

**Appendix G**

**.....Agriculture and UIC Mitigation Plan**

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**AGRICULTURAL IMPACT MITIGATION PLAN**  
**CapX2020 345 kV Electric Transmission Projects in Minnesota**

**CapX2020**

**June 2009**

# AGRICULTURAL IMPACT MITIGATION PLAN

## CapX2020

### Table of Contents

Purpose.....	1
General Provisions .....	2
Mitigative Actions .....	3
1. Pole Placement.....	3
2. Soil and Rock Removal for Bored Holes.....	3
3. Damaged and Adversely Affected Tile.....	3
4. Installation of Additional Tiles .....	4
5. Construction Debris .....	4
6. Compaction, Rutting, Fertilization, Liming, and Soil Restoration .....	4
7. Damaged Soil Conservation Practices .....	5
8. Weed Control .....	5
9. Irrigation Systems .....	5
10. Temporary Roads.....	5
11. Construction in Wet Conditions.....	6
12. Procedures for Determining Construction-Related Damages and Providing Compensation .....	6
13. Advance Notice of Access to Private Property .....	6
14. Role and Responsibilities of Agricultural Monitor.....	6
15. Qualifications and Selection of Agricultural Monitor .....	7
16. Role of the Utilities Inspector .....	7
Appendix A: Definitions.....	A-1
Appendix B: Mitigative Actions for Organic Agricultural Land.....	B-1

# AGRICULTURAL IMPACT MITIGATION PLAN

## CapX2020

### Purpose

This Agricultural Impact Mitigation Plan ("AIMP" or 'the plan') was developed by Northern States Power Company, a Minnesota corporation and wholly-owned subsidiary of Xcel Energy Inc., and Great River Energy, a Minnesota generation and transmission cooperative (together, referred to as "the Utilities"), representing the CapX2020 utility consortium and with the Minnesota Department of Agriculture ("MDA"). The overall objective of this AIMP is to identify measures the Utilities will take to avoid, mitigate, repair and/or provide compensation for impacts that may result from 345 kV electric transmission line construction of the CapX2020 projects on Agricultural Land in Minnesota.

CapX2020 ("CapX2020") is a joint initiative of 11 transmission-owning utilities in Minnesota and the surrounding region. The purpose of CapX2020 is to study, develop, permit and construct electric transmission infrastructure as needed to implement long-term and cost-effective solutions for customers to meet the growth in energy use expected by the year 2020. The three CapX2020 projects included in this AIMP are described as:

- 1) the 345 kV transmission line from Brookings County, South Dakota to Hampton, Minnesota;
- 2) the 345 kV transmission line from Monticello, Minnesota to St. Cloud to the Fargo area, North Dakota; and
- 3) the 345 kV transmission line from Hampton, Minnesota to Rochester to La Crosse, Wisconsin.

Collectively, these three transmission lines are referred to as the "CapX2020 Projects".

The construction standards and policies in this plan apply only to construction activities occurring partially or wholly on privately owned Agricultural Land. The measures do not apply to construction activities occurring entirely on public rights-of-way, railroad rights-of-way, publicly owned land, or private land that is not Agricultural Land. The Utilities will, however, adhere to the same construction standards relating to the repair of agricultural tile (Item No. 3 in the AIMP) when Tiles are encountered on public highway rights-of-way, railroad rights-of-way, or publicly or privately owned land.

Appendix B of this AIMP applies only to Organic Agricultural Land as described in the National Organic Program Rules, 7 CFR Parts 205.100, 205.202, and 205.101.

Unless the Easement or other agreement, regardless of nature, between the Utilities and the Landowner or Tenant specifically provides to the contrary, the mitigative actions specified in the construction standards and policies set forth in this AIMP will be implemented in accordance with the General Provisions.

## **General Provisions**

The mitigative actions are subject to change by Landowners or Tenants, provided such changes are negotiated with and acceptable to the Utilities.

Certain provisions of this AIMP require the Utilities to consult with the Landowner and Tenant of a property. The Utilities will engage in a good faith effort to secure the agreement of both Landowner and Tenant in such cases.

Unless otherwise specified, the Utilities will retain qualified contractors to execute mitigative actions. However, the Utilities may negotiate with Landowners or Tenants to carry out the mitigative actions that Landowners or Tenants wish to perform themselves.

Mitigative actions employed by the Utilities pursuant to this AIMP, unless otherwise specified in this AIMP or in an Easement or other agreement negotiated with an individual Landowner or Tenant, will be implemented within 45 days following completion of Final Clean-up on an affected property, weather permitting, or unless otherwise delayed by mutual agreement between Landowner or Tenant and Utility. Temporary repairs will be made by the Utilities during construction as needed to minimize the risk of additional property damage or interference with the Landowner's or Tenant's access to or use of the property that may result from an extended time period to implement mitigative actions.

The Utilities will implement the mitigative actions contained in this AIMP to the extent that they do not conflict with the requirements of any applicable federal and/or state rules and regulations and other permits and approvals that are obtained by the Utilities for the project or they are not determined to be unenforceable by reason of other requirements of federal and state permits issued for the project. To the extent a mitigative action required by this agreement is determined to be unenforceable in the future due to requirements of other federal or state permits issued for the project, the Utilities will so inform the Landowner or Tenant and will work with them to develop a reasonable alternative mitigative action.

Prior to the construction of the transmission line, the Utilities will provide each Landowner and Tenant with a telephone number and address which can be used to contact the Utilities, both during and following the completion of construction, regarding the agricultural impact mitigation work which is performed on their property or other construction-related matter. If the contact information changes at any time before completion of Final Clean-up and/or after the completion of construction, the Utilities will provide the Landowner and Tenant with updated contact information. The Utilities will respond to Landowner and Tenant telephone calls and correspondence within a reasonable time.

The Utilities will use good faith efforts to obtain a written acknowledgement of completion from each Landowner and Tenant upon the completion of Final Clean-up on their respective property.

If any provision of this AIMP is held to be unenforceable, no other provision will be affected by that holding, and the remainder of the AIMP will be interpreted as if it did not contain the unenforceable provision.

## **Mitigative Actions**

The Utilities will reasonably restore or compensate Landowners and/or Tenants, as appropriate, for damages caused by the Utilities as a result of transmission line construction, and as outlined in this plan. The decision to restore land or compensate Landowners will be made by the Utilities after discussion with the Landowner or Tenant.

### **1. Pole Placement**

During the design of the project, the Utilities' engineering, land rights and permitting staff will work together to address pole placement issues. Utilities' staff will work with Landowners on pole placement. When the preliminary design is complete, the land rights agents will review the staked pole locations with the Landowners.

### **2. Soil and Rock Removal for Bored Holes**

Any excess soil and rock will be removed from the site unless otherwise requested by the Landowner.

### **3. Damaged and Adversely Affected Tile**

The Utilities will contact affected Landowners or Tenants for their knowledge of Tile locations prior to the transmission line's installation. Utilities will make every attempt to probe for Tile if the Landowner does not know if Tile is located in the proposed pole location. Tile that is damaged, cut, or removed as a result of this probe will be immediately repaired. The repair will be reported to the Inspector.

If Tile is damaged by the transmission line installation, the Tile will be repaired in a manner that restores the Tile's operating condition at the point of repair. If Tiles on or adjacent to the transmission line's construction area are adversely affected by the construction of the transmission line, the Utilities will take such actions as are necessary to restore the functioning of the Tile, including the relocation, reconfiguration, and replacement of the existing Tile. The affected Landowner or Tenant may elect to negotiate a fair settlement with the Utilities for the Landowner or Tenant to undertake the responsibility for repair, relocation, reconfiguration, or replacement of the damaged Tile. In the event the Landowner or Tenant chooses to undertake the responsibility for repair, relocation, reconfiguration, or replacement of the damaged Tile, the Utilities will not be responsible for correcting Tile repairs after completion of the transmission line (the Utilities are responsible for correcting Tile repairs after completion of the transmission line, provided the repairs were made by the Utilities or their agents or designees).

Where the damaged Tile is repaired by the Utilities, the following standards and policies will apply to the Title repair:

- A. Tiles will be repaired with materials of the same or better quality as that which was damaged.

- B. If water is flowing through a damaged Tile, temporary repairs will be promptly installed and maintained until such time that permanent repairs can be made.
- C. Before completing permanent Tile repairs, Tiles will be examined within the work area to check for Tile that might have been damaged by construction equipment. If Tiles are found to be damaged, they will be repaired so they operate as well after construction as before construction began.
- D. The Utilities will make efforts to complete permanent Tile repairs within a reasonable timeframe after Final Clean-up, taking into account weather and soil conditions.
- E. Following completion of the Final Clean-up and damage settlement, the Utilities will be responsible for correcting and repairing Tile breaks, or other damages to Tile systems that are discovered on the Right-of-Way to the extent that such breaks are the result of transmission line construction. These damages are usually discovered after the first significant rain event. The Utilities will not be responsible for Tile repairs the Utilities have paid the Landowner or Tenant to perform.

#### **4. Installation of Additional Tiles**

The Utilities will be responsible for installing such additional Tile and other drainage measures as are necessary to properly drain wet areas on the Right-of-Way caused by the construction of the transmission line.

#### **5. Construction Debris**

Construction-related debris and material which are not an integral part of the transmission line, and which have been placed there by the Utilities, will be removed from the Landowner's property at the Utilities' cost. Such material to be removed would include excess construction materials or litter generated by the construction crews.

#### **6. Compaction, Rutting, Fertilization, Liming, and Soil Restoration**

- A. Compaction will be alleviated as needed on Cropland traversed by construction equipment. Cropland that has been compacted will be plowed using appropriate deep-tillage and draft equipment. Alleviation of compaction of the topsoil will be performed during suitable weather conditions, and must not be performed when weather conditions have caused the soil to become so wet that activity to alleviate compaction would damage the future production capacity of the land as determined by the Agricultural Monitor.
- B. The Utilities will restore rutted land to as near as practical to its pre-construction condition.
- C. If there is a dispute between the Landowner or Tenant and the Utilities as to what areas need to be ripped or chiseled, the depth at which compacted areas should be

ripped or chiseled, or the necessity or rates of lime, fertilizer, and organic material application, the Agricultural Monitor's opinion will be considered by the Utilities.

## **7. Damaged Soil Conservation Practices**

Soil conservation practices such as terraces and grassed waterways which are damaged by the transmission line's construction, will be restored to their pre-construction condition.

## **8. Weed Control**

On land which is owned by Utilities for substation facilities, the Utilities will work with Landowners if requested on weed control activities outside of the substations with the intent to not allow the spread of weeds onto adjacent Agricultural Land. Any weed control spraying will be in accordance with State of Minnesota regulations.

## **9. Irrigation Systems**

- A. If the transmission line and/or temporary work areas intersect an operational (or soon to be operational) spray irrigation system, the Utilities will establish with the Landowner or Tenant, an acceptable amount of time the irrigation system may be out of service.
- B. If, as a result of the transmission line construction activities, an irrigation system interruption results in crop damages, either on the Right-of-Way or off the Right-of-Way, compensation of Landowners and/or Tenants, as appropriate, will be determined as described in section 11 of this AIMP.
- C. If it is feasible and mutually acceptable to the Utilities and the Landowner or Tenant, temporary measures will be implemented to allow an irrigation system to continue to operate across land on which the transmission line is also being constructed. Utilities will work with the Landowner or Tenant to identify a preferable construction time.

## **10. Temporary Roads**

The location of temporary roads to be used for construction purposes will be discussed with the Landowner or Tenant.

- A. The temporary roads will be designed so as to not impede proper drainage and will be built to mitigate soil erosion on or near the temporary roads.
- B. Upon abandonment, temporary roads may be left intact through mutual agreement of the Landowner or Tenant and the Utilities unless otherwise restricted by federal, state or local regulations.

- C. If a temporary road is to be removed, the Agricultural Land upon which the temporary road is constructed will be returned to its previous use and restored to equivalent condition as existed prior to their construction.

#### **11. Construction in Wet Conditions**

If it is necessary to construct during wet conditions, and if the Agricultural Monitor believes conditions are too wet for continued construction, damages which may result from such construction will be paid for by the Utilities and/or appropriate restoration will be conducted. Compensation for Landowners and/or Tenants, as appropriate, will be determined as described in section 12 of this AIMP.

#### **12. Procedures for Determining Construction-Related Damages and Providing Compensation**

- A. The Utilities will develop and put into place a procedure for the processing of anticipated Landowners' or Tenants' claims for construction-related damages. The procedure will be intended to standardize and minimize Landowner and Tenant concerns in the recovery of damages, to provide a degree of certainty and predictability for Landowners, Tenants and the Utilities, and to foster good relationships among the Utilities, Landowners and their Tenants over the long term.
- B. Negotiations between the Utilities and any affected Landowner or Tenant will be voluntary in nature and no party is obligated to follow any particular method for computing the amount of loss for which compensation is sought or paid. The compensation offered is only an offer to settle, and the offer shall not be introduced in any proceeding brought by the Landowner or Tenant to establish the amount of damages the Utilities must pay. In the event the Utilities and a Landowner or Tenant are unable to reach an agreement on the amount of damages, the Landowner or Tenant may seek recourse through mediation.

#### **13. Advance Notice of Access to Private Property**

The Utilities will endeavor to provide the Landowner and/or Tenant advanced notice before beginning construction on the property. Prior notice will consist of a personal contact, email, letter or a telephone contact, whereby the Landowner and the Tenant are informed of the Utilities' intent to access the land.

#### **14. Role and Responsibilities of Agricultural Monitor**

The Agricultural Monitor will be retained and funded by the Utilities, but will report directly to the MDA. The primary function of the Agricultural Monitor will be to audit the Utilities' compliance with this AIMP. The Agricultural Monitor will not have the authority to direct construction activities and will not have authority to stop construction. The Agricultural Monitor will notify the Utilities' Inspector if he/she believes a compliance issue has been identified. The Agricultural Monitor will have full access to Agricultural Land crossed by the CapX2020 projects and will have the option of

attending meetings where construction on Agricultural Land is discussed. Specific duties of the Agricultural Monitor will include, but are not limited to the following:

1. Participate in preconstruction training activities sponsored by the Utilities.
2. Monitor construction and restoration activities on Agricultural Land for compliance with provisions of this AIMP.
3. Report instances of noncompliance to the Utilities Inspector.
4. Prepare regular compliance reports and submit to MDA, as requested by the MDA.
5. Act as liaison between Landowners and Tenants and MDA, if necessary.
6. Maintain a written log of communications from Landowners and/or Tenants regarding compliance with this AIMP. Report Landowner complaints to the Utilities Inspector and/or Right-of-Way representative.
7. In disputes between Utilities and a Landowner and/or Tenant over restoration, determine if agricultural restoration is reasonably adequate in consultation with the Utilities Inspector.

#### **15. Qualifications and Selection of Agricultural Monitor**

The Agricultural Monitor will have a bachelor's degree in agronomy, soil science or equivalent work experience. The Agricultural Monitor will have demonstrated practical experience with pipeline or electric transmission line construction and restoration on Agricultural Land. Final selection of the Agricultural Monitor will be a joint decision between the MDA and the Utilities.

#### **16. Role of the Utilities Inspector**

The Utilities Inspector will:

1. Be full-time member of the Utilities inspection team.
2. Be responsible for verifying the Utilities compliance with provisions of this AIMP during construction.
3. Work collaboratively with other Utilities Inspectors, Right-of-Way agents, and the Agricultural Monitor in achieving compliance with this AIMP.
4. Observe construction activities on Agricultural Land on a regular basis.
5. Have the authority to stop construction activities that are determined to be out of compliance with provisions of this AIMP.

6. Document instances of noncompliance and work with construction personnel to identify and implement appropriate corrective actions as needed.
7. Provide construction personnel with training on provisions of this AIMP before construction begins.
8. Provide construction personnel with field training on specific topics as needed.

## Appendix A: **Definitions**

Agricultural Land	Land that is actively managed for cropland, hayland, or pasture, and land in government set-aside programs.
Agricultural Monitor	Monitor retained and funded by the Utilities, reporting directly to the Minnesota Department of Agriculture (“MDA”) and responsible for auditing the Utilities' compliance with provisions of this AIMP.
Cropland	Land actively managed for growing row crops, small grains, or hay.
Easement	The agreement(s) and/or interest in privately owned Agricultural Land held by the Utilities by virtue of which it has the right to construct, operate and maintain the transmission line together with such other rights and obligations as may be set forth in such agreement.
Final Clean-up	Transmission line activity that occurs after the power line has been constructed. Final Clean-up activities include but are not limited to: removal of construction debris, de-compaction of soil as required, installation of permanent erosion control structures, final grading, and restoration of fences and required reseeding. Once Final Clean-up is finished, Landowners will be contacted to settle all damage issues and will be provided a form to sign confirming final settlement.
Landowner	Person(s) holding legal title to Agricultural Land on the transmission line route from whom the Utilities is seeking, or has obtained, a temporary or permanent Easement, or their representatives.
Non-Agricultural Land	Any land that is not "Agricultural Land" as defined above.
Right-of-Way	The Agricultural Land included in permanent and temporary Easements which the Utilities acquires for the purpose of constructing, operating and maintaining the transmission line.
Tenant	Any Person lawfully renting or sharing land for agricultural production which makes up the "Right-of-Way" as defined in this AIMP.
Tile	Artificial subsurface drainage system.
Topsoil	The uppermost horizon (layer) of the soil, typically with the darkest color and highest content of organic matter.
Utilities Inspector	Full-time on-site inspector retained by the Utilities to verify compliance with requirements of this AIMP during construction of the transmission line. The Inspector will have demonstrated experience with transmission line construction on Agricultural Land.

## **Appendix B: Mitigative Actions for Organic Agricultural Land**

### **Introduction**

The Utilities recognize that Organic Agricultural Land is a unique feature of the landscape and will treat this land with the same level of care as other sensitive environmental features. This Appendix identifies mitigation measures that apply specifically to farms that are Organic Certified or farms that are in active transition to become Organic Certified, and is intended to address the unique management and certification requirements of these operations. All protections provided in the Agricultural Impact Mitigation Plan will also be provided to Organic Agricultural Land in addition to the provisions of this Appendix.

The provisions of this Appendix will apply to Organic Agricultural Land for which the Landowner or Tenant has provided to the Utilities a true, correct and current version of the Organic System Plan within 60 days after the signing of the Easement for such land or 60 days after the issuance of a Route Permit to the Utilities by the PUC, whichever is sooner, or, in the event the Easement is signed later than 60 days after the issuance of the Route Permit. The provisions of this Appendix are applicable when the Organic System Plan is provided to the Utilities at the time of the signing of the Easement.

### **Organic System Plan**

The Utilities recognize the importance of the individualized Organic System Plan (OSP) to the Organic Certification process. The Utilities will work with the Landowner or Tenant, the Landowner or Tenant's Certifying Agent, and/or a mutually acceptable third-party Organic consultant to identify site-specific construction practices that will minimize the potential for Decertification as a result of construction activities. Possible practices may include, but are not limited to: equipment cleaning, planting a deep-rooted cover crop in lieu of mechanical decompaction, applications of composted manure or rock phosphate, preventing the introduction of disease vectors from tobacco use, restoration and replacement of beneficial bird and insect habitat, maintenance of organic buffer zones, use of organic seeds for any cover crop, or similar measures. The Utilities recognizes that Organic System Plans are proprietary in nature and will respect the need for confidentiality.

### **Prohibited Substances**

The Utilities will avoid the application of Prohibited Substances onto Organic Agricultural Land. No herbicides, pesticides, fertilizers or seed will be applied unless requested and approved by the Landowner. Likewise, no refueling, fuel or lubricant storage or routine equipment maintenance will be allowed on Organic Agricultural Land. Equipment will be checked prior to entry to make sure that fuel, hydraulic and lubrication systems are in good working order before working on Organic Agricultural Land. If Prohibited Substances are used on land adjacent to Organic Agricultural Land, these substances will be used in such a way as to prevent them from entering Organic Agricultural Land.

## **Temporary Road Impacts**

Topsoil and subsoil layers that are removed during construction on Organic Agricultural Land for temporary road impacts will be stored separately and replaced in the proper sequence after the transmission line is installed. Unless otherwise specified in the site-specific plan described above, the Utilities will not use this soil for other purposes, including creating access ramps at road crossings. No topsoil or subsoil (other than incidental amounts) may be removed from Organic Agricultural Land. Likewise, Organic Agricultural Land will not be used for storage of soil from non-Organic Agricultural Land.

## **Erosion Control**

On Organic Agricultural Land, the Utilities will, to the extent feasible, implement erosion control methods consistent with the Landowner or Tenant's Organic System Plan. On land adjacent to Organic Agricultural Land, the Utilities' erosion control procedures will be designed so that sediment from adjacent non-Organic Agricultural Land will not flow along the Right-of-Way and be deposited on Organic Agricultural Land. Treated lumber, non-organic hay bales, non-approved metal fence posts, etc. will not be used in erosion control on Organic Agricultural Land.

## **Weed Control**

On Organic Agricultural Land, the Utilities will, to the extent feasible, implement weed control methods consistent with the Landowner's or Tenant's Organic System Plan. Prohibited Substances will not be used in weed control on Organic Agricultural Land. In addition, the Utilities will not use Prohibited Substances in weed control on land adjacent to Organic Agricultural Land in such a way as to allow these materials to drift onto Organic Agricultural Land.

## **Monitoring**

In addition to the responsibilities of the Agricultural Monitor described in the AIMP, the following will apply:

- A. The Agricultural Monitor will monitor construction and restoration activities on Organic Agricultural Land for compliance with the provisions of this appendix and will document any activities that may result in Decertification.
- B. Instances of non-compliance will be documented according to Independent Organic Inspectors Association protocol consistent with the Landowner's Organic System Plan, and will be made available to the MDA, the Landowner, the Tenant, the Landowner's or Tenant's Certifying Agent, the Utilities Inspector and to the Utilities.

If the Agricultural Monitor is responsible for monitoring activities on Organic Agricultural Land, he/she will be trained, at the Utilities' expense, in organic inspection, by the Independent Organic Inspectors Association, unless the Agricultural Monitor received such training during the previous three years.

### **Compensation for Construction Damages**

The settlement of damages will be based on crop yield and/or crop quality determination and the need for additional restoration measures. Unless the Landowner or Tenant of Organic Agricultural Land and Company agree otherwise, at the Utilities expense, a mutually agreed upon professional agronomist will make crop yield determinations, and the Minnesota Department of Agriculture Fruit and Vegetable Inspection Unit will make crop quality determinations. If the crop yield and/or crop quality determinations indicate the need for soil testing, the testing will be conducted by a commercial laboratory that is properly certified to conduct the necessary tests and is mutually agreeable to the Utilities and the Landowner or Tenant. Field work for soil testing will be conducted by a Professional Soil Scientist or Professional Engineer licensed by the State of Minnesota. The Utilities will be responsible for the cost of sampling, testing and additional restoration activities, if needed. Landowners or Tenants may elect to settle damages with the Utilities in advance of construction on a mutually acceptable basis or to settle after construction based on a mutually agreeable determination of actual damages.

### **Compensation for Damages Due to Decertification**

Should any portion of Organic Agricultural Land be Decertified as a result of construction activities, the settlement of damages will be based on the difference between revenue generated from the land affected before Decertification and after Decertification so long as a good faith effort is made by the Landowner or Tenant to regain Certification.

## Definitions

Unless otherwise provided to the contrary in this Appendix, capitalized terms used in this Appendix shall have the meanings provided below and in the AIMP. In the event of a conflict between this Appendix and the AIMP with respect to definitions, the definition provided in this Appendix will prevail but only to the extent such conflicting terms are used in this Appendix. The definition provided for the defined words used herein shall apply to all forms of the words.

Apply	To intentionally or inadvertently spread or distribute any substance onto the exposed surface of the soil.
Certifying Agent	As defined by the National Organic Program Standards, Federal Regulations 7 CFR Part 205.2.
Decertified or Decertification	Loss of Organic Certification.
Organic Agricultural Land	Farms or portions thereof described in 7 CFR Parts 205.100, 205.202, and 205.101.
Organic Buffer Zone	As defined by the National Organic Program Standards, Federal Regulations 7 CFR Part 205.2.
Organic Certification or Organic Certified	As defined by the National Organic Program Standards, Federal Regulations 7 CFR Part 205.100 and 7 CFR Part 205.101.
Organic System Plan	As defined by the National Organic Program Standards, Federal Regulations 7 CFR Part 205.2.
Prohibited Substance	As defined by the National Organic Program Standards, Federal Regulations 7 CFR Part 205.600 through 7 CFR 205.605 using the criteria provided in 7 USC 6517 and 7 USC 6518.

