

BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

**IN THE MATTER OF THE APPLICATION BY SCS CARBON TRANSPORT LLC FOR
A PERMIT TO CONSTRUCT A CARBON DIOXIDE TRANSMISSION PIPELINE**

DOCKET HP22-001

PREFILED TESTIMONY OF JENNA CARLSON DIETMEIER, PhD
ON BEHALF OF THE COMMISSION STAFF
June 23, 2023

1 **Q. State your name.**

2

3 A. Jenna Carlson Dietmeier

4

5 **Q. By whom are you employed?**

6

7 A. State of South Dakota

8

9 **Q. For what department or program do you work?**

10

11 A. Department of Education, South Dakota State Historical Society, South Dakota State
12 Historic Preservation Office (SHPO)

13

14 **Q. Please explain the program goals and your role and duties within the State Historic
15 Preservation Office.**

16

17 A. The National Historic Preservation Act (NHPA) of 1966 created a State Historic
18 Preservation Officer in each state and territory to administer each state's and each
19 territory's historic preservation program. Each State Historic Preservation Officer, with
20 the support of qualified staff, is charged with:

- 21 • Conducting a comprehensive survey of historic properties
- 22 • Maintaining an inventory of historic properties
- 23 • Administering state programs of Federal assistance
- 24 • Identifying and nominating eligible properties to the National Register of Historic
25 Places
- 26 • Advising and assisting Federal, State, and local governments in matters of historic
27 preservation
- 28 • Preparing and implementing a statewide historic preservation plan
- 29 • Providing public information, education, training, and technical assistance
- 30 • Working with local governments in the development of local historic preservation
31 programs and helping them become "certified local governments"
- 32 • Providing consultation for Federal undertakings under Section 106 of NHPA

33

34 In South Dakota, the State Historic Preservation Office (SHPO) is a program of the South
35 Dakota State Historical Society.

36

37 As Review and Compliance Coordinator, my role within SHPO is to oversee our office's
38 review of over 1,400 projects annually within South Dakota for compliance with federal
39 and state preservation laws. I consult with agencies on federally funded, licensed,
40 permitted, or approved projects to ensure that the agency has taken the effect of the
41 undertaking on historic properties into account. I also comment on state and local
42 projects to ensure that archaeological resources are taken into consideration under state
43 law. Other duties I regularly perform within SHPO include providing training on and

1 resources pertaining to compliance with preservation laws, preparing or assisting in the
2 preparation of nominations to the National Register of Historic Places, managing
3 contracts, and providing technical and general assistance to agencies and the public in
4 archaeological matters and matters of preservation law.
5

6 On June 9, 2023, I also began duties as Interim State Historic Preservation Officer. As
7 such, I also oversee our office’s fulfillment of the duties in the bulleted list above.
8

9 **Q. On whose behalf was this testimony prepared?**

10
11 A. This testimony was prepared on behalf of the Staff of the South Dakota Public Utilities
12 Commission.
13

14 **Q. State and explain the laws and regulations that protect archaeological and historic
15 resources in South Dakota.**

16
17 A. Section 106 of the National Historic Preservation Act of 1966, as amended, requires
18 federal agencies to take into account the effects of their undertakings on historic
19 properties. The implementing regulations of Section 106, found at 36 C.F.R. § 800,
20 delineate the process federal agencies follow to comply with Section 106. At its most
21 basic, Section 106 compliance is a four-step process:
22

23 Step 1. Initiate the Process – The federal agency determines whether the proposed
24 project is a federal undertaking. The implementing regulations of Section 106 define an
25 undertaking as “a project, activity, or program funded in whole or in part under the direct
26 or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of
27 a Federal agency; those carried out with Federal financial assistance; and those requiring
28 a Federal permit, license, or approval.” The agency then must decide if their undertaking
29 has the potential to affect historic properties. A historic property is a prehistoric or
30 historic district, site, building, structure, or object included in, or eligible for inclusion in,
31 the National Register of Historic Places. If the agency determines that their undertaking
32 does not have the potential to affect historic properties given the nature of the proposed
33 undertaking, they document this and exit the Section 106 process. If the agency
34 determines that the undertaking has the potential to affect historic properties, they
35 identify appropriate consulting parties and move on to the second step.
36

37 Step 2. Identify Historic Properties – The federal agency is required to make a
38 “reasonable and good faith effort” to identify historic properties which may be affected
39 by the undertaking. The specific identification efforts employed depend upon the
40 individual undertaking and the type(s) of properties which may be affected.
41 Identification efforts may include background research such as a search of the National
42 Register of Historic Places database or research at a local historical society, consultation
43 with our Tribal Partners and members of the general public, oral history interviews,

1 sample field investigations, and field survey. Agencies are specifically required to
2 consult with Indian tribes to assist in identifying properties which may be of religious and
3 cultural significance to them and may be eligible for listing in the National Register. If
4 no historic properties are identified within the undertaking's Area of Potential Effects
5 (APE), the agency consults with SHPO on that finding, and, if SHPO concurs, documents
6 the results of consultation and exits the Section 106 process. If historic properties are
7 identified within the APE, the agency moves on to the third step.

8
9 Step 3. Assess Adverse Effects – If historic properties are identified within the APE, the
10 agency must determine how the undertaking will affect those properties. An adverse
11 effect occurs when the undertaking may alter, either directly or indirectly, any of the
12 characteristics of a historic property that qualify it for inclusion in the National Register
13 of Historic Places. If the undertaking can be modified or conditions imposed to avoid
14 adversely affecting a historic property, the agency consults with SHPO on their finding of
15 No Adverse Effect and, if SHPO concurs, documents the results of consultation and exits
16 the Section 106 process. If it is found that the undertaking will have an adverse effect on
17 one or more historic properties, the agency moves on to the fourth step.

18
19 Step 4. Resolve Adverse Effects – If one or more historic properties will be adversely
20 affected by the undertaking, the agency continues to consult with the appropriate parties
21 and develops an agreement document, usually a Memorandum of Agreement, which
22 defines the agreed upon stipulations to minimize or mitigate the adverse effect.
23 Throughout the entire Section 106 process, the agency is required to consult with the
24 appropriate consulting parties, as described throughout the regulations.

25
26 South Dakota Codified Law (SDCL) 1-19A-11.1 requires the State, or any political
27 subdivision of the state (cities, counties, etc.) to notify SHPO of any project that has the
28 potential to encroach upon, damage, or destroy properties listed in the National or State
29 Registers of Historic Places and allow SHPO the opportunity to investigate and comment
30 on such projects. Unlike Section 106, SDCL 1-19A-11.1 does not require agencies to
31 consider properties that may be eligible for listing in the National Register of Historic
32 Places; SDCL 1-19A-11.1 only requires consideration of properties which are already
33 listed. Additionally, Section 106 defines who are consulting parties in the Section 106
34 process and specifically requires the agency to consult with American Indian Tribes;
35 SDCL 1-19A-11.1 only requires comment from SHPO.

36
37 Section 106 of the National Historic Preservation Act supersedes SDCL 1-19A-11.1.
38 However, SCS Carbon Transport LLC's proposed carbon dioxide transmission pipeline
39 has been segmented with only certain areas of the project requiring permits from a federal
40 agency. As such, SHPO will consult on certain segments of the project under Section
41 106 and will comment on the remaining segments under SDCL 1-19A-11.1.
42 Additionally, as the project is subject to the permitting requirements of the Public
43 Utilities Commission, ARSD 20:10:22:23 requires the applicant to include "an

1 identification and analysis of the effects the construction, operation, and maintenance of
2 the proposed facility will have on the anticipated affected area including... a forecast of
3 the impact on landmarks and cultural resources of historic, religious, archaeological,
4 scenic, natural, or other cultural significance.”

5
6 **Q. Describe the documents you have reviewed and commented upon pertaining to SCS**
7 **Carbon Transport, LLC’s efforts to identify cultural resources.**

8
9 A. On September 20, 2021, SHPO received the document titled “Scope of Work – Level III
10 Intensive Cultural Resources Survey of the Midwest Carbon Express Project: Beadle,
11 Brown, Clark, Codington, Edmunds, Hamlin, Hand, Hyde, Kingsbury, Lake, Lincoln,
12 McCook, McPherson, Miner, Minnehaha, Spink, Sully, and Turner Counties, South
13 Dakota” from Abby Peyton of Perennial Environmental Services, LLC. The Scope of
14 Work outlines the intensive survey methods, artifact collection and site recordation
15 strategies, and reporting protocols that SCS Carbon Transport LLC proposes to use for
16 the portion of the Midwest Carbon Express project in South Dakota. SHPO provided
17 comments on the proposed scope of work, including recommendations for clarifying
18 methodologies, in a letter dated September 27, 2021.

19
20 Between February 10, 2022, and August 1, 2022, SHPO received three drafts of the
21 report titled “Level III Intensive Cultural Resources Survey of the Midwest Carbon
22 Express Project: Beadle, Brown, Clark, Codington, Edmunds, Hamlin, Hand, Hyde,
23 Kingsbury, Lake, Lincoln, McCook, McPherson, Miner, Minnehaha, Spink, Sully, and
24 Turner Counties, South Dakota” from Patrick Trader of Gray & Pape, Inc. This report
25 discusses the results of intensive field survey conducted between September 28 and
26 November 29, 2021. In each draft of the Level III report, Gray & Pape, the subcontractor
27 conducting the intensive cultural resources surveys, responded to and addressed SHPO’s
28 comments on the preceding draft.

29
30 On October 25, 2022, and December 19, 2022, SHPO received an initial and a revised
31 draft, respectively, of the report titled “ADDENDUM REPORT: Level III Intensive
32 Cultural Resources Survey of the Midwest Carbon Express Project: Beadle, Brown,
33 Clark, Codington, Edmunds, Hamlin, Hand, Hyde, Kingsbury, Lake, Lincoln, McCook,
34 McPherson, Miner, Minnehaha, Spink, Sully, and Turner Counties, South Dakota” from
35 Patrick Trader of Gray & Pape, Inc. This addendum report discusses the results of
36 intensive field survey conducted between November 30, 2021, and July 2, 2022.

37
38 On May 9, 2023, SHPO received the report titled “SECOND ADDENDUM REPORT:
39 Level III Intensive Cultural Resources Survey of the Midwest Carbon Express Project:
40 Beadle, Brown, Clark, Codington, Edmunds, Hamlin, Hand, Hyde, Kingsbury, Lake,
41 Lincoln, McCook, McPherson, Miner, Minnehaha, Spink, Sully, and Turner Counties,
42 South Dakota” from Patrick Trader of Gray & Pape, Inc. The second addendum report

1 discusses the results of intensive field survey conducted between July 3, 2022, and
2 November 18, 2022.

3
4 The Scope of Work and the survey reports indicate that SCS Carbon Transport LLC
5 intends to conduct 100% intensive field surveys for cultural resources for all project
6 components within South Dakota. The last report received, the second addendum report,
7 indicates that additional cultural resource investigations are still ongoing as route
8 adjustments are made and access to the land is granted.

9
10 **Q. Has SCS Carbon Transport LLC, to the best of your knowledge, complied with the**
11 **state and federal laws and regulations you previously described?**

12
13 A. To the best of my knowledge, SCS Carbon Transport LLC is in the process of complying
14 with the laws and regulations described above.

15
16 SCS Carbon Transport LLC has indicated that 100% of the project area will be surveyed
17 for cultural resources. To the best of my knowledge, SCS Carbon Transport LLC is still
18 in the process of identifying cultural resources and how they will be impacted by the
19 project, pursuant to ARSD 20:10:22:23.

20
21 To the best of my knowledge, at this time, no properties listed in the State or National
22 Registers of Historic Places have been identified as being affected by the proposed
23 carbon dioxide transmission pipeline. As such, SCS Carbon Transport LLC does not
24 have any current outstanding obligations pursuant to SDCL 1-19A-11.1.

25
26 Compliance with Section 106 of the National Historic Preservation Act is the
27 responsibility of the federal agency and will apply to those segments of the project with a
28 federal nexus.

29
30 **Q. Are there any archaeological, historical and/or culturally sensitive areas which will**
31 **be affected by the SCS Carbon Transport LLC carbon dioxide transmission**
32 **pipeline?**

33
34 A. It is unclear. In the three reports which SHPO has received, a total of 113 newly and
35 previously recorded archaeological sites were identified during the survey efforts. Tribal
36 Cultural Specialists from the Rosebud Sioux Tribe; the Northern Cheyenne Tribe; the
37 Mandan, Hidatsa, and Arikara Nation; and the Sisseton Wahpeton Oyate participated in
38 portions of some surveys with the archaeologists from Gray & Pape, Inc. However, SCS
39 Carbon Transport LLC has not yet completed 100% survey of all project areas, as they
40 committed to doing in the Scope of Work SHPO received on September 20, 2021.
41 Additionally, it is unclear if Tribal Cultural Specialists will participate in the upcoming
42 survey efforts or if any additional Tribal surveys are proposed at this time. As such, it is

1 unclear if any archaeological, historical and/or culturally sensitive areas will be affected
2 by the proposed pipeline.

3
4 **Q. Please describe the properties which have been identified during the survey efforts**
5 **to date.**

6
7 A. Properties identified during the survey efforts to date include prehistoric occupation sites,
8 prehistoric lithic scatters and isolated finds, historic era depressions, historic era
9 farmsteads, historic era artifact scatters, railroads, burial mounds, and stone feature sites.
10 Of these properties, SHPO has agreed that seventy (70) are eligible for listing in the
11 National Register of Historic Places, thirty-eight (38) are not eligible for listing in the
12 National Register of Historic Places, and five (5) have not yet been fully evaluated for
13 eligibility to the National Register of Historic Places.

14
15 **Q. Can the Applicant mitigate the risks associated with crossing sensitive areas?**

16
17 A. As the identification of historic properties and other cultural resources is still ongoing and
18 the route and/or re-routes of the carbon dioxide transmission pipeline have not yet been
19 finalized, it is unclear if or how SCS Carbon Transport LLC can mitigate the risks
20 associated with crossing sensitive areas. The three reports completed by Gray and Pape,
21 Inc. state that SCS Carbon Transport LLC is “committed to avoiding all impacts” to
22 resources which are eligible for listing in the National Register of Historic Places. The
23 three reports indicate that the majority of the sites which are eligible for listing in the
24 National Register of Historic Places will be avoided by confirmed or proposed re-routes
25 of the carbon dioxide pipeline; this includes fifty (50) stone feature sites and one (1)
26 burial mound site. The reports indicate that other properties which are eligible for listing
27 in the National Register of Historic Places will be avoided through the use of horizontal
28 directional drilling or boring; this includes two (2) stone feature sites, ten (10) railroad
29 sites, and one (1) prehistoric occupation site. Additionally, the reports indicate that three
30 (3) eligible stone feature sites and one (1) eligible historic farmstead will be avoided by
31 either a re-route or boring, and an unevaluated historic stone fence, an unevaluated
32 mound site, and an unevaluated prehistoric lithic scatter will be avoided by re-reroutes.

33
34 **Q. Has SCS Carbon Transport LLC adequately addressed SHPO’s comments or**
35 **concerns on the information submitted to date?**

36
37 A. It is unclear. In the two revised versions of the Level III Intensive Cultural Resources
38 Survey report, Gray & Pape, Inc. addressed the concerns or questions SHPO raised
39 regarding the consultant’s evaluation of multiple sites’ eligibility to the National Register
40 of Historic Places. Similarly, in the revised Addendum Report, Gray & Pape, Inc.
41 addressed SHPO’s concern regarding the evaluation of one site’s eligibility to the
42 National Register of Historic Places.

43

1 In SHPO's responses to each of the three reports received, SHPO has recommended that
2 Summit Carbon Solutions continue to engage with our Tribal Partners in the
3 identification of properties which could be affected by the proposed project and in
4 developing means to avoid physical, visual, or other impacts to properties throughout the
5 project area which may be of religious and cultural significance to them. In SHPO's
6 letter in response to the Second Addendum Report, SHPO also included
7 recommendations to engage with our Tribal Partners in delineating the full boundary of
8 site 39SP0288, evaluating the site in its full extent, and defining appropriate measures to
9 avoid adversely impacting the property. As survey efforts are still ongoing and details of
10 the route of the pipeline are finalized, SHPO has not yet seen if all of our office's
11 comments and/or recommendations have been addressed by SCS Carbon Transport LLC.
12

13 **Q. Please provide any additional information that may be helpful or necessary for us to**
14 **investigate further.**

15
16 A. SHPO is aware that certain portions of SCS Carbon Transport LLC's carbon dioxide
17 transmission pipeline will require permits from the United States Army Corps of
18 Engineers, making them federal undertakings subject to Section 106 of the National
19 Historic Preservation Act. The United States Army Corps of Engineers has not yet
20 initiated Section 106 consultation with SHPO on the proposed undertaking, and SHPO is
21 unsure which portions of the project will be subject to Section 106. The United States
22 Army Corps of Engineers also remains responsible for their government-to-government
23 consultation with American Indian Tribes for the proposed undertaking.
24

25 Additionally, on May 1, 2023, Abby Peyton of Perennial Environmental Services, LLC
26 notified SHPO that Perennial Environmental Services, LLC along with Gray & Pape, Inc.
27 were formally separated from SCS Carbon Transport LLC's carbon dioxide transmission
28 pipeline. SHPO has not yet been notified of the principal investigator for any of the
29 upcoming cultural resources surveys or if there will be any proposed changes from the
30 scope of work which Perennial Environmental Services, LLC. had supplied to SHPO on
31 September 20, 2021.
32

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

34
35 A. Yes
36
37
38