OAH 28-2500-39436
MPUC IP-7109/PPL-23-109

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Magellan Pipeline Company, L.P. for a Route Permit for the Pipestone Reroute Project in Pipestone County, Minnesota

TABLE OF CONTENTS

STATEMENT OF THE ISSUES **2**

SUMMARY OF RECOMMENDATION **3**

FINDINGS OF FACT **3**

I. Applicant 3
II. Procedural History 3
III. Description of the Project 10
IV. Need Overview 11
V. Routes Evaluated 13
A. Application Preferred Route (APR). 15
B. Route Alternative 1 (RA-01). 15
C. Route Alternative 2 (RA-02). 15
D. Route Alternative 3 (RA-03). 16
VI. Land Requirements 16
VII. Depth of Cover 17
VIII. Construction Activities, Testing, and Restoration 17
IX. Public, Tribal, Agency, and Local Government Participation 20
A. Public Input 20
B. Tribal Input 21
C. Agency Input 21
D. Local Government Input 22
X. Factors for a Route Permit 23
XI. Application of Routing Factors to the Proposed Route 24
A. Effects on Human Settlement 24
1. Population and Employment 24
2. Displacement 25
3. Existing Land Use and Zoning 27
4. Planned and Future Land Use 28
5. Cultural Values 29
6. Transportation 30

7. Public Services 32
8. Noise and Vibration 33
9. Aesthetics 35
10. Environmental Justice 36
11. Other Impacts on Human Settlement 37
B. Natural Environment 37
1. Geology 38
2. Soils 39
3. Wetlands 40
4. Vegetation 41
5. Wildlife and Wildlife Habitat 42
6. Threatened, Endangered, and Other Special Status Species 43
C. Lands of Historical, Archaeological, and Cultural Significance. 45
1. Pipestone National Monument 46
2. Natural Systems and Features 47
3. Pipestone Indian School 48
4. Archaeological Resources 49
5. Historical Resources 50
6. Cemeteries and Burials 52
7. Tribal Resources 53
D. Land-Based Economies 54
E. Pipeline Cost and Accessibility 56
F. Use of Existing Rights-of-Way and Right of Way Sharing or Paralleling 56
G. Natural Resources and Features 57
1. Groundwater Resources 58
2. Surface Water Resources 59
H. Mitigation by Regulatory Control 60
I. Cumulative Potential Effects 60
J. Policies, Rules, and Regulations 61
K. Summary of Factors Analysis 62
XII. Route Permit Conditions and Proposed Mitigation Measures 63

CONCLUSIONS OF LAW 66

RECOMMENDATIONS 67

MEMORANDUM 68

OAH 28-2500-39436
MPUC IP-7109/PPL-23-109

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Magellan Pipeline Company, L.P. for a Route Permit for the Pipestone Reroute Project in Pipestone County, Minnesota	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION**

This matter came before Administrative Law Judge Joseph C. Meyer for joint public and evidentiary hearings on April 23 and 24, 2024.[1] Two in-person hearings were held on April 23, 2024, both at the Hiawatha Lodge, 805 Third Avenue Northwest, Pipestone, Minnesota 56164. The April 24, 2024, hearing was conducted virtually via WebEx.

Richard Dornfeld, Assistant Attorney General, and Larry B. Hartman, Environmental Review Manager, appeared on behalf of the Minnesota Department of Commerce (DOC or the Department).

Christina K. Brusven and Patrick D.J. Mahlberg, Fredrikson and Byron, P.A., and Ross A. Crutchfield, Magellan Midstream Partners, L.P., appeared on behalf of Magellan Pipeline Company, L.P (Magellan).

Faith Spotted Eagle appeared on behalf of the Brave Heart Society (Brave Heart).

Trevor Culbertson appeared on behalf of Commission Staff.

STATEMENT OF THE ISSUES

1. Has Magellan satisfied standards set forth in Minn. Stat. § 216G.02 (2022) and Minn. R. 7852.0100-.4100(2023)?

2. If so, which of the proposed route alternatives best meets the route selection criteria articulated in Minn R. 7852.1900 and what, if any, conditions should be included in the route permit?

[1] The parties anticipated little to no cross-examination of witnesses; therefore, they requested consolidation of the public and evidentiary hearings. Fourth Prehearing Order (Apr. 2, 2024) (20244-204900-01).

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Magellan has satisfied the criteria in Minnesota law for a Route Permit and recommends that the Commission **GRANT** a route permit for Route Alternative 2 (RA-02) and include appropriate conditions in the route permit.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. Applicant

1. Magellan is a limited partnership headquartered in Tulsa, Oklahoma and authorized to do business in the State of Minnesota.[2] Magellan is a subsidiary of Magellan Midstream Partners, L.P. ONEOK, Inc. is the parent company of Magellan Midstream Partners, L.P.[3]

2. Magellan is the responsible owner of and the applicant for the Pipestone Reroute Project (Project).[4]

3. Magellan is a common-carrier pipeline company that transports various grades of gasoline and diesel fuel from refineries in the Southwest and Midwest of the United States to distribution terminals in Minnesota, South Dakota, North Dakota, and other states in the region.[5] Magellan operates facilities in 36 Minnesota counties which supply approximately 60 percent of the refined petroleum products used in Minnesota.[6]

II. Procedural History

4. On April 10, 2023, Magellan filed a route permit application (Route Permit Application) to construct the Project, which described the Application Preferred Route (APR).[7]

5. On April 12, 2023, the Commission filed a Notice of Comment Period providing for initial comments on application completeness to be filed by April 26, 2023, reply comments by May 3, 2023, and supplemental comments by May 8, 2023.[8]

[2] Ex. MAG-1 at 2 (Route Permit Application).
[3] Ex. MAG-8 at 1 (Cox Direct).
[4] Ex. MAG-8 at 1 (Cox Direct).
[5] Exs. MAG-1 at 5 (Route Permit Application), MAG-8 at 7 (Cox Direct).
[6] Pipestone 12:00 p.m. Public Hearing Transcript (Tr.) at 13 (Apr. 23, 2024).
[7] Ex. MAG-1 at 4 (Route Permit Application).
[8] Ex. MPUC-1 (Notice of Comment Period).

6. On April 24, 2023, Magellan filed a letter correcting the Route Permit Application by specifying a maximum requested route width for the APR.[9]

7. On April 26, 2023, the Department filed comments and recommendations regarding application completeness. The Department recommended that the Commission accept the Route Permit Application as complete, modify the procedural process timeline to allow for additional route proposals, take no action on a citizen advisory committee, and approve the Department's budget proposal. The Department also requested that Magellan provide additional information as necessary to assist with the review of the Route Permit Application.[10]

8. Also on April 26, 2023, LIUNA Minnesota and North Dakota (LIUNA) filed comments recommending that the Commission deem the Route Permit Application complete.[11]

9. Also on April 26, 2023, International Union of Operating Engineers Local 49 (Local 49) filed comments supporting the importance of pipelines.[12]

10. On May 2, 2023, the Mille Lacs Band of Ojibwe (MLBO) filed comments requesting that the Commission deny the Route Permit Application and require Magellan to engage in consultation with additional tribes to find a routing solution that protects physical pipestone resources. MLBO also proposed an alternative route (RA-01) for consideration that it believed would minimize or prevent further impacts to tribal resources.[13]

11. On May 3, 2023, Magellan filed reply comments responding to the comments filed by the Department, LIUNA, Local 49, and MLBO, and indicating that the route permit process would allow for consideration of RA-01.[14]

12. On May 4, 2023, the Commission filed a letter responding to MLBO that explained the opportunity to intervene as a party and to propose alternative routes.[15]

13. On June 28, 2023, the Commission issued the Notice of Application Acceptance, Public Information and the Comparative Environmental Analysis (CEA) Scoping Meetings. The Commission noted that it would accept comments through September 6, 2023, and that comments could include alternative routes or route segments as well as requests as to what should be studied in the CEA.[16]

---

[9] Ex. MAG-3 (Letter Describing Route Width Changes).
[10] Ex. DOC-1 at 1 (Completeness Comments and Recommendations).
[11] Ex. DOC-2 (LIUNA Comments).
[12] Ex. DOC-3 (Local 49 Comments).
[13] Exs. MPUC-2 (MLBO Comments); MPUC-3 (MLBO Comments). The alternative route proposed by MLBO was designated as Route Alternative 1 (RA-01) for this proceeding.
[14] Ex. MAG-4 (Magellan Reply Comments).
[15] Ex. MPUC-4 (Commission Response to MLBO Comments).
[16] Ex. MPUC-5 (Notice of Application Acceptance).

14. On June 30, 2023, the Commission served the same Notice of Application Acceptance and Public Information and CEA Scoping Meetings on an additional service list of approximately 30 tribal governments.[17]

15. On July 11 and 12, 2023, Commission staff and the Department held an in-person scoping meeting in Pipestone, Minnesota, and a virtual scoping meeting via WebEx. Approximately 20 people offered comments at these meetings.[18]

16. On August 7, 2023, the Commission issued its Order Finding Application Complete and Granting Variance; Notice of and Order for Hearing (Completeness Order) which required preparation of a CEA for the Project, referred the matter to the Office of Administrative Hearings for a hearing, and accepted RA-01 for study and consideration.[19]

17. On September 6, 2023, the matter was reassigned to Administrative Law Judge Barbara J. Case and assigned the new docket number 82-2500-39436.[20]

18. On September 6, 2023, Magellan filed scoping comments addressing the comments offered in the July 11 and 12, 2023 scoping meetings. In one of the scoping comments, Magellan proposed a second alternative route (RA-02).[21]

19. Also on September 6, 2023, the Department of Transportation (DOT) filed scoping comments noting that RA-01 would require at least one utility permit from DOT.[22]

20. Additionally, on September 6, 2023, the Department of Natural Resources (DNR) filed scoping comments stating that the Project would require a Natural Heritage review and noted several potential environmental impacts.[23]

21. On September 7, 2023, the United States Fish and Wildlife Service, Windom Wetland Management District Office (USFWS) commented that if Magellan intended to use temporary access roads, it would require a permit or right-of-way from the USFWS.[24]

22. On September 7, 2023, the Pipestone Human Rights Commission submitted comments expressing concerns about the impact of the Project on the natural pipestone resources and indigenous and non-indigenous gravesites.[25]

---

[17] Ex. MPUC-6 (Notice of Application Acceptance).
[18] Pipestone 6:00 p.m. Scoping and Informational Meeting Tr. (July 11, 2023); Webex 6:00 p.m. Scoping and Informational Meeting Tr. (July 12, 2023).
[19] Ex. MPUC-7 at 5, 9 (Completeness Order). The matter was assigned to Administrative Law Judge James E. LaFave.
[20] Reassignment Letter (Sep. 6, 2023) (20239-198764-01).
[21] Ex. MAG-7 (Magellan Scoping Comments).
[22] Ex. DOC-7 (DOT Comments).
[23] Ex. DOC-8 (DNR Comments).
[24] Ex. DOC-10 (USFWS Comments).
[25] Ex. DOC-13 (Pipestone Human Rights Commission Comments). The substantive comments appear to have been omitted from the September 7, 2023 filing, but were later submitted on September 11, 2023. Ex. DOC-16 (Pipestone Human Rights Commission Comments).

23. On September 7, 2023, the City of Pipestone (City) submitted comments opposing the Project due to potential harm to environmental and cultural resources.[26]

24. On September 7, 2023, the Upper Sioux Community Tribal Historic Preservation Office (Upper Sioux Community THPO) submitted comments opposing both the APR and RA-02, and suggesting another alternative route (RA-03).[27]

25. On September 19, 2023, Judge Case issued an Order for Prehearing Conference to schedule a prehearing conference for September 28, 2023.[28]

26. On September 28, 2023, Judge Case held the prehearing conference to discuss scheduling and procedural matters.[29]

27. On October 2, 2023, the Department submitted scoping comments which recommended that the CEA include RA-02 and RA-03.[30]

28. On October 17, 2023, the Commission issued its Scoping Order accepting the APR, RA-01, RA-02, and RA-03 for study and analysis by the CEA.[31]

29. On October 20, 2023, Judge Case issued the Second Prehearing Order that established a procedural schedule and addressed other procedural matters.[32]

30. On March 4, 2024, the Department filed the CEA.[33] The Department also scheduled two in-person meetings in Pipestone, Minnesota on March 19, 2024, and an online meeting via Webex on March 20, 2024.[34] The Department also established a comment period to gather information and questions from the public about the CEA in order to ensure that the CEA is complete and accurate.[35] The Commission also issued a Notice of Availability of CEA and Public Information Meetings.[36] The Department published notice of the availability of the CEA in the March 5, 2024 edition of the *EQB Monitor*.[37]

[26] Ex. DOC-14 (City Comments).
[27] Ex. DOC-15 (Upper Sioux Community THPO Comments). The route alternative suggested in these comments was designated Route Alternative 3 (RA-03).
[28] Order for Prehearing Conference (Sep. 19, 2023) (20239-199029-01).
[29] Second Prehearing Order (Oct. 20, 2023) (202310-199764-01).
[30] Ex. DOC-18 (Department Scoping Comments).
[31] Ex. MPUC-8 (Scoping Order).
[32] Second Prehearing Order (Oct. 20, 2023) (202310-199764-01).
[33] Exs. DOC-20 – DOC-32 (CEA Vol. I and II).
[34] Ex. DOC-19 at 1 (DOC Notice of CEA and Public Meetings).
[35] Ex. DOC-19 at 2–3 (DOC Notice of CEA and Public Meetings).
[36] Ex. MPUC-9 (Commission Notice of CEA and Public Meetings).
[37] EQB Monitor – Notice of Availability of Comparative Environmental Analysis and Public Meetings (Mar. 5, 2024), available at: https://www.eqb.state.mn.us/sites/eqb/files/Mar%205%2C%202024.pdf (last accessed July 5, 2024).

31. On March 4, 2024, Magellan filed the Direct Testimony and Schedules of Brandon Cox,[38] Wes Pebsworth,[39] and Patricia Trocki.[40]

32. On March 19, 2024, two public meetings were held in Pipestone, Minnesota, in order to solicit comments on the CEA. An additional online meeting was held on March 20, 2024.[41]

33. On March 20, 2024, this matter was reassigned to Administrative Law Judge Joseph C. Meyer and the docket number was changed to 28-2500-39436.[42]

34. On March 28, 2024, the Administrative Law Judge issued the Third Prehearing Order noticing a Prehearing Conference for April 1, 2024.[43]

35. On April 1, 2024, the Administrative Law Judge presided over a prehearing conference to prepare for the public and evidentiary hearings in this matter.[44]

36. On April 2, 2024, the Administrative Law Judge issued the Fourth Prehearing Order combining the public and evidentiary hearings and setting forth other administrative provisions related to this matter.[45]

37. On April 8, 2024, the Commission issued a Notice of Public/Evidentiary Hearings scheduling two hearings in Pipestone, Minnesota, on April 23, 2024, and a remote hearing via Webex on April 24, 2024.[46] The notice also established a comment period through May 8, 2024, soliciting comments on whether the Commission should grant a route permit for the Project and, if so, what additional conditions or requirements should be included in the route permit.[47]

38. On April 9, 2024, Magellan filed the Rebuttal Testimony and Schedules of Brandon Cox[48] and Patricia Trocki.[49] Mr. Cox appended Magellan's CEA comments to his testimony as Schedule 1.[50]

[38] Ex. MAG-8 (Cox Direct).
[39] Ex. MAG-9 (Pebsworth Direct).
[40] Ex. MAG-10 (Trocki Direct).
[41] Pipestone Comparative Environmental Analysis Public Hearing Tr. (Mar. 19, 2024); Webex Comparative Environmental Analysis Public Hearing Tr. (Mar. 20, 2024).
[42] Reassignment Letter (Mar. 20, 2024) (20243-204503-01).
[43] Third Prehearing Order (Mar. 28, 2024) (20243-204740-01).
[44] Fourth Prehearing Order (Apr. 2, 2024) (20244-204900-01).
[45] Fourth Prehearing Order (Apr. 2, 2024) (20244-204900-01).
[46] Ex. 308 (Direct Testimony of Todd Langston Schedules A and B).
[47] Ex. MPUC-10 (Commission Notice of Public/Evidentiary Hearings).
[48] Ex. MAG-11 (Cox Rebuttal).
[49] Ex. MAG-12 (Trocki Rebuttal).
[50] Ex. MAG-11 at Schedule 1 (Cox Rebuttal).

39. The Department received approximately 15,000 public comments during the CEA comment period that closed on April 9, 2024.[51]

40. Two joint evidentiary and public hearings were held in Pipestone, Minnesota, on April 23, 2024, and one remote joint evidentiary and public hearing was held remotely via Webex on April 24, 2024. Approximately 24 people provided oral comments, and Magellan responded to some of these comments at the hearings.[52]

41. The written public comment period remained open through May 8, 2024. More than 5,000 written comments were submitted.[53]

42. Public and agency comments submitted during the permitting and CEA process are described in more detail in Section IX below.

43. On April 24, 2024, Brave Heart filed a Petition to Intervene.[54]

44. On April 30, 2024, Magellan filed an errata correcting an error in the Direct Testimony of Brandon Cox.[55]

45. On May 1, 2024, Magellan filed a response to Brave Heart's Petition to Intervene indicating that, subject to several conditions, it did not object to Brave Heart's intervention.[56]

---

[51] Exs. DOC-89 (Written Comments Pipestone CEA, Part 1 of 2), DOC-90 (Written Comments Pipestone CEA, Part 2 of 2).

[52] Pipestone 12:00 p.m. Evidentiary and Public Hearing Tr. (April 23, 2024); Pipestone 6:00 p.m. Evidentiary and Public Hearing Tr. (April 23, 2024); Webex 12:30 p.m. Evidentiary and Public Hearing Tr. (April 24, 2024).

[53] *See, e.g.,* Public Comment Batches 1-102 (May 8–14, 2024) (eDocket Nos. 20245-206503-01, 20245-206508-01, 20245-206510-01, 20245-206506-01, 20245-206505-01, 20245-206522-01, 20245-206525-01, 20245-206526-01, 20245-206527-01, 20245-206528-01, 20245-206530-01, 20245-206532-01, 20245-206537-01, 20245-206542-01, 20245-206552-01, 20245-206552-02, 20245-206552-03, 20245-206552-04, 20245-206552-05, 20245-206552-06, 20245-206552-07, 20245-206552-08, 20245-206552-09, 20245-206552-10, 20245-206625-01, 20245-206625-02, 20245-206625-03, 20245-206625-04, 20245-206625-05, 20245-206625-06, 20245-206625-07, 20245-206625-08, 20245-206625-09, 20245-206625-10, 20245-206644-01, 20245-206644-02, 20245-206644-03, 20245-206644-04, 20245-206644-05, 20245-206644-06, 20245-206644-07, 20245-206644-08, 20245-206644-09, 20245-206644-10, 20245-206649-01, 20245-206649-02, 20245-206649-03, 20245-206652-01, 20245-206652-02, 20245-206652-03, 20245-206652-04, 20245-206652-05, 20245-206652-06, 20245-206657-01, 20245-206657-02, 20245-206657-03, 20245-206657-04, 20245-206657-05, 20245-206657-06, 20245-206657-07, 20245-206657-08, 20245-206657-09, 20245-206657-10, 20245-206658-01, 20245-206658-02, 20245-206658-03, 20245-206658-04, 20245-206658-05, 20245-206673-01, 20245-206673-02, 20245-206673-03, 20245-206673-04, 20245-206673-05, 20245-206673-06, 20245-206673-07, 20245-206673-08, 20245-206673-09, 20245-206673-10, 20245-206703-01, 20245-206703-02, 20245-206703-03, and 20245-206703-04).

[54] Brave Heart Petition to Intervene (May 9, 2024) (20244-205917-01).

[55] Ex. MAG-8 (Errata for Cox Direct).

[56] Magellan Response to Brave Heart Intervention (May 1, 2024).

46. On May 9, 2024, the Administrative Law Judge issued the Fifth Prehearing Order noticing a prehearing conference for May 13, 2024, to discuss Brave Heart's Petition to Intervene.[57]

47. On May 13, 2024, the Department filed a motion seeking admittance of late-filed exhibits into the evidentiary hearing record.[58]

48. On May 15, 2024, the Administrative Law Judge issued an order granting the Department's motion and receiving Exhibits DOC-130 through DOC-171 into the evidentiary record.[59]

49. On May 20, 2024, the Administrative Law Judge issued an order granting Brave Heart's Petition to Intervene and established several conditions for the late intervention.[60]

50. On May 24, 2024, the Department filed its Response to Comments on the CEA, which summarized comments received on the CEA and provided responses to comments.[61] Appendix A to the Response to Comments provided sections of the CEA that were revised based on these comments.[62]

51. On May 31, 2024, Magellan filed an initial brief and proposed findings of facts, conclusions of law, and recommendations.[63]

52. On June 14, 2024, Brave Heart filed a responsive brief (Brave Heart Brief).[64] On June 21, 2024, Magellan filed a supplemental brief responding to Brave Heart's responsive brief.[65]

---

[57] Fifth Prehearing Order (May 9, 2024) (20245-206538-01).

[58] DOC Motion for Admittance of Late-filed Exhibits (May 13, 2024) (eDocket Nos. 20245-206692-01, 20245-206692-02, and 20245-206692-03). The Department sought to admit Exhibits DOC 130 – DOC 171. These Exhibits were public comments related to the CEA process that were timely received by the DOC but inadvertently not originally offered into the evidentiary record.

[59] Order Granting Department's Motion for Admittance of Late-Filed Exhibits (May 15, 2024) (eDocket No. 20245-206739-01).

[60] Order Granting Brave Heart Society's Petition to Intervene (May 20, 2024) (eDocket No. 20245-206894-01).

[61] DOC Response to Comments on the CEA for Magellan (May 24, 2024) (eDocket No. 20245-207101-01).

[62] DOC Response to Comments on the CEA for Magellan at Appendix A (May 24, 2024) (eDocket No. 20245-207101-01).

[63] Magellan's Post-Hearing Brief (May 31, 2024) (eDocket No. 20245-207316-02); Magellan's Proposed Findings of Fact, Conclusions of Law, and Recommendations (May 31, 2024 (eDocket No. 20245-207316-03).

[64] Brave Heart's Responsive Brief (June 14, 2024) (eDocket No. 20246-207724-01). Brave Heart filed a correct version of its responsive brief that included an attachment on June 18, 2024. Brave Heart's Corrected Responsive Brief (June 18, 2024) (eDocket No. 20246-207790-01).

[65] Magellan's Supplemental Reply Brief (June 21, 2024) (eDocket No. 20246-207871-01). Magellan correctly notes that the prehearing orders in this matter did not contemplate supplemental briefing. However, Brave Heart filed a reply brief without filing an initial brief, in violation of the order granting Brave Hearts intervention. Order Granting Brave Heart Society's Petition to Intervene (May 20, 2024) (eDocket No. 20245-206894-01). Absent a supplemental brief, Magellan would not have had an opportunity to

III. Description of the Project

53. The Project is a rerouting of approximately 0.74 miles of an existing 8-inch pipeline from federal lands managed by USFWS and the National Park Service (NPS) with the Pipestone Creek Unit of the Northern Tallgrass Prairie National Wildlife Refuge (NWR).[66] The pipeline will deliver refined petroleum products.[67]

54. The various route alternatives evaluated for the Project are located in Troy, Sweet, Grange, and Gray Townships in Pipestone County, Minnesota.[68]

55. The Project's associated facilities include access roads and cathodic protection equipment. Because the proposed Project will relocate a segment of the existing pipeline between two existing mainline valve locations, no new valves or pump stations are proposed as part of the Project. The Project will require one permanent and five temporary access roads, the majority of which are proposed on private property. The Project will receive cathodic protection by tying into Magellan's existing impressed current systems.[69]

56. Magellan plans to upgrade an existing manually-operated valve site so that it can be operated remotely in order to allow greater operational control to isolate the segment of pipeline that is part of the Project in the event of a release of refined petroleum.[70]

57. The pipe specifications are shown in the following table from the Route Permit Application:[71]

respond to Brave Heart's arguments and would have been prejudiced. Accordingly, the Administrative Law Judge will consider the information in Magellan's supplemental brief.

[66] Ex. MAG-1 at 1 (Route Permit Application).
[67] Ex. MAG-1 at 4 (Route Permit Application).
[68] Ex. DOC-20 at 33 (CEA Vol. I).
[69] Ex. MAG-1 at 6 (Route Permit Application).
[70] Ex. MAG-8 at 15 (Cox Direct).
[71] Exs. MAG-1 at 6 (Route Permit Application), DOC-20 at 12 (CEA Vol. 1). The 1.3-mile estimated length is specific to the APR.

Table 3.2-1: Magellan Project Pipe Specifications

Explanation	Specification
Pipe size (diameter)	8-inch outside diameter
Pipe type (grade)	X52 carbon steel pipe manufactured according to API Specification 5L PS2
Pipe wall thickness	
Nominal	0.322 inch
Road bore	0.322 inch
Cased railroad	NA
Uncased railroad	NA
HDD	0.322 inch
Estimated length	1.3 miles
Pipe design factor	0.6
Longitudinal seam factor	1.0
Class location and requirements	NA (applies to natural gas pipelines)
Coating, mainline	Fusion bond epoxy (14 mils) and abrasion-resistant overcoat (35 mils)
Coating, HDD and road bore	Fusion bond epoxy (14 mils) and abrasion-resistant overcoat (35 mils)
Specified minimum yield strength	52,000 psi
Tensile strength	66,000 psi

API = American Petroleum Institute; HDD = horizontal direction drill; NA = not applicable; psi = pounds per square inch

58. The maximum operating pressure of the Project will be up to 1,440 pounds per square inch gauge (psig). The maximum operating pressure is based on Barlow's formula, which is a calculation used to show the relationship between internal pressure, allowable stress, nominal thickness, and diameter. The standard operating pressure ranges between 820 psig and 860 psig.[72]

59. The average annual capacity on the Magellan pipeline is 22,500 barrels per day.[73]

60. Magellan transports a wide variety of petroleum products. The products, generally described, are various fuels. Prior to deactivation and abandonment of the portion of the pipeline underlying the federal lands, the Magellan pipeline transported refined petroleum products, including diesel, gasoline, and jet fuel. The products shipped on the Magellan pipeline are not expected to change with the Project in service.[74]

IV. Need Overview

61. The Magellan pipeline serves communities in eastern North Dakota, eastern South Dakota, and western Minnesota. The right-of-way (ROW) permit across

[72] Exs. MAG-1 at 6 (Route Permit Application), DOC-20 at 12 (CEA Vol. I).
[73] Ex. MAG-1 at 7 (Route Permit Application).
[74] Ex. MAG-1 at 7 (Route Permit Application).

federal lands that was granted to Applicant's predecessor expired, and the U.S. Department of the Interior (DOI) determined that it would not issue a renewed ROW permit for the section of the existing pipeline across federal lands. The DOI directed Magellan to take the pipeline out of service by October 1, 2022.[75]

62. Magellan previously considered permanently shutting down the pipeline, but recent rulemaking by the U.S. Environmental Protection Agency (EPA) mandates the availability of two special grades of gasoline, not currently available for use in the state of Minnesota, which may increase fuel shortages in this region if the pipeline is not restored to service.[76] The rule approved year-round sales of these special fuel blends in eight Midwestern states, including Minnesota.[77]

63. Prior to deactivation, the bidirectional pipeline was part of the pipeline system that transported gasoline and diesel to storage and distribution terminals in Marshall and Alexandria, Minnesota; Sioux Falls and Watertown, South Dakota; and Fargo and Grand Forks, North Dakota.[78]

64. When flowing northward, this pipeline moved product originating from refineries in Oklahoma and Kansas or even as far south as the Gulf Coast to the Midwest distribution terminals. The ability to deliver product to these terminals from southern refineries can help mitigate supply disruptions at any of the Minnesota refineries. Similarly, when flowing southward, this Pipeline moved product originating from refineries in Minnesota to the distribution terminal in Sioux Falls, South Dakota, which likewise mitigates supply disruptions at any of the southern refineries. This reduces the risk for fuel shortages in the regions supplied by these terminals.[79]

65. As an example of a possible effect of the pipeline being out of service, Magellan's Sioux Falls terminal, which serves southwest Minnesota, among other areas, experienced a 110 percent increase in the number of days where it experienced limited or no availability of gasoline from 2022 (the year predating the shutdown) to 2023.[80]

66. The Sioux Falls market, which is the market closest to the pipeline with publicly available data, has seen an increase in logistical costs of approximately $0.09 per gallon of gasoline when measured against the period prior to the pipeline shutdown, an incremental increase of $34.4 million.[81]

67. The EPA recently approved a rule (E15 Final Waiver Rule) that removes a 1-pound per square inch Reid vapor pressure waiver for summer gasoline-ethanol

[75] Ex. MAG-1 at 1 (Route Permit Application).
[76] Exs. MAG-1 at 1 (Route Permit Application), MAG-8 at 4–5 (Cox Direct).
[77] 40 C.F.R § 1090.215.
[78] Ex. MAG-1 at 5 (Route Permit Application).
[79] Ex. MAG-8 at 4 (Cox Direct).
[80] Ex. MAG-8 at 7 (Cox Direct).
[81] Ex. MAG-8 at 7 (Cox Direct); Public Comments of Magellan at 2 (May 8, 2024) (eDocket No. 20245-206514-01).

blended fuels containing 10 percent ethanol, thereby creating the same requirements for both 10 and 15 percent ethanol.[82]

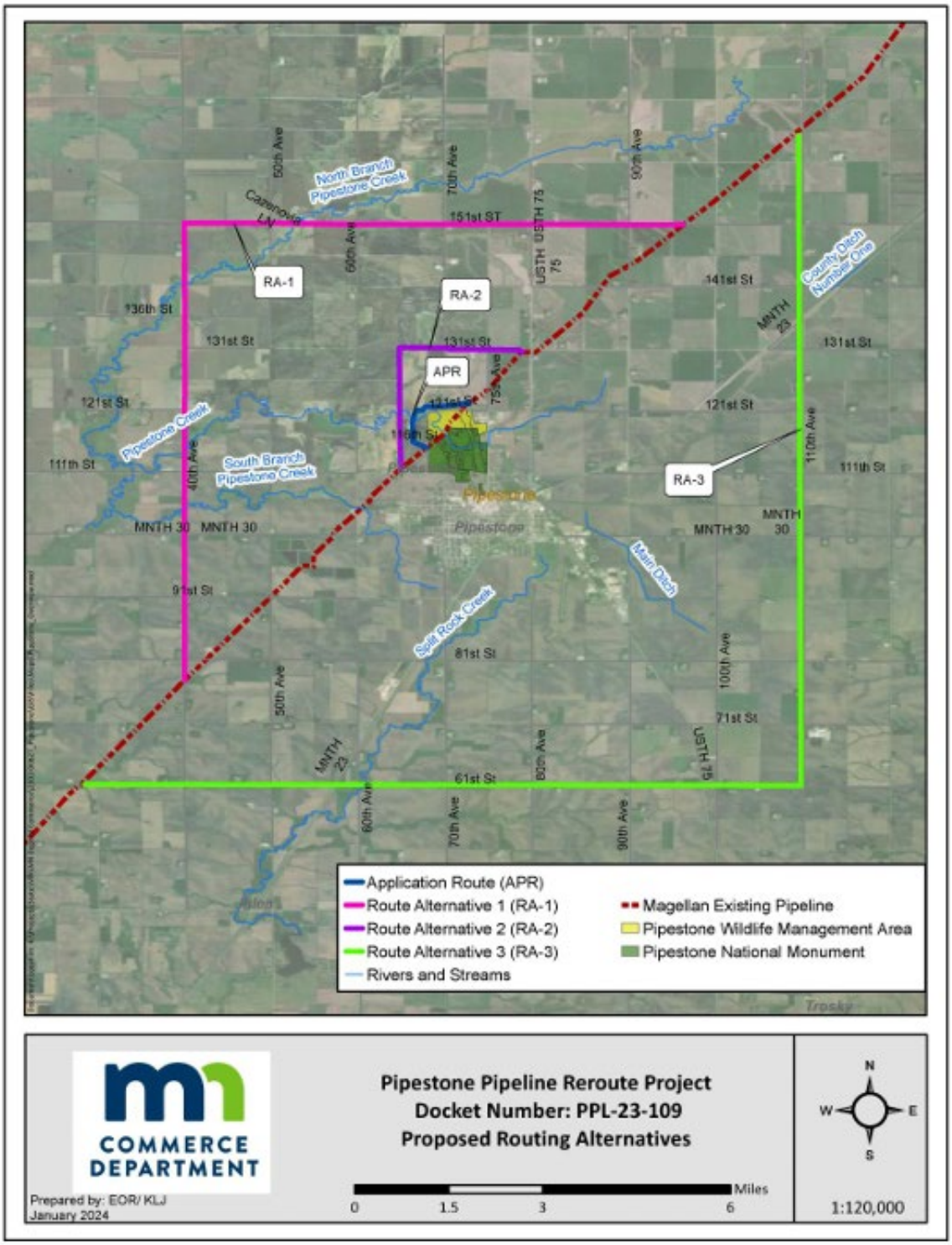
68. The EPA acknowledged that its E15 Final Waiver Rule could result in additional supply disruptions given the need to separately produce, ship, and store two boutique gasoline grades. The EPA delayed implementation of the E15 Final Waiver Rule to April 2025 to allow time for additional infrastructure to be built to meet this need.[83]

69. The EPA recognized that reductions in gasoline supply due to implementation of the waiver requested in the E15 Waiver Final Rule could be made up through additional supply from other refinery areas, such as the Gulf Coast. Magellan's existing bidirectional 8-inch pipeline between Sioux Falls and Marshall provides a link in this distribution pipeline network.[84]

V. Routes Evaluated

70. Magellan and the Department evaluated four distinct route alternatives: the originally filed APR; RA-01; RA-02; and RA-03. The routes are depicted on the following map:[85]

[82] Ex. MAG-8 at 4–5 (Cox Direct); 40 C.F.F. § 1090.215.
[83] Ex. MAG-8 at 5 (Cox Direct); 40 C.F.R. § 1090.215.
[84] MAG-8 at 5 (Cox Direct).
[85] Ex. DOC-20 at 28 (CEA Vol. I).


RA-1
RA-2
RA-3
APR
North Branch Pipestone Creek
South Branch Pipestone Creek
Pipestone Creek
Split Rock Creek
Main Ditch
County Ditch Number One
Pipestone
Application Route (APR)
Route Alternative 1 (RA-1)
Route Alternative 2 (RA-2)
Route Alternative 3 (RA-3)
Rivers and Streams
Magellan Existing Pipeline
Pipestone Wildlife Management Area
Pipestone National Monument
COMMERCE DEPARTMENT
Pipestone Pipeline Reroute Project
Docket Number: PPL-23-109
Proposed Routing Alternatives
Prepared by: EOR/ KLJ
January 2024
Miles
0
1.5
3
6
N
W
E
S
1:120,000

A. Application Preferred Route (APR).

71. The APR is approximately 1.3 miles in total length and crosses 17.9 acres of land.[86] It follows a greenfield route through private lands outside the City and adjacent to nearby federal lands in Troy, Grange, and Sweet Townships in Pipestone County.[87]

72. The APR interconnects with the existing pipeline immediately east of 70th Avenue and approximately 2,100 feet due north of the intersection of 9th Street Northwest and 70th Avenue. It traverses open country in a general northwest/southeast direction for approximately 960 feet to where it crosses 116th Street. From this point, the route crosses open agricultural area/grass land in a general north/south direction for approximately 2,725 feet, passing between the Woodlawn and St. Leo cemeteries and crossing Pipestone Creek before turning east. The alignment continues in a general east/west direction across open ground north of the NWR for approximately 3,375 feet before interconnecting with the pipeline in the SW¼ SW¼ of Section 36, Township 107 North, Range 46 West. The Route Permit Application also identifies access roads, extra workspaces, and other project elements associated with the APR.[88]

B. Route Alternative 1 (RA-01).

73. RA-01, proposed by MLBO, is approximately 13.1 miles in length and crosses approximately 200 acres of land.[89] This alternative follows existing road ROWs through portions of Sweet, Troy, and Grange Townships in Pipestone County.[90]

74. RA-01 interconnects with the existing pipeline approximately 1,900 feet south of the intersection of 81st Street and 40th Avenue. It runs in a general north/south direction for approximately 7.38 miles adjacent to and immediately east or west of the public ROW along 40th Avenue to the intersection of 151st Street and 40th Avenue. From this point, the pipeline route runs adjacent to and immediately north or south of the public ROW along 151st Street for approximately 5.71 miles in a general east/west direction. RA-01 interconnects with the pipeline approximately 3,450 feet east of the intersection of 151st Street and 90th Avenue.[91]

C. Route Alternative 2 (RA-02).

75. RA-02, proposed by Magellan, is approximately 3.4 miles in length and crosses approximately 54 acres of land.[92] RA-02 generally follows an existing 115 kV transmission line through portions of Troy and Sweet Townships in Pipestone County.[93]

---

[86] Ex. DOC-20, Table ES-1 at ii (CEA Vol. I).
[87] Exs. DOC-20 at 12, 33, 42 (CEA Vol. I), MAG-1 at 1 (Route Permit Application).
[88] Ex. DOC-20 at 25, 97 (CEA Vol. I).
[89] Ex. DOC-20 at 26, Table ES-1 at ii (CEA Vol. I).
[90] Ex. DOC-20 at 33, 42 (CEA Vol. I).
[91] Ex. DOC-20 at 26 (CEA Vol. I).
[92] Ex. DOC-20 at ii, 25 (CEA Vol. I).
[93] Exs. DOC-20 at 33, 42 (CEA Vol. I), MAG-8 at 11 (Cox Direct).

76. RA-02 interconnects with the existing pipeline approximately 300 feet north of 110th Street. It traverses across open country in a north/south direction for approximately 1.94 miles, including a portion paralleling an existing 115 kV transmission line to where it crosses 131st Street. From this point, the route is adjacent to and immediately north or south of the public ROW along 131st Street for 1.45 miles. It interconnects with the existing pipeline approximately 560 feet southwest of the intersection of 131st Street and U.S. HWY 71 in the NE¼ NE¼ of Section 36, Township 107 North, Range 46 West.[94]

77. The general design and operational specifications, as well as operation and mitigation measures for RA-02, would be the same as those identified for the APR in the Route Permit Application.[95] If constructed, Magellan expects that it would cross underneath 131st Street (Highway 69) via boring and 70th Avenue, Pipestone Creek, and the rock outcropping along 131st Street, via the Horizontal Directional Drilling (HDD) method.[96]

D. Route Alternative 3 (RA-03).

78. RA-03, proposed by the Upper Sioux Community THPO, is approximately 18.7 miles in length and crosses approximately 285 acres of land.[97] RA-03 follows existing road ROWs through portions of Sweet, Gray, and Grange Townships in Pipestone County.[98]

79. RA-03 interconnects with the existing pipeline approximately 725 feet west of the intersection of 61st Street (County Road 52) and 30th Avenue. It runs in a general east/west direction for approximately 8.26 miles adjacent to and immediately north or south of the public ROW along 61st Street to the intersection of 61st Street and 110th Avenue. From this point, the route runs adjacent to and immediately east or west of the public ROW along 110th Avenue for approximately 10.43 miles, interconnecting with the existing pipeline approximately 250 feet north of the intersection of 161st Street and 110th Avenue.[99]

VI. Land Requirements

80. Magellan has requested a 200-foot route width and an 85-foot ROW during the Project's construction.[100]

81. The Project will require the acquisition of 40 feet of new ROW to accommodate the proposed pipeline. Temporary construction workspace, approximately 45 feet in width in upland areas and 35 feet in width in wetland areas, will be located adjacent to and contiguous with the proposed new ROW corridor and will be identified by

[94] Exs. DOC-20 at 25–26 (CEA Vol. I), MAG-8 at 11 (Cox Direct).
[95] Ex. MAG-8 at 11 (Cox Direct).
[96] Ex. MAG-8 at 11 and Schedule 2 at 3–4 (Cox Direct).
[97] Ex. DOC-20 Table ES-1 at ii, 27 (CEA Vol. I).
[98] Ex. DOC-20 at 33-34, 42 (CEA Vol. I).
[99] Ex. DOC-20 at 27 (CEA Vol. I).
[100] Ex. MAG-3 at 1 (Letter Describing Route Width Change).

distinctive staking of construction limits prior to clearing. In addition, approximately 5.22 acres of other temporary workspaces will be required at the two tie-in locations, HDD locations, and bore locations.[101] There will also be above ground appurtenances, including a new cathodic protection system and pipeline markers.[102]

VII. Depth of Cover

82. Based on site characteristics for the Project, federal regulations allow a depth of cover of 30 inches.[103]

83. Where the pipeline crosses cultivated agricultural lands, state law requires that a pipeline be buried to a minimum depth of cover of 54 inches, unless waived by the landowner.[104] Magellan anticipates burying the pipeline with a minimum of 54 inches of cover and with a minimum of 60 inches depth of cover beneath intermittent and perennial waterbodies. The amount of cover will be deeper for HDD crossings, which will be determined by site-specific requirements.[105]

VIII. Construction Activities, Testing, and Restoration

84. Pipeline construction includes survey and staking of the ROW, clearing and grading, topsoil stripping and soil segregation, pipe stringing, bending, welding/coating, inspection, trenching, lowering-in, backfilling, HDD, boring, hydrostatic testing, cleanup, and restoration and revegetation.[106]

85. Prior to construction, Magellan will stake the centerline and exterior boundaries of the construction ROW. Exterior boundary stakes will mark the limit of approved disturbance areas and will be maintained throughout construction and restoration. Magellan and its contractors will contact the Gopher One-Call System to identify and mark the locations of underground utilities. During staking, equipment involved in construction will be moved onto the ROW using existing roads for access wherever practicable. Once the ROW is staked, traffic control measures will be implemented where the construction ROW intersects public roads to ensure both construction worker and public safety.[107]

86. Once the ROW is properly staked, clearing equipment will be brought in to remove the existing vegetation. Vegetation will be cleared using mowing equipment in grasslands. In an effort to protect Pipestone Creek and its associated wetlands, Magellan will employ HDD at the Pipestone Creek crossing. Thus, no vegetation clearing or filling of the wetlands associated with Pipestone Creek will be performed.[108]

---

[101] Ex. MAG-1 at 8 (Route Permit Application).
[102] Exs. MAG-8 at 3 (Cox Direct), MAG-1 at 1 (Route Permit Application).
[103] Ex. MAG-1 at 9–10 (Route Permit Application) (citing 49 CFR § 195.248(a)).
[104] Minn. Stat. § 216G.07, subds. 1 and 2 (2022).
[105] Ex. MAG-1 at 10 (Application); Ex. DOC-36 at 20–21 (Pipestone Public Meeting Tr. (March 19, 2024)).
[106] Ex. MAG-1 at 12 (Route Permit Application).
[107] Ex. MAG-1 at 12–13 (Route Permit Application).
[108] Exs. MAG-1 at 13 (Route Permit Application), MAG-8 at 13 (Cox Direct).

87. Topsoil will be stripped and segregated from the full ROW width during construction in agricultural lands and other areas as requested by the landowner or as specified in the project plans, commitments, and/or permits.[109]

88. Pipe, specifically fabricated for the Project, will be loaded from a pipe yard located west of 70th Avenue onto specialized "stringing trucks" and transported to the construction ROW. Before excavating the pipeline trench, Magellan will lay out – or "string" – individual joints of pipe with an average length of 40 feet along the construction ROW and arrange the pipe to be accessible to construction personnel. Small portable cranes and/or side-boom tractors will be used to unload the stringing trucks and place the pipe along the ROW.[110]

89. A mechanical pipe-bending machine will be used to bend individual joints of pipe to the angle needed to accommodate changes in the natural ground contour or pipeline alignment. In certain areas where field bending is not practicable, prefabricated fittings will be used. Magellan intends to field-inspect 100 percent of the welds and will apply epoxy coating on welded joints.[111]

90. Construction personnel will use backhoes and/or ditching machines to excavate a trench approximately 5.5 feet deep. To the extent practicable, trench walls will be vertical. The trench will typically be 34 inches wide at the top. In unstable and saturated soils, the trench could be wider. The pipe will then be lowered into the trench using side-boom tractors. Construction survey crews will use precision global positioning system (GPS) equipment to mark the final position of the pipeline before being backfilled to ensure adequate depth of cover has been achieved and the pipeline is located properly within the easement.[112]

91. The HDD method is a process that allows for trenchless construction by drilling a hole beneath a surface feature (waterbody, road, or other unique resource) and installing a prefabricated segment of pipeline through the hole. The method avoids disturbance to the ROW surface between the drill's entry and exit points and is sometimes used to install pipelines underneath sensitive resources or areas that present difficulties using typical installation methods. HDDs provide certain advantages over typical construction methods, such as avoidance of surface disturbance, riparian tree clearing, or in-stream construction.[113]

92. Magellan has developed an HDD Inadvertent Return Mitigation Plan with the objective to minimize the impact of a potential inadvertent return of drilling muds during HDD operations by planning, early detection, and adequate containment of the HDD mud.[114]

---

[109] Ex. MAG-1 at 13 (Route Permit Application).
[110] Ex. MAG-1 at 13 (Route Permit Application).
[111] Ex. MAG-1 at 13–14 (Route Permit Application).
[112] Ex. MAG-1 at 14 (Route Permit Application).
[113] Ex. MAG-1 at 14–15 (Route Permit Application).
[114] Ex. MAG-1 at Appendix E (Route Permit Application).

93. Magellan will use the HDD method to cross Pipestone Creek.[115]

94. If water accumulates in the trench, the trench will be dewatered. Trench dewatering will include the use of a pump, hose, and a filtering device. If water will be discharged to a well-vegetated upland area, dewatering filter bags and controlled discharge rates will be used to minimize the potential for erosion and subsequent release of sediment into nearby surface water and wetlands. Dewatering may include use of a dewatering structure such as a straw bale dewatering structure with a geotextile filter bag to provide additional filtration near sensitive resource areas. Dewatering will be conducted in accordance with Magellan's Best Management Practices (BMP) Plan and applicable permits. Landowner approval is required in advance of placement of dewatering structures outside the approved construction ROW.[116]

95. Road crossings will be completed using the road bore technique, which will be undetectable to the public and will not interfere with traffic.[117]

96. After the pipe has been placed in the trench, the trench will be backfilled to the approximate ground surface elevation. Construction debris will not be permitted in the backfill. If excessive amounts of rocks are included in the backfill, the pipeline will be protected with a rock shield or similar protective coating and/or backfilled with clean padding before backfilling with rocky material.[118]

97. After backfilling, Magellan will regrade, restore, and de-compact, as necessary, to preconstruction conditions to the extent practicable. Topsoil will be respread over areas from which it was removed. Permanent soil stabilization efforts will include ROW revegetation. Fences that are removed during construction will be reconstructed across the ROW.[119]

98. Magellan will restore original land grade and contours to the extent practicable and will install permanent erosion controls devices to ensure restoration takes place. All disturbed areas will be revegetated in accordance with Magellan's BMP Plan, permit requirements, and site-specific landowner agreements. Magellan will comply with other federal, state, and local rules and regulations.[120]

99. After restoration, Magellan will contact affected landowners and/or tenants to discuss any outstanding issues related to project completion on their respective property. Magellan indicates that it will continue to work with each affected party to ensure cleanup and restoration conforms to the easement agreement.[121]

---

[115] Webex 12:30 p.m. Evidentiary and Public Hearing Tr. at 16:12–14 (April 24, 2024) (Cox).
[116] Ex. MAG-1 at 14 (Route Permit Application).
[117] Ex. MAG-1 at 14 (Route Permit Application).
[118] Ex. MAG-1 at 14 (Route Permit Application).
[119] Ex. MAG-1 at 16 (Route Permit Application).
[120] Ex. MAG-1 at 16 (Route Permit Application).
[121] Ex. MAG-1 at 16 (Route Permit Application).

IX. Public, Tribal, Agency, and Local Government Participation

100. On August 18, 2022, more than six months prior to filing the Route Permit Application, Magellan sent an introduction letter to 29 tribal governments who are traditionally associated with and have maintained a connection to the Project area. On September 1, 2022, Magellan sent a Project update letter to the tribes describing an expanded study area. Between October 28 and November 4, 2022, Magellan followed up with each tribe by email to request input on the Project and interest in attending an in-person meeting, and to provide digital copies of the Project introduction letters. Magellan sent a separate email invitation to the tribes for a meeting on December 6, 2022, in Pipestone, Minnesota.[122]

101. Magellan also engaged with federal, state, and local agencies regarding the proposed Project prior to filing the Route Permit Application.[123] Copies of the agency correspondence were provided as Appendix F to the Route Permit Application.

102. Multiple individual and organizational stakeholders offered feedback reflecting a variety of perspectives, suggestions, and opinions with respect to the Project. This section summarizes that feedback but does not describe each individual comment.[124]

A. Public Input

103. Many public comments, both oral and in-person, focused on concerns about the spiritual connection that various tribal groups felt towards the land at and around the Pipestone National Monument (Monument), as well as the importance of the natural resources for making pipes which are sacred to many Native Americans.[125] Some of these comments specifically requested a five-mile buffer zone around the Monument.[126]

104. Other comments raised concerns about potential environmental consequences from the Project.[127] Some of these comments raised questions about the need of a pipeline to transport fossil fuels as renewable energy becomes more ubiquitous.[128]

---

[122] Ex. MAG-1 at 73–74 (Route Permit Application).
[123] Ex. MAG-1 at 21–22 and Appendix F (Route Permit Application).
[124] Some comments are also described in other sections of this Report.
[125] *See, e.g.*, Exs. DOC-48 (Comment of Cara Anthony), DOC-113 (Comment of Deanna Stands), DOC-118 (Comment of Sarah Sivright), DOC-149 (Michael Day), Pipestone 12:00 p.m. Evidentiary and Public Hearing Tr. at 29–31 (Apr. 23, 2024).
[126] *See, e.g.,* Ex. DOC-84 (Comment of Elizabeth Janvrin).
[127] *See, e.g.*, Exs. DOC-58 (Comment of Susan Ciancanelli), DOC-70 (Comment of Rebecca Gonzalez-Campoy), DOC-99 (Comment of Jami Gaither), DOC-132 (Comment of Dr. Gordon Spronk).
[128] *See, e.g.*, Exs. DOC-57 (Comment of Deborah Clemmensen), DOC-84 (Comment of Elizabeth Janvrin), DOC-93 (Comment of Gabrielle Strong).

105. Some members of the public, including union members, were supportive of the project because of the jobs it could create and their belief that pipelines are the most efficient and safest way to transport fuel.[129]

106. Some property owners expressed concerns about the presence of a pipeline on their property or its proximity to their houses.[130]

B. Tribal Input[131]

107. On April 3, 2024, the Northern Arapaho Tribe Tribal Historic Preservation Office filed comments asking to be contacted if traditional cultural properties, rock features, or human remains are found during excavation.[132]

108. On April 7, 2024, the Flandreau Santee Sioux Tribe filed comments indicating that it had contacted Magellan to state its opposition to any new pipeline reroute, and that it did not hear from Magellan after that. The Flandreau Santee Sioux Tribe believes that the pipeline is unnecessary in light of new environmental laws and the mass production of affordable electric vehicles.[133]

109. On April 8, 2024, the Ihanktonwan Dakota Oyate Treaty Steering Committee filed comments expressing concerns about Magellan's level of cultural knowledge and awareness. The comments further raised concerns about the impact of a potential spill on cultural and natural resources, including groundwater. The comments also appended a resolution from the Yankton Sioux Tribe Business and Claims Committee that raised concerns about a lack of consultation and transparency, as well as possible harms to cultural and natural resources.[134]

110. On May 10, 2024, the Great Plains Tribal Chairmen's Association, Inc. submitted a resolution joining the Yankton Sioux Tribe's resolution and opposing the Project based on a lack of need for the Project, a lack of tribal consultation, and threats to environmental, cultural, and archaeological resources.[135]

C. Agency Input

111. On September 5, 2023, the USFWS stated that if Magellan desired to utilize temporary access roads within lands owned by the USFS, it would require a permit or ROW.[136]

---

[129] *See, e.g.*, Pipestone 12:00 p.m. Evidentiary and Public Hearing Tr. at 31–33, 108–09 (Apr. 23, 2024).
[130] *See, e.g.*, Pipestone 12:00 p.m. Evidentiary and Public Hearing Tr. at 94, 100 (Apr. 23, 2024).
[131] This section addresses input by tribal governments, institutions, and organizations. Participation by individual tribal members is discussed in the previous section.
[132] Ex. DOC-59 (Northern Arapaho Tribe Tribal Historic Preservation Office Comments).
[133] Ex. DOC-140 (Flandreau Santee Sioux Tribe Comments).
[134] Ex. DOC-40 (Ihanktonwan Dakota Oyate Treaty Steering Committee); *see also* Ex. DOC-137 (Comment of Yankton Sioux Tribe Business and Claims Committee).
[135] Ex. DOC-152 (Great Plains Tribal Chairmen's Association Comments).
[136] Ex. DOC-10 (USFWS Comments) (Sep. 5, 2023).

112. On September 6, 2023, DOT filed a public comment indicating that the APR would have little to no effects on the state trunk highway system, and that RA-01 would require a utility permit from DOT.[137]

113. On September 6, 2023, DNR requested that the CEA address any concerns raised in the National Heritage Review letter, measures to avoid or mitigate a spill or leak where the Project crosses Pipestone Creek, fugitive dust control, and the importance of wildlife-friendly erosion control.[138] DNR further recommended the Project avoid the use of products containing chlorides in its fugitive dust control efforts to avoid toxic effects.[139]

114. On April 4, 2024, NPS expressed concerns that the CEA was dismissive of Native American values in its analysis of cultural values and described the importance of the Monument on Native American people. The comments further recommended that location, cathodic protection, spill or leak detection systems, and trench liners in sensitive areas be incorporated into a spill prevention strategy to avoid any impact to the Monument, and that more coordination should take place with tribes and cultural practitioners.[140]

115. On April 9, 2024, DNR filed comments identifying state-listed plants and animals that were in the vicinity of the APR and RA-02.[141]

116. On April 17, 2024, DNR filed comments indicating that RA-03 was the agency's preferred route alternative. DNR also requested special permit conditions requiring avoidance of chemical dust suppressants that contain chloride as a dust abatement measure and the use of only bit-netting or natural netting without synthetic additives as erosion control blankets.[142]

D. Local Government Input

117. On September 6, 2023, the City filed comments opposing the Project, regardless of its location, due to the potential for significant impact upon cultural resources and the environment.[143]

118. On April 9, 2024, the City filed comments opposing the APR and RA-02 due to their proximity to the cemeteries and indicating that the City was considering expanding its cemeteries in the future.[144]

[137] Ex. DOC-7 (DOT Comments) (Sep. 6, 2023).
[138] Ex. DOC-8 (DNR Comments) (Sep. 6, 2023).
[139] Ex. DOC-8 (DNR Comments) (Sep. 6, 2023).
[140] Ex. DOC-92 (DOI-National Park Service Comments).
[141] Ex. DOC-39 (DNR Comments).
[142] Ex. DOC-52 (DNR Comments).
[143] Ex. DOC-14 (City of Pipestone Comments).
[144] Ex. DOC-147 (City of Pipestone Comments).

X. Factors for a Route Permit

119. A person may not construct a pipeline without a pipeline routing permit issued by the Commission unless the pipeline is exempted from the Commission's routing authority. A pipeline requiring a permit may only be constructed on a route designated by the Commission.[145]

120. A route is the proposed location of a pipeline between two end points. A route may have a variable width from the minimum required for the pipeline right-of-way up to 1.25 miles.[146]

121. In determining the route of a proposed pipeline, the Commission considers the characteristics, the potential impacts, and methods to minimize or mitigate the potential impacts of all proposed routes so that it may select a route that minimizes human and environmental impact.[147]

122. In selecting a route for designation and issuance of a pipeline routing permit, the Commission considers the impact on the pipeline of the following:

A. human settlement, existence and density of populated areas, existing and planned future land use, and management plans;

B. the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands;

C. lands of historical, archaeological, and cultural significance;

D. economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations;

E. pipeline cost and accessibility;

F. use of existing rights-of-way and right-of-way sharing or paralleling;

G. natural resources and features;

H. the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in Minn. R. 7852.3400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices;

I. cumulative potential effects of related or anticipated future pipeline construction;

---

[145] Minn. Stat. § 216G.02, subd. 2.
[146] Minn. R. 7852.0100, subp. 31
[147] Minn. R. 7852.1900, subp. 2.

J. the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minn. Stat. § 299J.05 (2022), relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.[148]

123. There is sufficient evidence in this record to assess the Project using the criteria and factors set forth above.

XI. Application of Routing Factors to the Proposed Route

A. Effects on Human Settlement

124. Minnesota law requires consideration of the impact of the Project on human settlement, existence and density of populated areas, existing and planned future land use, and management plans.[149]

125. As part of the CEA, the Department evaluated impacts of the Project on (1) population and employment; (2) displacement; (3) existing land use and zoning; (4) planned and future land use; (5) cultural values; (6) transportation; (7) public services; (8) noise and vibration; (9) aesthetics; (10) environmental justice; and (11) other impacts on human settlement.

126. The Project is located entirely within Pipestone County, with route alternatives located in Troy, Grange, Gray, and Sweet township(s). The City is located adjacent to or near each of the alternatives proposed. No route alternatives cross into the Pipestone city boundary.[150]

1. Population and Employment

127. Landowners whose land will be crossed will be directly impacted by construction activities and those landowners adjacent to the temporary construction area will be impacted by noise and traffic, which may include access roads.[151]

128. Prior to construction, Magellan will work with landowners to obtain easements as necessary and will provide written notification, direct phone calls, and in-person meetings to these landowners to inform them of construction activities.[152]

129. During construction, there will be benefits to the local economy. These benefits will be mainly to lodging facilities, groceries, restaurants, fueling stations, and other material purchases made by the workforce on the Project.[153]

---

[148] Minn. R. 7852.1900, subp. 3.
[149] Minn. R. 7852.1900, subp. 3(A).
[150] Ex. DOC-20 at 33 (CEA Vol. I).
[151] Ex. DOC-20 at 35 (CEA Vol. I).
[152] Ex. DOC-20 at 35 (CEA Vol. I).
[153] Ex. DOC-20 at 35 (CEA Vol I).

130. LIUNA indicated that it believed the project had the potential to create family-supporting employment opportunities for its members and other local skilled construction trades.[154] Local 49 indicated that pipelines generally can be a source of good-paying jobs for local workers.[155]

131. No long-term direct or indirect impacts are expected from the Project to the Pipestone County population and employment once construction is complete. Once in operation, the pipeline will be monitored remotely. Agricultural land disturbed during construction will be restored to its former use.[156]

132. There is the potential for the population of the City and Pipestone County to be affected by hazardous chemicals during construction or a petroleum product leak during operation of the pipeline.[157]

133. Potential hazards associated with the release of fuels include the release of hazardous air pollutants, vapors or atmospheres, chemical and carcinogen exposures in soil and drinking/surface water, and the risk of fire or explosion hazards resulting from flammable liquid releases. These hazards pose health risks to nearby communities if spills or leaks occur.[158]

134. Ultimately, the impacts to population and employment for all four route alternatives are anticipated to be minimal and positive in both the short- and long-term.[159] Analysis of the impact on population and employment does not significantly favor or disfavor any of the route alternatives relative to each other.

2. Displacement

135. Displacement occurs when a residence or structure must be removed to ensure safe operation and maintenance of a pipeline. Minnesota has established a statute that requires pipeline setback ordinances from residential and other developments.[160]

136. With the rural nature of the Project area and a local economy driven by agricultural business, displaced structures could impact a property owner's livelihood with removal of silos and barns essential to farming practice and business.[161]

137. The APR has defined temporary and permanent ROW limits, so the other route alternatives were evaluated based on potential risks.[162]

---

[154] Ex. DOC-2 (LIUNA Comments).
[155] Ex. DOC-3 (Local 49 Comments).
[156] Ex. DOC-20 at 35 (CEA Vol. I).
[157] EX. DOC-20 at 35 (CEA Vol. I).
[158] Ex. DOC-20 at 142 (CEA Vol. I).
[159] Ex. DOC-20 at 152 (CEA Vol. I).
[160] Ex. DOC-20 at 35 (CEA Vol. I) (citing Minn. Stat. § 299J.05 (2022)).
[161] Ex. DOC-20 at 35 (CEA Vol. I).
[162] Ex. DOC-20 at 36 (CEA Vol. I).

138. Direct impacts from the project will include the potential for structure removal if setback requirements cannot be ensured to allow for safe operation and maintenance of the pipeline. Magellan will need to compensate property owners for any structures that will need to be removed for construction and operation of the pipeline.[163]

139. The number of structures within 300 feet of the various route alternatives are as shown in the following table:[164]

Table 6-3 Structures within 300-foot Analysis Area by Alternative

Route Alternative	Number of Structures within 150' alignment	Number structures within 100' of alignment	Number structures within 50' of alignment	Number structures within 25' of alignment	Number structures crossed by
APR	5	4	1	0	0
RA-1	22	6	0	0	0
RA-2	10	6	1	1	0
RA-3	48	35	23	13	12

140. The APR would not displace any residences or structures. RA-01 passes within 100 feet of six residential and other types of structures, but further engineering of the route could potentially adjust the alignment to have a greater setback from residential and other structures. RA-02 is located within 50 feet of a silo and 25 feet of a structure, but further engineering of the route could potentially adjust the alignment to prevent removal of the silo and have a great setback from residential and other structures. RA-03 crosses 12 structures including residential structures. There are also 13 structures (including residential structures) withing 25 feet of alignment and 23 structures within 50 feet of alignment. Even with further engineering of RA-03, there is the greatest potential for displacement to occur than the other three alternatives.[165]

141. Final pipeline design is expected to place the pipeline within the permitted route so that the permanent right-of-way will avoid direct impacts to residences or other buildings. Impacts are expected to be minimal, and the route permit will include special conditions pertaining to accidents and spills during operations.[166]

142. While the overall impacts will be minimal, analysis of displacement disfavors RA-03 relative to the other route alternatives due to the significantly longer length of the route.

[163] Ex. DOC-20 at 36 (CEA Vol. I).
[164] Ex. DOC-20 at 36 (CEA Vol. I).
[165] Ex. DOC-20 at 36–37 (CEA Vol. I).
[166] Ex. DOC-20 at 152 (CEA Vol. I).

3. Existing Land Use and Zoning

143. The land uses in the Project areas consist mainly of agricultural lands, rural residential land, and rights-of-way for roads, railroads, pipelines, and electrical transmission lines. There are also two cemeteries, recreation sites, and trails.[167]

144. The total number of parcels within the 300-foot analysis area for each of the route alternatives are as shown in the following table:[168]

Table 6-4. Number of Parcels within 300-foot Analysis Area by Alternative

Route Alternative	Number of Parcels
APR	6
RA-1	47
RA-2	17
RA-3	55

145. Short-term, direct impacts to land use and zoning will be similar for each of the route alternatives, but there will be an increase of impacts directly related to the length of the proposed route alternative.[169]

146. The APR and RA-02 have the potential to directly impact two cemeteries. RA-01 and RA-03 have the potential to impact snowmobile trails, and RA-03 may impact Casey Jones State Trail.[170]

147. Easements from landowners along the selected route will be necessary for construction. Efforts will be made to avoid the removal of structures where possible. Potential impacts on agricultural land associated with construction include temporary reduction in agricultural production for cultivated land. Indirect impacts from construction to land uses include the dust emissions and noise that can also indirectly affect nearby land uses including the Monument. To mitigate these impacts, BMPs will be utilized including the use of water as needed to control dust during active construction. Noise impacts will be limited to daytime construction.[171]

148. Long-term direct impacts from the Project will be minimal once the ROW is reclaimed to preconstruction conditions. Efforts will be made to place the permanent ROW as close to existing linear highway or utility ROW to reduce impacts to agricultural and residential properties. Agricultural activities can continue in the ROW

[167] Ex. DOC-20 at 37 (CEA Vol. I).
[168] Ex. DOC-20 at 37 (CEA Vol. I).
[169] Ex. DOC-20 at 40 (CEA Vol. I).
[170] Ex. DOC-20 at 40 (CEA Vol. I).
[171] Ex. DOC-20 at 40 (CEA Vol. I) (internal citations omitted).

post-construction, but the Project will preclude new development on the permanent pipeline ROW.[172]

149. There is the potential for land uses to be affected by hazardous chemicals during construction or petroleum product leak during operation of the pipeline.[173]

150. Short-term impacts to agricultural land uses will occur across all four route alternatives. Following construction, land within the ROW will be available for agricultural use.[174]

151. While the short-term direct impacts will be slightly different for each route alternative based on the length of the route, consideration of existing land use and zoning does not significantly favor or disfavor any of the four route alternatives.

4. Planned and Future Land Use

152. Pipestone County was not aware of any future or planned development projects, with the last platted subdivision occurring approximately ten years ago.[175]

153. The City identified a planned unit development located in the southwest portion of the city boundary, as well as new gas station at HWY 30 and HWY 75 within the City. The City is also aware of a potential solar development east of the Monument but was not able to give the exact location.[176] The City further indicated that it is "looking at expanding" its cemeteries and has been exploring possible purchases of land for this expansion.[177]

154. The amount of farmland between and north of the City's cemeteries is such that, should the City expand its cemeteries in the future, none of the route alternatives would materially interfere with that expansion.[178]

155. There is a highway resurfacing construction project that extends from MNTH 23 in Pipestone to the northwest, as well as a replacement of a bridge east of the intersection of MNTH 23 and US HWY 75 in Pipestone starting in 2024. The detour for the bridge replacement will re-route traffic north out of the City on US HWY 75 to HWY 8, proceeding east on HWY 8 to MNTH 23.[179]

156. Direct and indirect impacts on future projects, for both the long- and short- term, are not expected for any of the route alternatives.[180]

---

[172] Ex. DOC-20 at 40 (CEA Vol. I).
[173] Ex. DOC-20 at 40 (CEA Vol. I).
[174] Ex. DOC-20 at 152 (CEA Vol. I).
[175] Ex. DOC-20 at 40 (CEA Vol. I).
[176] Ex. DOC-20 at 40 (CEA Vol. I).
[177] Ex. DOC-147 (City of Pipestone Comments).
[178] Ex. MAG-11 at 10–11 (Cox Rebuttal).
[179] Ex. DOC-20 at 41 (CEA Vol. I).
[180] Ex. DOC-20 at 41 (CEA Vol. I).

157. For the proposed MNTH 23 Pipestone to Russell project, no direct impacts are expected during construction, but indirect impacts could include increased traffic and noise where the highway project and pipeline project construction is occurring. RA-03 crosses where the resurfacing of MNTH is planned. If both projects are under construction at the same time, coordination with DOT will need to occur to reduce conflicts between the two projects.[181]

158. No long-term direct or indirect impacts are expected to planned future land use from the Project.[182] Consideration of planned and future land use does not favor or disfavor any of the route alternatives relative to each other.

5. Cultural Values

159. Cultural values are learned community beliefs and attitudes that provide a framework for individual and community thought and action, and are informed, in part, by ethnic heritage.[183]

160. No businesses, churches, government facilities, or institutions will be displaced or closed during the construction or operation of the Project.[184]

161. Families may be displaced if RA-02 or RA-03 are selected and engineering is unable to avoid or meet setbacks from residential structures or silos.[185]

162. For the APR and RA-02, short-term disruption during ceremonies and quarrying at the Monument during construction are anticipated to be minimal due in part to special conditions placed on the route permit and the use of BMPs.[186] Magellan will avoid construction activities that could interfere with the experience of the Sundance ceremonies that take place at the Monument annually in July and/or August.[187]

163. Impacts to cultural values are expected to be minimal and short term in most instances, and the Project is not anticipated to have direct or indirect adverse impacts on the cultural values of Pipestone County or the City.[188]

164. Consideration of cultural values does not significantly favor or disfavor any of the route alternatives relative to each other.

---

[181] Ex. DOC-20 at 41 (CEA Vol. I).
[182] Ex. DOC-20 at 41, 152 (CEA Vol. I).
[183] Ex. DOC-20 at 42 (CEA Vol. I). The cultural values discussed here focus on post-settlement communities, and Native American cultural resources are separately discussed in the analysis of cultural resources. This organizational decision was made to consolidate and analyze the unique and important cultural values that the land in and around the Monument holds for many Native Americans.
[184] Ex. DOC-20 at 44 (CEA Vol. I).
[185] Ex. DOC-20 at 44 (CEA Vol. I).
[186] Ex. DOC-20 at 152–53 (CEA Vol. I).
[187] MAG-9 at 4 (Pebsworth Direct).
[188] Ex. DOC-20 at 43 (CEA Vol. I).

6. Transportation

165. Movement of workers, equipment, and materials to the construction area is anticipated to have short-term impacts on transportation systems.[189]

166. Magellan will work with local road authorities to identify access points to the right-of-way that minimize impacts to local traffic patterns. Road congestion associated with construction will increase during peak hours, but congestion is expected to be minimal. If oversized and/or overweight loads will be transported, Magellan will coordinate with appropriate road authorities to prevent impacts to roads and highways.[190]

167. Using boring drilling techniques to construct the pipeline under roadways will avoid disruptions to vehicular traffic and physical impacts on roadbeds. Indirect short-term impacts will include dust and soil on the roads, and noise levels from construction equipment and employees will result in increased risk to the traveling public. This risk is anticipated to be minimal. BMPs will be implemented to minimize noise, and dust and soil on roadways. Long-term impacts from the Project will be beneficial to local and state transportation systems. It will reduce the amount of fuel trucks on the highway, putting less strain on road infrastructure and potential for crashes.[191]

168. Magellan will contact governing bodies having jurisdiction over any roads to be impacted by construction of the proposed project to obtain the appropriate approvals. This includes DOT approval (Utility Crossing Permit) where the proposed project crosses MNTH 30 (RA-01 and RA-03), MNTH 23 (RA-03), and U.S. HWY 75 (RA-01). DOT approval will address construction methods for HDD under highways and roads, impact on other utilities, traffic control in construction areas, authorized access points for construction activities, impact on highway drainage, impact on highway vegetation, and other concerns.[192]

169. The APR will have little to no effects on the state trunk highway system.[193]

170. Roads will be repaired as necessary if impacted by extra wear and tear due to transportation of equipment and project-related materials. Additionally, proper signage and traffic management, as agreed upon by the road authorities in consultation with the applicant, will be employed during construction.[194]

171. The following table shows the transportation routes crossed or paralleled by the four route alternatives.[195]

[189] Ex. DOC-20 at 44 (CEA Vol. I).
[190] Ex. DOC-20 at 44–45 (CEA Vol. I).
[191] Exs. DOC-20 at 45 (CEA Vol. I), Ex. MAG-1 at Schedule 1 at 2 (Cox Rebuttal).
[192] Ex. DOC-20 at 45 (CEA Vol. I).
[193] Ex. DOC-7 (DOT Comments).
[194] Ex. DOC-20 at 45 (CEA Vol. I).
[195] Ex. DOC-20 at 45–47 (CEA Vol. I).

Table 6-6 Transportation Parallel or Cross by Alternative

Route Alternative	Transportation Name	Parallel or Cross	Distance Parallel (miles)
Application Route (APR)	County Road 67	Crossing	---
	Magellan Pipeline	Crossing	---
	116th Street	Crossing	---
RA-1	County Highway 15	Crossing	---
	County Highway 4	Crossing	---
	County Highway 5	Crossing	---
	County Highway 7/151st Street	Parallel	5.8
	County Road 53	Parallel	7.4
	County Road 71	Crossing	---
	County Road 72	Crossing	---
	County Road 76	Crossing	---
	County Road 77	Crossing	---
	91st Street	Crossing	---
	131St Street	Crossing	---
	50th Avenue	Crossing	---
	60th Avenue	Crossing	---
	70th Avenue	Crossing	---
	U.S. Highway 75	Crossing	---
	90th Avenue	Crossing	---
	81st Street	Crossing	---
	Cazenovia Lane	Crossing	---
	111th Street	Crossing	---
	121st Street	Crossing	---
	136th Street	Crossing	---
	40th Avenue	Crossing	---
RA-2	County Road 67	Crossing	---
	131st Street	Parallel	1.43
	75th Avenue	Crossing	---
	Magellan Pipeline	Crossing	---
	70th Avenue	Crossing	---
	116th Street	Crossing	---
	100 to 161 kV Transmission line	Parallel	1.0
RA-3	County Highway 15	Crossing	---
	County Highway 4	Crossing	---
	County Highway 6	Crossing	---
	County Highway 7	Crossing	---

	County Road 52/61st Street	Parallel	8.3
	County Road 53	Crossing	---
	County Road 55	Crossing	---
	County Road 56	Crossing	---
	County Road 57	Crossing	---
	County Road 61	Crossing	---
	County Road 67	Crossing	---
	County Road 70	Crossing	---
	County Road 68/110th Avenue	Parallel	10.5
	MN Trunk Highway 30	Crossing	---
	Mn Trunk Highway 23	Crossing	---
	U.S. Highway 75	Crossing	---
	BNSF	Crossing	---
	100th Avenue	Crossing	---
	50th Avenue	Crossing	---
	30th Avenue	Crossing	---
	141st Street	Crossing	---
	161st Street	Crossing	---

172. Short-term impacts to transportation (traffic delays) may occur across all four route alternatives. Construction will not impact road or rail beds. Long-term traffic impacts to traffic patterns will not occur.[196]

173. Consideration of transportation does not significantly favor or disfavor any of the four route alternatives with respect to one another.

7. Public Services

174. During construction, temporary impacts such as delayed traffic and noise are anticipated but should be minimal. The potential impacts of all routes are similar in that they are short-term and will end once construction concludes. Traffic delays have the potential to delay emergency services response times. If needed, the construction crew will immediately respond to allow emergency personnel through, so they are able to access the surrounding homes and organizations.[197]

175. If there were to be a spill or accident during construction or operation, Pipestone County will be first responders onsite, potentially putting a strain on public services depending on the size of the incident.[198]

[196] Ex. DOC-20 at 153 (CEA Vol. I).
[197] Ex. DOC-20 at 47–48 (CEA Vol. I).
[198] Ex. DOC-20 at 48, 153 (CEA Vol. I).

176. The proposed project will not result in long-term impacts on public services in Pipestone County or the City.[199] Consideration of public services does not significantly favor of disfavor any of the route alternatives relative to each other.

8. Noise and Vibration

177. Noise is generally defined as any undesired sound. Sound travels in a wave motion and produces a sound pressure level measured in decibels on a logarithmic scale. An A-weighted scale (dBA) is used to replicate the sensitivity of the human ear. A 10 dBA increase is perceived as sound doubling in loudness. Likewise, a 10 dBA decrease is perceived as sound decreasing by one-half. The Minnesota Pollution Control Agency has established standards for the regulation of noise levels during the daytime and nighttime in Minn. R. 7030.0040 (2023). In Minnesota, noise impacts are evaluated by modeling the decibel levels that are expected to be exceeded 10 percent and 50 percent of the time. These levels are identified as L10 and L50, respectively. The L10 level is the noise level that is exceeded by 10 percent, or 6 minutes, of an hour. The L50 level is the noise level that is exceeded by of 50 percent, or 30 minutes, of an hour. The Project is in a rural area with typical public services (e.g., police, fire protection, waste collection, natural gas, wells, septic systems, cable television, electricity, telephone, etc.).[200]

178. The allowable decibel level depends on the land use of the location of the person who hears the noise (receptor). These noise area classifications are as follows:

(1) NAC-1 includes residential housing, religious activities, camping and picnicking areas, health services, hotels, and educational services;

(2) NAC-2 includes retail, business and government services, recreational activities, and transit passenger terminals;

(3) NAC-3 includes manufacturing, fairgrounds and amusement parks, agricultural and forestry activities;

(4) NAC-4 includes underdeveloped and unused land (for which there are no noise standards.[201]

179. The construction of the Project will result in temporary noise and vibration increases within and adjacent to the project area. Impacts from noise are anticipated to be minimal and typical for a pipeline construction project. The noise and vibration will be generated from heavy equipment used for hauling materials and moving earth and equipment. Noise associated with heavy equipment can range between 80 and 90 dBA at 50 feet from the source. Sensitive areas located close to the construction area may temporarily experience increased noise and vibration levels. Although noise associated with construction generally does not pose a direct risk to health, it often causes people to

[199] Ex. DOC-20 at 48 (CEA Vol. I).
[200] Ex. DOC-20 at 48 (CEA Vol. I).
[201] Ex. DOC-20 at 48–49 (CEA Vol I). Table 6-7 shows the noise standards for the various NACs.

become irritated or stressed and causes poor quality of life. Additionally, noise can cause losses of hearing resulting from long-term exposure to high decibel levels.[202]

180. Impacts are unavoidable but can be minimized. Magellan will take measures to control construction-related noise, including limiting pipeline construction activities to daylight hours, maintain equipment in good working order, and using manufacturer-supplied silencers when available. No above-ground facilities are proposed. Operational noise is expected to be minimal. No additional mitigation is proposed.[203]

181. All four of the route alternatives are near at least one NAC-1 and NAC-2 site. The number of NAC-1 and NAC-2 sites within 750 feet of the route alternatives are shown in the following tables:[204]

Table 6-8. Sensitive Noise Receptors (NAC-1)

Route Alternative	Distance from Proposed Pipeline Centerline (ft)					Total Receptors
	0-150	150-300	300-450	450-600	600-750	
APR	1	3	0	0	1	5
RA-1	12	9	1	1	1	24
RA-2	1	2	0	2	1	6
RA-3	9	7	7	0	0	23

Table 6-9. Sensitive Noise Receptors (NAC-2)

Route Alternative	Distance from Proposed Pipeline Centerline (ft)					Total Receptors
	0-150	150-300	300-450	450-600	600-750	
APR	1	1	0	1	0	3
RA-1	0	1	0	0	1	2
RA-2	1	0	0	0	0	1
RA-3	0	1	0	0	0	1

182. Short-term, unavoidable noise and vibration impacts associated with construction are anticipated to be minimal with use of standard permit conditions and mitigation. Long-term impacts associated with operation and maintenance of the pipeline are anticipated to be minimal and unavoidable. The route permit will have a special

[202] Ex. DOC-20 at 49 (CEA Vol. I).
[203] Ex. DOC-20 at 49–50 (CEA Vol. I).
[204] Ex. DOC-20 at 50–51 (CEA Vol. I).

condition that states construction should not occur during ceremonial and traditional use of the Pipestone Monument, in consultation with NPS staff and tribal representatives.[205]

183. As there are more NAC-1 receptors located along RA-01 and RA-03, consideration of this factor favors the APR and RA-02 over RA-01 and RA-03.

9. Aesthetics

184. Aesthetics, focusing on the visual landscape aspect, is what people perceive to be pleasing to the eye from their perspective. Each perspective will be unique to one's experience. Because of this, aesthetics is subjective. The exposure to visuals and the sensitivity of viewers can determine visual perception. To determine the affected environment, visual resources can be divided into three categories: natural, cultural, and project.[206]

185. The general area where the Project is proposed on the outskirts of Pipestone, has a rural aesthetic character. Views commonly found in this rural area will include roadways, agricultural, residential, commercial, and waterways. Local cultural and recreational resources near proposed route alternatives include Woodlawn Cemetery, St. Leo Cemetery, the Monument, Pipestone Creek, tall Grass Prairie NWR – Pipestone Unit, the King of Trails Scenic Byway (US HWY 75) and as well city parks and trails.[207]

186. Impacts to aesthetics of the area are anticipated to be minimal and temporary. The visual environment will be temporarily impacted during construction for all route alternatives by construction equipment/employees, vegetation removal and exposed soil in active construction areas. The pipeline will be buried upon completion of construction; therefore, no long-term impacts are anticipated. Accommodations can be made to halt construction on days that events may take place at cultural resource areas. After all phases of construction are completed, restoration of any impacted vegetation will be made to preconstruction conditions.[208]

187. The APR will be within view of St. Leo Cemetery, Woodlawn Cemetery, the Pipestone Monument, Pipestone Creek, and the Tallgrass Prairie NEW-Pipestone Unit as well as typical rural landscape.[209]

188. RA-01 will be within views of Pipestone Creek and Pipestone County-Hiawatha Sno-Blazer Trail as well as typical rural landscape.[210]

189. RA-02 will be within views of St. Leo Cemetery, Woodlawn Cemetery, the Monument, and Pipestone Creek, as well as typical rural landscape.[211]

---

[205] Ex.DOC-20 at 153 (CEA Vol. I).
[206] Ex. DOC-20 at 52 (CEA Vol. I).
[207] Ex. DOC-20 at 52 (CEA Vol. I).
[208] Ex. DOC-20 at 52 (CEA Vol. I).
[209] Ex. DOC-20 at 52 (CEA Vol. I).
[210] Ex. DOC-20 at 53 (CEA Vol. I).
[211] Ex. DOC-20 at 53 (CEA Vol. I).

190. RA-03 will be within views of Split Rock Creek and Pipestone County-Hiawatha Sno Blazer Tail, as well as typical rural landscape.[212]

191. Consideration of aesthetics does not significantly favor or disfavor any of the route alternatives with respect to each other.

10. Environmental Justice

192. Environmental justice refers to the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, income, and education levels. Conversely, energy injustice refers to situations where some people are negatively or disproportionately affected by human impacts on the environment. Negative impacts on the environment disproportionately affect marginalized, minority, and socioeconomically disadvantaged groups.[213]

193. No minority or disadvantaged community or population will be relocated or displaced by construction of the Project.[214]

194. The APR includes areas within the city limits of Pipestone and fringes immediately outside. Areas inside Pipestone city limits are defined as a high poverty area, and unincorporated areas are defined as not a high poverty area. It has a disproportionate number of children under the age of 18 compared to state and county populations.[215]

195. RA-01 transects a rural, agricultural area west and north of the City. The area crossed by RA-01 is not a high poverty area. The number of children is similar to state and county averages.[216]

196. RA-02 includes areas within the city limits of Pipestone and fringes immediately outside north and west of the City. Areas inside the Pipestone city limits are defined as a high poverty area, and unincorporated areas are defined as not a high poverty area. It has a slightly disproportionate number of children under the age of 18 compared to state and county populations.[217]

197. RA-03 transects a rural, agricultural area east and north of the City. The area crossed by RA-03 is not a high poverty area. The number of children is similar to state and county averages.[218]

198. Because the Project area is located outside of any high-density housing developments and outside city boundaries, there will not be impacts that cause disproportionately high and adverse effects to environmental justice populations.[219]

---

[212] Ex. DOC-20 at 53 (CEA Vol. I).
[213] Ex. DOC-20 at 53 (CEA Vol. I) (internal citations omitted).
[214] Ex. DOC-20 at 56 (CEA Vol. I).
[215] Ex. DOC-20 at 57 (CEA Vol. I).
[216] Ex. DOC-20 at 57 (CEA Vol. I).
[217] Ex. DOC-20 at 57 (CEA Vol. I).
[218] Ex. DOC-20 at 57 (CEA Vol. I).
[219] Ex, DOC.20 at 143 (CEA Vol. I).

Consideration of environmental justice does not significantly favor or disfavor any of the route alternatives with respect to each other.

11. Other Impacts on Human Settlement

199. Short- and long-term impacts associated with project construction (air emissions, fugitive dust) and operation (air emissions) will occur. These impacts are anticipated to be unavoidable but minimal for all four route alternatives. BMPs are included in the general provisions of the route permit.[220]

200. Magellan will implement measures to reduce fugitive dust near the Monument.[221]

201. It is anticipated that final pipeline design will align the pipeline within the approved route, such that the permanent right-of-way will generally avoid direct impacts to hazardous waste and regulated material sites. Impacts are anticipated to be minimal. The route permit will have a special condition at Phase I Environmental Site Assessment and Phase II Environmental Site Assessment (if required) will be conducted prior to construction and appropriate actions will be taken if warranted.[222]

202. Impacts to public safety during normal construction and operation of a pipeline with the use of standard permit conditions and BMPs-as well as compliance with federal pipeline safety regulations-are anticipated to be minimal. The route permit will include special conditions pertaining to accidents in spills during operations.[223]

203. Due to consideration of displacement disfavoring RA-03 and consideration of noise vibrations disfavoring RA-01 and RA-03, consideration of overall impact on human settlement impacts favors APR and RA-02 relative to the other route alternatives. Even with those distinctions, overall potential impacts to human settlement are similar among all four route alternatives.[224]

B. Natural Environment

204. Minnesota law requires consideration of the impact of the Project on the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands.[225]

205. As part of the CEA, the Department evaluated the impact of the project on (1) geology; (2) soil; (3) wetlands; (4) vegetation; (5) wildlife and wildlife habitat; and (6) threatened, endangered, and other special status species.

---

[220] Ex. DOC-20 at 153 (CEA Vol. I).
[221] Ex. MAG-9 at 4 (Pebsworth Direct).
[222] Ex. DOC-20 at 153 (CEA Vol. I).
[223] Ex. DOC-20 at 153 (CEA Vol. I).
[224] Ex. DOC-20 at 57 (CEA Vol. I).
[225] Minn. R. 7852.1900, subp. 3(B).

1. Geology

206. Southwest Minnesota, along with much of eastern South Dakota, lies within the Coteau des Prairies, also called the Prairie Coteau, a flatiron-shaped plateau, which formed about 25,000 to 10,000 years ago during the most recent glaciation event. This erosional remnant projects above lowlands formerly occupied by the Des Moines Lobe to the east and the James Lobe to the west, which formed because of the Late Wisconsin Laurentide Ice Sheet. Up to 100 feet of glacial sediment cover the area of where the proposed route alternatives are located [226]

207. Bedrock geology across where the proposed route alternatives occur is Paleoproterozoic Sioux Quartzite, which is comprised of quartzite, mudstone, and local conglomerates of fluvial and marine origin. Bedrock ranges from depths of approximately 100 feet in the vicinity of the City to surface exposures intersecting the APR and RA-02.[227]

208. Surficial geology across the area of where the proposed route alternatives occur is classified into three main groups: till, stream deposits, and bedrock.[228]

209. Pipestone County is largely covered by pre-Wisconsin till plain and locally overlain by windblown sediment. The till is very dense with a clay loam to silty clay loam matrix, yellow-brown where oxidized, and gray where unoxidized.[229]

210. The westernmost portion of RA-03 is covered by till overlain by more than five feet of windblown silt, some fine sand, and clay.[230]

211. Pleistocene stream sediment deposits are present along the stream banks which transect all proposed route alternatives. The stream deposits are comprised of sand and gravel deposited by glacial meltwater. Along the banks of the North Branch Pipestone Creek, Late-Wisconsin aged sediments are present, which transect RA-01 for approximately 2.5 miles between 50th Ave and HWY 75, for approximately 1-mile near Country Road 72, and for several hundred feet north of County HWY 4.[231]

212. Stream channels nearest the City are Wisconsin aged only a few thousand years older during the Late-Wisconsin stream deposits. These deposits intersect all four proposed route alternatives.[232]

213. Pre-Wisconsin stream sediments are present on the south side of the area of the proposed route alternatives, along RA-03 and following Main Ditch and Split Rock Creek banks.[233]

---

[226] Ex. DOC-20 at 102 (CEA Vol. I).
[227] Ex. DOC-20 at 102 (CEA Vol. I).
[228] Ex. DOC-20 at 102 (CEA Vol. I).
[229] Ex. DOC-20 at 102 (CEA Vol I).
[230] Ex. DOC-20 at 102–03 (CEA Vol. I).
[231] Ex. DOC-20 at 103 (CEA Vol. I).
[232] Ex. DOC-20 at 103.
[233] Ex. DOC-20 at 103 (CEA Vol. I).

214. Sioux Quartzite bedrock outcrops are visible along a northwest to southeast topographic high, parallel with lines of glaciation, which intersect the APR and RA-02 The exposures and shallow buried bedrock contain glacially striated and later wind polished pink quartz arenite. This glacial feature also intersects Pipestone Creek at Winnewissa Falls located 0.68 miles southeast of the APR.[234]

215. Geologic resources near the City include pipestone quarries for cultural purposes located on the Monument.[235]

216. Impacts to geology could occur because of pipeline installation through shallow bedrock or potential aggregate resources. To reduce the potential for impacts, the Sioux Quartzite outcrop and shallow bedrock will be crossed by using HDD method. Magellan does not anticipate that blasting will be required.[236]

217. Impacts to geology are expected to be minimal for RA-01 and RA-03, and range from minimal to moderate for the APR and RA-02 due to those two routes crossing over the Sioux Quartzite Ridge. Potential impacts will vary in duration, be of a small size, and affect unique resources. Impacts can be mitigated, but some impacts are unavoidable.[237]

218. Because the APR and RA-02 cross over the Sioux Quartzite Range, consideration of the impact on geology favors RA-01 and RA-03 over the APR and RA-02.

2. Soils

219. The proposed route alternatives are located in the Prairie Coteau within the Central Feed Grains and Livestock Region, Major Land Resource Areas. The dominant soil order in this area is Mollisols. These soils are commonly characterized as loamy, very deep, and well-drained to poorly drained. They originate in alluvial depressions, floodplains, or in fine-loamy till on till plains. A portion of the proposed route alternative area is located in the Pleistocene-aged till deposits.[238]

220. According to the Natural Resources Conservation Service (NRCS), soils in Pipestone County are classified as Prime Farmland (approximately 64.7 percent). Prime Farmland is defined as having the best combination of physical and chemical characteristics to produce agricultural crops. Approximately 7 percent of the soil is classified as Prime Farmland if drained, approximately 2 percent is Prime Farmland if protected from flooding, and approximately 26 percent is identified as Not Prime Farmland. The following table shows a summary of the farmland classifications within three feet of the proposed route alternatives:[239]

[234] Ex. DOC-20 at 103 (CEA Vol. I).
[235] Ex. DOC-20 at 103 (CEA Vol. I).
[236] Exs. DOC-20 at 105 (CEA Vol. I), Ex. MAG-8 at Schedule 2 at 2, 4 (Cox Direct).
[237] Ex. DOC-20 at 155 (CEA Vol. I).
[238] Ex. DOC-20 at 105 (CEA Vol. I).
[239] Ex. DOC-20 at 107–08 (CEA Vol. I).

Table 6-16. Farmland Classifications Acreage of Application Routes[169]

Route Alternative	Prime Farmland		Farmland of Statewide Importance	
	acres	percentage	acres	percentage
APR	32.7	65	0	0
RA-1	356.3	75	0.7	1>
RA-2	92.3	74	0	0
RA-3	440	65	1.8	1>

221. Although there are considerable amounts of classified farmland located near each of the route alternatives, direct and indirect impacts to soils are anticipated to be minimal. Direct short-term soil impacts may include, but are not limited to, soil compaction, soil erosion, and introduction of rock to the topsoil. Topsoil loss and soil erosion can be caused by minimal vegetation coverage and may also be due to reduced soil productivity when rocks are mixed into the topsoil. These direct impacts could last after construction is completed due to poor vegetative regrowth following reclamation efforts of the ROW. BMPs will be implemented during construction in an effort to avoid these occurrences. Appendix C of the Route Application provides erosion controls and sediment stabilization efforts that must be implemented to reduce erosion and prevent sediment from migrating off-site. Per landowner's requests, topsoil piles will be separated and reserved for surface reclamation processes and will not be utilized during subsurface construction backfilling. Protecting soil stockpiles, as well as other erosion and sedimentation control measures are standards included in the draft route permit. During construction activities and operation of the pipeline, there is potential for small spills or leaks of gasoline, oil, other fuels, coolants, transmission fluid, or other hazardous chemicals.[240]

222. While all four route alternatives impact prime farmland classifications, RA-01 and RA-03 will impact substantially more agricultural ground given their greater length. Impacts across all segment alternatives are anticipated to be minimal with the use of general permit conditions, construction practices, and BMPs.[241] Accordingly, consideration of the impact on soils favors the APR and RA-02 over RA-01 and RA-03.

3. Wetlands

223. The APR contains 11.6 acres of wetland. RA-01 contains 9.8 acres of wetland. RA-02 contains 5.95 acres of wetland. RA-03 contains 14.97 acres of wetland.

[240] Ex. DOC-20 at 108 (CEA Vol. I).
[241] Ex. DOC-20 at 155 (CEA Vol. I).

Most of the wetland areas are located within swales in crop fields or are floodplains associated with waterbodies.[242]

224. Direct impacts to wetlands are anticipated to be short-term and minimal, and unique resources will not be affected. Magellan will use the HDD method to minimize impact on wetland.[243]

225. There are a variety of mitigation measures for wetlands provided in the route permit application as well as in the standard mitigation identified in the route permit. These measures will reduce any impact to wetlands.[244] Potential impacts across all route alternatives are anticipated to be minimal with the use of general permit conditions and the HDD method.[245] Consideration of the impact on wetlands does not favor or disfavor any of the proposed route alternatives.

4. Vegetation

226. Present day vegetation in the Project area consists of agricultural crops; native and non-native grasslands, which are frequently used for grazing; manicured lawns; and rock-outcrop prairies.[246]

227. Vegetation impacts are expected to be temporary in nature. Vegetation will be removed during the construction activities. Upon completion of construction, the area will be returned to preconstruction contours to the extent practicable and temporary and permanent BMPs will be utilized to minimize erosion and improve vegetation establishment. Areas of "Outstanding" to "Moderate" biodiversity will be avoided via HDD. There will be no surface disturbance between entry and exit point of the HDD. Trenching will not occur during construction where the route crosses native plant communities to avoid impacts.[247]

228. Based on DNR's National Heritage Review of the APR and RA-02, to avoid impacting state-protected plants, all native prairie and rock outcrop habitats must be avoided. If this is not feasible, to demonstrate avoidance of state-protected plants, a qualified surveyor will need to conduct a botanical survey in these habitats prior to any Project activities.[248]

229. A variety of mitigation measures will be documented as special conditions in the route permit. The conditions will reduce impacts to native plant communities.[249]

---

[242] Ex. DOC-20 at 114 (CEA Vol. I).
[243] Exs. DOC-20 at 114 (CEA Vol. I), MAG-8 at 13 (Cox Direct), MAG-11 at 3 (Cox Rebuttal).
[244] Ex. DOC-20 at 115 (CEA Vol. I).
[245] Ex. DOC-20 at 155 (CEA Vol. I).
[246] Ex. DOC-20 at 116 (CEA Vol. I).
[247] Exs. DOC-20 at 119 (CEA Vol. I), MAG-11 at 3 (Cox Rebuttal).
[248] Ex. DOC-39 at 3 (DNR Comments).
[249] Ex. DOC-20 at 119 (CEA Vol. I).

230. There is the potential for vegetation to be contaminated by hazardous chemicals during construction or petroleum product leak during operation of the pipeline.

231. All segment alternatives impact similar vegetation types, including grass cover types. Sites with notable biodiversity range from a low of 11.4 acres for RA-03 to a high of 33.1 acres for the APR. Areas with moderate to outstanding biodiversity will be avoided through HDD. Impacts are anticipated to be minimal with use of general and special use permit conditions, construction techniques, avoidance within the route width, and BMPs.[250] Consideration of the impacts on vegetation does not favor or disfavor any of the four route alternatives with respect to each other.

5. Wildlife and Wildlife Habitat

232. Habitat for terrestrial species within the Project area primarily consists of tallgrass prairie, wet prairie, agricultural land, with scattered woodland habitats where the Project area intersects rural farmsteads.[251]

233. Aquatic wildlife habitat within the Project area consists of streams and wetlands. The Project area crosses five waterways mapped on the Public Waterways Inventory (PWI) by DNR. These waterways provide habitat for fish and other aquatic species. Most notably, the main branch of Pipestone Creek, the north branch of Pipestone Creek, and Split Rock Creek are perennial, free flowing watercourses that provide fishery habitats. Other waterways (PWIs and non-designated waterways) in the Project area offer lower quality habitat due to erosion, lack of year-round flow, or channelization. No designated trout streams are located within the Project area. Twenty-six fish species inhabit Pipestone Creek.[252]

234. Impacts to general wildlife species and wildlife habitat are anticipated to be minimal. All four route alternatives will have similar impacts to wildlife resources. Most impacts will be temporary and minimal. Short-term, direct impacts will include temporary displacement or disturbance during construction and temporary loss or alteration of habitat. Once construction is complete and site restoration has occurred, it is likely that wildlife will continue to utilize the area. Impacts to wildlife and wildlife habitat can be minimized by locating the pipeline route and construction staging/storage areas along existing ROW or in previously disturbed areas where practicable. Areas of higher priority for wildlife-friendly erosion control within the Project area include wetlands and water crossings such as Pipestone Creek.[253]

[250] Ex. DOC-20 at 117; 155 (CEA Vol. I). Specific acreage for each route alternative is shown in Table 6-18 on page 117 of Ex. DOC-20.
[251] Ex. DOC-20 at 122 (CEA Vol. I).
[252] Ex. DOC-20 at 121 (CEA Vol. I).
[253] Ex. DOC-20 at 121–22 (CEA Vol. I).

235. There is the potential for wildlife habitat to be contaminated by hazardous chemicals during construction or petroleum product leak during operation of the pipeline.[254]

236. Consideration of wildlife and wildlife habitat does not favor or disfavor any of the four route alternatives with respect to each other.

6. Threatened, Endangered, and Other Special Status Species

237. The tricolored bat, a proposed endangered species, has critical habitat in the Project area for all four route alternatives.[255]

238. The northern long-eared bat, an endangered species, has critical habitat in the Project area for all four route alternatives.[256]

239. The northern long-eared and tricolored bats are known or believed to occur or have occurred in Pipestone County based on federal data. However, no known maternity roosts or hibernacula entrances are in Pipestone County. Also, no suitable woodland or forest habitat is within 1,000 feet of the Project area. Limited tree clearing is expected to occur within the Project area and will only occur in the permanent ROW. Tree removal will be avoided between June 1 and August 15. These bat species are not expected to occur within the Project area and are unlikely to be impacted by construction or operation/maintenance activities[257]

240. The monarch butterfly, a candidate for federally protected status, has critical habitat in the Project area for all four route alternatives.[258]

241. The Topeka shiner, an endangered species, has critical habitat in the Project area for all four route alternatives.[259]

242. Streams inhabited by the Topeka shiner are mapped within all four of the route alternatives. In order to prevent impacts to the Topeka shiner, it is important that adequate erosion and sedimentation control BMPs are put in place along streams that may contain, or flow to streams that contain, Topeka shiners. As a special condition of the route permit, if any in stream work is required, work should be conducted before August 15 to protect Topeka Shiner spawning habitat.[260] DNR also recommended that Magellan avoid work from mid-May to mid-August in order to protect Topeka shiners.[261]

---

[254] Ex. DOC-20 at 122 (CEA Vol. I).
[255] Ex. DOC-20 at 122 (CEA Vol. I).
[256] Ex. DOC-20 at 122 (CEA Vol. I); Response Comments on the CEA at A-2 (May 24, 2024) (eDocket No. 20245-207101-01).
[257] Ex. DOC-20 at 124 (CEA Vol. I).
[258] Ex. DOC-20 at 123 (CEA Vol. I).
[259] Ex. DOC-20 at 123 (CEA Vol. I).
[260] Ex. DOC-20 at 124 (CEA Vol. I).
[261] Ex. DOC-39 at Attach. at 4 (DNR Comments).

243. The Dakota skipper, a threatened species, has critical habitat in the Project area for all four route alternatives.[262]

244. The western prairie fringed orchid, a threatened species, has critical habitat in the Project area for all four route alternatives.[263]

245. Habitat suitable for the Dakota skipper and western prairie fringed orchid may be present in the Project area, especially in areas of Outstanding and High biodiversity. As a special condition of the route permit, these areas will need to be surveyed prior to construction activities to determine if these species are present. If determined to be present, Magellan will need to work with the USFWS and DNR to identify measures to avoid and mitigate potential impacts.[264]

246. The western harvest mouse, a species of special concern, has critical habitat in the Project area for RA-01.[265]

247. Henslow's sparrows, a state-listed endangered bird species, have been documented in the vicinity of the APR and RA-02 in DNR's National Heritage Review of those two route alternatives. Suitable nesting habitat for this species includes uncultivated and unmowed grasslands and old fields with standing, dead vegetation, and a substantial litter layer. As such, initial disturbance in these areas should not occur during their breeding season, between May 15 and July 15. If avoidance during breeding season is not feasible, areas that will be disturbed that contain suitable nesting habitat will need to be surveyed for active nests prior to any project disturbance.[266]

248. The APR and RA-02 have a variety of state listed endangered, threatened, and special concern vascular plants in their vicinity. Specifically, prairie quillwort, hairy waterclover, western prairie fringed orchid, short-pointed umbrella sedge, mud plantain, waterhyssop, larger water starwort, three-stamened waterwort, mudwort, Devil's tongue, tumble grass, slender plantain, Scouler's popcornflower, Oregon cliff fern, and Buffalo grass all appear in the vicinity of the APR and RA-02. Buffalo Grass appears in the vicinity of the APR, RA-02, and RA-03.[267]

249. No short- or long-term direct impacts to federally-listed threatened or endangered species are anticipated if preconstruction surveys are completed. All four route alternatives will have similar impacts as they all cross similar habitats that may be used by federally listed species.[268]

[262] Ex. DOC-20 at 123 (CEA Vol. I).
[263] Ex. DOC-20 at 123 (CEA Vol. I).
[264] Ex. DOC-20 at 124 (CEA Vol. I).
[265] Ex. DOC-20 at 124 (CEA Vol. I).
[266] E. DOC-39 at 3 (DNR Comments).
[267] Response Comments on the CEA at A-3 to A-4 (May 24, 2024) (eDocket No. 20245-207101-01).
[268] Ex. DOC-20 at 124 (CEA Vol. I).

250. Short- and long-term direct and indirect impacts to state-listed special concern species are anticipated to be minimal. Mitigation measures will be followed to avoid and minimize impacts to these resources.[269]

251. There is the potential for protected wildlife habitat to be contaminated by hazardous chemicals during construction or petroleum product leak during operation of the pipeline.[270]

252. Impacts to general wildlife species and wildlife habitat are anticipated to be minimal across all four route alternatives with use of general permit conditions, BMPs, and other mitigation. All the route alternatives will have similar impacts to wildlife resources. Most impacts will be temporary and minimal. Short-term, direct impacts will include temporary displacement or disturbance during construction and temporary loss or alteration of habitat. Once construction is complete and site restoration has occurred, it is likely that wildlife will continue to utilize the area. Impacts to wildlife and wildlife habitat can be minimized by locating the pipeline route and construction staging/storage areas along existing ROW or in previously disturbed areas where practicable. Areas of higher priority for wildlife-friendly erosion control within the Project area include wetlands and water crossings such as Pipestone Creek.[271]

253. There is the potential for protected wildlife habitat to be contaminated by hazardous chemicals during construction or petroleum product leak during operation of the pipeline.[272]

254. Due to the number of state special status species in the vicinity of the APR and RA-02, consideration of threatened, endangered, and other special status species favors RA-01 and RA-03 over the APR and RA-02.

255. Consideration of the overall impact of the Project on natural resources favors RA-01 and RA-03 over the APR and RA-02.

C. Lands of Historical, Archaeological, and Cultural Significance.

256. Minnesota law requires consideration of the impact of the Project on lands of historical, archaeological, and cultural significance.[273]

257. As part of the CEA, the Department analyzed the impact to cultural resources. Cultural resources include the locations of human activity, occupation, or use that contain materials, structures, or landscapes used, built, or modified by people. They include archaeological resources (sites and isolated finds), historical resources (objects, buildings, structures, or districts), and sacred places (including traditional cultural properties [TCPs] and ethnographic landscapes). They also include the institutions that

[269] Ex. DOC-20 at 125 (CEA Vol. I).
[270] Ex. DOC-20 at 125 (CEA Vol. I).
[271] Ex. DOC-20 at 121–22, 154 (CEA Vol. I).
[272] Ex. DOC-20 at 125 (CEA Vol. I).
[273] Minn. R. 7852.1900, subp. 3(C).

form and maintain communities and link them to their surroundings. Cultural resources also include tribal, usufructuary rights.[274]

258. The CEA was based on archaeological and historical resources recorded as part of cultural resource inventories and recorded in databases maintained by the Minnesota State Historic Preservation Office (MnSHPO), Minnesota Office of the State Archaeologist (MnOSA), NPS, and the cultural resource investigations sponsored by Magellan in 2022 and 2023 along portions of the APR and RA-02.[275]

259. The CEA examined the impact of the Project on (1) the Monument, (2) natural systems and features, (3) the Pipestone Indian School, (4) archaeological resources, (5) historical resources, (6) cemeteries and burials, and (7) tribal resources. The known cultural resources found within and near the four proposed route alternatives are summarized in the following table:[276]

Table 6-15. Summary of Known Cultural Resources

Route Alternative	Ethnographic Landscape/TCP	Archaeological	Building/Structures	Roads	Cemeteries/ Burials
APR	1	1	0	0	2
RA-1	0	0	0	2	0
RA-2	0	0	0	0	2
RA-3	0	0	1	4	1

1. Pipestone National Monument

260. The Monument was established by Congress in 1937 to protect the historic pipestone quarries considered sacred by many Native Americans. Because of its cultural importance and archeological resources, the Monument was listed on the National Register in 1966. More recently, as a result of analysis resulting in a Cultural Landscape Report for the Monument, the Monument is identified as a significant cultural (ethnographic) landscape meeting National Register standards under Criteria A, C, and D. As an ethnographic landscape, it is inscribed with over several thousands of years of quarrying; includes various types of archaeological localities and expressions; has areas used for rituals associated with quarrying; contains native plant communities from where important plants used for rituals and healing were gathered; and has prominent geological features central to Native religious practices.[277] The Monument and the surrounding area comprise a sacred site to a multitude of tribal nations.[278]

[274] Ex. DOC-20 at 75 (CEA Vol. I).
[275] Ex. DOC-20 at 75 (CEA Vol. I).
[276] Ex DOC-20 at 81-102 (CEA Vol. I).
[277] Ex. DOC-20 at 82 (CEA Vol. I).
[278] Brave Heart Brief at 1.

261. The APR is immediately north and south of the Monument and its associated ethnographic landscape and traditional cultural property. RA-02 is 0.25 to 0.90 miles west and north of the Monument. Construction activities along either the APR or RA-02 could disrupt ceremonies and traditional use of the Monument.[279]

262. Between the Monument and the APR and RA-02, Pipestone Creek flows westerly, which would direct any possible spill away from the Monument.[280]

263. Magellan has agreed to not engage in construction activities during ceremonial use of the Monument and to coordinate with Monument staff regarding potential traffic disruptions during periods of increased use, including during ceremonial use of the Monument during the annual Sundance and other occasions.[281]

264. Because of the APR and RA-02's proximity to the Monument, consideration of the impact of the Project on the Monument favors RA-01 and RA-03 over the APR and RA-02.

2. Natural Systems and Features

265. The Monument and its associated ethnographic landscape are a significant cultural resource.[282]

266. The Monument is the only location where Native Americans have quarried catlinite from prehistory to the present.[283] Brave Heart is concerned about the impact of the Project on natural resources related to sacred tribal interests.[284]

267. The Monument is a Native American sacred site associated with religious practices and cultural activities. It is significant for its history of Native American and European American contact and exploration in the early 1800s, specific quarrying rights, and the Pipestone Indian School (1893–1953).[285]

268. The ethnographic landscape has been evaluated as contributing to the existing Pipestone National Monument National Register Property for its association with quarrying, Native American reservation history, association with the development of the NPS and the Civilian Conservation Corps-Indian Division, and modern architecture associated with the NPS.[286]

269. The use of catlinite is important to the cultural identity of Native peoples, an important part of the continuing traditional practices, and imbued and animated with a living force that plays a central part in Native American religious traditions. The Monument

[279] Ex. DOC-20 at 156 (CEA Vol. I).
[280] Ex. MAG-11 at 9 (Cox Rebuttal).
[281] Ex. DOC-20 at 3–4 (CEA Vol. 1).
[282] Ex. DOC-20 at 89 (CEA Vol. I).
[283] Ex. DOC-20 at 89 (CEA Vol. I).
[284] Brave Heart Brief at 2–7.
[285] Ex. DOC-20 at 89 (CEA Vol. I).
[286] Ex. DOC-20 at 90 (CEA Vol. I).

and associated ethnographic landscape should also be considered Traditional Cultural Properties for their past and on-going importance to cultural and traditional practices for a number of Native American tribes.[287]

270. There are concerns about the impact of potential leaks of refined products on catlinite resources.[288]

271. Traditional Dakota spiritual practitioners use the flora, fauna, water, tall grass prairie, medicines, and the entire landscape.[289]

272. The APR would be placed immediately north and south of the Monument's ethnographic landscape, and RA-02 would be placed 0.25 to 0.90 miles west and north of the Monument.[290]

273. Magellan arranged for a non-invasive geophysical survey using an electromagnetic induction instrument to identify positions and depths of catlinite beds in order to design an HDD to avoid catlinite resources.[291] This study did not discover any catlinite along RA-02.[292]

274. Magellan completed geotechnical borings at the location of the HDD near the Sioux quartzite outcropping on RA-02, and this study also found no catlinite.[293] The geotechnical borings identified solid Sioux quartzite at this location and found no evidence of fissures or other cracks in the rock that would allow refined product to penetrate in the event of a spill, making unlikely that any spill would reach areas where catlinite will be present. Instead, the quartzite would effectively act as an additional casing to the pipe for any released product to follow back to the initial bore holes.[294]

275. The initial geotechnical review suggests that the catlinite geological layer will not be directly impacted by either route.[295]

276. Consideration of the impact on natural systems and features favors RA-01 and RA-03 over the APR and RA-02 due to the potential impact on catlinite resources, and of the two, favors RA-02 relative to the APR for the same reason.

3. Pipestone Indian School

277. The Bureau of Indian Affairs established the Pipestone Indian School in 1893. It was one of 21 boarding schools in Minnesota and was located in the northeast

[287] Ex. DOC-20 at 90 (CEA Vol I).
[288] *See, e.g.,* Exs. DOC-40 at 1–2 (Ihanktonwan Dakota Oyate Treaty Steering Committee Comments), DOC-152 at 4 (Great Plains Tribal Chairmen's Association, Inc. Comments).
[289] Ex. DOC-40 at 2 (Ihanktonwan Dakota Oyate Treaty Steering Committee Comments).
[290] Ex. DOC-20 at 156 (CEA Vol. I).
[291] Ex. MAG-10 at 6 (Trocki Direct).
[292] Ex. MAG-11 at 8 (Cox Rebuttal).
[293] Ex. MAG-11 at 8 (Cox Rebuttal).
[294] Ex. MAG-11 at 8 (Cox Rebuttal).
[295] Ex. DOC-20 at 156 (CEA Vol. I).

corner of the Pipestone Reservation. The school developed from the original two buildings to a large complex of 63 buildings, including a hospital and staff housing. The school operated until 1953 when it was closed due to changes in government programs and funding.[296]

278. The CEA did not identify specific concerns related to the Pipestone Indian School other than general concerns about impacts to historical buildings, structures, and objects.[297]

279. Direct impacts to historical buildings, structures, and objects are not anticipated, as the Project will be located to avoid these types of resources.[298]

280. During operations, no direct impacts on cultural resources will occur due to no ground disturbance beyond the previously disturbed construction footprint, so impacts on new cultural resources will not be expected unless there are extenuating circumstances (spills/leaks or erosion).[299]

281. Consideration of the impact on the Pipestone Indian School does not favor or disfavor any of the four route alternatives with respect to each other.

4. Archaeological Resources

282. Archeologists define archaeological resources as material evidence of human culture and activity in the past. Resources include artifacts (stone tools, ceramics, and building material), features (houses, pits, and ovens), sites (camps, villages, quarries, and temples), and associated documentation (fieldnotes and oral traditions). Outside the Monument, few archaeological resources are reported in the central portion of Pipestone County. Most reported sites are in the eastern one-quarter to one-half of the county.[300]

283. Two previously recorded archaeological sites are within the Project area: the Monument (Site 21PP002) and an isolated prehistoric flaked stone tool identified during the survey of the 1.9-mile segment of RA-02 investigated in the fall of 2023. No construction activities will occur within the Monument or the defined site boundaries for Site 21PP002.[301]

284. The southern end of the APR extends slightly into the Monument boundary and Site 21PP0002. Magellan sponsored a preliminary archaeological field reconnaissance of a limited portion of the APR in the vicinity of St. Leo and New Woodlawn cemeteries in the fall of 2022. Fourteen shovel tests were excavated at 15-meter intervals and no archaeological materials were identified in the shovel tests. The Survey Implementation Model suggests a low probability for archaeological sites along northern portions of the route. Most of the route is not modeled because of insufficient

[296] Ex. DOC-20 at 90 (CEA Vol. I).
[297] Ex. DOC-20 at 90–92 (CEA Vol. I).
[298] Ex. DOC-20 at 91 (CEA Vol. I).
[299] Ex. DOC-20 at 92 (CEA Vol. I).
[300] Ex. DOC-20 at 92 (CEA Vol. I).
[301] Ex. DOC-20 at 93 (CEA Vol. I).

information. A high probability area corresponds to the eastern portion of St. Leo Cemetery. [302]

285. No archaeological resources are currently recorded along RA-01 alignment within the Project area. The Survey Implementation Model indicates most of the route is modeled as unknown because of insufficient information.[303]

286. No archaeological resources are currently recorded along RA-02. Magellan sponsored a second archaeological survey for the Project in the fall of 2023. The 2023 survey included 1.9 miles of the 3.4-mile-long route alternative. The survey entailed a surface walk over and shovel testing to identify archaeological resources. One isolated, non-diagnostic prehistoric archaeological flaked stone tool was identified near Pipestone Creek. MnSHPO concurred that this find was not individually eligible for listing on the National Register of Historic Places. The Survey Implementation Model indicates most of the route is modeled as unknown because of insufficient information.[304]

287. No archaeological resources are currently recorded along RA-03. The Survey Implementation Modeling indicates most of the route is modeled as unknown because of insufficient information.[305]

288. Magellan's Plan for the Unanticipated Discovery of Cultural Resources and/or Human Remains prescribes action to be taken in the event that a previously unrecorded archaeological site is discovered during construction. If archaeological materials are identified during ground disturbing activities, Magellan will work with applicable representatives and authorities to establish a mitigation strategy for pipeline construction and operation.[306]

289. Because of the APR's extension into an archaeological site, the consideration of archaeological resources disfavors the APR relative to the other three route alternatives.

5. Historical Resources

290. Historical resources include objects, buildings, structures, trails, roads, and any other objects dating from the past 300 years. They can be found wherever conditions are suitable (for instance, houses and homesteads on higher elevation sites and sites suitable for agriculture) or in areas where structures were necessary (bridges at a river or stream). These properties tend to be in areas that have a built environment and/or are adjacent to road, railroad, and water transportation routes. The time periods represented

[302] Ex. DOC-20 at 92–93 (CEA Vol. I). The Survey Implementation Model mentioned here was developed by DOT. Ex. DOC-20 at 79 (CEA Vol. I).
[303] Ex. DOC-20 at 93 (CEA Vol. I).
[304] Exs. DOC-20 at 93 (CEA Vol. I), MAG-10 at 6 (Trocki Direct).
[305] Ex. DOC-20 at 93–94 (CEA Vol. I).
[306] Ex. MAG-1 at 70 (Route Permit Application).

by these properties run from the early Euro-American settlement period through the modern industrial development period.[307]

291. No previously recorded buildings or structures are reported within the Project area for the APR.[308]

292. RA-01 crosses over a segment of Trunk Highway/U.S. Highway 75 (formerly MNTH 6) (XX-ROD020) north of Pipestone and a segment of MNTH 30 (XX-ROD-027) west of the City. Both segments are currently unevaluated in terms of their potential listing on the National Register. The pipeline will be placed in an HDD bore at road crossings. Bridge No. 1618 (PP-SWE-004) is also within the Project area of this route alternative. It has not been evaluated for its historic significance or eligibility for listing on the National Register. Construction will not directly affect the roads segments or Bridge No. 1618, as the pipeline will be placed outside the public ROW along these routes or in an HDD at road crossings. However, historic significance for these resources will need to be evaluated, and indirect impacts will need to be assessed prior to construction.[309]

293. No buildings or structures are reported within the Project area for RA-02.[310]

294. RA-03 crosses over a segment of Trunk Highway/U.S. Highway 75 (formerly MNTH 6) (XX-ROD020) southeast of the City, a segment of Trunk Highway 30 (XX-ROD-027) east of the City, and a segment of MNTH 23 (XX-ROD-152) east of the City. It will be placed adjacent to and parallel with MNTH 23 along County Road 52 south of the City (XX-ROD-152). All four segments are currently unevaluated in terms of their potential listing on the National Register. All three crossings will be placed in an HDD bore. Construction will not directly affect these road segments, as the pipeline will be placed outside the public ROW along these routes or in an HDD at road crossings. Historic significance for these resources will need to be evaluated, and indirect impacts will need to be assessed prior to construction.[311]

295. Magellan's Plan for the Unanticipated Discovery of Cultural Resources and/or Human Remains prescribes action to be taken if a previously unrecorded historic site is discovered during construction. If archaeological or cultural materials are identified during ground disturbing activities, Magellan will work with applicable representatives and authorities to establish a mitigation strategy for pipeline construction and operation.[312]

296. Consideration of the impact on historical resources does not favor or disfavor any of the route alternatives with respect to each other.

[307] Ex. DOC-20 at 95 (CEA Vol. I).
[308] Ex. DOC-20 at 95 (CEA Vol. I).
[309] Ex. DOC-20 at 95–96 (CEA Vol. I).
[310] Ex. DOC-20 at 95–96 (CEA Vol. I).
[311] Ex. DOC-20 at 96 (CEA Vol. I).
[312] Ex. MAG-1 at 70 (Route Permit Application).

6. Cemeteries and Burials

297. The APR will pass between the St. Leo and New Woodlawn cemeteries through an area identified as an Unrecorded Historic Cemetery on the MnOSA on-line database. A 2022 archaeological reconnaissance did not identify any potential unmarked burials.[313]

298. RA-01 will not be placed within or near any documented cemeteries or isolated burials.[314]

299. RA-02 will be immediately south and west of the St. Leo Cemetery. The area around the St. Leo Cemetery was included as part of a 2023 remote sensing survey conducted for the project to identify potential and suspected catlinite deposits and unmarked burials. Acute focal anomalies were found in the magnetic susceptibility data in this area. These anomalies do not appear to be consistent with graves. Additional work may be necessary to evaluate anomaly locations within the project construction workspace if this route is selected by the Commission.[315]

300. RA-03 will pass through a large area identified as "O. Smith Burial."[316]

301. Brave Heart expressed concerns about the impact of the Project on unmarked graves.[317]

302. Initial geophysical and archaeological reviews suggest that associated graves and burials do not occur within the corridor for the APR or RA-02.[318]

303. The City opposes the APR and RA-02 due to their close proximity to the two cemeteries and concerns about the impact a leak would have on the cemeteries. Further, the City is considering expanding its cemeteries.[319]

304. Magellan's spill modeling suggests that a leak in the pipeline would not impact either the existing or any planned expansions to the cemeteries.[320]

305. Magellan's Plan for the Unanticipated Discovery of Cultural Resources and/or Human Remains prescribes action to be taken in the event that previously unrecorded human remains are discovered during construction. If suspected human skeletal remains are identified during ground-disturbing activities, Magellan will work with

[313] Ex. DOC-20 at 97 (CEA Vol. I).
[314] Ex. DOC-20 at 97 (CEA Vol. I).
[315] Ex. DOC-20 at 97 (CEA Vol. I).
[316] Ex. DOC-20 at 98 (CEA Vol. I).
[317] Brave Heart Brief at 4–5.
[318] Ex. DOC-20 at 156 (CEA Vol. I).
[319] Ex. DOC-147 (Cite of Pipestone Comments).
[320] Public Comments of Magellan at 3 (May 8, 2024) (eDocket No. 20245-206514-01).

applicable representatives and authorities to establish a mitigation strategy for pipeline construction and operation.[321]

306. MnSHPO recommended that Magellan coordinate with the Minnesota State Archaeologist and the Minnesota Indian Affairs Council for monitoring near the St. Leo Cemetery.[322]

307. Due to their proximity to the cemeteries, consideration of burials and cemeteries disfavors the APR and RA-02 with respect to the other two route alternatives.

7. Tribal Resources

308. Tribal resources are the natural, cultural, and financial assets belonging to or benefiting Native American tribes and Alaska Native entities. They can include land, water, wildlife, minerals, timber, fish, plants, traditional foods, sacred sites, historical artifacts, grants, loans, scholarships, and more. Tribal resources are often managed by the tribal governments or organizations, with the assistance or oversight of the federal government.[323]

309. Magellan invited tribes with an interest in the project to participate in the 2023 cultural resources survey and to monitor the removal of geotechnical cores where HDD is planned. Additionally, Magellan sponsored a noninvasive geophysical survey at four project locations on parcels where survey permission was granted. The geophysical survey had two purposes: 1) to detect the presence or absence along sections of RA-02 in areas with suspected (but unconfirmed) catlinite stratum or strata, and 2) to assess the area south and west of St. Leo Cemetery for preservation of unmarked graves or burials that may have been placed outside the cemetery boundary.[324]

310. No tribal resources were identified along the APR other than resources that were analyzed elsewhere in the CEA (such as the Monument and the ethnographic landscape).[325]

311. No tribal resources are known within RA-01, RA-02, or RA-03.[326]

312. Concurrent with the archaeological survey, a tribal survey was conducted to identify significant cultural resources. This survey resulted in the identification of one resource outside of the ROW. The tribal cultural specialist did not divulge confidential information about this resource, but Magellan has committed to avoiding it during construction by installing fencing or another barrier to prevent vehicle and foot traffic from crossing the resource.[327]

---

[321] Ex. MAG-1 at 70 (Route Permit Application).
[322] Ex. MAG-10 at 9–10 (Trocki Direct).
[323] Ex. DOC-20 at 98 (CEA Vol. I).
[324] Ex. DOC-20 at 98 (CEA Vol. I).
[325] Ex. DOC-20 at 98–99 (CEA Vol. I).
[326] Ex. DOC-20 at 99 (CEA Vol. I).
[327] Ex. MAG-10 at 6–7 (Trocki Direct).

313. Consideration of tribal resources does not favor or disfavor any of the four route alternatives with respect to each other, other than with respect to factors already considered elsewhere in this Report.

314. Consideration of overall impacts on lands of historical, archaeological, and cultural significance favors RA-01 and RA-03 over the APR and RA-02 because of the APR and RA-02's proximity to the Monument, the catlinite resources, and cemeteries, as well as the APR's proximity to an archaeological site.

D. Land-Based Economies

315. Minnesota law requires consideration of the impact of the Project on economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations.[328]

316. The CEA evaluated the route alternatives with respect to their impact on agricultural, commercial/industrial, forestry, recreational, and mining industries.[329]

317. Most of the land that will be temporarily disturbed by construction will be agricultural land, which will not be able to be cultivated during construction. Negotiated easements with affected landowners along the approved route will mitigate temporary impacts on agricultural production by providing payment for the inability to plant crops or for crop damage. Following construction and restoration, agricultural activities will be allowed to resume along the pipeline's permanent ROW, so impacts to agricultural land use will be temporary and minimal. However, the Project will preclude construction of structures within the permanent ROW, which may or may not impact future agricultural use.[330]

318. Soil compaction and rutting, bringing rocks into the upper soil horizon, spreading of weeds, trenching across a field drainageway, and inadvertently breaking drain tile are all possible impacts to agricultural land. Magellan's BMPs discuss mitigation measures, and standard conditions in a Commission route permit require permittees to minimize impacts to agricultural lands.[331]

319. The APR will have the least impact on farmlands, as it is the shortest route alternative. RA-03 will have the greatest impact, as it is the longest and involves primarily row-crop lands adjacent to county roads.[332] Long-term impacts are not anticipated.[333]

320. Land zoned for commercial and industrial uses is mainly on the edges and outskirts of the City and along MNTH 23 (associated with the Cargill Pipestone Elevator) over one mile from any of the proposed alternative routes. Industrial land uses near the proposed alternatives include the Pipestone Water Treatment Plant about 0.3 miles east

[328] Minn. R. 7852.1900, subp. 3(D).
[329] Ex. DOC-20 at 58–66 (CEA Vol. I).
[330] Ex. DOC-20 at 59 (CEA Vol. I).
[331] Ex. DOC-20 at 59 (CEA Vol. I).
[332] Ex. DOC-20 at 58–59 (CEA Vol. I).
[333] Ex. DOC-20 at 157 (CEA Vol. I).

of the APR's eastern end and the Cargill Pipestone Elevator about 1.4 miles north of RA-03. The municipal airport and adjacent industrial area, consisting of light manufacturing facilities, is in the southeast corner of town, about two miles west of RA-03. An auto salvage yard is located approximately 1,200 feet west of RA-01.[334]

321. Impacts to commercial and industrial areas will be negligible and temporary. Direct impacts from construction and operation to existing commercial and industrial land-based economies will be avoided where possible by avoiding existing or proposed buildings or infrastructure. Commercial and industrial impacts may occur if an alternative route cannot be engineered to avoid or meet setback from structures, especially on RA-03. The Project will preclude construction of structures within the permanent ROW, which may or may not impact future commercial or industrial uses. Temporary impacts related to construction noise, traffic, or short-term access changes may occur.[335] Commercial and industrial impacts across all four route alternatives will be short term. Long-term impacts are not anticipated.[336]

322. Forestry is not a major economic activity in Pipestone County. No Christmas tree farms or sawmills are within the county. None of the four route alternatives will impact harvestable stands of timber.[337] Impacts across all four route alternatives will be short term. Long-term impacts are not anticipated.[338]

323. Recreational activities in Pipestone County include hunting, fishing, boating, hiking, biking, golfing, sightseeing, and snowmobiling. Public lands within one mile include two federally managed lands (the Monument and the Northern Tallgrass Prairie NWR – Pipestone Creek Unit), the King of Trails Scenic Byway (U.S. HWY 75), three Pipestone city parks (Hiawatha, Leon H. Moore, and Westview parks), a roadside park and memorial (Pipestone County Veterans Park), the Casey Jones State Recreational Trail, and several snowmobile trails. No state parks or wildlife management areas are within one mile of the route alternatives, including Split Creek State Park near Ihlen, Minnesota. Pipestone Creek, branches of Pipestone Creek, and Split Rock Creek will be crossed by the Project, but they are not state-designated water trails.[339]

324. Impacts to recreational areas are anticipated to be minimal. Short-term impacts may occur during construction and can be mitigated by general permit conditions (restricting construction during ceremonial use of the Monument), construction techniques, and BMPs. No long-term impacts are anticipated.[340]

325. No mines (including open-pit quarries) occur within one mile of the proposed route alternatives. Impacts to mining operations are expected to be negligible and short-term. No direct impacts to mining are anticipated. Indirect impacts may occur in the future

[334] EX. DOC-20 at 60 (CEA Vol. I).
[335] Ex. DOC-20 at 60 (CEA Vol. I).
[336] Ex. DOC-20 at 157 (CEA Vol. I).
[337] Ex. DOC-20 at 61 (CEA Vol. I).
[338] Ex. DOC-20 at 157 (CEA Vol. I).
[339] Ex. DOC-20 at 61 (CEA Vol. I).
[340] Ex. Ex. DOC-20 at 63, 157 (CEA Vol. I).

as the presence of a buried pipeline may preclude development of new mining operations.[341]

326. While selecting a shorter route alternative would have a slightly smaller impact on agricultural land, consideration of land-based economies does not significantly favor or disfavor any of the four route alternatives with respect to each other.

E. Pipeline Cost and Accessibility

327. Minnesota law requires consideration of the impact of the Project on pipeline cost and accessibility.[342]

328. Magellan engineers developed cost opinions for engineering, construction and materials, mitigation, construction and environmental inspection, ancillary facilities, markers, ROW accessibility/acquisition, and reclamation for all four route alternatives.[343]

329. The total estimated cost of the APR is $6,000,000.[344]

330. The total estimated cost of RA-01 is $25,000,000.[345]

331. The total estimated cost of RA-02 is $8,000,000.[346]

332. The total estimated cost of RA-03 is $34,000,000.[347]

333. With respect to the APR, if Magellan desires to utilize temporary access roads within lands owned by the USFWS as part of their preferred reroute, Magellan will be required to obtain a permit or right-of-way issued by the USFWS.[348]

334. The CEA did not evaluate the need for temporary or permanent access roads for RA-01, RA-02, or RA-03.[349]

335. Consideration of pipeline cost and accessibility favors the APR and RA-02 over RA-01 and RA-03.

F. Use of Existing Rights-of-Way and Right of Way Sharing or Paralleling

336. Minnesota law requires consideration of the impact of the Project on use of existing rights-of-way and right-of-way sharing or paralleling.[350]

---

[341] Ex. DOC-20 at 65–66, 157 (CEA Vol. I).
[342] Minn. R. 7852.1900, subp. 3(E).
[343] Ex. DOC-20 at 157 (CEA Vol. I).
[344] Ex. DOC-20 at 158 (CEA Vol. I).
[345] Ex. DOC-20 at 158 (CEA Vol. I).
[346] Ex. DOC-20 at 158 (CEA Vol. I).
[347] Ex. DOC-20 at 158 (CEA Vol. I).
[348] Exs. DOC-10 (USFWS Comments) (Sep. 5, 2024), DOC-135 (USFWS Comments) (Apr. 9, 2024).
[349] Ex. DOC-20 at 16 (CEA Vol. I).
[350] Minn. R. 7852.1900, subp. 3(F).

337. The Project may parallel existing ROWs but will not share other ROWs. The pipeline will be in a new permanent ROW, which may be located adjacent to existing ROW (where applicable).[351]

338. Existing public ROW and easements in the Project area include roads, railroad, transmission lines, and pipelines. Having new alternative route right-of-way parallel existing rights-of-way and easements will consolidate development, thereby reducing human and environmental conflicts.[352]

339. As shown in the following table, the APR does not parallel any existing right-of-way and is following a greenfield path, RA-01 and RA-03 are entirely adjacent to existing right-of-way, and RA-02 is 97 percent adjacent to existing right-of-way with the other 3 percent being highway crossing and near the intersection of Highway 75 and 131st Street, where the route will connect into the existing pipeline:[353]

Table 6-5 Paralleling Existing Rights of Way By Route

Route Alternative	Existing Rights of Way	Approximate Route Length (miles)	Approximate Percentage Paralleling Existing ROW
APR	None	1.34	0%
RA-1	County Road 7/151st Street and County Road 53	13.1	100%
RA-2	131st Street and Transmission Line	3.4	97%
RA-3	County Road 68/110th Avenue and County Road 52/61st Street	18.68	100%

340. Consideration of existing rights of way disfavors the APR relative to the other three route alternatives.

G. Natural Resources and Features

341. Minnesota law requires consideration of the impact of the Project on natural resources and features.[354]

342. The CEA considered the impact of the project on both groundwater and surface water resources.[355]

[351] Ex. DOC-20 at 14 (CEA Vol. I).
[352] Ex. DOC-20 at 41 (CEA Vol. I).
[353] Ex. DOC-20 at 42 (CEA Vol. I).
[354] Minn. R. 7852.1900, subp. 3(G).
[355] DOC-20 at 108–13 (CEA Vol. I).

1. Groundwater Resources

343. Groundwater in the area surrounding the proposed route alternatives consists of the Sioux Quartzite Aquifer. This aquifer is present throughout far southwestern Minnesota and is the main water source for the area, furnishing water to municipal, domestic, and stock wells. Wells in the area are completed in fractured and weathered zones near land surface or in buried zones of porous or poorly cemented sandstone that are interbedded within the quartzite.[356]

344. The majority of the Project is classified as having moderate geologic sensitivity to pollution in all areas except those directly adjacent to a major watercourse, such as the North Branch of Pipestone Creek, or where Sioux Quartzite is mapped at or near the land surface, which are classified as having a very high sensitivity to pollution. A very high sensitivity to pollution rating means that contaminants at the surface can take anywhere from hours to months to reach the underlying aquifer, whereas a moderate sensitivity means contaminants can take anywhere from years to decades to reach the underlying aquifer.[357]

345. An examination of the Pipestone County ditch system shows that a leak on RA-03 could end up draining into Pipestone Creek.[358]

346. Direct impacts to groundwater resources are anticipated to be short-term and minimal provided that preconstruction surveys are completed. Direct impacts to groundwater resources could occur if pipeline installation through shallow bedrock alters the flow of groundwater by creating a new, lower resistance pathway for groundwater movement.[359]

347. Additional direct impacts to groundwater quality could occur from a spill or leak of fuels or hazardous materials associated with construction or maintenance equipment if not cleaned up immediately. The impact of a spill or leak will be most severe in areas classified as having very high sensitivity to groundwater pollution. All of the proposed route alternatives travel through areas that have very high sensitivity to groundwater pollution. To prevent spills and to minimize impacts to groundwater quality in the event of a spill, Magellan indicated that it will develop and implement a spill response plan to immediately clean up spills. Magellan further indicated that specific requirements for construction crews to report and to respond to fuel spills and other accidental resources will be specified in construction contract documents.[360]

[356] Ex. DOC-20 at 109 (CEA Vol. I).
[357] Ex. DOC-20 at 109 (CEA Vol. I).
[358] Comment by Steve Ewing (May 1, 2024) (eDocket No. 20245-206218-01).
[359] Ex. DOC-20 at 111 (CEA Vol. I.).
[360] Ex. DOC-20 at 111 (CEA Vol. I).

348. A portion of the APR is in a high vulnerability area in the Drinking Water Supply Management Area (DWSMA). Portions of RA-01 and RA-03 are located in a lower vulnerability area in the DWSMA. RA-02 is outside the DWSMA.[361]

349. Project impacts to groundwater resources are anticipated to be minimal and short-term.[362]

350. Consideration of the impact on groundwater disfavors RA-03 with respect to the other route alternatives because of the possibility that a leak could contaminate Pipestone Creek.

2. Surface Water Resources

351. Surface water resources within the area of the proposed route alternatives consist of portions of ten minor watersheds, with six waterways as mapped by the Public Waters Inventory by the DNR. Of these waterways, Pipestone Creek and branches of Pipestone Creek are crossed by a majority of the proposed route alternatives. The total number of waterway crossings by each proposed route alternative are shown in the following table:[363]

Table 6-17. Total Waterway Crossing by Alternative

Route Alternative	Number of Waterway Crossing
APR	3
RA-1	5
RA-2	1
RA-3	1

352. The APR, RA-01, and RA-02 are located completely within the Lower Big Sioux River Major Watershed. RA-03 is located mostly within the Lower Big Sioux River Major Watershed and partially within the Rock River Major Watershed.[364]

353. Pipestone Creek crosses the APR twice and RA-01 and RA-02 once each. Unnamed Stream I-069-019 crosses the APR once. North Branch Pipestone Creek crosses RA-01 twice. South Branch Pipestone Creek crosses RA-01 once. Unnamed Stream 1-069-909-008 crosses RA-01 once. Split Rock Creek crosses RA-03 once.[365]

354. Direct impacts to surface water resources are anticipated to be short-term and minimal with use of general permit conditions, proposed construction practices, and

[361] Ex. DOC-171 (Department of Health Comments and Attached Maps).
[362] Ex. DOC-20 at 154 (CEA Vol. I).
[363] Ex. DOC-20 at 111, 113 (CEA Vol. I).
[364] Ex. DOC-20 at 112 (CEA Vol. I).
[365] Ex. DOC-20 at 112 (CEA Vol. I).

BMPs. Surface waters will be crossed using HDD, resulting in similar impacts for each alternative. Selecting stream crossings in locations already impacted by adjacent infrastructure, such as existing roads or pipeline crossings, minimizes the number of locations where the stream corridor is interrupted by human disturbance. The APR and RA-01 will cross Pipestone Creek in an area not previously impacted by adjacent infrastructure.[366]

355. Use of HDD methods for waterbody crossings could result in an inadvertent release of drilling fluids that could temporarily affect water quality within the waterbody. An inadvertent release occurs when the drilling fluid (composed mostly of water and bentonite clay) finds pathways through natural fissures in the soil and rock along the drill path. Impacts on waterbodies from an inadvertent release will be primarily limited to increased turbidity. To minimize the potential impact from an inadvertent release, Magellan will develop an inadvertent release response plan which will detail the actions necessary for monitoring, containment, and clean up.[367]

356. Consideration of surface water resources does not significantly favor or disfavor any of the four route alternatives with respect to each other.

357. Consideration of natural resources and features disfavors RA-03 with respect to the other route alternatives.

H. Mitigation by Regulatory Control

358. Minnesota law requires consideration of the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in Minn. R. 7852.3400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices.[368]

359. Impacts to cultural resources will be mitigated by the adoption of several special permit conditions recommended in Section XXII of this Report.

360. Human and environmental effects will be mitigated by measures, discussed in Section XXII of this Report, that Magellan has agreed to incorporate.

361. Consideration of mitigation by regulatory control does not favor or disfavor any of the route alternatives with respect to each other.

I. Cumulative Potential Effects

362. Minnesota law requires consideration of cumulative potential effects of related or anticipated future pipeline construction.[369]

[366] Ex. DOC-20 at 113, 154 (CEA Vol. I).
[367] Ex. DOC-20 at 113 (CEA Vol. I).
[368] Minn. R. 7852.1900, subp. 3(H).
[369] Minn. R. 7852.1900, subp. 3(I).

363. Cumulative potential effects are environmental effects that result from the proposed project in conjunction with other proposed projects in the environmentally relevant area. The effects from any one project may be small; however, the incremental effects from all projects together may be significant.[370]

364. The City and Pipestone County were contacted to inquire about projects in the environmentally relevant area that are reasonably likely to occur and that may interact with environmental effect from the Project. Future projects in the environmentally relevant area that contribute to cumulative potential effects include a residential planned unit development; a new gas station; a solar garden; and a DOT project on HWY 23 that includes resurfacing the highway, culvert lining along the corridor, and a bridge replacement in the City.[371]

365. Cumulative potential effects vary among the four route alternatives, given the differences in route lengths. BMPs and other mitigation measures will reduce cumulative potential effects for all four route alternatives.[372] The cumulative potential effects are mostly short-term and minimal for all four route alternatives.[373]

366. Consideration of cumulative potential effects does not significantly favor or disfavor any of the four route alternatives with respect to each other.

J. Policies, Rules, and Regulations

367. Minnesota law requires consideration of the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minn. Stat. § 299J.05 relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.[374]

368. Applicable policies, rules, and regulations are similar among the four route alternatives. All four route alternatives are subject to, and must comply with, the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws.[375]

369. The USFWS raised a concern about the need for a federal environmental review under the National Environmental Policy Act (NEPA).[376]

370. Determining whether there is a federal nexus requiring a review under NEPA is a federal decision, over which the Commission has no authority.[377]

---

[370] Ex. DOC-20 at 125 (CEA Vol. I).
[371] Ex. DOC-20 at 126 (CEA Vol. I).
[372] Ex. DOC-20 at 158 (CEA Vol. I).
[373] Ex. DOC-20 at 126–30 (CEA Vol. I).
[374] Minn. R. 7852.1900, subp. 3(J).
[375] Ex. DOC-20 at 158 (CEA Vol. I).
[376] Ex. DOC-135 (USFWS Comments) (Apr. 9, 2024).
[377] Response Comments on the CEA at 77 (May 24, 2024) (eDocket No. 20245-207101-01).

371. The draft route permit requires Magellan to obtain all necessary permits and comply with the conditions of those permits. Accordingly, if one of those permits establishes a federal nexus and a review under NEPA is required, Magellan's permit will require it to undergo such a review.[378]

K. Summary of Factors Analysis

372. Effects on land-based economies are expected to be minimal and do not significantly favor any of the route alternatives. Mitigation by regulatory control, policies, rules, and regulations, and cumulative potential effects also do not favor or disfavor any of the proposed route alternatives.

373. Effects on human settlement favor the APR and RA-02 over RA-01 and RA-03 because RA-01 and RA-03 are near more sensitive noise receptors, and RA-03 further has a larger potential for displacement.

374. Effects on the natural environment favor RA-01 and RA-03 over the APR and RA-02 because of the number of state special status species occurring with the vicinity of the APR and RA-02.

375. Effects on lands of historical, archaeological, and cultural significance favor RA-01 and RA-03 over the APR and RA-02because of the APR and RA-02's proximity to cemeteries, the Monument, catlinite resources, and the APR's proximity to an archaeological site.

376. Effects on natural resources disfavor RA-03 because of the possibility of a leak contaminating Pipestone Creek.

377. As the APR and RA-02 are significantly less expensive to build, consideration of pipeline cost and accessibility favors either of those two route alternatives with respect to RA-01 and RA-03.

378. As the APR does not parallel any existing rights-of way, consideration of exiting rights-of-way disfavors the APR relative to the other three route alternatives.

379. While the APR and RA-02 are similar in many respects, the APR's lack of right-of-way paralleling and the presence of an archaeological site along the route make RA-02 a better route alternative than the APR, even when considering the slightly longer and its corresponding impact on cost and other human and natural effects.

380. RA-03's greater potential for displacement, greater cost, and potential impact on Pipestone Creek, while not providing meaningfully more distance from the Monument and the catlinite resources, makes RA-01 a superior route alternative when compared to RA-03.

[378] Ex. DOC-30 at 11 (CEA Vol. II-Appendix F).

381. Many of the drawbacks to RA-02 have been mitigated. Magellan has presented credible evidence that the Monument and the catlinite resources will not be at risk from a potential spill,[379] that this route will still accommodate the City's potential cemetery expansion,[380] and that it has a protocol in place to address any unanticipated discoveries of cultural resources or human remains.[381]

382. When considering all the criteria in Minn. R. 7852.1900, subp. 3, RA-02 is the best route alternative for the Project.

XII. Route Permit Conditions and Proposed Mitigation Measures

383. Magellan agreed to incorporate the following mitigation measures:

A. Magellan will work with landowners for the use of private access roads, restoring these roads according to landowner agreements once construction is complete;[382]

B. Magellan will install pipeline markers at various locations (e.g., road crossings) within the Project ROW in accordance with applicable federal and state regulations;[383]

C. Magellan will be responsible for securing all necessary permits needed for the pipe yard, such as a National Pollutant Discharge Elimination System/State Disposal System Construction Stormwater General Permit from the Minnesota Pollution Control Agency;[384]

D. Magellan intends to use its Unanticipated Discoveries Plan to set forth guidelines in the event archaeological resources or human skeletal remains are discovered during construction activities and the HDD Inadvertent Return Mitigation Plan to minimize the impact of a potential inadvertent return of drilling fluid during HDD operations;[385]

E. After restoration, Magellan will contact affected landowners and/or tenants to discuss any outstanding issues related to project completion on their respective property. Magellan will continue to work with each affected party to ensure cleanup and restoration conforms to the easement agreement;[386]

[379] *See, e.g.*, MAG-11 at 9 (Cox Rebuttal).
[380] Ex. MAG-11 at 10–11 (Cox Rebuttal).
[381] Ex. MAG-1 at App. D (Route Permit Application).
[382] Ex. MAG-11 at 2 (Cox Rebuttal).
[383] Ex. MAG-11 at 2 (Cox Rebuttal).
[384] Ex. MAG-11 at 2 (Cox Rebuttal).
[385] Ex. MAG-11 at 2 (Cox Rebuttal).
[386] Ex. MAG-11 at 2–3 (Cox Rebuttal).

F. Magellan will construct the pipeline under roadways using the bore method to avoid disruptions to vehicular traffic and physical impacts on roadbeds. Magellan will utilize both the HDD and bore crossing methods at public roads. The bore crossing method also avoids impacts to the roadway but does so using a technique more appropriate for the length and depth of most road crossings;[387]

G. Magellan will coordinate with Monument staff regarding potential traffic disruption during periods of increased visitor use, including during ceremonial use of the Monument during the annual Sundance and other occasions;[388]

H. Prior to starting construction, Magellan will complete a Level 2 wetland delineation to confirm wetland locations and finalize the project design. If impacts are unavoidable, then Magellan will work with regulatory agencies to obtain the necessary wetland permits. Magellan will also apply to DNR for a License to Cross public waters for Public Waters Inventory crossings (as applicable);[389]

I. Areas of "Outstanding" to "Moderate" biodiversity will be avoided via HDD. There will be no surface disturbance between entry and exit point of the HDD. Trenching will not occur during construction where the route crosses native plant communities to avoid impacts.[390]

J. Magellan committed to continuing to engage with interested tribes who have been traditionally associated with the Monument as the Project moves forward.[391]

K. Magellan plans to have tribal monitors onsite during construction and will implement its Unanticipated Discoveries Plan as necessary during construction.[392]

384. Magellan also agreed to implement the following special permit conditions to mitigate potential impacts to cultural resources:

A. Construction activities will be suspended during ceremonial use of the Monument;[393]

B. Magellan should sponsor a cultural and archaeological resources inventory of the designated route (including extra workspaces, bore

[387] Ex. MAG-11 at 3 (Cox Rebuttal).
[388] Ex. MAG-11 at 3 (Cox Rebuttal).
[389] Ex. MAG-11 at 3 (Cox Rebuttal).
[390] Ex. MAG-11 at 3 (Cox Rebuttal).
[391] Ex. MAG-9 at 4 (Pebsworth Direct).
[392] Ex. MAG-9 at 5 (Pebsworth Direct).
[393] Ex. MAG-11 at 3 (Cox Rebuttal).

holes, access roads, and pipe yard) to standards established by the MnSHPO, MnOSA, and Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation;[394]

C. Tribal cultural resource specialists will be invited to assist with the cultural resources inventory and to monitor all phases of construction of the selected alternative;[395]

D. Magellan will consult with tribal cultural resource specialists and tribal historic preservation offices, MnOSA, Pipestone County Sheriff, and MnSHPO for the identification, recovery, and culturally appropriate re-interment/repatriation of potential burials of students from the Pipestone Indian School who may be interred outside the defined boundaries of the St. Leo and New Woodlawn cemeteries.[396]

385. The DNR recommended the following special permit conditions to mitigate potential impacts to the environment:

A. Magellan shall avoid the use of chemical dust suppressants that contain chloride as a dust abatement measure during construction of the pipeline;[397]

B. Magellan shall use only "bio-netting" or "natural netting" types and mulch products without synthetic (plastic) fiber additives as erosion control blankets in constructing the pipeline.[398]

386. DNR's proposed special permit conditions are reasonable and will provide further mitigation against potential environmental effects. The Administrative Law Judge recommends the permit include these special permit conditions.

387. The Department's CEA Reply Comments listed several mitigation measures to be documented in the route permit as special conditions to minimize impacts to special status species:[399]

A. Directionally bore under Minnesota Biological Survey (MBS) sites;

B. Operate as much as possible within already disturbed areas;

C. Where possible, confine construction activities to the opposite side of the road from native plant communities (NPCs) and MBS sites;

[394] Ex. MAG-11 at 4 (Cox Rebuttal).
[395] Ex. MAG-11 at 4 (Cox Rebuttal).
[396] Ex. MAG-11 at 4 (Cox Rebuttal).
[397] Ex. DOC-52 (DNR Comments).
[398] Ex. DOC-52 (DNR Comments).
[399] Response Comments on the CEA at A-5 – A-6(May 24, 2024) (eDocket No. 20245-207101-01).

D. Retain a buffer between proposed activities and MBS sites;

E. Minimize vehicular disturbance in the areas surrounding MBS sites;

F. Do not park equipment or stockpile supplies in MBS sites;

G. Do not place spoil within MBS Sites or other sensitive areas;

H. Inspect and clean all equipment prior to bringing it to the site to prevent the introduction and spread of invasive species;

I. If possible, conduct the work under frozen ground conditions;

J. Use effective erosion prevention and sediment control measures;

K. Revegetate disturbed soil with native species suitable to the local habitat as soon after construction as possible;

L. Use only weed-free mulches, topsoils, and seed mixes. Of particular concern is birdsfoot trefoil (*Lotus corniculatus*) and crown vetch (*Coronilla varia*), two invasive species that are sold commercially and are problematic in prairies and disturbed open areas, such as roadsides; and

M. Initial disturbance of uncultivated and unmowed areas will not occur between May 15th and July 15th.

388. The special permit conditions described in the CEA Response are reasonable and will provide further mitigation against potential effects to special status species. The Administrative Law Judge recommends the permit include these mitigation measures.

389. Any Conclusion of Law more properly deemed a Finding of Fact is incorporated herein.

390. Any portion of the accompanying Memorandum more properly considered to be a Finding of Fact is incorporated herein.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to consider the Application under Minn. Stat. § 216G.02.

2. The Commission, the Department, and Magellan have complied with all applicable procedural requirements.

3. The Department has conducted an appropriate environmental analysis of the proposed Project. The CEA addresses the issues and alternatives identified by the Commission and includes the detail that is needed to evaluate route alternatives according to the criteria in Minn. R. 7852.1900.

4. The evidence in the record demonstrates that the APR, RA-01, RA-02, and RA-03 all meet the requirements of Minn. Stat. §§ 216G.01-.12 (2022) and are eligible for consideration and evaluation under the criteria set forth in Minn. R. 7852.1900.

5. There is no feasible and prudent alternative to the construction of the Project, and the Project is consistent with and reasonably required for the promotion of public health and welfare in light of the state's concern for the protection of its air, water, land, and other natural resources as expressed in the Minnesota Environmental Rights Act.[400]

6. When considering the factors in Minn. R. 7852.1900, the evidence in the record demonstrates that RA-02 is the best route for the Project.

7. Magellan's request for a route width of up to 200 feet is reasonable and appropriate for the project.

8. The route permit should be issued in the form set forth in Ex. DOC-20 (Appendix F to the CEA), except that the route permit should incorporate all of the mitigation measures and special permit conditions described above in Section XXII.

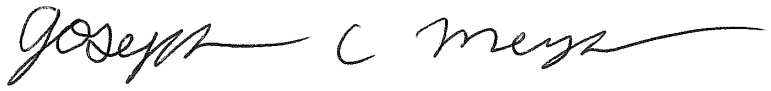
9. Any Finding of Fact more properly considered to be a Conclusion of Law is incorporated herein.

10. Any portion of the accompanying Memorandum more properly considered to be a Conclusion of Law is incorporated herein.

RECOMMENDATIONS

Based upon these Conclusions of Law, the Administrative Law Judge recommends that the Commission should **GRANT** a route permit for RA-02 and include appropriate conditions in the route permit as described herein.

Dated: July 17, 2024



JOSEPH C. MEYER
Administrative Law Judge

[400] Minn. Stat. § 116B.04 (2022).

NOTICE

Notice is hereby given that exceptions to this Report, if any, by any party adversely affected must be filed under the time frames established in the Commission's rules of practice and procedure, Minn. R. 7829.1275, .2700 (2023), unless otherwise directed by the Commission. Exceptions should be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted pursuant to Minn. R. 7829.2700, subp. 3. The Commission will make the final determination of the matter after the expiration of the period for filing exceptions, or after oral argument, if an oral argument is held.

The Commission may, at its own discretion, accept, modify, or reject the Administrative Law Judge's recommendations. The recommendations of the Administrative Law Judge have no legal effect unless expressly adopted by the Commission as its final order.

MEMORANDUM

This Report analyzes four route alternatives and explains how the relevant standards under Minnesota law, especially the factors listed in Minn R. 7852.1900, led to a recommendation that the Commission should issue a route permit for RA-02. Consideration of the relative merits of the four route alternatives under those factors necessarily incorporates a series of policy-related value judgments that are ultimately for the Commission to make. This Memorandum provides more detail, in a narrative format, of how the Administrative Law Judge applied those factors. This Memorandum does not attempt to recite how every factor and piece of evidence were analyzed. Rather, it focuses on explaining the differences in the routes that resulted in a recommendation for RA-02 over the other three alternatives.

The APR and RA-02 are relatively similar to each other while, RA-01 and RA-03 are relatively similar to each other, thereby creating two sets of comparable.

The APR and RA-02 were both significantly shorter routes than the other two alternatives but were closer to a series of sensitive resources and features, including the Monument, two cemeteries in the City, the catlinite resources, and a variety of special status species. Between these two route alternatives, RA-02 was a substantially superior alternative. The APR did not parallel any existing ROW, was in the vicinity of an archaeological site, and was closer to the Monument and the catlinite resources. These factors outweighed the cost benefit that the shorter APR enjoyed with respect to RA-02, especially in light of the fact that the party who would bear the cost difference (Magellan) ultimately recommended that the Commission approve RA-02 rather than the APR.

The other two route alternatives, RA-01 and RA-03, were both longer and more expensive routes, but were located farther away from the Monument and the catlinite resources. Between these two route alternatives, RA-03 was longer, more expensive, had more potential for a negative impact, and more potential for displacement than RA-01. Accordingly, RA-01 was a substantially superior alternative when compared to RA-03.

This left a decision between RA-01 and RA-02. The primary virtue of RA-01 was that it provided greater distance from the Monument and the catlinite resources. There was significant public comment, both written and oral, explaining the importance of the land and the physical resources within to tribal communities. There was a substantial discussion of the importance of the use of the catlinite to make sacred pipes that play an important role in many tribal traditions. The testimony and commentary on these points was passionate, sincere, and powerful. The Commission should strongly consider that perspective as it makes its decision.

RA-02's benefits largely derived from it being a shorter route. Brave Heart's poignant statement that "[c]onvenience and cost to a private company are of de minimis concern when human health, safety, culture, spirituality, and subsistence are at stake"[401] is an important perspective. Certainly, if RA-02's only advantages with respect to RA-01 were financial benefits for Magellan, the Administrative Law Judge would not have recommended RA-02. But, in addition to being more cost-effective for Magellan, RA-02's shorter length results in a series of human and environmental benefits. A shorter route means less potential for human displacement, disruption to agricultural industries, and impact on the environment. Further, Magellan has put forth credible evidence that, even in the event of a leak, RA-02's relative proximity to the Monument would not put the Monument at risk.[402]

When weighing the relative merits of RA-01 and RA-02, it is also important to note that some of RA-02's potential disadvantages can be mitigated. To the extent that there are cultural or human remains in proximity of RA-02, Magellan has committed to implement a protocol in the event of any unanticipated discoveries of human remains or cultural resources.[403] Further, while RA-02 has more potential impact to state special status species, a series of DNR-recommended special permit conditions can mitigate those effects. Conversely, as RA-01's disadvantages stem from its greater length, there is less opportunity to mitigate because it will still be the longer route.

Ultimately, the Administrative Law Judge made the recommendation that, based on the advantages RA-02 offers with respect to RA-01, as well as the greater opportunity for mitigating its disadvantages, the Commission should grant a route permit for RA-02. This recommendation was informed by weighing different competing policy interests inherent in the legal standards that govern this proceeding. If the Commission were to weigh those factors differently, it could, with fidelity to the appropriate legal standards and the evidence in the record, also conclude that RA-01 is an appropriate route.

J. C. M.

[401] Brave Heart Brief at 8.
[402] MAG-11 at 9 (Cox Rebuttal).
[403] Ex. MAG-1 at App. D (Route Permit Application).