

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

<b>IN THE MATTER OF THE</b>	)	
<b>APPLICATION OF DAKOTA</b>	)	<b>HP14-002</b>
<b>ACCESS, LLC FOR AN ENERGY</b>	)	
<b>FACILITY PERMIT TO</b>	)	<b>ROSEBUD SIOUX TRIBE'S</b>
<b>CONSTRUCT THE DAKOTA</b>	)	<b>ANSWERS TO DAKOTA ACCESS</b>
<b>ACCESS PIPELINE PROJECT</b>	)	<b>(SECOND SET) OF INTERROGATORIES</b>
	)	

TO: BRETT KOENECKE, Attorneys for Dakota Access, LLC 503 South Pierre Street  
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The Rosebud Sioux Tribe, (Sicangu Oyate Land Office and Sicangu Lakota Treaty Office)  
hereby submits the following Answers and Objections to Dakota Access Second Set of  
Interrogatories.

INTERROGATORY NO. 1: list all linear utility infrastructure located within the  
Rosebud Sioux Reservation. This request is intended to include, but is not limited to: gas  
pipelines, water pipelines, and electric lines.

OBJECTION: The Rosebud Sioux Tribe objects to the Interrogatory on the grounds that  
the Interrogatory call for an answer that is not relevant to the scope of the proceedings and the  
applicants burden of proof under SDCL 49-41B. These proceedings are governed by SDCL 49-  
41B. The lineal utility infrastructure located within the Rosebud Sioux Indian Reservation is not  
relevant to the applicants burden of proof or information that the PUC would consider in making  
a determination if the Applicant has complied with SDCL 49-41B.

INTERROGATORY NO. 2: For each facility listed in Interrogatory 1 above that is  
owned by a utility company, provide the name of the facility owner.

OBJECTION: The Rosebud Sioux Tribe objects to the Interrogatory on the ground cited  
in support of the Objection raised in response to Interrogatory 1.

*Exhibit B*

INTERROGATORY NO. 3: What property rights does the Rosebud Sioux Tribe have or claim within one half mile of the Dakota Access pipeline's current proposed route?

ANSWER AND OBJECTION: The Rosebud Sioux Tribe objects to the Interrogatory on the ground cited in support of the Objection raised in response to Interrogatory 1. Without waiving the objection the Rosebud Sioux Tribe may have traditional cultural property sites, as that term is defined by the National Historic Preservation Act, that are located within the Pipeline's proposed current route. The Rosebud Sioux Tribe has aboriginal rights associated with their status as a federally recognized Indian Tribe as those terms are defined by federal law. The Rosebud Sioux Tribe owns land located in the State of Iowa which may be located within one-half mile of the proposed pipeline route.

INTERROGATORY NO. 4: How far in feet or miles is the proposed pipeline located from the Rosebud Sioux Reservation exterior boundary?

OBJECTION: The Rosebud Sioux Tribe objects to the Interrogatory on the ground cited in support of the Objection raised in response to Interrogatory 1.

INTERROGATORY NO. 5: What water or other rights does the Rosebud Sioux Tribe claim could or will be impacted by the proposed pipeline?

ANSWER: The Rosebud Sioux Tribe possesses water rights consistent with the *Winters Doctrine*, a judicially created doctrine established in the case of *Winters v. United States*, 207 U.S. 564 (1908) that may be impacted by the proposed pipeline. Under this doctrine, tribal water rights are reserved from the date of the establishment of the tribe's reservation. Under federal law the Rosebud Sioux Tribe has protected rights to water from the Missouri River and its tributaries that are necessary to fulfill the purpose of the creation of the Rosebud Indian Reservation. Rosebud may have rights associated with the requirements of the National Historic

Preservation Act for potential properties located along the route. The Rosebud Sioux Tribe has other rights that are protected under federal and state law related to the safe development of energy resources, environmental and human rights protections, and all other rights that parties to contested cases have that are consistent with the Constitution and laws of the state of South Dakota and the United States. The response to this interrogatory is not intended to be an exhaustive list.

INTERROGATORY NO. 6: Provide all facts to support your answer to Interrogatory No 5 above.

ANSWER AND OBJECTION: Rosebud objects to the Interrogatory on the grounds that at this time it is impossible to assert all facts that support the answer to Interrogatory 5. Rosebud will provide some of the identified facts in support of the answer to Interrogatory 5 and 6; accordingly;

- a) The Rosebud Sioux Tribe is a federally recognized Indian Tribe as that term is defined by applicable federal laws and U.S. Supreme Court opinions.
- b) That the case of *Winters v. United States*, 207 U.S. 564 (1908) is a United States Supreme Court opinion that established the tribal water rights doctrine commonly known as the Winter's Doctrine.
- c) South Dakota codified laws, constitution, court opinions provide for parties in contested cases such as this to have rights that are consistent with due process requirements of the state and federal constitutions.
- d) It is a fact that there is no indication in the application that the applicant considered the Winter's doctrine and its applicability to water use for the project.
- e) There is no indication in the application that the applicant considered what impact the project's construction and operation may have on tribal reserved water rights.
- f) There is no information contained in the application that indicates that these concerns were properly considered and evaluated in consideration of the application.

- g) Water used from the Missouri River and its tributaries for the construction and operation of the pipeline may threaten availability of water from the Missouri River and its tributaries.

INTERROGATORY NO. 7: Does the Rosebud Sioux Tribe disagree with or oppose the construction of crude oil transportation pipelines in the State of South Dakota, regardless of where situated within the state?

OBJECTION: The Rosebud Sioux Tribe objects to the Interrogatory on the ground cited in support of the Objection raised in response to Interrogatory 1. Whether or not the Rosebud Sioux Tribe disagrees with or opposes the construction of crude oil pipelines in the State of South Dakota is not relevant to the PUC's considerations and the applicants burden of proof as required by law.

INTERROGATORY NO. 8: Does the Rosebud Sioux Tribe have a formal position regarding the construction of crude oil pipelines on its Reservation land? If so, what is it and how was that position developed.

OBJECTION: The Rosebud Sioux Tribe objects to the Interrogatory on the ground cited in support of the Objection raised in response to Interrogatory 1.

INTERROGATORY NO. 9: Does the Rosebud Sioux Tribe have a formal position regarding the construction of crude oil pipelines in the State of South Dakota? If so, what is it and how was that position developed.

OBJECTION: The Rosebud Sioux Tribe objects to the Interrogatory on the ground cited in support of the Objection raised in response to Interrogatory 1.

INTERROGATORY NO. 10: Does the Rosebud Sioux Tribe have a formal position regarding the proposed Dakota Access pipeline? If so, what is it and how was that position developed.

OBJECTION: The Rosebud Sioux Tribe objects to the Interrogatory on the ground cited in support of the Objection raised in response to Interrogatory 1.

INTERROGATORY NO. 10: If the answer to No. 7 above is “no,” generally state what it is about the proposed Dakota Access pipeline that the Rosebud Sioux Tribe finds objectionable.

OBJECTION: The Rosebud Sioux Tribe objects to the Interrogatory on the ground cited in support of the Objection raised in response to Interrogatory 1.

INTERROGATORY NO. 11: If the answer to No. 7 above is “yes,” generally state the Tribe’s objections to the construction of crude oil transportation pipelines in the State of South Dakota.

OBJECTION: The Rosebud Sioux Tribe objects to the Interrogatory on the ground cited in support of the Objection raised in response to Interrogatory 1.

REQUEST FOR PRODUCTION OF DOCUMENTS 1: Provide a copy of all documents referenced in any answer above or which supports any answer above.

OBJECTION: The Rosebud Sioux Tribe objects to Request for Production of Documents No.1 on the ground cited in support of the Objection raised in response to Interrogatory 1. Rosebud refers Dakota Access to its application, amended application and its other supporting documents currently on file with the Public Utilities public website and in the possession of the applicant.

Dated this 15<sup>th</sup> day of June, 2015.

RAPPOLD LAW OFFICE

By: /s/ Matthew L. Rappold  
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### CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on the 15<sup>th</sup> day of June, 2015, he caused a true and correct copy of the original of the foregoing Rosebud Sioux Tribe's Responses to Dakota Accesses Second Set of Interrogatories and Request for Production of Documents, by electronic transmission to the following:

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