoping Comment Summary for additional information and detail. Information received during the scoping period was incorporated into the development of the Draft EIS.

All comments on the Draft EIS, as well as any supporting attachments have been entered into the administrative record. Based on comments received, responses were prepared (Final EIS, Appendix L, Comment Response Document), and the EIS was modified as appropriate. Internal and technical changes were also made to the Draft EIS for the Final EIS. Changes made to the text as a result of the comments received are printed in bold in the FEIS (Final EIS, pp. 17-18). Route Alternative 4 was identified during the Draft EIS comment period (FEIS, p. 24 and pp. 36-39) due to concerns with areas of spiritual and cultural significance within Route Alternative 1, and concerns with impacts to residents (City of Cass Lake and Village of Ball Club) within Route Alternative 2. Route Alternative 4 was evaluated in Section 3 of the Final EIS, pp. 64-523.

RUS received one comment on the Final EIS from the USEPA in a letter dated October 15, 2010. USEPA expressed concerns about how the Final EIS addressed certain issues with respect to the St. Regis Superfund Site, certain water resources/wetlands, and the Section 106 Programmatic Agreement for the proposed Project. RUS's response to USEPA is included along with USEPA's letter as Attachment B, Comments and Response on the Final Environmental Impact Statement.

C. Changes from the Draft EIS to the Final EIS

Based on comments received on the Draft EIS, responses were prepared (Final EIS, Appendix L, Comment Response Document), and the Final EIS was modified as appropriate. Internal and

technical changes were also made to the Draft EIS for the Final EIS. Changes made to the text as a result of the comments received are printed in bold (Final EIS, pp. 17-18). No further agency responses are needed beyond those included in the Final EIS, and this ROD (including attachments to the ROD).

VI. Summary of Environmental Effects

The analyses documented in the Final EIS demonstrated that the proposed Project would have no impacts or minor impacts on air quality and climate, geology and soils, groundwater, floodplains, mining, community services, safety and health, land use, recreation and tourism, agriculture, utility systems, traffic and transportation and noise. Expected impacts on other environmental resources are discussed below.

Water Resources, Floodplains and Wetlands impacts are similar for all routes considered in detail, with Route Alternative 4 crossing slightly more water basins than Route Alternatives 1 and 2, and Route Alternatives 1 and 4 cross slightly more water structures and wetlands than Route Alternative 2. In contrast, Route Alternative 3 crosses more water basins, water structures and wetlands than the other three routes.

Due to its greater length, Route Alternative 3 has the greatest effect on biological resources, with the greatest number of acres of vegetation communities converted. However, Route Alternative 3 is the only Alternative Route that does not affect the Species of Concern for the Ten Section Area, either by conversion or by affects to the periphery, and does not affect the Traditional Cultural Properties (TCPs) because it is primarily off the reservation. Route Alternative 1 would jeopardize the only known one-flowered broomrape population on the CNF and in Northern Minnesota, and may alter cultural experiences in areas identified as culturally significant. Route Alternative 4 avoids the population of one-flowered broomrape, has fewer impacts to biological resources than Route Alternative 3, and crosses the Ten Section area in an area of less importance to the LLBO.

The conversion of forested acres to open acres for Route Alternatives 1 and 2 on CNF lands is

similar, while higher for Route Alternative 4, and nearly double for Route Alternative 3 due to its longer length.

The socioeconomic impacts for the Project are similar for all four Route Alternatives. There is projected to be a short-term influx of income to the community during construction due to increased tax base and economic benefit to businesses and surrounding communities. There will be increased timber sales as a result of the Project as well as a resulting loss of forest land and timber revenue across the Forest.

All four routes pose a potential impact to subsistence uses from conversion and fragmentation of habitat and introduction of invasive species. Mitigation measures have been identified to address these impacts (see Attachment D Mitigation Measures).

The Environmental Justice effects indicate that there will be a long-term loss of gathering lands and temporary disruption to hunting and gathering during construction for all four Route Alternatives. Although Route Alternative 3 avoids the reservation, this area is still within the treaty area for the Ojibwe where hunting and gathering traditions are exercised on the NFS lands. Mitigation measures have been identified to address these impacts (see Attachment D Mitigation Measures).

In summary, Route Alternative 4 is primarily a combination of Route Alternative 1 and 2. The west and east ends of Route Alternative 4 follow Route Alternative 1, while the central portion of the route generally follows Route Alternative 2. This route alternative crosses an already highly disturbed area compared to Route Alternative 1. The route has been located in an area to avoid crossing the most important portion of the Ten Section area, which is a culturally and spiritually significant area to the LLBO, as well as avoids the CNF Pike Bay Experimental Forest. Route Alternative 4 will primarily avoid the communities of Cass Lake and Ball Club, thereby reducing the impacts to residences while also minimizing the impacts to the visual corridor along US Highway 2. Route Alternative 4 is located along a relatively highly disturbed area with multiple utility, roadways, and railway ROW so that the impact of the Project on the

scenic value of the area is not as great as the environmental impacts arising from locating the Project along Route Alternative 3. Furthermore, Route Alternative 4 would be partially constructed within temporarily cleared areas from the recent Enbridge pipeline project, thereby minimizing additional forest clearing.

VII. Decisions and Rationale for Decisions

RUS decisions must comply with all relevant federal and state environmental regulations. These regulations are listed in Table 6-1 of the Final EIS, pp. 595-600.

A. Decisions

This ROD documents findings specific to the proposed action, which is the construction and operation of the Bemidji to Grand Rapids 230 kV Transmission Line Project on NFS lands in Itasca and Cass Counties, as described in the analysis of Route Alternative 4 in the Bemidji to Grand Rapids 230 kV Transmission Line Project Final EIS, issued September 17, 2010 in the Federal Register. This includes mitigation measures to prevent or minimize both short-term and long-term impacts on resources from construction and operation of the Project, including the use of shorter poles to reduce the scenic impact at the pinch point between Pike Bay and Cass Lake (ROD Attachment B, Mitigations).

RUS has made the following decisions:

- Based on an evaluation of the information and impact analyses presented in the Final EIS, including the evaluation of all alternatives, and in consideration of the agency's Environmental Policies and Procedures (7 CFR Part 1794), RUS finds that the overall impact analysis and evaluation of reasonable alternatives is consistent with NEPA. In the Final EIS, RUS, in cooperation with CNF, LLBO DRM, and USACE, identified Route Alternative 4, including certain conditions and requirements, as its preferred alternative. In this ROD, RUS identifies the Final EIS preferred alternative as its selected alternative, with further modifications, requirements, and conditions as set forth in **Attachment D**,

Mitigation Measures. This ROD, subject to conditions, concludes the RUS's environmental review process in accordance with its Environmental Policies and Procedures.

- A review and analysis of the selected alternative's justification, associated engineering studies, and preliminary financial information has led to RUS's concurrence with the selected alternative's purpose and need.

RUS hereby agrees to the above and the consideration of Minnkota's loan application may proceed. The following condition applies:

1. Minnkota will implement the selected alternative as described in this ROD, with further details as described for the preferred alternative in the Final EIS. This includes, but is not limited to, those actions incorporated into the selected alternative to reduce or eliminate impacts and any mitigation measures that the Final EIS and this ROD state will be implemented.

B. Rationale and Compliance with Legal and Policy Mandates

This section explains how the selected alternative, as defined in the Final EIS and in this ROD, satisfies RUS's statutory, regulatory, and policy mandates.

1. National Environmental Policy Act

In the Final EIS, RUS has fully considered all reasonable alternatives to the proposed action and concluded that the selected alternative, construction and operation of the Project in Route Alternative 4, best meets the purpose and need of the proposed Project. The agency has met the requirements of NEPA and agency policies and procedures for public involvement. This has included responses to requests for information from concerned individuals, non-governmental organizations, and state and other federal agencies. The impacts, actions, and mitigation to reduce them are provided in the Final EIS and summarized in Attachment D, Mitigation

Measures, to this ROD. Minnkota will be responsible for implementation of these measures, with RUS, USACE, CNF and LLBO DRM oversight.

2. National Historic Preservation Act

Consultation with the Tribal Historic Preservation Officer, State Historic Preservation Officer, Advisory Council on Historic Preservation, and Consulting Parties occurred and is documented through the fully executed Programmatic Agreement (see Attachment C). The Programmatic Agreement sets forth procedures for consultation related to the surveys that have not been completed and for the determination of eligibility, assessment of effects, resolution of adverse effects, and post review discoveries through the entire APE as necessary that have not been accomplished to date.

3. Endangered Species Act

A Biological Assessment (BA) for the proposed Project was prepared and submitted to the U.S. Fish and Wildlife Service. On July 15, 2010, the U.S. Fish and Wildlife Service concurred with the determinations of the BA as detailed in the Final EIS (see Appendix G) and is currently finalizing an Incidental Take Permit for bald eagles.

4. Executive Order 11988, Flood Plain Management

The 230 kV transmission line for the proposed Project would cross 100-year floodplains with eight transmission structures. There are no routes that would completely avoid floodplains. As a result, there is no practicable alternative to construction of a transmission line in the floodplain.

5. Executive Order 11990, Protection of Wetlands

Impacts to wetland due to conversion (226 acres) would occur for the proposed Project due to right-of-way clearing and maintaining electrical clearance. Temporary impacts to wetlands (91 acres) would occur during construction of the proposed Project facilities. Approximately 112 structures would be placed in wetlands. Impacts have been minimized as detailed in the Final EIS (see Section 3.6.3 Mitigation). Additionally, an Individual Permit through the USACE is underway and includes additional mitigation. None of the alternatives (other than the no action

alternative) avoid wetlands. As a result, there is no practicable alternative to construction in wetlands.

VIII. RUS Loan Review

This ROD is not a decision on Minnkota's loan application and therefore not an approval of the expenditure of federal funds. The ROD concludes the agency's environmental review process in accordance with NEPA and RUS's Environmental Policies and Procedures (7 CFR Part 1794). The ultimate decision as to loan approval depends upon the conclusion of this environmental review process plus financial and engineering analyses. Issuance of the ROD will allow these reviews to proceed.

IX. Right to Administrative Review

This Record of Decision concludes the agency's environmental review process pursuant to the National Environmental Policy Act and the RUS's Environmental Policies and Procedures (7 CFR Part 1794). There are no provisions to appeal this decision. Legal challenges to the ROD may be filed in federal district court under the Administrative Procedures Act.

X. Approval

This Record of Decision is effective on signature.

Dated: 11/23/2010



JONATHAN ADELSTEIN

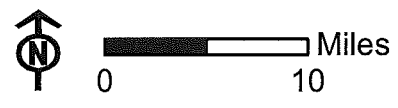
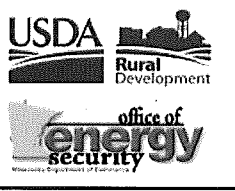
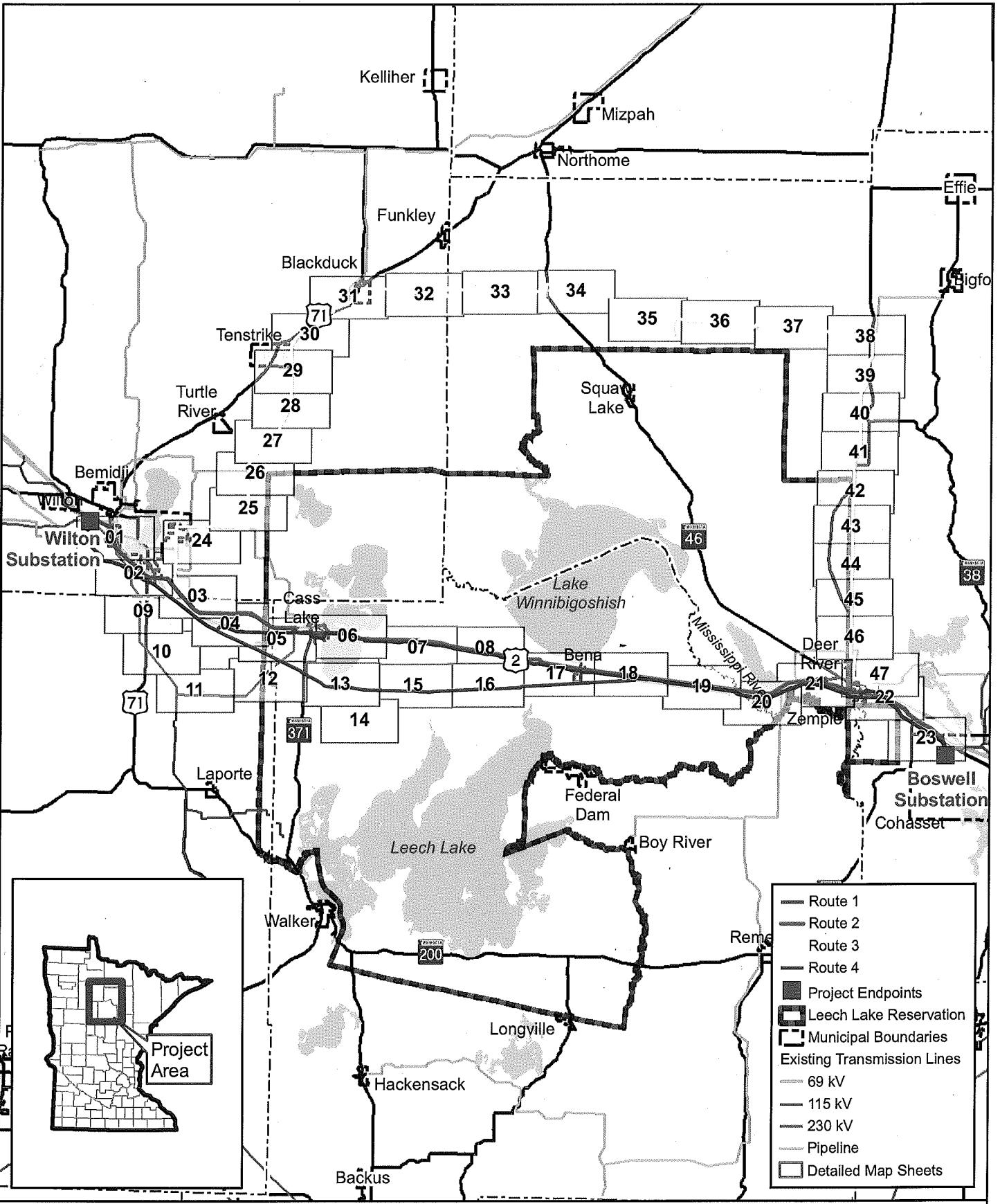
Administrator

Rural Utilities Service

Contact Person

For additional information on this Record of Decision or the Environmental Impact Statement, please contact Ms. Stephanie Strength, Environmental Protection Specialist, at USDA, Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1571, Washington DC 20250-1571; telephone: (970) 403-3559; fax: (202) 690-0649; or e-mail: stephanie.strength@wdc.usda.gov.

Attachment A: Map of Proposed Alternative (Route Alternative 4)



Appendix D
 Detailed Route Maps Index
 230 kV BGR Transmission Line
 Draft Environmental Impact Statement

Attachment B. Response to Comments on the FEIS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

OCT 15 2010

REPLY TO THE ATTENTION OF:

E-19J

Stephanie A. Strength, Environmental Protection Specialist
U.S. Department of Agriculture - Rural Development, Rural Utilities Service
Mail Stop 1571
1400 Independence Avenue, SW
Washington, DC 20250-1571

Re: Bemidji-Grand Rapids 230 kV Transmission Line Project Final Environmental Impact Statement Beltrami, Hubbard, Cass and Itasca Counties, Minnesota.
CEQ No.: 20100371

Dear Ms. Strength:

In accordance with our responsibility and authority under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the U.S. Environmental Protection Agency (EPA) reviewed the U.S. Department of Agriculture - Rural Utilities Service's (RUS) above-referenced Final Environmental Impact Statement (FEIS), prepared in conjunction with the Minnesota Department of Commerce, Office of Energy Security (OES).

Minnkota Power Cooperative, Otter Tail Power Company, and Minnesota Power (project proponents) propose to construct and operate a 230-kV electric transmission line from Bemidji to Grand Rapids, Minnesota (project). The project would meet projected future electric demand and maintain regional electric transmission reliability. The project area contains the Leech Lake Band of Ojibwe (LLBO) Reservation, Chippewa National Forest (CNF) land, county, state and private land. The U.S. Army Corps of Engineers (Corps), U.S. Forest Service (FS), CNF, and the Leech Lake Band of Ojibwe (LLBO), Leech Lake Division of Resource Management (LLDRM) are cooperating agencies on the EIS.

EPA commented on the Draft EIS (DEIS) for this proposal in our letter dated April 15, 2010. EPA expressed concerns regarding potential environmental impacts to wetlands, surface waters, ground water and the St. Regis Superfund Site, and loss of forest land. We questioned the adequacy of proposed mitigation. In addition, EPA commented on the alternatives analysis and future identification of the EIS preferred alternatives, and recommended additional information for inclusion in the FEIS.

The FEIS identifies a Preferred Route Alternative (Alternative 4). Preferred Alternative 4 is a combination of portions of DEIS Route Alternatives 1 and 2 and incorporates Segment Alternatives F and K. Alternative 4 includes the addition of 230 kV equipment at the Wilton, Boswell and Cass Lake Substations. The Boswell and Cass Lake Substations would be expanded in order to accommodate the 230 kV equipment. The FEIS identifies and provides an

analysis of the impacts associated with Alternative 4 and in comparison to the No-Build and DEIS Alternatives 1, 2 and 3. The FEIS provides an explanation regarding the identification and selection of Alternative 4 as the FEIS Preferred Alternative.

Mitigation: The FEIS identifies additional potential mitigation measures that could be used to further avoid, minimize and compensate for impacts for various resources. The FEIS identifies that mitigation measures that would be required by the federal agencies as permitting conditions would be included in the Record of Decision (ROD) issued by each federal permitting agency. In addition, the Commission will identify its required mitigation measures in the Commission's High Voltage Transmission Line (HVTL) permit. The LLDRM will also identify its required mitigation measures in its ROD. The FEIS does not identify the order and timing of each ROD, including the RUS ROD, and the Commission's HVTL permit decision.

Recommendation: We recommend RUS identify in its ROD the expected order and timing each federal cooperating agency and the LLDRM will issue their RODs in relation to the RUS ROD and the Commission's HVTL permit decision.

St. Regis Paper Company Superfund Site: The FEIS Preferred Alternative 4 includes Segment F. Segment F is a 1.3 mile segment that provides an alternative route through Cass Lake between MN Highway 371 and Pike Bay. Segment F may require the crossing of the St. Regis Paper Company Superfund Site along its southern, western, and eastern administrative boundaries. However, the FEIS does not include information and discussion that EPA feels is important in understanding potential consequences associated with this project.

Request: We request the RUS include the following information in the RUS ROD that is not identified and discussed in the FEIS:

1. Minnkota Power Cooperative, Otter Tail Power Company, and Minnesota Power could become a potentially responsible party (PRP) to the St. Regis Paper Company Superfund Site (site) if their project-related work results in the release of site-related hazardous substances.
2. There is the potential for release of contaminated soil from the St. Regis Paper Company Superfund Site due to the emplacement of transmission poles in contaminated soil.
3. There is the potential for adverse impacts to groundwater if the emplacement of transmission poles in the St. Regis Paper Company Superfund Site contaminated groundwater plume results in the release of contaminated groundwater from the upper aquifer through the local till layer into the lower aquifer.
4. There is the potential for adverse impacts to workers in areas of site-related contaminated soil and groundwater.

5. The potential impacts identified above in items 2, 3 and 4 should have been identified and discussed in the EIS, and should be documented in the ROD.
6. The "Groundwater," "Soils" and "Safety and Health" sections of the FEIS Comparatives Impacts of Route Alternatives Tables ES-2 and 5-1 should be modified in the ROD to incorporate the potential impacts information identified above in comments 2, 3 and 4.
7. Timothy Drexler should be identified in the ROD as the EPA Remedial Project Manager for the St. Regis Paper Company Superfund Site, including his contact information: 312/353-4367 and drexler.timothy@epa.gov.

Water Resources/Wetlands: The FEIS incorporates EPA's recommended changes regarding the Clean Water Act (CWA) Section 402 National Pollutant Discharge Elimination System (NPDES) General Storm Water Discharges Associated with Construction Activity permit. The FEIS also references EPA's CWA Section 401 certification authority within the exterior boundaries of the LLBO reservation.

The FEIS identifies that the Corps has taken the position that Alternative 4 is likely to be the least environmentally damaging preferred alternative (LEDPA) for Clean Water Act (CWA) Section 404 permitting. The FEIS does not identify what permitting mechanism (e.g., individual permit, Letters of Permission) the Corps intends to use for this proposal. In addition, the FEIS does not mention whether the Corps will require compensation mitigation for all wetland losses, including the permanent loss of forested wetland due to tree clearing of the right-of-way. The FEIS does not include a draft or final wetland mitigation plan.

EPA retains its right to provide additional review and comment regarding this proposal during the CWA Section 404 permit process and EPA's CWA Section 401 water quality certification for that portion of the project located within the exterior boundaries of the LLBO reservation. The EPA contact for CWA Section 404 permitting for the entire project and Section 401 certification for that portion of the project located within the exterior boundaries of the LLBO reservation is Janice Cheng. Janice may be reached at 312/353-6424 or at cheng.janice@epa.gov.

Tribal Concerns: The FEIS references the tribal concerns that RUS considered in its analysis and selection of the FEIS Preferred Alternative. The FEIS explains that project proponents and the FEIS cooperating federal agencies will continue their consultation with LLBO as part of their Treaty and trust obligations during their permit decision making regarding this proposal. An unsigned draft Programmatic Agreement (PA) between RUS, the cooperating federal agencies and the LLBO is included in the FEIS.

Recommendation: We recommend the final signed PA be included in the RUS ROD.

We appreciate the opportunity to comment on this FEIS. If you have any questions regarding our comments, please contact Virginia Laszewski, lead reviewer to this project, at (312) 886-7501 or at laszewski.virginia@epa.gov. EPA requests one hard copy and three CDs of the RUS Record of Decision when available.

Sincerely,



Kenneth A. Westlake
Chief, NEPA Implementation Section
Office of Enforcement and Compliance Assurance

cc: Suzanne Lamb Steinhauer, Project Manager, Minnesota Department of Commerce
Office of Energy Security, 85 – 7th Place East, Suite 500, Saint Paul, Minnesota
551001-2198
Tamara Cameron, Chief, Regulatory Branch, U.S. Army Corps of Engineers, St. Paul
District, 190 Fifth Street East, Suite 401, Saint Paul, Minnesota 55101-1638
Robert Maroney, U.S. Army Corps of Engineers, 10867 E. Gull Lake Drive NW,
Brainerd Field Office, Brainerd, Minnesota 56401
Robert Harper, Forest Supervisor, U.S. Forest Service – Chippewa National Forest,
200 Ash Avenue NW, Cass Lake, Minnesota 56633
Nick Rowse, U.S. Fish and Wildlife Service, Twin Cities Field Office, 4101 American
Boulevard East, Bloomington, Minnesota 55425
Arthur LaRose, Chairman, Leech Lake Band of Ojibwe, 115 Sixth Street NW, Suite E,
Cass Lake, Minnesota 56633
Bruce Johnson, Division Director, Division of Resources Management, Leech Lake
Band of Ojibwe, 115 Sixth Street NW, Suite E, Cass Lake, Minnesota 56633
Levi Brown, Environmental Manager, Division of Resources Management, Leech Lake
Band of Ojibwe, 115 Sixth Street NW, Suite E, Cass Lake, Minnesota 56633
Craig Affeldt, Supervisor, Environmental Review and Feedlot Section, Minnesota
Pollution Control Agency, 520 Lafayette Road North, Saint Paul, Minnesota
55155-4194
Steven Colvin, Supervisor, Environmental Review Section, Minnesota Department of
Natural Resources, 500 Lafayette Road, Saint Paul, Minnesota 55155-40

EPA Comment Letter (10/15/2010)

Mitigation

1. See ROD Section I. Summary of the Agency's Decision for the expected order and timing of each federal cooperating agency and LLBO DRM issuance of their RODs in relation to the RUS ROD and OES' HVTL permit decision.

See ROD Section I, page 2.

St. Regis Paper Company Superfund Site

1. The Project has been enrolled in the MPCA's Voluntary Investigation and Cleanup Program that applies to the Superfund site to make sure there is no release of site-related hazardous substances. The Preferred Alternative was designed to avoid interfering with remediation activities.
2. Contaminated soils that are excavated during construction will have special handling procedures and will be hauled off to an approved RCRA Subtitle D landfill for disposal.
3. The Utilities' permitting consultant, HDR Inc., has identified the known elevations of the top of the upper till based on geologic cross sections provided by Barr Engineering, the Utilities' environmental consultant. Pole foundations and soil probes conducted adjacent to the St. Regis site will avoid contact with this layer, which is a confining unit that protects the lower aquifer from vertical contaminant migration.
4. An investigation involving sampling and analysis at the proposed pole locations will be conducted before line construction activities begin. Tree clearing, however, will likely need to take place to enable access for the sampling equipment. Following the investigation, areas that are identified as having contaminated soil and/or groundwater will be staffed by personnel with proper health and safety training to adequately handle and dispose of contaminated materials. Proper measures will be documented and taken based on contaminant concentrations identified to protect worker's health and safety.
5. See response above.

6. See response above.
7. Contact USEPA Remedial Project Manager Timothy Drexler regarding the St. Regis Paper Company Superfund Site at 312/353-4367 or drexler.timothy@epa.gov.

Water Resources/Wetlands:

1. The USACE is currently reviewing the Project for an individual permit. USACE has already provided comments on the Utilities' initial application, and the Utilities have provided further information for USACE review.
2. Compensatory mitigation is being provided for all wetland losses, including losses associated with a change in wetland type, i.e. changing forested wetlands to non-forested wetlands due to tree clearing within the right-of-way. The Applicants are in the process of purchasing approximately 50 acres of USACE approved wetland bank credits, per USACE's request.
3. The Section 404/401 application was submitted to USEPA (Janice Cheng in Chicago) on November 1, 2010. Follow up correspondence with USEPA is ongoing.

Tribal Concerns:

The final signed PA is included as ROD Attachment C.

Attachment C: Final Programmatic Agreement

**PROGRAMMATIC AGREEMENT
AMONG**

**The U.S. Department of Agriculture, Rural Utilities Service,
The U.S. Army Corps of Engineers,
The U.S. Department of Agriculture, Forest Service,
The Leech Lake Tribal Historic Preservation Office,
AND**

**The Minnesota State Historic Preservation Office,
REGARDING**

**Bemidji to Grand Rapids 230-kV HVTL Transmission Project
in Beltrami, Hubbard, Cass and Itasca Counties, Minnesota**

WHEREAS, the Rural Utilities Service (RUS) is authorized to provide assistance in the development of infrastructure in rural America under its Electric Program in accordance with the rural Electrification Act of 1936 (7 U.S.C. §§ 901-950b); and

WHEREAS, under this program RUS receives applications for financial assistance to improve the transmission of electricity to rural areas; and

WHEREAS, Otter Tail Power Company, Minnesota Power and Minnkota Power Cooperative, Inc. (the Utilities) propose to construct approximately 68 to 116 miles of new 230kV transmission line between Bemidji and Grand Rapids, Minnesota, with associated aboveground facilities, such as transmission facilities and substations, and ancillary facilities, such as temporary work areas and contractor yards (the BGR Project); and

WHEREAS, Minnkota Power Cooperative, Inc. (Minnkota) has applied to RUS for financial assistance for its part of the construction of the Project; and

WHEREAS, RUS may fund the Project, thereby making it an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and its implementing regulations "Protection of Historic Properties" (36 CFR Part 800); and

WHEREAS, the St. Paul District, U.S. Army Corps of Engineers (USACE) is evaluating a permit application for the Project to place structures in, under, or over navigable waters of the U.S. pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), and place dredged or fill material in waters of the U.S. pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344; see 33 C.F.R. Part 323), thereby making the Project an undertaking subject to review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the United States Forest Service (USFS) must approve the Project for consistency with the Chippewa National Forest (CNF) Land and Resource Management Plan, thereby making it an undertaking subject to review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, RUS, USACE, and USFS have agreed that RUS will be the lead federal agency for purposes of Section 106 of the NHPA in accordance with 36 CFR § 800.2(a)(2); and

WHEREAS, RUS has determined that the area of potential effects (APE) for the undertaking, in which direct effects will occur, encompasses the 1,000 foot route as well as BGR Project related access roads, substation and transmission facilities, environmental crossings, temporary work areas and contractor yards, and other appurtenant facilities, whether contiguous with the route or not; and

WHEREAS, the BGR Project will be constructed within a 125-foot right-of-way (ROW) that lies within the 1000-foot route; and

WHEREAS, RUS has determined that the APE for visual effects will extend for a maximum of one-quarter mile on either side of the center line of the 125-foot ROW; and

WHEREAS, RUS is phasing identification and evaluation of historic properties and application of the criteria of adverse effects in accordance with 36 CFR § 800.4(b)(2) and 36 CFR § 800.5(a)(3), respectively, because the BGR Project alternatives consisted of corridors covering a large land area; and

WHEREAS, in accordance with 36 CFR § 800.14(b)(1)(ii), execution of a Programmatic Agreement (PA) is appropriate because effects on historic properties cannot be fully determined prior to approval of the BGR Project; and

WHEREAS, the federally and environmentally Preferred Alternative (Route 4) for the Project is identified in the Final Environmental Impact Statement (FEIS) titled, *Bemidji-Grand Rapids 230 kV Transmission Line Project* that was published on September 2010; and

WHEREAS, RUS has determined that the construction of the Preferred Alternative may have an adverse effect on properties which are listed in or eligible for listing in the National Register of Historic Places (NRHP), and has consulted with the Minnesota State Historic Preservation Office (SHPO) and the Leech Lake Band of Ojibwe (LLBO) Tribal Historic Preservation Office (THPO) pursuant to 36 CFR Part 800; and

WHEREAS, RUS has consulted with the LLBO THPO because the Project falls within the exterior boundaries of the LLBO Reservation, where the LLBO exercises its inherent governmental authority; and

WHEREAS, the LLBO THPO has authority under Section 101(d)(2) of NHPA for Section 106 review of archaeological sites within that part of the APE lying within the exterior boundaries of the tribe's reservation; and

WHEREAS, the LLBO THPO has participated in consultation and is a signatory to this PA; and]

WHEREAS, RUS invited the Assiniboine and Sioux Tribes of the Fort Peck Reservation; Bad River Band of Lake Superior Chippewa; the Bois Forte Band of Minnesota Chippewa; the Flandreau Santee Sioux Tribe; the Fond du Lac Band of Lake Superior Chippewa; the Grand Portage Band of Lake Superior Chippewa; the Keweenaw Bay Indian Community; the Lac Courte Oreilles Band of Lake Superior Chippewa; the Lac Vieux Desert Band of Lake Superior Chippewa; the Leech Lake Band of Ojibwe; the

Lower Sioux Indian Community; the Mille Lacs Band of Ojibwe; the Prairie Island Indian Community the Red Cliff Band of Lake Superior Chippewa; the Red Lake Band of Ojibwe; the Santee Sioux; the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; the Sokogan Chippewa; the Upper Sioux Community; and the White Earth Band of Ojibwe to participate in government-to-government consultation for the Project; and

WHEREAS, RUS has consulted, and will continue to consult, with the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Bois Forte Band of Minnesota Chippewa, the Lower Sioux Indian Community, the Mille Lacs Band of Ojibwe, the Santee Sioux of Nebraska, the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin, and the White Earth Band of Ojibwe and has invited these tribes to concur in this PA; and

WHEREAS, on September 10, 2010 RUS invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation, in accordance with 36 CFR § 800.6(a)(1)(i)(C), providing the specified documentation; and

WHEREAS, the ACHP has elected not to participate in consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, the terms used in this PA are defined in 36 CFR § 800.16;

NOW, THEREFORE, RUS, USACE, USFS, LLBO and Minnesota SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

RUS, USACE and USFS, as appropriate, shall ensure that the following stipulations are carried out.

I. CONDITIONS

- A. RUS shall ensure that the terms of this PA have been implemented prior to the start of construction of the BGR Project.
- B. In accordance with 36 CFR § 800.2(c)(2)(i)(A), RUS must consult with the LLBO THPO, in lieu of the SHPO, when taking into account effects to historic properties on tribal lands, as defined in 36 CFR § 800.16(x). The SHPO may participate as a consulting party only under the circumstances identified pursuant to 36 CFR § 800.2(c)(1)(ii).

II. PROFESSIONAL STANDARDS

- A. The identification, evaluation and other surveys and studies required under the terms of this PA shall be carried out by or under the direct supervision of a professional who, at a minimum, meets the Secretary of the Interior's *Professional Qualification Standards* (48 FR 44716, September 29, 1983) in archeology or architectural history, as appropriate.

- B. Studies of traditional resources have been and shall be carried out by or under the direct supervision of a person approved by RUS in consultation with the LLBO THPO.
- C. Studies of archeological resources shall be carried out by or under the direct supervision of a person approved by RUS in consultation with the LLBO THPO.

III. IDENTIFICATION AND EVALUATION

- A. In accordance with 36 CFR § 800.4(a) through(c), RUS, USFS and USACE shall consult with the LLBO THPO, SHPO, the Utilities, and participating Indian tribes to determine the level of effort for the survey or surveys that will be conducted to identify and evaluate historic properties, including those to which Indian tribes might attach religious and cultural significance, in the APE.
 - a. RUS, USFS and USACE shall ensure that the level of effort for the identification survey meets the reasonable and good faith regulatory standard.
 - b. In determining the level of effort for an identification survey, RUS, USFS and USACE shall consider applicable guidance prepared by the CNF, the LLBO THPO, the SHPO, the ACHP and the National Park Service (NPS), and be guided by the findings and recommendations of previous studies and investigations, especially the reports titled, "*Summary Report of a Records Review and Cultural Resources Sensitivity Model for Proposed Routes of a 230 kV Electrical Transmission Line from Bemidji to Grand Rapids in Beltrami, Cass, Hubbard and Itasca Counties, Minnesota*" (Olmanson & Wells, 2009) and "*A Traditional Cultural Property Survey of the Bemidji to Grand Rapids 230 kV Transmission Line Proposal in Cass and Itasca Counties of Minnesota, on the Leech Lake Reservation*" (Lemon, 2010).
- B. Evaluation
 - a. When applying the NRHP criteria to identified architectural resources, the Utilities shall consult with the SHPO. If the Utilities and the SHPO can agree on NRHP eligibility, then the resource will be treated on the basis of that agreement. If the parties fail to reach agreement, the Utilities shall submit the matter to RUS, USFS and the USACE for resolution in accordance with 36 CFR § 800.4(c)(2).
 - b. When applying the NRHP criteria to identified archeological and traditional resources located on non-CNF *tribal lands*, the Utilities shall consult with the LLBO THPO and participating tribes. If the Utilities and the LLBO THPO can agree on NRHP eligibility, then the resource will be treated on the basis of that agreement. If the parties fail to reach agreement, the Utilities shall submit the matter to RUS, USFS and the USACE for resolution in accordance with 36 CFR § 800.4(c)(2).
 - c. If the resource is also located on the CNF, then the USFS will apply the NR criteria in accordance with 36 CFR § 800.4(c)(2).
 - d. When applying the NRHP criteria to identified archeological and traditional resources located off *tribal lands*, the Utilities shall consult with the SHPO, LLBO THPO and participating tribes. If the Utilities, the SHPO,

LLBO THPO and participating tribes can agree on NRHP eligibility, then the resource will be treated on the basis of that agreement. If the parties fail to reach agreement, the Utilities shall submit the matter to RUS, USFS and the USACE for resolution in accordance with 36 CFR § 800.4(c)(2). If the resource is also located on the CNF, then the USFS will apply the NR criteria in accordance with 36 CFR § 800.4(c)(2).

- e. In implementing Stipulation III.B, RUS, USFS and USACE shall acknowledge the special expertise of Indian tribes in assessing the NRHP eligibility of historic properties that may possess religious and cultural significance to them.

C. Identification and Evaluation of Historic Properties Within the APE for Visual

Effects : RUS, the USFS and the USACE shall consult with the SHPO to determine the level of effort, including survey scope, methods and procedures, needed to identify NRHP listed or eligible architectural resources in the visual APE which might be affected by the Project.

- a. In determining the level of effort for survey, RUS, USFS and USACE shall take into account the influence of the existing topography, vegetation, land use, with the recognition that, pursuant to 36 CFR § 800.5(a), an adverse effect occurs when the integrity, specifically the setting and feeling, of one or more of the qualifying characteristics of a historic property is diminished.
- b. The Utilities shall implement the level of effort for any identification survey once its scope, methods and procedures have been agreed upon by RUS, USFS, USACE and the SHPO. If the parties cannot reach agreement, the matter will be resolved in accordance with Stipulation XI.
- c. Upon completion, the Utilities will describe the implementation of the survey in a draft report prepared pursuant to Stipulation III.F.

D. Identification and Evaluation of Historic Properties Within the APE for Direct

Effects : RUS, the USFS and the USACE shall consult with the LLBO THPO, SHPO and participating tribes to determine the level of effort, including survey scope, methods and procedures, needed to identify NRHP listed or eligible archeological and traditional resources in the APE for direct effects.

- a. For those portions of the APE for direct effects lying within the exterior boundaries of the LLBO reservation, RUS, USFS and USACE shall consult with the LLBO THPO in lieu of the SHPO in accordance with 36 CFR § 800.3(c)(1).
- b. RUS, USFS, USACE, the LLBO THPO and participating tribes agree that the APE for Direct Effects represents only a portion of a larger traditional landscape that is considered eligible for listing in the NRHP for the purposes of Section 106 review under the terms of this PA. Traditional resources identified in the APE for Direct Effects by RUS, USFS and USACE, therefore, may be considered contributing to this eligible traditional landscape. In implementing the terms of this PA RUS, USFS and USACE will treat traditional resources that are part of this NRHP eligible landscape in a manner that preserves their integrity and potential to contribute to the historic property.
- c. RUS, the USFS and the USACE shall consult with the LLBO THPO, SHPO and participating Indian tribes to determine the level of effort,

including the scope, methods and procedures, of the survey or surveys to be conducted to identify NRHP listed or eligible archeological sites and traditional resources in the APE for direct effects.

- d. The Utilities shall implement the level of effort for the identification survey once its scope, methods and procedures have been agreed upon by RUS, USFS, USACE, LLBO THPO and the SHPO, as appropriate, and participating tribes. If the parties cannot reach agreement, the matter will be resolved in accordance with Stipulation XI.
- e. Upon completion, the Utilities will describe the implementation of the survey in a report prepared pursuant to Stipulation III.F.

E. Avoidance: Prior to completing an evaluation in accordance with Stipulation III.B, the Utilities may propose measures to avoid effects to identified archeological, traditional or architectural resources.

- a. Under the terms of this PA, avoidance of adverse effects is the preferred alternative.
- b. RUS, USFS and USACE shall consult with the LLBO THPO, SHPO and participating Indian tribes to identify reasonable avoidance measures. The Utilities shall incorporate agreed upon measures into the BGR Project plans and specifications.

F. Reporting: The survey report(s) drafted in accordance with Stipulations III.C and D shall include a map or maps showing the APE and ROW along with the location of identified archeological, traditional or architectural resources, including any that are NRHP listed or have been previously determined eligible. The draft report also shall contain recommendations regarding the NRHP eligibility of identified resources; specify those resources for which additional study might be needed; and make recommendations regarding effects and those measures that might avoid, minimize or mitigate adverse effects.

- a. The Utilities shall submit the draft report to RUS, USFS, USACE, LLBO THPO, SHPO and participating tribes for review. The parties shall have fifteen (15) days from receipt to provide written comments to RUS on the findings and recommendations presented in the draft survey report.
- b. RUS, USFS and USACE shall ensure that written comments submitted in a timely manner are taken into account in the preparation of the final report(s) and implementation of the terms of the PA.
- c. The Utilities shall provide each federal agency and consulting party with one copy of the final survey report.

IV. TREATMENT

- A. If, through implementation of Stipulation III historic properties are identified in the APE, RUS, USFS and USACE shall consult with the LLBO THPO, SHPO and participating Indian tribes to apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a).
- B. If historic properties will be adversely affected, RUS, USFS and USACE shall consult in accordance with 36 CFR § 800.6(a) to identify appropriate measures that are in the public interest to avoid, minimize or mitigate adverse effects to historic properties. If NRHP eligible archeological or traditional resources that are

located on *tribal lands* will be adversely affected, RUS, USFS and USACE shall consult with the LLBO THPO in lieu of the SHPO in accordance with 36 CFR § 800.3(c)(1).

- C. When agreement between RUS, USFS, the LLBO THPO, SHPO and participating tribes can be reached on how to resolve the adverse effect, the Utilities shall prepare a Treatment Plan (Plan) describing the measures to be carried out, the manner in which they will be carried out, and a schedule for their implementation.
 - a. In resolving adverse effects to NRHP listed or eligible archeological sites, the federal agencies and consulting parties shall not be limited to the consideration of data recovery.
 - b. When treatment measures include archeological data recovery, the Plan will identify the specific research questions to be addressed with an explanation of their relevance, the archeological methods to be used, and provisions for public interpretation and education subject to restrictions established by 36 CFR § 800.6(a)(5).
 - c. In resolving adverse effects to NRHP eligible traditional resources or those contributing to the traditional landscape identified in Stipulation III.D, RUS, USFS and USACE shall take into account the recommendations of the LLBO THPO presented in the report titled, "*A Traditional Cultural Property Survey of the Bemidji to Grand Rapids 230 kV Transmission Line Proposal in Cass and Itasca Counties of Minnesota, on the Leech Lake Reservation*" (Lemon, 2010).
- D. The Utilities shall submit the Plan to RUS, USFS, USACE, the LLBO THPO, SHPO and the participating Indian tribes for review. These parties shall have fifteen (15) days from receipt to submit a written review of the measures and terms of the Plan. RUS, USFS and USACE shall ensure that the Plan which is implemented takes into account timely comments and recommendations submitted by the consulting parties.
- E. If the agencies and consulting parties cannot agree on measures to resolve adverse effects, the dispute shall be resolved in accordance with Stipulation XI.

V. TIMING

- A. RUS, USFS and USACE shall ensure that the requirements of Stipulations III and IV are implemented prior to the start of any BGR Project construction.
- B. The Utilities may initiate tree clearing in the ROW in January 2011 as long as the signatories agree that historic properties will not be adversely affected by this activity. The Utilities shall ensure that this tree clearing activity is monitored in accordance with Stipulation VII.

VI. CURATION

- A. The Utilities shall return all artifacts and materials recovered through implementation of the terms of this PA to the respective landowner. Prior

to the return, the Utilities shall afford the landowner an opportunity to donate the artifacts and materials to the LLBO THPO.

- B. Any artifacts, materials, or records removed from federal land that are not subject to the Native American Graves Protection and Repatriation Act (NAGPRA) will be curated in accordance with 36 CFR Part 79, "*Curation of Federally-Owned and Administered Archaeological Collections.*"
- C. Artifacts and materials retrieved from non-CNF *tribal lands* will be curated in accordance with LLBO THPO standards and policy.

VII. CONSTRUCTION MONITORING

- A. The Utilities will employ one tribal monitor and one alternate tribal monitor to ensure that construction activities within the exterior boundaries of the LLBO Reservation and the CNF are performed in accordance with agreed upon plans, specifications and measures developed pursuant to the terms of this PA. In addition, the tribal monitor will observe construction activities to identify and report those situations to which Stipulation IX is applicable.
- B. The tribal monitor and alternate will be selected by the LLBO THPO. The monitor selected
 - a. Must have knowledge of archeological and traditional resources of importance to the LLBO and/or other Indian tribes in the region; and
 - b. Must communicate effectively.
- C. The tribal monitor and alternate will maintain a daily log of activities and observations. Each week the monitor and alternate will submit a report describing their activities and observations, along with any actions taken and their outcome, for that week. The report will be submitted to the LLBO THPO and the BGR Project General Environmental Inspector (GEI).
- D. The Utilities shall ensure that the monitor and alternate are notified about construction activities during the daily and weekly meetings so that one monitor can be available to observe construction activities at all times. If there is more than one active BGR Project construction site, the Utilities will employ both the monitor and the alternate simultaneously to ensure that coverage of all construction activities is adequate.
 - a. The Utilities shall invite the monitor and alternate to participate in all construction meetings.
 - b. The Utilities shall encourage the monitor and alternate to use their knowledge and experience to assist in avoiding adverse effects to historic properties in the APE and impacts to important resources outside of the APE.
- E. The tribal monitor and alternate are authorized to stop work in the immediate area if they believe Stipulation IX to be applicable or that construction is not being implemented in accordance with agreed upon measures. Once work has stopped, the tribal monitor or alternate must immediately notify the BGR Project GEI and the LLBO THPO. The GEI, in consultation with the LLBO THPO, shall determine the how to proceed.

VIII. CONFIDENTIALITY: RUS, USFS, and USACE will protect information about historic properties of religious and cultural significance to Indian tribes, including location information or information provided by Indian tribes to assist in the identification of such properties, to the extent allowed by Section 304 of the National Historic Preservation Act [16 U. S. C. 470w3], 36 CFR § 800.11(c) and other applicable laws, including Exemption 3 of the Freedom of Information Act [5 U.S.C. 552(b)].

IX. POST- REVIEW UNANTICIPATED DISCOVERIES

- A. If previously unidentified historic properties or unanticipated effects to historic properties are discovered during BGR Project construction, the construction contractor shall immediately halt all activity within a one hundred (100) foot radius of the discovery, notify the Utilities of the discovery and implement interim measures to protect the discovery from looting and vandalism.
- B. Immediately upon receipt of the notification required in Stipulation IX.A, the Utilities shall inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted, clearly mark the area of the discovery, implement additional measures, as appropriate, to protect the discovery from looting and vandalism, and notify RUS, USFS, USACE, LLBO THPO, SHPO and the following Indian tribes - the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Bois Forte Band of Minnesota Chippewa, the Lower Sioux Indian Community, the Mille Lacs Band of Ojibwe, the Santee Sioux of Nebraska, the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin, and the White Earth Band of Ojibwe.
- C. Upon receipt of notification, RUS or USFS, as appropriate, shall treat the discovery in accordance with 36 CFR § 800.13(b)(3) and (c).
- D. Treatment of Human Remains
 - a. When the discovery contains human remains and is located on the CNF or the LLBO Reservation, USFS or RUS, respectively, shall comply with NAGPRA [25 U.S.C. 3001 et. seq.] and its implementing regulations (43 CFR Part 10). The Utilities will implement the procedures in Attachment A for inadvertent discoveries of NAGPRA human remains and cultural items on the CNF. The Utilities will implement the procedures in Attachment B for inadvertent discoveries of NAGPRA human remains and cultural items on the LLBO Reservation.
 - b. Immediately following the discovery of human remains, the Utilities will notify the following Indian tribes of the discovery - the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Bois Forte Band of Minnesota Chippewa, the Lower Sioux Indian Community, the Mille Lacs Band of Ojibwe, the Santee Sioux of Nebraska, the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin, and the White Earth Band of Ojibwe.

- c. If the construction contractor for the Utilities believes that a discovery contains human remains and the discovery is not located on federal or tribal lands, the construction contractor shall comply with Stipulation XI.A. Immediately upon receipt of such notification, the Utilities shall comply with the procedures required by Minnesota Statute 390.005.
1. The Utilities shall notify the county coroner. Under the terms of this PA, the Utilities also will notify RUS, USFS, USACE, LLBO THPO, SHPO and other consulting Tribes of the discovery.
 2. If the unidentified human remains are found outside of platted, recorded, or identified cemeteries and in contexts which indicate antiquity of greater than fifty (50) years, the coroner shall notify the Minnesota Office of the State Archaeologist (OSA) and the Minnesota Indian Affairs Council in compliance with Section 307-08 of the Minnesota Private Cemeteries Act.
 3. Suspected human remains shall not be further disturbed or removed until disposition has been determined by the OSA and the Minnesota Indian Affairs Council consistent with the guidance titled *State Archaeologist's Procedures for Implementing Minnesota's Private Cemeteries Act*. (Anfinson, 2008).
- d. At all times human remains must be treated with the utmost dignity and respect, and in a manner consistent with the ACHP's *Policy Statement on the Treatment of Human Remains, Burial Sites and Funerary Objects* (February 23, 2007).
- E. The Utilities shall ensure that the requirements of Stipulation IX are incorporated into all construction contracts.

X. REPORTING

- A. Quarterly following the execution of this PA until construction is complete, the Utilities shall submit a written report to RUS, USACE, USFS, the LLBO THPO, the SHPO, and participating tribes describing progress on implementation of the terms of this PA. At a minimum the report shall contain a summary of construction completed and underway during the period covered by the report and describe the location of this work. The Utilities also may elect to describe any mitigation measures that have been implemented, the schedule for completion of mitigation, the treatment of any post-review discoveries pursuant to Stipulation IX, any scheduling changes proposed, any problems encountered, and any disputes addressed pursuant to Stipulation XI in the report. The Utilities may submit the report electronically to the federal agencies and consulting parties.
- B. The Utilities shall invite the LLBO THPO to inspect construction whenever work occurs within 100 feet of a historic property in which the LLBO THPO has identified an interest.

- C. Upon written request, the Utilities shall grant the LLBO THPO and USFS access to the work site to observe construction.

XI. DISPUTE RESOLUTION

- A. Should any signatory or concurring party to this PA object in writing at any time to any actions proposed or the manner in which the terms of this PA are implemented, RUS, USACE and USFS, as appropriate within the limits of their authority, shall consult with such party to resolve the objection. If RUS, USACE or USFS, as appropriate, determines that the objection cannot be resolved, that agency will:
- a. Forward all documentation relevant to the dispute, including the resolution proposed by RUS, USACE or USFS, as appropriate, to the ACHP. The ACHP shall provide the RUS with its advice, pursuant to 36 CFR § 800.2(b)(2), on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the RUS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The RUS will then proceed according to its final decision.
 - b. Notify RUS, USACE or USFS, as appropriate, that it will comment pursuant to 36 CFR § 800.7(c), and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by RUS, USACE or USFS, as appropriate, in accordance with 36 CFR § 800.7(c)(4).
 - c. If the ACHP does not provide its advice regarding the dispute within thirty (30) days, RUS, USACE or USFS, as appropriate, may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the RUS, USACE or USFS, as appropriate, shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- B. The responsibility of RUS, USACE or USFS, as appropriate, to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.
- C. For the term of this PA, if an objection should be raised by the public about the implementation of measures stipulated in this PA, RUS, USACE or USFS, as appropriate, will notify the signatories to this PA and consult with the objecting party to seek resolution. If RUS, USACE or USFS, as appropriate, determines that the objection cannot be resolved, that agency will seek the advice or comment of ACHP in accordance with Stipulation XI.A.

XII. TERM OF AGREEMENT

- A. The term of this PA shall be five (5) years from the date of execution by the signatories unless the signatories agree to extend its term. If its stipulations have not been carried out, and prior to work continuing on the BGR Project, RUS, USACE or USFS, as appropriate, shall either (a) execute another agreement pursuant to 36 CFR § 800.6 or 36 CFR § 800.14(b) , or request, take into account and respond to the comments of the ACHP pursuant to 36 CFR § 800.7.
- B. Six (6) months prior to the date on which the PA will expire, the Utilities shall notify the other signatories of the impending expiration. RUS, USACE or USFS, as appropriate, may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation XIII. RUS, USACE or USFS, as appropriate, shall notify the signatories as to the course to be pursued.

XII. AMENDMENT

This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date it is executed by all of the signatories and filed with ACHP.

XIII. TERMINATION

- A. If any signatory to this PA determines that its terms will not, or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XIII. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.
- B. Once the PA is terminated, and prior to work continuing on the BGR Project, RUS, USACE or USFS, as appropriate, must either (a) execute an agreement pursuant to 36 CFR § 800.6 or 36 CFR § 800.14(b), or (b) request, take into account, and respond to the comments of ACHP under 36 CFR § 800.7. RUS shall notify the signatories as to the course of action it will pursue.

EXECUTION of this PA by RUS, USACE, USFS, LLBO THPO and the Minnesota SHPO, and implementation of its terms evidence that RUS has taken into account the effects of this undertaking on historic properties and afforded ACHP a reasonable opportunity to comment.

Signatories:

US DEPARTMENT OF AGRICULTURE, RURAL UTILITIES SERVICE

By: Mark S. Pearl

Date: 10/4/10

Mark S. Plank, Director
Engineering and Environmental Staff
Water and Environmental Programs

US DEPARTMENT OF AGRICULTURE, FOREST SERVICE

By: Robert N. Schmal Date: 9/24/2010
Robert N. Schmal, Acting Forest Supervisor, Chippewa National Forest

US ARMY CORPS OF ENGINEERS

By: Lynne Cannon Date: 9/29/10

LEECH LAKE BAND OF OJIBWE TRIBAL HISTORIC PRESERVATION OFFICER

By: Gina Lemon Date: 9-24-10
Gina Lemon
Tribal Historic Preservation Officer

MINNESOTA STATE HISTORIC PRESERVATION OFFICE

By: Britta L. Bloomberg Date: 9/29/10
Britta L. Bloomberg, Deputy STPO

Invited Signatories:

MINNKOTA POWER COOPERATIVE, INC.

By: John T. Graves Date: 10/4/10
John T. Graves, Environmental Manager

OTTER TAIL POWER COMPANY

By: Alan R. Koelkeritz Date: 9/28/10
Alan R. Koelkeritz Project Manager

MINNESOTA POWER

By: *James B. Allison* Date: *9/30/10*
Supervisor, Environmental Siting & permitting

Concurring parties:

ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION

By: _____ Date: _____

THE BOIS FORTE BAND OF MINNESOTA CHIPPEWA

By: _____ Date: _____

LOWER SIOUX INDIAN COMMUNITY

By: _____ Date: _____

SANTEE SIOUX OF NEBRASKA

By: _____ Date: _____

RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA INDIANS OF WISCONSIN

By: _____ Date: _____

THE MILLE LACS BAND OF OJIBWE,

By: _____ Date: _____

THE WHITE EARTH BAND OF OJIBWE

By: _____ Date: _____

ATTACHMENT A:

**PLANS FOR THE UNANTICIPATED DISCOVERY OF
HUMAN REMAINS OR BURIALS ON
CHIPPEWA NATIONAL FOREST LANDS
DURING CONSTRUCTION OR MODIFICATION OF
BEMIDJI TO GRAND RAPIDS 230 KV TRANSMISSION FACILITIES**

- I. For construction or modification of Bemidji to Grand Rapids 230 kV Project transmission facilities on Chippewa National Forest lands:**
1. When an unmarked human burial or unregistered grave is encountered during construction activities, the USFS shall comply with the Native American Graves Protection and Repatriation Act (1990) and implementing regulations, as amended.
 2. Upon encountering an unmarked human burial or unregistered grave during ground disturbing construction activities, the construction contractor for Otter Tail Power Company, Minnesota Power and Minnkota Power Cooperative, Inc. (the Utilities) will immediately stop work within a one-hundred (100) foot radius from the point of discovery and provide immediate telephone notification followed by written confirmation (e.g. certified letter) to the Chippewa National Forest (CNF). The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
 3. Immediately following receipt of such notification, CNF will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery and will assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
 4. The CNF will notify appropriate law enforcement, the CNF Project Manager, and the Tribal and/or State Historic Preservation Office (THPO and/or SHPO) immediately, but no later than three (3) days, after receipt of written confirmation of the discovery (43 CFR Part 10.4(d)). After law enforcement has concurred that the human burial is archaeological, CNF will initiate consultation with the appropriate Indian Tribe(s) or known lineal descendants concerning the disposition of the human remains and associated objects.
 5. The Utilities may resume construction activities in the area of the discovery thirty (30) days after certification by CNF of receipt of the written notification of discovery if the activity is otherwise lawful, and at any time that a written, binding agreement developed in coordination with the LLBO THPO and executed with the affiliated Indian Tribe(s) that adopts appropriate treatment and disposition measures.

ATTACHMENT B:

**PLANS FOR THE UNANTICIPATED DISCOVERY
OF HUMAN REMAINS OR BURIALS
ON THE LEECH LAKE BAND OF OJIBWE RESERVATION DURING
CONSTRUCTION OR MODIFICATION
OF BEMIDJI TO GRAND RAPIDS 230 kV TRANSMISSION FACILITIES**

- I. **For construction or modification of Bemidji to Grand Rapids 230 kV transmission facilities on Tribal lands:**
1. When an unmarked human burial or unregistered grave is encountered during construction activities, the requirements stipulated in the Native American Graves Protection and Repatriation Act (1990) shall apply.
 2. Upon encountering an unmarked human burial or unregistered grave during ground disturbing construction activities, the construction contractor for Otter Tail Power Company, Minnesota Power and Minnkota Power Cooperative, Inc. (the Utilities) will immediately stop work within a one-hundred (100) foot radius from the point of discovery and provide immediate telephone notification followed by written confirmation (e.g. certified letter) to the Leech Lake Band of Ojibwe (LLBO) Tribal Historic Preservation Officer (THPO), and all other consulting Tribes and parties. The construction contractor will implement interim measures to protect the discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.
 3. Immediately following receipt of such notification, the THPO will ensure that construction activities have halted within a one-hundred (100) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.
 4. LLBO THPO will notify LLBO Tribal law enforcement within forty-eight (48) hours of the discovery. Immediately upon receipt of such notification, the LLBO THPO will notify the Minnesota Indian Affairs Council and the Minnesota Office of the State Archeologist, and other consulting Tribes and parties of the discovery.
 5. The LLBO THPO will determine the treatment, including mitigation, and disposition of the unmarked human burial or unregistered grave in accordance with the Minnesota Private Cemeteries Act. The LLBO THPO will implement all treatment and disposition measures deemed appropriate with the approval of consulting Tribes.
 6. The Utilities may resume construction activities in the area of the discovery upon receipt of written authorization from THPO.

Attachment D: Mitigation Measures

ROD ATTACHMENT D
Summary of Mitigation Measures

Resource	Mitigation Measures
Aesthetics	Limits imposed in the HVTL permit for the removal of vegetation and trees.
	HVTL permit requirements for cleanup of construction waste.
	HVTL permit requirement to span water bodies when possible.
	ROW, access roads, temporary work spaces, and other private lands restoration required by the HVTL permit and as agreed upon in the vegetative management plan.
	Communication with landowners regarding specific pole placement.
	Use of uniform structure designs to the extent practicable that blend into the natural environment (i.e., wooden structures).
	Placement of structures to minimize their visibility from highways, waterways, and trail crossings .
	Limit number and placement of construction staging areas. Use Enbridge cleared ROW when possible .
	Cross water bodies in the same location as existing transmission lines.
	Double-circuit the Project with existing transmission or distribution lines to the extent practicable and consistent with engineering or system reliability criteria .
	Parallel existing transmission line and pipeline easement to the extent possible.
	Reduce height of the structures, as feasible, to minimize impacts within areas of high scenic importance. Use of H-frame structures for the Mississippi River crossing near Ball Club would have a lower profile than single pole structures.
	Mitigation specific to maintaining Scenic Integrity Objectives on CNF lands, including planting to reduce visibility of the corridor from roadways, maintaining a "no mow" zone at the edge of the ROW, and removal of mitigation vegetation from outside the ROW while retaining the appearance of remaining plants.
Special landscaping/plantings will be considered at trails and other recreational uses where aesthetics can be improved.	
Assist CNF and LLDRM with dump site cleanup in areas of concern.	
Air Quality and Climate	Use of Best Management Practices (BMPs) to control fugitive dust during construction: monitor dust generation; operate vehicles at reduced speeds; and use of water and dust abatement methods.
	Maintain construction vehicles consistent with EPA requirements to use ULSD fuel in all on/off road construction equipment.
	Limit burning of vegetative and construction debris for the entire project. Use alternative methods such as chipping the debris for mulching, for use as a fuel source, or other uses.
	No burning of slash or construction piles on or near the boundaries of the Leech Lake Reservation, in order to reduce the potential for Black Carbon and other emissions, absent a burning permit from the appropriate authorities .
	Restoration of the natural landscape would commence shortly upon cessation of construction activities, as is typically required as a condition of the HVTL permits issued by the Commission.
Decreases in terrestrial carbon sequestration from the clearing of ROW could be substantially offset by the re-planting of new growth vegetation.	
Soil and Geology	HVTL permit requirement to re-grade areas disturbed to construction to reflect topography existing before construction.
	Avoid disturbance of soils and excavation in steeply sloped areas.
	Implementation of Soil Erosion and Sediment Control Plan, required by the HVTL permit.

Resource	Mitigation Measures
	<p>Development of BMPs under a Storm Water Pollution Prevention Plan (SWPPP), including installation of silt fencing, weed-free straw bales or ditch blocks and/or covering bare soils with weed-free mulch, plastic sheeting, or fiber rolls to protect drainage ways and streams from sediment runoff from exposed soils.</p> <p>Restore compacted soils to their native state through tillage operations.</p> <p>Limit setup and staging sites to previously disturbed areas to the extent practicable.</p> <p>Identification of wet organic soils through mapping and, if necessary on-site investigations and soil borings.</p> <p>To the extent practicable, complete construction in the wet organic soils when the ground is frozen.</p> <p>Develop procedures for the proper storage and disposal of all hazardous and non-hazardous wastes generated during construction.</p> <p>Use controlled staging areas for refueling and hazardous material loading/unloading.</p> <p>Revegetate all disturbed areas once construction is complete. Seed mixes could be specified based upon site characteristics and in accordance with regulatory permits.</p> <p>If topsoil is removed from the CNF, which may affect surficial topography, it must be salvaged and reused in accordance with the 2004 Forest Plan.</p> <p>In the event that previously contaminated soils are discovered during construction, the Applicants could stop work immediately, contact the appropriate state or tribal agency, and consult with the agency with respect to an acceptable plan of action.</p>
Water Resources	<p>HVTL permit requirement to span all water bodies to the extent possible.</p> <p>Plant or seed non-agricultural areas disturbed by transmission line structures to prevent runoff. Ensure that native seed mixes from the plants already indigenous to the immediate area of disturbance are used for the seeding.</p> <p>HVTL permit could require the Project to co-locate with existing transmission facilities along certain segments of a permitted route.</p> <p>Development of BMPs under a SWPPP or Section 404 permit, including location of structures and disturbed areas away from water bodies; location of fueling activities and fuel and chemical storage away from water bodies; installation of sediment and erosion control; use of turbidity control methods; spread topsoil and seed in a timely manner; avoid use of fertilizer, pesticides, or herbicides near water bodies; implement procedures to minimize and control inadvertent fluid returns during horizontal direction drilling (if used).</p> <p>Compensatory mitigation if required under the Section 404 permit could include the restoration, establishment, enhancement, or preservation of wetlands or other aquatic resources to off-set Project impacts.</p> <p>The license to cross state lands and public waters issued by MnDNR may require adherence to MnDNR invasive species standards, restriction of the use of certain pesticides, use of native species for revegetation, avoidance of in-stream work during fish spawning times, and creation of access roads to state lands if they become isolated as a result of the Project.</p>
Floodplains	<p>HVTL permit requirement to return floodplain contours to their pre-construction profile if disturbed during construction.</p> <p>HVTL permit requirement to span all water bodies and associated floodplains to the extent possible.</p> <p>Plant or seed non-agricultural areas disturbed by transmission line structures to prevent runoff. Use native seed mixes from the indigenous plants and plant indigenous plants located in the immediate disturbed soil area; ensure seeding and/or plantings are done in a time congruent with seeding and growth of the area, not during a time that would preclude germination or rooting.</p> <p>Use construction techniques to minimize run-off into floodplains during construction.</p>

Resource	Mitigation Measures
Wetlands	HVTL permit requirement to span wetlands to the extent possible.
	Development of BMPs under a SWPPP, NPDES permit, License to Cross Public Waters permit, Public Waters work permit, Section 404 Clean Water Act permit , and Section 10 permit, including location of fueling activities and fuel and chemical storage away from water bodies; installation of sediment and erosion control; use of turbidity control methods; spreading of topsoil and seed in a timely manner; avoiding use of fertilizer, pesticides, or herbicides near wetlands; implementing procedures to minimize and control inadvertent fluid returns during horizontal direction drilling (if used).
	Schedule construction during frozen ground conditions.
	Access wetlands through the shortest route resulting in the least amount of physical impact to the wetland during construction.
	Assemble structures on upland areas before transporting into wetlands.
	Use of construction mats and specially designed all terrain vehicles to minimize impacts within wetlands when construction during winter (frozen) months is not possible.
	Restore wetlands as required by the USACE St. Paul District to replace wetland functions and values lost due to regulated activities pursuant to Section 404 of the Clean Water Act and St. Paul District Policy for Wetland Compensatory Mitigation in Minnesota, and in concert with other district policies and guidance.
Biological Resources	Reseed disturbed areas following construction with a LLDRM/CNF/MnDNR approved native species seed mix to restore native vegetation cover. Seed mix will be developed in conjunction with appropriate resource agencies taking into consideration culturally important species.
	Develop a LLDRM/CNF/MnAg approved noxious weed management program, including a noxious weed and vegetation management plan.
	Conduct a field review of ROW and construction staging sites prior to construction to identify areas that contain noxious weeds. Construction equipment in these areas should be avoided or cleared of noxious weeds prior to construction as feasible.
	Power-wash or manually remove material from construction vehicles prior to the start of construction and if equipment has traveled from an area contaminated by noxious weeds to an uncontaminated area.
	Siting the Project within or adjacent to existing ROWs to minimize impacts to wildlife habitat.
	Limit clearing and maintenance of the ROW within previously forested areas to the extent practicable.
	Install marked transmission line shield wires to the extent practicable within major avian flyways.
Species of Concern	Develop an Avian Mitigation Plan (AMP) .
	Nesting platforms on Project structures for eagles and osprey will be provided in designated areas.
	Placement of the ROW within the 1,000-foot-wide route to avoid known species of concern, active nesting locations, and active breeding locations.
	Conduct ROW clearing outside of the breeding season.
	Notify appropriate agencies if previously unknown nesting/breeding sites are identified during construction.
Cultural Resources	If taking of a species occurs, compensatory mitigation may include funding of state acquisition of certain sites, funding survey work, and/or funding habitat research.
	Refrain from construction and logging within 0.3 mile of active Northern goshawk nests during breeding season.
	Avoid identified archaeological and historic resources through adjustment of the ROW within the selected 1,000-foot-wide route.
Use single pole structures within the city of Cass Lake to minimize visual and aesthetic impacts to the viewshed of historical properties.	

Resource	Mitigation Measures
	<p>Implement BMPs for water resources (see above) to minimize potential effects to wild rice.</p> <p>Mitigation on CNF lands:</p> <p>The CNF will work with LLDRM and the Applicants to develop, fund and implement a program to assess suitable mitigation and contingency sites; develop, fund, and implement establishment of mitigation sites; and implement adaptive management as needed to achieve site-specific goals.</p> <p>The CNF will develop mitigation criteria in conjunction with the LLDRM with input from the tribal community in a form and location(s) acceptable to the LLDRM.</p> <p>Suitable mitigation, and locations for these projects, will be identified prior to the installation of the 230kV transmission line; and these mitigation projects must be initiated within five years of the initiation of transmission line construction.</p> <p>If suitable mitigation projects or locations for these projects cannot be identified on areas already approved through the NEPA, the CNF will initiate NEPA on additional locations within one year of the completion of the transmission line construction on the CNF.</p> <p>The CNF will work with the Applicants to find a means of meeting the financial, logistical, and staffing requirements to make the mitigation successful.</p> <p>Mitigation on CNF lands will be in the form of providing for traditional gathering opportunities and products. Mitigation projects will be deemed to be successful when determined by the CNF in collaboration with the LLDRM on an annual basis. Projects that have been identified include:</p> <ul style="list-style-type: none"> • Blueberry management, consisting of intensive and moderate enhancement on no less than 800 acres by brushing, burning and/ or pine thinning. This project would include establishment of harvestable blueberry and adaptive management as needed to achieve site-specific goals. • Sugar Maple/basswood ecosystem Management, consisting of protection or enhancement of no less than 200 acres by using methods including, but not limited to, creating single or few-tree openings, single tree girdling, and, as necessary, deer enclosures. This project would include establishment of sugar bush characteristics, and adaptive management as needed to achieve site-specific goals. • Sweet grass Management, consisting of plantings in openings of no less than 10 acres. This project requires researching methods of propagation, acquiring local seeds or plants, and maintaining suitable openings for habitat. Some sweet grass may be maintained in intensively managed plots while some will be maintained in more natural locations and densities. This project would include establishment of harvestable sweet grass and adaptive management as needed to achieve site-specific goals. • Berry patch Management, consisting of protection or enhancement on no less than 35 acres of multiple species of fruiting shrubs and vines. Management would consist of but not be limited to establishing and maintaining areas suitable for traditional harvesting of berries. This project would include establishment of harvestable diverse traditional fruits and adaptive management as needed to achieve site-specific goals.
Land Use	<p>Co-locate the Project along existing ROWs, including highways, railways, existing transmission lines, and pipelines.</p> <p>Communicate with MnDNR LLDRM, and CNF to identify and avoid sensitive forested or open areas.</p> <p>Reseed state and federal forested land with a seed mix recommended by the appropriate agency's management. Seed mix will be developed in conjunction with appropriate resource agencies (LLDRM, CNF, MnDNR) taking into consideration culturally important species.</p> <p>Limit construction staging and lay-down areas to previously disturbed areas.</p>

Resource	Mitigation Measures
	<p>Use the minimum necessary width and length for transmission line access roads.</p> <p>Communicate with private land owners regarding exact placement of structures and disturbed areas.</p> <p>Adjust conductor spans to avoid sensitive land use areas.</p> <p>Limit construction activities to the ROW, unless access permission is obtained from adjacent landowners.</p> <p>Repair or replace fences, gates, and similar improvements that are removed or damaged during Project construction.</p>
Socioeconomics	<p>Communicate with landowners regarding exact placement of structures and disturbed areas.</p> <p>Minimize house displacement through flexibility in the route alignment.</p> <p>Use the minimum necessary width and length for transmission line access roads.</p> <p>Limit construction activities to the ROW, unless access permission is obtained from adjacent landowners.</p> <p>Easement payments to landowners are required to compensate landowners for loss of use of the utility easement on their property.</p> <p>Co-locate the Project along existing ROWs, including highways, railways, existing transmission lines, and pipelines, to avoid crossing additional, undisturbed properties and affecting property values.</p> <p>Employ, through participating agreements or contract use, Leech Lake Band Members to the maximum extent possible on all aspects of the project considering the TERO (Tribal Employment Rights Office) ordinance. Use LLBO DRM temporary employment program when practical.</p>
Environmental Justice	<p>Communicate with private landowners regarding exact placement of structures and disturbed areas.</p> <p>The Applicants could develop mitigation measures in conjunction with the LLDRM for loss of traditional gathering opportunities on all lands not covered by federal mitigation.</p> <p>To prevent long-term disruption to hunting and gathering resources, the HVTL permit would require restoration of the rights-of-way, temporary work spaces, access roads, and other lands affected by constructions. The HVTL permit could require the Applicants to work with the MnDNR, LLDRM, CNF, landowners, and local wildlife management programs to restore and maintain the rights-of-way to provide a useful and functional habitat for plants, nesting birds, small animals, and migrating animals to minimize habitat fragmentation.</p> <p>The Applicants will work with the LLDRM and LLBO DRM members to allow them to collect and transplant (in whole or in part) traditionally important plants from the entire ROW before construction. A communication plan will be developed that will provide LLBO DRM members clear and timely information as to when ROW (on CNF-owned land) would not be available for gathering activities (which may include transporting plants of concern) because of construction. Information will be presented to LLDRM to provide at LIC meetings, in the local newspaper, on the LLBO DRM website, etc.</p> <p>Applicants will work to provide opportunities including, but not limited to, contracts-for-service to the LLDRM Plant Resource Department to conduct long-term monitoring and management of the HVTL ROW on the LLR to reduce non-native invasive species and enhance native, traditionally important plants.</p> <p>Span water bodies, wetlands, and floodplains to the extent possible, to minimize effects on wild rice resources.</p>
Recreation and Tourism	<p>Co-locating the Project along existing ROWs, including highways, railways, existing transmission lines, and pipelines, to avoid previously undisturbed recreation areas and wildlife habitat.</p> <p>Communicate with private landowners and resource management agencies regarding exact placement of structures and disturbed areas.</p> <p>Placement of barriers and signs at or near road crossings to limit unauthorized off-highway vehicle (OHV) or other vehicle traffic on ROWs.</p>

Resource	Mitigation Measures
	<p>Conduct construction at water access points during winter months, when use of such areas for recreation tourism is minimal, to the extent practicable.</p> <p>Align the Project ROW perpendicular rather than parallel to existing trails to the extent practicable to minimize impacts to recreation trails.</p> <p>Post signs during construction to provide residents and visitors with advance notice of what recreational activities may be affected during construction.</p> <p>Provide alternate routes for recreation, where possible.</p>
Agriculture	<p>HVTL permit required Agricultural Mitigation Plan.</p> <p>Communicate with private landowners regarding placement of structures and disturbed areas to minimize effects on farming operations.</p> <p>Co-locating the Project along existing ROWs, including highways, railways, existing transmission lines, and pipelines, to avoid previously undisturbed agricultural land.</p> <p>Use of a single pole structure for placement on agricultural land if placement of H-frame structures cannot be sited to minimize impacts to farming operations.</p> <p>Compensate landowners for crop damage and soil compaction that occurs during Project construction.</p> <p>HVTL permit requires restoration of ROW and disturbed areas, including restoration of compacted soils per the Agricultural Impact Mitigation Plan.</p>
Forestry	<p>Limits imposed in the HVTL permit for the removal of vegetation and trees.</p> <p>Limits imposed in the HVTL permit for the creation of temporary easements for access roads and construction/staging areas. The HVTL permit could require that these areas be selected to minimize tree removal.</p> <p>Plant tree seedlings as appropriate to restore wooded temporary work areas not within the Project's permanent ROW.</p> <p>Conduct construction activities on CNF lands in accordance with the Forest-Wide Management Directions, as provided in the 2004 Final Forest Plan.</p> <p>Offer timber harvested from the Project to the local community for use as firewood. Applicants are encouraged to provide timber harvested from the Project to the Leech Lake Band of Ojibwe. Specific dropsite locations for wood placement will be identified in conjunction with LLBO. Wood left at dropsites should be placed in piles, easily accessible for firewood gatherers.</p>
Mining	No mitigation measures identified.
Community Services	No mitigation measures identified.
Utility Systems	<p>Proper maintenance, preventative maintenance, and selection of hardware for the transmission line to reduce interference and utility interruption.</p> <p>HVTL permit condition requiring the correction of interference to communication systems that the transmission line causes or creates.</p> <p>Modifying receiving antennae to correct radio interference.</p> <p>Detune transmission line structures if necessary to eliminate interference with AM radio broadcast stations.</p> <p>Design and place structures away from AM radio antenna to avoid blocking/ interference.</p> <p>Communicate with local radio broadcasting stations to confirm that blocking interference does not occur due to structure placement.</p> <p>Modification or replacement of antenna or amplifier for residents that experience TV signal interference.</p>

Resource	Mitigation Measures
	<p>Reduction of AC interference on pipelines through reducing the impedance of the transmission structure grounds, grounding the pipeline in conjunction with de-couplers, burying gradient control wires along the pipeline or ground mats under aboveground facilities (such as at valves), and the use of dead fronts at test stations.</p> <p>Conduct computer modeling of AC interference to ensure that property mitigation is designed and installed prior to energizing the transmission line.</p> <p>Schedule planned service disruptions that are necessary during construction activities with the affected owners of existing transmission lines. Provide advance notice of service disruption to electric customers.</p> <p>Conduct computer modeling to ensure a proper safe distance between the Project and pipeline is maintained to reduce the potential for ignition during a simultaneous failure on both lines.</p> <p>Use a one-call utility locator service to identify existing utility lines prior to construction.</p> <p>Ensure that utility repair crews are present or on-call during construction activities to respond to unplanned incidents that may result in an interruption to electric service.</p>
Traffic and Transportation	<p>Construct transmission line in accordance with National Electric Safety Code (NESC) guidelines for the required clearances between transmission lines and transportation structures.</p> <p>HVTL permit requirement to comply with MnDOT and all applicable road authorities' management standard and policies, including written notice of construction to MnDOT and applicable road authorities.</p> <p>HVTL permit requirement to restore the ROW, temporary work spaces, access roads, abandoned ROW, and other lands affected during construction, including living snow fences.</p> <p>File a "Notice of Proposed Construction of Alteration" with the FAA and provide an opportunity for the FAA to comment about compatibility of the Project with airport operations.</p> <p>Obtain MnDOT and county permits as applicable for transmission line crossings of roadways. Use of ROW along the National Highway System requires approval of the Federal Highway Administration.</p> <p>Implement traffic control measures during construction, which could include flag persons, barriers, and flashing lights.</p> <p>Install temporary wood pole "guard structures" to safeguard the public and construction workers during removal of existing conductors or stringing of new overhead conductors over highways.</p> <p>Grounding tracks and communication cables on existing rail lines to prevent interference.</p> <p>Use of taller structures where the Project crosses the railroad to increase clearance between passing trains and conductors.</p> <p>Consolidate the Project with existing transmission line to reduce the number of railroad crossings.</p>
Safety and Health	<p>Use BMPs to minimize the potential for spills or leaks from equipment during construction, including frequent inspections of equipment; requiring portable spill containment kits for construction equipment; ensuring that equipment operations are present at the nozzle at all times when fueling is in progress; and prohibiting the refueling of equipment in wetlands.</p> <p>Use of protective devices (e.g., breakers and relays) that would de-energize the transmission line in the event of an emergency.</p> <p>Use of fences at substations to prevent access.</p> <p>Construct the Project in accordance with NESC standards regarding clearance, grounding, utility crossing, strength of materials, and ROW widths.</p> <p>Ground metal buildings, fences, and other large, permanent conductive objects in close proximity or parallel to the line to prevent electric field discharge.</p> <p>Minimize the length of the transmission line that parallels or is co-located with distribution of local service conductors to minimize the potential for stray voltage.</p>

Resource	Mitigation Measures
	Educating local livestock operations about techniques to reduce the potential for insulated electric fences to pick up an induced charge from the transmission line.
Noise	HVTL permit requirement for the Project to meet Minnesota noise standards.
	Limit construction to daytime work hours.
	Equip heavy equipment with sound attenuation devices, such as mufflers.
	Minimize noise impacts from substation through design, including setbacks from sensitive noise receptors, layout and landscaping choices, and use of low noise transformers.