

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE)
APPLICATION OF DAKOTA) HP14-002
ACCESS, LLC FOR AN ENERGY)
FACILITY PERMIT TO CONSTRUCT)
THE DAKOTA ACCESS PIPELINE)
PROJECT)

REBUTTAL TESTIMONY OF

MONICA HOWARD

ON BEHALF OF

DAKOTA ACCESS, LLC

DAKOTA ACCESS EXHIBIT #

August 14, 2015

1 **Q. Please state your name and business address for the record.**

2 A. My name is Monica Howard, I am the Environmental Project Manager with Dakota
3 Access, LLC (“Dakota Access”), the Applicant in this proceeding, and Director of
4 Environmental Science for Energy Transfer Partners, L.P. (“ETP”). My business address
5 is 1300 Main St, Houston, TX. 77002.

6 **Q. Have you previously submitted direct testimony in this proceeding?**

7 A. Yes, I previously submitted direct testimony, dated July 6, 2015 which is identified as
8 Dakota Access Exhibit 6.

9 **Q. What is the purpose of your rebuttal testimony?**

10 A. The purpose of my rebuttal testimony is to respond to the environmental components of
11 the testimony of Derric Iles, Tom Kirschenmann, Ryan Ledin, Kimberly McIntosh,
12 David Nickel, Paige Olson, Andrea Thorton, DeAnn Thyse, Brian Walsh, and Cameron
13 Young.

14 **Q. Several of the above listed parties referenced the Federal Energy Regulatory
15 Commission (FERC) filing requirements in their testimony. Is the Dakota Access
16 Pipeline project subject these FERC environmental regulations?**

17 A. No.

18 **Q. Did Dakota Access omit reference to general permit SDG070000 for hydrostatic and
19 trench dewatering as stated by Ryan Ledin (See page 2 of his testimony, starting at
20 line 20)?**

21 A. No. The application submitted in December 2014 identifies permit number SDG070000 as
22 a permit required for construction. Table 5.0-1 within Section 5.0 discusses permit
23 applicability. The permit is again discussed in Section 15.5.

24 **Q. Will Dakota Access implement the hydrostatic test water withdrawal or discharge**
25 **recommendations made by Ryan Ledin in his prefiled testimony?**

26 A. Yes.

27 **Q. Do you have any comments on Ryan Ledin's statements regarding perceived**
28 **deficiencies in the SWPPP ?**

29 A. Yes, throughout his testimony Mr. Ledin referenced Federal Energy Regulatory
30 Commission (FERC) Procedures; however this project is not regulated by FERC; nor is
31 the pipeline construction subject to NPDES permitting as it has been expressly exempted
32 by the EPA. The submitted SWPPP meets the applicable federal requirements designed
33 to protect the environment and specifically waters of the U.S.

34 Mr. Ledin's testimony repeatedly expressed concern regarding consistency in applying
35 Best Management Practices (BMPs). However, consistency is not the measure of a
36 successful SWPPP. Rather, BMPs must be employed to meet site specific challenges in
37 the field. BMPs will be employed as necessary to comply with the Clean Water Act at
38 each specific location.

39 Dakota Access intends to employ experienced and qualified Environmental Inspectors
40 familiar with appropriate implementation of BMPs to ensure compliance. It should be
41 further noted that the typical drawings appended to the SWPPP did provide maximum
42 spacing recommendations for slope breakers and trench breakers.

43 **Q. Do you have any comments regarding Mr. Ledin's recommendations relative to**
44 **vegetation management and control of noxious weed including wash stations?**

45 A. Yes, as directed by the Department of Agriculture, Dakota Access is managing noxious
46 weeds in consultation with individual landowners on a case-by-case basis. Dakota

47 Access requires the contractor to ensure that equipment mobilized to the project is
48 clean/free of dirt and debris that may host noxious weeds. Further, plots of noxious
49 weeds warranting the implementation of wash stations were not observed during surveys
50 or reported to us by landowners. As a result, the use of wash stations is not warranted.

51 **Q. Do you have a response to Mr. Ledin’s recommendation that a “master waterbody
52 and wetland” crossing table be included in the SWPPP with milepost or stationing
53 to indicate the features’ exact location? (See page 4 of his testimony starting at line
54 14)**

55 A. Yes, all wetlands and waterbodies are incorporated onto the alignment sheets issued for
56 construction, which identifies the features by name and station and it is evident which
57 features will be crossed via HDD. The crossing method for all other features will be
58 determined by the contractor, with advice as necessary from the Chief Inspector and the
59 Environmental Inspector, to ensure compliance with applicable regulations. The site by
60 site decision for which crossing method to employ is based on conditions present at the
61 time of crossing. Any given wetland or waterbody could be crossed by any of the
62 presented methods. As a result, once again, a site by site analysis at the time of crossing
63 is necessary to assure the best method given current circumstances.

64 **Q. Are you aware of the concern Tom Kirschenmann raises in his testimony regarding
65 the pipeline’s close proximity to Game Production Areas (See page 2 of his
66 testimony starting at line 1)?**

67 A. Yes, Dakota Access understands that the proposed route is in close proximity to these
68 sensitive areas. However, the route does not currently pass through these areas and
69 Dakota Access has no plans to change the route such that it will pass through these areas.

70 Based on the current route, Dakota Access does not anticipate adverse impacts on these
71 sensitive areas.

72 **Q. Are you aware of the concern Tom Kirschenmann raises in his testimony regarding**
73 **Native Prairie areas (See page 2 of his testimony starting at line 10)?**

74 A. Yes, again we appreciate his concern. As noted in Section 16.1 of the December 2014
75 submittal, a very small amount of native prairie is crossed by the Project, and Dakota
76 Access is consulting with the NRCS regarding appropriate seed mixtures for restoration.

77 **Q. Are you aware of the concern Tom Kirschenmann raises in his testimony regarding**
78 **waterfowl production areas and private lands under conservation easements (See**
79 **page 2 of his testimony starting at line 10)?**

80 A. Yes. The route does not cross any waterfowl production areas or federal wildlife
81 management areas. However, Wetland and Grassland easements held by the USFWS on
82 private lands are being crossed by the Project. As a result, an Environmental Assessment
83 has been submitted to the USFWS-Refuge Division for review as part of the Special Use
84 Permit process to cross these easements.

85 **Q. Can you comment on the potential impact the project may have on federally**
86 **protected species in South Dakota?**

87 A. Dakota Access has been working with the USFWS since June of 2014. Impact
88 assessments on all federally protected species is being coordinated in accordance with the
89 Endangered Species Act.

90 **Q. Please comment specifically on the impact to the Topica Shiner.**

91 A. The SD Ecological Field Office identified nine waterbodies crossed by the project where
92 the Topeka shiner was potentially present. As a result, Dakota Access proposes to to

93 HDD four of these of these water crossings. As a result, impacts will be avoided.
94 Biological surveys determined that the pipeline crossing location at two other
95 waterbodies lack suitable habitat for the species. As such, the Project has the potential to
96 impact the Topkea shiner at three remaining streams that will be conventionally crossed.
97 Based on communication with the USFWS and USACE, Dakota Access intends to utilize
98 the existing Programmatic Biological Opinion for the Issuance of Selected Nationwide
99 Permits Impacting the Topeka Shiner in South Dakota, dated October 2014, to address
100 impacts to the species.

101 **Q. Please comment specifically on the impact to the Dakota Skipper.**

102 A. The Dakota Skipper is a federally protected species and is listed in Campbell and
103 Edmunds Counties. However, biological surveys concluded that no suitable habitat
104 within those counties is crossed by the project, thus no impacts are anticipated.

105 **Q. Did you read Ms. Andrea Thornton’s prefiled testimony and do you have any**
106 **comments to offer?**

107 A. Yes. Ms. Thornton’s testimony references the Federal Energy Regulatory Commission
108 filing requirements, Plan, and the Interstate Natural Gas Association of America. None
109 of the listed references are applicable to this Project.

110 **Q. In addition, Ms. Thornton recommends the PUC “require a more quantifiable**
111 **measure to determine when revegetation is successful...” She recommends 70%**
112 **revegetation as a quantifiable measure. Does Dakota Access agree to do so?**

113 A. Yes. In section 5.0 of the SWPPP submitted in December 2014 we propose the 70%
114 revegetation measure as it is consistent with EPA recommendations

115 **Q. On page 7 of her testimony, Ms. Thornton addresses revegetation potential. How did**

116 **Dakota Access determine the revegetation potential?**

117 A. The SSURGO database was utilized and supplemented with the Official Soil Series
118 Descriptions within the County Soil Surveys of the affected counties. The attribute data
119 within the geospatially references database provides the extent of the component soils
120 and properties for each map unit. The soil attribute data was used to determine the
121 revegetation potential for each soil map unit. For example, soils with low revegetation
122 potential typically have high compaction and/or erosion potentials, have slopes greater
123 than 8 percent, are generally not classified as prime farmland, and/or are usually hydric in
124 nature.

125 **Q. Did Dakota Access omit identification of areas with saline, sodic, and saline-sodic**
126 **soils crossed by the project as stated in Ms. Thornton's testimony?**

127 A. No, the December 2014 submittal contained this information in Section 14.5 and Exhibit
128 C. The potential for negative impacts to revegetation from these factors was discussed,
129 as well as the fact that Dakota Access has retained an agricultural consultant to develop
130 specific measures for work in these areas.

131 **Q. Do you have a response to Ms. Thornton's statements that Dakota Access lacks**
132 **measures to address specific seed mixes as needed or areas with revegetation**
133 **concerns (see page 8 of her testimony)?**

134 A. As stated in Section 16.1, Dakota Access will consult with the NRCS for recommended
135 seed mixes for restoration of grasslands and pasture/rangeland. Additionally, our
136 agricultural consultant is developing measures to be included in the construction line list
137 for site specific measures needed during construction and/or revegetation. Such
138 recommendations will be incorporated into the construction line list or under separate

139 cover.

140 **Q. Did Dakota Access route the project to avoid Zone A Wellhead or Source Water**
141 **Protection Areas as recommended by Brian Walsh?**

142 A. Yes.

143 **Q. Did Dakota Access contact the counties with Zone B areas in accords with Mr.**
144 **Walsh’s testimony?**

145 A. Yes. All counties with identified Zone B areas were contacted and Dakota Access
146 confirmed that no respective permitting or coordination is needed.

147 **Q. Do you agree with Cameron Young’s testimony that the northern long-eared bat is a**
148 **federally protected species in South Dakota (See page 3 of his testimony)?**

149 A. No. On April 2, 2015, the USFWS published the final listing in the Federal Register with
150 an effective date of May 4, 2015 listing the northern long-eared bat as threatened and
151 exercised the option of issuing an interim 4(d) rule. The 4(d) rule allowed for more
152 flexible implementation of the Endangered Species Act and “to tailor prohibitions to
153 those that make the most sense for protecting and managing at-risk species.” In areas
154 outside of the 150-mile White Nose Syndrome (WNS) buffer zone, incidental take from
155 lawful activities is not prohibited. The state of South Dakota currently falls outside of the
156 WNS 150-mile buffer zone; thus impacts to the species in South Dakota are exempted.

157 **Q. Do you agree with Cameron Young’s testimony that the Sprague’s pipit is a**
158 **federally listed species in Campbell and McPherson Counties (See page 3 of his**
159 **testimony)?**

160 A. No, this species is a candidate for listing and has no statutory protection under the
161 Endangered Species Act.

162 **Q. Do you agree with Cameron Young’s testimony regarding impacts and mitigation**
163 **for the whooping crane (See page 3 of his testimony)?**

164 A. No. During migration, during which the project may be constructed, the species may
165 inhabit various areas including croplands and palustrine wetlands. While the Project area
166 within South Dakota may provide suitable stopover habitat for migrating whooping
167 cranes, this species is highly mobile and would likely avoid the areas affected during
168 construction. Additionally, there is ample suitable stopover habitat surrounding the
169 Project area and throughout the region that would provide habitat for the whooping crane
170 outside the construction footprint that may be more desirable to individuals than the
171 temporarily affected area within the project footprint. Further, impacts to potential stop
172 over habitat does not warrant mitigation under the ESA.

173 **Q. Do you agree with Cameron Young’s testimony regarding the Pallid Sturgeon,**
174 **Dakota Skipper, or Western prairie fringed orchid in South Dakota (see page 4 of**
175 **his testimony)?**

176 A. No. The project is being designed, constructed and operated to meet or exceed US DOT
177 regulations and will therefore be protective of aquatic resources, including the pallid
178 sturgeon. All sturgeon habitat will be crossed via HDD and there are block valves
179 located on both sides of waterbodies known to support the pallid sturgeon. Block valves
180 are remotely operated and constantly monitored (24/7).

181 No suitable habitat for the Dakota skipper is crossed in Edmunds or McPherson Counties;
182 therefore a no effect determination is appropriate. Additionally, the western prairie
183 fringed orchid was not observed during surveys, thus a no effect determination is
184 appropriate.

185 **Q. Is Dakota Access committed to compliance with all applicable federal and state**
186 **regulations respective to protection of species and the environment and will Dakota**
187 **Access contractually require their contractor to comply as well?**

188 A. Yes.

189 **Q. Are there any archeological or historically sensitive areas crossed by DAPL, if so**
190 **can Dakota Access mitigate the risks associated with those sensitive crossings?**

191 A. During early coordination with the SD SHPO Dakota Access committed to surveying all
192 high and moderate probability areas, which constitutes 80% of the Project area in South
193 Dakota. To date, Dakota Access has surveyed 89% of the route, which is inclusive of
194 the high and moderate probability areas, and has exceeded survey commitments. The
195 results of the 89% surveyed was documented in the 2015 Level III report and addendum
196 reports dated June 2 and August 7, respectively.

197 A total of 11 archaeological sites within the 400 foot survey corridor were recommended
198 as eligible for listing in the National Register of Historic Places (NRHP), or were
199 determined to have an unevaluated NRHP status and recommended to be avoided. The
200 Project has been successfully tweaked the route to avoid impacts to all 11 sites. Dakota
201 Access is confident that impacts to sensitive cultural resources will be avoided through
202 rerouting, modifications to Project workspace, or trenchless installation (i.e, bore, HDD).
203 It should be noted that Dakota Access is not involved in the sighting or permitting of the
204 contractor or delivery yards, those are the responsibility of the contractor and
205 manufacturer/vender, respectively.

206 **Q. Has the extent of federal involvement on the project been established?**

207 A. Yes. The extent of federal involvement is limited to the federally jurisdictional areas

208 along the route. For Waters of the U.S. this is up to 257 feet on either side of the water
209 feature. For USFWS easements, it is limited to the jurisdictional areas along the
210 respective tracts containing easements. There is no other federal jurisdiction along the
211 Project in South Dakota. A map of the federal jurisdictional areas was created and
212 provided to Ms. Paige Olson on 08/07/15 for clarification of areas of federal involvement
213 questioned in her testimony.

214 **Q. Will Dakota Access make the changes to the Unanticipated Discovery Plan provided**
215 **in Ms. Paige Olson's and DeAnn Thyse's testimonies?**

216 A. Yes, these revisions have been made and a revised plan was submitted to Paige Olson on
217 August 8, 2015.

218 **Q. Can Dakota Access clarify the three items from the June Level III report that were**
219 **discussed in Ms. Paige Olson's testimony?**

220 A. Yes. Clarifications were provided to Mr. Olson on August 8, 2015.

221 **Q. Does this conclude your testimony?**

222 A. Yes.

223

224 Dated this ____ day of August 2015

225

226 _____

227 Monica Howard