



1                   TRANSCRIPT OF PROCEEDINGS, held in the  
2 above-entitled matter, at the Career Center, Sioux Falls,  
3 South Dakota, on the 24th day of September, 2015.

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1           CHAIRMAN NELSON: I will call the ad hoc meeting  
2 of the Public Utilities Commission to order. We are  
3 obviously operating in two different locations, the  
4 University Center in Sioux Falls and Room 414 in Pierre.

5           I am present in Sioux Falls along with  
6 Commissioners Hanson and Fiegen. Acting Commissioner  
7 Sattgast is in the meeting room in Pierre.

8           Just a couple of housekeeping notes. The live  
9 webcast of this meeting for some reason is not working.  
10 And so it's being recorded in three different manners,  
11 but the live webcast is not working. And so we are going  
12 to proceed with the meeting. They are furiously working  
13 to try to get the live webcast working.

14           But if they don't, we will take the recording of  
15 this meeting and place it on our website at the  
16 conclusion of this meeting so the public will have full  
17 access to everything that is said and done here.

18           With that, we've got two different dockets to  
19 deal with today. We're going to deal with HP14-002, In  
20 the Matter of the Application of Dakota Access, LLC for  
21 an Energy Facility Permit to Construct the Dakota Access  
22 Pipeline.

23           We've got a number of different motions.  
24 Obviously, Commissioner Fiegen is not going to be  
25 participating in this portion of the meeting. And we are

1 going to proceed in this order on the motion. The first  
2 motion that I think we're going to deal with is from  
3 South Dakota Association of Rural Water Systems' Motion  
4 to Substitute Witness.

5 Is their attorney present there in Pierre?

6 MS. WIEST: Yes.

7 COMMISSIONER HANSON: Mr. Chairman.

8 CHAIRMAN NELSON: Yes. Just hang on.

9 Mr. Hanson.

10 COMMISSIONER HANSON: Before you proceed with  
11 that, I need to make a statement.

12 Five days ago I learned that my daughter's  
13 husband's grandmother, Doris Haber, is a property owner  
14 who is affected by the proposed Dakota Access Pipeline.  
15 She is negotiating an easement at the present time with  
16 Dakota Access. She is not an Intervenor.

17 However, because this is not a close connection  
18 to me, I do not believe this presents a conflict of  
19 interest to me. However, I wanted to make it certain  
20 that this is disclosed on the record.

21 So I will not be recusing myself, but I do want  
22 all of the parties to be aware of that.

23 CHAIRMAN NELSON: Very appropriate. And thank  
24 you for sharing that with us.

25 COMMISSIONER FIEGEN: And I'm going to leave.

1 Commissioner Sattgast, you're in control.

2 CHAIRMAN NELSON: Okay. With that,  
3 Ms. Northrup, go ahead.

4 MS. NORTHRUP: This is Margo Northrup on behalf  
5 of the South Dakota Association of Rural Water Systems.  
6 The statewide association is an association that is made  
7 up of nonprofit rural water systems.

8 (Discussion off the record)

9 MS. NORTHRUP: As I was saying, my name is  
10 Margo Northrup. I'm the attorney for the South Dakota  
11 Association of Rural Water Systems, which is the  
12 statewide association made up of nonprofit rural water  
13 systems throughout the State of South Dakota. We have  
14 seven member systems that are going to be impacted by the  
15 Dakota Access Pipeline.

16 I have filed prefiled testimony of Steve Harper  
17 who is the general manager in one of -- WEB Water, which  
18 is one of the member companies that was impacted by the  
19 Dakota Access project.

20 WEB Water has reached an agreement with Dakota  
21 Access Pipeline, and I learned probably two weeks ago  
22 that Mr. Harper was no longer employed with WEB Water.  
23 He left rather suddenly. And so I filed this motion to  
24 substitute a witness, Dan Zolkowsky, who is a  
25 construction engineer from Lewis & Clark.

1           As a practical matter, Lewis & Clark is the only  
2 system who still has outstanding concerns with Dakota  
3 Access Pipeline that we're still working through, but I  
4 would like to substitute Dan for Steve Harper.

5           I did provide prefiled testimony, which is very  
6 similar to what was submitted on behalf of Steve Harper.  
7 Our primary issue is, you know, the safety of the  
8 crossings.

9           With that, I can stand by for any questions.

10          CHAIRMAN NELSON: Thank you. I'm going to go to  
11 the Applicant.

12          MR. KOENECKE: Good morning, Commissioner. We  
13 have no objection to Ms. Northrup's request this morning.  
14 We just found out about the issues that Lewis & Clark has  
15 raised within about the last week, and, as she said, we  
16 are diligently working on those.

17          So, as she said, they have arisen late in the  
18 process, and we have spent time as late as last night and  
19 early as prior to this this morning working on this issue  
20 and we certainly have no objection to her request.

21          Thank you.

22          CHAIRMAN NELSON: Thank you.

23          Intervenors, any of the Intervenors?

24          Ms. Real Bird?

25          MS. REAL BIRD: Yankton Sioux Tribe has no

1 objection to the request.

2 Thank you.

3 CHAIRMAN NELSON: Thank you.

4 Mr. Boomsma?

5 MR. BOOMSMA: No objection.

6 Thank you.

7 CHAIRMAN NELSON: Thank you.

8 I'm going to check. Matt Rappold, have you  
9 joined us? Not hearing Matt this morning.

10 Staff.

11 MS. EDWARDS: Staff has no objection.

12 CHAIRMAN NELSON: Very good. Questions from  
13 Commissioners.

14 COMMISSIONER HANSON: No questions.

15 CHAIRMAN NELSON: I just have one question.

16 The prefiled testimony from Mr. Harper, will  
17 that be introduced, and will your new witness be adopting  
18 that or not?

19 MS. NORTHRUP: I believe that it will just be  
20 the prefiled testimony that I attached to the motion I  
21 filed -- I think it would be substitute prefiled  
22 testimony of Dan Zolkowsky.

23 CHAIRMAN NELSON: Thank you.

24 Other Commissioner questions?

25 COMMISSIONER SATTGAST: No questions.

1           CHAIRMAN NELSON: Seeing none, is there a  
2 motion?

3           COMMISSIONER HANSON: Mr. Chairman, in HP14-002  
4 I move that the Commission grant the Motion for  
5 Substitution of a Witness.

6           CHAIRMAN NELSON: Discussion on the motion?  
7 Seeing none, all those in favor will vote aye;  
8 those opposed, nay.

9           Commissioner Sattgast.

10          COMMISSIONER SATTGAST: Aye.

11          CHAIRMAN NELSON: Commissioner Hanson.

12          COMMISSIONER HANSON: Aye.

13          CHAIRMAN NELSON: Nelson votes aye.

14          The motion carries.

15          The next motion that we're going to take up is  
16 the motion from Mr. Boomsma to allow telephonic  
17 testimony.

18          Glenn, go ahead.

19          MR. BOOMSMA: Thank you. This is Glenn Boomsma.

20          Yes. On September 16 I did file this motion to  
21 allow telephonic testimony, and in that motion I laid out  
22 a total of nine witnesses that I would like to have  
23 testify via telephone at the hearing.

24          I did also specify the reasons for those -- for  
25 my request. I've also communicated with others involved



1 in the case to see if they have any objections or  
2 opposition to this. My understanding is that nobody  
3 does.

4 With that said, I have good reason for the  
5 motion, and I would ask that the motion be granted.

6 CHAIRMAN NELSON: Thank you. We will go to the  
7 Applicant.

8 MR. KOENECKE: Thank you, Commissioner. As  
9 Mr. Boomsma stated, we neither support or oppose his  
10 request. And I'll leave it at that.

11 Thank you.

12 CHAIRMAN NELSON: Ms. Real Bird, anything to  
13 add?

14 MS. REAL BIRD: Commissioners, we're satisfied  
15 with premotion discussions with Mr. Boomsma so we have no  
16 objection.

17 Thank you.

18 CHAIRMAN NELSON: Very good.

19 Just double-checking. Mr. Rappold, have you  
20 joined us?

21 Not hearing Matt.

22 Ms. Edwards.

23 MS. EDWARDS: Staff has no objection.

24 CHAIRMAN NELSON: Questions from Commissioners.  
25 Commissioner Hanson.

1           COMMISSIONER HANSON: Mr. Chairman, I don't have  
2 any question. I just want to make certain -- and I don't  
3 believe anyone's taking advantage of the situation here,  
4 but I want to make certain that in the future no one  
5 takes advantage of this. Because it really is beneficial  
6 to all of us if witnesses attend the hearings as opposed  
7 to call in.

8           There's a lot of reasons for that, and it just  
9 makes it a lot easier for all of us to process. And so I  
10 just want to make certain people don't all of a sudden  
11 have an avalanche of witnesses that decide to call in  
12 instead of participate in person.

13           Thank you, Mr. Chairman.

14           CHAIRMAN NELSON: Any additional questions?

15           Is there a motion?

16           COMMISSIONER HANSON: Mr. Chairman, I'll move in  
17 HP14-002 that the Commission grant the motion to allow  
18 telephonic testimony to these witnesses.

19           CHAIRMAN NELSON: I'm not sure who's on the  
20 phone, but we're hearing somebody speaking there.

21           Okay. We have a motion on the floor.

22           Discussion on the motion.

23           Let me just echo Commissioner Hanson's comments.  
24 This is certainly not preferable for the Commission. We,  
25 frankly, enjoy having folks appear in person. I think it

1 gives us a better feel for where they're coming from and  
2 a better opportunity to ask our questions.

3 But by the same case, I think Mr. Boomsma's made  
4 a compelling case in the case of these specific witnesses  
5 that this may in some of their cases be the only way  
6 they'll be able to testify, and we certainly do want to  
7 hear from them so I will support the motion.

8 Additional discussion?

9 Hearing none, all those in favor will vote aye;  
10 those opposed, nay.

11 Commissioner Sattgast.

12 COMMISSIONER SATTGAST: Aye.

13 CHAIRMAN NELSON: Commissioner Hanson.

14 COMMISSIONER HANSON: Aye.

15 CHAIRMAN NELSON: Nelson votes aye. Motion  
16 carries.

17 We have a series of motions for time certain, if  
18 I can -- and I'm going to try to sort all of these out.  
19 It looks like an awful lot of people want to testify on  
20 October 6. But we'll take these one at a time and see  
21 where we end up.

22 I'm going to begin with Sioux Falls's motion.  
23 Ms. Best is here in the room with us, and I'm going to  
24 put you on camera.

25 Go ahead, Diane.

1 MS. BEST: Thank you. Diane Best, representing  
2 the City of Sioux Falls.

3 The Dakota Access Pipeline as presently  
4 proposed would run parallel to the west boundary of the  
5 Sioux Falls Landfill. We have intervened and expect the  
6 landfill manager to testify about proposed conditions  
7 that Sioux Falls would ask for to protect various  
8 landfill features and structures.

9 It will be short testimony, and, in fact, we're  
10 talking to Dakota Access Pipeline to determine whether  
11 they are willing to stipulate to any of those particular  
12 conditions.

13 If we do not reach a stipulation, of course, we  
14 will need the landfill manager to travel to Pierre and  
15 testify, which we have no objection to. And we certainly  
16 understand that you have a long Procedural Schedule and  
17 that it's not always easy to decide exactly when people  
18 can testify in advance and we can't precisely schedule  
19 all witnesses.

20 Nonetheless, we do have a staffing issue at the  
21 landfill at the present time due to recent staffing  
22 changes. We do not have an assistant landfill manager.  
23 So our landfill manager, Dustin Hanson, really needs to  
24 be at the landfill to the extent possible, rather than  
25 being on deck for a week in Pierre. Pierre is a lovely

1 city, but he does need to be back at the landfill.

2 So I filed a motion basically asking for a range  
3 of time, somewhere the afternoon of the 6th or morning of  
4 the 7th just to lodge some kind of time frame so rather  
5 than having him be there a whole week. And so that's the  
6 consideration I'm asking for at this time.

7 CHAIRMAN NELSON: So I'm understanding he would  
8 prefer to be at the landfill than in Pierre.

9 MS. BEST: Well, that's what he's telling me. I  
10 think that's hard to believe. But yeah.

11 CHAIRMAN NELSON: I'm with you.

12 Okay. We'll go to Dakota Access.

13 MR. KOENECKE: No objection, Commissioners.

14 CHAIRMAN NELSON: Thank you. Ms. Real Bird.

15 MS. REAL BIRD: The Tribe has no objection.

16 CHAIRMAN NELSON: Ms. Edwards.

17 MS. EDWARDS: Staff has no objection.

18 CHAIRMAN NELSON: Questions from Commissioners.

19 If not, motions.

20 And I will move in HP14-002 that we set a time  
21 certain of the morning of October 7 for the witness from  
22 Sioux Falls.

23 Discussion on the motion.

24 I chose that particular time as opposed to the  
25 6th since I think it will be just a little later in the

1 process, and we're going to have some others that want  
2 the 6th.

3 So discussion on the motion.

4 Hearing none, all those in favor will vote aye;  
5 those opposed, nay.

6 Commissioner Sattgast.

7 COMMISSIONER SATTGAST: Aye.

8 CHAIRMAN NELSON: Commissioner Hanson.

9 COMMISSIONER HANSON: Aye.

10 CHAIRMAN NELSON: And Nelson votes aye.

11 The motion carries.

12 That brings us then to South Dakota Association  
13 of Rural Water Systems that has asked, I believe, for  
14 either October 6 or October 7.

15 Ms. Northrup.

16 MR. KOENECKE: It looks like it falls to me to  
17 say that Ms. Northrup has left the room, Commissioner.

18 CHAIRMAN NELSON: Well, let me ask then, do you  
19 have any objection to either of those dates?

20 MR. KOENECKE: I do not.

21 CHAIRMAN NELSON: Ms. Real Bird?

22 MS. REAL BIRD: No objection.

23 CHAIRMAN NELSON: Ms. Edwards.

24 MS. EDWARDS: No objection.

25 CHAIRMAN NELSON: Questions from Commissioners.

1           Hearing none, is there a motion?

2           I will move in HP14-002 that for the witness for  
3 South Dakota Association of Rural Water Systems be  
4 designated sometime on October 7.

5           Discussion on the motion.

6           Hearing none, all those in favor will vote aye;  
7 those opposed, nay.

8           Commissioner Sattgast.

9           COMMISSIONER SATTGAST: Aye.

10          CHAIRMAN NELSON: Commissioner Hanson.

11          COMMISSIONER HANSON: Aye.

12          CHAIRMAN NELSON: Nelson votes aye.

13          The motion carries.

14          That then brings us to the motion from the  
15 Yankton Sioux Tribe regarding the unavailability on a  
16 particular date and a request for time certain for  
17 several other witnesses.

18          Ms. Real Bird, go ahead.

19          MS. REAL BIRD: Thank you, Mr. Chairman and  
20 members of the Commission.

21          The Tribal Inauguration is September 30, and we  
22 just want to notice unavailability of our three  
23 witnesses. It is unlikely that they would go on the  
24 30th, but we thought we'd, just to make sure, notice  
25 their unavailability for that particular day.

1           In addition, we ask the Commission for an order  
2 allowing two of our witnesses to go on October 6.  
3 Ms. Spotted Eagle happens to have some obligations around  
4 this time, and October 6 is the date that will work best  
5 for her schedule.

6           Mr. Saunsoci is our chief of police, and due to  
7 other officers' training schedules he's going to have to  
8 pick up some more patrol shifts. And so he would like to  
9 narrow down October 6 as well.

10           If October 6 gets too crowded, there's an  
11 outside chance he could be there on the 1st or 2nd. But  
12 he would prefer October 6, looking ahead at the patrol  
13 schedule for that law enforcement unit.

14           And that's our request. Thank you.

15           CHAIRMAN NELSON: What about Mr. Cooke?

16           MS. REAL BIRD: He is going to be available all  
17 days of the hearing with the exception of September 30.

18           CHAIRMAN NELSON: Okay. So we're just dealing  
19 with the two then; correct?

20           MS. REAL BIRD: Correct.

21           CHAIRMAN NELSON: And I think there was some  
22 confusion. October 6 is a Tuesday, I believe. And  
23 that's the day that you want; correct?

24           MS. REAL BIRD: Yes. My understanding is we're  
25 not having the hearing on October 5, Monday. And the 6th



1 is the date that Ms. Spotted Eagle and will Mr. Saunsoci  
2 had indicated.

3 CHAIRMAN NELSON: Perfect. Thank you.

4 MS. REAL BIRD: Tuesday, October 6.

5 CHAIRMAN NELSON: Thank you.

6 Dakota Access.

7 MR. KOENECKE: No objection, Mr. Chairman.

8 CHAIRMAN NELSON: Ms. Edwards.

9 MS. EDWARDS: No objection.

10 CHAIRMAN NELSON: Mr. Boomsma.

11 MR. BOOMSMA: No objection.

12 CHAIRMAN NELSON: Questions from the Commission.

13 COMMISSIONER HANSON: Mr. Chairman, my only  
14 concern is that we're able to hear all of these witnesses  
15 on the 6th. I know that Dakota Access is going to be --  
16 well, I'm assuming they will not be finished with their  
17 information to us at that time so we may have to just  
18 hear theirs later on.

19 CHAIRMAN NELSON: Thank you.

20 Motions.

21 I will move in HP14-002 that we designate  
22 Mr. Saunsoci and Ms. Spotted Eagle for October 6.

23 Discussion on the motion.

24 Yeah. I would agree with Commissioner Hanson.

25 The Applicant may or may not be done with their case, but

1 I don't see any problem with these two being designated  
2 for that particular day. We will work them in as needed.

3 And as far as the request for not putting the  
4 others on September 30, the way this is going to proceed,  
5 that will not be an issue so I don't think we -- I didn't  
6 include that in my motion.

7 Further discussion on the motion?

8 Hearing none, all those in favor will vote aye;  
9 those opposed will vote nay.

10 Commissioner Sattgast.

11 COMMISSIONER SATTGAST: Aye.

12 CHAIRMAN NELSON: Commissioner Hanson.

13 COMMISSIONER HANSON: Aye.

14 CHAIRMAN NELSON: And Nelson votes aye.

15 Motion carries.

16 I think that resolves our Dakota Access motions.

17 Does anyone know anything to the contrary?

18 MR. BOOMSMA: This is Glenn Boomsma. I'd like  
19 to be heard on one matter.

20 CHAIRMAN NELSON: Certainly. Go ahead, Glenn.

21 MR. BOOMSMA: Say, I had a conference call with  
22 the Applicant, Attorney Edwards, and then also the  
23 Intervenors about -- about one week ago, and it was about  
24 this topic of setting aside a day certain for my clients  
25 who are Intervenors to testify.

1           And at that time it was proposed that my clients  
2 would be able to testify hopefully on October 6 as well.  
3 And I didn't hear any opposition at all. And it seemed  
4 like everybody was in agreement with that.

5           I didn't file a motion for a day certain, but in  
6 light of how there was no opposition, I would ask that  
7 the Commission take up my request at this time.

8           CHAIRMAN NELSON: Okay. And yeah. I understand  
9 that in your original motion there was some reference to  
10 possibly asking for this, but since there wasn't a follow  
11 up that's why I wasn't aware of the discussions that  
12 you've had. So this is, frankly, a new issue for the  
13 Commissioners.

14           I am going to turn to Dakota Access to determine  
15 whether they have any objection to this. And  
16 specifically to this being heard without a motion being  
17 filed.

18           MR. KOENECKE: I have no objection to this being  
19 heard and discussed and determined here this morning.

20           And Glenn is right. Mr. Boomsma is correct, he  
21 talked about that date for his witnesses, and so I have  
22 no objection to that, Commissioner.

23           CHAIRMAN NELSON: Thank you. And I'm just going  
24 to go around.

25           Ms. Real Bird, any objection to this being

1 heard?

2 MS. REAL BIRD: No, Mr. Chairman. Glenn did  
3 raise this in a telephone call, and so we already  
4 discussed it, and we have no objection to his request.

5 CHAIRMAN NELSON: Ms. Edwards, any objection?

6 MS. EDWARDS: Staff has no objection.

7 And I would note that Mr. Boomsma mentioned in a  
8 phone call he thought each of his witnesses would take  
9 about four or five minutes. He has something like  
10 20 witnesses. So if they do take a short amount of time  
11 like he predicts, we should be able to get through them.

12 CHAIRMAN NELSON: Okay. So just so I'm clear,  
13 Mr. Boomsma, you're not talking about just your  
14 telephonic witnesses; you're talking about all of your  
15 witnesses?

16 MR. BOOMSMA: I am. I'm talking about obviously  
17 the telephonic ones. And I estimate there will be eight  
18 of them. And then, yes, in addition to that would be my  
19 live witnesses.

20 CHAIRMAN NELSON: Okay. Additional Commissioner  
21 questions?

22 Is there a motion?

23 Ms. Wiest.

24 MS. WIEST: My question is then do all the  
25 parties believe that we can get through the two witnesses

1 from Yankton and all of these on October 6?

2 That would be my issue.

3 CHAIRMAN NELSON: I'm not hearing --

4 MS. WIEST: I guess I point --

5 CHAIRMAN NELSON: Let me just say that I'm not  
6 hearing a response.

7 I guess just so that we're all on the same page,  
8 what I would anticipate doing is taking the two Yankton  
9 witnesses immediately that morning, and then we'll turn  
10 it over to Mr. Boomsma to get as far as he can that day.  
11 And if he doesn't finish that day, they'll have to roll  
12 over to the following day.

13 MS. WIEST: Yes. And then we have two scheduled  
14 for the 7th. So it could be then even the afternoon of  
15 the 7th for Mr. Boomsma's witnesses.

16 CHAIRMAN NELSON: That is correct, yes.

17 MS. WIEST: Thank you.

18 CHAIRMAN NELSON: I'll leave it up to him to try  
19 to manage the time of his witnesses, and hopefully they  
20 will go as quickly as he anticipates.

21 Additional Commissioner questions.

22 MR. BOOMSMA: Thank you.

23 CHAIRMAN NELSON: I would -- let's see. Do we  
24 have a motion on the table? No motion.

25 I will move in HP14-002 that Mr. Boomsma's

1 witnesses be scheduled for October 6 with the  
2 understanding that any that do not finish that day will  
3 then roll over either to the 7th or at some later point.

4 Discussion on the motion?

5 Hearing none, all those in favor will vote aye;  
6 those opposed, nay.

7 Commissioner Sattgast.

8 COMMISSIONER SATTGAST: Aye.

9 CHAIRMAN NELSON: Commissioner Hanson.

10 COMMISSIONER HANSON: Aye.

11 CHAIRMAN NELSON: Nelson votes aye.

12 The motion carries.

13 Any additional issues?

14 MR. BOOMSMA: One question. This is Glenn  
15 Boomsma.

16 Thomasina, how long do you think your two  
17 witnesses will take on the 6th? Just estimate.

18 MS. REAL BIRD: For one of them we're unlikely  
19 to add anything other than her prefiled, and so on our  
20 end just a couple of minutes. I suppose it depends on  
21 other parties' questions for that witness.

22 And so the second witness we will have a few  
23 additional questions in addition to what was prefiled --

24 (Discussion off the record)

25 MS. REAL BIRD: I am in the room with -- sorry,

1 Mr. Chairman and Cheri. I am in the room with Jennifer  
2 Baker who is also of record on this case for the Tribe so  
3 we had you on speaker.

4 Cheri, where I left off was we will have some  
5 additional questions for our second witness to elaborate  
6 on some points contained in the prefiled, and that  
7 shouldn't take too awful long. I'm guessing 10 to 15  
8 minutes. And then the unknown factor that I can't answer  
9 is parties' questions.

10 So I guess I don't know, Mr. Boomsma, how long  
11 our two witnesses might take.

12 MR. BOOMSMA: Thank you.

13 CHAIRMAN NELSON: Any additional issues on this  
14 docket that needs to be resolved today?

15 If not, we will look forward to seeing all of  
16 you on Tuesday. And that will conclude this docket.

17 (The proceeding is concluded.)  
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1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY )

4

5 I, CHERI MCCOMSEY WITTNER, a Registered  
6 Professional Reporter, Certified Realtime Reporter and  
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 24th day of  
11 September, 2015, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 4th day of  
14 November, 2015.

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18 \_\_\_\_\_  
19 Cheri McComsey Wittner,  
20 Notary Public and  
21 Registered Professional Reporter  
22 Certified Realtime Reporter

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