

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

<b>IN THE MATTER OF THE APPLICATION OF ) DAKOTA ACCESS, LLC FOR AN ENERGY ) FACILITY PERMIT TO CONSTRUCT THE ) DAKOTA ACCESS PIPELINE ) )</b>	<b>FINAL DECISION AND ORDER; NOTICE OF ENTRY  HP14-002</b>
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**PROCEDURAL HISTORY**

On December 15, 2014, the South Dakota Public Utilities Commission (Commission) received an energy facility permit application (Application) from Dakota Access, LLC (Dakota Access) pursuant to SDCL 49-41B-4 to construct the South Dakota portion of the proposed Dakota Access Pipeline (Pipeline). The Pipeline will begin in North Dakota and terminate in Patoka, Illinois, traversing 13 counties in South Dakota. The proposed 12- to 30-inch diameter pipeline will have an initial capacity of 450,000 barrels of oil per day with a total potential of up to 570,000 barrels per day. The proposed route will enter South Dakota in Campbell County at the North Dakota/South Dakota border and will extend in a southeasterly direction, exiting the state at the South Dakota/Iowa border in Lincoln County. The length of the Pipeline through South Dakota is approximately 270 miles. The Pipeline also would include one pump station in South Dakota located in Spink County. Pursuant to SDCL 49-41B-24, the Commission has one year from the date of application to render a decision on the Application.

On December 16, 2014, the Commission issued its Notice of Application; Order for and Notice of Public Input Hearings; Notice of Opportunity to Apply for Party Status. The notice provided that each municipality, county, and governmental agency in the area where the facility is proposed to be sited; any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the area in which the facility is to be sited; or any interested person, may be granted party status in this proceeding by making written application to the Commission on or before February 13, 2015.

On December 17, 2014, Dakota Access filed a Motion for Waiver of ARSD 20:10:22:39. Dakota Access requested a waiver to the extent the rule requires the filing of written testimony with its application. On December 23, 2014, Dakota Access filed a Revised Application and Revised Exhibits A and C. Dakota Access stated that the revised documents reflected route changes.

On December 30, 2014, the Commission issued an order assessing a filing fee not to exceed \$610,000. On January 8, 2015, Commissioner Fiegen filed a letter delivered to Governor Dennis Daugaard advising of a conflict of interest under SDCL 49-1-9 after learning of family ownership of land on the proposed Pipeline route. On January 14, 2015, Governor Daugaard filed a letter with Secretary of State Shantel Krebs appointing State Treasurer Rich Sattgast to serve as Acting Commissioner in place of Commissioner Fiegen pursuant to SDCL 49-1-9.

Pursuant to SDCL 49-41B-15 and 49-41B-16, and its Notice of Application; Order for and Notice of Public Hearings and Notice of Opportunity to Apply for Party Status, the Commission held public hearings on Dakota Access's application as follows: Wednesday, January 21, 2015, from noon (12:00 p.m. CST) until 3:00 p.m. in the Bowdle School Gymnasium, 3083 2nd Ave., Bowdle, South Dakota; Wednesday, January 21, 2015, from 6:00 p.m. CST until 9:00 p.m. in the Redfield, School Auditorium, 502 E. 2nd St., Redfield, South Dakota; Thursday, January 22, 2015, from 10:30 a.m. CST until 1:30 p.m. in the Iroquois School Gymnasium, 111 E. Washita Ave., Iroquois, South Dakota; and Thursday, January 22, 2015, from 5:30 p.m. CST until 8:30 p.m. in the Roosevelt Room at the Ramkota Hotel & Conference Center, 3200 W. Maple Street, Sioux Falls, South Dakota. The purpose of the public input hearings was to hear public comment regarding Dakota Access's application. At the public input hearings, Dakota Access presented a brief description of the project, following which interested persons appeared and presented their views, comments, and questions regarding the application.

On January 6, 2015, the Commission received an Application for Party Status from the South Dakota Department of Transportation. On January 15, 2015, the Commission received an Application for Party Status from Chris Healy and Mark Meierhenry. On January 20, 2015, the Commission received an Application for Party Status from Lake County. On January 22, 2015, the Commission received Applications for Party Status from WEB Water Development Association, Inc. and Randy Kuehn. On January 28, 2015, the Commission received an Application for Party Status from the Lincoln County Board of Commissioners. On February 2, 2015, the Commission received an Application for Party Status from Pente Farms, LLC. On February 3, 2015, the Commission received an Application for Party Status from the Minnehaha County Board of Commissioners. On February 4, 2015, the Commission received an Application for Party Status from Peggy Hoogestraat. On February 5, 2015, the Commission received an Application for Party Status from Joy A. Hohn. On February 6, 2015, the Commission received Applications for Party Status from Marilyn J. Murray, the City of Harford, and Rocky Acres Land Investment LLC. On February 9, 2015, the Commission received Applications for Party Status from Dale E. Sorenson Life Estate; Dakota Rural Action; Dale and Debra K. Sorenson; Duane Sorenson - Dale, S. Sorenson Life Estate; Dennis Sorenson - Dale E. Sorenson Life Estate; Douglas Sorenson - Dale E. Sorenson Life Estate; Linda Goulet; Haugen Investments LP; Phillip Fett; and Orrin E. Geide. On February 10, 2015, the Commission received Applications for Party Status from Shirley M. Oltmanns; Bradley F. Williams; Craig L. Walker; and Dotta-Jo A. Walker. On February 11, 2015, the Commission received an Application for Party Status from Kevin J. Schoffelman and the City of Sioux Falls. On February 12, 2015, the Commission received an Application for Party Status from Delores Andreessen Assid; Charles J. Johnson; Janice E. Petterson; Corliss F. Wiebers; Paul A. Nelsen; and Paul A. Seamans. On February 12, 2015, the Commission received a letter withdrawing the applications for party status for Mark Meierhenry and Christopher Healy. On February 13, 2015, the Commission received an Application for Party Status from John Wellnitz; John Stratmeyer; the 2012 Brass Family LLLP; the Indigenous Environmental Network; Rosebud Sioux Tribe-Sicangu Oyate Land Office; and Rosebud Sioux Tribe-Sicangu Lakota Treaty Office. On February 17, 2015, the Commission received an Application for Party Status from the Yankton Sioux Tribe; KKKP Property LLLP; Calvin Schreiber; DLK&M, LLC; Pederson Ag. LLC; Jean Osthus; Daniel & Marcia Hoiland; and Mavis A. Perry.

On February 18, 2015, the Commission granted Dakota Access's Motion for Waiver of ARSD 20:10:22:39. In addition, the Commission granted intervention to the South Dakota Department of Transportation; Lake County; WEB Water Development Association, Inc.; Randy

Kuehn; Lincoln County Board of Commissioners; Pente Farms, LLC; Minnehaha County Board of Commissioners; Peggy A. Hoogestraat; Joy A. Hohn; Marilyn J. Murray; City of Hartford; Rocky Acres Land Investment, LLC; Linda Goulet; Dale E. Sorenson Life Estate; Dakota Rural Action; Dale and Debra K. Sorenson; Duane Sorenson; Dennis Sorenson; Douglas Sorenson; Haugen Investments, LP; Phillip Fett; Orrin E. Geide; Shirley M. Oltmanns; Bradley F. Williams; Craig L. Walker; Dotta-Jo A. Walker; Kevin J. Schoffelman; City of Sioux Falls; Delores Andreessen Assid; Charles J. Johnson; Janice E. Petterson; Corliss F. Wiebers; Paul A. Nelsen; and Paul A. Seamans.

On March 5, 2015, the Commission granted intervention to John Wellnitz; John Stratmeyer; Lorin Brass; Indigenous Environmental Network; Rosebud Sioux Tribe-Sicangu Oyate Land Office; Rosebud Sioux Tribe-Sicangu Lakota Treaty Office; Yankton Sioux Tribe KKKP Property, LLLP; Calvin Schreiber; DLK&M, LLC; Pederson Ag, LLC; Jean Osthus; Daniel and Marcia Hoiland; and Mavis Parry.

On March 11, 2015, the Commission issued a Prehearing Scheduling Order. On March 19 and 20, 2015, Dakota Access filed route revisions. On April 20, 2015, the South Dakota Association of Rural Water Systems, Inc. (SDARWS) filed a Petition for Intervention. On May 4, 2015, the Commission granted intervention to SDARWS.

On May 7, 2015, Yankton Sioux Tribe filed a Motion to Compel. On May 8, 2015, the Yankton Sioux Tribe, Rosebud Sioux Tribe, Indigenous Environmental Network and Dakota Rural Action filed a Joint Motion to Amend Procedural Schedule. On May 11, 2015, Peggy Hoogestraat, Matthew Anderson, Kristi Anderson, Nancy Stofferahn, Tom Stofferahn, Ron Stofferahn, Kevin Schoffelman, Mavis Parry, Shirley Oltmanns, Janice Petterson, Carlis Wiebers, Linda Goulet, Marilyn Murray, Lori Kunzelman, Joy Hohn, Rodney Hohn, Orrin Geide, Doug Bacon, Margaret Hilt, Devona Smith, Al Arends, Sherrie Fines-Tracy, Delores Assid, and Ruth E. Arends, by and through their attorney Glenn J. Boomsma, joined the Joint Motion to Amend Procedural Schedule.

The motion hearing on Yankton Sioux Tribe's Motion to Compel was set for May 12, 2015. The motion hearing for Joint Motion to Amend Procedural Schedule was set for May 26, 2015. On May 12, 2015, Yankton Sioux Tribe, Rosebud Sioux Tribe, Indigenous Environmental Network, and Dakota Rural Action filed a Joint Motion for Reconsideration of Order Dated May 11, 2015 in which they requested that a hearing be held prior to May 22, 2015. On May 12, 2015, the motion hearing on the Joint Motion for Reconsideration of Order Dated May 11, 2015 was set for May 14, 2015. On May 12, 2015, a Protective Order was issued.

By order dated May 13, 2015, the Commission granted in part and denied in part Yankton Sioux Tribe's Motion to Compel. By order dated May 14, 2015, the Commission granted the Motion for Reconsideration of Order Dated May 11, 2015 and set the motion hearing for the Joint Motion to Suspend for May 19, 2015. By order dated May 20, 2015, the Commission granted in part the Joint Motion to Amend Procedural Schedule. On July 8, 2015, Dakota Access filed a draft Facility Response Plan.

Written prefiled direct and rebuttal testimony was filed by the parties' witnesses. On August 17, 2015, Yankton Sioux Tribe filed a Motion for Leave to File Out of Time. Yankton Sioux Tribe requested that one of its witnesses be allowed to file his prefiled testimony on August 17, 2015. Pursuant to the scheduling order, the deadline for prefiled testimony was August 14, 2015. The motion hearing on Yankton Sioux Tribe's Motion for Leave to File Out of Time was scheduled for August 20, 2015. On August 20, 2015, the Commission issued its Order For and Notice of Evidentiary Hearing, with the hearing scheduled to begin September

29, 2015. By order dated August 21, 2015, the Motion for Leave to File Out of Time was granted.

On August 21, 2015, Dakota Access filed proposed route adjustments. On September 16, 2015, Peggy A. Hoogestraat, Kevin J. Schoffelman, Linda Goulet, Corlis Wiebers, Mavis Parry, Shirley Oltmanns, Janice E. Petterson, Marilyn Murray, Delores Andreessen Assid, Joy Hohn, Rodney Hohn, Orrin E. Geide, Nancy Stofferahn, Tom Stofferahn, Ron Stofferahn, Matthew Anderson, Kristi Anderson, Margaret Hilt, Ruth E. Arends, Allan C. Arends, Lorri L. Bacon, Sherrie K. Fines-Tracy, Laurie Kunzelman and Devona Smith, through their attorney Glenn Boomsma, requested that certain witnesses be allowed to offer telephonic testimony at the evidentiary hearing. On September 18, 2015, Dakota Access filed its South Dakota Spill Model Discussion. On September 18, 2015, the City of Sioux Falls filed a motion requesting that the Commission establish a range of time, either the afternoon of October 6 or the morning of October 7, for the testimony of the City of Sioux Falls' witness, Dustin Hansen. On September 21, 2015, Dakota Access filed maps showing route adjustments. On September 21, 2015, SDARWS filed a Motion for Substitution of Witness. On September 23, 2015, Yankton Sioux Tribe filed a Notice of Witness Unavailability and Motion for Time Certain. On September 23, 2015, the City of Sioux Falls, Commission Staff, SDARWS, Yankton Sioux Tribe, Indigenous Environmental Network and Dakota Rural Action filed their witness and exhibit lists. On September 23, 2015, Rosebud Sioux Tribe filed its exhibit list and the intervenors represented by Glenn Boomsma filed an informal witness and exhibit list. On September 24, 2015, Dakota Access filed its witness and exhibit list and the intervenors represented by Glenn Boomsma filed an amended witness and exhibit list. On September 25, 2015, Commission Staff filed an amended witness and exhibit list.

On September 25, 2015, the Commission granted SDARWS' motion to substitute a witness and request for a time certain for its witness; the motions to allow telephonic testimony and a time certain for witnesses represented by Glenn Boomsma; Yankton Sioux Tribe's motion to allow two of its witnesses to testify at a time certain; and the City of Sioux Falls' motion to allow its witness to testify at a time certain.

On September 28, 2015, Dakota Access filed a Motion to Strike Rosebud Sioux Tribe's Exhibit List Filing, and Preclude Introduction of Undisclosed Exhibits. On September 28, 2015, Dakota Access filed its Revised Agricultural Impact Mitigation Plan. On September 29, 2015, Yankton Sioux Tribe, Rosebud Sioux Tribe, Indigenous Environmental Network, and Dakota Rural Action filed a Joint Motion to Stay Proceedings for Preparation of an Environmental Impact Statement. On October 6, 2015, Dakota Access filed a Brief in Opposition to Environmental Impact Statement. On October 8, 2015, the City of Sioux Falls and Dakota Access filed their Joint Motion regarding Stipulated Findings of Fact, Conditions, and Exhibits.

The evidentiary hearing was held as scheduled, beginning on September 29, 2015 and ending on October 9, 2015. At the conclusion of the evidentiary hearing, a briefing schedule and decision date was set by the Commission and on October 21, 2014, an Order Setting Procedural was issued. On October 22, 2015, the Commission issued its Order Denying Motion to Stay Proceedings for Preparation of an Environmental Impact Statement. On October 26, 2015, the Commission issued its Order Denying Motion to Strike and Preclude Introduction of Exhibits. On November 3, 2015, Dakota Access filed its Exhibit E, Insurance Requirements with Michels Corporation and Attachment 1, Member Guaranty Agreement. Post-hearing briefs were filed in accordance with the briefing schedule. On November 6, 2015, Lewis and Clark Regional Water System filed a letter stating it had reached an agreement to enter into a Water Line Crossing Agreement with Dakota Access.

At its November 30, 2015, ad hoc meeting, the Commission voted to approve conditions to which a permit to construct the Project would be subject, if granted. Commissioner Hanson's substitute motion to deny the permit failed. The Commission then voted to grant a permit to Dakota Access to construct the Project, subject to the approved conditions (Commissioner Hanson, dissenting). The Commission also voted to grant the Joint Motion regarding Stipulated Findings of Fact, Conditions, and Exhibits that was submitted by the City of Sioux Falls and Dakota Access.

Having considered the evidence of record, applicable law and the arguments of the parties, the Commission makes the following Findings of Fact, Conclusions of Law, and Decision:

### **FINDINGS OF FACT**

#### **Parties**

1. Petitioner, Dakota Access, LLC, (Dakota Access) is a Delaware limited liability company having its principal place of business in Dallas, Texas. Ex. Staff-1, Ex. A, p. 2. As of the hearing dates, the companies with membership in Dakota Access include Energy Transfer Partners and Phillips 66. Tr. at 65-66. Sunoco Logistics will be the third member. *Id.*

2. At the February 13, March 2, and April 30, 2015, regularly scheduled Commission meetings, the Commission unanimously voted to grant party status to persons that had requested party status prior to the commencement of the meeting. Those that intervened and were granted party status include: South Dakota Department of Transportation, Lake County, WEB Water Development Association, Inc., Randy Kuehn, Lincoln County Board of Commissioners, Pente Farms, LLC, Minnehaha County Board of Commissioners, Peggy A. Hoogestraat, Joy A. Hohn, Marilyn J. Murray, City of Hartford, Rocky Acres Land Investment, LLC, Linda Goulet, Dale E. Sorenson Life Estate, Dakota Rural Action, Dale and Debra K. Sorenson, Duane Sorenson, Dennis Sorenson, Douglas Sorenson, Haugen Investments, LP, Phillip Fett, Orrin E. Geide, Shirley M. Oltmanns, Bradley F. Williams, Craig L. Walker, Dotta-Jo A. Walker, Kevin J. Schoffelman, City of Sioux Falls, Delores Andreessen Assid, Charles J. Johnson, Janice E. Petterson, Corliss F. Wiebers, Paul A. Nelsen, Paul A. Seamans, John Wellnitz, John Stratmeyer, Lorin Brass, Indigenous Environmental Network, Rosebud Sioux Tribe-Sicangu Oyate Land Office, Rosebud Sioux Tribe-Sicangu Lakota Treaty Office, Yankton Sioux Tribe, KKKP Property, LLLP, Calvin Schreiber, DLK&M, LLC, Pederson Ag, LLC, Jean Osthus, Daniel and Marcia Hoiland, Mavis Parry, and the South Dakota Association for Rural water Systems, Inc. (SDARWS). See Commission orders granting intervention issued on February 18, 2015, March 5, 2015, and May 4, 2015.

3. The Commission's Staff also participated as a party in the case.

#### **Procedural Findings**

4. Dakota Access filed an application for a siting permit with the Commission on December 15, 2014, and a revised application on December 23, 2014. Ex. DAPL-1.

5. The Commission issued the following notices and orders in the case as described in greater detail in the Procedural History above, which is hereby incorporated by reference in these Findings of Fact and Conclusions of Law:

- 12/16/14 - Notice of Application; Order for and Notice of Public Input Hearings; Notice of Opportunity to Apply for Party Status
- 12/30/14 - Order Assessing Filing Fee
- 02/18/15 - Order Granting Waiver and Intervention and Party Status (South Dakota Department of Transportation, Lake County, WEB Water Development Association, Inc., Randy Kuehn, Lincoln County Board of Commissioners, Pente Farms, LLC, Minnehaha County Board of Commissioners, Peggy A. Hoogestraat, Joy A. Hohn, Marilyn J. Murray, City of Hartford, Rocky Acres Land Investment, LLC, Linda Goulet, Dale E. Sorenson Life Estate, Dakota Rural Action, Dale and Debra K. Sorenson, Duane Sorenson, Dennis Sorenson, Douglas Sorenson, Haugen Investments, LP, Phillip Fett, Orrin E. Geide, Shirley M. Oltmanns, Bradley F. Williams, Craig L. Walker, Dotta-Jo A. Walker, Kevin J. Schoffelman, City of Sioux Falls, Delores Andreesen Assid, Charles J. Johnson, Janice E. Petterson, Corliss F. Wiebers, Paul A. Nelsen, and Paul A. Seamans)
- 02/25/15 - Prehearing Scheduling Conference Order
- 03/05/15 - Order Granting Intervention and Party Status (John Wellnitz, John Stratmeyer, Lorin Brass, Indigenous Environmental Network, Rosebud Sioux Tribe-Sicangu Oyate Land Office, Rosebud Sioux Tribe-Sicangu Lakota Treaty Office, Yankton Sioux Tribe, KKKP Property, LLLP, Calvin Schreiber, DLK&M, LLC, Pederson Ag, LLC, Jean Osthus, Daniel & Marcia Hoiland, and Mavis Parry)
- 03/11/15 - Prehearing Scheduling Order
- 05/04/15 - Order Granting Intervention (South Dakota Association of Rural Water Systems, Inc.)
- 05/07/15 - Order for and Notice of Motion Hearing
- 05/11/15 - Order for and Notice of Motion Hearing
- 05/12/15 - Protective Order
- 05/12/15 - Order for and Notice of Motion Hearing on Less Than Ten Days' Notice
- 05/13/15 - Order Granting in Part and Denying in Part Yankton Sioux Tribe's Motion to Compel
- 05/14/15 - Order Granting Motion to Reconsider and Order for and Notice of Motion Hearing on Less Than Ten Days' Notice
- 05/20/15 - Order Granting in Part Motion to Amend Procedural Schedule
- 08/18/15 - Order for and Notice of Motion Hearing on Less than 10 Days' Notice
- 08/20/15 - Order for and Notice of Evidentiary Hearing
- 08/21/15 - Order Allowing Late Filed Testimony
- 09/22/15 - Order for and Notice of Motions Hearing on Less Than 10 Days' Notice
- 09/25/15 - Order Granting Motions
- 10/21/15 - Order Setting Post-Hearing Briefing Schedule and Decision Date
- 10/22/15 - Order Denying Motion to Stay Proceedings for Preparation of an Environmental Impact Statement
- 10/26/15 - Order Denying Motion to Strike and Preclude Introduction of Exhibits
- 12/14/15 - Order Granting Joint Motion Regarding Stipulated Findings of Fact, Conditions and Exhibits

6. Pursuant to SDCL 49-41B-15 and 49-41B-16, and its Notice of Application; Order for and Notice of Public Hearings and Notice of Opportunity to Apply for Party Status, the Commission held public hearings on Dakota Access's application at the following times and places: Wednesday, January 21, 2015, from noon (12:00 p.m. CST) until 3:00 p.m. in the Bowdle School Gymnasium, 3083 2nd Ave., Bowdle, South Dakota; Wednesday, January 21, 2015, from 6:00 p.m. CST until 9:00 p.m. in the Redfield, School Auditorium, 502 E. 2nd St., Redfield, South Dakota; Thursday, January 22, 2015, from 10:30 a.m. CST until 1:30 p.m. in the Iroquois

School Gymnasium, 111 E. Washita Ave., Iroquois, South Dakota; and Thursday, January 22, 2015, from 5:30 p.m. CST until 8:30 p.m. in the Roosevelt Room at the Ramkota Hotel & Conference Center, 3200 W. Maple Street, Sioux Falls, South Dakota.

7. The purpose of the public hearings was to afford an opportunity for interested persons to present their views and comments to the Commission concerning the Application. At the hearings, Dakota Access presented a brief description of the project after which interested persons presented their views, comments, and questions regarding the application. See Public Hearing Transcripts.

8. The following testimony was prefiled in advance of the formal evidentiary hearing held September 29, 30, and October 1, 2, 6, 7, 8, and 9, 2015 in Room 414, State Capitol, Pierre, South Dakota:

#### Direct Testimony:

- Dakota Access: Joey Mahmoud, Monica Howard, John (Jack) H. Edwards, Chuck Frey, Todd Stamm
- Commission Staff: Brian Walsh, Paige Olson, Tom Kirschenmann, Derric Iles, Kim McIntosh, Darren Kearney, Michael Houdyshell, Todd Bailey, David Nickel, Ann Curnow, Andrea Thornton, DeAnn Thyse, Michael Shelly, Robert McFadden, Cameron Young, Ryan Ledin
- Landowners' Witnesses: Corliss Fay Wiebers, Delores (Andreessen) Assid, Devona B. Smith, Janice Elaine Petterson, Kevin John Schoffelman, Linda Ann Goulet, Margaret (Andreessen) Hilt, Marilyn Jean Murray, Matthew L. Anderson, Mavis Arlene Parry, Nancy J. Stofferahn, Peggy A. Hoogestraat, Rod & Joy Hohn, Ronald H. Stofferahn, Shirley Mae Oltmanns, Thomas E. Stofferahn, Brian Top, Ruth E. Arends, Allan C. Arends, Lorrie L. Bacon, and Sherrie K. Fines-Tracy, Orrin Geide, Kent Moeckly, Sue Sibson, Laurie Kunzelman
- City of Sioux Falls: Dustin Hansen
- South Dakota Association of Rural Water Systems: Dan Zulkosky

#### Rebuttal Testimony

- Dakota Access: Joey Mahmoud, Monica Howard, Chuck Frey, Micah Rorie, Stacey Gerard, Aaron Dejoia
- Commission Staff: Michael E. Timpson
- Landowner Intervenors: Peggy A. Hoogestraat, Sue Sibson, Janice Elaine Petterson
- Indigenous Environmental Network and Dakota Rural Action: Lisa Deville, Wasté Win Young, Peter Capossela, Robert P. Gough, Dallas Goldtooth
- Yankton Sioux Tribe: Faith Spotted Eagle, Chris Saunsoci, Jason Cooke

## **Applicable Statues and Regulations**

9. The following South Dakota statutes are applicable: SDCL 49-41B-1 through 49-41B-2.1, 49-41B-4, 49-41B-11 through 49-41B-19, 49-41B-21, 49-41B-22, 49-41B-24, 49-41B-26 through 49-41B-38 and applicable provisions of SDCL chapters 1-26 and 15-6.

10. The following South Dakota administrative rules are applicable: ARSD chapter 20:10:01 and ARSD 20:10:22:01 through ARSD 20:10:22:25, ARSD 20:10:22:36 through ARSD 20:10:22:40.

11. Pursuant to SDCL 49-41B-22, the Applicant for a facility construction permit has the burden of proof to establish that:

- (1) The proposed facility will comply with all applicable laws and rules;
- (2) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area;
- (3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and
- (4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

## **The Project**

12. The Project will be owned by Dakota Access, LLC. Dakota Access, LLC members will include Energy Transfer Partners, Phillips 66, and Sunoco Logistics. Ex. DAPL-1, pp. 4-5; Tr. at 65-66.

13. The Project will be operated by Sunoco Logistics. Tr. at 523.

14. The purpose of the Project is to connect the Bakken and Three Forks production areas in North Dakota to a crude oil hub in Illinois. This supply will serve to replace the United States' reliance on less stable and less reliable sources of foreign crude oil and further the goal of energy independence. Ex. DAPL-1, p. 4.

15. The Project is approximately 1,168-miles-long. Tr. at 56. The South Dakota portion of the pipeline will be approximately 274 miles in length. *Id.* The project enters South Dakota in Campbell County approximately 17 miles east of the Missouri river and continues southeast through McPherson, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, Lake, McCook, Minnehaha, Turner, and Lincoln counties. Ex. DAPL-1, pp. 1, 4-5. Detailed route maps were presented into evidence. Ex. DAPL-2. The maps provided sufficient detail to analyze the route.

16. The pipeline is proposed to initially transport approximately 450,000 barrels per day, with an anticipated capacity up to 570,000 barrels per day. Ex. DAPL-1, p. 1.

17. Construction of the Project is proposed to commence in the spring of 2016, with construction in South Dakota planned to last approximately nine months. Ex. DAPL-5, Agricultural Impact Mitigation Plan. Construction in South Dakota will be constructed in two partial and one full construction spread with 900 to 1,000 construction personnel on each spread. Tr. at 301. Dakota Access has entered into binding contracts for the shipment of crude oil product pursuant to the Project plan. Ex. DAPL-1, p. 4; DAPL- 31, pp. 1-2. The contractual commitments, which are already in existence, demonstrate the viability and need for the project.



18. The pipeline will have a 12-30 inch diameter and be constructed using high-strength steel pipe API 5L. Ex. DAPL-1, pp.1, 52. The pipeline will be coated with fusion-bonded epoxy that provides a barrier between the steel pipe surface and corrosive environments. The pipeline will also be protected by a cathodic protection system. Ex DAPL-1, p. 52; Ex. DAPL-31, p. 5.

19. The pipeline will operate at a maximum operating pressure of 1,440 psig. Ex. DAPL-1, p. 53.

20. The Project will have one pump station in South Dakota located approximately seven miles southeast of Redfield in Spink County. Ex. DAPL-1, p. 1. The pump station consists of approximately nine acres of land acquired by Dakota Access in fee. Ex. DAPL-1, p. 52.

21. The pump station will be electrically driven and will pump crude oil through the pipeline. *Id.* at 52-53. Design and construction of the pump station will meet the requirements of the National Electric Code and American Petroleum Institute 500. *Id.* at 52. The pump station will be fully automated for unmanned operation. Remote start and stop, set point controls, unit monitoring equipment and station information will be installed at the pump station. *Id.* at 53. Backup power at the pump station will consist of batteries to maintain communications between the pump station and the pipeline control center, and operate lighting and power for minor facility procedures if local utility power supply is disrupted. *Id.*

22. Dakota Access will install 40 main line valves in South Dakota. Tr. at 187-188. Main line valves have the capacity to isolate sections of the line in the event of an emergency to minimize impacts in case of abnormal operations or for operational maintenance reasons. Ex. DAPL-1, p. 7.

23. The pipeline will be constructed within a corridor, generally ranging from 85 feet to up to 150 feet, consisting of a 50-foot wide permanent right-of-way with the remaining area consisting of a temporary construction right-of-way. Ex. DAPL-32, p. 1 and attached typical drawings; Ex. DAPL-1, pp. 5-6.

24. The project will be designed, constructed, tested, and operated in accordance with all applicable requirements, including the U.S. Department of Transportation, Pipeline Hazardous Materials and Safety Administration (PHMSA) regulations set forth at 49 CFR Part 195. These federal regulations are intended to ensure protection for the public and the environment, and to prevent crude oil pipeline accidents and failures. Ex. DAPL-31, pp. 4-5; Ex. Staff- 9, pp. 5-6.

25. The current estimated cost of the Dakota Access Project in South Dakota is \$820 million. Ex. DAPL-1, p. 4. Dakota Access is subject to South Dakota taxing authorities to pay property taxes. *Id.* at 42.

### **Demand for the Facility**

26. Currently, the United States produces approximately 10 million barrels of oil per day and imports approximately 10 million barrels per day. Consumption ranges between 17.5 to 20 million barrels per day. Tr. at 1933.

27. The transport of domestic crude oil to meet domestic refining needs will reduce the United States' dependence on foreign oil. *Id.*; Ex. Staff-1, attached Ex. A, pp.4-7.

28. Through this project, Dakota Access will provide a number of opportunities for refiners in the United States to utilize the crude oil production coming out of the Bakken and Three Forks

areas in North Dakota. Reliable and safe transportation of crude oil will help meet the energy needs of the United States, including South Dakota. Ex. DAPL-1, p. 4; Tr. at 1930-1934.

29. Dakota Access secured binding long-term transportation and efficiency contracts from multiple committed shippers to support development of the Dakota Access pipeline with a crude oil transportation capacity of approximately 450,000 barrels per day. These long-term binding shipper commitments demonstrate endorsement and support for the Project, its economics, proposed route, and target market, as well as the need for additional pipeline capacity and access to domestic refinery markets. Ex. DAPL-1, p. 4.

### **Alternative Routes**

30. Dakota Access provided information related to its selection of the proposed route for the Project and route alternatives. Ex. DAPL-1, pp. 7-9; Ex. DAPL-30, pp. 9-10. Ex. Staff-1, attached Ex. A, pp. 11-20. The information included a description of its Geographical Information System (GIS) route-selection/optimization program. *Id.* Environmental, engineering, and land datasets were utilized and weighted. *Id.* Dakota Access used the output from the GIS routing program, field survey results, and micro routing considerations gathered by the project team, which included consideration of environmental resources, landowner feedback, and government feedback. Ex. Staff-1, attached Ex. A. p. 14; Ex. DAPL-30, pp. 9-10. Route changes were made as a result of these considerations. Ex. DAPL-1, p. 8. *See also* Findings of fact 102, 103.

31. SDCL 49-41B-36 explicitly states that chapter 49-41B is not "a delegation to the commission of the authority to route a transmission facility..." The Commission accordingly finds and concludes that it lacks authority to compel the Applicant to select an alternative route or to base its decision on whether to grant or deny a permit for a proposed facility on whether the selected route is the route the Commission itself might select.

### **Design and Construction**

32. Dakota Access plans to install 40 main line valves along the route in South Dakota. Ex. DAPL-31, p. 4. The valves will have remote actuators that allow the valves to be quickly activated from the pipeline control center to isolate sections of the pipeline to minimize impacts in the event of an emergency. In addition to the remote actuators, the valves will also allow for local operation. *Id.* The use of 40 main line valves is in excess of code requirements and was incorporated into the design of the Project to increase safety and Dakota Access's ability to respond to abnormal operating conditions. Tr. at 249, 2140.

33. Pipeline segments will allow the passage of internal inspection devices. Ex. DAPL-31, p. 4. These devices are capable of detecting internal and external anomalies in the pipe such as corrosion, dents, and gouges. *Id.* There are three pig launcher/receivers that are designed to launch and receive these internal inspection devices. *Id.*

34. The pipeline will have a design factor of 0.72. *Id.* at 5. The pipeline will have a nominal 30-inch diameter. *Id.* Pipe material grade will be X-70, and comply with API 5L-PFL2. *Id.* Pipe wall thickness will be 0.429 inch or 0.625 inch. *Id.*

35. Dakota Access will apply an external fusion bond epoxy coating to the pipeline and an impressed cathodic protection system will be used to protect against corrosion. *Id.* All material

used in the construction of the Project will be manufactured, constructed, and operated in accordance with applicable regulations. *Id.*

36. Current storage of pipeline segments outdoors in preparation for construction does not negatively impact the effectiveness of the fusion bond epoxy coating, nor does it affect pipeline integrity. DAPL-37, p. 1; Tr.at 1569-1570, 1584, 2136-2137.

37. Dakota Access has not applied for any waivers from PHMSA. Ex. DAPL-31, p. 5.

38. The design of the pipeline is based on a maximum operating pressure of 1,440 PSIG. *Id.* Various sections of the pipeline will be exposed to lower pressures due to the combined pump station discharge pressure, friction pressure loss, and hydrostatic head gain or loss for pipe segments located at elevations that differ from pump station elevations. *Id.*

39. Dakota Access included a main line valve typical drawing, pump station typical drawing, and project flow diagrams. Ex. DAPL-3, pp. 11-17 (conf.).

40. Dakota Access is subject to all PHMSA regulations pertaining to design and construction. 49 CFR Part 195; Ex. DAPL-31, p. 4.

41. All pipe welds will be nondestructively tested using ultrasonic or radiographic inspection. Tr. at 609, 2137.

42. Dakota Access will hydrostatically test the pipeline prior to operations. Hydrostatic testing is done through the use of water to pressurize the pipeline. Ex. DAPL-34. pp. 4-5; Tr. at 609.

43. Dakota Access will use surface waters as a water source for hydrostatic testing in agreement with the owners of the water rights and/or any state or federal permit. Ex. DAPL-33, p. 11. Water used for hydrostatic testing is not consumed but is subsequently released pursuant to applicable permits, is filtered through straw bale structures to remove dirt, and the water is monitored and tested before and after discharge. Ex. DAPL- 32, p. 6; Tr. at 318-319.

44. During construction, Dakota Access will have a number of inspectors on a construction spread, including environmental inspectors, who will monitor any environmental issue that arises as well as monitor for compliance with all applicable permits. Ex. DAPL-1, p. 13; Ex. DAPL-33, p. 8.

45. Dakota Access prepared a detailed Storm Water Pollution Prevention Plan, which will be utilized during construction to minimize impacts of storm water runoff during project construction activities. Ex. DAPL-5, Stormwater Pollution Prevention Plan. Dakota Access has also developed a spill prevention, containment and countermeasures plan for use during construction to provide preventative and mitigative measures to minimize environmental impact associated with inadvertent spills or releases of fuel, lubricant, or hazardous materials during construction of the project. Ex. DAPL-5, Spill Prevention, Containment, and Countermeasures Plan. In addition, Dakota Access has prepared an Agricultural Impact Mitigation Plan that addresses various aspects of construction intended to mitigate and prevent damage during the construction phase. Ex. DAPL-5, Agricultural Impact Mitigation Plan. Environmental and/or agricultural inspectors will be used during the construction phase of the project. Ex. DAPL-5, Agricultural Impact Mitigation Plan, p. 4; Ex. DAPL-33, p. 8. Dakota Access, through implementation of procedures outlined in these plans, will minimize the impacts associated with the project.

46. In particular, the Agricultural Impact Mitigation Plan includes many mitigation steps Dakota Access will take during construction which are designed to return the land to its original production. Ex. DAPL-5, Agricultural Impact Mitigation Plan. These include topsoil removal and replacement, prevention of erosion, temporary and permanent repair of drain tiles, and restoration after soil compaction and rutting. *Id.* at 6-10. In addition, the Commission has included additional conditions regarding construction. See *generally*, Permit Conditions.

47. Dakota Access will acquire any necessary permits for the crossing of roads. Ex. DAPL-33, p. 2. If Dakota Access causes damage to roads, Dakota Access is responsible for the repair of the roads to pre-construction condition. Permit Condition 25. Pursuant to SDCL 49-41B-38, Dakota Access is required to post a bond to ensure that any damage beyond normal wear and tear to public roads, highways, bridges or other related facilities will be adequately compensated. The amount of the bond is set at \$24 million. Permit Condition 25(f).

48. The Commission finds that procedures in the Storm Water Pollution Prevention Plan, Spill Prevention Control and Countermeasures Plan, Agricultural Impact Mitigation Plan, and other construction plans and procedures that Dakota Access has committed to implement, together with conditions regarding construction practices adopted by the Commission herein, will minimize impacts from construction of the Project to the environment and social and economic conditions of inhabitants and expected inhabitants in the project area.

49. Some conditions relate to construction and its effect on landowners and their property. Dakota Access may encounter physical conditions along the route during construction that makes compliance with certain of these conditions infeasible. If, after providing a copy of this order, including the conditions, to the landowner and advising Commission staff, the Applicant and landowner agree in writing to modifications of one or more requirements specified in these conditions, such as maximum clearance or right-of-way widths, Dakota Access may follow the alternative procedures and specifications agreed to between it and the landowner.

### **Operations and Maintenance**

50. The Dakota Access pipeline will be designed, constructed, tested, and operated in accordance with all applicable requirements, including the PHMSA regulations at 49 CFR Part 195. Ex. DAPL-31, pp. 3-5. These federal regulations are intended to ensure adequate protection for the public and the environment and to prevent crude oil pipeline accidents and failures. 49 CFR Part 195. The safety features of Dakota Access's operations are also governed by 49 CFR Part 195.

51. The Project will employ a Supervisory Control and Data Acquisition (SCADA) system to remotely monitor and control the pipeline. Data necessary and useful to monitoring the pipeline's operations will be collected and transmitted to the operations control center, which is manned 24 hours per day, 365 days per year. Ex. DAPL-34, pp. 3-4.

52. The SCADA system is able to constantly monitor sensing devices placed along the pipeline to track the pressure, temperature, density, and flow of liquid petroleum under transport, and display each movement's status to operators at the control center. *Id.* at 4. Through these systems, the pipeline's operators can maintain the pipeline within established operating parameters. *Id.* The pipeline operators can remotely shut down pump stations and isolate pipeline segments when they observe abnormal conditions or if safety parameters are exceeded. The Computational Pipeline Monitoring system, a subsystem of the SCADA system,

is able to analyze deviations in the flow of liquids to the pipeline *Id.* This improves the operator's ability to identify leaks and other abnormal operating conditions. *Id.*

53. Additionally, Dakota Access will implement and utilize direct observation methodologies, which include aerial patrols, ground patrols, right-of-way marker signs that provide a 24-hour number for reporting emergency situations, and public and landowner awareness programs designed to encourage and facilitate the reporting of suspected leaks and events that may suggest a threat to the integrity of the pipeline. Ex. DAPL-41, p. 5; Ex. DAPL-6, p.17.

54. Dakota Access will implement abnormal operating procedures when necessary and as required by 49 CFR 195.402(d). Ex. DAPL-6, p. 17. Abnormal operating procedures can include shutting down any affected line segment if there is an indication of a leak, isolating the line segment, depressurizing the line, starting internal and external notification, and mobilizing additional personnel as required. *Id.*

55. As required by the United States Department of Transportation, state law and regulations, Dakota Access will prepare a Facility Response Plan for the system. *Id.* at 1. The plan is currently in draft form. Ex. DAPL-6. In drafting the plan, Dakota Access developed a South Dakota Spill Model Discussion. Ex. DAPL-7 (conf.). The Spill Model Discussion evaluates worst-case discharges which permits Dakota Access to properly design its facility response plan to address the same. The risk assessment over-estimates the probable size of a spill to ensure conservatism and emergency response in other planning objectives. Ex. DAPL-7, p. 7 (conf.); Tr. at 527.

56. The Facility Response Plan will be submitted to PHMSA for review prior to commencement of pipeline operations. Ex. DAPL-6. The Commission finds that the Facility Response Plan as required under 49 CFR 195.402 shall also be submitted to the Commission at the time it is submitted to PHMSA to apprise the Commission of its details.

57. Pursuant to the Facility Response Plan, Dakota Access will strategically locate emergency response equipment along the pipeline route, including a trailer, oil spill containment and recovery equipment, boats, and a communications office. Ex. DAPL-6, pp. 19-20. Dakota Access will also have a number of contractors available to provide emergency response assistance if necessary. *Id.*; Tr. at 528.

58. If the Dakota Access pipeline should experience a release, Dakota Access would implement its Facility Response Plan. Ex. DAPL-6. The South Dakota Department of Environment and Natural Resources (DENR) would be involved in the assessment and abatement of the release, and require the leak to be cleaned up and remediated. Ex. Staff-3, pp. 1-10. The DENR has the necessary resources to oversee the assessment and cleanup of crude oil releases and has extensive experience in overseeing the assessment and cleanup of all types of petroleum releases. *Id.* at 8, 10.

59. Local emergency responders may be required to initially secure the scene and ensure the safety of the public, and Dakota Access will provide training in that regard. Ex. DAPL-6, pp. 22, 30; Tr. at 528.

60. The Commission finds that the threat of serious injury to the environment or inhabitants of the State of South Dakota from a crude oil release is substantially mitigated by the integrity management, leak detection, and facility response processes and procedures that Dakota Access is continuing to plan and will implement.

## **Environmental and Land Use Impacts of the Project**

61. Project maps include soil type maps and aerial photograph maps of the Dakota Access pipeline route in South Dakota that indicate typography, land use, project mileposts, and section, township, and range location descriptors. Ex. DAPL-2.

62. The Project route crosses six terrestrial vegetation community types in South Dakota including: pasture land/range land, native grassland, hay land, row crop agriculture, residences and farmsteads, and right-of-way corridors. Total acreage of each type of vegetation community is:

- a) Pasture land/range land: 969.3 acres
- b) Native grassland: 41 acres
- c) Hay land: 369.5 acres
- d) Row crop agriculture: 3763.1 acres
- e) Residences and farmsteads: 30 acres
- f) Right-of-Way corridors: 128.1 acres

See Ex. DAPL-1, pp. 18-19.

63. Impacts to vegetation and land use along the route will occur as a result of the project. Permanent land use impacts include those that will occur at the aboveground facilities associated with the Project, which are the 40 main line valves, three pig launcher and receiver facilities, and a pump station. Ex. DAPL-32, pp. 8-9. In addition, Dakota Access will acquire, and provide compensation for, pipeline right-of-way easements from landowners. Ex. DAPL-1, p. 38. There will be some land use restrictions regarding the permanent pipeline right-of-way. *Id.* at 39. Dakota Access has appropriate plans in place to reclaim vegetation areas temporarily impacted by the Project to prevent permanent impacts to vegetation. Ex. DAPL-33, pp.16-17; Ex. DAPL-5, Agricultural Impact Mitigation Plan. In addition, the Commission has set forth a number of Permit Conditions regarding reclamation and revegetation, as well as compliance oversight. See *generally*, Permit Conditions.

64. Surficial deposits within the region wherein the Project is proposed for construction are composed primarily of alluvium, eolian deposits, lacustrine sediments, moraine, and outwash. Ex. DAPL-1, p.10. Alluvium consists of clay and silt with lesser amounts of sand and gravel deposited by recent streams, and is typically black or dark brown and rich in organic matter. *Id.* Eolian deposits are formed through the sorting of clay, silt, and sand-sized particulates from surficial sediments. Lacustrine sediments accumulate in areas containing ponded glacial meltwater. Moraine is formed from debris released from beneath a glacier and is a relatively flat to gently rolling surface. Outwash consists of sand and gravel, along with minor silt and clay, and is deposited by meltwater streams. *Id.*

65. Karst terrain results from the dissolution of highly soluble bedrock and areas with karst terrain can be more susceptible to subsidence. Ex. DAPL-33, p. 9. The potential for the Project to encounter karst terrain is unlikely. *Tr.* at 1804-1805, 1810-1811. In the unlikely event karst terrain is encountered, Dakota Access is required to comply with Permit Condition 12 that requires site-specific evaluations by a qualified geologist or geotechnical engineer to provide input on mitigation measure if any signs of karst topography is found during construction.

66. It is not anticipated the project will impact mineral resources, as no identification of industrial mining operations was noted within one mile of the Project area. Ex. DAPL-1, p. 11; Ex. DAPL-33, p. 6.

67. Soil tables for the route were provided. Ex. DAPL-4, Soil Characteristics for Each Soil Map Unit Within the Project Area. The tables include the total crossing district for each soil-series unit, the areas impacted by construction of the aboveground pump station, and the characteristics of each of the soil map units within the project area. *Id.*; Ex. DAPL-33, p. 7. The identified soil characteristics include: prime farmland, hydric soils, compaction potential, erosion potential, steep slopes, shallow bedrock, shallow natric layers, and revegetation potential. *Id.*

68. Approximately 37% of the soils crossed by the pipeline are considered to be prime farmland, and approximately 44% of the route is identified as farmland of statewide importance. Ex. DAPL-1, p. 11. Following completion of construction, other than the aboveground facilities, these areas of farmland will be reclaimed and put back to pre-construction condition and use, subject to right-of-way restrictions. Ex. DAPL-33, p. 8.

69. The majority of the soils within the project area are classified as hydric. Ex. DAPL-4, Soil Characteristics for Each Soil Map Unit Within the Project Area. Hydric soils are defined by the U.S. Army Corp of Engineers as soils that formed under conditions of saturation, flooding or ponding long enough during growing seasons to develop anaerobic conditions in the upper part. Ex. DAPL-1, p. 12. Hydric soils can be prone to compaction and rutting. *Id.* Dakota Access will minimize impacts to hydric soils by implementing mitigation measures as outlined in the Stormwater Pollution Prevention Plan. Ex. DAPL-5, Stormwater Pollution Prevention Plan.

70. Soils with high erosion potential within the Project area were identified based on Natural Resources Conservation Service (NRCS) designations of land capability class and sub-class. Ex. DAPL-4, Soil Characteristics for Each Soil Map Unit Within the Project Area. This exhibit identifies the erosion potentials of each map unit within the project area. While the majority of soils within the project area have low erosion potential, there are identified areas with moderate and high erosion potential. *Id.* Dakota Access will utilize proper erosion and sedimentation control devices as provided for in the Stormwater Pollution Prevention Plan. Ex. DAPL-5. In addition, the Commission has set forth Permit Conditions to further address erosion issues. Permit Conditions 15, 16, 17, 26.

71. Soils with high sodium concentrations were identified by Dakota Access. Ex. DAPL-4, Soil Characteristics for Each Soil Map Unit Within the Project Area. Identification of such soils is necessary as the condition limits growth of plant species and can be a challenge in reclamation. Ex. DAPL-1, p. 13; Ex. DAPL-33, p. 8. Dakota Access has retained an agricultural consultant to develop specific mitigation measures for work in these areas. Ex. DAPL-33, p. 8. In addition, Dakota Access will consult with NRCS to obtain a proper seed mix for use in these areas. *Id.* at 17.

72. Successful restoration and revegetation of the project work spaces and permanent easement areas are important to maintain positive landowner relations, to maintain land productivity, and to protect underlying soil from potential damage. Ex. DAPL-1, p. 13.

73. The majority of soils impacted by the project have moderate to high revegetation potential. Ex. DAPL-1, p. 13; Ex. DAPL-4, Soil Characteristics for Each Soil Map Unit Within the Project Area. There are also areas of low revegetation potential. *Id.* Dakota Access has set forth its procedures for revegetation in its Stormwater Pollution and Prevention Plan and its Agricultural

Impact Mitigation Plan. Ex. DAPL-5, Stormwater Pollution and Prevention Plan, Section 3.1 and Agricultural Impact Mitigation Plan, Section 6.

74. Noxious weeds may cause environmental and economic impacts, and can directly or indirectly injure agriculture, waterways, wildlife, or public health. Ex. DAPL-1, p. 20. A total of 12 species of state and county noxious weeds were documented within the project area. Ex. DAPL-1, pp. 20-22. Construction activities result in surface disturbance, which could contribute to the spread of noxious weeds. Dakota Access will implement best management practices and weed control practices during construction and operation to mitigate impacts from noxious weeds. Ex. DAPL-33, 17-18. These practices include treating known noxious weed infestations prior to ground disturbance, reseeding immediately following construction, the use of weed-free seed, and the use of weed-free erosion control materials. *Id.* Dakota Access will also consult with the NRCS, the South Dakota Department of Agriculture, and local county officials to identify areas of noxious weed concerns and develop control methods for those areas of noxious weed concerns. Permit Condition 15.

75. The Dakota Access construction and reclamation process involves placement of environmental inspectors along the route to monitor construction personnel and progress. The effectiveness of revegetation and permanent erosion control devices will be monitored by Dakota Access's operating personnel during long-term operation and maintenance of the Project. Ex. DAPL-1, p.13; Ex. DAPL-33, p. 8. In addition, a public liaison officer will facilitate communications among Dakota Access, landowners, local communities, and residents and facilitate prompt resolution of complaints and problems that may develop as a result of the Project. Permit Condition 6. Further, a third-party monitor will report directly to the Commission to monitor compliance with the permit. Permit Condition 29.

76. Dakota Access developed a Spill Prevention, Containment, and Countermeasures Plan that sets forth its planning and prevention procedures, general best management practices, and spill procedures. Ex. DAPL-5, attached as Appendix B to its Stormwater Pollution Prevention Plan. This plan properly sets forth appropriate measures for the prevention, containment, remediation of inadvertent spills or releases of fuel, lubricant, or hazardous materials during construction of the Project. Ex. DAPL-5. Dakota Access also prepared a preliminary South Dakota Spill Model Discussion and a draft Facility Response Plan. Exs. DAPL-6, 7.

77. Dakota Access did not identify any high consequence areas, as defined by 29 CFR 195, in the pipeline corridor. Tr. at 186-187. However, if the identification of high consequence areas occurs, or if environmental factors change thus resulting in the existence of a high consequence area, per 49 CFR 195, Dakota Access must integrate that high consequence area into its integrity management plan. Tr. at 2205-2206. Dakota Access will continue to evaluate and perform assessment activities regarding high consequence areas. Permit Condition 33.

#### Special Considerations: Impact to Water Bodies and Wetlands

78. Dakota Access identified 279 water body crossings located within the Project footprint. Of those identified, 10 are perennial streams and rivers, 105 are intermittent streams, 139 are ephemeral streams, and 25 are open water ponds. Ex. DAPL-1, p. 25. The Project does not cross the Missouri River in South Dakota. Ex. DAPL-2. Dakota Access will comply with the conditions of any permit issued by a federal or state agency. Ex. DAPL-33, p.11.

79. Impacts to water bodies are expected to be limited to the construction phase. Impacts during construction may include an increase of sedimentation and turbidity, introduction of water



pollutants, or entrapment of fish. No permanent long-term effects on water quality or fish communities are anticipated to occur as a result of the construction or normal course of operation of the pipeline. Ex. DAPL-1, p. 26.

80. Dakota Access will minimize potential impacts on water bodies by utilizing specialized crossing methods and implementing best management practices to decrease time spent in water crossing areas. *Id.*

81. Construction methods utilized at water body crossings are highly dependent on characteristics of the water body encountered, environmental constraints, the underlying geology, and other factors. *Id.* at 26-28. Potential types of crossing methods include: open-cut crossing method, flume crossing method, dam and pump crossing method, or a horizontal directional drill. Ex. DAPL-1, pp. 26-28. The majority of waterbody crossings will use the open-cut method. *Id.* at 26. In order to minimize impacts to water quality, best management practices will be used, including excavating the pipeline trench immediately prior to pipe installation. *Id.*

82. The horizontal directional drill crossing method will be utilized at water body crossings or other areas along the route where it is necessary to avoid a particularly sensitive resource. *Id.* at 27. The horizontal directional drill method allows for construction across an area without the excavation of a trench, by drilling a hole significantly below the conventional pipeline depth, and pulling the pipeline through the pre-drilled hole. *Id.*

83. Table 17.1-1 of the application identifies the water bodies and wetlands wherein the horizontal directional drill method will be used. *Id.* In addition, Dakota Access identified two additional water bodies, which will be horizontal directionally drilled. Tr. at 402-403. The horizontal directional drill method will be used at five water bodies of particular sensitivity and three wetlands of particular sensitivity. Ex. DAPL-1, p. 27; Tr. at 402-403.

84. Dakota Access routed the project to avoid permanent fill in wetlands. Ex. DAPL-1, p. 28. In addition, aboveground facilities were sited within upland areas. No permanent loss of wetlands is anticipated. *Id.* As with water crossings, temporary impacts to wetlands are limited to the construction phase. Table 17.2-1 summarizes all wetlands within the project area. *Id.* at 28-29. The table includes United States Army Corps of Engineers' jurisdictional wetlands and non-jurisdictional wetlands. *Id.* at 28. To avoid impacts, Dakota Access will cross three of the wetlands via horizontal directional drilling. *Id.* at 27. Where impacts are unavoidable, Dakota Access will implement best management practices to ensure the wetland is restored. *Id.* at 29.

#### Special Considerations: Impact on Agricultural Land and Land Use

85. Testimony was presented by and on behalf of some affected landowners who opposed the construction of the pipeline. Exs. I1 through I24. Out of 743 tracts of land identified by Dakota Access as being within the Project footprint, the landowners providing testimony own six of the tracts. Tr. at 1907-1908. The Landowners expressed concerns about the Project's impact on their lands, including returning the land to pre-construction levels, compaction of soil, potential damage to drain tile systems, compliance with permit conditions, environmental and safety issues, and the future development of their property. *Id.*

86. Row crop agriculture and hay lands will be temporarily disturbed and removed from production during construction. Agricultural production is expected to resume during the growing season following completion of the pipeline construction. Ex. DAPL-1, p. 43. The Commission finds that Dakota Access has developed plans and presented evidence that showed that land

productivity levels and land and soil conditions following pipeline construction can be returned to pre-disturbance levels. Ex. DAPL-33, pp. 16-17; Ex. DAPL-39, pp.5-10; Tr. at 1881; Ex. DAPL-5. Plans include its Agricultural Impact Mitigation Plan that is designed to minimize construction impacts and restore land to its pre-construction levels, and its Stormwater Pollution Prevention Plan that is designed to minimize the impacts of stormwater runoff during construction activities. Ex. DAPL-5. In addition to the plans presented by Dakota Access, the Commission has imposed a number of conditions to address landowner concerns. See generally Permit Conditions.

87. To minimize impacts to agricultural vegetation, Dakota Access will segregate topsoil during construction of the pipeline. At a minimum, the depth of topsoil to be stripped will be 12 inches, or actual depth of topsoil if less than 12 inches. Ex. DAPL -5, Agricultural Impact Mitigation Plan, p. 6. Dakota Access will work with individual landowners where topsoil is in excess of 12 inches. Tr. at 1875. Dakota Access will strip additional topsoil in areas where the depth of topsoil exceeds 12 inches, if requested by the landowner. Permit Condition 16(a). Segregated topsoil will then be returned following backfill of the subsoil, ensuring preservation of valuable topsoil within the construction area. Ex. DAPL-33, p. 17.

88. Functioning drain tile systems are necessary for landowners to maximize crop production on agricultural land. Dakota Access has plans in place to repair existing drain tile to its pre-construction condition and maintain the drain tile system's functionality. Tr. at 1878-1879, DAPL-5, Agricultural Impact Mitigation Plan, pp. 8-10. Dakota Access's plans include specific methods for the temporary and permanent repair of drain tiles. DAPL-5, Agricultural Impact Mitigation Plan, pp. 8-10. In addition, Dakota Access must repair or replace all damaged and disturbed drain tile in a manner that maintains the full integrity, function, and original slope of the drain tile. Permit Condition 41. Dakota Access is also required to make additional repairs or replacement in the event any drain tile ceases to function properly because of the pipeline construction or operation. *Id.*

89. Additional Permit Conditions that further address landowner concerns include: restoration and revegetation of the land; decompaction of soils; weed control; crop monitoring protocols; reseeding; keeping landowners informed of the obligations of Dakota Access; preventative construction requirements; and the liability of Dakota Access for damages. Permit Conditions 16, 41, 46, 47, 48, 49, 50, 51. The Commission has imposed conditions regarding where the pipeline runs within 500 feet of residences. Permit Condition 26. Dakota Access is liable for all damages caused by the construction or operation of the Project, including the repair or replacement of any property damaged or removed, lost productivity, crop loss, livestock loss, and loss of organic certification. Permit Conditions 46 through 49. The Commission also addressed concerns regarding compliance by requiring Dakota Access to contract with a third-party monitor. The third-party monitor will be approved by the Commission and report directly to the Commission. The third-party monitor will work with Dakota Access's environmental and agriculture inspectors and the Public Liaison officer to ensure compliance with the conditions of the permit and will report on any non-compliance. Permit Condition 31.

90. Dakota Access has also demonstrated its willingness to work with landowners to address land development concerns, including making route changes. Tr. at 2090; Ex. DAPL-1 pp. 8-9. In addition, Dakota Access presented evidence showing how pipelines can co-exist in developed areas. Exs. DAPL-51, 52; Tr. at 1943. Other environmental and safety issues are addressed in previous findings of fact relating to design and construction, operation and maintenance, and environmental and land use.

91. Landowners' issues regarding easement acquisition and condemnation proceedings are not within the jurisdiction of the Commission.

### **Impacts on Wildlife and Fish**

92. The Project does not cross any water bodies categorized as high-quality fisheries within South Dakota. Ex. DAPL-1, p. 25. A total of three water bodies crossed by the Project are categorized as low-quality and have warm water fishery classifications. The three warm water fishery water bodies are Turtle Creek, the James River, and the Big Sioux River. *Id.*

93. Dakota Access compiled a comprehensive list of all federal and state sensitive, threatened, and endangered species within the counties crossed by the project. Ex. DAPL- 4, Federal and State Listed Threatened and Endangered Species in South Dakota. This list includes the potential impacts on these species, their habitat requirements, and a determination of effect on the species. *Id.* Dakota Access has consulted with the U.S. Fish and Wildlife Service, the South Dakota Natural Heritage Program, and the South Dakota Game, Fish & Parks. Ex. DAPL-33, p. 18. Dakota Access will continue consulting with resource agencies to develop mitigative measures to minimize potential impacts to any listed species prior to initiating construction. *Id.* at 23. Dakota Access will implement any recommendations made. Tr. at 2043-2044, 2168-2169.

94. Dakota Access and the U.S Fish and Wildlife Service identified potential effects on one listed aquatic species, the Topeka Shiner. Ex. DAPL-33, p. 23. Dakota Access will cross water bodies where the Topeka Shiner has been identified as a potentially impacted species. As a result, Dakota Access will utilize the horizontal directional drill crossing method for some of these water bodies. Open cut crossings will be done in accordance with the biological opinion issued by U.S. Fish and Wildlife Service. Ex. DAPL-33, p. 23; Ex. DAPL-38, p. 4-5. Dakota Access will consult with the U.S. Fish and Wildlife Service and follow all recommendations made by the U.S. Fish and Wildlife Service. Tr. at 2168-2169.

### **Impact on Cultural Resources**

95. Dakota Access conducted a thorough cultural resource survey along the proposed Project route, except for areas that Dakota Access has not yet received survey permission. Tr. at 2151-2152; Exs. DAPL-45 through 49. Dakota Access also prepared an unanticipated discovery plan that addresses proper handling of cultural resources, human remains, paleontological resources, and funerary objects unearthed in the excavation and construction process. Ex. DAPL-9.

96. The entirety of the route, with the exception of 12 tracts to which Dakota Access has not received survey permission, has been surveyed for cultural resources. Tr. at 2151-2152. Dakota Access shall survey the remaining tracts when it has permission. All aboveground facilities have also been surveyed, including the pump station, the main line valves, the launchers/receivers, as well as all access roads currently identified. Tr. at 2152. As contractor yards and any additional roads are identified, they will also be surveyed. *Id.*

97. South Dakota law requires a survey that includes identification of all previously identified cultural resources listed on the registry of historic places. See SDCL 1-19A-11.1. In addition to surveying these previously identified cultural resources, Dakota Access also identified areas eligible for inclusion on the Registry for National Historic Places. Tr. at 2165. The South Dakota State Historic Preservation Office (SHPO) reviewed the cultural resource surveys and unanticipated discovery plan. Tr. at 741. Dakota Access responded to concerns expressed by

SHPO. Paige Olson, review compliance coordinator for SHPO, stated that the concerns she had raised had been addressed. Tr. at 744, 753.

98. Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their undertakings on historic properties. 36 USC 800.1(a). The United States Army Corp. of Engineers is currently in the process of complying with its Section 106 obligations. Tr. at 2177-2178. This process includes consulting with Indian tribes. Ex. Staff-6, p. 8. The state process does not provide for consulting with Indian tribes. *Id.*

99. Through cross-examination, Rosebud Sioux Tribe asked questions about certain areas on the Level III Cultural Resource survey maps Tr. at 815-832 (conf.) Areas of particular sensitivity as identified by the Rosebud Sioux Tribe were either avoided in pipeline routing, or avoided through horizontal directional drill methods. Tr. at 2154-2165.

### **Other Social and Economic Factors**

100. Other potential social and economic impacts of the Project were assessed. The Commission finds that a review of these impacts shows that the Project will not substantially impair the health, safety or welfare of the inhabitants or pose an unacceptable threat of serious injury to the social or economic conditions of inhabitants. The project will bring jobs, both temporary and permanent, to the State of South Dakota, and specifically to the areas of construction and operation. Ex. DAPL-30, p. 13. Although some of the numbers related to jobs were subject to varying interpretations, the Commission finds that these were not deliberate misstatements of material facts. The potential impacts that were assessed included impacts on commercial and industrial sectors, housing, land values, labor market, health facilities, energy, sewage and water, solid waste management facilities, fire protection, law enforcement, recreational facilities, schools, transportation facilities, and other community and government facilities. Ex. DAPL-30, pp. 12-18; Ex. DAPL-1, pp. 37-42. Regarding concerns related to the increased number of workers in the area, Dakota Access will rely on existing governmental and public services and, to the extent additional resources are needed, Dakota Access will require its contractor to provide the additional resources, such as security and medical services. Ex. Staff-1, Ex. A, p. 41.

101. Dakota Access will pay property taxes to local governments on an annual basis. Ex. DAPL-1, p. 42. An increase in assessed, taxable valuation for school districts is a positive development. In addition, Dakota Access will pay sales, use, gross receipts, and lodging taxes. *Id.*

### **Orderly Development of the Region**

102. An applicant for a permit is required to show that its proposed facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government. The Commission finds the facility will not unduly interfere with the orderly development of the region. Dakota Access has acquired almost 90% of easements for the area in South Dakota. Tr. at 2077-2078. Although some cities and counties were intervenors in this proceeding, no testimony was presented by any city or county opposing the Project. Dakota Access had numerous meetings with governmental officials regarding the Project. Tr. at 1944. Dakota Access met with the cities of Sioux Falls, Tea, and Harrisburg and made route changes that were designed to avoid certain future development areas. Tr. at 181-182; see *also* Ex. City of Sioux Falls-A, Dakota Access Pipeline/Municipal Growth Areas. The City of Sioux Falls did not present testimony at the

hearing, and, during the hearing, it entered into a Stipulation with Dakota Access regarding its landfill, including findings of fact approved by the Commission. See Findings of Fact 107-114.

103. Dakota Access's witness Joey Mahmoud explained that when considering the pipeline route, one goal was to minimize the environmental footprint. By increasing the length of a pipeline, there are additional impacts, including landowner impacts, impacts to wetlands, impacts to endangered species, and other risks associated with a longer pipeline. Tr. at 2114. Moving the pipeline away from one community means that that the pipeline is moving closer to another community resulting in a transference of impacts. Tr. at 2118.

104. In addition, Dakota Access presented evidence that pipelines are compatible with developed and developable areas. Exs. DAPL-51, 52; Tr. at 386-387, 1943. One of the maps showed the pipeline infrastructure in the Sioux Falls area. Ex. DAPL-52.

105. The Commission finds that neither the Yankton Sioux Tribe nor the Rosebud Sioux Tribe is an affected local unit of government. The Commission finds that neither reservation is near enough to the Project footprint to be considered an affected local unit of government.

### **Environmental Assessment**

106. On September 29, 2015, the Yankton Sioux Tribe, the Rosebud Sioux Tribe, Indigenous Environmental Network, and Dakota Rural Action filed a Joint Motion to Stay Proceedings for Preparation of an Environmental Impact Statement. The Yankton Sioux Tribe, the Rosebud Sioux Tribe, Indigenous Environmental Network, and Dakota Rural Action requested a stay of these proceedings "for a reasonable time, to allow for the preparation of an environmental impact statement (EIS) on the Dakota Access Pipeline revised application." Individual Intervenor, represented by Glenn Boomsma joined in the motion. The Commission denied the motion for a stay. The motion was made the day the hearing began. Pursuant to SDCL chapter 49-41B and ARSD chapter 20:10:22, an applicant is required to provide a detailed environmental assessment. Following the hearing, and based on the evidence received, the Commission finds that the environmental assessment conducted in this proceeding satisfactorily addressed environmental impacts and that the preparation of an environmental impact statement pursuant to SDCL chapter 34A-9 is unnecessary.

### **Stipulated Findings Entered into by the City of Sioux Falls and Dakota Access Regarding the Regional Sanitary Landfill**

107. The City of Sioux Falls is the owner of real property located in the southeast quarter of (SE ¼) of Section 34-T101N-R51W of the 5th P.M., Minnehaha County, South Dakota. This property is approximately five miles west of the Sioux Falls City limits and is outside the City Growth Area. This real property is used for the Sioux Falls Regional Sanitary Landfill (Landfill).

108 The Dakota Access proposed route lies parallel along the west boundary of the Landfill.

109. The Landfill is designed so cells (excavated areas for deposit of solid waste) are set back into Landfill property at least 300 feet. The Landfill uses the area within the 300 feet as a buffer with trees and other vegetation, storage of materials and equipment, and for routine purposes associated with a landfill, including regulatory items such as groundwater monitoring and inspections as required or allowed by the South Dakota Department of Environment and Natural Resources (DENR) or the United States Environmental Protection Agency.

110. The cell design and boundaries have been incorporated into the landfill permit granted by the South Dakota Department of Environment and Natural Resources (DENR). Under the DENR permit, the City is not allowed to excavate land and dispose of waste within the 300 foot area. Due to the distance between the cells and the proposed pipeline, the excavation and use of the Landfill cells would not disturb the Dakota Access pipeline and the installation of the Dakota Access pipeline would not disturb the Landfill cells.

111. Sioux Falls has installed a system of groundwater monitoring wells to monitor whether municipal solid waste leachate is migrating into the groundwater. This includes an upgradient well on the northwest edge of the landfill site to serve as a baseline for groundwater quality. This monitoring site is located between the Landfill cells and the proposed Dakota Access pipeline. If petroleum or oil (under some unforeseen event) were to migrate into the groundwater in this area, the groundwater monitoring well could show the presence of petroleum. The function of monitoring wells is to detect contaminants and provide for corrective action as soon as possible.

112. Sioux Falls has a Landfill gas pipeline system used for gathering gas generated by the landfill and transporting it off site to an ethanol plant south of the landfill.

113. There are trees and a chain link fence near the west boundary of the Sioux Falls Landfill within the 300 foot area.

114. Sioux Falls does not objection to the siting of the Dakota Access pipeline along the west side of the Landfill, as presently proposed, so long as the Dakota Access pipeline is installed safely at appropriate depths and locations relative to the existing and future Landfill features and fixtures, and does not damage the Landfill property and, further, is constructed and operated in accordance with 49 CFR Part 195 and any other applicable permitting requirements.

### **General**

115. An application may be denied, returned, or amended, at the discretion of the Commission, for failure to file an application generally in the form and content required by SDCL chapter 49-41B and ARSD chapter 20:10:22. SDCL 49-41B-13(2). The Commission finds that Dakota Access filed its application generally in the form and content required by SDCL chapter 49-41B and ARSD chapter 20:10:22. The Commission notes that the supplementation of an application with additional information is common. Ex. Staff-1, p. 5.

116. An application may be denied, returned, or amended, at the discretion of the Commission, if there are any deliberate misstatements of material facts in the application or in accompanying statements or studies. SDCL 49-41B-13(1). The Commission finds that the application and its accompanying statements and studies did not contain any deliberate misstatements of material facts.

117. The Commission finds that the Permit Conditions attached hereto as Exhibit A and incorporated herein by reference are supported by the record, are reasonable and will help ensure that the Project will meet the standards established for approval of a construction permit for the Project set forth in SDCL 49-41B-22 and should be adopted.

118. The Commission finds that the Project, if constructed in accordance with the terms and conditions of this decision, will comply with all applicable laws and rules, including all requirements of SDCL chapter 49-41B and chapter ARSD 20:10:22.

119. The Commission finds that the Project, if constructed in accordance with the terms and conditions of this decision, will not pose an unacceptable threat of serious injury to the environment nor to the social and economic conditions of inhabitants or expected inhabitants in the siting area.

120. The Commission finds that the Project, if constructed in accordance with the terms and conditions of this decision, will not substantially impair the health, safety or welfare of the inhabitants in the siting area.

121. The Commission finds that the Project, if constructed in accordance with the terms and conditions of this decision, will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

122. The Commission finds that a permit to construct the Project should be granted subject to the Conditions set forth in Exhibit A.

123. To the extent that any Conclusion of Law set forth below is more appropriately a finding of fact, that Conclusion of Law is incorporated by reference as a Finding of Fact.

Based on the foregoing Findings of Fact, the Commission hereby makes the following:

#### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the subject matter and parties to this proceeding pursuant to SDCL chapter 49-41B and ARSD chapter 20:10:22. Subject to the findings made on the four elements of proof under SDCL 49-41B-22, the Commission has authority to grant, deny, or grant upon reasonable terms, conditions or modifications, a permit for the construction, operation, and maintenance of the Dakota Access Pipeline.

2. The Dakota Access Pipeline Project is a transmission facility as defined in SDCL 49-41B-2.1.

3. Applicant's permit application, as amended and supplemented through the proceedings in this matter, complies with the applicable requirements of SDCL chapter 49-41B and ARSD chapter 20:10:22. The Commission finds that Dakota Access filed its application generally in the form and content required by SDCL chapter 49-41B and ARSD chapter 20:10:22.

4. The Commission finds there was no showing that there are any deliberate misstatements of material facts in the application or in accompanying statements or studies.

5. The project does not involve federal agency action. As a result, the National Environmental Policy Act (NEPA) does not require preparation of an environmental assessment or environmental impact statement.

6. State law does not require preparation of an environmental impact statement. SDCL 34A-9-2. The Commission finds that the application and permitting requirements under SDCL chapter 49-41B, and ARSD chapter 20:10:22 are sufficient for the Commission to review the environmental impacts of the Project and that an environmental impact statement pursuant to SDCL chapter 34A-9 is not necessary.

7. SDCL 49-41B-1 provides in part that “[t]he Legislature also finds that by assuming permit authority, that the state must also ensure that these facilities are constructed in an orderly and timely manner so that the energy requirements of the people of the state are fulfilled.” The Commission finds that this language is directed toward ensuring that the permit process is conducted in a timely manner.

8. The Project, if constructed in accordance with the terms and conditions of this decision, will comply with all applicable laws and rules, including all requirements of SDCL chapter 49-41B and ARSD chapter 20:10:22.

9. The Project, if constructed in accordance with the terms and conditions of this decision, will not pose an unacceptable threat of serious injury to the environment nor to the social and economic conditions of inhabitants or expected inhabitants in the siting area.

10. The Project, if constructed in accordance with the terms and conditions of this decision, will not substantially impair the health, safety or welfare of the inhabitants in the siting area.

11. The Project, if constructed in accordance with the terms and conditions of this decision, will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

12. The Commission has no authority over condemnation or eminent domain. SDCL 21-35-1 requires that these issues be brought before the circuit court.

13. Neither the Rosebud Sioux Tribe nor the Yankton Sioux Tribe is an affected local unit of government.

14. Native American Tribes do not have adjudicated private property land rights to any of the property crossed by the Project. The Commission does not have jurisdiction to adjudicate any land rights claims.

15. The standard of proof is by the preponderance of evidence. The Applicant has met its burden of proof pursuant to SDCL 49-41B-22 and is entitled to a permit as provided in SDCL 49-41B-24.

16. The Commission has authority to revoke or suspend any permit granted under the South Dakota Energy Facility Permit Act for failure to comply with the terms and conditions of the permit pursuant to SDCL 49-41B-33 and must approve any transfer of the permit granted by this Order pursuant to SDCL 49-41B-29.

17. To the extent that any of the Findings of Fact in this decision are determined to be conclusions of law or mixed findings of fact and conclusions of law, the same are incorporated herein by this reference as a Conclusion of Law as if set forth in full herein.

18. PHMSA is delegated exclusive authority over the establishment and enforcement of safety-orientated design and operational standards for hazardous materials pipelines. 49 U.S.C. 60101, et seq.

19. SDCL 49-41B-36 explicitly states that SDCL chapter 49-41B is not “a delegation to the commission of the authority to route a transmission facility....” The Commission accordingly concludes that it lacks authority (i) to compel the Applicant to select an alternative route or (ii) to



base its decision on whether to grant or deny a permit for a proposed facility on whether the selected route is the route the Commission might itself select.

20. The Commission concludes that it needs no other information to assess the impact of the proposed facility or to determine if Dakota Access has met its burden of proof.

21. The Commission concludes that the Application and all required filings have been filed with the Commission in conformity with South Dakota law and that all procedural requirements under South Dakota law, including public hearing requirements, have been met.

22. The Commission concludes that it possesses the authority under SDCL 49-41B-24 to impose conditions on the construction, operation and maintenance of the Project, that the Conditions set forth in Exhibit A are supported by the record, are reasonable and will help ensure that the Project will meet the standards established for approval of a construction permit for the Project set forth in SDCL 49-41B-22 and that the Permit Conditions are hereby adopted.

It is therefore

ORDERED, that a permit to construct the Dakota Access Project is granted to Dakota Access LLC, subject to the Conditions set forth in Exhibit A.

#### NOTICE OF ENTRY AND OF RIGHT TO APPEAL

PLEASE TAKE NOTICE that this Final Decision and Order was duly issued and entered on the 14<sup>th</sup> day of December, 2015. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition with the Commission within 30 days from the date of issuance of this Final Decision and Order; Notice of Entry. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 14<sup>th</sup> day of December, 2015.

<p><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.</p> <p>By: <u>Rosalynne West</u></p> <p>Date: <u>12-14-15</u></p> <p>(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

Chris Nelson  
CHRIS NELSON, Chairman

GARY HANSON, Commissioner (dissenting)

Richard L. Sattgast  
RICHARD L. SATTGAST, Acting Commissioner

## Exhibit A

### PERMIT CONDITIONS

#### I. Compliance with Laws, Regulations, Permits, Standards, and Commitments

1. Dakota Access shall comply with all applicable laws and regulations in its construction and operation of the Project. These laws and regulations include, but are not necessarily limited to: the federal Hazardous Liquid Pipeline Safety Act of 1979 and Pipeline Safety Improvement Act of 2002, as amended by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, and the various other pipeline safety statutes codified at 49 U.S.C. § 60101 et seq. (collectively, the "PSA"); the regulations of the United States Department of Transportation implementing the PSA, particularly 49 C.F.R. Parts 194 and 195; temporary permits for use of public water for construction, testing or drilling purposes, SDCL 46-5-40.1 and ARSD 74:02:01:32 through 74:02:01:34.02 and temporary discharges to waters of the state, SDCL 34A-2-36 and ARSD Chapters 74:52:01 through 74:52:11, specifically, ARSD § 74:52:02:46 and the General Permit issued thereunder covering temporary discharges of water from construction dewatering and hydrostatic testing.
2. Dakota Access shall obtain and shall thereafter comply with all applicable federal, state, and local permits, including but not limited to: Clean Water Act § 404 and Rivers and Harbors Act Section 10 Permits; General Permit for Temporary Discharges and federal, state, and local highway and road encroachment permits. Any of such permits not previously filed with the Commission shall be filed with the Commission upon their issuance. To the extent that any law, regulation, requirement, condition, or permit applicable to the portion of the pipeline in this state differs from the requirements of these Conditions, the more stringent shall apply.
3. The permit granted by this Order shall not be transferable without the approval of the Commission pursuant to SDCL 49-41B-29.
4. Dakota Access shall undertake and complete all of the actions that it and its affiliated entities committed to undertake and complete in its Application as amended, in its testimony and exhibits received in evidence at the hearing, and in its responses to data requests received in evidence at the hearing.

#### II. Reporting and Relationships

5. The most recent and accurate depiction of the Project route and facility locations is found on the maps in Exhibit DAPL-2. The Application filed by Dakota Access with the Commission indicates Dakota Access will continue to develop route adjustments throughout the pre-construction design phase. These route adjustments will accommodate environmental features identified during surveys, property-specific issues, and civil survey information. Dakota Access shall do the following as it pertains to routing:
  - a) File new aerial route maps that incorporate any route adjustments prior to construction.
  - b) Notify the Commission and all affected landowners, utilities and local governmental units as soon as practicable if material deviations are proposed to the route and afford the Commission the opportunity to review and approve such modifications.

c) Notify affected landowners of any change in the route on their land.

d) Upon completion of the pre-construction route, Dakota Access shall file maps with the Commission depicting the final preconstruction route.

e) At the conclusion of construction, Dakota Access shall file detailed maps with the Commission depicting the final as-built location of the Project facilities.

6. Dakota Access shall provide a public liaison officer, approved by the Commission, to facilitate the exchange of information between Dakota Access, including its contractors, and landowners, local communities, and residents and to facilitate prompt resolution of complaints and problems that may develop for landowners, local communities, and residents as a result of the Project. Dakota Access shall file with the Commission its proposed public liaison officer's credentials for approval by the Commission prior to the commencement of construction. After the public liaison officer has been approved by the Commission, the public liaison officer may not be removed by Dakota Access without the approval of the Commission. The public liaison officer shall be afforded immediate access to Dakota Access's on-site project manager, its executive project manager, and to contractors' on-site managers and shall be available at all times to the Staff via mobile phone to respond to complaints and concerns communicated to the Staff by concerned landowners and others. Dakota Access shall also implement and keep an updated web site covering the planning and implementation of construction and commencement of operations in this state as an informational medium for the public. As soon as the Dakota Access's public liaison officer has been appointed and approved, Dakota Access shall provide contact information for him/her to all landowners crossed by the Project and to law enforcement agencies and local governments in the vicinity of the Project. The public liaison officer's contact information shall be provided to landowners in each subsequent written communication with them. If the Commission determines that the public liaison officer has not been adequately performing the duties set forth for the position in this Order, the Commission may, upon notice to Dakota Access and the public liaison officer, take action to remove the public liaison officer.

7. Dakota Access shall submit quarterly progress reports to the Commission that summarize the status of land acquisition and route finalization, the status of construction, the status of environmental control activities, including permitting status and Facility Response Plan and Integrity Management Plan development, and any other plan required pursuant to PHMSA regulations, the implementation of the other measures required by these conditions, and the overall percent of physical completion of the project and design changes of a substantive nature. Each report shall include a summary of consultations with the South Dakota Department of Environment and Natural Resources (SDDENR) and other agencies concerning the issuance of permits. The reports shall list dates, names, and the results of each contact and the company's progress in implementing prescribed construction, land restoration, environmental protection, emergency response and integrity management regulations, plans, and standards. The first report shall be due for the period ending March 31, 2016. The reports shall be filed within 31 days after the end of each quarterly period and shall continue until the project is fully operational. Once known, Dakota Access shall inform the Commission of the date construction will commence.

8. Continuing until landowner reclamation is complete, Dakota Access's public liaison officer shall report quarterly to the Commission on the status of the Project from his/her independent vantage point. The report shall detail

problems encountered and complaints received. The liaison officer shall collect all reports generated per Condition 13 and provide them to the Commission or Commission Staff upon request.

For the period of three years following completion of construction, Dakota Access shall report to the Commission annually on the status of road repairs, road reconstruction, and any problems or issues occurring during the course of the year.

9. Not later than two months prior to construction, Dakota Access shall commence a program of contacts with state, county, and municipal emergency response, law enforcement, and highway, road, and other infrastructure management agencies serving the Project area in order to educate such agencies concerning the planned construction schedule and the measures that such agencies should begin taking to prepare for construction impacts and the commencement of project operations.

10. Dakota Access shall conduct a preconstruction conference prior to the commencement of construction to ensure that Dakota Access, and its contractors, fully understand the conditions set forth in this order. At a minimum, the conference shall include a Dakota Access representative, Dakota Access's construction supervisor, and Commission Staff.

### **III. Construction**

11. Except as otherwise provided in the conditions of this Order and Permit, Dakota Access shall comply with all mitigation measures set forth in the Stormwater Pollution Prevention Plan, and Appendices, Agricultural Impact Mitigation Plan, Horizontal Directional Drill Contingency Plan, and Blast Plan as set forth in DAPL-5. If modifications to a plan are made by Dakota Access as it refines its construction plans or are required by any federal or state agency, the plan as so modified shall be filed with the Commission and shall be complied with by Dakota Access.

12. The probability of Dakota Access encountering karst features is low. However, if voids or other signs of karst topography are found during construction, Dakota Access shall conduct further site-specific evaluations by a qualified geologist or geotechnical engineer to provide input on mitigation measures. Dakota Access shall complete site-specific mitigation measures on a case by case basis for each karst feature encountered during construction. Any site specific mitigation plans completed for a karst feature shall be submitted to the Commission for review.

13. Dakota Access shall record and keep the following information: (i) landowner concerns or requests which differ from the Agricultural Impact Mitigation Plan, (ii) an indication of how Dakota Access responded to any such landowner requests, (iii) environmental compliance concerns with regard to the Commission order or other law, rule, or regulation, (iv) unique reclamation activities based on landowner request or field factors such as problematic soils, large weed plots, or other such unanticipated conditions, (v) any action items as ordered, directed, or recommended by the environmental inspector.

14. Dakota Access will coordinate all utility crossings in good faith with existing operators and will follow all One Call Procedures.

15. Prior to construction, Dakota Access shall consult with the South Dakota Department of Agriculture, the Natural Resources Conservation Service (NRCS), and local county officials to develop specific plans for the following: proper seed mix for pasture areas, identification of areas of noxious weed concern, and to develop control methods for those areas of noxious weed concern. Dakota Access shall conduct analytical soil probing and/or soil boring and analysis in areas of particularly sensitive soils where reclamation potential is low. Dakota Access shall identify soils for which alternative handling methods are recommended. Dakota Access shall adequately identify and plan for areas susceptible to erosion and any areas with low reclamation potential. Records regarding these analyses, identifications, and plans shall be recorded and made available to the Commission and the affected property owner upon request.

16. Dakota Access shall provide each landowner with an explanation regarding trenching and topsoil and subsoil/rock removal, segregation, and restoration method options for the landowner's property, a written explanation of the option for complete topsoil segregation, a copy of the Agricultural Impact Mitigation Plan, and a copy of the Order and Conditions. Dakota Access shall follow the landowner's selected preferences as documented on any written agreements with the landowner, as modified by any subsequent amendments, or by other written agreements. Dakota Access shall take the following steps to mitigate reclamation challenges and assure proper reclamation occurs:

a) Dakota Access shall separate and segregate topsoil from subsoil in all areas where excavation occurs, as provided in the Agricultural Impact Mitigation Plan. If it is discovered during excavation that the topsoil depth is greater than 12 inches, Dakota Access shall inform the landowner of the actual depth of topsoil and afford the landowner the options of either stripping the entire depth of the topsoil or the 12 inches as set forth in the Agricultural Impact Mitigation Plan.

b) Dakota Access shall repair any damage to property that results from construction activities.

c) Dakota Access shall restore all areas disturbed by construction to their preconstruction condition, including their original preconstruction topsoil, vegetation, elevation, and contour, or as close thereto as is feasible, except as is otherwise agreed to by the landowner in writing.

d) Except where practicably infeasible, final grading and topsoil replacement and installation of permanent erosion control structures shall be completed in non-residential areas within 20 days after backfilling the trench. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Dakota Access' control cause delay, temporary erosion controls shall be maintained until conditions allow completion of cleanup and reclamation. In the event Dakota Access cannot comply with the 20-day time frame as provided in this Condition, Dakota Access shall give notice of such fact to all affected landowners, and such notice shall include an estimate of when such restoration is expected to be completed.

e) Dakota Access shall draft specific crop monitoring protocols for agricultural lands. If requested by the landowner, Dakota Access shall provide an independent crop monitor to conduct yield testing and/or such other measurements of productivity as the independent crop monitor shall deem appropriate. The

independent monitor shall be a qualified agronomist, rangeland specialist, or otherwise qualified with respect to the species to be restored. The protocols shall be filed with the Commission and shall be evaluated for adequacy in response to a complaint or otherwise. If the landowner foregoes the opportunity to use the independent crop monitor provided by Dakota Access, the landowner retains the right to use an independent crop monitor of the landowner's choosing and at the landowner's own cost.

f) Dakota Access shall work closely with landowners, NRCS, and county governments in planning for noxious weed control. Landowner permission shall be obtained before the application of herbicides.

g) Throughout the construction duration, Dakota Access shall employ weed control measures as soon as reasonably practical and immediately when noxious weeds are observed to mitigate weeds on the temporary soil piles and within the construction right-of-way. To implement this additional weed control mitigation, the environmental inspector or agricultural inspector should be capable of identifying multiple species of weeds at a number of life stages, and be able to recommend and implement weed control measures early enough in the life cycle of the weed species in question to minimize or prevent the plant from setting seeds.

h) Section 6n of the Agricultural Impact Mitigation Plan regarding wet conditions shall apply to improved hay land and pasture lands in addition to crop lands.

i) The size, density, and distribution of rock within the construction right-of-way following reclamation shall be similar to adjacent undisturbed areas. Dakota Access shall treat rock that cannot be backfilled within or below the level of the natural rock profile as construction debris and remove it for disposal offsite except when the landowner agrees to the placement of the rock on the landowner's property in writing. In such case, the rock shall be placed in accordance with the landowner's directions.

j) Dakota Access shall employ adequate measures to de-compact subsoil as provided in its Agricultural Impact Mitigation Plan. Dakota Access shall conduct compaction testing of areas on and off the construction right-of-way, using a penetrometer or other equivalent measuring device, to provide an adequate means of determining whether such measures have reduced compaction to levels similar to adjacent sections of cropland undisturbed by construction. Topsoil shall be de-compacted if requested by the landowner.

k) Dakota Access shall monitor and take appropriate mitigative actions as necessary to address salinity issues when dewatering the trench, and field conductivity and/or other appropriate constituent analyses shall be performed prior to disposal of trench water in areas where salinity may be expected. Dakota Access shall notify landowners prior to any discharge of saline water on their lands or of any spills of hazardous materials on their lands of one pint or more or of any lesser volume which is required by any federal, state, or local law or regulation or product license or label to be reported to a state or federal agency, manufacturer, or manufacturer's representative.

l) Dakota Access shall follow the Stormwater Pollution Prevention Plan. On site modifications shall be approved by the environmental inspector, documented by the inspector, and filed with the Commission.

m) Dakota Access shall apply mulch when reasonably requested by landowners and also wherever necessary following seeding to stabilize the soil surface and to reduce wind and water erosion.

n) Dakota Access shall reseed all impacted vegetated land, excluding commodity or row crops. This is intended to include, but is not limited to a reseeded of all pasture, hay, and native species areas with comparable seed or native species mix to be approved by landowner, in writing. Cropland shall be seeded with cover crops consistent with the Agricultural Impact Mitigation Plan. Dakota Access shall actively monitor revegetation on all disturbed areas for at least two years.

o) Dakota Access shall coordinate with landowners regarding their desires to protect cattle, shall implement protective measures as are reasonably requested by the landowner, and shall adequately compensate the landowner for any loss.

p) Prior to commencing construction, Dakota Access shall file with the Commission a confidential list of property owners crossed by the pipeline and update this list if route changes during construction result in property owner changes.

q) Dakota Access shall, and shall cause its contractor to, equip each of its vehicles used in pre-construction or construction activities, including off road vehicles, with a hand held fire extinguisher, portable compact shovel, and communication device such as a cell phone, in areas with coverage, or a radio capable of achieving prompt communication with Dakota Access's fire suppression resources and emergency services.

r) Temporary sediment barriers shall remain in place until the permanent revegetation coverage has reached a minimum of 70 percent cover as compared to similar cover in an adjacent area that is undisturbed by construction. This includes a comparative presence of noxious species such that the presence of noxious species shall not be more dominant on the revegetated area when compared to the adjacent undisturbed lands.

17. Dakota Access shall implement the following sediment control practices:

a) Dakota Access shall use floating sediment curtains to maintain sediments within the construction right-of-way in open water bodies with no or low flow when the depth of non-flowing water exceeds the height of straw bales or silt fence installation. In such situations the floating sediment curtains shall be installed as a substitute for straw bales or silt fence along the edge or edges of each side of the construction right-of-way that is underwater at a depth greater than the top of a straw bale or silt fence.

b) Dakota Access shall install sediment barriers in the vicinity of delineated wetlands and water bodies as outlined in the SWPPP regardless of the presence of flowing or standing water at the time of construction.

c) Dakota Access should consult with South Dakota Game, Fish and Parks (SDGFP) to avoid construction near water bodies during fish spawning periods in which in-stream construction activities should be avoided to limit impacts on specific fisheries, if any, with commercial or recreational importance.

18. Dakota Access shall comply with the following conditions regarding construction across or near wetlands, water bodies, and riparian areas:

a) Unless a wetland is actively cultivated or rotated cropland or unless site specific conditions require utilization of Dakota Access's proposed 85 foot width and the landowner has agreed to such greater width, the width of the construction right-of-way shall be limited to 75 feet in non-cultivated wetlands, unless a different width is approved or required by the United States Army Corps of Engineers.

b) Unless a wetland is actively cultivated or rotated cropland, extra work areas shall be located at least 50 feet away from wetland boundaries except where site-specific conditions render a 50-foot setback infeasible. Extra work areas near water bodies shall be located at least 50 feet from the water's edge, except where the adjacent upland consists of actively cultivated or rotated cropland or other disturbed land or where site-specific conditions render a 50-foot setback infeasible. Clearing of vegetation between extra work space areas and the water's edge shall be limited to the construction right-of-way.

c) Water body crossing spoil, including upland spoil from crossings of streams up to 30 feet in width, shall be stored in the construction right of way at least 10 feet from the water's edge or in additional extra work areas and only on a temporary basis.

d) Temporary in-stream spoil storage in streams greater than 30 feet in width shall only be conducted in conformity with any required federal permit(s) and any applicable federal or state statutes, rules, and standards.

e) Wetland and water body boundaries and buffers shall be marked and maintained until ground disturbing activities are complete. Dakota Access shall maintain 15-foot buffers where practicable, which for stream crossings shall be maintained except during the period of trenching, pipe laying, and backfilling the crossing point. Buffers shall not be required in the case of non-flowing streams.

f) Best management practices shall be implemented to prevent heavily silt-laden trench water from reaching any wetland or water body directly or indirectly.

g) Erosion control fabric shall be used on water body banks immediately following final stream bank restoration unless riprap or other bank stabilization methods are utilized in accordance with federal or state permits.

h) The use of raw timber and slash to support equipment crossings of wetlands shall be avoided.

i) Subject to Condition 35, vegetation restoration and maintenance adjacent to water bodies shall be conducted in such manner to allow a riparian strip at least 30 feet wide as measured from the water body's mean high water mark to permanently re-vegetate with native plant species across the entire construction right-of way.



19. Dakota Access shall cover open-bodied dump trucks carrying sand or soil while on paved roads and cover open-bodied dump trucks carrying gravel or other materials having the potential to be expelled onto other vehicles or persons while on all public roads.

20. Dakota Access shall position water trucks on gravel roads, for dust control, where conditions warrant.

21. Dakota Access shall require that its primary contractor ensure that all construction equipment is properly tuned and maintained and that idling be minimized during construction.

22. Dakota Access shall use its best efforts to not locate fuel storage facilities within 200 feet of private wells and 400 feet of municipal wells and shall minimize and exercise vigilance in refueling activities in areas within 200 feet of private wells and 400 feet of municipal wells.

23. If trees are to be removed that have commercial or other value to affected landowners, Dakota Access shall compensate the landowner for the fair market value of the trees to be cleared and/or allow the landowner the right to retain ownership of the felled trees.

24. Dakota Access shall develop frac-out plans specific to areas in South Dakota where horizontal directional drilling will occur and file the plans with the Commission. The plan shall be followed in the event of a frac-out. If a frac-out event occurs, Dakota Access shall notify the Commission and all government agencies including but not limited to SDDENR as required by the plan and state and federal law.

25. Dakota Access shall comply with the following conditions regarding road protection and bonding:

a) Dakota Access shall coordinate road closures with state and local governments and emergency responders and shall acquire all necessary permits authorizing crossing and construction use of state, county and township roads.

b) Dakota Access shall implement a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the general public.

c) Prior to their use for construction, Dakota Access shall videotape those portions of all roads which will be utilized by construction equipment or transport vehicles in order to document the pre-construction condition of such roads.

d) After construction, Dakota Access shall repair and restore, or compensate governmental entities for the repair and restoration of, any deterioration caused by construction traffic, such that the roads are returned to at least their preconstruction condition.

e) Dakota Access shall use appropriate preventative measures as needed to prevent damage to paved roads and to remove excess soil or mud from such roadways.

f) Pursuant to SDCL 49-41B-38, Dakota Access shall obtain and file for approval by the Commission prior to construction in such year a bond in the amount of \$24 million, including any additional period until construction and repair has been completed, to ensure that any damage beyond normal wear to public roads, highways, bridges or other related facilities will be adequately restored or compensated. Such bond shall be issued in favor of, and for the benefit of, all such townships, counties, and other governmental entities whose property is crossed by the Project. The bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Dakota Access shall give notice of the existence and amount of these bonds to all counties, townships, and other governmental entities whose property is crossed by the Project.

g) All pre-existing roads and lanes used during construction must be restored to at least their pre-construction condition that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition, except as otherwise requested or agreed to by the landowner or any governmental authority having jurisdiction over such roadway.

h) Dakota Access shall, prior to any construction, file with the Commission a list identifying private and new access roads that will be used or required during construction and file a description of methods used by Dakota Access to reclaim those access roads.

26. In those areas where the Project passes within 500 feet of a residence or farmstead building:

a) To the extent feasible, Dakota Access shall coordinate construction work schedules with affected residential landowners prior to the start of construction in the area of the residences.

b) Dakota Access shall maintain access to all residences at all times except as otherwise agreed between Dakota Access and the occupant.

c) Dakota Access shall install temporary safety fencing, when reasonably requested by the landowner or occupant, to control access and minimize hazards associated with an open trench and heavy equipment in a residential area.

d) Dakota Access shall notify affected residents in advance of any scheduled disruption of utilities and limit the duration of such disruption.

e) Dakota Access shall repair any damage to property that results from construction activities.

f) Dakota Access shall separate topsoil from subsoil and restore all areas disturbed by construction to at least their preconstruction condition.

g) Except where practicably infeasible, final grading and topsoil replacement, installation of permanent erosion control structures, and repair of fencing and other structures shall be completed in residential

areas within 14 days after backfilling the trench. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Dakota Access's control prevent compliance with this time frame, temporary erosion controls and appropriate mitigative measures shall be maintained until conditions allow completion of cleanup and reclamation.

h) When reasonably requested by a landowner, Dakota Access shall evaluate the use of a chemical dust suppressant. If Dakota Access determines the use of a chemical dust suppressant is not feasible, the company shall notify the landowner of its decision and reason.

27. Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken. At least two months prior to the start of construction in South Dakota, Dakota Access shall file with the Commission and provide to the landowners an adverse weather land protection plan containing appropriate adverse weather land protection measures, the conditions in which such measures may be appropriately used, and conditions in which no construction is appropriate.

28. Reclamation and clean-up along the right-of-way must be continuous and coordinated with ongoing construction.

29. If construction, reclamation, and final stabilization will not be completed prior to winter weather, Dakota Access shall put in place a winter stabilization plan to stabilize conditions for reclamation the following spring. The plan shall be filed with the Commission and provided to landowners upon completion of the plan.

30. Numerous Conditions of this Order relate to construction and its effects upon affected landowners and their property. Dakota Access may encounter physical conditions along the route during construction which make compliance with certain of these Conditions infeasible. If, after providing a copy of this order, including the Conditions, to the landowner, Dakota Access and landowner agree in writing to modifications of one or more requirements specified in these conditions, Dakota Access may follow the alternative procedures and specifications agreed to between it and the landowner.

31. Dakota Access shall contract with an independent third-party, approved by the Commission, to monitor compliance with this permit. More specifically, prior to construction, Dakota Access shall file with the Commission its proposed third-party monitor's credentials, which shall include the individual's name, qualifications, and a description of how Dakota Access proposes for the selected individual to monitor for compliance. After the third-party monitor has been approved by the Commission, the third-party monitor may not be removed by Dakota Access without approval of the Commission. If the Commission determines that the third-party monitor has not been adequately performing the duties set forth for the position in this Order, the Commission may, upon notice to Dakota Access and the third-party monitor, take action to remove the third-party monitor. At least 30 days prior to construction, Dakota Access shall file with the Commission a plan that will be developed jointly with the selected third-party monitor. The plan will outline the specific terms and conditions of the third-party monitoring program that will include a minimum of the following considerations:

a) The third-party monitor will be paid for by Dakota Access, but will report directly to the Commission.

b) The third-party monitor will work directly with the Public Liaison Officer, the Dakota Access Environmental Inspectors, and Agricultural Inspectors to ensure compliance with the various conditions of the permit. In the event of a noncompliance, the monitor will have the obligation to timely notify Dakota Access via the Environmental or Agricultural Inspector so as Dakota Access can take the appropriate action to mitigate or correct the noncompliance. Should the third-party monitor report any noncompliance to the Commission or Staff, the report shall simultaneously be shared with Dakota Access.

c) The third-party monitor will have direct access to the company construction manager, project manager, or other company management staff and will have the ability to communicate any noncompliance issues or concerns that are not addressed or mitigated by the Environmental or Agricultural Inspectors.

d) This condition will not include the monitoring of laws or processes that are otherwise under the inspection or jurisdiction of a different agency such as the USACE, USFWS, or PHMSA. The monitor will not inspect report on any technical design standard or requirement pursuant to 49 CFR Parts 194 and 195. However, should Dakota Access be notified in advance of a compliance inspection to be conducted by any regulatory agency, Dakota Access shall notify the third-party monitor of the inspection date, time, and location and afford the third-party monitor the opportunity to participate in the inspection for the purpose of submitting a summary report of the inspection to the Commission.

e) The third-party monitor's contractual monitoring obligations to the Commission will require them to begin their monitoring responsibilities with the onset of mainline construction activities and will end at the conclusion of initial reclamation activities.

f) The third-party monitor will comply with all Dakota Access safety requirements. This includes the obligation to safely work, travel, and traverse within the limits of the construction work area and will be subject to Dakota Access safety standards and processes at all times, under no exceptions. The third-party monitor must comply with all access points, travel restrictions within the construction work areas, and any special conditions or safety exclusion areas throughout the duration of construction. The third-party monitor must comply with all local, state, and federal laws and regulations.

g) The monitor will not have any stop work authority.

h) The third-party monitor shall prepare a report to the Commission or Staff as determined by the Commission that will include, at a minimum, the work areas that were monitored, any concerns, noncompliances, any remediation or mitigation measures employed to ensure compliance with the various conditions of the permit, any additional steps to correct or remedy a noncompliance, and a list of any areas of concerns.

#### **IV. Pipeline Operations, Detection, and Emergency Response**

32. Dakota Access shall construct and operate the pipeline in the manner described in the application and at the hearing, including in Dakota Access's exhibits, in accordance with DOT's PHMSA regulations, and in accordance with the conditions of this permit and the conditions of this Order and the construction permit granted herein.

33. Dakota Access shall require compliance by its shippers with its crude oil specifications in order to minimize the potential for internal corrosion.

34. Dakota Access's obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the pipeline. In its surveillance and maintenance activities, Dakota Access shall, and shall cause its contractor to, equip each of its vehicles, including off-road vehicles, with a hand held fire extinguisher, portable compact shovel, and communication device such as a cell phone, in areas with coverage, or a radio capable of achieving prompt communication with emergency services.

35. In accordance with 49 C.F.R. 195, Dakota Access shall continue to evaluate and perform assessment activities regarding high consequence areas. Prior to Dakota Access commencing operation, all unusually sensitive areas as defined by 49 CFR 195.6 that may exist, whether currently marked on DOT's HCA maps or not, should be identified and added to the Facility Response Plan and Integrity Management Plan. In its continuing assessment and evaluation of environmentally sensitive and high consequence areas, Dakota Access shall seek out and consider local knowledge, including the knowledge of the South Dakota Geological Survey, the Department of Game Fish and Parks and local landowners and governmental officials.

36. Prior to putting the Dakota Access Pipeline into operation, Dakota Access shall prepare, file with PHMSA, and implement a facility response plan as required under 49 CFR 194. Dakota Access shall also prepare and implement a set of written procedures for conducting normal operations and maintenance activities and handling abnormal operations and emergencies as required under 49 CFR 195.402. Dakota Access shall also prepare and implement a written integrity management program in the manner and at such time as required under 49 CFR 195.452.

At such time as Dakota Access files its Facility Response Plan and Integrity Management Plan with PHMSA or any other state or federal agency, it shall also file such documents with the Commission. The Commission's confidential filing rules found at ARSD 20:10:01:41 may be invoked by Dakota Access with respect to such filings to the same extent as with all other filings at the Commission. If information is filed as "confidential," any person desiring access to such materials or the Staff or the Commission may invoke the procedures of ARSD 20:10:01:41 through 20:10:01:43 to determine whether such information is entitled to confidential treatment and what protective provisions are appropriate for limited release of information found to be entitled to confidential treatment.

37. To facilitate periodic aerial patrol pipeline leak surveys during operation of the facilities: in wetland and riparian areas, a minimum corridor of 30 feet centered on the pipeline centerline (15 feet on either side), shall be maintained in an herbaceous state. Trees within the corridor greater than 15 feet in height may be selectively cut and removed from the permanent right-of-way.

## **V. Environmental**

38. Except to the extent waived by the owner or lessee in writing or to the extent the noise levels already exceed such standard, the noise levels associated with Dakota Access's pump station and other noise-producing facilities will not exceed the LDN=55dba standard at the nearest occupied, existing residence, office, hotel/motel or non-industrial business not owned by Dakota Access. The point of measurement will be within 100 feet of the

residence or business in the direction of the pump station or facility. Post-construction operational noise assessments will be completed by an independent third-party noise consultant, approved by the Commission, to show compliance with the noise level at each pump station or other noise-producing facility. The noise assessments will be performed in accordance with applicable American National Standards Institute standards. The results of the assessments will be filed with the Commission. In the event that the noise level exceeds the limit set forth in this condition at any pump station or other noise producing facility, Dakota Access shall promptly implement noise mitigation measures to bring the facility into compliance with the limits set forth in this condition and shall report to the Commission concerning the measures taken and the results of post-mitigation assessments demonstrating that the noise limits have been met.

39. At the request of any landowner or public water supply system that offers to provide the necessary access to Dakota Access over his/her property or easement(s) to perform the necessary work, Dakota Access shall replace at no cost to such landowner or public water supply system, any polyethylene water piping located within 500 feet of the Project with piping that is resistant to permeation by BTEX. Dakota Access shall not be required to replace that portion of any piping that passes through or under a basement wall or other wall of a home or other structure. At least 45 days prior to commencing construction, Dakota Access shall publish a notice in each newspaper of general circulation in each county through which the Project will be constructed advising landowners and public water supply systems of this condition.

40. DAPL shall comply with all applicable state and federal laws pertaining to the protection of sensitive species, including the Endangered Species Act, Migratory Bird Treaty Act, and Bald and Golden Eagle Protection Act, as well as the Programmatic Biological Opinion for the Issuance of Selected Nationwide Permits Impacting the Topeka Shiner in South Dakota. The U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service will determine the scope of DAPL's compliance with such laws and the Biological Opinion. Any correspondence received from U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service shall also be filed with the Commission.

41. Dakota Access shall keep a record of drain tile system information throughout planning and construction, including pre-construction location of drain tiles. Location information shall be collected using a sub-meter accuracy global positioning system where available, or where not available by accurately documenting the pipeline station numbers of each exposed drain tile. Dakota Access shall maintain the drain tile location information and tile specifications and incorporate it into its Facility Response and Integrity Management Plans where drains might be expected to serve as contaminant conduits in the event of a release. If drain tile relocation is necessary, Dakota Access shall work directly with the landowner to determine proper location and slope. The location of permanent drain tiles shall be noted on as-built maps. Qualified drain tile contractors and or persons shall be employed to repair drain tiles. Dakota Access shall be responsible for repairing or replacing all damaged and disturbed drain tile in a manner that maintains the full integrity, function, and original slope of the drain tile. Dakota Access shall be responsible for making additional repairs or replacement should any drain tile cease to function properly because of the pipeline construction or operation.

42. Waterbody crossing methods shall be determined prior to construction of each particular water body crossing, as a best management practice. The purpose of this requirement is to allow the construction contractor

to plan ahead for the right equipment at the right locations and times, and provide Dakota Access's environmental inspectors sufficient time and ability to advise the contractor regarding potential changes to the planned crossing method based on field conditions.

## **VI. Cultural Resources**

43. Dakota Access shall follow the "Unanticipated Discoveries Plan," as reviewed and approved by the State Historical Preservation Office ("SHPO"). If during construction, Dakota Access or its agents discover what may be an archaeological resource, cultural resource, historical resource, or gravesite, Dakota Access or its contractors or agents shall immediately cease work at that portion of the site and follow the "Unanticipated Discoveries Plan." Dakota Access will notify the landowner of any unanticipated discovery. If the unanticipated discovery is of such a nature that a materially different route than that approved by the Commission is required, Dakota Access shall obtain Commission approval for the new route before proceeding with any further construction. Dakota Access shall be responsible for any costs that the landowner is legally obligated to incur as a consequence of the disturbance of a protected cultural resource as a result of Dakota Access's construction or maintenance activities.

44. Dakota Access shall provide and/or work with the lead Federal agency to provide data, avoidance plans, or mitigation plans to the SHPO that are agreed to for areas that are subject to jurisdiction under the National Historic Preservation Act. In the event archaeological resources are identified outside of Federal jurisdictional areas where the National Historic Preservation Act applies, Dakota Access shall provide SHPO any data, avoidance, or mitigation plans that are agreed upon or approved for release from the landowners for archaeological resources that have the potential to be or that have been listed as eligible for listing on the National Register of Historic Places.

45. Dakota Access shall have access to a certified archeologist in order to facilitate the training, identification, handling, and impact mitigation of archeological resources, cultural resources, historical resources, or gravesites encountered during construction of the pipeline.

## **VII. Enforcement and Liability for Damage**

46. Dakota Access shall repair or replace all property removed or damaged during all phases of construction and operation of the proposed transmission facility, including but not limited to, all fences, gates and utility, water supply, irrigation, or drainage systems. Dakota Access shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses, loss of organic certification, or loss of value to a paleontological resource damaged by construction or other activities.

47. In the event that a person's well is contaminated as a result of construction or pipeline operation, Dakota Access shall pay all costs associated with finding and providing a permanent water supply that is at least of similar quality and quantity; and any other related damages, including but not limited to any consequences, medical or otherwise, related to water contamination.

48. Any damage that occurs as a result of soil disturbance on a person's property resulting from the construction or operations of Dakota Access shall be paid for by Dakota Access.

49. Dakota Access shall compensate the landowner for crop and pasture loss beyond the scheduled three years, if it is shown that Dakota Access caused the extended crop or pasture loss.

50. No person will be held responsible for a pipeline leak that occurs as a result of his/her normal farming practices over the top of or near the pipeline.

51. Dakota Access shall pay commercially reasonable costs and indemnify and hold the landowner harmless for any loss, damage, claim, or action resulting from Dakota Access's use of the easement, including any resulting from any release of regulated substances or from abandonment of the facility, except to the extent such loss, damage claim, or action results from the gross negligence or willful misconduct of the landowner or its agents.

52. The Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners, other persons sustaining or threatened with damage or the consequences of Dakota Access's failure to abide by the conditions of this permit, or otherwise having standing to obtain enforcement of the conditions of this Order and Permit.

#### **VIII. STIPULATED CONDITIONS WITH THE CITY OF SIOUX FALLS**

53. The portion of the Dakota Access pipeline to be installed parallel to the west side of the Landfill, as presently proposed, would be subject to the standard conditions imposed by the Commission (including the conditions set forth in the Mahmoud Rebuttal testimony), except as specifically noted herein, and is also subject to the following conditions.

54. Dakota Access pipeline installation must be undertaken safely at appropriate depths and locations relative to the existing and future Landfill features and fixtures, so neither the installation nor the maintenance permanently damages Landfill property or temporarily damages Landfill property beyond that authorized by the City in easement(s).

55. Dakota Access may not install or maintain its pipeline in such a way as to obstruct or impede Landfill workers or customers from entering and using the Landfill for disposal of solid waste, unless specifically authorized by the City.

56. Dakota Access is responsible for locating and avoiding or protecting the Landfill monitoring well and gas pipeline during construction, including contacting One-Call.

57. Before commencing any construction on the Landfill property, Dakota Access must place barricades so as to protect against damage or intrusion into the immediate area of the Sioux Falls groundwater monitoring well located near the northwest corner of the Landfill. Dakota Access must maintain the barricades throughout construction. If the Landfill monitoring well is damaged by Dakota Access at any time, Dakota Access must pay for any repair or replacement and must cooperate with Sioux Falls and regulatory authorities regarding any additional sampling and testing of groundwater that may be required in the interim.

58. If petroleum is identified in the Landfill monitoring well in the northwest corner of the Landfill property at any time following installation and the initial use of the pipeline, then Dakota Access must cooperate with Sioux Falls



and regulatory authorities regarding additional testing. If the City undertakes further testing to determine the source of the petroleum or oil and the tests show the petroleum or oil is attributable to the Dakota Access pipeline, Dakota Access pipeline will reimburse the City for the testing that the City has undertaken in that regard. If the DENR requires additional groundwater monitoring wells to detect and monitor the extent of Dakota Access's contribution to petroleum at this site, Dakota Access will pay the costs of installing such additional monitoring wells. Further, if petroleum from the Dakota Access pipeline infiltrates the Landfill monitoring well such that the landfill monitoring well malfunctions or can no longer be reliably used as part of the Landfill leachate detection system, Dakota Access will pay for repair or replacement of the groundwater monitoring well as recommended by the DENR. The City is not obligated to undertake any testing or other regulatory requirements that are properly the responsibility of Dakota Access.

59. Dakota Access and its Contractor(s) must follow all applicable safety regulations during installation and operation of the pipeline.

60. If Dakota Access disturbs any soil or vegetation on the Landfill property, it is responsible for all costs in restoring such areas to pre-disturbance level.

61. Dakota Access shall not, except as otherwise agreed upon by the parties (e.g., condition 62), park, store, drive on, or use trucks or other construction equipment in any way on the surface above the Landfill gas pipeline and shall not disturb any valves or other appurtenances for the Landfill gas pipeline, expressly authorized by Sioux Falls.

62. Dakota Access may place spoils on the surface of the ground above the Landfill gas pipeline during construction, but must remove the spoils upon installation and completion of the pipeline. Such storage and use of the surface includes driving across and on the surface above the Landfill gas pipeline, but such use is (a) limited to pickups, skid steers, and similar light equipment as the Landfill gas pipeline lies along the west side of the landfill, and (b) as agreed by the Landfill Manager for the area where the Dakota Access pipeline will cross under the City's Landfill gas pipeline. Dakota Access shall take all necessary precautions when working on top of or crossing the Landfill gas pipeline.

63. Although 49 CFR Part 195 requires oil pipelines to be installed at least 30 inches below the surface in areas absent solid rock, Dakota Access has agreed to install its pipeline with the top at least four feet below the surface or as agreed upon in the easement conditions.

64. Dakota Access will cross the City's Landfill gas pipeline on the south side of 268th street near the Landfill. The Dakota Access pipeline must be installed under the Landfill gas pipeline at the proposed intersection with at least two feet of clearance between the Landfill gas pipeline and the Dakota Access pipeline. At this location, Dakota Access is allowed to cross the pipeline with its equipment and will employ necessary protection techniques to avoid impacts to the Landfill gas pipeline, as agreed upon by the Landfill manager.

65. Dakota Access must install its pipeline at sufficient depth (to be determined and agreed upon before construction) from the surface at three agreed upon locations to allow for haul roads/utility corridors to be

designed and designated by the City, with the precise locations to be designated by the City prior to the beginning of Dakota Access construction.

66. Dakota Access must pay all costs associated with installing or maintaining the pipeline so as to maintain the clearances between the Dakota Access pipeline and other structures owned or operated by the Landfill or City of Sioux Falls, as required by this Permit.

67. The Dakota Access pipeline must maintain the above stated clearances from the gas pipeline and haul road/utility corridor during the life of this permit, regardless of any alteration, repair, and replacement of the Dakota Access pipeline, or sections thereof, except as expressly authorized by the Commission.

68. Any fences removed by Dakota Access on the Landfill property must be replaced or relocated at Dakota Access's cost.

69. Dakota Access is responsible for the operation, repair, maintenance, replacement, or removal of its oil pipeline and associated appurtenances at no cost to the City of Sioux Falls.

70. The Conditions set forth herein are binding on all officers, agents, employees, assigns, lessees, and successors in interest of Dakota Access.