
**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION
OF DAKOTA ACCESS, LLC FOR A
PERMIT TO CONSTRUCT THE
DAKOTA ACCESS PIPELINE

**YANKTON SIOUX TRIBE'S
OBJECTIONS TO DAKOTA ACCESS'
PROPOSED PERMIT CONDITIONS**

HP14-002

COMES NOW Yankton Sioux Tribe ("Yankton"), by and through Jennifer S. Baker and Thomasina Real Bird with Fredericks Peebles & Morgan LLP, and hereby submits its objections to Exhibit A "Permit Conditions" to Applicant's Reply Brief.

On October 21, 2015, the Public Utilities Commission ("Commission") issued an order setting the post-hearing briefing schedule and decision date. In that order, the Commission set November 6, 2015 as the deadline for post-hearing briefs and ordered that proposed findings of fact and conclusions of law may be submitted with initial briefs. The Commission further ordered that response briefs shall be filed no later than November 20, 2015. It should be noted that the Commission set no deadline for the submission of proposed conditions or for responses or objections to proposed conditions.

On November 6, 2015, Dakota Access filed its post-hearing brief. On that date Dakota Access also filed Applicant's Proposed Findings of Fact and Conclusions of Law. As Exhibit A to Applicant's Proposed Findings of Fact and Conclusions of Law, Dakota Access filed proposed permit conditions. On November 20, 2015, Dakota Access filed Applicant's Reply Brief. As Exhibit A thereto, Dakota Access again filed proposed Permit Conditions. Dakota Access indicated in its reply brief that it had engaged in discussions with Public Utilities Commission Staff ("Staff") in crafting this second set of proposed permit conditions and that Dakota Access

and Staff had stipulated to the second set of proposed permit conditions. Yankton was never contacted or consulted regarding either set of proposed permit conditions.

Due to the inadequacy of the proposed permit conditions, Yankton asserts the following objections to the proposed permit conditions submitted by Dakota Access as Exhibit A to Applicant's Reply Brief.

Objections to Proposed Permit Conditions

Dakota Access' Proposed Stipulated Condition No. 5: This condition should contain an additional subpart requiring that, prior to construction, Dakota Access shall conduct cultural resource surveys of land that has not yet been surveyed. If a route modification includes land not yet surveyed, failure to include this additional requirement would place any potential cultural resources at significant risk.

Dakota Access' Proposed Stipulated Condition No. 6: The third-to-last sentence of this condition should read: "As soon as the Dakota Access's public liaison officer has been appointed and approved, Dakota Access shall provide contact information for him/her to all landowners crossed by the Project and to law enforcement agencies and local governments, including the Yankton Sioux Tribe, in the vicinity of the Project." The Yankton Sioux Tribe is a local unit of government, as described in Yankton's Post-Hearing Brief, pages 23-24 and Yankton's Post-Hearing Reply Brief, pages 22-23, incorporated herein by reference. Due to Dakota Access' reluctance to acknowledge this fact, it must be incorporated into this condition.

Dakota Access' Proposed Stipulated Condition No. 9: This condition should read: "Prior to construction, Dakota Access shall commence a program of contacts with state, county, municipal, and tribal emergency response, law enforcement and highway, road and other infrastructure management agencies..." It will be important for the Tribe's law enforcement in

particular to be aware of the planned construction schedule and preparations it should make for the project in light of the risks it will pose to the Tribe's population through worker presence at the Tribe's casino. *See* Yankton's Post-Hearing Brief at 22, incorporated herein by reference; Yankton's Post-Hearing Reply Brief at 16, incorporated herein by reference.

Dakota Access' Proposed Stipulated Condition No. 11: This condition, which requires Dakota Access to comply with mitigation measures contained in certain plans that may be modified, should be revised to include the following final sentence: "Any such modifications shall be subject to Commission approval."

Dakota Access' Proposed Stipulated Condition No.12: This condition should be amended so that the final sentence reads: "Any site specific mitigation plans completed for a karst feature shall be submitted to the Commission for review and approval." The Commission's decision to grant the permit was based in part on certain plans for mitigation of various aspects of the proposed project as well as Staff witness Michael Timpson's testimony concerning the unlikelihood of encountering karst. Should Dakota Access encounter karst during construction, the Commission should have authority to approve, deny, or condition that plan just as it has the permit itself.

Dakota Access' Proposed Stipulated Condition No. 16(k): This condition addresses the discharge of saline water on landowners' lands. Dakota Access failed to disclose that saline water would be discharged onto landowner property during the hearing. Moreover, during discovery, Dakota Access informed Yankton that there would be no chemicals in the water that would be discharged. **Exhibit A** (Response to Interrogatory No. 54(E): "No byproducts or chemicals will be contained in the discharge water"). Sodium chloride, which when mixed with water is called saline, is a chemical. The fact that discharge water would include saline is a

material fact that was not disclosed by Dakota Access. Any permit should therefore prohibit Dakota Access from discharging saline water. The second sentence of this condition should be amended to read: “Dakota Access shall notify landowners prior to any spill of hazardous materials on their lands which is required by any federal, state, or local law or regulation or product license or label to be reported to a state or federal agency, manufacturer, or manufacturer’s representative.” It should further state: “The discharge of saline water is expressly prohibited.”

Dakota Access’ Proposed Stipulated Condition No. 16(q): This proposed condition would allow Dakota Access to meet its reclamation duty once permanent revegetation coverage has reached a minimum of just 70% cover as compared to similar cover in an adjacent area that is undisturbed by construction. This means that landowners would be deprived of 30% of the vegetation that currently exists, and that the land would not in actuality be fully reclaimed. Any permit should require 100% reclamation, including revegetation of 100% cover.

Dakota Access’ Proposed Stipulated Condition No. 20: This proposed condition merely requires Dakota Access to use its “best efforts” not to locate fuel storage facilities within 200 feet of private wells and 400 feet of municipal wells. To adequately safeguard South Dakotans’ drinking water, this condition should wholly prohibit Dakota Access from locating fuel storage facilities within such distances.

Dakota Access’ Proposed Stipulated Condition No. 25: This proposed condition addresses an adverse weather land protection plan. Unlike Condition No. 25 in Dakota Access’ previously submitted proposed conditions, this condition includes no requirement that the Commission make the adverse weather land protection plan available to landowners. There is no

legitimate reason for restricting landowner access to this plan, and in the interests of transparency and local awareness, such plan should be made available to local landowners.

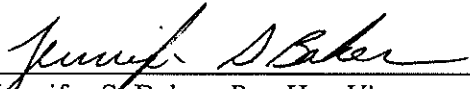
Dakota Access' Proposed Stipulated Condition No. 28: This condition permits Dakota Access and a landowner to stipulate in writing for Dakota Access to vary from certain conditions contained in the final order. This condition must specifically enumerate each condition to which it applies, rather than including an inexhaustive list. It must further be limited to changes that impact only the land belonging to the landowner in question.

Dakota Access' Proposed Stipulated Condition No. 34: This condition should be amended to require Dakota Access to obtain a determination by the Commission that the facility emergency response plan, written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies, and the integrity management program will adequately protect the interests of South Dakota and its citizens prior to construction. These documents should be filed with the Commission and made available to the public for an opportunity to comment prior to the Commission making its determination. This condition should further be amended to accurately reflect the process for confidential filings with the Commission. The second sentence of the second paragraph should be amended to read: "If Dakota Access files a request for confidential treatment of information pursuant to ARSD 20:10:01:41 granted confidential treatment by the Commission" rather than "If information is filed as 'confidential...'"

Dakota Access' Proposed Stipulated Condition No. 43: This proposed condition is inadequate to protect cultural resources that would be disturbed by the proposed project. Any permit should require Dakota Access to have a certified archeologist on site at all times during

construction and to immediately and directly notify Yankton and any other potentially affected tribes in the event of an unanticipated discovery.

Respectfully submitted this 9th day of December, 2015.



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Attorneys for Yankton Sioux Tribe

EXHIBIT A

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF
DAKOTA ACCESS, LLC FOR AN ENERGY
FACILITY PERMIT TO CONSTRUCT THE
DAKOTA ACCESS PIPELINE

**YANKTON SIOUX TRIBE'S SECOND
INTERROGATORIES
AND REQUESTS FOR PRODUCTION
OF DOCUMENTS TO DAKOTA
ACCESS, LLC**

HP14-002

Answering Dakota Rural Action's First Interrogatories to Dakota Access, LLC, Dakota Access, LCC states and alleges as follows:

INTERROGATORIES

INTERROGATORY NO. 43:

State the name, current address, and telephone number of the person answering these interrogatories.

ANSWER:

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Todd Stamm
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INTERROGATORY NO. 44:

State the name, current address, and telephone number of any person, other than legal counsel, who Dakota Access talked with about answering these interrogatories, who assisted Dakota Access in answering these interrogatories, or who provided information that Dakota Access relied on in answering these interrogatories.

ANSWER: See the response to INTERROGATORY NO. 43.

INTERROGATORY NO. 45:

What is the legal relationship between Dakota Access and Energy Transfer Partners, L.P. (ETP)?

ANSWER: Dakota Access Holdings, LLC is owned 100 percent by Energy Transfer Partners, L.P. (“ETP”), a master limited partnership publicly traded on the New York Stock Exchange (“NYSE”). Energy Transfer Equity, L.P. (“ETE”), also a master limited partnership publicly traded on the NYSE, indirectly owns the general partner of ETP and certain of that partnership’s limited partner units. ETP owns the general partner of Sunoco Logistics Partners, L.P. (“SXL”) and certain of its limited partner units. (ETE and ETP are together referred to herein as “Energy Transfer”). Energy Transfer maintains its corporate headquarters at 3738 Oak Lawn Avenue, Dallas, Texas 75219.

INTERROGATORY NO. 46:

What is the legal relationship between Dakota Access and Energy Transfer Equity, L.P.?

ANSWER: Dakota Access Holdings, LLC is owned 100 percent by Energy Transfer Partners, L.P. (“ETP”), a master limited partnership publicly traded on the New York Stock Exchange (“NYSE”). Energy Transfer Equity, L.P. (“ETE”), also a master limited partnership publicly traded on the NYSE, indirectly owns the general partner of ETP and certain of that partnership’s limited partner units. ETP owns the general partner of Sunoco Logistics Partners, L.P. (“SXL”) and certain of its limited partner units. (ETE and ETP are together referred to herein as “Energy Transfer”). Energy Transfer maintains its corporate headquarters at 3738 Oak Lawn Avenue, Dallas, Texas 75219.

INTERROGATORY NO. 47:

What is the relationship between the Dakota Access pipeline and the Energy Transfer Crude Oil (ETCO) pipeline?

ANSWER: Objection. The question is vague.

INTERROGATORY NO. 48:

- A. What is the status of construction and/or conversion and/or operation of the ETCO pipeline?
- B. If this pipeline is not already operational, when is the expected date of operation?

ANSWER: Objection. The requested information is not relevant to the proposed Dakota Access pipeline.

INTERROGATORY NO. 49:

- A. Does Dakota Access own or operate any crude oil pipelines that are currently operational?
- B. If so, please identify these pipelines.
- C. Has Dakota Access ever owned or operated any crude oil pipelines in the past?
- D. If so, please identify these pipelines and the reasons they are no longer owned or operated by Dakota Access.
- E. Please identify any non-crude oil pipelines owned or operated by Dakota Access and the product transported by said pipelines,

ANSWER: None.

INTERROGATORY NO. 50:

- A. Does ETP own or operate any crude oil pipelines that are currently operational?
- B. If so, please identify these pipelines.
- C. Has ETP ever owned or operated any crude oil pipelines in the past?
- D. If so, please identify these pipelines and the reasons they are no longer owned or operated by ETP.
- E. Please identify any non-crude oil pipelines owned or operated by ETP and the product transported by said pipelines.

ANSWER: ETP and ETP affiliates operate and have ownership interest in 5,848 miles of crude oil pipeline. ETP owns and operates the Rio Bravo pipeline. In addition to the ETP crude oil pipeline, the Sunoco Logistics Crude Oil Pipeline System contains approximately 5,800 miles of crude oil trunk and gathering pipelines. The Sunoco Logistics Crude Oil Pipeline System includes the West Texas Gulf Pipe Line Company ("West Texas Gulf"), a wholly-owned subsidiary containing approximately 600 miles of crude pipelines, a controlling financial interest in Mid-Valley Pipeline Company ("Mid-Valley") containing approximately 1,000 miles of pipeline, and an equity interest in SunVit Pipeline LLC ("SunVit"). In addition, SXL owns a 37 percent undivided interest in the approximately 100-mile Mesa Pipe Line.

INTERROGATORY NO. 51:

Are there any potential points of destination along the proposed pipeline route before it reaches the terminus at Patoka, Illinois? If so, please identify the facility and location of each potential point of destination.

ANSWER: Objection. Calls for speculation.

INTERROGATORY NO. 52:

What is the final destination for the product transported by the proposed pipeline at which the product will be refined?

ANSWER: Objection. Calls for speculation. The applicable transports the product; it is not the party determining to which refineries in particular such product is ultimately transported.

INTERROGATORY NO. 53:

What will the product transported by the proposed pipeline be used for at the consumer consumption level?

ANSWER: Objection. Calls for speculation, the applicant transports the product.

INTERROGATORY NO. 54:

- A. When Dakota Access does apply for water use or discharge permits within the State of South Dakota, from which agency or agencies do you anticipate applying?
- B. What water sources in South Dakota does Dakota Access intend to use for the proposed project?
- C. How much water does Dakota Access anticipate the proposed project will require from water sources in South Dakota?
- D. How does Dakota Access intend to dispose of waste water or other discharged water resulting from the proposed project in the State of South Dakota?
- E. What byproducts, chemicals, or other substances will be contained in waste water or other discharged water resulting from the proposed project?

ANSWER:

A) Applicable water appropriation and discharge permits will be sought from the South Dakota Department of Environment and Natural Resources. We anticipate submitting applications in the third quarter of 2015.

B) Water sources to be utilized for the project have not been determined.

C) The volume and sources of test water are still being investigated. It is not known if the all of the water for testing needs in South Dakota will be sourced from South Dakota. Some volumes may be "pushed" from one test segment to another in lieu of discharging and filling each test section. Additionally, test sections cross state lines, and the source for that segment may originate at either end, or be pushed from a test segment on either side.

D) As stated in the December 2014 PUC Application, two types of discharges will occur during Project construction; hydrostatic testing and trench dewatering. Typically water is discharged to vegetated upland areas through appropriate energy dissipating devices and/or discharge structures and monitored. All discharges will be done in accords with applicable permit conditions.

E) No byproducts or chemicals will be contained in the discharge water.

INTERROGATORY NO. 55:

When does Dakota Access expect to hire or retain contractors for construction of the proposed project?

ANSWER: The date has not been determined.

INTERROGATORY NO. 56:

When does Dakota Access expect to begin construction in South Dakota if a permit is granted by the PUC?

ANSWER: 1st Quarter 2016.

INTERROGATORY NO. 57:

- A. Why has Dakota Access not yet completed cultural surveys of the entirety of the proposed route?
- B. When does Dakota Access anticipate surveying the land along the proposed pipeline route that has not yet been surveyed?
- C. Please identify the location(s) of land along the proposed pipeline route that has not yet been surveyed.

ANSWER:

- A. To date, inventory surveys have been completed across all land tracts where access was voluntarily granted by individual landowners, which constitutes 97.3% of the route and 100% of the areas requiring surveys based on the probability model submitted to the SHPO in August of 2014.**
- B. Dakota Access maintains a stand-by archaeological field crew that is responsible for conducting additional surveys as needed.**
- C. Tracts that are not 100% complete for cultural survey include 1.2 miles in Spink, 3.6 miles in Minnehaha, 0.4 miles in Turner, and 2.3 miles in Lincoln Counties.**

INTERROGATORY NO. 58:

What tools and/or training will be provided to inspectors and contractors to enable them identify an unanticipated discovery as such?

ANSWER: All inspectors and contractors will receive project specific training on the identification of cultural resources in the field and on the requirements of the unanticipated discovery plan for the Project prior to initiating work on the right-of-way. Contractors and Inspection staff will have stop work authority to cease operations in any given area if any potential resources are identified. Environmental inspection staff will receive additional training in the identification of cultural resources and will have direct access to Company environmental management and qualified archaeologists to confirm any finds and communicate with the respective agencies as detailed in the unanticipated discovery plan.

INTERROGATORY NO. 59:

- A. Is or has the U.S. Army Corps of Engineers or any other federal agency conducting or conducted an Environmental Assessment (EA) of the proposed project?
- B. If so, what is the status of the EA?

ANSWER: In South Dakota, a draft EA is under review by the US Fish and Wildlife Service for respective federal easements crossed South Dakota (please note this EA includes 5 easements in North Dakota).

INTERROGATORY NO. 60:

What goods and services, and in what quantities, will Dakota Access procure from local businesses in South Dakota in conjunction with construction of the proposed pipeline?

ANSWER: Objection. Calls for speculation and the question is overly broad and unduly burdensome.

INTERROGATORY NO. 61:

How is the share of Bakken oil production that Dakota Access plans to transport by pipeline currently being transported, and by whom?

ANSWER: Objection. The request is irrelevant.

INTERROGATORY NO. 62:

- A. In which towns in South Dakota and for what duration of time will construction workers for the proposed pipeline temporarily reside during the construction process?
- B. How many workers will be temporarily located in a particular town at a time?
- C. Have you identified lodging for these workers?
- D. If not, how do you know adequate lodging exists at these locations?

ANSWER:

- A. The temporary construction workers will typically exhaust all options available to meet their housing needs. The options include, but are not limited to, hotels or motels, rental properties, and trailer camp sites. The warehouse locations to be utilized for the Project are strategically placed for not only logistic efficiencies, but to take advantage of the local living accommodations for the workforce.**
- B. The temporary construction workers will typically exhaust all options available to meet their housing needs. The options include, but are not limited to, hotels or motels, rental properties, and trailer camp sites. The warehouse locations to be utilized for the Project are strategically placed for not only logistic efficiencies, but to take advantage of the local living accommodations for the workforce.**
- C. The temporary construction workers will typically exhaust all options available to meet their housing needs. The options include, but are not limited to, hotels or motels, rental properties, and trailer camp sites. The warehouse locations to be utilized for the Project are strategically placed for not only logistic efficiencies, but to take advantage of the local living accommodations for the workforce.**
- D. The temporary construction workers will typically exhaust all options available to meet their housing needs. The options include, but are not limited to, hotels or motels, rental properties, and trailer camp sites. The warehouse locations to be utilized for the Project are strategically placed for not only logistic efficiencies, but to take advantage of the local living accommodations for the workforce.**

REQUESTS FOR PRODUCTION OF DOCUMENTS

DOCUMENT REQUEST NO. 8:

Please provide a copy of any Environmental Assessment or Environmental Impact Statement prepared in anticipation of the proposed project. If only a draft of said document has been released, please provide a copy of the draft.

RESPONSE: See Yankton Sioux Tribe – Second Interrogatories – Document Request No. 8. Please note that this is a draft and subject to change.

DOCUMENT REQUEST NO. 9:

Please provide all interrogatories posed by each intervener to Dakota Access and all corresponding responses submitted by the respective intervener.

RESPONSE: Due to the volume of materials, a drop box link will be provided via e-mail.

DOCUMENT REQUEST NO. 10:

Please provide all requests for production of documents served by each intervener on Dakota Access and all corresponding responses submitted by the respective intervener.

RESPONSE: Due to the volume of materials, a drop box link will be provided via e-mail.

Dated this ____ day of June, 2015.

BY: _____

State of Texas)
)ss
County of Harris _____)

On this the ____ day of June, 2015, before me the undersigned officer, personally appeared Stephen Veatch, who acknowledged himself to be an authorized individual of Dakota Access, LLC, a corporation, and that he being authorized so to do, executed the foregoing name of the corporation by himself as Stephen Veatch.


IN WITNESS WHEREOF I hereunto set my hand and official seal this ____ day of June, 2015.

(SEAL)

Notary Public
Notary Print Name:
My Commission Expires:

As to the objections, these interrogatory answers are signed by Kara C. Semmler this 22 day of June, 2015.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 
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CERTIFICATE OF SERVICE

Kara Semmler of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 22 day of June, 2015, she mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at her last known addresses, to-wit:

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KARA C. SEMMLER

CERTIFICATE OF SERVICE

I certify that on this 9th day of December, 2015 the foregoing **YANKTON SIOUX TRIBE'S OBJECTIONS TO DAKOTA ACCESS' PROPOSED PERMIT CONDITIONS** was filed on the Public Utilities Commission of the State of South Dakota e-filing website. Also on this day, a true and accurate copy was sent via email to the following (or US Mail when no email is given):

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