

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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

DOCKET NO. HP14-002

**Direct Testimony of Tom Kirschenmann
On Behalf of the Staff of the South Dakota Public Utilities Commission
July 6, 2015**

1 **Q: State your name.**

2
3 A: Tom Kirschenmann

4
5 **Q: State your employer.**

6
7 A: State of South Dakota, Department of Game, Fish, and Parks

8
9 **Q: State the program for which you work.**

10
11 A: Division of Wildlife, Terrestrial Resources Chief

12
13 **Q: State the program roles and your specific job with the department.**

14
15 A: The role of the Terrestrial Resources section is to study, evaluate, and assist
16 in the management of all wildlife and associated habitats. Management includes
17 game and non-game wildlife populations, habitat management on public lands
18 and technical assistance and habitat development on private lands, population
19 and habitat inventory, and environmental review of local and landscape projects.
20 As Chief of the Terrestrial Resources Section, I oversee all wildlife management
21 and research, as well as habitat management consisting of the department's
22 public lands and private lands programs.

23
24 **Q: Explain the range of duties you perform.**

25
26 A: Duties include leading the Terrestrial Resources section that includes three
27 program administrators (Wildlife, Habitat, Wildlife Damage), 21 wildlife biologists,
28 and two secretaries; oversee all wildlife research, management, and the
29 establishment of hunting seasons for game species; oversee all private lands
30 habitat programs; coordinate environmental review evaluations and responses
31 related to terrestrial issues; serve as the Department's liaison for several state
32 and federal agencies; and represent the Department on state and national
33 committees.

34
35 **Q: On whose behalf was this testimony prepared?**

36
37 A: This testimony was prepared on behalf of the Staff of the South Dakota Public
38 Utilities Commission.

39
40 **Q: Have you reviewed the Application and its amendments?**

41
42 A: Yes, the relevant sections.

43
44 **Q Are there any sensitive wildlife areas crossed by the pipeline?**

45
46 A: Game Production Areas

1 Four Game Production Areas are in close proximity to the pipeline route and
2 could be considered as sensitive areas especially if the final route is immediately
3 adjacent to or potentially need to cross these properties. All Game Production
4 Areas contain extensive wetland resources, native and reestablished upland
5 habitat for resident and migratory wildlife, and high public recreation use and
6 value. Three of the four are Federal Aid acquired properties, so would require
7 additional actions (NEPA driven) in order to grant any necessary easements that
8 affect title.

9 10 Native Prairie

11 Native prairie remnants exist throughout eastern South Dakota, in particular in
12 the northcentral portion of the state within the Missouri Coteau ecoregion. Native
13 prairie habitats provide unique habitat due to the diversity of plant species for a
14 multitude of wildlife species. The fragmentation of native prairie resulting from
15 infrastructure is a concern and the potential affect it would have on a number of
16 grassland dependent bird species. It would be recommended to consult range
17 and prairie experts on appropriate seeding mixtures to complete restoration
18 efforts if native prairie tracts are included in the pipeline route and necessary
19 methods to minimize noxious weed infestation within the disturbed area.

20 21 Waterfowl Production Areas & Private Lands under Conservation Easements

22 Waterfowl Production Areas are federal wildlife management areas found
23 throughout eastern South Dakota with some close to or possibly crossed pending
24 final route. These areas consist of wetland and grassland habitats providing
25 needed habitat for both resident and migratory wildlife to meet necessary
26 components of their annual life cycle.

27
28 There are also private lands enrolled in wetland and grassland conservation
29 easements through the Fish and Wildlife Service. These properties, like
30 Waterfowl Production Areas, provide quality wildlife habitat especially for
31 grassland dependent species.

32
33 Dakota Access would need to contact the US Fish and Wildlife Service for
34 appropriate mitigation and approval steps.

35 36 Riparian & Stream Habitats

37 Streams and rivers of all sizes could be considered sensitive areas. Small
38 streams are especially sensitive and stream fish species are sensitive to habitat
39 impairment. Underground directional boring is one method of minimizing impacts
40 to riparian/stream habitats.

41
42 A few known tributaries and rivers that could potentially be impacted, in particular
43 when considering Topeka shiner, is Shue Creek, Pearl and Middle Pearl Creeks,
44 Redstone Creek, Rock Creek, West Fork of the Vermillion, East Fork of the
45 Vermillion, and the James River.

Q: Will any State or Federal threatened or endangered species be impacted by the route?

A: Topeka Shiner

The pipeline would go directly through the central part of the Topeka shiners known and largest remaining population across its range. Listed below are some general strategies and guidelines to minimize impacts.

1. Avoid construction activities within waterways from May 15 - July 15, which is the optimal spawning period for Topeka Shiner.
2. Methods that block a stream should not be constructed for extended periods of time. If temporary blocks are necessary, flexible water barriers should be used.
3. Disturbance to channel, streambank, and riparian areas should be kept to an absolute minimum and restored to pre-project evaluation. We suggest that strict criteria be used to prevent the use of option borrow areas that result in impacts to riparian and wetland areas.
4. Removal of vegetation and soil should be confined to those areas absolutely necessary to construction and should be accomplished in a manner to reduce soil erosion.
5. Riparian vegetation losses should be quantified and replaced on site. Grading operations and reseedling of indigenous species should begin immediately following construction to reduce sediment and erosion potential.
6. A post construction sediment and erosion control plan should also be implemented in order to provide interim control prior to re-establishment of permanent vegetative cover on the disturbed site.

Other Fish Species

Additional state listed species that could be impacted by construction include Banded killfish, Northern redbelly dace, Blacknose shiner, Sicklefin chub, and Sturgeon chub. Mitigation measures to be considered are those listed under the Topeka shiner section.

Bald Eagle

The Bald eagle is currently listed as a state threatened species, but has recently been proposed to be removed from the state list by the Game, Fish and Parks Commission. There is potential for bald eagles to establish nests close to the pipeline route. Provisions of the Bald and Golden Eagle Protection Act should be followed to avoid disturbance of nesting or wintering birds. General guidance to minimize impacts includes monitoring for active nests prior to and during

1 construction and the utilization of a 1 mile buffer consideration during the nesting
2 season (Feb. 1 – Aug. 15).

3
4 **Butterflies**

5 The primary range of the Dakota Skipper and Poweshiek Skipperling occurs
6 northeast of the pipeline route, however there are records of other rare butterflies
7 dependent on native prairie closer to the proposed route. If the pipeline crosses
8 native prairies it is recommended to minimize soil disturbance associated with
9 construction activities and use appropriate native seed if any restoration or
10 replanting is required.

11
12 **Whooping Cranes**

13 Whooping Cranes have been documented during spring and fall migration
14 throughout most of the counties in the project area and may use some of the
15 sensitive areas as migratory stop overs. Construction workers should be made
16 familiar with the appearance of whooping cranes and consideration of temporarily
17 suspending work if cranes choose to roost near pipeline work.

18
19 **Sprague's Pipit**

20 The Sprague's pipit is currently a federal candidate species. The recently
21 completed South Dakota Breeding Bird Atlas included no confirmed records of
22 this species. However, the northern portion of the pipeline crosses counties that
23 likely support nesting for this species. Destruction of native habitats should be
24 mitigated for by replacement with grassland plantings using native species.

25
26 **Q: Does this conclude your testimony?**

27
28 **A: Yes.**