

APPENDIX V

Migratory Bird Nest Avoidance and Monitoring Plan

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**Enbridge Energy, Limited Partnership
Enbridge Pipelines (Southern Lights) L.L.C.**

Migratory Bird Nest Avoidance and Monitoring Plan

**Alberta Clipper
and
Southern Lights Diluent
Pipeline Projects**

October 15, 2008

MIGRATORY BIRD NEST AVOIDANCE and MONITORING PLAN

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1.0 Introduction

The U.S. Fish and Wildlife Service (FWS) provided comments on the Notice of Intent to prepare an Environmental Impact Statement for the Alberta Clipper and Southern Lights Diluent Projects (Alberta Clipper) in May 2008 (see Appendix A). This document addresses Enbridge's plan to maintain compliance with the Migratory Bird Treaty Act (16 U.S.C. 703-712; 40 Stat. 755) during construction of the Alberta Clipper. Construction for the projects is anticipated to begin in April 2009.

Please note that this Migratory Bird Nest Avoidance and Monitoring Plan addresses non-raptor species; see Enbridge's Raptor Nest Survey and Monitoring Plan for protection of raptor species.

2.0 Bird Species of Concern

As per the FWS recommendations (see Appendix A), a list of species of concern has been compiled using the FWS Birds of Conservation Concern report, which identifies "those species (beyond those already federally listed as threatened or endangered) in greatest need of conservation action at different geographic scales." The 2002 list is the most recent report available; therefore it has been used to develop a list of species from Bird Conservation Regions (BCR) 11, 12, and 23, through which the proposed pipeline crosses (FWS, 2002). In addition, federally listed species, state listed species, Forest Service Regional Forester's Sensitive species, and tribally listed species are included.

Natural Heritage Information reviews from the North Dakota Game and Fish (NDGF), Minnesota Department of Natural Resources (MDNR), and the Wisconsin Department of Natural Resources (WDNR) did not identify any non-raptor state-listed or federally listed bird species of concern along the project route. The Chippewa National Forest (CNF) and Leech Lake Band of Ojibwe (LLBO) sensitive species are also addressed in the Alberta Clipper Biological Assessment/Biological Evaluation for lands within the CNF and LLBO Reservation boundaries.

Appendix B includes a summary table of species identified under the above criteria.

3.0 Avoidance

The nesting season for migratory birds in the project area generally begins May 1st and ends July 31st. Due to many unknown variables at this time, it appears that there will be minimal clearing of vegetation prior to the nesting period in April, 2009. This depends on three primary variables;

- Uncertainty of timing of several permit receipts.
- Minimal equipment accessibility due to road restrictions in April.
- Inaccessibility of right of way due to time of year (typically wet).

Impacts on birds and active bird nests protected under the MBTA would be avoided by early clearing. If permits are received prior to May 1st and conditions are favorable, Enbridge will clear as much of the right-of-way as possible before the nesting season.

Nesting habitats for the birds listed in Appendix B were categorized into the following 6 general types:

1. Brush
2. Forest

3. Grassland
4. Underground/Burrow
5. Lake/Open Water
6. Wetland

Appendix C lists the bird species of concern within each nesting habitat category. Assuming that clearing must occur within the bird nesting period, Enbridge has a two-pronged approach it proposes to implement to reduce risk of impacts on migratory birds and active bird nests: targeted clearing and surveys.

3.1 Targeted Clearing

Enbridge has assessed quality of habitat and the number of potential species that would utilize that habitat for nesting in developing a Construction Plan to minimize the amount of clearing necessary within the nesting period. The Construction Plan is broken into four construction spreads and is included in Appendix D. Forested and wetland areas would have the highest quality habitat and, therefore, no clearing is proposed within the Chippewa National Forest during the nesting season.

Each of the proposed construction spreads are discussed below along with a description of the targeted clearing methodology, for clearing that would occur during the nesting season, in the construction plan.

1. Spread 1 (North Dakota/Manitoba Border to near Trail, Minnesota)

This spread consists of approximately 129 miles of 36-inch diameter pipeline construction. Land use is predominantly agriculture (90%+) and construction along this corridor has occurred in 2008 as part of the Enbridge LSr Project. The typical construction corridor for the Alberta Clipper Project is 140 feet wide. Typically, 100 feet of the 140 foot-wide Alberta Clipper workspace has already been cleared as part of the LSr Project.

Work would begin at the Minnesota/North Dakota border and proceed eastward. Approximately 50 miles of additional 40-foot wide workspace would need to be cleared within the nesting season. Due to the predominantly agricultural land use, the area is of low quality for nesting habitat. Very intermittent high quality nesting habitat does exist along four wooded riparian corridors (Red, Tamarac, Middle and Snake Rivers) that the project would cross. All of these wooded corridors are anticipated to be crossed using horizontal direction drills (HDDs) and no tree clearing will occur, therefore avoiding this high quality habitat.

2. Spread 2 (Near Trail, MN to near Cass Lake, MN)

This spread consists of approximately 68 miles of 36-inch diameter pipeline construction and 51 miles of 20-inch diameter pipeline construction. Land use is predominantly agricultural west of Clearbrook, MN and transitions into a mixed use of agricultural and wooded areas east of Clearbrook. Construction west of Clearbrook has occurred in 2008 as part of the Enbridge LSr Project where 100 feet of the 140-foot-wide Alberta Clipper workspace has already been cleared.

Construction east of Clearbrook to milepost 940 was completed in 2002 as part of Enbridge's Terrace III project. Typically, 80 feet of the 140-foot-wide workspace was cleared in 2002.

Work would begin clearing at Trail, MN and proceed eastward. Approximately 16 miles of additional 40-foot wide workspace would need to be cleared within the nesting season until Clearbrook, MN is reached. Due to the predominantly agricultural land use west of Clearbrook, MN, the area is of low quality for nesting habitat.

Work would then proceed eastward from Clearbrook for approximately 30 miles during the nesting season. The area requiring clearing would be approximately 80 feet wide in land that has had less than seven year's growth and 60 feet wide (140-foot-wide construction workspace total) of older growth. East of Clearbrook, MN, clearing of mature trees would be minimal due to collocation with other recently completed project workspace. In addition, two of the higher quality nesting habitats (West Four Legged Lake and Mississippi River) along the right-of-way would be crossed using the HDD method where no tree clearing will occur.

3. *Spread 3 (Cass Lake, MN to near Swan River Crossing)*

This spread consists of approximately 61 miles of 36-inch and 20-inch diameter pipeline construction. Land cover is predominantly forested and a large portion of this spread consists within the Chippewa National Forest (CNF). Construction has been planned to avoid clearing within the high quality CNF habitat during the nesting period. Construction east of the Prairie River to MP 1020 was completed in 2002 as part of Enbridge's Terrace III project. Typically 80 feet of the 140-foot-wide construction workspace was cleared in 2002.

A small piece of construction is planned within the bird nesting season for two miles near the Enbridge Deer River station. This work will consist of a HDD crossing and work will occur within an agricultural field, so impacts to potential nesting birds would be avoided. Additional mainline work during the growing season would begin east of the Prairie River and continue for approximately 10 miles to MP 1020 with a clearing width of approximately 80 feet in land that has had less than seven year's growth. The remainder of the construction workspace, 60 feet wide (140-foot-wide construction workspace total), of older growth would also be cleared during the nesting season. The full 140-foot-wide workspace would be cleared from MP 1020 to MP 1028 within the nesting season.

4. *Spread 4 (Swan River Crossing to Superior, WI)*

This spread consists of approximately 57 miles of 36-inch and 20-inch diameter pipeline construction. Land cover is predominantly forested. Construction east of MP 1080 to the Superior Terminal was completed in 2002 as part of Enbridge's Terrace III project. Typically 80 feet of the 140-foot-wide construction workspace was cleared in 2002.

Mainline work would begin at the Superior Terminal and proceed west for approximately 18 miles to MP 1080 with a clearing width of approximately 80 feet with less than seven years of growth and 60 feet wide (140-foot-wide construction workspace total) of older growth within the nesting season. The full 140-foot-wide construction workspace would need to be cleared from MP 1078 to MP 1080 within the nesting season.

3.2 Surveys

In areas that would require clearing within the migratory bird nesting period identified above, surveys for nesting birds would be conducted pre-clearing.

Surveys would concentrate on the species listed in Appendix B. Surveys would also target areas in the CNF where previous bird surveys identified particular songbird species. Surveys would occur pre-construction and consist of point count surveys conducted by experienced survey teams. Nest locations would be recorded with sub-meter accuracy GPS. All active migratory bird nests identified during survey, including nests for those species not listed in Appendix B, would be provided appropriate protections in compliance with the MBTA.

4 Conservation Measures for Active Nests

Site-specific construction activity restrictions will be applied based on species, location of nest in relation to construction, and other factors in order to protect nesting birds. The CNF has specific restrictions for 2 non-raptor species within their boundaries.

Recommended Conservation Measures Within the Chippewa National Forest

- Great Blue Heron
 - No activity 660 feet from active rookery from March 1 through August 31
 - A heron rookery was identified during aerial stick nest surveys for raptor nests, May 2008, at MP 968.4 in the CNF
- Black backed woodpecker
 - Restrict activities within 200 feet of active nests until young have fledged

5 References

U.S. Fish and Wildlife Service. 2002. Birds of Conservation Concern 2002. Division of Migratory Bird Management, Arlington, Virginia. 99 pp. [Online version available at <http://migratorybirds.fws.gov/reports/bcc2002.pdf>].

APPENDIX A

U.S. Fish and Wildlife Service Letter to Department of State, May 2008



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Bishop Henry Whipple Federal Building
1 Federal Drive
Fort Snelling, MN 55111-4056

IN REPLY REFER TO:

FWS/AES-CPA (ER 08/354)

MAY 13 2008

Ms. Elizabeth Orlando
OES/ENV Room 2657
U.S. Department of State
Washington, D.C. 20520

Dear Ms. Orlando:

Subject: Proposed Alberta Clipper Project by Enbridge Energy, Limited Partnership (EELP)

This is in regard to the U.S. Department of State's (DOS) Notice of Intent (NOI) to prepare an environmental impact statement (EIS) to evaluate the environmental impacts of the EELP's proposed Alberta Clipper Project (Federal Register notice of March 31, 2008). The EELP has applied to the DOS for a Presidential Permit, pursuant to Executive Order 13337 of April 30, 2004, to construct, connect, operate, and maintain a 36-inch-diameter crude oil and liquid hydrocarbon pipeline at the United States-Canadian border near Neche, Pembina County, North Dakota, for the purpose of transporting liquid hydrocarbons and other petroleum products between the United States and Canada.

The United States portion of the project would consist of approximately 326 miles of new 36-inch-diameter pipeline from the border crossing near Neche to an existing EELP tank farm in Superior, Wisconsin. The EELP proposes to construct the pipeline generally along its existing pipeline right-of-way. The construction would generally require a 140-foot-wide construction right-of-way to allow temporary storage of topsoil and spoil and to accommodate safe operation of construction equipment. The EELP would retain a portion of the construction right-of-way in order to maintain a 75-foot-wide permanent right-of-way from the current outermost pipeline.

Construction of the proposed pipeline would affect portions of two regions of the U.S. Fish and Wildlife Service (FWS):

FWS Region 6

North Dakota: Pembina County

FWS Region 3

Minnesota: Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis, and Carlton Counties

Wisconsin: Douglas County

We understand that Region 6's North Dakota Ecological Services Field Office has previously commented on the North Dakota portion of the project and has no additional comments to provide at this time. The comments below address fish and wildlife resources that could occur and potentially be impacted in the FWS Region 3 (Minnesota and Wisconsin) by the proposed pipeline project.

AUTHORITY

The following comments on the proposed project have been prepared under the authority of the Fish and Wildlife Coordination Act (FWCA) (48 Stat. 401; 16 U.S.C. 661 *et seq.*) and the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). They are provided in an effort to ensure the protection of fish and wildlife resources through your assessments, investigations, and other planning related to the proposed project, as well as to assist you in complying with acts and executive orders (EOs) addressing fish and wildlife resources, including EO 11990 (Protection of Wetlands) and EO 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds). These comments do not preclude separate review and comment by the FWS as afforded by the FWCA on any permits required from the U.S. Army Corps of Engineers pursuant to the Clean Water Act (33 U.S.C. 1344 *et seq.*). Additionally, these comments do not absolve the project proponent from complying with the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712; 40 Stat. 755, as amended) and the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 688-688d, as amended). Compliance with all of these statutes and regulations is required for compliance with the National Environmental Policy Act of 1969 as amended (83 Stat. 852; 42 U.S.C. 4321 *et seq.*).

The FWS has special concerns for migratory birds, federally listed endangered and threatened species, and other important fish and wildlife resources. We also are concerned about any impacts on federal and state wildlife refuges and management areas and other similar public lands, as well as to other areas that support sensitive habitats. Habitats frequented by important fish and wildlife resources include wetlands, streams, riparian (streamside) woodlands, forests, and native grasslands. We give special attention to projects that propose modification of wetlands, or stream alteration, or could result in contamination of important habitats. The FWS recommends ways to avoid, minimize, rectify, reduce, or compensate for adverse impacts to important fish and wildlife resources and their habitats that may be attributed to land and water resource development proposals.

FEDERALLY LISTED SPECIES AND CRITICAL HABITATS

Pursuant to section 7 of the ESA, every federal agency, in consultation or conference with the FWS, is required to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any federally listed or proposed species and/or result in the destruction or adverse modification of designated and/or proposed critical habitat. In accordance with section 7(a)(2) of the ESA, the federal agency should determine if any federally listed threatened or endangered species and/or designated/proposed critical habitat would be directly and/or indirectly affected by the proposed project. The assessment of potential impacts (direct and indirect) must include an "affect" or "no effect" determination and be presented to the FWS in writing. If the FWS agrees with a determination of "not likely to adversely affect" made by

the federal agency, the FWS would provide a letter of concurrence. If the federal agency makes a “no effect” determination, no concurrence from the FWS is necessary and, to reduce workload on the FWS staff, no letter of concurrence will be provided. If federally listed species and/or designated/proposed critical habitat would be adversely affected by this action, the federal agency will need to formally request further section 7 consultation with the FWS prior to making any irretrievable or irreversible commitment of federal funds (section 7(d) of the ESA), or issuing any federal permits or licenses.

In accordance with section 7(c) of the ESA, we have determined that the federally listed and candidate species identified in Enclosure 1 are known to occur, or are likely to occur, in the counties traversed by the pipeline and may be affected by the construction and/or maintenance of the pipeline and associated right-of-way. Additional information regarding these species is provided in Enclosure 1. There is presently no designated or proposed critical habitat in the project area.

Gray Wolves: On January 29, 2007, gray wolves of the western Great Lakes population were removed from the federal list of threatened and endangered species. Thus, wolves in this population are no longer protected under the federal ESA, and section 7 consultation with the FWS regarding them is no longer necessary. The area affected by this delisting includes Minnesota and Wisconsin. The Minnesota and Wisconsin Departments of Natural Resources (DNRs) have developed plans to guide future wolf management actions and should be consulted concerning any potential impacts of the project on wolves.

Bald eagles: On August 8, 2007, the bald eagle was removed from the federal list of threatened and endangered species. Thus, the bald eagle is no longer protected under the federal ESA, and section 7 consultation with the FWS for the species is no longer necessary. However, bald eagles continue to be protected under the Bald and Golden Eagle Protection Act (BGEPA), in addition to the Migratory Bird Treaty Act (MBTA). See the information provided below concerning the protection of bald and golden eagles under the BGEPA.

Affect/No Effect Determination

The FWS recommends that the DOS consider the information provided above with regard to making its assessment on the potential impacts of the proposed project on federally listed species and designated critical habitat and in making the “affect/no effect determination.” Further, the FWS recommends that the DOS not limit its consideration of effect to just the above project information, but also consider other potential effects (including the effects of other activities that are interrelated or interdependent) as they become apparent during the course of other project studies and/or project development and modification.

Candidate Species

Candidate species are species under consideration by the FWS for possible inclusion on the *List of Endangered and Threatened Wildlife and Plants*. Although these species receive no substantive or procedural protection under the ESA, the FWS encourages federal agencies and project proponents to consider candidate species in their project planning process. The Dakota

skipper (*Hesperia dacotae*) is a candidate species that occurs in the general area in which the proposed pipeline is planned to be constructed. Additional information regarding the species is provided in Enclosure 1.

BALD AND GOLDEN EAGLE PROTECTION ACT (BGEPA)

Although no longer protected under the federal ESA, bald eagles remain protected under the BGEPA, which prohibits anyone from “taking” bald or golden eagles. Among other actions, “take” includes disturbance of eagles. Information from previous projects in this area indicates that there may be bald eagle nesting sites in the vicinity of the project corridor. It is the project proponent’s responsibility to minimize or avoid impacts. The FWS has developed guidance for avoiding disturbance to bald eagles during nesting. This guidance is available at Region 3’s “Bald Eagle Management Guidelines & Conservation Measures” web site at <http://www.fws.gov/midwest/eagle/guidelines/index.html>.

This website steps project proponents through the Bald Eagle Management Guidelines so that they can determine whether their activities may disturb nesting bald eagles and, thus, possibly be in violation of the BGEPA. The step-by-step guidance on this website is specific to bald eagles in the states within Region 3 of the FWS. If needed, the EELP should be prepared to conduct surveys for active and alternate bald eagle nests located within 660 feet of the pipeline corridor and associated work areas to ensure that the intent of the BGEPA can be met.

REVIEW, COMMENTS, AND RECOMMENDATIONS ON THE PROPOSED PROJECT ACTION ON OTHER FISH AND WILDLIFE RESOURCES

A. Streams and Riparian Habitats

The proposed pipeline project will cross a number of streams and rivers. We recommend that directional drilling be used for crossings of streams and rivers that support rare or sensitive species and/or high quality fisheries in order to avoid impacts to these resources.

Where directional drilling will not be used, we recommend that the EELP implement the following procedures in order to minimize potential environmental impacts:

1. Stream crossings should not be undertaken during fish spawning periods. Most spawning occurs in April, May, and June for the project area. The State DNRs can be consulted for more specific information.
2. Stream bottoms impacted by constructions activities should be restored to pre-project elevations.
3. Streams should be crossed perpendicular to flow whenever feasible, particularly if any portions of the pipeline are re-routed and not collocated along the existing right-of-way.
4. Removal of vegetation and soil should be accomplished in a manner to reduce soil erosion and to disturb as little vegetation as possible.

5. Grading operations and reseedling of native species should begin immediately following trench backfilling.

The proposed project, along with other pipeline projects proposed by the EELP for this corridor, will result in additional loss of woody vegetation along stream and river banks. The Minnesota DNR expressed its concerns regarding this issue in its letter of January 9, 2008, addressing the EELP Southern Lights-LSr project. We share those concerns and support the mitigation measures recommended by the DNR to avoid or minimize these impacts. If it is not feasible to restore riparian habitats at the pipeline crossings recommended by the DNR, we recommend that the EELP seek opportunities to restore riparian habitats along other portions of streams and rivers in the project area to compensate for any avoidable loss of such habitats associated with the EELP's recent and proposed projects in this pipeline corridor.

B. Wetland Habitats

The proposed project will be routed through a number of wetland areas that provide habitat for various fish and wildlife species, including migratory birds such as shorebirds, wading and water birds, and waterfowl. In general, the FWS recommends that avoidance be the first step in any planning project that may adversely impact wetlands. Once all measures have been taken to avoid wetlands, and impacts are still likely to occur, the FWS recommends that the impacts be minimized to the extent possible and that unavoidable impacts be offset with compensatory mitigation.

For the most sensitive wetlands along the pipeline route, directional drilling should be considered if re-routing of the pipeline around these wetlands is not feasible. Impacts that cannot be avoided should be offset with compensatory mitigation at ratios based upon the type of wetland impacted and whether the impact will be temporary or permanent. To offset the permanent loss of forested wetland habitat, a ratio of 2 or 3 acres or more of replacement habitat for each acre lost might be appropriate, whereas a ratio of less than 1.1:1 might be appropriate to offset the temporary loss of emergent wetlands that are likely to recover most of their functions and values within a few years after pipeline construction is completed.

In order to provide an adequate basis for determining wetland impacts, habitat assessments should be conducted by the EELP to identify the major types and acreages of wetlands that will be impacted, both temporarily and permanently, by construction and maintenance of the Alberta Clipper project. All wetlands should be accounted for, not just those regulated under federal or state regulatory programs, as EO 11990 (Protection of Wetlands) pertains to all wetlands, not just those considered to be jurisdictional under the Clean Water Act.

We recommend that the EELP implement the following procedures when crossing wetlands in order to minimize potential environmental impacts:

1. The top layer of soil containing the seeds and tubers of wetland plants should be segregated from the sub-soils during excavation to be used as the final layer for backfilling the trench.

2. Wetlands impacted by construction activities should be restored to pre-project elevations. In cases where wetland basins to be crossed are formed because of impermeable soils, the soil area should be packed to reestablish the impermeability of the basin's floor.
3. Removal of vegetation and soil should be accomplished in a manner to reduce soil erosion and to disturb as little vegetation as possible.
4. Grading operations and reseedling of native species, if needed, should begin immediately following trench backfilling.

Information on the occurrence of wetlands within the project area may be obtained from the relevant National Wetlands Inventory (NWI) map. The FWS has the primary Federal responsibility for mapping and maintaining an inventory of wetlands in the United States. These NWI maps provide information on wetland type, location, and size and can assist you in analyzing the effect of your project. However, these maps may not necessarily provide information on the extent of wetlands regulated under state or local authority or regulated by the U.S. Army Corps of Engineers (Corps) under the Rivers and Harbors Act of 1899 and the Clean Water Act of 1977.

The NWI maps can be acquired from the appropriate state distribution center, one of six U.S. Geological Services (USGS) Earth Science Information Center regional offices, or by calling the USGS national toll-free number: 1-800-USA-MAPS. Maps can also be viewed at the Library of Congress and the Federal Depository Library System and, where available, downloaded cost-free through the NWI Home Page on the Internet at <http://www.nwi.fws.gov>.

C. Grassland Habitats

Native prairies are considered the most threatened habitat in the United States, including in part of the area through which the proposed pipeline project is planned to be routed. Therefore, it is of even more importance to protect whatever remains. Impacts to any prairie which is crossed by the proposed project should be minimized by restricting the work space to the absolute minimum necessary to complete the project. This includes vehicle and equipment driving and staging, and storage areas for materials, equipment and supplies. Restoration of any prairie impacts should be mitigated at a ratio of no less than 1:1 (grasslands created/restored versus grasslands impacted) and following methodology and materials approved by the Natural Resources Conservation Service for the specific area of a state that is impacted.

D. Migratory Birds

Pipeline construction activities in grasslands, wetlands, forests, and riparian habitats have the potential to result in the taking of migratory birds, eggs, young, and/or active nests if the activities are conducted during the nesting period. The Migratory Bird Treaty Act prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior.

Most migratory bird nesting activity in the project area occurs from approximately mid-April through late July, although some migratory bird species are known to nest outside of the aforementioned primary nesting season period. For example, eagles and some other raptors may begin nesting as early as February, whereas sedge wrens, which occur in some wetland habitats, may be found nesting up to mid-September.

If the construction of the project is planned to occur during the primary nesting season or at any other time which may result in the take of nesting migratory birds, the FWS recommends that the project proponent arrange to have a qualified biologist conduct a field survey of the affected habitats and structures to determine the absence or presence of nesting migratory birds. Surveys must be conducted during the nesting season. The FWS further recommends that field surveys for nesting birds, along with information regarding the qualifications of the biologist(s) performing the surveys, be thoroughly documented and that such documentation be maintained on file by the project proponent until such time as construction on the proposed project has been completed. In addition, if above ground power lines are proposed for this project they should be built, at a minimum, to standards identified in the Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006 (Avian Power Line Interaction Committee, 2006).

The FWS requests that the following information for each state to be crossed by the pipeline be provided to the appropriate FWS Ecological Services field office for the state prior to construction proceeding at the proposed project site. Provision of the requested information and further collaboration of the EELP with the FWS on any construction timing that might be needed would demonstrate a good faith effort by the EELP to avoid unintentional take of migratory birds to the extent practicable.

1. A copy of any survey(s) for nesting migratory birds done in conjunction with this proposed project. The survey(s) should provide details in regard to survey methods, date and time of survey, species observed/heard, and location of species observed/heard relative to the proposed project site.
2. Written description of all avoidance measures implemented at the proposed project site to avoid the take of migratory birds.
3. Written description of any circumstances where it has been determined by the project proponent that one or more active bird nests cannot be avoided by the planned construction activities.

The surveys should focus first on species of concern, as described in Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds), and on priority habitats. As planning for the Alberta Clipper project moves forward, the FWS will coordinate with the DOS and the EELP to develop a list of such species and habitats likely to be found in the project area.

In order to provide an adequate basis for determining project impacts, habitat assessments should be conducted by the EELP to identify the major types and acreages of vegetation communities that will be disturbed by construction of the Alberta Clipper project. In its letter of January 9, 2008, addressing the EELP Southern Lights-LSr project, the Minnesota DNR recommended that

the impacts of that project and the Alberta Clipper project be addressed collectively. We support that recommendation and suggest that the habitat assessment for the Alberta Clipper project include all of the other projects proposed by the EELP in this corridor (i.e., the Southern Lights-LSr project and the portion of the Southern Lights Diluent project north of Superior, Wisconsin). The assessment should distinguish between permanent and temporary impacts.

In response to the cumulative impacts associated with the increasing number of pipeline projects being proposed in this region, we have recently begun to work with companies to develop conservation guidelines directed not only at minimizing the potential for the taking of migratory birds but also at mitigating for the loss, both temporary and permanent, of habitats that support migratory birds. Rockies Express Pipeline LLC, in collaboration with the FWS, recently completed development of “Guidelines for Achieving Compliance with the Migratory Bird Treaty Act and Executive Order No. 13186 Through Voluntary Conservation Measures” (Guidelines) for its REX-East natural gas pipeline that is proposed to be constructed across portions of four states in our region (Missouri, Illinois, Indiana, and Ohio).

The Guidelines can be found in the Federal Energy Regulatory Commission’s (FERC) final EIS for the project through links at <http://www.ferc.gov/industries/gas/enviro/eis/2008/04-11-08.asp>. Click on the link for eLibrary Volume 2 at the bottom of the page and look for the link to “CD Document L Conservation Guidelines.” The supporting attachments to the Guidelines can be found through links to other parts of CD Document L on Volume 2. The Guidelines are also referenced a number of times in the Executive Summary and in sections 4 and 5 of the final EIS. The provision of mitigation for the loss of habitat, as well as actions taken by the project proponent to minimize the take of migratory birds, allowed the FERC to be in compliance with the requirements of EO 13186 and to reasonably state in the EIS that they did not anticipate significant adverse impacts to migratory birds as a result of the project. That statement could be made both for direct and cumulative impacts for the species in the project area.

We believe it would be appropriate for the EELP to work with the FWS to develop similar guidelines that would cover the Alberta Clipper project, as well as the Southern Lights-LSr project and the portion of the Southern Lights Diluent project proposed north of Superior, Wisconsin.

E. National Wildlife Refuges and State Wildlife Management Areas

The EELP should contact the FWS if the proposed pipeline will be going through or otherwise impacting any areas for which the FWS administers fee title or an easement within the National Wildlife Refuge System. The FWS requires that all wetlands under its jurisdiction be avoided during construction, when possible. Special Use or right-of-way permits will be necessary for any construction activities resulting in impacts to FWS lands (i.e., both fee title and easements). The issuances of Special Use or right-of-way permits are subject to the final determination of a Refuge compatibility review process under the auspices of the National Wildlife Refuge Improvement Act of 1997.

State Wildlife Management Areas

If the proposed pipeline will be going through or otherwise impacting any state game or wildlife management areas or fishing access areas, the EELP should contact the state agency responsible for the area to determine if the area was acquired by the state with Federal Assistance funds through the Pittman-Robertson Wildlife Restoration Act or the Dingell-Johnson Sport Fish Restoration Act. Certain restrictions apply to these lands which may have to be addressed by the FWS before work can take place.

The FWS appreciates the opportunity to review and comment on the proposed pipeline project. Should you have questions concerning these comments, please contact Mr. Lynwood (Lyn) MacLean of my staff by phone at (612) 713-5330 or by e-mail at lyn_maclean@fws.gov.

Information or questions regarding fish and wildlife resources for a particular state within the project area in Region 3 can be directed to the appropriate contact below.

Minnesota: Mr. Nick Rowse, Project Biologist, Twin Cities Ecological Services Field Office, U.S. Fish and Wildlife Service, 4101 American Blvd. E., Bloomington, MN 55425-1665; phone: (612) 725-3548 x 2201, fax: (612) 725-3609; e-mail: nick_rowse@fws.gov.

Wisconsin: Mr. Joel Trick, Project Biologist, Green Bay Ecological Services Field Office, U.S. Fish and Wildlife Service, 2661 Scott Tower Drive, New Franken, WI 54229; phone: (920) 866-1717, fax: (920) 866-1710; e-mail: joel_trick@fws.gov.

Sincerely,



Acting
for

Lynn M. Lewis
Assistant Regional Director
Ecological Services

REFERENCES

Avian Power Line Interaction Committee (APLIC). 2006. *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006*. Edison Electric Institute, APLIC, and the California Energy Commission. Washington, D.C. and Sacramento, CA.

cc: Ms. Tamara Cameron, Corps of Engineers, Regulatory Branch, St. Paul District, MN
Ms. Virginia Laszewski, U.S. Environmental Protection Agency, Region 5, Chicago, IL

ENCLOSURE 1

County Lists of Federally Listed and Candidate Species

State/ County	Canada Lynx (<i>Lynx canadensis</i>) (T)	Western prairie fringed orchid (<i>Platanthera praeclara</i>) (T)	Dakota Skipper (<i>Hesperia dacotae</i>) (C)
<u>Minnesota</u>			
Aitkin	X		
Beltrami	X		
Carlton	X		
Cass	X		
Clearwater	X		
Hubbard	X		
Itasca	X		
Kittson		X	X
Marshall	X		
Pennington		X	
Polk		X	X
Red Lake		X	
St. Louis	X		
<u>Wisconsin</u>			
Douglas	X		

KEY

- T – Threatened Species**
- X – Species Occurrence in this County**
- C - Candidate**

Fact sheets and other information that may be useful for determining whether the Canada lynx could occur in the project area can be found through links on the Region 3 web site page at <http://www.fws.gov/midwest/Endangered/saving/outreach.html>.

Federally Listed Species Occurrences, Habitats, and Impacts

Western Prairie Fringed Orchid

The western prairie fringed orchid (*Platanthera praeclara*), federally listed as threatened, inhabits tall-grass calcareous silt loam or sub-irrigated sand prairies. Declines in western prairie fringed orchid populations have been caused by the drainage and conversion of its habitats to agricultural production, channelization, siltation, road and bridge construction, grazing, haying, and the application of herbicides.

The life cycle of the plant can make it difficult to detect. If potential habitat is present within the project area, the FWS recommends that a survey be conducted by a botanist familiar with the species during the flowering period (i.e., mid-June to mid-July) to determine the possible occurrence of this plant. Qualifications of the surveyor, method of survey, and results of the survey should be submitted to the appropriate FWS field office for review and a determination whether further section 7 consultation with the FWS is necessary.

A fact sheet and other information that may be useful for determining whether the western prairie fringed orchid could occur in the project area can be found through links on the Region 3 web site page at <http://www.fws.gov/midwest/Endangered/saving/outreach.html>.

Candidate Species

Dakota Skipper

The Dakota skipper (*Hesperia dacotae*) is a candidate species found in native prairies containing a high diversity of wildflowers and grasses. Habitats include two prairie types: (1) low (wet) prairie dominated by bluestem grasses, wood lily, harebell, and smooth camas; and (2) upland (dry) prairie on ridges and hillsides dominated by bluestem grasses, needlegrass, pale purple and upright coneflowers and blanketflower. A fact sheet and other information for the Dakota skipper can be found through links on the Region 3 web site page at <http://www.fws.gov/midwest/Endangered/lists/candidat.html>.

APPENDIX B
Species Table

Appendix B
Species Table

Species	Scientific name	BCR11	BCR12	BCR23	USFWS Region 3 BCC	ESA listed ²	State listed- MN ^{2,3}	State listed- WI ²	CNF/ LLBO listed
Stilt sandpiper	<i>Calidris himantopus</i>		X	X	X				
Swainson's hawk	<i>Buteo swainsoni</i>	X			X				
Swainson's thrush	<i>Catharus ustulatus</i>							SC	
Swainson's warbler	<i>Limnothlypis swainsonii</i>				X				
Trumpeter swan	<i>Cygnus buccinator</i>						T	E	X
Upland sandpiper	<i>Bartramia longicauda</i>	X	X	X	X			SC	
Western grebe	<i>Aechmophorus occidentalis</i>							SC	
Western meadowlark	<i>Sturnella neglecta</i>							SC	
Whimbrel	<i>Numenius phaeopus</i>		X		X			SC	
Whip-poor-will	<i>Caprimulgus vociferus</i>							SC	
White-rumped sandpiper	<i>Calidris fuscicollis</i>	X							
Willet	<i>Tringa semipalmata</i>	X							
Wilson's phalarope	<i>Phalaropus tricolor</i>	X	X	X	X		T	SC	X
Wood thrush	<i>Hylocichla mustelina</i>		X	X	X				
Worm-eating warbler	<i>Helmitheros vermivorum</i>				X			E	
Yellow rail	<i>Coturnicops noveboracensis</i>	X	X		X			T	
Yellow throated warbler	<i>Dendroica dominica</i>							E	
Yellow-billed cuckoo	<i>Coccyzus americanus</i>							SC	
Yellow-breasted chat	<i>Icteria virens</i>							SC	
Yellow-crowned night heron	<i>Nyctanassa violacea</i>							T	

¹ BCR- Bird Conservation Region, US FWS Birds of Conservation Concern

² E- Endangered, T- Threatened, SC-Special Concern

³ ND does not maintain a state list, but defers to the federal list.

⁴ Habitat descriptions from NatureServe website

⁵ Critical habitat in St. Louis County, MN and Douglas County, WI (does not overlap project route)

APPENDIX C
Nesting Habitat Table

Appendix C
Nesting Habitat Table

Wetland	Forest	Grassland	Lake/Open Water	Brush	Underground/Burrow
American bittern	Acadian flycatcher	American golden plover	American white pelican	Bell's vireo	Burrowing owl
American black duck	Bay-breasted warbler	Bachman's sparrow	Caspian tern	Bewick's wren	
Baird's sparrow	Black-backed woodpecker	Barn owl	Cattle egret	Canada warbler	
Black rail	Black-billed cuckoo	Blue-winged warbler	Common goldeneye	LeConte's sparrow	
Black tern	Black-throated blue warbler	Buff-breasted sandpiper	Common moorhen	Prairie warbler	
Black-crowned night heron	Bonaparte's gull	Chestnut-collared longspur	Common tern (Great Lakes population)	Yellow-breasted chat	
Bobolink	Boreal chickadee	Dickcissel	Great black-backed gull		
Connecticut warbler	Cape May warbler	Grasshopper sparrow	Piping Plover		
Forster's tern	Cerulean warbler	Greater prairie chicken	Trumpeter swan		
Greater yellowlegs	Chuck-will's-widow	Henslow's sparrow	Western grebe		
Horned grebe	Golden-winged warbler	Lark sparrow			
Hudsonian godwit	Great blue heron	Loggerhead shrike			
King rail	Great egret	Marbled godwit			
Least bittern	Hooded warbler	McCown's longspur			
Little gull	Kentucky warbler	Northern bobwhite			
Long-billed curlew	Kirtland's warbler	Sanderling			
Nelson's sharp-tailed sparrow	Louisiana waterthrush	Sedge wren			
Northern pintail	Olive-sided flycatcher	Sharp-tailed grouse			
Prothonotary warbler	Red-headed woodpecker	Sprague's pipit			
Redhead	Spruce grouse	Stilt sandpiper			
Red-necked grebe	Swainson's thrush	Upland sandpiper			
Rusty blackbird	Whip-poor-will	Western meadowlark			
Sandhill crane	Wood thrush				
Short-billed dowitcher	Worm-eating warbler				
Snowy egret	Yellow throated warbler				
Solitary sandpiper	Yellow-billed cuckoo				
Swainson's warbler					
Whimbrel					
White-rumped sandpiper					
Willet					
Wilson's phalarope					
Yellow rail					
Yellow-crowned night heron					

APPENDIX D

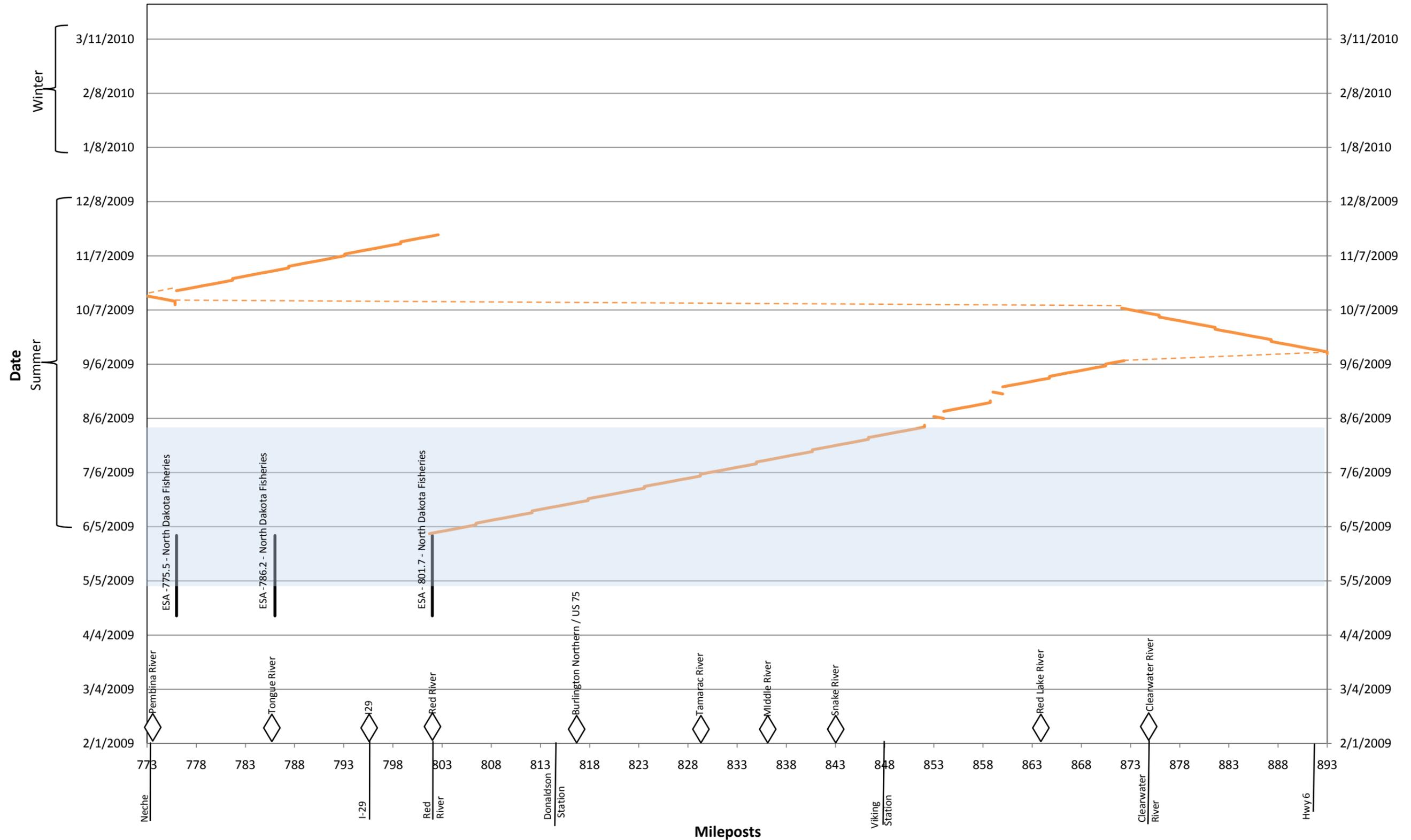
**Construction Plan
(Spreads 1 through 4)**

Spread 1
 March Chart
 10/13/08
DRAFT

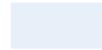
 Migratory Bird - Clearing Restriction
 Winter Work Area

 Clipper (36") Construction Segment (represents pipe weld)
 Move Around
 HDD

Assumptions:
 1) Lay rate assumed to be 5000 ft/day
 2) Work week is assumed to be 6 days/week
 3) Two days are allotted for each move around

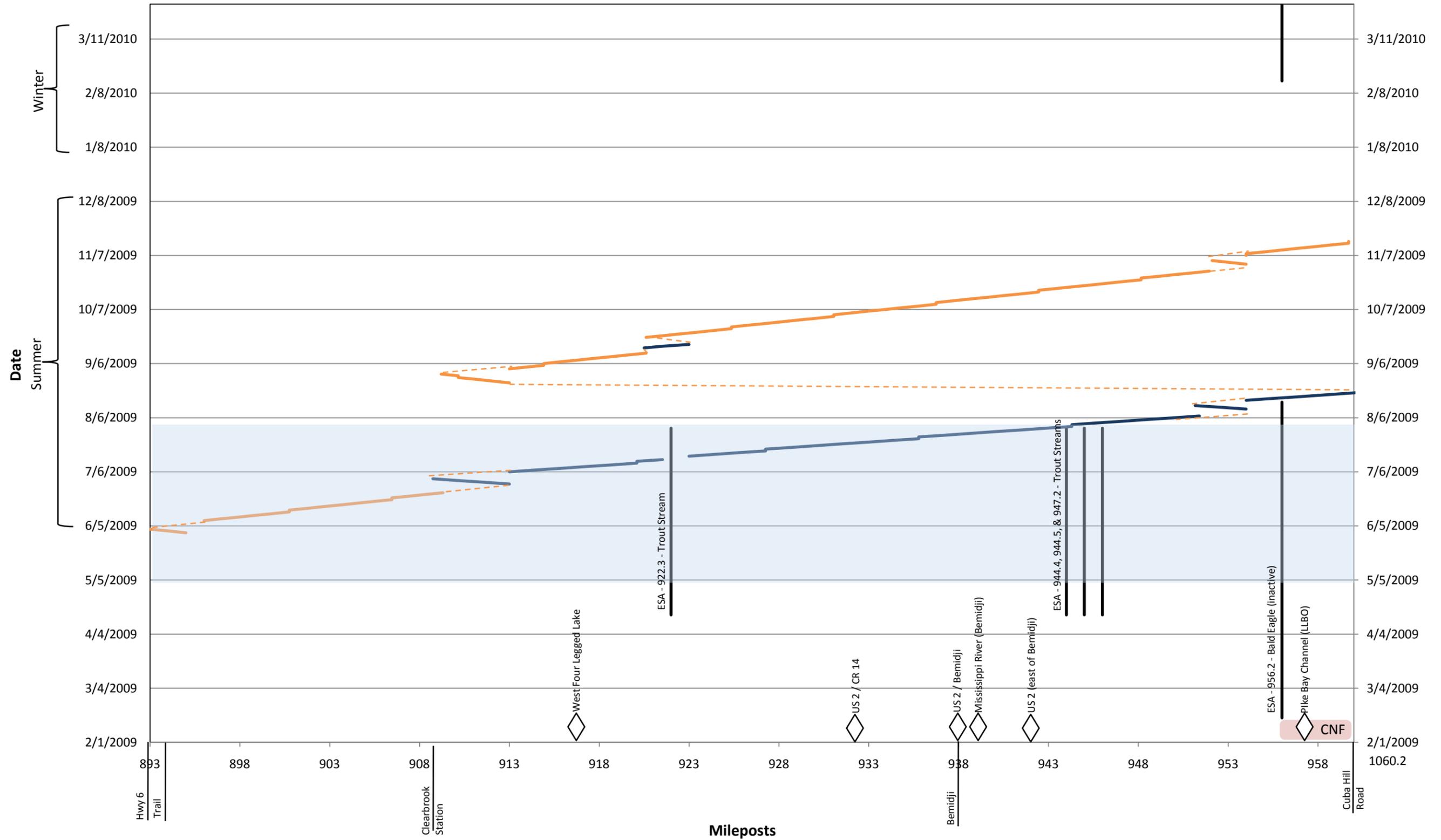


Spread 2
March Chart
10/13/08
DRAFT

 Migratory Bird - Clearing Restriction
 Winter Work Area
 HDD

 Clipper (36") Construction Segment (represents pipe weld)
 Southern Lights (20") Construction Segment (represents pipe weld)
 Move Around

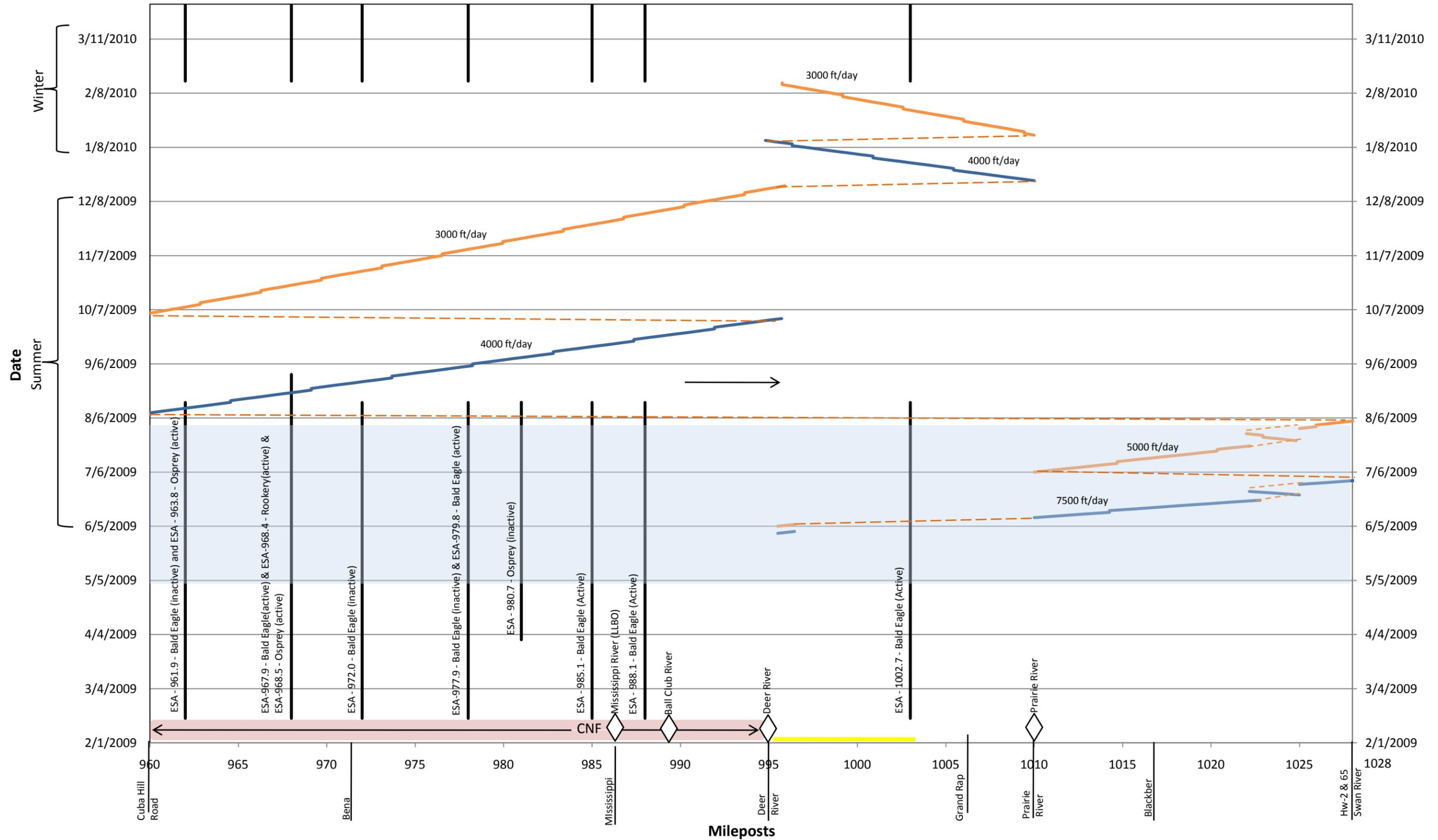
Assumptions:
1) Lay rate assumed to be from 5000 (36") to 7500 (20") ft/day
2) Work week is assumed to be 6 days/week
3) Two days are allotted for each move around



Spread 3
 March Chart
 10/13/08
DRAFT



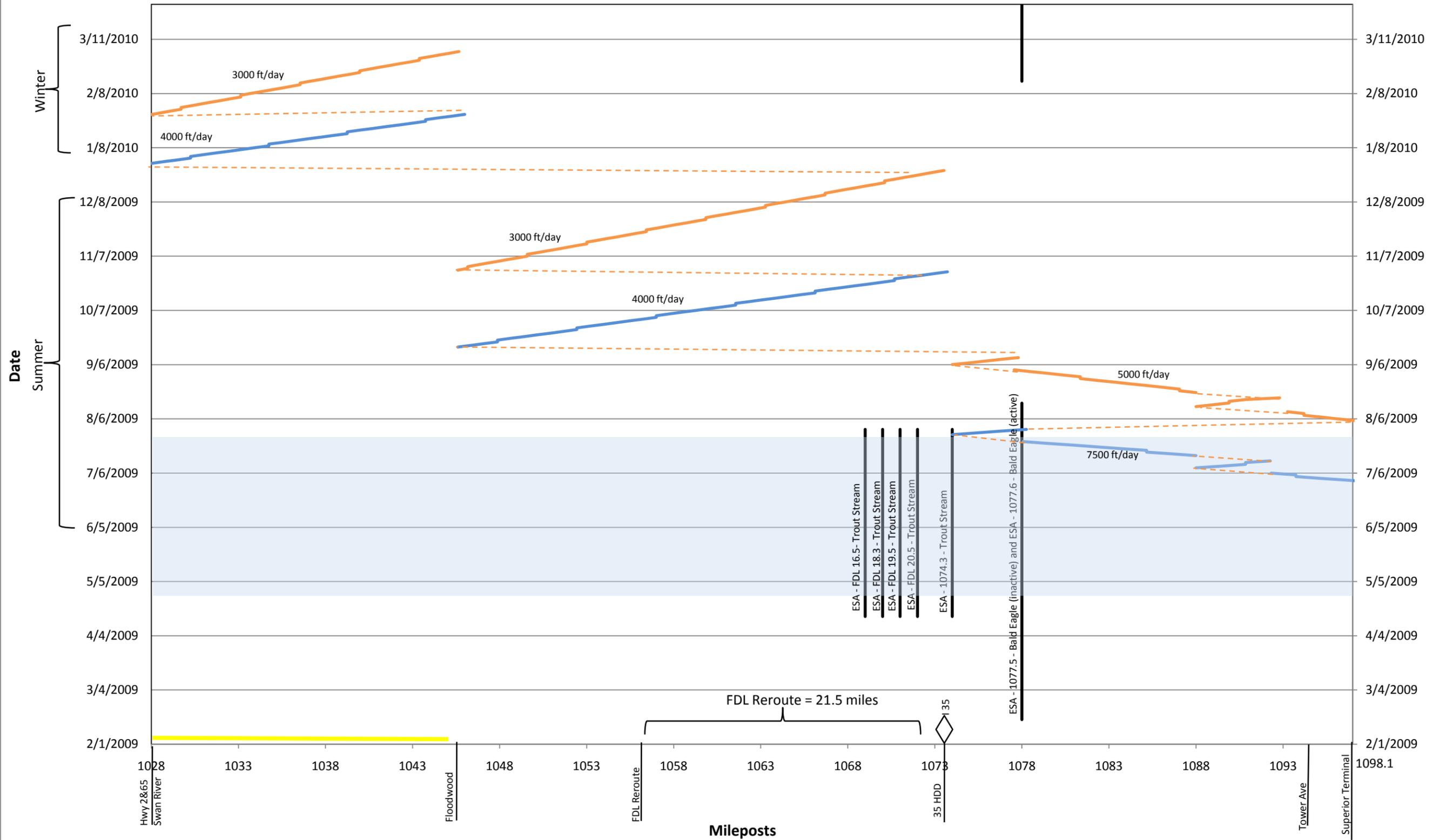
Assumptions:
 1) Lay rate varies from 3000 ft/day to 7500 ft/day
 2) Work week is assumed to be 6 days/week
 3) Two days are allotted for each move around



Spread 4
 March Chart
 10/13/08
DRAFT



Assumptions:
 1) Lay rate varies from 3000 ft/day to 7500 ft/day
 2) Work week is assumed to be 6 days/week
 3) Two days are allotted for each move around



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