

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Otter Tail Power Company for a Site Permit for the up
to 66MW Solway Solar Project in Beltrami County, Minnesota

MPUC Docket No. E017/GS-24-309

OAH Docket No. 23-2500-40576

**DIRECT TESTIMONY OF PRESTON D. RIEWER
ON BEHALF OF OTTER TAIL POWER COMPANY**

May 6, 2025

1 I. INTRODUCTION AND QUALIFICATIONS

2
3 Q. Please state your name, employer, and business address.

4 A. My name is Preston Riewer. I am a Manager of Engineering at Otter Tail Power
5 Company. My business address is 215 S. Cascade St., Fergus Falls, Minnesota
6 56537.
7

8 Q. Please briefly describe your educational background and professional
9 experience.

10 A. I graduated from North Dakota State University with a Bachelor of Science degree
11 in Mechanical Engineering. I also hold a Master's in Business Administration from
12 University of Texas, Permian Basin. I have worked in the electric industry,
13 specifically, for nearly five years – all with Otter Tail Power Company.
14

15 Q. For whom are you testifying?

16 A. I am testifying on behalf of the Applicant, Otter Tail Power Company (Otter Tail).
17

18 Q. What is your role with respect to the Solway Solar Project (Project)?

19 A. I am the Project Manager for the Project. I have been accountable for securing
20 land, permitting activities, and all engineering to date. Moving forward, I will be
21 accountable for subsequent engineering, procurement, construction, and
22 ultimately, commissioning of the Project.
23

24 II. PURPOSE OF TESTIMONY

25
26 Q. What is the purpose of your Direct Testimony?

27 A. The purpose of my testimony is to provide an update on on-going development
28 efforts for the Project. Specifically, I will provide an update on interconnection
29 efforts, project design changes, agency coordination, and provide comments on
30 the Environmental Assessment (EA) and the Draft Site Permit (DSP).
31

1 **Q. What schedules are attached to your Direct Testimony?**

2 A. The following schedules are attached to my Direct Testimony:

- 3 • **SCHEDULE A**: Statement of Qualifications
- 4 • **SCHEDULE B**: Project Area and Updated Project Footprint Map
- 5 • **SCHEDULE C**: U.S. Army Corps of Engineers Jurisdictional Wetland
- 6 Delineation Letter, dated October 30, 2024
- 7 • **SCHEDULE D**: Beltrami County No Loss Notice of Determination, dated
- 8 December 3, 2024
- 9 • **SCHEDULE E**: Phase I Cultural Resources Survey Report (Public and
- 10 Nonpublic)
- 11 • **SCHEDULE F**: SHPO Concurrence

12

13 **III. PROJECT OVERVIEW**

14

15 **Q. Please provide a summary of the Project, including the proposed location**

16 **and proposed site.**

17 A. The Project consists of a proposed up to 66 megawatt (MW) solar energy

18 conversion facility located at 7707 Centerline Road NW, Solway, Minnesota

19 56678, just north of the City of Solway in Beltrami County, Minnesota.

20

21 **Q. Why did Otter Tail choose the Project Area as presented in the Application**

22 **to build the Project?**

23 A. Otter Tail owns 100 percent of the land on which the Project would be constructed.

24 Otter Tail used an iterative process considering many factors, including an analysis

25 of environmental impacts, setbacks, unavailable or restricted land, construction

26 restrictions, and landowner preferences, to identify the proposed location. The

27 selected Project location is advantageous for solar development based upon

28 proximity to existing electric transmission infrastructure, sufficient solar resource,

29 sufficient land control, consistency with local land uses, minimal impact to natural

30 and cultural resources, and minimal impacts to prime farmland.

31

IV. PROJECT UPDATES

Q. Have there been any updates in how the Project will interconnect to the electric grid?

A. Otter Tail proposes to interconnect the Project using existing interconnection rights at the Solway Combustion Turbine Generating Station via the Midcontinent Independent System Operator (MISO) surplus interconnection process. Surplus interconnection service allows new sources of electric supply to connect to the grid at the site of an already existing supply resource using the existing interconnection service already allotted to that resource. Because it utilizes existing interconnection rights, MISO's surplus interconnection study process is typically shorter than the interconnection study process for new generation interconnection requests. Otter Tail submitted a surplus application to MISO on July 8, 2024, and we initially expected to receive the modeling results from the MISO Surplus application by April 30 but that is now pushed to June 2, 2025. MISO's modeling results are still pending, but it is our expectation that there will be no concerns demonstrated in this model, allowing our solar Project to come online as a surplus interconnected resource with no issue.

Q. What is the status of executing a generator interconnection agreement (GIA) for the Project?

A. The current schedule for the MISO Surplus Application is to have the Surplus GIA signed shortly after modeling results are complete.

Q. Has the anticipated schedule for the construction of the Project changed from what was contemplated in the Application?

A. No. Otter Tail continues to anticipate that construction of the Project would begin between October 2025 and September 2026.

Q. Have there been any other updates related to the Project since Otter Tail filed the Application?

1 A. Yes. Upon further evaluation, Otter Tail has removed the southwestern portion of
2 the solar array from the Project Footprint, as noted in the updated Project Area
3 and Project Footprint map provided in Schedule B. This results in a decrease in
4 the size of the Project Footprint to 224 acres. The overall nameplate capacity of
5 the Project remains up to 66 MWs.

6
7 **Q. Do the updates to the design change anything about the anticipated impacts**
8 **of the Project?**

9 A. Yes. The removal of the southwestern array will decrease the tree clearing area
10 from 115 acres to 79 acres, in response to the suggestion made by the Minnesota
11 Department of Natural Resources (MDNR) in their comments. The southwestern
12 portion of the array is the portion that had the potential to impact or cross the Great
13 Lake pipeline. Because this portion of the Project Footprint has been removed, no
14 impacts (or crossings) to the Great Lake gas pipeline are expected.

15
16 **V. COORDINATION WITH AGENCIES, SHPO, AND INTERESTED TRIBAL**
17 **NATIONS**
18

19 **Q. Has Otter Tail completed any additional studies or agency coordination**
20 **since filing its Application?**

21 A. Yes. Otter Tail completed a jurisdictional determination for two delineated wetland
22 areas located within the Project Area near the footprint of the proposed substation
23 expansion. The U.S. Army Corps of Engineers reviewed the two areas (wetlands
24 49 and 50 as identified in the Wetland Delineation Report, Application Appendix J)
25 and issued a non-jurisdictional determination on October 30, 2024. See Schedule
26 C. Otter Tail also consulted Beltrami County, the Local Government Unit
27 responsible under the Minnesota Wetland Conservation Act for review of the two
28 areas. Beltrami County issued a No Loss decision on December 3, 2024. See
29 Schedule D.

1 In May 2025, Otter Tail will be completing additional geotechnical studies on the
2 site to inform the design phase of the Project. Otter Tail has completed additional
3 coordination with SHPO, which is outlined below.
4

5 **Q. Do you have any updates regarding State Historic Preservation Office**
6 **(SHPO) coordination since the Application was filed?**

7 A. Yes. SHPO responded to the initial project introduction letter on September 27,
8 2024. In this letter SHPO assigned the project SHPO Project Number 2024-1959
9 and recommended completion of a Phase I archaeological survey. Otter Tail
10 completed and submitted the Phase I cultural resources survey report titled *Solway*
11 *Solar Project, Beltrami County, Minnesota* for SHPO's review on November 26,
12 2024. SHPO responded to this report in a January 8, 2025 letter requesting
13 additional information be included in an updated report. Otter Tail sent the updated
14 Phase I cultural resources survey report to SHPO with the requested additional
15 information included on January 31, 2025. See Schedule E (Public and Nonpublic).
16 SHPO reviewed the updated Phase I cultural resources survey report and in a
17 March 21, 2025 letter concurred that "no significant archaeological sites will be
18 affected by this project and that there are no properties listed in the National or
19 State Register of Historic Places, or within the Historic Sites Network, that will be
20 affected by this project." See Schedule F. With this concurrence, SHPO
21 coordination on the Project concluded.
22

23 **Q. Has Otter Tail received additional correspondence from interested tribal**
24 **nations?**

25 A. Yes. As documented in the Application, Upper Sioux Community, Lower Sioux
26 Community, and Shakopee Mdewakanton Sioux Community expressed interest in
27 the Project.¹ The Upper Sioux Community sent a Traditional Cultural Specialist
28 (TCS) to accompany the cultural resources survey, which was performed October
29 14-17, 2024. Tribal resources were identified during the survey by the Upper Sioux

¹ Application at 96.

1 Community TCS. In an October 22, 2024 email, Otter Tail reached out to the Upper
2 Sioux Community Tribal Historic Preservation Officer (THPO) for avoidance
3 recommendations regarding the Tribal resources. Otter Tail sent follow-up
4 reminders via email on November 8, 2024 and November 15, 2024, then called
5 the Upper Sioux Community THPO on November 19, 2024. During this call, the
6 Upper Sioux Community THPO provided avoidance recommendations. Otter Tail
7 incorporated these recommendations into the Project design. Otter Tail submitted
8 the Phase I cultural resources survey report on November 27, 2024 (along with a
9 cover letter and figure describing and illustrating how the Project had adapted to
10 incorporate the Upper Sioux Community THPO recommendations) to the Upper
11 Sioux Community, Lower Sioux Community, and Shakopee Mdewakanton
12 Community THPOs. These avoidance recommendations are summarized in
13 Schedule E.
14

15 VI. COMMENTS ON THE EA AND DSP

16

17 **Q. Have you reviewed the EA prepared by the Minnesota Department of**
18 **Commerce Energy Environmental Review and Analysis (EERA) unit for the**
19 **Project?**

20 A. Yes.
21

22 **Q. Do you have any comments on the EA?**

23 A. Yes. Otter Tail has a limited number of corrections and clarifications related to the
24 EA. They are as follows:
25

- 26 • In Section 2.1.3.5 of the EA, it states “[i]nterior chain link fencing with a height of
27 six feet above grade topped with one foot of barbed wire will be installed along the
28 perimeter of the project substation and O&M building.” The EA is correct that
29 interior chain link fencing will be installed along the perimeter of the project
30 substation. While not separately identified in Section 4.1.5 of the Application, Otter

1 Tail plans to install agricultural woven wire fencing around the perimeter of the
2 O&M building as it will be located within the Project boundary.

- 3
- 4 • In Section 2.1.6, the EA states that a “decommissioning bond will be posted no
5 earlier than the tenth anniversary of operation.”² This is incorrect. As stated on
6 pages 8-9 of its Decommission Plan (Appendix K of the Application), Otter Tail will
7 utilize a net salvage rate methodology used for all its generation facilities to
8 account for decommissioning costs of the Project.
9
 - 10 • Table 10 of the EA indicates that the population of Beltrami County was 4,089 in
11 2010 and 3,935 in 2020, and that the population of Bemidji was 292 in 2010 and
12 276 in 2020.³ As noted in the Application, the population of Beltrami County was
13 44,442 in 2010, and 46,228 in 2020, and the population of Bemidji was 13,1431 in
14 2010, and 14,574 and 14,574 in 2020. Similarly, the population of Solway City was
15 96 in 2010 and 73, in 2020, whereas EA Table 10 indicates that the population of
16 Solway was 195 in 2010 and 209 in 2020.
17

18 **Q. Do you have any comments on the DSP?**

19 A. Yes. The DSP indicates a 30-year term for the site permit, but Otter Tail indicated
20 in its Application that the anticipated project life was 35-years.⁴ Otter Tail requests
21 a Site Permit duration to match the 35-year service life of the Project.
22

23 **Q. Draft Site Permit Special Condition Section 5.1 would require Otter Tail to file**
24 **an updated noise impact assessment before the pre-construction meeting.**
25 **What is your response?**

26 A. As the EA correctly notes, “[n]oise levels during operation of the project are
27 anticipated to be minimal.” The primary source of noise during operation will be the

² EA at 22.

³ EA at 55.

⁴ Application at 33.

1 substation transformer and inverters. The substation transformer is anticipated to
2 produce 50 dBA—the MPCA noise standard—at 240 feet. However, the nearest
3 residence is more than 900-feet away from the inverters, so noise levels will not
4 exceed the MPCA noise standard.⁵ Moreover, the Project is adjacent to the Solway
5 Combustion Turbine Generating Station,⁶ so transformer and inverter noise is
6 consistent with existing noise in the area. Accordingly, Otter Tail believes that the
7 standard condition on noise in Section 4.3.7 of the DSP sufficiently addresses
8 Project noise and a separate special condition is not warranted here.

9
10 **Q. DSP Special Condition Section 5.2 would require a subsurface investigation**
11 **“to avoid damage to underground public utilities,” and would require that**
12 **Otter Tail “confer with the Great Lakes Gas Transmission Company to avoid**
13 **impacts to the Great Lakes gas pipeline.” Do you have any comments on this**
14 **condition?**

15 A. Yes. As discussed above, Otter Tail has updated the Project design to remove the
16 southwestern solar array from the Project Footprint, avoiding any potential impact
17 the Great Lakes gas pipeline. As such, Otter Tail believes that Special Condition
18 Section 5.2 of the DSP is longer needed.

19
20 **Q. DSP Special Condition 5.5 would require the Permittee to “comply with DNR**
21 **wolf management guidance.” Do you have any comments on this condition?**

22 A. Yes. I have been unable to identify what wolf management guidance the condition
23 refers to. DNR’s Wolf Management webpage is cited in the EA, but it is unclear
24 what portion of the webpage apply to the Project. Accordingly, Otter Tail requests
25 Special Condition 5.5 be revised to:

26
27 **5.5 Gray Wolf**

⁵ EA at 44.

⁶ Application at 16.

1 The Permittee shall ~~comply with DNR wolf management guidance~~ notify the U.S.
2 Fish and Wildlife Service if there is observed gray wolf activity during project
3 construction that could indicate a den or rendezvous site in proximity.

4
5 This modified condition is consistent with the recommendations in U.S. Fish and
6 Wildlife Service's IPaC results (see Application Appendix Q).

7
8 **VII. CONCLUSION**

9
10 **Q. Does this conclude your Direct Testimony?**

11 **A. Yes.**

PRESTON RIEWER

priewer@otpc.com

218.739.8582

215 S Cascade St
Fergus Falls, MN 56537

WORK EXPERIENCE

OTTER TAIL POWER COMPANY MANAGER, ENGINEERING

October 2023 - Present

- Project Manager, Solway Solar
- Project Sponsor, Abercrombie Solar
- Oversaw the installation of 15 - 40 kW solar installations across OTP service territory in 2024
- Oversee run-of-river hydro maintenance repairs
- Oversee Capital Projects for existing generation infrastructure
- Contract execution: procurement & asset purchases

OTTER TAIL POWER COMPANY SENIOR RESOURCE PLANNER

*November 2021 -
October 2023*

- Encompass modeling for Integrated Resource Plan
- Otter Tail Liaison for MISO Resource Adequacy related issues
- Risk mitigation for capacity revenue & energy hedging

OTTER TAIL POWER COMPANY C&I ENERGY ENGINEER

*November 2020 -
November 2021*

- Enhanced C&I customer alignment with energy objectives
- Identified energy efficiency opportunities for C&I customers

EDUCATION

NORTH DAKOTA STATE UNIVERSITY

Sports Official | Campus Volunteering | Lab Assistant

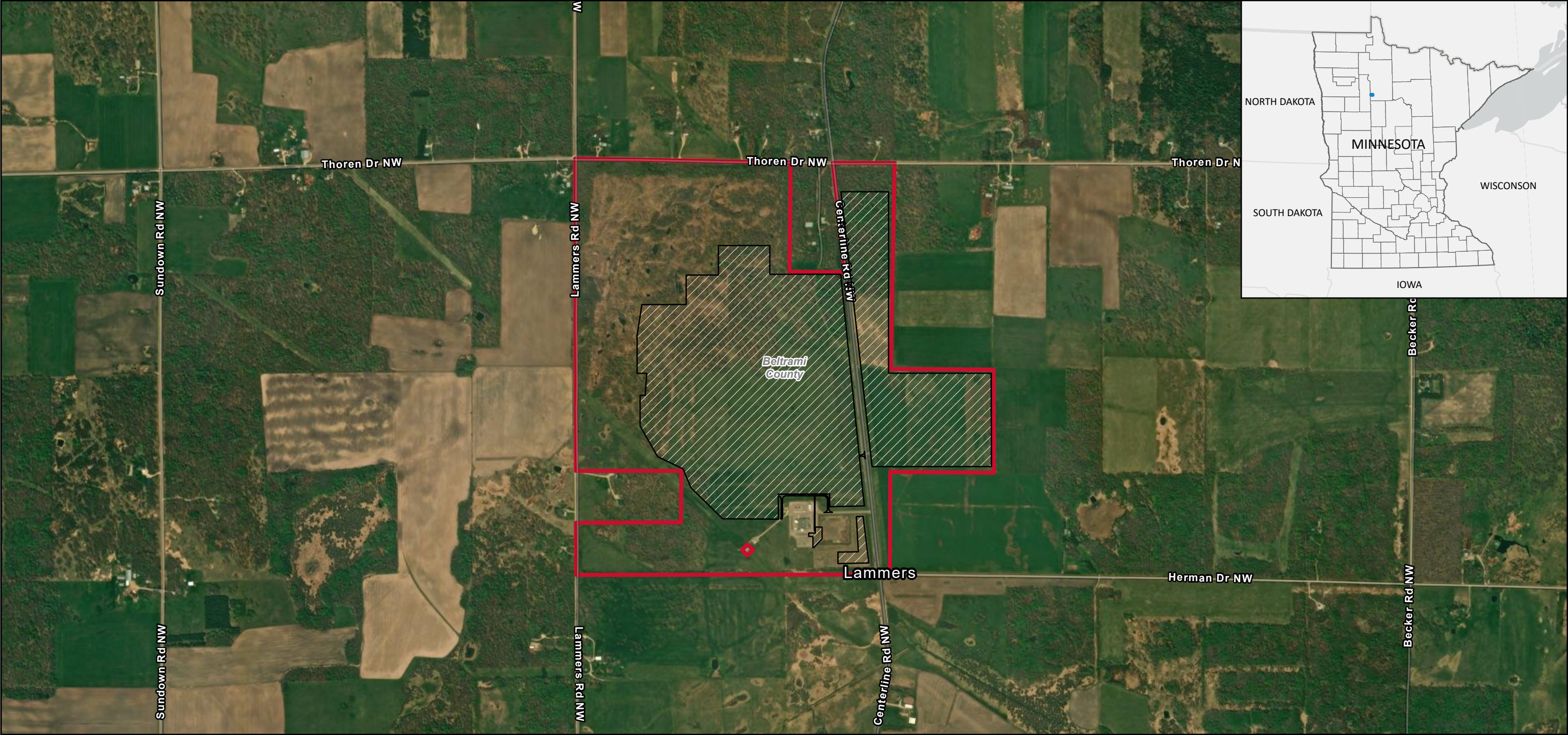
**BSC, MECHANICAL
ENG.**




UNIVERSITY OF TEXAS, PERMIAN BASIN

Emphasis: Energy Business

MBA

Schedule B: Project Area and Updated Project Footprint



- Legend**
-  Project Area
 -  County Boundary
 -  Project Footprint

Imagery Source : Esri, TomTom, Garmin, FAO, NOAA, USGS, EPA, USFWS, Esri Community Maps Contributors, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS, Maxar, Province of Ontario, Esri, TomTom, Garmin, FAO, NOAA, USGS, EPA, NPS, USFWS

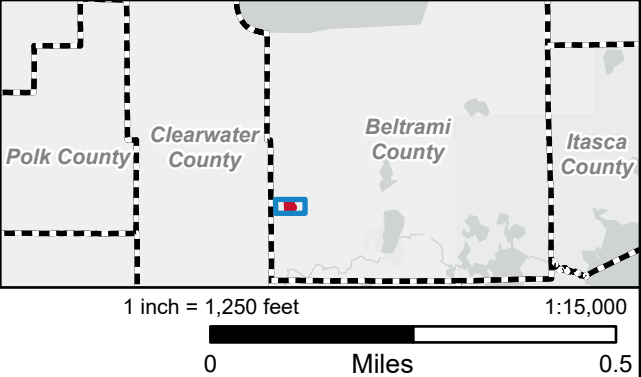


Exhibit OTPC- ___, Riewer Direct, Schedule C

From: [Gregory Larson](#)
To: [Lueth, Katie](#); [Vukonich, Paul](#)
Cc: [Ponting, Lynda \(BWSR\)](#); [Wick, Arne \(DNR\)](#); [Brent Rud](#); daryl.w.wierzbinski@usace.army.mil
Subject: Solway Solar No-Loss NOD
Date: Tuesday, December 3, 2024 8:09:22 AM
Attachments: [image001.png](#)
[Solway Solar WCA NOD No-loss.docx](#)
[Solway Attachments.zip](#)
[Joint Application Form - Solway Solar 20241105.pdf](#)

This is an **EXTERNAL** email. DO NOT open attachments or click links in suspicious email.

Good morning,

Please see attached No-Loss NOD for the Solway Solar project.

Thank you,

Greg Larson

Environmental Resources Specialist

Environmental Services/Soil & Water Conservation District

701 Minnesota Ave NW Ste.113

Bemidji, MN 56601

Phone: 218-333-4171



BELTRAMI
county est. 1866

Minnesota Wetland Conservation Act Notice of Decision

Local Government Unit: Beltrami County	County: Beltrami
Applicant Name: Otter Tail Power Company, Paul Vukonich	Applicant Representative: Katie Lueth
Project Name: Solway Solar	LGU Project No. (if any):
Date Complete Application Received by LGU: 11/05/2024	
Date of LGU Decision: 12/03/2024	
Date this Notice was Sent: 12/03/2024	

WCA Decision Type - check all that apply

<input type="checkbox"/> Wetland Boundary/Type	<input type="checkbox"/> Sequencing	<input type="checkbox"/> Replacement Plan	<input type="checkbox"/> Bank Plan (not credit purchase)
<input checked="" type="checkbox"/> No-Loss (8420.0415)	<input type="checkbox"/> Exemption (8420.0420)		
Part: <input checked="" type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H		Subpart: <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9	

Replacement Plan Impacts (replacement plan decisions only)

Total WCA Wetland Impact Area:
Wetland Replacement Type: <input type="checkbox"/> Project Specific Credits: <input type="checkbox"/> Bank Credits:
Bank Account Number(s):

Technical Evaluation Panel Findings and Recommendations (attach if any)

<input checked="" type="checkbox"/> Approve <input type="checkbox"/> Approve w/Conditions <input type="checkbox"/> Deny <input type="checkbox"/> No TEP Recommendation
--

LGU Decision

<input type="checkbox"/> Approved with Conditions (specify below) ¹ List Conditions:	<input checked="" type="checkbox"/> Approved ¹ <input type="checkbox"/> Denied
Decision-Maker for this Application: <input checked="" type="checkbox"/> Staff <input type="checkbox"/> Governing Board/Council <input type="checkbox"/> Other:	
Decision is valid for: <input checked="" type="checkbox"/> 5 years (default) <input type="checkbox"/> Other (specify):	

¹ *Wetland Replacement Plan approval is not valid until BWSR confirms the withdrawal of any required wetland bank credits. For project-specific replacement a financial assurance per MN Rule 8420.0522, Subp. 9 and evidence that all required forms have been recorded on the title of the property on which the replacement wetland is located must be provided to the LGU for the approval to be valid.*

LGU Findings – Attach document(s) and/or insert narrative providing the basis for the LGU decision¹.

<input type="checkbox"/> Attachment(s) (specify): <input checked="" type="checkbox"/> Summary: Application was reviewed and approved. No evidence of hydric soils.
--

¹ Findings must consider any TEP recommendations.

Attached Project Documents

<input type="checkbox"/> Site Location Map <input checked="" type="checkbox"/> Project Plan(s)/Descriptions/Reports (specify):
--

Appeals of LGU Decisions

If you wish to appeal this decision, you must provide a written request within 30 calendar days of the date you received the notice. All appeals must be submitted to the Board of Water and Soil Resources Executive Director along with a check payable to BWSR for \$500 *unless* the LGU has adopted a local appeal process as identified below. The check must be sent by mail and the written request to appeal can be submitted by mail or e-mail. The appeal should include a copy of this notice, name and contact information of appellant(s) and their representatives (if applicable), a statement clarifying the intent to appeal and supporting information as to why the decision is in error. Send to:

Appeals & Regulatory Compliance Coordinator
 Minnesota Board of Water & Soils Resources
 520 Lafayette Road North
 St. Paul, MN 55155
travis.germundson@state.mn.us

Does the LGU have a local appeal process applicable to this decision?

☐ Yes¹ ☒ No

¹If yes, all appeals must first be considered via the local appeals process.

Local Appeals Submittal Requirements (LGU must describe how to appeal, submittal requirements, fees, etc. as applicable)

--

Notice Distribution (include name)

Required on all notices:

<input checked="" type="checkbox"/> SWCD TEP Member: Brent Rud	<input checked="" type="checkbox"/> BWSR TEP Member: Lynda Ponting
<input type="checkbox"/> LGU TEP Member (if different than LGU contact):	
<input checked="" type="checkbox"/> DNR Representative: Arne Wick	
<input type="checkbox"/> Watershed District or Watershed Mgmt. Org.:	
<input type="checkbox"/> Applicant:	<input type="checkbox"/> Agent/Consultant:

Optional or As Applicable:

<input checked="" type="checkbox"/> Corps of Engineers: Daryl Wierzbinski	
<input type="checkbox"/> BWSR Wetland Mitigation Coordinator (required for bank plan applications only):	
<input type="checkbox"/> Members of the Public (notice only):	<input type="checkbox"/> Other:

Signature: Greg Larson	Date: 12/3/2024
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This notice and accompanying application materials may be sent electronically or by mail. The LGU may opt to send a summary of the application to members of the public upon request per 8420.0255, Subp. 3.



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

October 30, 2024

Regulatory File No. 2024-00806-DWW

Otter Tail Power Company
c/o Paul Vukonich
PO Box 496
Fergus Falls, Minnesota 56538-0496
pvukonich@otpc.com

Dear Paul Vukonich:

This letter regards an approved jurisdictional determination for a 500 acre property located in Section 16, Township 147 North, Range 35 West, Beltrami County, Minnesota. The review area for our jurisdictional determination is Wetland 49 (0.57 acre) and Wetland 50 (0.82 acre) and are identified on the enclosed Figure MVP-2024-00806-DWW Drawing 3.

The review area of 1.40 acres contains no waters of the United States subject to Corps of Engineers (Corps) jurisdiction. Therefore, you are not required to obtain Department of the Army authorization to discharge dredged or fill material within this area. The rationale for this determination is provided in the enclosed Approved Jurisdictional Determination form. You are also cautioned that the area of waters described on the enclosed Jurisdictional Determination form is approximate and is not based on a precise delineation of aquatic resources.

This determination is only valid for the review area shown on the enclosed Figure MVP-MVP-2024-00806-DWW Drawing 3.

If you object to this approved jurisdictional determination, you may request an administrative appeal under Corps regulations at 33 CFR 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Mississippi Valley Division Office at the address shown on the form.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR 331.5, and that it has been received by the Division Office within 60 days of the date of the enclosed NAP.

It is not necessary to submit an RFA form to the division office if you do not object to the determination in this letter.

This approved jurisdictional determination may be relied upon for five years from the date of this letter. However, the Corps reserves the right to review and revise the determination in response to changing site conditions, information that was not considered during our initial review, or off-site activities that could indirectly alter the extent of wetlands and other resources on-site. This determination may be renewed at the end of the five year period provided you submit a written request and our staff are able to verify that the limits established during the original determination are still accurate.

Regulatory Division (File No. 2024-00806-DWW)

If you have any questions, please contact me in our Duluth office at (218) 350-1491 or daryl.w.wierzbinski@usace.army.mil. In any correspondence or inquiries, please refer to the Regulatory file number shown above.

Sincerely,

A handwritten signature in black ink, appearing to read "Daryl W. Wierzbinski". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daryl W Wierzbinski
Lead Project Manager

Enclosures

cc:

Katie Lueth, katie.lueth@hdrinc.com

Greg Larson, Gregory.Larson@co.beltrami.mn.us

Exhibit OTPC- ___, Riewer Direct, Schedule D

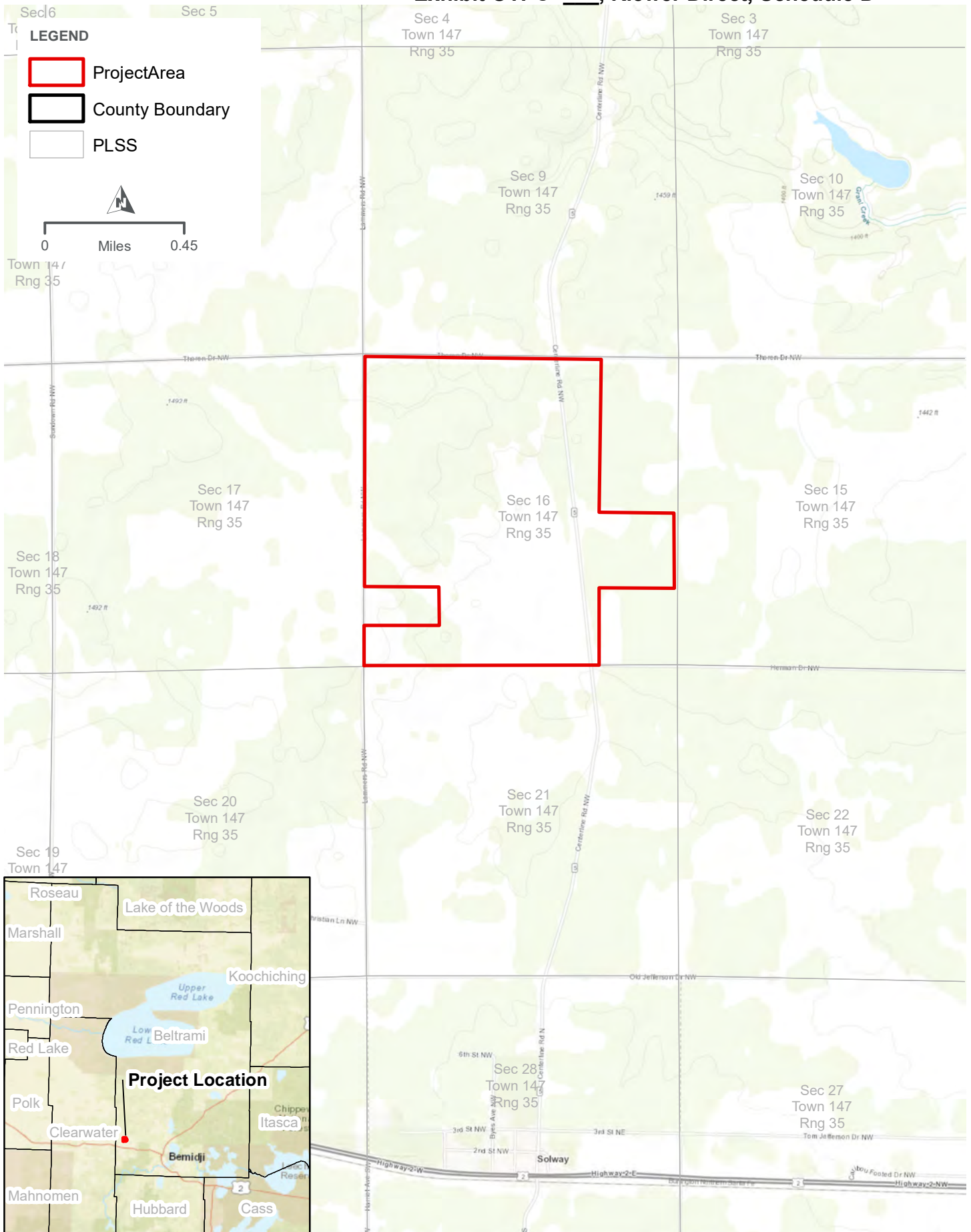
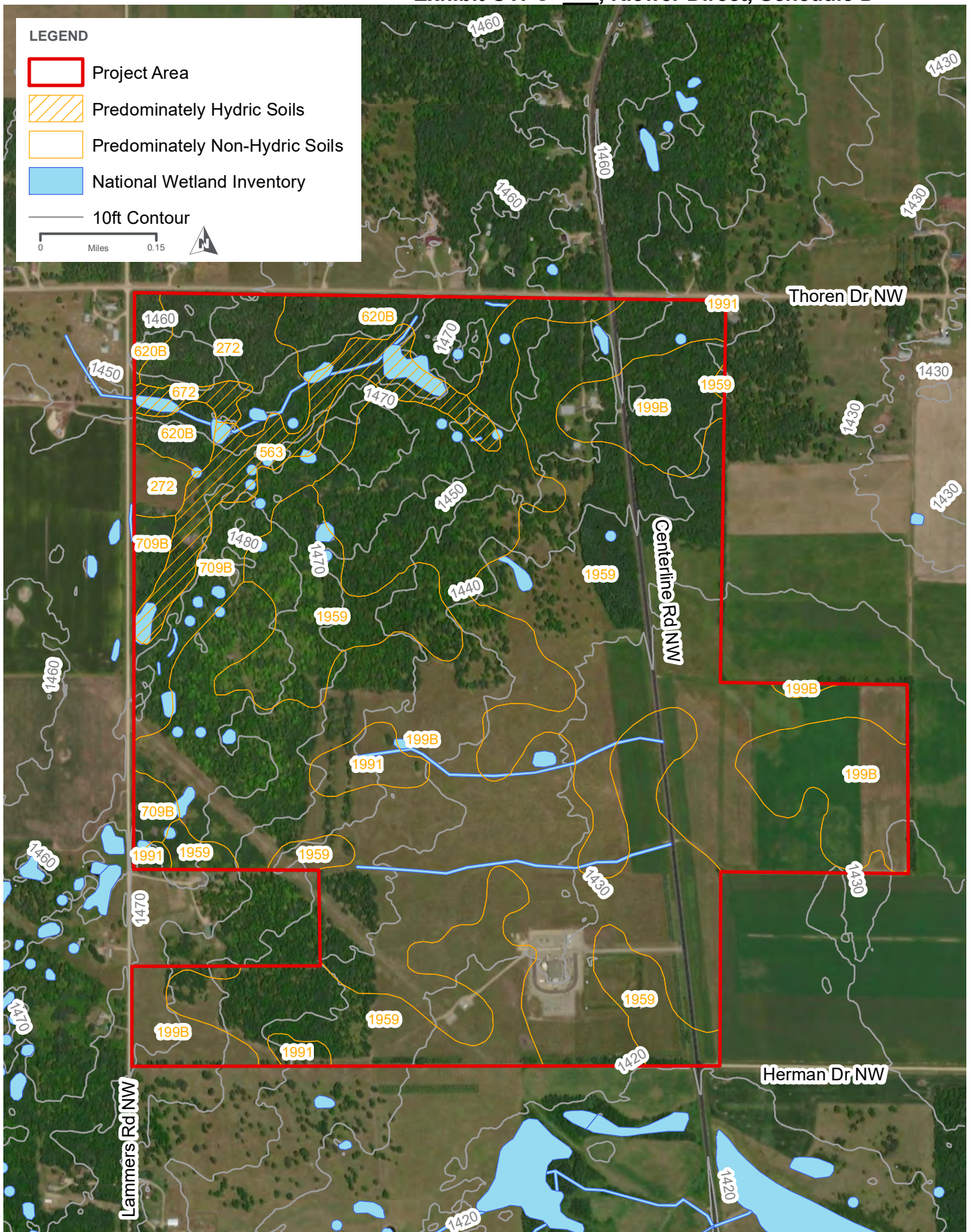


FIGURE 1. PROJECT LOCATION MAP
SOLWAY SOLAR PROJECT

BELTRAMI COUNTY, MN

WETLAND DELINEATION REPORT



**FIGURE 2. NWI, SOILS, AND TOPOGRAPHY
SHERCO SOLAR PROJECT**

BELTRAMI COUNTY, MN

WETLAND DELINEATION REPORT



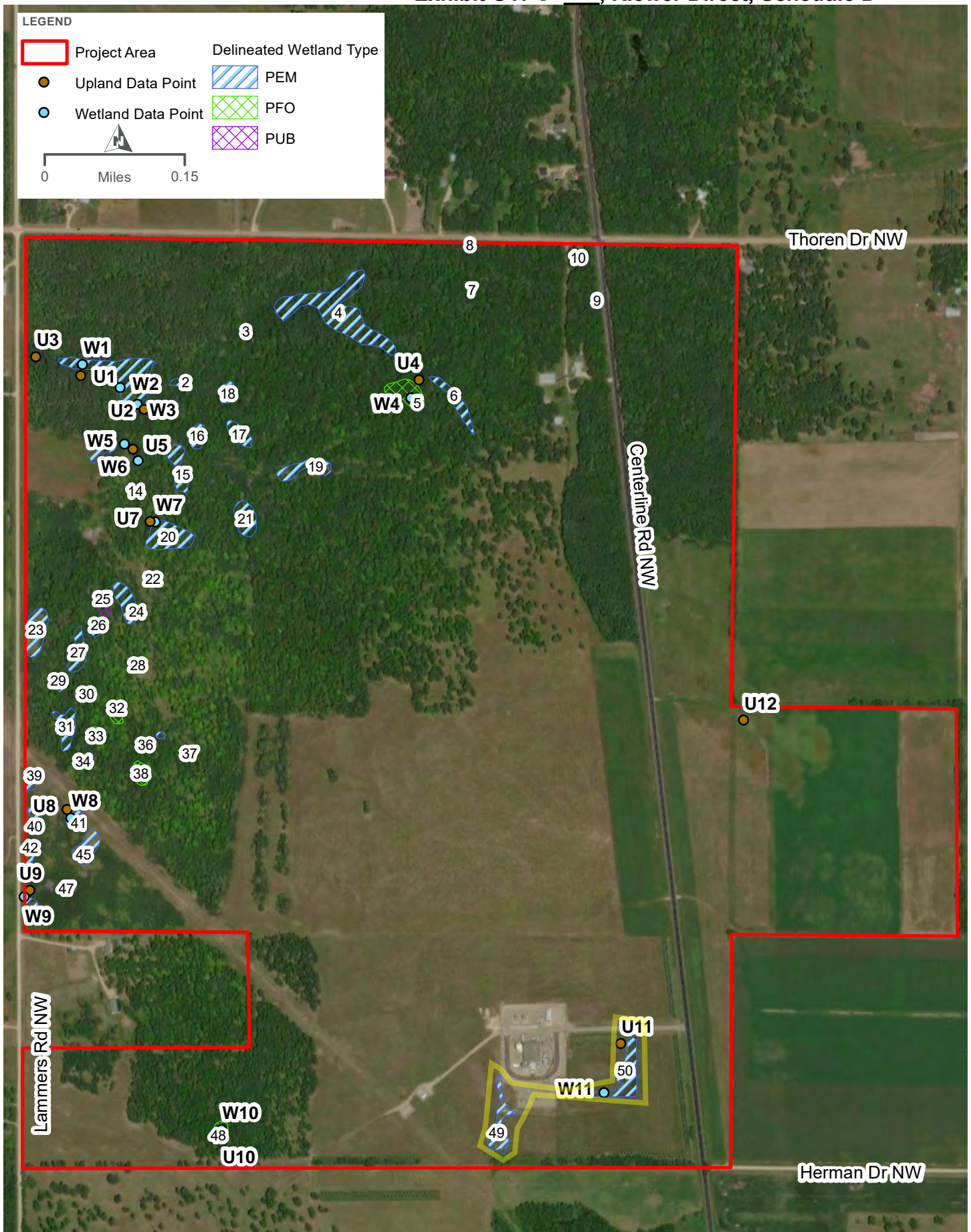


FIGURE 3. DELINEATED WETLANDS

SOLWAY SOLAR PROJECT

BELTRAMI COUNTY, MN

WETLAND DELINEATION REPORT



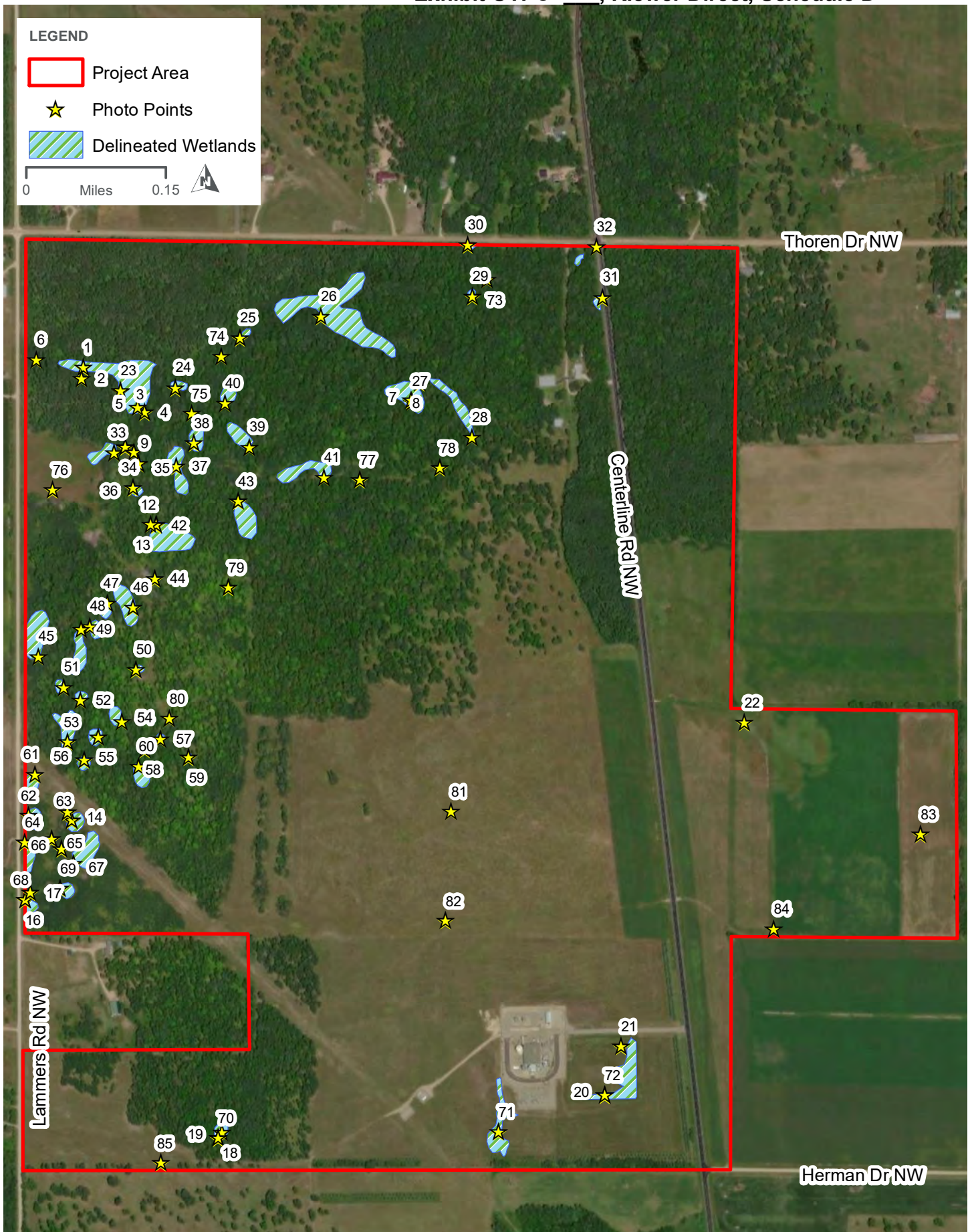


FIGURE 4. PHOTO LOCATIONS
SOLWAY SOLAR PROJECT

BELTRAMI COUNTY, MN

WETLAND DELINEATION REPORT





FIGURE 5. HISTORICAL AERIAL IMAGERY (1991)

SOLWAY SOLAR PROJECT

BELTRAMI COUNTY, MN

WETLAND DELINEATION REPORT



NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Otter Tail Power Company	File Number: MVP-2024-00806-DWW	Date: 10/30/2024
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL WITHOUT PREJUDICE	C
<input type="checkbox"/>	PERMIT DENIAL WITH PREJUDICE	D
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	E
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	F

SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL WITHOUT PREJUDICE: Not appealable

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: You may appeal the permit denial

You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information for reconsideration

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- **RECONSIDERATION:** You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: Not appealable

You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:

U.S. Army Corps of Engineers
St. Paul District
Regulatory Division
332 Minnesota Street, Suite E1500
St. Paul, MN 55101-1323

Phone: 651-290-5525

If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:

Brian Oberlies
Administrative Appeals Review Officer
Mississippi Valley Division
P.O. Box 80 (1400 Walnut Street)
Vicksburg, MS 39180-0080
Phone: 601-634-5820
Email: brian.m.oberlies@usace.army.mil

SECTION II – REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. Use additional pages as necessary. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.

<p>_____</p> <p>Signature of appellant or agent.</p>	<p>Date:</p>
<p>Email address of appellant and/or agent:</p>	<p>Telephone number:</p>



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

MVP-2024-00806-DWW

29 October 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),¹ MVP-2024-00806-DWW MFR 1 of 1

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.² AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.³

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

¹ While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00806-DWW

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - i. Wetland 49 (0.57 acre), non-jurisdictional
 - ii. Wetland 50 (0.82 acre), non-jurisdictional

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. __, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area is approximately 1.4 acres in size and is identified by the yellow polygon on the attached Figure MVP-2024-00806-DWW Drawing 3. The overall review area is located in Section 16, Township 147 North, Range 35 West, 47.5435442202 N, -95.1304321403 W near the City of Solway, Beltrami County, Minnesota. There are no other JDs associated with the review area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A

6. SECTION 10 JURISDICTIONAL WATERS⁵: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁶ N/A

⁵ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁶ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00806-DWW

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
- b. The Territorial Seas (a)(1)(ii): N/A
- c. Interstate Waters (a)(1)(iii): N/A
- d. Impoundments (a)(2): N/A
- e. Tributaries (a)(3): N/A
- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not "waters of the United States" even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁷ N/A
- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g.,

⁷ 88 FR 3004 (January 18, 2023)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00806-DWW

tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Subject features Wetland 49 and 50 are not a TNW, territorial sea, or interstate water and therefore are not an (a)(1) water. A wetland delineation summary for the wetlands indicate that the wetlands are depressional wetlands, surrounded by upland, and may have formed from a water detention pond and drainage from the facility (does not exit the property). These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. The nearest relatively permanent water information from aerial imagery shows these wetlands are approximately 1.79 mile from Grant Creek directly northeast of the review area. However, there are no ditches, swales, pipes, or culverts that connect these wetlands to a downstream jurisdictional water. These wetlands are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland; therefore, these wetlands are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. HDR, Wetland Delineation Report for Otter Tail Power Company near City of Solway, Minnesota, dated August 2024.
 - b. Historical imagery dated 1940, 1972, 1991, 2003, and 2024. Prepared and provided by authorized agent Katie Lueth on October 3, 2024.
 - c. NHD Flowlines map and 2-ft Contour map. Prepared and provided by authorized agent Katie Lueth on October 3, 2023.

10. OTHER SUPPORTING INFORMATION. N/A

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

March 21, 2025

Laura Koski
Cultural Resources Project Manager
HDR Engineering
laura.koski@hdrinc.com

RE: Otter Tail Power Company - Solway Solar PV Project
T147 R35 S16, Lammers Twp, Beltrami County
SHPO Number: 2024-1959

Dear Laura Koski:

Thank you for continuing consultation on the above referenced project. We understand that this project will require a Minnesota Public Utilities Commission site permit. Therefore, the submitted information has been reviewed pursuant to the responsibilities given the State Historic Preservation Office by the Minnesota Historic Sites Act (MS 138.665-666). If this project will be located on non-federal public land, the project will also be subject to review under the Minnesota Field Archaeology Act (MS 138.40).

We previously provided comments on this project in a letter dated January 8, 2025, requesting additional information on survey methodology and previous ground disturbance in the proposed project area. We have reviewed the revised report, *HDR Engineering, Inc., Solway Solar Project, Beltrami County, Minnesota* (November 25, 2024, Merjent), and based on the documentation provided, we have determined that no significant archaeological sites will be affected by this project and that there are **no properties** listed in the National or State Registers of Historic Places, or within the Historic Sites Network, that will be affected by this project.

Thank you for providing a summary of the tribal consultation and engagement efforts that have been completed for this project.

Please note that this comment letter does not address the requirements of Section 106 of the National Historic Preservation Act of 1966 and 36 CFR § 800. If this project is considered for federal financial assistance, or requires a federal permit or license, then review and consultation with our office will need to be initiated by the lead federal agency. Be advised that comments and recommendations provided by our office for this state-level review may differ from findings and determinations made by the federal agency as part of review and consultation under Section 106.

If you have any questions regarding our review of this project, please contact Kelly Gragg-Johnson, Environmental Review Specialist, at 651-201-3285 or kelly.graggjohnson@state.mn.us.

Sincerely,



Amy Spong
Deputy State Historic Preservation Officer

MINNESOTA STATE HISTORIC PRESERVATION OFFICE

50 Sherburne Avenue ■ Administration Building 203 ■ Saint Paul, Minnesota 55155 ■ 651-201-3287

mn.gov/admin/shpo ■ mnshpo@state.mn.us

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