

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

**IN THE MATTER OF THE
APPLICATION BY CROCKER WIND
FARM, LLC FOR A PERMIT OF A
WIND ENERGY FACILITY AND A 345
KV TRANSMISSION LINE IN CLARK
COUNTY, SOUTH DAKOTA, FOR
CROCKER WIND FARM**

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**INTERVENORS' RESPONSES TO
CROCKER WIND FARM, LLC'S
SECOND SET OF DATA REQUESTS
TO INTERVENORS**

EL17-055

Intervenors, through counsel, provide the following Responses to Crocker Wind Farm, LLC's Second Set of Data Requests to Intervenors.

- 2-1) Update Intervenors' responses to Staff's First Set of Data Requests to reflect the Withdrawal of Party Status for Specified Intervenors, filed on March 21, 2018. Specifically, to the extent that any, all, or portions of such responses are no longer relevant for the remaining Intervenors, provide revised responses.

Intervenors' Responses to Staff's First Set of Data Requests are updated as follows:

1-2) Intervenors are still evaluating the Application and Crocker Wind Farm, LLC's ability to satisfy the provisions of SDCL 49-41B-22. At the present time, Intervenors intend to illicit testimony on all four points of SDCL 49-41B-22 from those witnesses who have been identified through submission of prefiled testimony.

1-4) See the prefiled testimony submitted by Intervenors.

- 2-2) Identify each document (including electronic records) relied upon by Mr. Stevens for his testimony and, to the extent such document has not already been provided or is not publicly available in this docket, provide such document.

The principal document relied upon for Mr. Stevens's testimony is Crocker's Application for PUC permit including Figures, Appendices, and Exhibits. Other documents have already been provided to Crocker. Additional documents may be provided in accordance with the procedural schedule in place once Intervenors have completed their evaluation of the Application.

- 2-3) Identify each document (including electronic records) relied upon by Mr. Paulson for his testimony and, to the extent such document has not already been provided or is not publicly available in this docket, provide such document.

Mr. Paulson referred and took quotes from the following documents:



----**Silka Kempema's March 14, 2016 letter regarding the Crocker Wind Farm**

----**The SDGPF developed Siting Guidelines for Wind Power Projects in South Dakota that Silka referred to in her above noted letter.**

----**The May 18, 2016 and November 29, 2016 letters from Scott Larson, Field Supervisor, South Dakota Field Office, United States Department of Interior Fish and Wildlife Service.**

----**The US Fish and Wildlife Service Land-Based Wind Energy Guidelines that Scott Larson referred to in his above noted letters.**

Crocker should have all of the above documents.

Mr. Paulson also referred to the Crocker Wind Farm: Bird and Bat Conservation Strategy prepared for Crocker by Western EcoSystems Technology, Inc.

Mr. Paulson also referred to the Grassland Easement contracts with the United States Department of Interior. A copy is attached.

2-4) With respect to lines 29-47 of Mr. Stevens' testimony, identify:

a. Mr. Stevens' qualifications related to aviation, including aviation safety;

Mr. Stevens is a licensed pilot with 45 years flight experience. Stevens is a past member of the Civil Air Patrol and the Experimental Aircraft Association and has attended numerous safety seminars. Mr. Stevens has been an aircraft owner for the past 43 years. During this period of aircraft ownership, Mr. Stevens has participated in each of the aircraft's annual inspections. Under supervision of a licensed airframe and engine mechanic/inspector, Stevens completely rebuilt a Piper PA22 aircraft and has performed major overhauls on Lycoming 0-290 and 0-360 aircraft engines.

b. When Mr. Stevens became licensed as a pilot;

August 21, 1972

c. The individuals who use the "private airport" referenced on line 29 of Mr. Stevens' testimony;

The airport is available to anyone wishing to use it for soft-field landing practice, waiting out inclement weather, in an emergency, or simply spending time visiting someone in the area. The airport is normally unattended. The

Lone Tree airport is located one mile south of Stevens's residence and is not visible from his home.

- d. The purposes for and frequency of use of the private airport referenced on line 29 of Mr. Stevens' testimony for the past five years;

The "purposes" for the airport are several: the runway's purpose is to provide an unobstructed path for take-off and landing; the wind sock's purpose is to indicate wind direction and speed; the fuel tank's purpose is to provide storage and dispensing of flammable, high octane aviation fuel a safe distance from the hangar; the hangar's purpose is to provide shelter and storage for aircraft, maintenance tools, and supplies, etc., in a space protected from sun and weather.

The frequency of use for the past 5 years is consistent. Mr. Stevens uses his airport/aircraft for recreation. His flights, including take-off and landing are not logged as to date, time, and duration, nor are they required to be. Other pilots are free to use the airport at their discretion whenever they choose. The runway is mowed weekly through the growing season, but the airport is closed from late fall through winter and is not attended on a scheduled basis. See c. above re: use.

- e. Whether Mr. Stevens has obtained airspace rights over any property other than his own, whether through avigational easements or otherwise;

Mr. Stevens has not obtained any special airspace rights over other privately-owned land.

- f. And provide (to the extent not already provided) any communications, whether written or oral, between Mr. Stevens, the Federal Aviation Administration, and/or the South Dakota Department of Aeronautics.

This information was previously provided.

- 2-5) With respect to lines 49-56 of Mr. Stevens' testimony:

- a. Describe Mr. Stevens' qualifications and experience conducting aerial spraying; and
- b. Explain whether Mr. Stevens (himself or through another individual) conducts aerial spraying on his property.

Application of industrial strength herbicides or pesticides requires extensive training and licensing. Mr. Stevens does not have the equipment or desire to perform aerial spraying. He does have knowledge regarding aerial spraying

gained through the hiring of aerial spraying for weed control on his property as necessary. Spraying by land vehicle is impossible due to the rugged terrain, holes, hills, rocks, etc. Prior to contracting aerial spraying, a discussion is held with the applicator regarding chemicals, hazards, and susceptible neighboring vegetation.

2-6) With respect to lines 60-85 of Mr. Stevens' testimony, identify:

- a. Mr. Stevens' qualifications related to environmental survey/study and environmental review;

See d. and e. below

- b. Any documents (including electronic records) related to the assertions made in Mr. Stevens' testimony;

The principal document relied upon for Mr. Stevens's testimony is Crocker's Application for PUC permit including Figures, Appendices, and Exhibits.

- c. The date of the conversation "with the local GFP Conservation Officer last fall," and the name of the GFP Conservation Officer.

Stevens did not record the date. It was on a Sunday as he and his wife were taking back roads home after church looking for eagle nests when they met Kyle Lenzner, the local conservation officer, on the northeast side of Baileys Lake and struck up a conversation.

- d. Mr. Stevens' qualifications related to survey and/or study of sharptail grouse; and
- e. Mr. Stevens' qualifications related to survey and/or study of eagles, including identification of eagle nests.

As a youngster growing up in Clark County, Mr. Stevens developed an interest in identifying local bird species including their nests, their eggs, their calls, their habits, etc. While growing up Stevens spent much of his leisure time outdoors hunting, fishing, and camping; activities he continues to enjoy. Upon retirement in 2005, Stevens returned to rural South Dakota. Having spent many thousands of hours outdoors in the area, he is quite familiar with the wildlife on his farm and in the surrounding area.

Stevens encounters sharptail grouse on his farm frequently when checking on livestock, stalking the stack dam and dugouts during hunting season, checking trail cameras, en route to and from his deer stand, etc. Sharptails are well camouflaged and difficult to see until they are flushed. Occasionally

they are visible from a road when driving, but most often they are located away from traffic, in grassland, and in cropland adjacent to grassland.

For many years, just west of the farm a short distance, Stevens had the opportunity to observe an active eagle nest on a regular basis, in close proximity to the township road. Recently Mr. Stevens has confirmed and reported an active eagle nest approximately two miles from the Project footprint which had not been reported in Crocker's environmental survey/study. He is currently monitoring an additional, unreported eagle nest within the Project's boundary for activity.

2-7) With respect to lines 87-109 of Mr. Stevens' testimony, identify:

- a. The individuals Mr. Stevens asserts are "surrogates" of Crocker;
- b. Documents (including electronic records) supporting the assertions made in lines 99-105 of Mr. Stevens' testimony, and, to the extent such document has not already been provided or is not publicly available in this docket, provide such document;
- c. The "fifteen specific instances" referenced on page 107 of Mr. Stevens' testimony, including, as applicable, the date, individuals involved, a description of such events, and any applicable documents.

Mr. Stevens fears that responding to these questions in a public forum would put certain individuals at risk of further harassment/intimidation.

2-8) With respect to lines 118-22 of Mr. Stevens' testimony:

- a. Describe Mr. Stevens' qualifications and experience concerning archaeological and cultural resources;

Mr. Stevens does not claim to have experience concerning archaeological and cultural resources; he simply claimed to have possession of a significant number of Native American artifacts found on his property and rock rings that his family thought could have been placed at the bases of teepees.

- b. Identify whether the resources described by Mr. Stevens have been evaluated for eligibility to be listed on the National Register of Historic Properties;

The resources have not been evaluated for eligibility.

- c. Identify and describe the basis for Mr. Stevens' statement that "I would expect that the neighboring land within the footprint would also contain such items."

Native American artifacts were found on Stevens's land when previously untilled grassland became cultivated farmland. Much of Stevens's land remains untilled grassland. Untilled grassland directly west and adjacent to Stevens's untilled grassland lies within the Project footprint. The only separation of the two land tracts of untilled grassland is a section line near where the rock rings are located. The number of artifacts found on Stevens's land suggests that the area was not a small, isolated encampment.

- 2-9) With respect to Lines 124-87 of Mr. Stevens' testimony, identify Mr. Stevens's qualifications and experience concerning telecommunications studies, electromagnetic interference, and weather radar.

Although Stevens is a degreed electrical engineer with experience in electronics and digital computer design, his qualifications and experience were not a prerequisite for providing testimony on "telecommunications studies, electromagnetic interference, and weather radar." His testimony was based on reading the Comsearch studies, the EMF Report, and the Agency Correspondence regarding the NOAA weather radar. Clark County's Conditional Use Permit requires a 3rd party study showing interference would be unlikely. Crocker's commissioned studies do not show that interference would be unlikely. The Comsearch studies, for example, are incomplete and concur that they are inconclusive.

- 2-10) With respect to lines 189-205 of Mr. Stevens' testimony:

- a. Identify the documents (including electronic documents) supporting Mr. Stevens' assertions and, where such documents have not already been provided in this docket, provide such documents, and, to the extent such document has not already been provided or is not publicly available in this docket, provide such document;

The documents supporting Mr. Stevens's assertions are the Application for PUC permit, Docket EL17-055, including Figures, Exhibits, and Appendices, particularly letters from USFWS and SDGF&P to Geronimo which are included in Agency Correspondence.

- b. Describe the factual basis for the statement made on lines 203-05 that: "Some of the land within the proposed wind farm footprint is only accessible by low-maintenance and no-maintenance dirt roads. Construction and maintenance of the wind farm would be extremely difficult in these areas."

The factual basis for "no maintenance" is the bright yellow road signage stating, "No Maintenance". One only has to look at the Project map series showing turbine access roads and note the absence of township roadways that are maintained year-round. Township roads that are maintained during the summer months are occasionally blocked by drifting snow in the winter.

The township road west of Stevens’s residence, for example, is essentially “closed” for the duration of a typical winter. One or more proposed turbine access roads connect to this township road.

2-11) With respect to Mr. Paulson’s testimony:

- a. Describe Mr. Paulson’s qualifications and experience related to wildlife (including avian) survey/study; and

55+ years of avidly hunting (mainly for pheasants, ducks and geese, and white-tailed deer) the area around the Round/Reid Lake Complex Waterfowl Refuge—including hunting many fields in the Project area and spending countless hours sitting in fields or pits watching the waterfowl and other wildlife.

Growing up on a farm on the Northwest side of the Round/Reid Lake Complex Waterfowl Refuge.

Currently owning a home on a bluff on the Southwest side of the Round/Reid Lake Waterfowl Refuge that overlooks this Refuge---where it is easy to watch and monitor the waterfowl and other birds that use this Refuge. Please refer to attached pictures which show view from Mr. Paulson’s home.

Helping his son farm land on the north, south, and west sides of the Round/Reid Lake Complex Waterfowl Refuge when Mr. Paulson spends many hours during the spring, summer, and fall—and because of his interest in wildlife, Mr. Paulson is constantly on the lookout for what wildlife is doing in the area.

- b. Describe the basis for Mr. Paulson’s assertions in lines 132-37 of his testimony, and provide any documents related to such assertions.

As Mr. Paulson stated in line 132 and herein, he knows that the thousands of ducks and geese that migrate through this Central Flyway and rest/roost at the Round/Reid Lake Complex Waterfowl Refuge use this area extensively for feeding (twice a day) in the fall. The US Fish and Wildlife Service Land-Based Wind Energy Guidelines states that wind developers need to be very concerned about waterfowl migration stopovers and corridors—and especially note that some species move between sheltering and feeding areas twice a day. The Guideline states that this is a critical factor when considering development. The first recommendation is mitigation/avoidance

of such areas and abandonment of the site if adequate mitigation avoidance cannot be accomplished.

Dated at Sioux Falls, South Dakota this 12th day of April, 2018.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.

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Certificate of Service

The undersigned, one of the attorneys for Intervenors, certifies that a true and correct copy of the foregoing was served on April 12, 2018, via email upon the following persons:

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 /s/ *Reece M. Almond*
Reece M. Almond

Grassland Easement
(Revised April 1992)

UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
GRANT OF EASEMENT FOR WATERFOWL HABITAT PROTECTION

THIS INDENTURE, by and between

hereinafter referred to as Grantors, and the UNITED STATES OF AMERICA, hereinafter referred to as United States, acting by and through the Secretary of the Interior or his authorized representative.

WITNESSETH:

WHEREAS, the Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. 718d(c); the Fish and Wildlife Act of 1956, 16 U.S.C. 742a-742j; the Emergency Wetlands Resources Act of 1986, 16 U.S.C. 3901; and the Land and Water Conservation Fund Act, 16 U.S.C. 460 1-9(a)(1), authorize the Secretary of the Interior to acquire lands and waters or interests therein for the development, advancement, management, conservation, and protection of fish and wildlife resources. The purpose of this easement is to protect the habitat quality of the lands described on Exhibit A and such lands shall be maintained to provide cover, especially nesting cover, and food for a varied array of aquatic, terrestrial, and avian wildlife, particularly waterfowl and threatened and endangered species. The lands described on Exhibit A are hereinafter referred to as a wildlife management area, and

WHEREAS, the lands described below contain habitat suitable for use as wildlife management areas.

NOW, THEREFORE, for and in consideration of the sum of _____, the Grantors hereby grant to the United States, commencing with the acceptance of this indenture by the Secretary of the Interior or his authorized representative, an easement which includes a right of use for the maintenance of the lands described on Exhibit A, as wildlife management areas, in perpetuity, including the right of ingress to and egress on, over, across and through any and all lands of the Grantors, as described below, by authorized representatives of the United States. No rights herein are granted to the general public for access to or entry upon the land subject to this grant of easement for any purpose. The lands described on Exhibit A are located within, and the aforementioned right of ingress and egress extends on, over, across and through any and all lands within the following-described legal subdivision(s) in Clark County, State of South Dakota, to-wit:

T. 118 N., R. 58 W., 5th P.M.

sec. 13, NW $\frac{1}{4}$

12, the S 805.2' of SW $\frac{1}{4}$ except the W 745.8'

SUBJECT, however, to all statutory rights-of-way and other valid existing rights-of-way for highways, roads, railroads, pipelines, canals, laterals, electrical transmission lines, telegraph and telephone lines, cable lines, and all mineral rights.

The conveyance hereunder shall be effective on the date of the execution of this Indenture by the Secretary of the Interior or his authorized representative; provided, however, that such acceptance must be made within 12 calendar months from date of the execution of this Indenture by the Grantors, or any subsequent date as may be mutually agreed upon in writing by the parties hereto prior to the expiration of such date; and provided further, however, that in the event such acceptance is not made by such date, this Indenture shall be null and void.

The Grantors, for themselves, and for their heirs, successors and assigns, lessees, and any other person claiming under them, covenant and agree that they will cooperate in the maintenance and protection of the habitat areas, delineated on the map(s) attached hereto as Exhibit A, as wildlife management areas for the protection of fish and wildlife resources and to maintain the quality of these lands to provide cover for wildlife, especially nesting cover, and food for a varied array of aquatic, terrestrial, and avian wildlife, particularly waterfowl, and threatened and endangered species. To that end and for the purpose of accomplishing the intent of this indenture, the Grantors, for themselves or for their heirs, successors, and assigns, lessees, or any other person or person claiming under them covenant and agree as follows:

1. Grantors will cooperate in maintenance of the wildlife management area by maintaining permanent vegetative cover, consisting of grasses, forbs and low-growing shrubs, on said habitat areas, as follows: There shall be no haying or mowing or seed harvesting for any reason until after July 15 in any calendar year, no alteration of grassland, wildlife habitat or other natural features by digging, plowing, disking or otherwise destroying the vegetative cover, and no agricultural crop production upon the habitat areas delineated on Exhibit A, unless prior approval in writing is granted by the U.S. Fish and Wildlife Service; except that grazing the aforesaid lands is permitted at any time throughout the calendar year without approval in writing.
2. Grantors will pay taxes and assessments, if any, which may be levied against the land.
3. Noxious weed control and emergency control of pests necessary to protect the public good are allowed and will be the responsibility of the Grantors, subject to Federal and State Statutes and Regulations. However, mowing/haying noxious weed is prohibited in accordance with the easement terms stated above.

National Wildlife
Refuge System

- 4. This easement and the covenants and agreements contained herein shall run with the land and shall be binding on all persons and entities who shall come into ownership or possession of the lands subject to this easement. The Grantor successors and assigns shall notify the Regional Director, U.S. Fish and Wildlife Service in writing of any sale or transfer at least 30 days following the sale or transfer of any portion of the lands subject to this easement.

Copies of the above-referenced map(s), Exhibit A, are on file in the Office of the Regional Director, U.S. Fish and Wildlife Service.

It is understood that this Indenture imposes no other obligations or restrictions upon the Grantors and that neither they nor their successors, assigns, lessees, nor any other person or party claiming under them shall, in any way, be restricted from utilizing all of the subject lands in the customary manner for agricultural purposes except as provided herein.

It is further understood that the rights and interests granted to the United States herein shall become part of the National Wildlife Refuge System and shall be administered by the U.S. Fish and Wildlife Service, pursuant to the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd.

SPECIAL PROVISIONS

- 1. This indenture shall not be binding upon the United States until accepted on behalf of the United States by the Secretary of the Interior or his authorized representative, although this indenture is acknowledged by the Grantors to be presently binding upon them and to remain so until the expiration of said period for acceptance, as hereinabove described, by virtue of the payment to the Grantors, by the United States, of the sum of One Dollar, the receipt of which is hereby expressly acknowledged by Grantors.
- 2. Notice of acceptance of this Indenture shall be given the Grantors by certified mail addressed to _____ shall be effective upon the date of mailing, and such notice shall be binding upon all Grantors without sending a separate notice to each.
- 3. Payment of the consideration will be made by a United States Treasury check after acceptance of this indenture by the Secretary of the Interior or his authorized representative and after the Attorney General, or in appropriate cases, the Solicitor of the Department of the Interior shall have approved the easement interest thus vested in the United States.

IN WITNESS WHEREOF the Grantors have hereunto set their hands and seals this 30th day of March, 1998

_____(L.S.)

_____(L.S.)

_____(L.S.)

_____(L.S.)

ACKNOWLEDGMENT

STATE _____
COUNTY _____

On this 30 day of March in the year 1998 before me personally appeared

Omar G. Paulson and Alma M. Paulson, his wife

known to me to be the persons(s) described in and who executed the foregoing instrument and acknowledged to me that they (he/she) executed the same as their (his/her) free act and deed.

Dana R. Smith

My Commission Expires February 5, 2006

My commission expires _____

ACCEPTANCE

The Secretary of the Interior, acting by and through his authorized representative, has executed this agreement on behalf of the United States this SEP 08 1998 day of _____

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

By: _____

Dana R. Smith

CHIEF, DIVISION OF REALTY

Title: _____

U.S. Fish and Wildlife Service





