

## **APPENDIX H      AGRICULTURAL IMPACT MITIGATION PLAN**

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June 2021

**XCEL ENERGY**

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**Northern Colorado Area Plan:  
Ault to Cloverly Transmission Project**

*Agricultural Impact Mitigation Plan*



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## **ACRONYMS AND ABBREVIATIONS**

AIMP	Agricultural Impact Mitigation Plan
CDA	Colorado Department of Agriculture
Company	Public Service Company of Colorado, doing business as Xcel Energy
DWR	Colorado Division of Water Resources
kV	kilovolt
Project	Northern Colorado Area Plan: Ault to Cloverly Transmission Project
ROW	right(s)-of-way

## **1.0 INTRODUCTION**

Public Service Company of Colorado (PSCo), doing business as Xcel Energy (Xcel Energy), developed this Agricultural Impact Mitigation Plan (AIMP) for its Northern Colorado Area Plan: Ault to Cloverly Transmission Project (Project). The AIMP identifies measures that PSCo will take before, during, and after Project construction to avoid, mitigate, minimize, repair, or provide compensation for Project impacts on Agricultural Land.

Capitalized words and other terms have definitions outlined at the end of this AIMP in Section 8. Use of the term “Landowner” in this AIMP may be interpreted as “Landowner and/or Tenant.”

### **1.1 Project Description**

The Project includes the following existing and proposed facilities:

- A new overhead 230 kV double-circuit transmission line extending between the Western Area Power Administration (WAPA) Ault Substation and PSCo’s planned Husky Substation. One circuit will be installed initially and operated at 230 kV. PSCo is currently negotiating with landowners along this alignment. The second 230 kV circuit will be installed when additional electric capacity is needed. The new transmission line will be located in unincorporated Weld County (3.7 miles) and in the Town of Ault (0.7 mile).
- The planned Husky Substation, located in the Town of Ault, will replace the existing Ault 44 kV Substation, which will be decommissioned after the Husky Substation is energized.

In November 2018, PSCo submitted a site plan for the proposed Husky Substation to the Town of Ault. In February 2019, the Town of Ault approved the site plan.

- A new overhead 115/230 kV double-circuit transmission line extending between the planned Husky Substation and the site for the Collins Street Substation on the Town of Eaton’s east side. A 115 kV circuit will be installed initially, and a 230 kV circuit will be installed in the future when additional electric capacity is needed. The new transmission line will be located in unincorporated Weld County (7.2 miles), Town of Ault (0.3 mile) and Town of Eaton (0.9 mile). At ultimate buildout, both circuits will be installed on the same transmission structures.
- The new Collins Street Substation, to be located in the Town of Eaton, will replace PSCo’s existing Eaton 44 kV Substation, which will be decommissioned after the Collins Street Substation is energized. The Collins Street Substation will accommodate upgrades to the local electrical distribution system. Approximately 10 acres is needed for the new substation site.
- A new overhead 115/230 kV double-circuit transmission line extending between the new Collins Street Substation and the existing Cloverly Tap Point, which connects to PSCo’s existing Cloverly Substation. A 115 kV circuit will be installed initially, and a 230 kV circuit will be installed in the future when additional electric capacity is needed. The new transmission line will be located in unincorporated Weld County (4.6 miles) and in the Town of Eaton (1.0 mile).

### **1.2 Coordination**

PSCo prepared this AIMP with input from the Colorado Department of Agriculture (CDA) and the Colorado Division of Water Resources (DWR). Particular assistance from the Colorado DWR was provided

by Mr. Mark Simpson, Cache La Poudre Basin Water Commissioner, and Mr. Brent Schantz, South Platte River Operations and Compact Coordinator.

### **1.3 Applicability**

The AIMP and its pre-construction, construction, and post-construction standards and policies apply only to Project activities occurring on private agricultural land. If agricultural tile is encountered, whether on non-agricultural land or agricultural land, PSCo will implement construction standards relating to the repair of tile on agricultural lands discussed below. Portions of this AIMP that identify standards and policies applicable to organic agricultural land apply only to the types of lands defined in the National Organic Program Standards at Title 7 Code of Federal Regulations 205.100, 205.101, and 205.202. Additionally, pre-construction, construction, and post-construction standards and policies identified in this AIMP can be modified through Easement or other agreement between PSCo and the Landowner of agricultural land, as appropriate. In such case, the easement or other agreement will control.



## 2.0 AGRICULTURE IN WELD COUNTY

Agricultural operations, including harvesting crops and raising livestock, cover 75 percent of Weld County's 2.5 million acres. Weld County leads Colorado in the value of agricultural products sold and is one of the nation's richest agricultural counties. Every year, Weld County farmers plant more than 875,000 acres of crops, of which more than 300,000 acres are irrigated (Weld County 2020). Weld County's land use policies support rural character and respect the county's agricultural heritage and traditional agricultural land uses. More specifically, county officials recognize the right to farm and, in doing so, adopt the following Right to Farm Statement, a portion of which is provided below in addressing agricultural operations:

### **Weld County Right to Farm Statement**

*Weld County is one of the most productive agricultural counties in the United States, typically ranking in the top ten counties in the country in total market value of agricultural products sold. The rural areas of Weld County may be open and spacious, but they are intensively used for agriculture. Persons moving into a rural area must recognize and accept there are drawbacks, including conflicts with long-standing agricultural practices and a lower level of services than in town. Along with the drawbacks come the incentives which attract urban dwellers to relocate to rural areas: open views, spaciousness, wildlife, lack of city noise and congestion, and the rural atmosphere and way of life. Without neighboring farms, those features which attract urban dwellers to rural Weld County would quickly be gone forever.*

*Agricultural users of the land should not be expected to change their long-established agricultural practices to accommodate the intrusions of urban users into a rural area. Well-run agricultural activities will generate off-site impacts, including noise from tractors and equipment; slow-moving farm vehicles on rural roads; dust from animal pens, field work, harvest and gravel roads; odor from animal confinement, silage and manure; smoke from ditch burning; flies and mosquitoes; hunting and trapping activities; shooting sports, legal hazing of nuisance wildlife; and the use of pesticides and fertilizers in the fields, including the use of aerial spraying. It is common practice for agricultural producers to utilize an accumulation of agricultural machinery and supplies to assist in their agricultural operations. A concentration of miscellaneous agricultural materials often produces a visual disparity between rural and urban areas of the County (Weld County 2020).*

During PSCo's efforts to route the proposed transmission line and site a new substation in the Eaton area, landowners voiced the following concerns for impacts on agricultural land:

- Irrigation wells and underground pipelines carrying irrigation water.
- Pivot sprinkler systems, including electronic instrument panels and pumps.
- Drip irrigation systems, including underground drip tape and pumps.
- Guided pivot irrigation systems, including underground guidance systems.
- Interference with Global Positioning System equipment for AutoTrac-guided farm equipment.
- Transmission line conductor height and maintenance of irrigation ditches.
- Loss of agricultural production due to changes in the center pivot or other modifications to irrigation systems.

The following discussions provide mitigation measures and best management practices that PSCo will use to address these concerns.

### **3.0 GENERAL CONDITIONS**

PSCo will negotiate in good faith with each Landowner of agricultural land to secure an agreement containing the conditions or provisions needed to implement this AIMP. The mitigation measures below are subject to negotiation and approval or change by the Landowner of agricultural land, so long as such changes are negotiated with and acceptable to PSCo. Unless otherwise specified or agreed upon by the Landowner, PSCo or its qualified contractors will implement the mitigation measures. PSCo and the Landowner may agree that the Landowner will conduct certain activities.

Unless otherwise specified in this AIMP or in an easement or other agreement negotiated between PSCo and the Landowner, construction standards and policies or mitigation measures will be implemented within 90 days after completion of Final Clean-up activities on agricultural land. Weather conditions or other circumstances identified by mutual agreement between PSCo and the Landowner may delay implementing mitigation measures until after Final Clean-up. Where PSCo determines that it is practicable, PSCo will make temporary repairs. These temporary repairs may be made to minimize additional property damage or interference with the Landowner's access to the subject agricultural land or to comply with federal or state permits and regulations.

PSCo or its contractors will implement the pre-construction, construction, and post-construction standards and policies or mitigation measures in this AIMP so long as such activities do not conflict with applicable federal, state, or local rules, regulations, permits, licenses, approvals, or conditions obtained by PSCo for the Project. Should any activity in this AIMP be determined to be unenforceable due to federal, state, or local rules, regulations, permits, licenses, approvals, or conditions, PSCo will inform the Landowner and will identify a reasonable alternative activity.

## **4.0 PRE-CONSTRUCTION STANDARDS**

### **4.1 Contact Information**

Prior to right-of-way (ROW) preparation or construction, PSCo will make a good faith effort to provide each Landowner with PSCo land agent contact information, including a phone number and address that can be used to contact PSCo regarding impacts to agricultural land or other Project-related construction concerns or questions. Good faith efforts may include in-person meetings, emails, letters, or telephone calls. PSCo will provide updated information to the Landowner within a reasonable time of any change to PSCo contact information.

### **4.2 Soil and Water Resources Mapping**

If requested by the Landowner, prior to beginning construction activities, PSCo will map and measure soil and water features to document pre-construction conditions in locations where Project construction activities are planned to occur on agricultural land. More specifically, PSCo will map the topsoil depth and vegetation of crops, as well as subsurface irrigation systems to identify pipe locations and avoid or minimize impacts to such systems. Additionally, PSCo will measure water flows in known agricultural tile to document pre-construction flow rates and hydraulic conductivity. PSCo will also contact the affected Landowner to identify decreed water rights, if applicable. According to the Colorado DWR, individual landowners are the best source of information on historical water rights (Colorado DWR 2019).

### **4.3 Coordination with Irrigation Companies**

Prior to beginning construction activities, PSCo will work with the New Cache La Poudre Irrigating Company (Lucerne, Colorado) and Larimer and Weld Irrigation (Fort Collins, Colorado) to determine whether formal agreements are needed to cross irrigation canals with the proposed transmission line. PSCo will also coordinate Project information with these companies to avoid and minimize impacts on irrigation systems from construction or operation of the Project.

In conversations with landowners, PSCo has learned of the significance of existing irrigation wells that serve agricultural properties in the area. PSCo will work with landowners to understand the existing irrigation infrastructure on each parcel. Existing irrigation wells will be avoided when possible; however, it may be necessary to make minor adjustments in pole placement and height to facilitate a well remaining in place. If, on a case-by-case review, a well is determined to be safe to remain within the proposed ROW, PSCo and the Landowner, shall agree it is safe for the well to remain operational as-is, and will not pose a safety hazard to the owner, PSCo or service provider in the course of its continued operation and maintenance.

Should it be determined a well needs to be moved from its location within the ROW, PSCo may elect to have the Landowner perform the necessary work to replace the well as per the current guidelines by the State of Colorado, Weld County, and any ditch companies that may have jurisdiction for the well for which they will be compensated. PSCo may also choose to have the work done by a qualified service provider, approved by the Landowner, and to compensate the provider for the costs incurred to perform the scope of work needed to replace the original well. After consulting with local irrigation well-drilling and maintenance companies, it does appear that most, if not all, water wells will be able to be serviced without interference from the proposed route including those that may be located in the ROW.

#### **4.4 Transmission Structure Locations**

During the Project's design, PSCo's engineering, real estate, and siting and lands rights staff will seek input from the Landowner, as practicable, to address concerns for transmission structure locations. Prior to construction, the siting and land rights agents will review the planned structure locations with the Landowner, when requested to do so by the Landowner.

Prior to installing transmission line structures, PSCo will contact the affected Landowner for his/her knowledge of underground systems such as water pipelines, drip irrigation or agricultural tile locations. If the Landowner does not know if an underground system such as tile is located at a proposed structure location, PSCo will attempt to identify whether a tile is present. Agricultural tile that is damaged, cut, or removed as a result of PSCo's location efforts will be promptly repaired.

#### **4.5 Procedures for Determining Damages and Compensation**

PSCo will maintain a procedure for processing Landowner claims for construction-related damages, including but not limited to crop damages. The procedure is intended to standardize and minimize Landowner concerns for recovering damages, providing a degree of certainty and predictability for the Landowner and PSCo, and fostering a good relationship between the Landowner and PSCo for the long-term. During easement acquisition negotiations, PSCo will provide a copy of the procedure to the Landowner.

Damage claim negotiations between PSCo and an affected Landowner will be voluntary. PSCo will offer to compensate the Landowner according to the terms of PSCo's damage claim policy that is in effect at the time that the Easement is executed and recorded. The compensation offered is only an offer to settle, and the offer shall not be introduced in any proceeding brought by the Landowner to establish the amount of damages that PSCo must pay.

## **5.0 CONSTRUCTION STANDARDS**

PSCo will reasonably restore and/or compensate the Landowner, as appropriate, for damages caused by PSCo as a result of transmission line construction, and as outlined in this AIMP. PSCo will decide whether to restore land and/or compensate the Landowner after a discussion with the Landowner.

### **5.1 Monitoring**

The CDA does not require that an Agricultural/Environmental Monitor be hired for a project's construction phase (CDA 2020). However, because of agriculture's importance in the Project area, PSCo will consider retaining an Agricultural/Environmental Monitor if needed.

PSCo would develop a list of potential Agricultural/Environmental Monitors and written specifications for the minimum qualifications that the selected Monitor must possess. A sample list of qualifications is provided below.

#### **5.1.1 Sample List of Qualifications**

1. Have demonstrated practical experience with pipeline or electric power transmission line construction and restoration activities on agricultural land.
2. During Project construction activities, be responsible for verifying PSCo's compliance with this AIMP.
3. If work is being performed on Organic agricultural land, the Monitor will be trained in organic inspection by the Independent Organic Inspectors Association, unless the Monitor received such training during the previous three years.
4. On a regular basis, observe Project construction activities on agricultural land.
5. Work with Project construction personnel to ensure all practices comply with this AIMP.
6. Work with other members of PSCo's team to comply with this AIMP.
7. Document instances of noncompliance and work with Project construction personnel to identify and implement appropriate corrective actions as needed.
8. Before Project construction activities begin, provide Project construction personnel with training on the provisions of this AIMP.
9. As needed, provide Project construction personnel with field training on specific topics included in this AIMP.

#### **5.1.2 Responsibilities**

The Agricultural/Environmental Monitor would audit PSCo's compliance with this AIMP. The Agricultural/Environmental Monitor would not have the authority to direct or to stop Project construction activities. However, if the Monitor observes a significant, non-compliant activity, he/she would immediately report the activity to PSCo. If after reviewing the non-compliant Project activity, and if the judgment is made that continuing the activity will damage environmental resources and/or Agricultural Land, PSCo will issue a stop work order.

The Agricultural/Environmental Monitor's duties would include, but are not limited to the following:

1. Participating in pre-construction training activities that PSCo sponsors.
2. Monitoring Project construction and restoration activities on Agricultural Land for compliance with provisions of this AIMP. The Monitor will be allowed full access to the Agricultural Land where Project construction activities occur.
3. Reporting instances of noncompliance with this AIMP to PSCo and the Landowner.
4. Communicating Landowner concerns to PSCo, if needed.
5. Maintaining a written log of Landowner concerns that PSCo's construction or siting and land rights agents observe or report concerning compliance with this AIMP.
6. Be responsible for determining if weather conditions caused the soil to become so wet that the activity to alleviate compaction would reduce the future production capacity of the land and advising PSCo of these conditions. PSCo will be solely responsible in making the decision on whether it will proceed with Project construction activities in these circumstances. Compensation for the Landowner, as appropriate, will be determined as described in Section 4.5.

## **5.2 Access Roads**

The location of access roads to be used for Project construction activities will be discussed with the Landowner. PSCo will design access roads to not impede proper drainage and will construct access roads to mitigate soil erosion. If grading is required to create an access road, the access road may be left intact through mutual agreement between the Landowner and PSCo, unless otherwise restricted by federal, state, or local government regulations. If an access road is to be removed, the Agricultural Land on which the access road is constructed will be returned to its previous use and restored to its pre-construction condition.

## **5.3 New Transmission Structure Installation**

Installing the Project's proposed 115/230 kV transmission lines may create short-term impacts to active agricultural operations. More specifically, construction activities may damage or remove crops, preclude planting, impede access to certain fields or plots of land, obstruct farm vehicles and equipment, and affect harvest operations. All of these impacts would temporarily withdraw land from production and reduce agricultural productivity on the affected land. Construction equipment and vehicles may also compact agricultural soils. Construction activities that compact these soils might impact subsequent active agricultural operations.

During the Project's construction activities, livestock operations may also be temporarily affected. Construction activities may temporarily disrupt livestock access to pasture lands and disturb livestock with construction noise.

If Project construction activities result in damage or removal of existing crops or farm vehicles or equipment or a temporary or permanent withdrawal of land from production, PSCo will compensate the Landowner for temporary or permanent loss of production or equipment damage.

## **5.4 Spray and Drip Irrigation**

If the transmission line and/or temporary work areas intersect an operational, or soon to be operational, spray irrigation system or drip irrigation system, PSCo will work with the Landowner to establish an acceptable amount of time that the irrigation system may be out of service.

If, as a result of Project construction activities, an irrigation system interruption causes crop damages either on or off of the ROW, PSCo will compensate the Landowner for crop loss.

If it is feasible and mutually acceptable to PSCo and the Landowner, temporary measures will be implemented to allow an irrigation system to continue to operate across land on which the transmission line is also being constructed. PSCo will not allow an irrigation system to continue operation across land on which the transmission line is also being constructed, if PSCo determines that such operation would be unsafe.

## **5.5 Agricultural Tile**

If Project construction activities damage an agricultural tile, the tile will be repaired with materials of the same quality as that which was damaged. If tiles on or adjacent to the transmission line construction area are adversely affected by construction, PSCo will take such actions as are necessary to restore the tile's function, including relocating, reconfiguring, and replacing the existing tile. PSCo will correct tile repairs, as needed, after completing construction activities, provided that the repairs were made by PSCo or its agents or designees.

The affected Landowner may elect to negotiate a fair settlement with PSCo for the Landowner to be responsible for repairing, relocating, reconfiguring, or replacing damaged tile. In the event that the Landowner chooses to be responsible for repairing, relocating, reconfiguring, or replacing the damaged tile, PSCo will have no further liability for the identified damaged tile.

The following standards and policies apply to the tile repairs completed by PSCo:

1. Tiles will be repaired with materials of the same or better quality as that which was damaged.
2. If water is flowing through a damaged tile, temporary repairs will be promptly installed and maintained until such time that permanent repairs can be made.
3. PSCo will make efforts to complete permanent tile repairs in a reasonable timeframe after Final Clean-up, accounting for weather and soil conditions.
4. After completing the Final Clean-up and settling damages, PSCo will be responsible for correcting and repairing tile breaks or other damages to tile systems that are discovered on the ROW, to the extent that such breaks are the result of Project construction. These damages are usually discovered after the first significant rain event. PSCo will provide the Landowner with contact information, should tile damage concerns be identified after Final Clean-up. PSCo will not be responsible for tile repairs performed by the Landowner.

PSCo will be responsible for repairing areas, as necessary, to properly drain wet areas along the ROW caused by Project construction activities.

## **6.0 POST-CONSTRUCTION STANDARDS**

### **6.1 Soil Compaction/Rutting**

PSCo will repair damage incurred due to compaction, ruts, erosion, and/or washing of soil caused by Project construction activities. If, by mutual agreement, the Landowner repairs such damage, PSCo will reimburse the Landowner for the reasonable cost of labor and the use of equipment to repair damage incurred due to compaction, ruts, erosion, and/or washing of soil caused by Project construction activities. PSCo will make such payments in a reasonable period of time following Project construction activities and after receiving a statement substantiating the Landowner's repair costs.

If there is a dispute between the Landowner and PSCo as to what areas need to be ripped or chiseled, the depth to which compacted areas should be ripped or chiseled, or the need for or rates of applying lime, fertilizer, and organic material, PSCo will consult the Agricultural/Environmental Monitor before making a final decision.

### **6.2 Excess Soil and Rocks**

Unless the Landowner requests otherwise, excess soil and rock will be removed from the construction site. After Final Clean-up and restoration of Agricultural Lands, PSCo will make good faith efforts to obtain written acknowledgment from the Landowner that such activities have been completed.

### **6.3 Construction Debris**

PSCo will promptly remove Project-related construction debris and material that is not an integral part of the transmission structure from the Landowner's property at PSCo's cost. Such material may include excess construction materials or litter generated by the construction crews. PSCo will pay for the reasonable cost of repairs to the Landowner's equipment if the equipment is damaged by materials or debris that PSCo left on the property during construction activities.

### **6.4 Soil Conservation Practices**

Soil conservation practices such as terraces and grassed waterways that are damaged by Project construction activities will be restored to their pre-construction condition, to the extent practicable. PSCo will attempt to work with the Landowner to identify and document the pre-construction conditions of these features.

### **6.5 Reclamation and Revegetation**

At transmission structure work areas and along Project access roads, PSCo will redistribute topsoil that was removed during Project construction activities.

PSCo will only use certified weed-free hay, straw, or grass during all Project revegetation activities.



## **7.0 SPECIFIC STANDARDS FOR ORGANIC FARMS**

PSCo recognizes that Organic Agricultural Land is a unique feature of the landscape and will treat this land with a similar level of care as other sensitive environmental features. This section identifies mitigation measures that apply specifically to farms that are Organic Certified or farms that are in active transition to becoming Organic Certified, and is intended to address the unique management and certification requirements of these operations. This section supplements and is an addition to all other protections included in this AIMP.

The provisions of this section will only apply to Organic Agricultural Land for which the Landowner has provided a true, correct, and current version of the Organic System Plan to PSCo. The Landowner must provide the Organic System Plan to PSCo no later than 60 days after signing the Easement.

### **7.1 Organic System Plan**

PSCo recognizes the importance of the individualized Organic System Plan to the Organic Certification process. PSCo will work with the Landowner, the Landowner's Certifying Agent, and/or a mutually acceptable third-party organic consultant to identify the site-specific Project construction practices that will minimize the potential for decertification as a result of Project construction activities. Possible practices may include but are not limited to the following:

- Cleaning equipment.
- Planting a deep-rooted cover crop in lieu of mechanical decompaction.
- Applying composted manure or rock phosphate.
- Preventing the introduction of disease vectors from tobacco use.
- Restoring and replacing beneficial bird and insect habitat.
- Maintaining organic buffer zones.
- Using organic seeds for any cover crop.

PSCo recognizes that Organic System Plans are proprietary and will respect the need for confidentiality.

### **7.2 Prohibited Substances**

PSCo will avoid applying prohibited substances on Organic Agricultural Land. No herbicides, pesticides, fertilizers or seed will be applied to Organic Agricultural Land unless requested and approved by the Landowner. Likewise, PSCo will avoid refueling, storing fuels or lubricants, or conducting routine equipment maintenance on Organic Agricultural Land. Prior to entering Organic Agricultural Land, equipment will be checked to ensure that fuel, hydraulic, and lubrication systems are in good working order. If prohibited substances are used on land adjacent to Organic Agricultural Land, these substances will be used in such a way as to prevent them from entering Organic Agricultural Land.

### **7.3 Access Roads**

During Project construction activities, topsoil and subsoil layers that are removed to create access roads on Organic Agricultural Land will be stored separately and replaced in the proper sequence after the transmission line is installed. Unless otherwise specified in the site-specific practices mentioned above,

PSCo will not use this soil for other purposes, including creating access ramps at road crossings. No topsoil or subsoil, other than incidental amounts, may be removed from Organic Agricultural Land. Likewise, Organic Agricultural Land will not be used to store soil from non-Organic Agricultural Land.

## **7.4 Erosion Control**

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

## **7.5 Weed Control**

On Organic Agricultural Land, if PSCo determines that weed control is needed during Project construction activities, PSCo will, to the extent feasible, implement weed control methods consistent with the Landowner's Organic System Plan. Prohibited substances will not be used for weed control within 50 feet of posted Organic Agricultural Land.

## **7.6 Monitoring**

In addition to the responsibilities of the Agricultural/Environmental Monitor described in Section 5.1, the following stipulations will apply:

1. The Agricultural/Environmental Monitor will monitor Project construction and restoration activities on Organic Agricultural Land for compliance with the provisions of this section and will document any Project activities that may result in decertification.
2. Instances of non-compliance will be documented according to the Independent Organic Inspectors Association protocol consistent with the Landowner's Organic System Plan, and will be made available to the CDA, the Landowner, the Landowner's Certifying Agent, and PSCo.

## **7.7 Compensation for Construction Damages**

The settlement of damages will be based on crop yield and/or crop quality determination and the need for additional restoration measures. PSCo will first work with the Landowner of Organic Agricultural Land to determine crop yield. In the event that PSCo and the Landowner of Organic Agricultural Land cannot determine crop yield, at PSCo's expense, a mutually agreed upon professional agronomist will make crop yield determinations and the CDA will make crop quality determinations. If the crop yield and/or crop quality determinations indicate the need for soil testing, the testing will be conducted by a commercial laboratory that is properly certified to conduct the necessary tests and is mutually acceptable to PSCo and the Landowner. Field work for soil testing will be conducted by a professional soil scientist or professional engineer licensed by the state of Colorado. PSCo will be responsible for the cost of sampling, testing, and additional restoration activities, if needed. Additional restoration activities will be completed according to the terms of PSCo's damage claim policy that is in effect at the time that the Easement is executed and recorded.

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

Should any portion of Organic Agricultural Land be decertified as a result of Project construction activities, PSCo will pay damages for crops and/or livestock in the area impacted by the lost certification. The payment for damages will be equal to the full difference between the market value of conventional crops and/or livestock and the market value of the organic crops and/or livestock lost for three years or the period of time needed for the Landowner or Tenant to regain certification, whichever comes first. The market value of the crop will be determined as set forth in the damage claim policy. Prior to any compensation being paid for organic crop loss, at the request of PSCo, the Landowner shall provide verification of the loss of Organic Certification through the accredited certifying agent.

## **8.0 DEFINITIONS**

### **Agricultural Land**

Land that is actively managed for crops, hay, or pasture, and land in government set-aside programs.

### **Agricultural/Environmental Monitor**

The person(s) responsible for overall Project compliance with permit conditions and commitments made in this AIMP and for auditing PSCo's compliance with this AIMP. He/she will have demonstrated experience with pipeline or electric power transmission line construction on Agricultural Land. The Monitor will report directly to the Colorado Department of Agriculture.

### **Certificate of Public Convenience and Necessity**

The legal document that the Colorado Public Utilities Commission requires public utilities and cooperative electrical associations to file for new construction and extension of transmission facilities in Colorado. Codified at 4 Code of Colorado Regulations 723-3.

### **Certifying Agent**

Per the National Organic Program Standards at Title 7 Code of Federal Regulations 205.2.

### **Decertified or Decertification**

Loss of Organic Certification.

### **Easement**

The agreement(s) and/or interest in private-owned agricultural land held by PSCo by virtue of which PSCo has the right to construct, operate, and maintain the Project's transmission line together with such other rights and obligations as may be set forth in such agreement(s).

### **Final Clean-up**

Project activities that occur after construction activities are complete. Final Clean-up activities may include removing construction debris, de-compacting soil as required, removing temporary erosion control structures, final grading, restoring fences, and required reseeding. Once Final Clean-up is finished, PSCo will contact the Landowner to settle all Project-related damages and will provide a form to sign that acknowledges the final settlement.

### **Independent Organic Inspectors Association**

A non-profit association of farm inspectors dedicated to verifying practices of organic production (faircompanies 2008).

**Landowner**

Person(s) or their representatives holding legal title to agricultural land on the Project’s route from whom Xcel Energy is seeking, or has obtained, a temporary or permanent Easement. “Landowner” includes Tenant, if any.

**Non-Agricultural Land**

Any land that is not “agricultural land” as defined above.

**Organic Agricultural Land**

Farms or portions thereof described at Title 7 Code of Federal Regulations 205.100, 205.101, and 205.202.

**Organic Certification or Organic Certified**

As defined by the National Organic Program Standards at Title 7 Code of Federal Regulations 205.101.

**Organic System Plan**

As defined by the National Organic Program Standards at Title 7 Code of Federal Regulations 205.2.

**Prohibited Substance**

As defined by the National Organic Program Standards at Title 7 Code of Federal Regulations 205.600 through 205.605 using criteria provided in Title 7 United States Code, Sections 6517 and 6518.

**Right-of-Way**

The land included in temporary and permanent Easements, which PSCo acquired for the Project’s construction, operation, and maintenance activities.

**Subsoil**

Soil that is not topsoil and located immediately below topsoil.

**Tenant**

Any person(s) lawfully renting or sharing land for agricultural production that constitutes the “Right-of-Way” as defined above.

**Tile**

An artificial subsurface drainage system.

**Topsoil**

The uppermost horizon/layer of the soil, typically with the darkest color and greatest content of organic matter.

**Xcel Energy**

Public Service Company of Colorado, doing business as Xcel Energy, which may also include agents and contractors of Public Service Company of Colorado, doing business as Xcel Energy, where appropriate.

## 9.0 REFERENCES

- Colorado Department of Agriculture. 2020. Personal communication with Mr. Sam Anderson, CDA Conservation Division's Energy Coordinator, on January 8, 2020.
- Colorado Division of Water Resources. 2019. Personal communication with Mr. Mark Simpson, Colorado Division of Water Resources' Water Commissioner for The Cache La Poudre Basin, on December 13, 2019.
- faircompanies. 2008. Definition of Independent Organic Inspectors Association. Available online at <https://faircompanies.com/articles/organic-produce-independent-organic-inspectors-association/>. Accessed December 3, 2019.
- Weld County. 2020. General information about agriculture in Weld County, Colorado and the County's Right to Farm Statement. Available online at [https://www.weldgov.com/departments/planning\\_and\\_zoning/weld\\_county\\_right\\_to\\_farm](https://www.weldgov.com/departments/planning_and_zoning/weld_county_right_to_farm). Accessed January 8, 2020.
- Xcel Energy. 2018. Huntley to Wilmarth 345 kV Transmission Line Draft Environmental Impact Statement, AIMP.

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