

3-1) Refer to Page 37 of the Application. The Applicant states it “will consult with the appropriate regulatory agencies to establish the appropriate protective measures to avoid or mitigate wildlife seasonal, timing or mitigation concerns.” Have the protective measures been determined? If yes, please provide. If no, please provide a timeline for determination.

RESPONSE: Applicant received a consultation letter from the South Dakota Department of Game Fish & Parks on January 25, 2022, and October 3, 2022. A copy of the letter is attached. Additional consultation will be performed to address comments related to construction methodologies or time of year restrictions. Applicant expects this to be completed by the end of Q2.

- 3-2) Refer to Page 38 of the Application. The Applicant states that “consultation with USFWS regarding migratory birds and potential impacts to BCCs is ongoing.” Has the Applicant concluded its consultation with USFWS? If yes, please summarize the consultation and potential impacts.

RESPONSE: USFWS informed Applicant in the last half of 2022 that its guidance on this issue was imminent and would be provided by the end of March 2023. Applicant has not yet received the guidance, but will consult as appropriate after receipt. Applicant will supplement this answer when it has received guidance from USFWS.

- 3-3) Refer to Page 38 of the Application. Regarding walk-in area access impacts, the Applicant states that “these impacts are considered small because of the area of impact in comparison to the acreage open for hunting, and the small numbers of hunters that likely use the area.” Please provide support for the statement that small numbers of hunters likely use the area.

RESPONSE: As of the date of this response and according to the SDGFP Public Hunting Atlas there is currently one walk-in area crossed by the Project on the POET Chancellor Lateral.

- 3-4) Refer to the Applicant's response to Staff data request 1-12 and 1-17. Please provide the Geohazard Analysis when completed and the map required by ARSD 22:10:22:14(3). Also, describe the mitigation measures that will be implemented.

RESPONSE: The Phase I - Geological and Geohazard Desktop Study Report was developed in support of the Project preliminary planning efforts. The report provides an overview of the expected geotechnical conditions along and in proximity to the route using publicly available data and in-house database information from our consultant, to identify potential geohazard risks and hazards which could affect the proposed pipeline segments within the state of South Dakota. This Phase I Desktop Report is provided as an attachment.

The Phase II study will include field verification and additional due diligence activities which may include site specific assessments documented by geotechnical observations, field notes, photographs, limited measurements, and GPS location of features at select areas of interest identified in the Phase I report. Information captured in this Phase of the Project will be utilized to further assess the potential risk, outline areas for potential further study, and develop potential risk mitigation measures.

3-5) Refer to the Applicant's response to Staff data request 1-32. Please provide an update on Moody County's pipeline moratorium resolution.

RESPONSE: The Moody County Planning and Zoning Board voted on March 21, 2023, to extend the one-year pipeline moratorium that it had earlier passed. It was extended for one year. The Applicant understands that the Board may form a working group and hold a series of public-input meetings to address setbacks, starting in May 2023, with a stated goal of adopting an ordinance by July 2023.

- 3-6) Refer to Page 53 of the Application. The Applicant states “the remaining 93.4 miles of the Project could not be surveyed due to lack of access or were located outside of high and medium priority areas. Additional cultural resource surveys for the unsurveyed jurisdictional areas and areas of high and medium probability are planned after harvest in 2022 and will follow the same strategy outlined in this summary.”
- a) How many miles of the Project is the Applicant unable to survey due to lack of access? Please explain the main reason(s) for the lack of access.
 - b) Was the Applicant able to survey the areas of high and medium probability after harvest? If not, when will the Applicant finish the surveying?

RESPONSE: See below for responses.

- a) Surveys will resume in April 2023 and approximately 11 miles are needed for cultural surveys in federal jurisdictional areas. Of that mileage approximately 8.6 miles are not accessible. Lack of access is due to landowners not granting survey permission. Although Applicant has provided notice to landowners that we have survey rights under SDCL § 21-35-31, Applicant is choosing not to survey those landowners that are emphatically resistant to grant survey permission and/or those landowners represented by counsel that have stated that no surveys take place on their property without proceeding through the injunction process.
- b) Refer to response in 3-6 (a).

- 3-7) Refer to Page 57 of the Application. The Applicant states it has executed a letter of intent with four trade Unions to ensure highly skilled and qualified labor resources are available to support the construction of the Project. Please provide the executed letters of intent.

RESPONSE: Copies of the executed letters of intent are attached.

- 3-8) Refer to Page 59 of the Application. The Applicant states “all employees and contractors must abide by all federal, state and local laws. If any infractions occur, the employees or contractors will be subject to termination.” Please clarify if an infraction may lead to termination or will be subject to termination. For example, if an employee receives a speeding ticket, will they be subject to termination?

RESPONSE: Any infraction of Federal, State, and Local laws may lead to and be subject to termination. The Applicant will review on a case by case basis if the situation occurs.

- 3-9) Refer to Page 59 of the Application. The Applicant states “generally, trash will be removed from the construction ROW on a daily basis.” In what situations will trash not be removed from the construction ROW on a daily basis?

RESPONSE: General refuse will be removed daily. Section 2.4 of Applicant's Environmental Construction Guidance, which addresses waste management, provides that all waste materials (defined as general household refuse, oil or other waste liquids generated as a result of equipment maintenance) will be removed daily. Larger construction-related refuse, like pipe skids, for example, may be removed later than the same day the pipe is placed in the ground.

- 3-10) Refer to Page 59 of the Application. The Applicant states it will “maintain emergency response equipment and personnel at strategic points along the route and train their personnel to respond to any pipeline emergencies.”
- a) What type of emergency response equipment will be maintained at strategic points along the route? How many strategic points has the Applicant identified along the route?
 - b) The Applicant stated that it will hire 2 to 4 permanent employees in South Dakota. Please explain how 2 to 4 permanent employees can cover all the strategic points along the 111.9 mile route.

RESPONSE: See below for responses.

- a) Applicant's Emergency Response Plan will include the specific information requested. The plan is under development and a draft should be completed in Q4 2023. Emergency response equipment and locations of personnel and equipment are under review. There is a series of baseline equipment that will be maintained across the footprint, which includes but is not limited to stationary/personal monitors and SCBA's.
- b) 2-4 full time staff are assumed with supplemental contract labor. Sections 7.1 and 7.2 of the Application and as reiterated in Vidal Rosa's testimony #21, state that approximately 10 employees/ permanent jobs are anticipated in South Dakota. Full time staff will include measurement and pipeline techs within the State and subject matter experts that float across the system.

- 3-11) Refer to Page 60 of the Application. The Applicant states “an emergency response plan for the HGPS is being prepared and will be in place prior to commencing operation.” Can the Applicant prepare the emergency response plan and submit it for Commission consideration prior to the evidentiary hearing? If no, please explain.

RESPONSE: Objection. The emergency response plan is within the jurisdiction of PHMSA and is preempted by federal law. Without waiving the objection, the Emergency Response Plan is under development and a draft will be completed after collaboration with local EMS departments. The coordination activities that have been and will be undertaken with first responders, and their timing, are described in the answer to DR 3-12 (a). PHMSA requires that the emergency response plan be submitted before operation, which is not anticipated until Q4 2024. As indicated in the PHMSA Exceedance Table provided in Exhibit D of the Application, Applicant expects to have the plan completed and vetted 90-180 days before in-service, which would be Q3 2024.

- 3-12) Refer to Page 60 of the Application. The Applicant states in the development of the emergency response plan, the Applicant will be coordinating with “existing emergency response department along, and in proximity to, the route to ensure they and any mutual aid parties are informed of the operation risks and equipped to respond in the unlikely event of a release.”
- a) Please describe in detail what that coordination will entail.
 - b) Has the Applicant begun coordinating with existing county emergency response departments? If yes, please identify all departments the Applicant has coordinated with. If no, when does the Applicant intend to begin coordinating with those departments?
 - c) Does the Applicant intend to purchase the necessary emergency response equipment for each county? If yes, please provide a list of equipment that the Applicant intends to purchase for each county.

RESPONSE: See below for response.

- a) The Applicant's Emergency Response Engagement Plan includes the following:
 - Conduct stakeholder and emergency/first responder proctored CO2 training Q1 2023
 - Draft preliminary Emergency Response Plan between NHG and external stakeholders in development Q3 2023
 - Identify and obtain necessary resources to execute the preliminary plan after local/regional plans are compiled Q1 to Q2 2024.
 - The Applicant will set up a process for first responders to submit equipment requests.
 - NAV911 outcall system training
 - Operations personnel and/or 3rd party response team to supplement regional first responders
 - Perform drills to measure the effectiveness of the plan and adjust accordingly prior to placing in service and assets are established (49 CFR 195.402.15)
 - Conduct annual drills upon in-service
- b) Yes, the Applicant has been engaging local county officials and emergency response personnel since Summer of 2022. Most recently, during Q1 2023, NHG conducted emergency/first responder CO2 training. The following is a list of emergency response departments NHG has coordinated with and attended the CO2 training:
 - Brookings County - Director of County Development and Emergency Management
 - City of White and Brookings County Ambulance
 - Brookings County Ambulance

- Lincoln County, Director of EMS
 - Lincoln County Sheriff's Office
 - Lincoln County 911 dispatch center
 - Lincoln County Emergency Management Office
 - City of Hudson Fire Department
 - Worthing Fire Department
 - Tea Fire Department
 - Lennox Area Ambulance
 - Lennox Fire Department
 - Minnehaha County Director of EMS
 - Minnehaha County Sheriff's Office
 - Valley Springs Fire Department
 - Moody County Director of Emergency Management
 - Moody County Sheriff's Office
 - Colman Fire and Rescue Department
 - South Dakota Emergency Management
 - Flandreau Santee Sioux Tribe
- c) Developing the list of necessary emergency equipment is a collaborative process between Applicant and the emergency responders. The first step was providing initial CO2 training in January-February 2023 so that all departments had the same awareness of what could happen in the event of a CO2 release. Applicant gathered information to start developing drafts of the emergency response plans. In Summer 2023 NHG will deploy an online tool where EMS departments can communicate equipment they have or feel they need to respond to an emergency of our system. Applicant will assess the responses, continue collaboration, and procure necessary equipment and/or reimburse departments to procure as warranted such that all necessary equipment needs are fulfilled prior to operating the system.

3-13) Refer to Page 60 of the Application. The Applicant states “throughout operation of the system, the Applicant will conduct and host emergency response drills with its employees and local emergency responders, which will include planned drills, desktop events, and simulated field events.” Please provide the frequency in which each type drills will be conducted.

RESPONSE: PHMSA requires emergency response drills to be performed once a calendar year and no more than 15 months apart. The Applicant will perform each type of drill at least once per year.

3-14) Refer to Page 61 of the Application. The Applicant states “in order to address the potential for delays associated with weather and site conditions, the Applicant may need to conduct construction activities between the hours of 7:00 PM and 7:00 AM on an as needed basis.” Does the Applicant have any policies regarding the distance from an occupied residence when it proposes to conduct either late night or early morning construction activities?

RESPONSE: The Applicant assumes, conservatively, that residences within 1/4 of a mile may be affected from HDD construction activities that may take place overnight due to noise potential to approach 55 DbA Ldn. Applicant will coordinate with the affected persons offering compensation and hotel accommodations.

3-15) Refer to Page 61 of the Application. The Applicant states "HDD activities are required to run longer hours or even continuously to maintain the integrity of the drilled pathway for safe and proper installation of the respective pipe section." Please explain why the Applicant can't commence HDD drilling at a specific point of time during the day to ensure that the installation can be completed by approximately 7:00 PM.

RESPONSE: Installation of a pipeline segment via HDD can take weeks to months to complete depending on factors including the geology, diameter of the pipeline, and the length of the HDD. The vast majority of the HDD installation process will be performed during typical working hours; extended hours and/or overnight activity is limited to critical points when pausing could compromise the integrity of the HDD hole or successful completion of the pipeline pull back (pulling the pipeline segment through the hole).

Dated this 14th day of April, 2023.

WOODS, FULLER, SHULTZ & SMITH P.C.

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OBJECTIONS

The objections stated to Staff's Third Set of Data Requests were made by James E. Moore, one of the attorneys for Navigator Heartland Greenway, for the reasons and upon the grounds stated therein.

/s/James E. Moore
*One of the Attorneys for Navigator Heartland
Greenway*

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 2023, a true and correct copy of the foregoing Applicant's Responses to Staff's Third Set of Data Requests was served via e-mail transmission to the following:

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