

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

)	
)	HP14-002
IN THE MATTER OF THE)	
APPLICATION OF DAKOTA ACCESS,)	DRA AND IEN
LLC FOR AN ENERGY FACILITY)	REPLY BRIEF
PERMIT TO CONSTRUCT THE)	
DAKOTA ACCESS PIPELINE)	
)	

For its response to Applicants and PUC staff's post trial briefs, Dakota Rural Action and the Indigenous Environmental Network Rosebud state the following:

Compliance with Sec. 106 of the National Historic Preservation Act (NHPA):

The permit request for the Dakota Access Pipeline must be denied because DAPL acknowledged to the PUC that the cultural surveys failed to comply with the applicable requirements for Tribal participation in the identification and evaluation of historic properties in the DAPL cultural surveys. (“**I said they weren’t consulted for surveys.**” Tr. at 470, line 23 (emphasis added). See 16 U.S.C. §470h-2(a)(2)(e)(ii) (statutory requirement for Tribal consultation); 36 CFR §800.2(c)(2)(ii)(A) (regulatory requirement for Tribal consultation).

Alternative Route Analysis: Moreover, DAPL failed to introduce **any** evidence that it meets certain permit requirements, such as supplying a map and analysis of alternative pipeline routes, ARSD §20:10:22:12; and produced **insufficient** evidence on important potential environmental impacts, including water quality in the Missouri River near Tribal drinking water intakes at Standing Rock and Cheyenne River. ARSD §§20:10:22:15 (impacts on hydrology); 20:10:22:17 (impact on aquatic wildlife).

Mitigating Risks: These intakes serve drinking water to South Dakotans on the Standing Rock and Cheyenne River Reservations, but the record is devoid of threat assessment or mitigation. (Project shall “not substantially impair (public) health, safety or welfare; and not unduly interfere with the orderly development of the region.” SDCL §49-41B-22(3)). In order for the permit to issue, DAPL must

provide “employment estimates, and an assessment of the adequacy of local manpower to meet the labor requirements.” ARSD §20:10:22:24. It failed to do so, per the Staff Witness testimony of Dr. Michael Shelly. Tr. at 973-975.

Missouri River and HCAs: The Commission has the responsibility of ensuring that the proposed energy facility does not impair the people and lands of South Dakota. *Id.* While PUC staff maintains that the Commission is without the authority to regulate the pipeline outside of the state lines. “The Commission does not have the legal ability or procedures to enforce regulations outside its statutory jurisdiction.” Commission does the authority and **responsibility** to protect the people’s water that flows into the State but ensuring that it is not polluted by a spill from a pipeline that it does have the authority to permit. *Id.* DRA and IEN reiterate the importance of protecting the drinking water of the citizens of South Dakota and urge the Commission to deny the pipeline based on the threat it poses to the Missouri River and the other 129 water bodies it crosses in South Dakota.

Tribal rights must be recognized and protected: Dakota Rural Action and the Indigenous Environmental Network support the arguments of the Tribes regarding the environment, endangered species and wildlife impacts. We urge the Commission to honor these off and on reservation property rights.

Burden of Proof: Consequently, DAPL has failed to meet its burden of proof and the permit application must be denied. SDCL §49-41B-22. DAPL provided no argument and emphasized no evidence in its Post-hearing brief to overcome these failures. The record does not contain information that is required in order to grant the permit.

We urge the rejection of this pipeline permit in order to protect the lands, water and people of South Dakota.

DATED this 20th day of November, 2015,

/s/Kimberly Craven

Kimberly Craven, AZ BAR #23163
3560 Catalpa Way
Boulder, CO 80304
Telephone: 303.494.1974

Fax: 720.328.9411

Email: kimecraven@gmail.com

*Attorney for Dakota Rural Action &
Indigenous Environmental Network*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing DRA and IEN Reply Brief on the following persons:

/s/Kimberly Craven

Kimberly Craven, AZ BAR #23163
3560 Catalpa Way
Boulder, CO 80304
Telephone: 303.494.1974
Fax: 720.328.9411
Email: kimecraven@gmail.com
*Attorney for Dakota Rural Action &
Indigenous Environmental Network*

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us
(605) 773-3201 - voice

Ms. Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
Kristen.edwards@state.sd.us
(605) 773-3201 - voice

Ms. Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
karen.cremer@state.sd.us
(605) 773-3201 – voice

Mr. Brian Rounds
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
brian.rounds@state.sd.us
(605) 773-3201- voice

Mr. Darren Kearney
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
darren.kearney@state.sd.us
(605) 773-3201 - voice

Mr. Brett Koenecke - representing Dakota Access, LLC
May, Adam, Gerdes and Thompson, LLP
PO Box 160
Pierre, SD 57501
Brett@mayadam.net
(605) 224-8803 - voice
(605) 224-6289 - fax

Ms. Kara Semmler - representing Dakota Access, LLC
May, Adam, Gerdes and Thompson, LLP
PO Box 160
Pierre, SD 57501
kcs@magt.com
(605) 224-8803 - voice
(605) 224-6289 - fax

Mr. Tom Siguaw
Senior Project Director - Engineering
Dakota Access, LLC
1300 Main Street
Houston, TX 77002
tom.siguaw@energytransfer.com
(713) 989-2841 - voice
(713) 989-1207 - fax

Mr. Keegan Pieper
Associate General Counsel
Dakota Access, LLC
1300 Main Street
Houston, TX 77002
keegan.pieper@energytransfer.com
(713) 989-7003 - voice
(713) 989-1212 - fax

Mr. Stephen Veatch
Senior Director - Certificates
Dakota Access, LLC
1300 Main Street
Houston, TX 77002
Stephen.veatch@energytransfer.com
(713) 989-2024 - voice
(713) 989-1205 - fax

Mr. Joey Mahmoud
Senior Vice President - Engineering
Dakota Access, LLC
1300 Main Street

Houston, TX 77002
Joey.mahmoud@energytransfer.com
(713) 989-2710 - voice
(713) 989-1207 - fax

Mr. Jack Edwards
Project Manager
Dakota Access, LLC
4401 S. Technology Dr.
South Suite
Sioux Falls, SD 57106
Jack.edwards@energytransfer.com
(844) 708-2639 - voice

Ms. Jennifer Guthmiller
McPherson County Auditor
PO Box 390
Leola, SD 57456
mcphersonaud@valleytel.net
(605) 439-3314 - voice

Mr. Keith Schurr
Edmunds County Auditor
PO Box 97
Ipswich, SD 57451
Keith.schurr@state.sd.us
(605) 426-6762 - voice

Ms. Kelly Toennies
Faulk County Auditor
PO Box 309
Faulkton, SD 57438
Kelly.toennies@state.sd.us
(605) 598-6224 - voice

Ms. Theresa Hodges
Spink County Auditor
210 E. Seventh Ave.
Redfield, SD 57469
spinkcoauditor@nrctv.com
(605) 472-4580 - voice

Ms. Jill Hanson
Beadle County Auditor
Suite #201
450 Third St. SW
Huron, SD 57350
auditor@beadlesd.org
(605) 353-8400 - voice

Ms. Jennifer Albrecht
Kingsbury County Auditor
PO Box 196
DeSmet, SD 57231

Jennifer.albrecht@state.sd.us
(605) 854-3832 - voice

Ms. Susan Connor
Miner County Auditor
PO Box 86
Howard, SD 57349
minerauditor@minercountysd.org
(605) 772-4671 - voice

Ms. Roberta Janke
Lake County Auditor
200 E. Center St.
Madison, SD 57042
lakeauditor@lakecountysd.com
(605) 256-7600 - voice

Ms. Geralyn Sherman
McCook County Auditor
PO Box 190
Salem, SD 57058
mccookaud@triotel.net
(605) 425-2791 - voice

Mr. Bob Litz
Minnehaha County Auditor
415 N. Dakota Ave.
Sioux Falls, SD 57104
blitz@minnehahacounty.org
(605) 367-4220 - voice

Ms. Sheila Hagemann
Turner County Auditor
PO Box 370
Parker, SD 57053
turcoaud@iw.net
(605) 297-3153 - voice

Ms. Marlene Sweeter
Lincoln County Auditor
104 N. Main St.
Canton, SD 57013
auditor@lincolncountysd.org
(605) 764-2581 - voice

Ms. Lisa Schaeffbauer
Campbell County Auditor
PO Box 37
Mound City, SD 57646
campbellcommission@yahoo.com
(605) 955-3366 - voice

Ms. Karla Engle
Special Assistant Attorney General

South Dakota Department of Transportation
700 E. Broadway Ave.
Pierre, SD 57501-2586
karla.engele@state.sd.us
(605) 773-3262 - voice

Mr. Scott Pedersen
Chairman
Lake County
200 E. Center St.
Madison, SD 57042
lakegovt@lakecountysd.com
(605) 256-7600 - voice

Mr. Manuel J. de Castro, Jr.
Attorney
Lake County States Attorney
200 E. Center St.
Madison, SD 57042
lakesa2@lakecountysd.com
(605) 256-7630 - voice

General Manager
WEB Water Development Association, Inc.
PO Box 51
Aberdeen, SD 57402
office@webwater.org
(605) 229-4749 - voice

Mr. Randy Kuehn
17940 389th Ave.
Redfield, SD 57469
rlkfarms@gmail.com
(605) 472-1492 - voice

Mr. Jim Schmidt
Chairman
Lincoln County Board of Commissioners
104 N. Main, Ste. 110
Canton, SD 57013-1703
Auditor@lincolncountysd.org
(605) 764-2581

Mr. Michael F. Nadolski - Representing Lincoln County Board of Commissioners
Attorney
Lincoln County
Ste. 200
104 N. Main
Canton, SD 57077
mnadolski@lincolncountysd.org
(605) 764-5732 - voice
(605) 764-2931 - fax

Mr. Bret Merkle - Representing Pente Farms, LLC; KKKP Property, LLLP; Pederson Ag, LLC; Calvin

Schreiber; DLK&M, LLC; Jean Osthus; and Daniel & Marcia Hoiland
Merkle Law Firm
PO Box 90708
Sioux Falls, SD 57109-0708
bret@merklelaw.com
(605) 339-1420 - voice

Ms. Cindy Heiberger
Commission Chairman
Minnehaha County
415 N. Dakota Ave.
Sioux Falls, SD 57104
[cjepsen@minnehahacounty.org](mailto:cjepson@minnehahacounty.org)
(605) 367-4220 - voice

Mr. Kersten Kappmeyer
Attorney
Minnehaha County
415 N. Dakota Ave.
Sioux Falls, SD 57104
kkappmeyer@minnehahacounty.org
(605) 367-4226 - voice
(605) 367-4306 - fax

Mr. Glenn J. Boomsma - Representing: Peggy A. Hoogestraat, Kevin J. Schoffelman, Linda Goulet, Corlis Wiebers, Mavis Parry, Shirley Oltmanns, Janice E. Petterson, Marilyn Murray, Delores Andreessen Assid, Joy Hohn, and Orrin E. Geide
Attorney
Breit Law Office, P.C.
606 E. Tan Tara Circle
Sioux Falls, SD 57108
glenn@breitlawpc.com
(605) 336-8234 - voice
(605) 336-1123 - fax

Ms. Peggy A. Hoogestraat
27575 462nd Ave.
Chancellor, SD 57015
gardengalpeggy@gmail.com
(605) 647-5516 - voice

Ms. Joy A. Hohn
46178 263rd St.
Hartford, SD 57033
rjnchohn@gmail.com
(605) 212-9256 - voice

Ms. Marilyn J. Murray
1416 S. Larkspur Trl.
Sioux Falls, SD 57106
murrayma1@sio.midco.net
(605) 321-3633 - voice

Mr. Larry A. Nelson - Representing: City of Hartford
Frieberg, Nelson and Ask, L.L.P.
PO Box 38
Canton, SD 57013
lnelson@frieberglaw.com
(605) 987-2686 - voice

Ms. Teresa Sidel
City Administrator
City of Hartford
125 N. Main Ave.
Hartford, SD 57033
cityhall@hartfordsd.us
(605) 528-6187 - voice

Ms. Linda Glaeser
Manager
Rocky Acres Land Investment, LLC
27324 91st Ave. E.
Graham, WA 98338
lglaeser@seattlecca.org
lmglaeser@wwdb.org
(253) 670-1642 - voice

Ms. Linda Goulet
27332 Atkins Pl.
Tea, SD 57064
45Lgoulet@gmail.com
(605) 359-3822 - voice

Mr. Dale E. Sorenson
Dale E. Sorenson Life Estate
45064 241st St.
Madison, SD 57042
a77man@msn.com
(605) 480-1386 - voice

Ms. Kimberly Craven - Representing Dakota Rural Action and Indigenous Environmental Network (IEN)
3560 Catalpa Way
Boulder, CO 80304
kimecraven@gmail.com
(303) 494-1974 - voice

Ms. Sabrina King
Community Organizer
Dakota Rural Action
518 Sixth Street, #6
Rapid City, SD 57701
sabrina@dakotarural.org
(605) 716-2200 - voice

Mr. Frank James
Staff Director

Dakota Rural Action
PO Box 549
Brookings, SD 57006
fejames@dakotarural.org
(605) 697-5204 - voice
(605) 697-6230 - fax

Ms. Debra K., Mr. Duane H. & Mr. Dennis S. Sorenson
24095 451st Ave.
Madison, SD 57042
stubbyfarmer@yahoo.com
(605) 480-1370 - Debra Sorenson - voice
(605) 480-1162 - Duane Sorenson - voice
(605) 480-1055 - Dennis Sorenson - voice

Mr. Douglas Sorenson
24095 451st Ave.
Madison, SD 57042
plowboy@svtv.com
(605) 480-1385 - voice

Mr. William Haugen
Haugen Investments LP
PO Box 545
Hartford, SD 57033
wh401889@hotmail.com
(605) 359-9081 - voice

Mr. Phillip Fett
PO Box 572
Lennox, SD 57039
vonfett529@gmail.com
(605) 366-7155 - voice

Mr. Orrin E. Geide
46134 263rd St.
Hartford, SD 57033
(605) 261-4815 - voice

Ms. Shirley M. Oltmanns
26576 466th Ave.
Sioux Falls, SD 57106
ssoltm@gmail.com
(605) 941-0005 - voice

Mr. Bradley F. Williams
1044 Overlook Rd.
Mendota Heights, MN 55118
bwilliams@bestlaw.com
(612) 414-4950 - voice

Mr. Craig L. & Ms. Dotta-Jo A. Walker
733 NE 15th St.
Madison, SD 57042

court_walker@hotmail.com
(605) 256-0263 - voice

Mr. Kevin J. Schoffelman
712 W. Fourth Ave.
Lennox, SD 57039
klschoff@outlook.com
(605) 310-7062 - voice

Ms. Diane Best
Attorney
City of Sioux Falls
224 W. Ninth St.
Sioux Falls, SD 57117-7402
dbest@siouxfalls.org
(605) 367-8600 - voice

Mr. Charles J. Johnson
45169 243rd St.
Madison, SD 57042
c-bjohnson@svtv.com
(605) 270-2665 - voice

Ms. Janice E. Petterson
6401 S. Lyncrest Ave., Apt. 307
Sioux Falls, SD 57108
grmjarp@sio.midco.net
(605) 201-6897 - voice

Ms. Corliss F. Wiebers
607 S. Elm St.
PO Box 256
Lennox, SD 57039
wiebersco@gmail.com
(605) 647-2634 - voice

Mr. Paul A Nelsen
46248 W. Shore Pl.
Hartford, SD 57033
paul@paulnelsenconstruction.com
(605) 366-1116 - voice

Mr. Paul F. Seamans
27893 244th St.
Draper, SD 57531
jackknife@goldenwest.net
(605) 669-2777 - voice

Delores Andreessen Assid
c/o Laurie Kunzelman
3604 E. Woodsedge St.
Sioux Falls, SD 57108
(605) 321-5539 - voice

Mr. John Wellnitz
305 A St.
Osceola, SD 57353
johnwellnitz@gmail.com
(605) 350-5431 - voice

Mr. John Stratmeyer
46534 272nd St.
Tea, SD 57064
(605) 261-5572 - voice

Mr. Lorin L. Brass
46652 278th St.
Lennox, SD 57039
brass@iw.net
(605) 759-5547 - voice

Mr. Tom Goldtooth
Executive Director
Indigenous Environmental Network
ien@igc.org

Mr. Dallas Goldtooth
Community Organizer
Indigenous Environmental Network
goldtoothdallas@gmail.com

Mr. Matthew L. Rappold - Representing: RST-Sicangu Oyate Land Office
and RST- Sicangu Lakota Treaty Office
Rappold Law Office
816 Sixth St.
PO Box 873
Rapid City, SD 57709
Matt.rappold01@gmail.com
(605) 828-1680 - voice

Ms. Paula Antoine
RST-Sicangu Oyate Land Office
PO Box 658
Rosebud, SD 57570
wopila@gwtc.net
(605) 747-4225 - voice

Mr. Royal Yellow Hawk
RST- Sicangu Lakota Treaty Office
PO Box 430
Rosebud, SD 57570
yellowhawkroyal@yahoo.com
(605) 856-2998 - voice

Ms. Thomasina Real Bird - Representing - Yankton Sioux Tribe
Attorney
Fredericks Peebles & Morgan LLP
1900 Plaza Dr.

Louisville, CO 80027
trealbird@ndnlaw.com
(303) 673-9600 - voice

Ms. Jennifer S. Baker – Representing Yankton Sioux Tribe
Attorney
Fredericks Peebles & Morgan LLP
1900 Plaza Dr.
Louisville, CO 80027
Jbaker@ndnlaw.com
303-673-9600 - voice
303-673-9155 – fax

Ms. Mavis A. Parry
3 Mission Mtn. Rd.
Clancy, MT 59634
mavisparry@hotmail.com
(406) 461-2163 - voice

Ms. Margo D. Northrup - Representing: South Dakota Association of Rural Water Systems, Inc.
Attorney
Riter, Rogers, Wattier & Northrup LLP
PO Box 280
Pierre, SD 57501-0280
m.northrup@riterlaw.com
(605) 224-5825 - voice