

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

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

HP14-002

**PRE-FILED TESTIMONY OF
BRIAN TOP**

STATE OF SOUTH DAKOTA)

:SS

COUNTY OF MINNEHAHA)

1 Brian Top, being first duly sworn on his oath, deposes and states as follows:

2

3 **Please state your name and address.**

4 My name is Brian Top. My address is 2836 Old Orchard Trail, Sioux Falls, South
5 Dakota. My phone number is (605) 359-5108 and e-mail address is
6 topsoilsd@gmail.com.

7

8 **How are you involved with the Dakota Access Pipeline project?**

9 I have been hired as an expert witness in this matter by a group of landowners
10 affected by the proposed Dakota Access Pipeline. Those individuals have made formal
11 appearances in this matter and are represented by attorney Glenn J. Boomsma.

12

13 **What is your professional background?**

14 Currently, I am a self-employed environmental consultant with my company, Top
15 Soil Consulting. I am partnering with the Minnehaha Conservation District in

16 implementing best management practices in the Big Sioux River watershed. I work on
17 wetland identification and regulations, ensuring that my clients remain in compliance
18 with local, State and Federal regulations while still improving water management on their
19 land. I also assist the City of Sioux Falls with their Nutrient Management planning by
20 identifying suitable fields and taking soil samples for the Cities BioSolid application
21 program.

22 During 2011 and 2012, I worked for Hefty Seed Company as a Soil Improvement
23 Specialist. I identified wetlands and designed water management plans while ensuring
24 compliance with regulations. I worked with agronomists and researchers on various
25 projects and spoke at various company events and seminars.

26 Between 1986 and 2011, I was the District Conservationist for the US Department
27 of Agriculture – Natural Resources Conservation Service in the Minnehaha County
28 office. I supervised 4-6 employees and implemented all USDA conservation programs
29 including the CRP (Conservation Reserve Program) and WRP (Wetland Reserve
30 Program). I was responsible for wetland and highly erodible land compliance
31 requirements. I implemented USDA cost share programs such as the EQIP
32 (Environmental Quality Incentive Program). I gained extensive field knowledge
33 regarding soils and plant resources, and gave recommendations on cover crops, weed
34 control and native plant establishment. I worked with Minnehaha County Planning and
35 Zoning office to ensure that the County Drainage Ordinance was implemented well.

36 My education in these fields began at South Dakota State University, where I
37 earned a Bachelor of Science degree in 1982, with an emphasis in soils and chemistry.

38 During my professional career, I have become familiar with farmland irrigation
39 and drainage tile systems in eastern South Dakota. Specifically, I have accumulated

40 practical knowledge regarding the older drainage tile systems, such as clay or concrete
41 systems which are found in eastern South Dakota, as well as implementation of modern
42 plastic tile systems and their effects.

43
44 **What is the purpose of your testimony?**

45 My clients are concerned with the subsequent condition of their farmland where
46 the pipeline may be installed. The primary purpose of my testimony is to provide an
47 opinion regarding drainage and crop productivity issues that may be experienced upon
48 installation of the crude oil pipeline under cropland. Other agricultural-related issues
49 may also be addressed in my testimony.

50
51 **What Dakota Access or PUC case documents have you reviewed to prepare for this**
52 **testimony?**

53 I have reviewed: (1) Dakota Access, LLC ("Dakota Access") South Dakota PUC
54 Crude Oil Pipeline Application dated December 2014, as amended, and Exhibits thereto,
55 including the Agricultural Impact Mitigation Plan - Section 6 (the "Application"); (2)
56 Dakota Access' Answers to Peggy Hoogestraat's Interrogatories dated May 11, 2015; (3)
57 Transcripts of public input hearings at Bowdle, Redfield, Iroquois, and Sioux Falls, South
58 Dakota ("Public Hearing Transcripts"); and (4) Various other documents available on the
59 PUC website for this matter. I have also met with Dakota Access Right-Of-Way
60 Manager Susan Bergman and visited about the details of the pipeline installation.

62 **Please describe your professional experience regarding farmland drainage tile, both**
63 **clay/concrete systems and modern plastic systems in Minnehaha County, Lincoln**
64 **County or elsewhere.**

65 Plastic tile was installed on our family farm in 1971. My extensive professional
66 experience with modern tile systems began in 1982 while working for the United States
67 Department of Agriculture. We designed and helped install drainage tile in conjunction
68 with other conservation practices such as waterways and terraces. Beginning in 1986 I
69 was responsible for implementing the Conservation Compliance requirements of the 1985
70 Farm Bill. One of the key provisions of the Farm Bill was limiting any new drainage of
71 areas which USDA classified as wetlands. I was responsible for determining what areas
72 were deemed as wetlands, along with what drainage work was acceptable while
73 remaining eligibility for USDA program benefits. Maintenance of existing tile systems
74 was an important concern, and therefore I looked at a large number of old clay and
75 concrete tile systems which needed to be maintained. I was responsible for these
76 provisions until I left USDA in 2011. At that time, I became employed with Hefty Seed
77 Company. I continued to work with wetland identification and installation of drain tile
78 systems, primarily for customers of Hefty Seed Company. In 2012 I began working as a
79 private consultant doing similar work for my independent clients, which I have continued
80 until the present. My emphasis has shifted to the mitigation of impacted wetlands by
81 creating or restoring wetlands within the same watershed. I also am contracted by the
82 Minnehaha Conservation District to work with their customers by helping install other
83 conservation practices.

86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109

With respect to clay/concrete drainage tile systems in Minnehaha or Lincoln Counties, please describe any concerns you have regarding: (1) the excavating and removal of such drainage facilities; (2) the proposed depth of the pipeline; (3) the replacement of such drainage facilities; (4) the subsequent integrity and performance of such drainage facilities; (5) the damages and expenses a landowner may incur as a result of non-performing drainage tile after pipeline installation; and (4) other concerns regarding disturbance of such drainage facilities.

The excavation of old clay/concrete tile systems brings up several areas of concern. First of which is landowners are often unaware that these old systems exist. Many of these tile lines were installed but were never recorded. We do not know where they were installed or how extensive they are, so my first concern is that we are able to find all the tile lines that are damaged by the construction.

These old tile lines are often fragile. I have frequently seen clay tile which only had the bottom one half of the original still in place. The upper portion of the tile pieces has been dissolved by the surrounding soil, while the lower portion was protected from this by the flowing water. Obviously, it will be more difficult to repair these lines because of their fragile status.

The proposed depth of the pipeline along with the 24 inch (which is indicated in the verbage, although a 12 inch setback is indicated in the diagram in appendix A...) setback from the pipeline will make it very difficult to repair these lines to a functional system. A majority of the clay tile was placed at a depth of 30-48 inches, but I have witnessed it

110 being located at the ground surface (due to erosion) and I have also seen lines 15 feet
111 deep. The proposed 30 inch pipeline will be placed a minimum of 48 inches deep
112 according to Ms. Bergman. In that scenario with a 24 inch setback, the tile line would
113 need to be less than 2 feet deep if placed above the pipeline, and more than 8.5 feet deep
114 if placed below the pipeline. The chances of this tile system being a fully functioning
115 system is very small.

116

117 The integrity of the tile line repair is a concern. DAPL recognizes that there will be
118 settlement of soil material around the pipeline, and they are correct. That also means the
119 corresponding tile repair will settle and the tile system may fail or function at a reduced
120 capacity. A "tile bridge" will help (but not guarantee) that this settlement will not
121 happen, and the cost of a tile bridge is estimated at \$1200.00 per site. The contractor may
122 try to avoid using these costly bridges in order to save money, but they should be
123 required at all repaired sites.

124

125 The cost to a landowner if the tile line does not function could be significant. Some
126 systems may service many acres of land and the land could possibly be located on
127 multiple farms. An example would be if a tile system servicing 50 acres of land would
128 fail, and subsequently these 50 acres were to drown out and be a complete loss, the cost
129 of losing that crop on 50 acres is estimated to be \$40,000.00 at today's crop prices. Some
130 systems service areas much larger than 50 acres, so the yearly cost of the system failing is
131 very significant.

132

133 **With respect to modern plastic drainage tile systems in Minnehaha or Lincoln**
134 **Counties, please describe any concerns you have regarding: (1) the excavating and**
135 **removal of such drainage facilities; (2) the proposed depth of the pipeline; (3) the**
136 **replacement of such drainage facilities; (4) the subsequent integrity and**
137 **performance of such drainage facilities; (5) the damages and expenses a landowner**
138 **may incur as a result of non-performing drainage tile after pipeline installation; and**
139 **(4) other concerns regarding disturbance of such drainage facilities.**

140
141 Modern plastic tile which has been installed within the last 50 years is not as
142 fragile as the older clay/cement tile discussed in the previous question, but some of same
143 concerns persist. The rerouting of these lines could be difficult if the pipeline prohibits
144 the option of splicing within the same route.

145
146 The repairs of these lines will be easier and have a higher chance of success, but the
147 concerns about the fill around the tile lines settling is still a large concern. Therefore, a
148 tile bridge should also be used when these lines are damaged and subsequently repaired.

149
150 Again, the cost of these tile lines not functioning well is very high. With gross sales from
151 an acre of cropland calculated at \$800.00/acre, a large tile system which is not
152 functioning well can significantly damage a farmer's income.

153
154 Related to this concern is the restrictions on future tile drainage systems. DAPL has
155 indicated that they will try to accommodate any future tile systems that are planned. This
156 is not easily attainable. Landowners do not know where these systems will be installed or

157 at what depth they will need to be installed at. In order to accurately get this information,
158 landowners would need to complete expensive tile system surveys and designs. It is not
159 realistic that this can be accomplished prior to the pipeline being designed and installed,
160 therefore any future tile drainage systems would be severely restricted by the pipelines
161 route, elevation, and easement.

162
163 **Please describe your professional experience regarding soil removal, replacement,**
164 **and compaction, in Minnehaha County, Lincoln County or elsewhere, with regard**
165 **to installation of underground utility facilities.**

166 I have personally witnessed and installed many land disturbing projects. These
167 have involved utilities, conservation practices, tile installation and other activities.

168
169 **Please describe your primary concerns about soil removal and replacement relating**
170 **to pipeline installation in Minnehaha or Lincoln Counties.**

171 Soil in this area has been formed over thousands of years since the last glaciers
172 receded. In general, there is eight to fourteen inches of topsoil, but certain areas could
173 have more or less. This topsoil is vital to productivity due to its high levels of organic
174 matter, nutrients, michorizae, fungi, bacteria and other organisms critical to plant growth.
175 The mixing of these plant growth factors will have a negative effect on plant growth,
176 although it will be temporary since good quality topsoil is very adaptable. DAPL states
177 an intention of stockpiling the topsoil and replacing eight to twelve inches after the
178 pipeline is installed. This process needs to be done in a careful manner in order for the
179 land to recover as soon as feasible, and carefully monitored by the landlord.

180

181 Another critical concern is the mixing of the soil below the topsoil commonly referred to
182 as subsoil. This too was formed over thousands of years and has large and small pores
183 which allow water to percolate down into the soil profile. These pores will be destroyed
184 during construction and it will take many years to rebuild them through plant root and
185 earthworm activities. The parent material which was left by the glaciers is often very
186 restrictive to water movement, and is sometimes relatively shallow in the soil profile.
187 This material will be mixed in with the other subsoil and cause issues with plant growth
188 and compaction after the pipeline is installed.

189
190 I am not implying that these disturbed areas will never be productive again, but it will
191 take a long time. To imply that they will be back into full production after three growing
192 seasons is unrealistic. My professional opinion is that it will take at least 10 years and
193 possibly much longer for these sites to return to full production. The length of time will
194 vary with site and soil conditions.

195
196 **Please describe your primary concerns about soil compaction relating to pipeline**
197 **installation in Minnehaha or Lincoln Counties.**

198 Compaction will be significant with the heavy equipment, especially when
199 working in wet areas. DAPL plans on mitigating for this by deep tillage, but the damage
200 to the soil structure will not be repaired with a few passes with a deep tilling machine.
201 Resolving this will take many years of freezing and thawing along with the plant roots
202 and earthworms to slowly offset the damage done by compaction. University studies
203 indicate that negative impacts from compaction can last twenty or more years.

204

205 **With regard to crop yield and productivity on land which will be excavated and**
206 **replaced above the pipeline (i.e., pipeline easement areas), is it your opinion that**
207 **crop yield will be diminished? If so, (1) describe the factors associated with lost**
208 **yield during the first 3 years after pipeline installation; (2) describe the factors**
209 **associated with lost yield beyond the first 3 years after pipeline installation.**

210 See the previous two answers. In general, there will be diminished production on
211 these areas for approximately ten years, but the length will vary greatly with site
212 conditions. Some sites may be back to full production after three years, and some sites
213 may never return to there former level of production.

214
215 **Are you concerned that the heat generated by the pipeline (i.e., transporting 62-**
216 **degree crude oil) will negatively impact the soil or crop yield in the easement area?**
217 **If so, please explain in detail.**

218 I have concerns about insects and diseases which could survive the winter in the
219 area, which would normally not be able to survive, but are allowed to do so because of
220 this change in the micro-climate surrounding the pipe. I do not feel completely qualified
221 to answer this question.

222
223 **Would you expect that cost of farming expenses (inputs, cultivation, etc.) relating to**
224 **the easement area will higher than non-easement areas? If so, please explain in**
225 **detail.**

226 Yes. The disturbed areas will need to have higher levels of organic matter and
227 nutrients applied. These inputs may be expensive and difficult to obtain for some

228 producers. There will be a need for additional tillage to try reduce the damage from
229 compaction.

230

231 **With regard to grazing areas or feed lots, do you have any concerns regarding the**
232 **depth of the pipeline or any negative impact the pipeline easement area would have**
233 **on such land uses?**

234 Native grass roots can extend fifteen feet or more into the ground, and the
235 pipeline will obviously disturb this root system and limit the species which will be
236 available to revegetate. Therefore, species may not match the existing ecosystem.

237

238 There will be restrictions on any permanent structures and tree plantings in the Right of
239 Way area, which will affect future land use and shelterbelt establishment.

240

241 Feedlots will have to be avoided in the Right of Way. There is extensive disturbance,
242 excavations and heavy equipment traffic associated with a feedlot and therefore this land
243 use will not be allowed within the project area. This is another restriction on future land
244 use.

245

246 **In the event of an oil release event (leak or spill) underneath or upon crop land,**
247 **please describe the long-term impact on the ability to farm such land and related**
248 **crop yield.**

249

250 I was a member of the task force to assess damages following the Williams
251 Pipeline leak near Renner South Dakota in the early 1990s. Tens of thousands of gallons
of gasoline were recovered, but many acres of land still contained contaminated soil. The

252 South Dakota Department of Environment and Natural Resources approved “farming”
253 the contaminants out of the soil by frequently tilling the soil and allowing the
254 contaminants to evaporate. This process was done for several years with no crop
255 production in these areas. Eventually, an attempt was made to begin growing crops
256 which would return organic matter to the soil and allow the plant roots to form pores for
257 water to infiltrate. After many years, the restoration of this area was declared a success,
258 although I speculate that it is far from being completely restored twenty plus years later.

259

260 **Please state any other concerns you have regarding the Dakota Access Pipeline.**

261 I assume that the trench will need to be dewatered during construction to prevent
262 the pipe from floating. This dewatering could overwhelm existing drainage patterns with
263 this additional water.

264

265 **Do you believe that the Dakota Access Pipeline will pose a threat of serious injury to**
266 **the environment or the inhabitants within the siting area? If so, why?**

267 Yes. The environment within the siting area will be seriously impacted by the
268 long-lasting effects of construction and permanently injured in case of a leak of spill.

269

270 **Do you believe that the Dakota Access Pipeline will substantially impair the health,**
271 **safety and welfare of the inhabitants of the siting area? If so, why?**

272 Yes. The welfare/economic impact will be substantially impaired in the manner
273 set forth above.

274

275 **Would you be available to present testimony and respond to questions during the**
276 **formal hearing scheduled for September 29 through October 8, 2015?**

277 Yes.

278

279 **Does that conclude your testimony?**

280 Yes.

281

282

283

284

285

286

287

288

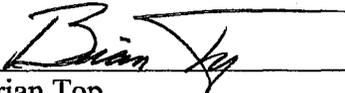
289

290

291

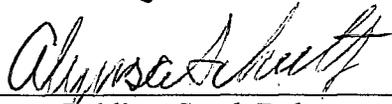
292

293



Brian Top

Subscribed and sworn before me this 2nd day of July, 2015.



Notary Public – South Dakota
My Commission Expires: 7/13/17

