

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

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

**YANKTON SIOUX TRIBE'S,  
ROSEBUD SIOUX TRIBE'S,  
INDIGENOUS ENVIRONMENTAL  
NETWORK'S, AND DAKOTA  
RURAL ACTION'S JOINT  
MOTION TO AMEND  
PROCEDURAL SCHEDULE**

**HP14-002**

The Yankton Sioux Tribe (“Yankton”), the Rosebud Sioux Tribe (“Rosebud”), Indigenous Environmental Network (“IEN”), and Dakota Rural Action (“DRA”) (hereinafter collectively referred to as the “Movants”), by and through counsel, hereby collectively move the South Dakota Public Utilities Commission (the “Commission”) to amend the Procedural Schedule set by Order of the Commission on March 11, 2015. In support of this motion, Movants assert the following:

1. On March 11, 2015, the Public Utilities Commission (“PUC”) entered an order establishing a procedural schedule as follows:

|                                                                                                                                                                                                                                                                                                                                                         |                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| First round of discovery requests served by all parties (may include more than one set of discovery requests)                                                                                                                                                                                                                                           | April 1              |
| First round of discovery responses served by all parties                                                                                                                                                                                                                                                                                                | May 1                |
| Second round of discovery requests served by all parties (may include more than one set of discovery requests)                                                                                                                                                                                                                                          | May 22               |
| Second round of discovery responses served by all parties                                                                                                                                                                                                                                                                                               | June 15              |
| Pre-filed direct testimony served and filed by all parties                                                                                                                                                                                                                                                                                              | June 26              |
| Additional discovery requests pertaining to issues raised by pre-filed testimony and exhibits or a change in circumstances (responses due within thirty days after the date of service of the request as provided in SDCL 15-6-33(a) except those in response to requests served after August 22 (may include more than one set of discovery requests)) | June 27 -<br>Sept. 1 |
| Pre-filed rebuttal testimony served and filed by all parties                                                                                                                                                                                                                                                                                            | August 14            |
| Final discovery responses served by all parties                                                                                                                                                                                                                                                                                                         | Sept. 21             |

|                                                               |                      |
|---------------------------------------------------------------|----------------------|
| Witness list and exhibit list served and filed by all parties | Sept. 23             |
| Hearing                                                       | Sept. 29 -<br>Oct. 8 |

2. On April 1, 2015, Yankton and DRA served Dakota Access with Interrogatories and Requests for Production of Documents in accordance with the procedural schedule. Yankton's and DRA's Interrogatories and Requests for Production of Documents are attached hereto as Exhibits 1 and 2, respectively.

3. Pursuant to the procedural schedule, responses to the first round of discovery requests were due on May 1, 2015. However, Dakota Access failed to serve its responses to Yankton's or DRA's requests by that deadline.

4. On May 1, 2015, Dakota Access sent an email to counsel for Yankton, DRA, and several other intervenors informing us that it would be unable to comply with the response deadline imposed by the Commission.

5. Upon receipt of Dakota Access' email, Yankton sent a letter to Dakota Access offering to refrain from filing a motion to compel production with the Commission if Dakota Access would stipulate to providing its late responses no later than May 8, 2015, and to amending the scheduling order because Dakota Access itself is clearly having difficulty complying with the compressed schedule currently in place. Yankton's letter of May 1, 2015 is attached hereto as Exhibit 3.

6. DRA similarly responded to Dakota Access, via email, on May 1, 2015, offering to stipulate to an extension upon the same conditions suggested by Yankton. DRA's email of May 1, 2015 is attached hereto as Exhibit 4.

7. Rather than respond to Yankton's and DRA's offers, Dakota Access served Yankton and DRA with incomplete and deficient responses to their Interrogatories and Requests

for Production of Documents. These deficiencies are described in Yankton's Motion to Compel which was filed in this matter on May 7, 2015 and is incorporated herein by reference, and in DRA's letter of May 7, 2015, attached hereto as Exhibit 5.

8. On May 6, 2015, Yankton sent a letter to Dakota Access noting that Dakota Access provided insufficient or deficient responses to Yankton's Interrogatories and Requests for Production of Documents, describing the specific deficiencies in the respective requests, and requesting that Dakota Access provide full and complete responses no later than 8:00 am (Central) on May 7, 2015, due to the delay caused by Dakota Access' continued failure to comply with the scheduling order issued by the Commission. Yankton's letter of May 6, 2015 is attached hereto as Exhibit 6.

9. On May 7, 2015, Counsel for DRA submitted a letter to Dakota Access informing it of its deficient responses, identifying the specific deficiencies, and requesting that the deficiencies be remedied by close of business on May 7, 2015. Exhibit 5.

10. As of the filing of this motion, Counsel for DRA has received no response from Dakota Access.

11. As Dakota Access' violations of the procedural schedule have already demonstrated, the current procedural schedule set by the Commission provides insufficient time for each stage of the discovery process. We are only at the initial stages of discovery, and already Dakota Access has been unable to meet the deadlines imposed by the Commission.

12. As a result of Dakota Access' failures to meet the Commission's deadlines, Yankton and DRA are currently being prejudiced by an increasingly shortened amount of time in which to review and analyze Dakota Access' responses and prepare for the next round of discovery requests.

13. Based on Dakota Access' conduct thus far, it is apparent that discovery disputes are likely to arise throughout the course of these proceedings. Yankton has already been forced to file a Motion to Compel, and DRA is currently preparing to do the same. For the second round of discovery, IEN and Rosebud will be submitting its own discovery requests to Dakota Access thus adding to the workload. Although some of the grounds for the Motion to Compel are matters that can be conclusively resolved by the Commission in one hearing, there are still a number of discovery requests that Dakota Access has not even attempted to answer. Once compelled to do so, it is possible based on Dakota Access' other responses that the requesting parties will find grounds to challenge one or more of those new responses, resulting in the need for a second hearing on Dakota Access' responses to the first round of discovery requests. This will result in excessive delay of the requesting parties' abilities to formulate its second round of requests, causing further conflict with the current procedural schedule.

14. As indicated above, the procedural schedule does not provide for meaningful time to receive and review each round of discovery responses in preparation for subsequent rounds of discovery.

15. The procedural schedule further fails to account for adequate time between discovery rounds to resolve discovery disputes, which will result again in diminished time and opportunity to prepare subsequent discovery requests.

16. Moreover, the procedural schedule does not provide for meaningful time to receive and review all discovery responses prior to formulating pre-filed direct testimony which will largely be based on those responses. In fact, the parties will not receive responses to the final round of discovery until *after* they are required to file both pre-filed direct testimony and pre-filed rebuttal testimony. The current schedule therefore effectively renders the final round of discovery

moot. Fundamental due process will be denied to all parties in this case if pre-filed testimony is required to be submitted before the discovery process, including review of all responses, has been completed.

17. In addition, the deadline to submit witness lists and exhibit lists falls only two days after final discovery responses have been received. This timing does not allow for meaningful time to review final discovery responses and analyze them for purposes of identifying witnesses and exhibits prior to the deadline for witness and exhibit lists.

18. Finally, the date of the final hearing is set only one week after the final discovery responses are due. Due to the nature of these proceedings, the volume and complexity of discovery are likely to be quite sizeable such that parties cannot possibly conduct meaningful review and analysis of the final round of discovery responses and prepare for the final hearing in just one week.

19. Based on Dakota Access' delay and non-responsiveness to requests for discovery information, the ability to file pre-filed testimony is also jeopardized.

WHEREFORE, Yankton, Rosebud, IEN, and DRA request that the Commission amend its order to provide for adequate time to receive and review discovery responses, taking into account additional time needed to resolve any disputes; to allow for sufficient time to meaningfully review all discovery for purposes of drafting pre-filed testimony prior to requiring submission of any pre-filed testimony, and to allow for sufficient time to meaningfully review all discovery for purposes of preparation for the final hearing prior to the date of the final hearing.

Respectfully submitted this 8th day of May, 2015.

*Thomasina Real Bird*

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# EXHIBIT 1

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

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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 FIRST  
INTERROGATORIES  
AND REQUESTS FOR  
PRODUCTION  
OF DOCUMENTS TO DAKOTA  
ACCESS, LLC**

**HP14-002**

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**TO: Dakota Access, LLC**

PLEASE TAKE NOTICE that, the Yankton Sioux Tribe (hereinafter "Yankton") hereby requests that the Applicant Dakota Access, LLC (hereinafter "Dakota Access") answer fully, in writing and under oath, the interrogatories set forth herein within the time provided by the South Dakota Public Utilities Commission ("PUC") Prehearing Scheduling Order dated March 11, 2015. These Interrogatories shall be construed to include any supplemental information, knowledge, or data responsive hereto which is later discovered or obtained by you.

Yankton requests that Dakota Access respond in writing to the Requests for Production of Documents below and produce all responsive documents for inspection and copying at the offices of the undersigned counsel within the time frame set forth by the PUC Prehearing Scheduling Order dated March 11, 2015.

**DEFINITIONS**

These Interrogatories ("Interrogatories") and Requests for Production ("Document Requests") incorporate the following definitions:

1. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.
2. "Any" and "all" shall each be understood to mean "any and all."
3. "Communication" means the oral, written, or electronic transmittal of information in the form of facts, statements, ideas, inquiries or otherwise.
4. "Concerning" means relating to, referring to, describing, regarding, evidencing, or constituting.
5. "Dakota Access" shall mean Dakota Access, LLC.



6. “Dakota Access Pipeline Project” shall mean the proposed 1,134 mile 12-inch to 30-inch diameter pipeline proposed by Dakota Access by an Application for Facility Permit dated December 15, 2014.

7. “Document” shall be given the broadest reading possible under the Commission’s rules and shall include, without limitation, the original and any copy, regardless of its origin or location, of any hard copy or electronic book, pamphlet, periodical, letter, memorandum, telegram, minutes, chart, tabulation, manual, guide, outline, abstract, history and/or record of meetings, conferences, and telephone or other conversations or communications, report, study, handwritten note, diary, desk calendar, work paper sheet, spreadsheet, paper, graph, index, tape, disk, audio or video recording, electronic data, magnetically and optically recorded document, electronically created or recorded document, archival copy of magnetically or optically recorded documents, document that has been logically deleted but not physically erased, computer hard drive, computer memory, network drive, floppy disk, CD ROM, backup tape, other archival media, email, instant message, intranet, extranet, voicemail, microfiche, recording sheet, Microsoft Word or other word processing file, Microsoft Excel or other spreadsheet file, Microsoft Outlook or other email, task, contact, or calendar file, Microsoft PowerPoint or other slide file, Microsoft Access or other database file, PDF or other image file, or data processing card, program or any other written, recorded, transcribed, punched, taped, filmed, or other graphic matter, however produced or reproduced, to which you or any of your agents, including, but not limited to, your attorneys, accountants, and all other representatives, have or have had. A true copy will suffice so long as you waive any objection to authenticity and will have the original available for inspection upon request. The terms “document,” “documents,” “record,” or “records” also include copies of drafts and other documents that are not identical duplicates of the originals, as well as copies of documents of which the originals are not in the possession, custody, or control of the responding party.

8. “Identify” when referring to a person means to state the person’s full name, present or last known address, telephone number, present or former employer and job title, and, if the person is deceased, his or her date of death. In addition, if the person is your current or former employee, state all job titles held by the person while employed by you and the dates that each job title was held. When referring to a document, “identify” means to give a reasonable description thereof, its date, author(s), recipient(s), media document is stored on if not stored in hard copy, and the full name and the present or last known address of the person, firm or corporation having possession, custody or control thereof.

9. The term “objective metadata” means the custodian of the document, the author of the document, all recipients, including “cc” and “bcc” recipients, of the document, the document title, the document creation date, the document modification date(s), the document type, and parent/attachment Bates-range information.

10. “Parties” shall mean the parties to this proceeding before the South Dakota Public Utilities Commission.

11. "Person" is defined as any natural person or any business, legal, or governmental entity or association.
12. The "Tribe" means the Yankton Sioux Tribe.
13. "Trust land(s)" means any land held in trust by the United States on behalf of an Indian tribe or an individual Indian.
14. The terms "you" and "your" means Dakota Access, its agents, executors, administrators, assigns, attorneys, solicitors, servants, employees, and representatives.

### **INTERROGATORIES INSTRUCTIONS**

15. Each Interrogatory shall be answered separately and fully in writing under oath.
16. Each Interrogatory should be answered upon Dakota Access' entire knowledge and based upon all information that is available to Dakota Access or subject to reasonable inquiry by Dakota Access. This includes all information in Dakota Access' possession or the possession of Dakota Access' attorneys, advisers, employees, agents, or other persons directly or indirectly employed by or connected with the Dakota Access or its attorneys and anyone else otherwise subject to Dakota Access' control.
17. If any answer is qualified, state specifically the terms of each qualification and the reasons for it. If you are unable to answer any Interrogatory fully and completely after exercising due diligence to secure the information necessary to make a full and complete answer, state the part that can be answered and answer the same in full to the extent possible. State further and specifically the reason(s) why the remainder cannot be answered, and state whatever information or knowledge you may have concerning the unanswered portions.
18. If Dakota Access does not have adequate knowledge to fully answer an Interrogatory, say so, but make a reasonable and good faith effort to obtain the information by asking other persons or organizations, unless the information is equally available to the asking party.
19. Whenever an Interrogatory may be answered by referring to a document, Dakota Access may specify the document, in sufficient detail to enable the asking party to locate and identify it as readily as you could, and attach such document as an exhibit to the response.
20. In responses to these discovery requests, Dakota Access should use all such defined terms with the same meaning or definition adopted by the Tribe. If Dakota Access uses any of terms differently than the Tribe, please indicate the particular definition or meaning that you are ascribing to any defined, collective, or unspecific term or phrase in the response to each discovery request.
21. Where a claim of privilege is asserted in responding or objecting to any discovery requested in these Interrogatories and information is not provided on the basis of such assertion, Dakota Access shall, in its response or objection, identify the nature of the privilege (including work product) that is being claimed. When any privilege is claimed, Dakota Access shall indicate, as to

the information requested, whether (a) any documents exist, or (b) any communications took place, and (c) also provide the following information for each such document in a "privilege log":

- A. the type of document;
- B. the general subject matter of the document;
- C. the date of the document;
- D. the author(s) of the document;
- E. the addressee(s) and any other recipient(s) of the document; and
- F. the custodian of the document, where applicable.

22. If Dakota Access objects or otherwise declines to answer any of the following Interrogatories fully and completely, set forth the grounds upon which Dakota Access relies with specificity so as to permit the Commission to determine the legal sufficiency of the objection, and provide the most responsive information you are willing to provide without an order to produce.

23. If, in answering the Interrogatories, Dakota Access claims any ambiguity in either the Interrogatories or in an applicable definition or instruction, identify in your response the language Dakota Access considers ambiguous and state the interpretation Dakota Access is using in responding.

24. The use of the singular form of any word includes the plural and vice versa; and the use of any tense of any verb shall also include within its meaning all other tenses of that verb.

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS INSTRUCTIONS**

25. These Document Requests include and are applicable to electronically-stored information, including any documents in electronic format. The term "electronically-stored information" refers to any original and any non-identical copies (whether non-identical because of notes made on copies or embedded or attached comments, annotations, transmissions, notations, or highlighting of any kind), of electronically- or digitally-stored information, including but not limited to, programming notes or instructions, activity listings of electronic mail receipts or transmittals, output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail or email, operating systems, source code of all types, programming languages, linkers and compilers, peripheral devices, external drives, PDF files, PRF files, PST files, batch files, ASCII files, crosswalks, code keys, pull down tables, logs, file layouts or any miscellaneous files or file fragments, regardless of the media on which they reside and regardless of whether said electronic data consists of an active file, backup file, deleted file or file fragment. Electronically-stored information also includes data stored on computer memory or memories, hard disks, floppy disks, zip drives, CD-ROM discs, Blackberry or other handheld devices, Instant Messenger programs, Bernoulli Boxes or their equivalents, magnetic tapes, microfiche, punched cards, punched tape, computer chips (including, without limitation, EPROM, PROM, ROM or RAM of any kind) or media cards on or in any other vehicle for electronic or digital data storage or transmittal.

26. All responsive and/or relevant electronically-stored information is to be preserved in native format with all corresponding metadata and embedded data intact. Adequate preservation of

electronically-stored information requires intervention to prevent loss due to routine operations. Continued use of your computers and other devices may cause electronically-stored information to be altered or erased. Consequently, alteration and erasure may result from your failure to act diligently to prevent loss or corruption of electronically-stored information. Therefore, to the extent you have not already done so, you must act affirmatively to properly segregate relevant information, as well as applicable hardware and software, to prevent loss or corruption.

27. If any document which you are requested to produce or identify herein was at one time in existence, but has been lost, discarded or destroyed, identify in writing each document and provide the following information:

- A. the date or approximate date it was lost, discarded or destroyed;
- B. the circumstances and manner in which it was lost, discarded or destroyed;
- C. the reason or reasons for disposing of the document (if discarded or destroyed);
- D. the identity of all persons having knowledge of the document;
- E. the identity of the person(s) who lost, discarded, or destroyed the document;
- F. the identity of all persons having knowledge of the contents thereof; and
- G. a detailed summary of the nature and contents of the document.

28. If any request for documents is deemed to call for the production of privileged or work product materials, and such privilege or work product protection is asserted, provide the following information, unless the parties have entered into an agreement providing otherwise:

- A. the reason for withholding the document;
- B. a statement of the basis for the claim of privilege, work product or other ground of non-disclosure;
- C. a brief description of the document, including:
  - i. the date of the document;
  - ii. number of pages, attachments and appendices of this documents;
  - iii. the names of its author(s) or preparer(s) and an identification by employment and title of each such person;
  - iv. the name of each person who was sent, shown, or received a blind or carbon copy of the document, together with an identification of each such person's employer and job title;
  - v. the present custodian of the document;
  - vi. the subject matter of the document; and
  - vii. the type or nature of the document.

29. In responding to each Document Request, produce all documents that are in your possession, custody, or control, including, but not limited to, those maintained or stored by attorneys and all other persons acting or purporting to act on your behalf.

30. If you know of any documents responsive to a particular Document Request but cannot produce them, so indicate in your response, produce all documents responsive to that Document

Request which are in your possession, custody, or control, and identify each person who you believe has additional documents responsive to that Document Request.

31. If Dakota Access objects to any part of a Document Request, produce all documents responsive to those parts of the Document Request to which Dakota Access does not object.

32. Each of the following Document Requests is continuing in nature. Accordingly, if, after serving a response to any Document Request or producing any documents responsive thereto, or any part thereof, Dakota Access obtains or becomes aware of additional documents responsive to such Document Request, or become aware that in some material respect to a previous response or document production is incomplete or incorrect, Dakota Access is required to supplement its response and/or your document production.

33. Documents are to be produced in full. If any requested Document cannot be produced in full, produce it to the extent possible, indicating which Document, or portion of that Document, is being withheld, and the reason that Document is being withheld.

34. Documents attached to each other should not be separated. To the extent documents have been separated, links to relevant attachments or identification, in list form, of corresponding attachment information shall be produced.

35. Dakota Access must produce the original of each Document requested together with all non-identical copies and drafts of that Document. If the original of any Document cannot be located, provide a copy in lieu thereof, which shall be legible and bound or stapled in the same manner as the original.

36. Documents which are maintained in the usual course of business in hardcopy form are to be produced in hardcopy form, unless otherwise agreed upon by the parties. To the extent such documents have been copied and converted to electronic form, you are instructed to so advise the requesting party prior to actual production to permit the parties to assess and discuss the extent to which such documents should be produced in electronic form, and, if so, the requested characteristics of such a production.

37. Electronically-stored information shall be produced in such fashion as to identify the location (i.e., the network file folder, hard drive, back-up tape or other location) where it is stored and, where applicable, the natural person in whose possession it was found (or on whose hardware device they reside or are stored) and the business address of each respective custodian. In addition, a separate list identifying all custodians for whom electronically-stored information is being produced and the corresponding bates range(s) of documents/information for each respective custodian is hereby requested.

38. Unless otherwise provided or agreed upon by the parties, databases and spreadsheets are to be produced in native format, with all corresponding metadata and embedded data intact and all cells of information accessible, including, but not limited to notes, comments, embedded formulas, headings, column titles and hidden cells.

39. Unless otherwise provided or agreed upon by the parties, PowerPoint or other similar electronic presentation files shall be produced in native format with all objective metadata, and other metadata, including, but not limited to notes, comments, presentations scripts and embedded formulas.

40. In the event that documents originally maintained in hard copy form are converted to electronic form such documents are to be produced in a searchable format, to be discussed and agreed upon by the parties, and with any compiled objective coding information and/or objective metadata intact and/or linked.

41. If you produce an electronically-stored or converted document which has attachments, enclosures, and/or exhibits, such attachments, enclosures, and/or exhibits should also be produced and proximately linked to the document containing the attachments, enclosures, and/or exhibits.

42. The fact that a document has been or will be produced by another party (or non-party) does not relieve you of the obligation to produce your copy of the same document, even if the two documents are identical in all respects.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1:**

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

### **INTERROGATORY NO. 2:**

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.

### **INTERROGATORY NO. 3:**

Identify each witness that you will or may call as a fact witness or expert witness in any evidentiary hearing or trial of this matter. For each individual, identify and provide the name, business address, and business telephone and the name of his or her employer and/or other organization(s) with which he or she is associated in any professional capacity; the substance of the facts to which he or she is expected to testify and the substance of the opinions to which he or she is expected to testify; the individual's profession or occupation, educational background, specialized training, and employment history relevant to the proposed testimony; and the individual's previous publications within the preceding 10 years; and all other cases or proceedings in which the witness has testified as an expert within the preceding four years.

### **INTERROGATORY NO. 4:**

Identify any other names that Dakota Access conducts business under, in the United States and internationally.

**INTERROGATORY NO. 5:**

Has Dakota Access received any communications from any regulatory body or agency that may have jurisdiction over the project which alleges that Dakota Access has failed to comply with any applicable permits, law, or regulation?

**INTERROGATORY NO. 6:**

Has a permit by any regulatory body or agency that may have jurisdiction over the construction, maintenance, or operation of any Dakota Access pipeline located in the United States or internationally ever been denied, revoked, or suspended by the regulatory body or agency?

**INTERROGATORY NO. 7:**

Has Dakota Access been given notice by any regulatory body or agency that may have jurisdiction over the construction, maintenance or operation of any pipeline located in the United States or internationally alleging that Dakota Access has failed to comply with any applicable permits for the construction, operation or maintenance of any pipeline located in the United States?

**INTERROGATORY NO. 8:**

Please identify all required permits that Dakota Access has applied for within the State of South Dakota regarding the use of public water for construction, testing, drilling, or temporary discharges to waters of the state and temporary discharges of water from construction dewatering and hydrostatic testing.

**INTERROGATORY NO. 9:**

Identify the most recent depiction of the Dakota Access Pipeline Project route and facility locations as they currently exist as compared to the information previously disclosed in Dakota Access' Application.

**INTERROGATORY NO. 10:**

Identify the dates, addresses, phone numbers, emails, and names of person(s) responsible for conducting surveys, addressing property specific issues and civil survey information.

**INTERROGATORY NO. 11:**

Does Dakota Access recognize the Yankton Sioux Tribe, a federally recognized sovereign Indian Nation, as a "local governmental unit?"

**INTERROGATORY NO. 12:**

Has Dakota Access appointed a public liaison officer?

1. If so, please provide such officer's:
  - a. Name;
  - b. Address;
  - c. Phone number; and
  - d. Email address.
2. Has Dakota Access directed such public liaison officer to contact and or consult with the Yankton Sioux Tribe?

**INTERROGATORY NO. 13:**

Has Dakota Access ever been found non-compliant with any other permits, from any state regarding the Dakota Access Pipeline Project or any other pipeline?

**INTERROGATORY NO. 14:**

Have any contractors hired by Dakota Access to construct any pipeline owned or operated by Dakota Access or any of its affiliates received any communication from any agency or regulatory body having jurisdiction over each pipeline regarding alleged safety concerns or safety violations regarding the construction, maintenance or operation of any pipeline in the United States?

**INTERROGATORY NO. 15:**

Have any contractors hired by Dakota Access to construct any pipeline owned or operated by Dakota Access or any of its affiliates received any communication from any agency or regulatory body having jurisdiction over each pipeline regarding alleged safety concerns or safety violations regarding the construction, maintenance or operation of any pipeline internationally?

**INTERROGATORY NO. 16:**

What steps has Dakota Access or any of its affiliates taken to ensure that the cultural and historic resources of the Yankton Sioux Tribe are protected?

**INTERROGATORY NO. 17:**

How many times has Dakota Access contacted the Yankton Sioux Tribe?

1. If Dakota Access did make such contact please provide the following:
  - a. Name(s) of the person(s) notified;
  - b. Title of the person(s) notified;
  - c. The physical address of the person(s) notified;
  - d. The telephone number(s) of the person(s) notified; and
  - e. The means by which Dakota Access made notification, i.e. written, oral, electronic, etc.;

**INTERROGATORY NO. 18:**

Has Dakota Access made any cultural and/or historic surveys along the route of the Project?

**INTERROGATORY NO. 19:**

Has Dakota Access uncovered any cultural or historic sites by the surveys? Please provide a detailed description of these sites, including locations of the same.

**INTERROGATORY NO. 20:**

Please provide the name, address, phone number, and email of all persons involved in any cultural or historic survey conducted by Dakota Access. In addition, please provide a detailed description of all pertinent professional training that qualifies the surveyor as a professional who meets the standards of the Secretary of the Interior's Historic Preservation Professional Qualification Standards (48 FR 44716, September 29, 1983).



**INTERROGATORY NO. 21:**

Has Dakota Access made any attempt to contact the Yankton Sioux Tribe Business and Claims Committee, its officers, or its Tribal Historic Preservation Office? If so, please provide the following:

- a. Name(s) of the person(s) contacted;
- b. Title of the person(s) contacted;
- c. The physical address of the person(s) contacted;
- d. The telephone number(s) of the person(s) contacted; and
- e. The means by which Dakota Access made contact, i.e. written, oral, electronic, etc.;

**INTERROGATORY NO. 22:**

Provide a detailed description of cultural and historic training that Dakota Access provides to its construction personnel.

**INTERROGATORY NO. 23:**

Does Dakota Access or any of its affiliates recognize that if approved and constructed, the Dakota Access Pipeline Project will travel through the identified Indian Country territory from the Treaties of 1851 and 1858, and as such will likely encounter undiscovered cultural and/or historic sites?

**INTERROGATORY NO. 24:**

Does Dakota Access plan to consult with the Yankton Sioux Tribe and its General Council, Business and Claims Committee, and its Tribal Historic Preservation Office regarding the Dakota Access Pipeline Project in the future?

**INTERROGATORY NO. 25:**

Does Dakota Access recognize and acknowledge that the Yankton Sioux Tribe has federally protected Winters Doctrine water rights and that these rights apply to any permit application to use water for the construction, operation or maintenance of the Dakota Access Pipeline Project?

**INTERROGATORY NO. 26:**

What steps, if any, has Dakota Access or any of its affiliates taken to ensure that the Yankton Sioux Tribe's federally-protected Winters Doctrine water rights are be protected?

**INTERROGATORY NO. 27:**

Are any waterways situated on or near the Dakota Access Pipeline Project route in South Dakota subject to designation under the Wild and Scenic River Act of 1968? If so, identify each of the waterways.

**INTERROGATORY NO. 28:**

Are there any land areas along or near the Dakota Access Pipeline Project route in South Dakota that have been designated as critical habitat under the Endangered Species Act? If so identify each of the land areas.

**INTERROGATORY NO. 29:**

Are there any land areas along or nearby the Dakota Access Pipeline Project route in South Dakota that have any endangered species located in that area? If so, identify the land areas and the endangered species.

**INTERROGATORY NO. 30:**

Are there any sensitive SD species located along or nearby the Dakota Access Pipeline Project route in South Dakota? If so, identify the land areas and the sensitive SD species.

**INTERROGATORY NO. 31:**

Will Dakota Access enter the Yankton Sioux Reservation during construction of the Dakota Access Pipeline Project?

**INTERROGATORY NO. 32:**

Identify the location of all equipment staging areas, construction staging areas, construction camps, and housing camps in South Dakota for emergency response, construction, and temporary housing that Dakota Access intends to utilize for the Dakota Access Pipeline Project.

**INTERROGATORY NO. 33:**

Identify the contractor or company that is responsible for emergency response for the Dakota Access Pipeline Project.

**INTERROGATORY NO. 34:**

Identify the crime statistics or data relied on by Dakota Access for analysis of crimes before and after the establishment of a temporary housing camp in South Dakota for the Dakota Access Pipeline Project.

**INTERROGATORY NO. 35:**

Identify the precautionary measures Dakota Access has or will implement at the temporary housing camps in South Dakota to protect the surrounding area from crime related to the temporary housing camp.

**INTERROGATORY NO. 36:**

Identify the protocols and guidelines that will be utilized to respond to reports of crime in or near the temporary housing camps in South Dakota.

**INTERROGATORY NO. 37:**

Will any of Dakota Access' construction equipment or crew access the Dakota Access Pipeline Project from trust land? If so, has Dakota Access received the necessary consent of the United States government to access trust land on the Yankton Sioux Reservation or the affected Reservation?

**INTERROGATORY NO. 38:**

Has Dakota Access made contact with or otherwise taken any action to plan for road closures which may affect the Yankton Sioux Tribe? If so, does Dakota Access plan to notify, coordinate or otherwise consult with the Yankton Sioux Tribe?

**INTERROGATORY NO. 39:**

Has Dakota Access made contact with or otherwise taken any action to plan for emergency response which may affect the Yankton Sioux Tribe? If so, does Dakota Access plan to notify, coordinate, or otherwise consult with the Yankton Sioux Tribe?

**INTERROGATORY NO. 40:**

How much land along the Dakota Access Pipeline Project proposed route for the Project has yet to be TCP surveyed. If any, identify the land.

**INTERROGATORY NO. 41:**

How many other state permits and federal permits are pending or not yet received by Dakota Access for the Dakota Access Pipeline Project.

**INTERROGATORY NO. 42:**

Have any tribes surveyed the land along the proposed route for the Dakota Access Pipeline Project? If so, which tribes?

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

**DOCUMENT REQUEST NO. 1:**

All documents that Dakota Access intends to offer as exhibits at the evidentiary hearing in this matter.

**DOCUMENT REQUEST NO. 2:**

All documents relating to environmental and hydrological surveys for the Dakota Access Pipeline Project.

**DOCUMENT REQUEST NO. 3:**

All documents relating to cultural and historic surveys, training, and response plans for the Dakota Access Pipeline Project.

**DOCUMENT REQUEST NO. 4:**

All documents relating to required permits, both in South Dakota and outside South Dakota, including permit applications which were denied, revoked, or suspended for the Dakota Access Pipeline Project or any other project constructed by Dakota Access since 2010.

**DOCUMENT REQUEST NO. 5:**

All documents related to Interrogatory No. 40.

**DOCUMENT REQUEST NO. 6:**

All documents constituting Dakota Access' Emergency Response Plan.

**DOCUMENT REQUEST NO. 7:**

All documents related to Interrogatory No. 30 as well as a table to show breeding times of sensitive SD species and a map to show migration pathways of sensitive SD species.

Dated this 1<sup>st</sup> day of April 2015.

*Thina Real Bird*

---

Thomasina Real Bird, SD Bar No. 4415  
FREDERICKS PEEBLES & MORGAN LLP  
1900 Plaza Drive  
Louisville, Colorado 80027  
Telephone: (303) 673-9600  
Facsimile: (303) 673-9155  
Email: [trealbird@ndnlaw.com](mailto:trealbird@ndnlaw.com)  
*Attorney for Yankton Sioux Tribe*

**CERTIFICATE OF SERVICE**

I certify that on this 1<sup>st</sup> day of April, 2015 I sent by email a true and correct copy of **YANKTON SIOUX TRIBE'S FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO DAKOTA ACCESS, LLC** to the following:

Mr. Brett Koenecke  
May, Adam, Gerdes and Thompson, LLP  
P.O. Box 160  
Pierre, SD 57501  
Email: [Brett@mayadam.net](mailto:Brett@mayadam.net)  
*Attorney for Dakota Access, LLC*

Ms. Kara Semmler  
May, Adam, Gerdes and Thompson, LLP  
P.O. Box 160  
Pierre, SD 57501  
Email: [kcs@magt.com](mailto:kcs@magt.com)  
*Attorney for Dakota Access, LLC*



---

Patricia Krakowski  
Legal Assistant

# EXHIBIT 2

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

---

|                                   |   |                                    |
|-----------------------------------|---|------------------------------------|
| IN THE MATTER OF THE PETITION OF  | ) |                                    |
| DAKOTA ACCESS PIPELINE, LLC FOR A | ) | Docket HP14-002                    |
| PERMIT TO CONSTRUCT THE DAKOTA    | ) |                                    |
| ACCESS PIPELINE                   | ) | <b>DAKOTA RURAL ACTION'S FIRST</b> |
|                                   | ) | <b>REQUEST FOR PRODUCTION OF</b>   |
|                                   | ) | <b>DOCUMENTS TO DAKOTA</b>         |
|                                   | ) | <b>ACCESS, LLC</b>                 |
|                                   | ) |                                    |

---

Party-Intervenor Dakota Rural Action (“DRA”), pursuant to SDCL § 15-6-34, hereby requests that Petitioner Dakota Access, LP (“DA”) produce the following-described documents and other tangible things for inspection and copying at the office of Dakota Rural Action or at a mutually agreeable location, during the usual hours of business, within the response date set forth in the Public Utilities Commission’s Order in the above-captioned dated March 11th, 2015.

**Definitions**

1. All words and phrases used in these requests for production of documents shall have their ordinary English meaning, except as otherwise defined herein.
2. The terms “you” or “your” mean Dakota Access, LLC, its general partner(s) and Affiliates, and its agents, representatives, servants, attorneys, and any other individual or entity acting on its behalf.
3. The term “Affiliates” means Energy Transfer Partners as well as other members of the LLC or LP including Panhandle Eastern Pipe Line Company, LP (the successor of Southern Union Company), Lone Star NGL LLC, Sunoco Logistics Partners L.P, Sunoco, Inc, Suser Holdings Corporation Sunoco LP and all members of Energy Transfer Equity.
4. The term “person” includes natural persons and business entities, including corporations, trusts, partnerships, joint ventures, and any other association or group of persons.
5. The term “regarding,” “reflecting,” or “relating to” mean with respect to the subject matter of the interrogatory, explicitly or implicitly mentioning or dealing with the subject matter, demonstrating, evidencing, showing, concerning, explaining, elaborating upon, or providing any information whatsoever with respect to the subject matter referenced.

6. The term “Petition” means the Petition filed by Dakota Access with the Public Utilities Commission of the State of South Dakota, Docket No. HP14-002, captioned *In the Matter of the Petition of Dakota Access, LLC, for a Permit to Construct the Dakota Access Pipeline*.

7. The terms “Dakota Access” or “Project” mean the Dakota Access Pipeline project, a portion of which is proposed to be constructed in South Dakota.

8. The term “DRA” means Dakota Rural Action.

9. The term “Commission” means the Public Utilities Commission of the State of South Dakota.

10. The words “describe in detail,” or words of similar import, mean to state separately all factual bases for the allegation requested to be described and/or to give a detailed description of the thing, event, or entity asked to be described, including (a) the identity of each personal having any knowledge of each fact or opinion relating to the allegation, thing, event, or entity to be described; (b) the identity of each document evidencing or relating to the answer given; and (c) all relevant dates or time periods.

11. The term “document” is to be interpreted in the broadest sense permitted under the South Dakota Rules of Civil Procedure codified in SDCL Title 15, and includes tangible things and any media upon which information is recorded, stored, or placed, including without limitation, writings, e-mails, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form.

12. The terms “communicate” and “communication” mean any disclosure, transfer or exchange of information, by any means or manner, including without limitation, any correspondence, writing, memorandum, facsimile transmission, telephone conversation, oral conversation, electronic (e-mail) or computer messages or other electronic transmission.

13. The term “identify” means:

- a. with respect to a natural person, state the person’s full name, present address, and telephone number (or, if unknown, the last known address and telephone number), and the name, address, and telephone number of the person’s present employer (or, if unknown, the name, address, and telephone number of the last know employer);
- b. with respect to a person other than a natural person, state the full name of the entity, the type of entity identified, its present business address and telephone number, and the names of its officers or managing partners; and
- c. with respect to a document or communication, provide a description of the document and its contents and purpose, and state the full name of the person(s) who received the



document, the date of the document's creation or formulation, and the name, address, and telephone number of its present custodian.

14. The singular shall include the plural, and vice versa, and words of either gender shall include both genders.

### **Instructions**

1. This request for production extends to all documents and other tangible things in the possession of Dakota Access, LLC , or subject to the custody and control of any of its agents or Affiliates.

2. You are required to serve upon DRA's attorneys written Responses, which shall state with respect to each Request for Production that the requested documents will be produced, except to the extent that you make written objections to particular items, stating the specific legal basis for each objection. If you do not produce any documents in response to a Request for Production, please so indicate in the written response.

3. Each of these requests is deemed to be a continuing discovery request and in the event that later you obtain any documents or tangible things response to these requests, please promptly amend your written responses to these requests and produce such additional documents or tangible things.

4. Please organize and label each document to correspond with the Request number to which the documents respond to, or produce each document in the file in which it is kept in the usual course of business.

5. If you claim that any document or tangible thing requested in these requests is protected from disclosure by virtue of privilege, work product doctrine, or otherwise, please describe the nature of the communication, documents or things not produced or disclosed in a manner that allows DRA and the Commission to assess the applicability of the privilege or protection, including, the date and names of the individuals drafting, sending or receiving each communication or document, the date each communication or document as drafted, sent or received, the number of pages or length of each communication or document, the general nature of the information communicated or documented, and a statement of the privilege claims.

6. If any document or tangible thing was, but is no longer, in your possession, subject to your control, or in existence, state:

- a. Whether it is missing or lost, and if so, the name and current address and phone number of the persons who have knowledge of it;
- b. Whether it has been destroyed, and if so, the circumstances under which it was destroyed and the name and current address and phone number of the persons who destroyed it or who have knowledge of its destruction;

- c. Whether it has been transferred voluntarily or involuntarily, and in each instance explain the circumstances surrounding the authorization for each disposition and state the date or approximate date of its disposition; and
- d. The identity of the person who has possession, custody, or control of the document.

### REQUESTS FOR PRODUCTION

1. All documents identified or referred to in your Answers to DRA's First Interrogatories to you.
2. All documents and correspondence presented to any expert in connection with the above-captioned proceedings, or received from any expert, including but not limited to emails, letters, engagement documents, resumes, curriculum vitae, reports, analysis, spreadsheets, schedules, and any drafts thereof.
3. The most recent resume or curriculum vitae of each expert whom you expect to call as an expert witness at the hearing before the Commission.
4. The written reports of experts who are expected to testify on behalf of Dakota Access, LLC.
5. All correspondence between Dakota Access or its Affiliates and the Commission or Commission staff concerning the Project.
6. All documents concerning production and transportation of crude oil from the Williston Basin area, including but not limited to, projections of crude oil supply to be transported via the proposed Project, and any agreements or commitments entered into with oil producers and refiners with respect to any production from the Williston Basin area.
7. All documents concerning the present route, including but not limited to, any parcel maps showing the precise location of the proposed Project through South Dakota.
8. All documents setting forth Dakota Access' proposed construction schedule for the Project, and all contracts for construction of the proposed Project and all contracts or other documents relating to commitments made with respect to the Project by shippers.
9. All documents concerning the strength of steel presumed to be used in the pipeline.
10. All documents concerning the decision to use fusion-bonded epoxy (FBE) coating on the proposed pipeline, including but not limited to, contracts or other agreements with the manufacturer of the FBE product, and any communications between Dakota Access and such manufacturer.

11. All documents, including internal communications between Dakota Access' or its Affiliates' staff, consultants, advisors, or other parties concerning the appropriate pipeline operating pressure for the Project.

12. All documents showing location of power lines for pumping stations proposed for the Project, the location of proposed pumping stations and mainline valves for the Project in South Dakota, and including, but not limited to all communications between Dakota Access or its Affiliates' staff, consultants, advisors, or other parties concerning location and operation of pumping stations, mainline valves, and the proposed conversion of valves to remote control operations.

13. All documents concerning compliance by Dakota Access with U.S. Department of Transportation, Pipeline Hazardous Materials and Safety Administration ("PHMSA") regulations set forth at 49 CFR Part 195 including all communications between Dakota Access or its Affiliates' staff, consultants, advisors, or other parties, and PHMSA, or other federal agencies concerning regulatory compliance, approvals, or waivers of applicable regulations with respect to the Project.

14. All documents concerning the increase in projected costs for the Project, including but not limited to draft or final budgets, pro-formas, estimated cost schedules, and communications between Dakota Access or its Affiliates' staff, consultants, advisors, or other parties regarding the increased estimated costs of the Project.

15. All documents setting forth forecasts of "additional crude oil production from the WCSB" and Williston Basin, including any documents discussing the impact of current low oil prices on such forecasts.

16. All documents, including but not limited to communications between Dakota Access or its Affiliates' staff, consultants, advisors, or other parties discussing or containing information stating or indicating that existing or new refineries will import less crude oil and, instead, replace it with crude oil transported via the Project.

17. All documents discussing or setting forth Dakota Access' or its Affiliates' forecasts of US demand for petroleum products.

18. All documents setting forth or discussing whether or if crude oil from the WCSB is sold at a "significant discount" from other sources.

19. All documents setting forth, discussing, or describing whether or if shipment of crude oil via the Project will replace rail transportation for crude oil shipments from the WCSB.

20. All documents setting forth binding commitments from shippers to use the Project, including but not limited to copies of contracts between Dakota Access (and its Affiliates) and such shippers.

21. All documents describing soil types and conditions along the currently proposed Project route through South Dakota.

22. All documents describing, discussing, or setting forth plans for the Project to cross perennial streams and rivers, intermittent streams, and ephemeral streams in South Dakota, including but not limited to all documents concerning the methodology used by Dakota Access (and its Affiliates) or its agents in determining construction plans for the Project across such waterways.

23. All documents containing information regarding Dakota Access (or its Affiliates') decision to use horizontal directional drilling to cross waterways, including but not limited to all documents discussing or describing the decision-making process engaged in to determine which waterways would be crossed using horizontal directional drilling.

24. All documents, including but not limited to forecasts and projections of tax revenue accruing to the State of South Dakota should construction and operation of the Project commence.

25. All documents evidencing Dakota Access' or its Affiliates' compliance efforts with applicable laws and regulations related to construction and operation of the Project.

26. All documents concerning Dakota Access" or its Affiliates' compliance with the compliance with Section 106 of the National Historic Preservation Act.

27. All documents concerning or discussing proposed adjustments or deviations in the route of the Project, including but not limited to copies of notices to affected landowners.

28. All documents containing information with respect to contacts or communications with state, county and municipal emergency response, law enforcement and highway, road and other infrastructure management agencies regarding the Project.

29. All documents containing information concerning Dakota Access' or its Affiliates' efforts to comply with mitigation measures set forth in the Construction Mitigation and Reclamation Plan submitted to the Commission.

30. All documents containing information regarding consultations, including but not limited to communications, with Natural Resources Conservation Services ("NRCS") regarding development of construction/reclamation units ("Con/Rec Units").

31. All Con/Rec Units developed in connection with the Project, including but not limited to drafts and supporting studies or documents.

32. All documents provided to landowners affected by the Project explaining trenching and topsoil and subsoil/rock removal, segregation and restoration methods for their property.

33. All documents containing information regarding trucking or hauling contractors to be used in construction of the Project, including but not limited to agreements with such trucking or hauling contractors.

34. All documents containing information or describing the methodology to be used by Dakota Access (or its Affiliates) for valuing trees.

35. All documents containing information regarding consultations between Dakota Access (or its Affiliates) and South Dakota Game, Fish and Parks.

36. All documents describing the development of frac-out plans in areas where horizontal directional drilling will occur in connection with the Project, including but not limited to any frac-out plans developed.

37. All documents describing or containing information regarding Dakota Access' or its Affiliates' efforts to comply with conditions regarding construction of the Project near wetlands, water bodies, and riparian areas, such documents including but not limited to compliance plans, construction plans, mitigation plans, and communications with any regulatory agency in such regard.

38. All documents containing or referencing adverse weather land protection plans developed in connection with the Project.

39. All documents that reference or identify private and new access roads to be used or required during construction of the Project.

40. All documents referencing or containing information regarding winterization plans provided to landowners affected by the Project, including but not limited to plan(s) developed.

41. All documents referencing agreements reached with landowners, including but not limited to any agreements reached with landowners modifying any requirements or conditions established by the Commission in connection with the Project.

42. All documents containing information regarding compliance by shippers with crude oil specifications.

43. All documents containing information regarding assessments performed in connection with your activities in "high consequence areas", including but not limited to documents referencing efforts by you to comply with 49 C.F.R. Part 195, and any communications or consultations with the South Dakota Geological Survey, the Department of Game Fish and Parks ("SDGFP"), affected landowners and government officials.

44. All documents where discussing have hydrologically sensitive areas.

45. All documents containing information regarding noise-producing facilities in connection with the Project, including but not limited to any studies conducted regarding noise levels, and any noise mitigation measures.

46. All documents containing information regarding Dakota Access' or its Affiliates' efforts to comply with protection and mitigation requirements of the US Fish and Wildlife Service ("USFWS") and SDGFP with respect to any endangered species.

47. All documents containing information or details regarding location of drain tiles, including but not limited to all documents containing information regarding the potential for drain tiles to operate as conduits for contaminants in connection with construction or operation of the Project.

48. All documents referencing or containing information concerning cultural or paleontological resources along the Project route, including but not limited to all documents identifying cultural and paleontological resources, consultations and communications with the Bureau of Land Management and Museum of Geology at the South Dakota School of Mines and Technology.

49. All documents regarding pipeline spills from Energy Partner Transfers projects including a list of ongoing litigation, the status of the clean up of the spills, and notices of violation for spills, leaks and contamination of water.

50. Please provide information regarding Dakota Access' and ETP's cash reserves adequacy to ensure that current reserves are adequate to cover all current and future liabilities, even for currently known contamination.

51. Please provide the documents used by Dakota Access for contacting landowners to acquire the temporary and permanent right of ways across their land.

52. Please provide a copy of land reclamation plans used for construction and the process for involving landowners in this process.

53. Please provide the long-term reclamation plans for the decommissioning of the pipeline when it reaches the end of its life.

54. Please provide a copy of the Emergency Response Plans and/or the Oil Spill Response Plans.

55. Please provide plans including law enforcement policing plans for the temporary construction camps that will be constructed in South Dakota during the pipeline's construction and law enforcement plans for policing them.

Dated this 1<sup>st</sup> day of April 2015.

Respectfully submitted,

/s/ Kimberly Craven

Kimberly Craven

3560 Catalpa Way

Boulder, CO 80304

Telephone: (303) 494-1974

Email: kimecraven@gmail.com

*Attorney for Dakota Rural Action*

*Pro hac vice pending*

# EXHIBIT 3





**THOMASINA REAL BIRD**  
1900 Plaza Drive  
Louisville, Colorado 80027  
T: (303) 673-9600  
F: (303) 673-9155  
E: [trealbird@ndnlaw.com](mailto:trealbird@ndnlaw.com)  
[www.ndnlaw.com](http://www.ndnlaw.com)

May 1, 2015

**VIA EMAIL**

Brett Koenecke  
May, Adam, Gerdes & Thompson LLP  
P.O. Box 160  
Pierre, SD 57501  
[Brett@magt.com](mailto:Brett@magt.com)

**Re: HP14-002 Dakota Access, LLC**

Mr. Koenecke:

Thank you for the update concerning Dakota Access' discovery production. While we typically would file a motion to compel production with the Commission at this point, we understand that it may be a more prudent use of resources to see if we can resolve this matter amicably. To that end, we would agree to accept late production of discovery responses from Dakota Access no later than May 8, 2015; however, we would require your stipulated approval to amend the scheduling order. I suspect you can appreciate the compact nature of the current schedule, as evidenced by your email message announcing you will require additional time to respond. Please let me know your thoughts and we can discuss dates for an amended schedule if you agree. Please contact me with your response by noon tomorrow, Saturday, May 2, 2015, so that I can prepare a motion to compel if needed.

Sincerely,

*Thomasina Real Bird*

Thomasina Real Bird

# EXHIBIT 4

**From:** Kimberly Craven kimecraven@gmail.com  
**Subject:** Re: HP14-002 Dakota Access  
**Date:** May 1, 2015 at 5:26 PM  
**To:** Thomasina Real Bird TRealBird@ndnlaw.com  
**Cc:** Brett Koenecke Brett@magt.com, glenn@breitlawpc.com, Kara C. Semmler KCS@magt.com, Edwards, Kristen Kristen.Edwards@state.sd.us, matt.rappold01@gmail.com, Jennifer Baker JBaker@ndnlaw.com



Dear Mr. Koenecke: I would echo and agree with Ms. Real Bird's sentiments regarding revisiting the Scheduling Order given the volume of discovery.

Sincerely,

Kimberly Craven

On May 1, 2015, at 4:57 PM, Thomasina Real Bird <[TRealBird@ndnlaw.com](mailto:TRealBird@ndnlaw.com)> wrote:

Mr. Koenecke:

My response is in the attached letter.

Sincerely,  
Thomasina

THOMASINA REAL BIRD  
FREDERICKS PUEBLIS & MORGAN LLP  
1900 Plaza Drive  
Louisville, Colorado 80027  
T: (303) 673-9600  
F: (303) 673-9155  
E: [trealbird@ndnlaw.com](mailto:trealbird@ndnlaw.com)  
[www.ndnlaw.com](http://www.ndnlaw.com)

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**From:** Brett Koenecke [<mailto:Brett@magt.com>]  
**Sent:** Friday, May 1, 2015 12:54 PM  
**To:** [glenn@breitlawpc.com](mailto:glenn@breitlawpc.com); [kimecraven@gmail.com](mailto:kimecraven@gmail.com); Thomasina Real Bird  
**Cc:** Kara C. Semmler; Edwards, Kristen  
**Subject:** HP14-002 Dakota Access

Counsel,

Each of you propounded a host of interrogatories in this matter and we have been working diligently to respond to your questions. We also had a number of questions from staff to answer this week as well. I had hoped to have answers to at least some if not most of your

answer this week as well. I had hoped to have answers to at least some if not most of your questions today. I can see that it probably isn't going to happen. There has been a lot of work done, so I may yet be surprised but at this point, it's looking like next week. Please do let me know your thoughts. Thank you.

BK

<Final Ltr to Koenecke re Discovery Production.pdf>

# EXHIBIT 6



**FREDERICKS PEEBLES & MORGAN LLP**  
ATTORNEYS AT LAW

**THOMASINA REAL BIRD**

1900 Plaza Drive  
Louisville, CO 80027  
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E-Mail [trealbird@ndnlaw.com](mailto:trealbird@ndnlaw.com)  
[www.ndnlaw.com](http://www.ndnlaw.com)

May 6, 2015

**VIA EMAIL**

Brett Koenecke  
May, Adam, Gerdes & Thompson LLP  
P.O. Box 160  
Pierre, SD 57501  
[Brett@magt.com](mailto:Brett@magt.com)

**Re: HP14-002 Dakota Access, LLC**

Mr. Koenecke:

We are writing to notify you that your production in response to the Yankton Sioux Tribe's First Interrogatories and Requests for Production of Documents is deficient. We wish to resolve this matter promptly in light of your already-late responses. Please be advised that we find your answers and production to be deficient as follows:

**Interrogatory No. 10**

You answered Interrogatory No. 10, which requested information regarding persons responsible for conducting surveys, with the word "PENDING" and the following:

2014 – present.  
Names

All % of Kara Semmler and Brett Koenecke  
May, Adam, Gerdes & Thompson LLP  
503 S. Pierre St.  
PO Box 160  
Pierre, SD 57501  
605-224-8803  
[brett@mayadam.net](mailto:brett@mayadam.net)  
[kcs@mayadam.net](mailto:kcs@mayadam.net)

Counsel for the Tribe has no knowledge of the meaning of "All % of Kara Semmler and Brett Koenecke" and finds it highly unlikely that the contact information for Dakota Access's

attorneys is responsive to Interrogatory No. 10. Your response to Interrogatory No. 10 appears incomplete and deficient. Please provide a full and complete answer responsive to this Interrogatory.

**Interrogatory No. 11**

With respect to Interrogatory No. 11, we asked whether Dakota Access recognizes the Yankton Sioux Tribe as a "local governmental unit." The statement in the answer you provided is not responsive to the question asked. Please respond to the question asked in this Interrogatory.

**Interrogatory Nos. 18 and 40**

Your answer to Interrogatory No. 40 appears to directly contradict your answer to Interrogatory No. 18, thus it is unclear which answer is correct and which answer is incorrect. Please provide us with the correct answers to each of these Interrogatories. If for some reason both answers already provided are accurate, please provide an explanation for what appears to be a discrepancy.

**Interrogatory No. 19 and Request No. 3**

You refused to answer Interrogatory No. 19 and refused to provide documents requested in Request No. 3 on the grounds that the information sought is confidential. However, there is no legal authority cited for this assertion of confidentiality and the information sought is in fact not required by law to be treated as confidential by Dakota Access or the Commission. Please provide the requested information and documents.

**Interrogatory Nos. 20, 25, 26**

Your answer to each of these Interrogatories contains merely the word "PENDING." You have failed to answer these questions. Please provide full and complete answers responsive to each of these Interrogatories.

**Request Nos. 4 and 7**

You objected rather than responding to Request Nos. 4 and 7 on the grounds that the Requests were overly broad, burdensome, and outside the scope of discovery. Request No. 4 sought documents relating to permits and permit applications for the Dakota Access Pipeline Project and for any other project constructed by Dakota Access since 2010. Due to the nature of these projects, the number of permits sought over the last 4 ½ years is not likely to be very significant and such documentation is reasonably likely to lead to the discovery of admissible evidence regarding safety, risks, performance, and other aspects of Dakota Access's operations. This information is well within the scope of discovery and is adequately narrow in scope so that it places no undue burden on Dakota Access. Request No. 7 sought all documents related to Interrogatory No. 30 as well as a table to show breeding times of sensitive SD species and a map to show migration pathways of sensitive SD species. You clearly did not find Interrogatory No.

Koenecke  
May 6, 2015  
Page 3 of 3

30 to be overly broad or outside the scope of discovery, thus it is illogical for you to claim, that documents related to that question are overly broad or outside the scope of discovery. With respect to the table and map requested, these items contain very narrow sets of information and are in no way broad. They are within the scope of discovery because assessing the impact of projects on South Dakota's sensitive species is within the purview of the Commission and the requested documents are likely to lead to admissible evidence relevant to that issue. Please provide full and complete production responsive to these requests.

As we have already noted in our previous correspondence, your production is late and it is now infringing on our right to review the responses to our discovery requests in preparation of for the remainder of these proceedings. Please remedy the above deficiencies in your production and provide us with your full and complete responses no later than 9:00 am (Central) tomorrow, May 7, 2015. You may contact me at the number listed above if you have any questions or wish to discuss these matters further.

Sincerely,



Thomasina Real Bird  
Attorney

002534



**CERTIFICATE OF SERVICE**

I certify that on this 8<sup>th</sup> day of May, 2015 the **YANKTON SIOUX TRIBE'S, ROSEBUD SIOUX TRIBE'S, INDIGENOUS ENVIRONMENTAL NETWORK'S AND DAKOTA RURAL ACTION'S JOINT MOTION TO AMEND PROCUDURAL SCHEDULE** in docket number HP14-002 was filed on behalf of the Yankton Sioux Tribe, Rosebud Sioux Tribe, Indigenous Environmental Network and Dakota Rural Action electronically via the South Dakota Public Utilities Commission e-filing website and a true and accurate copy was sent via email or U.S. Mail, first class postage prepaid, to the following:

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