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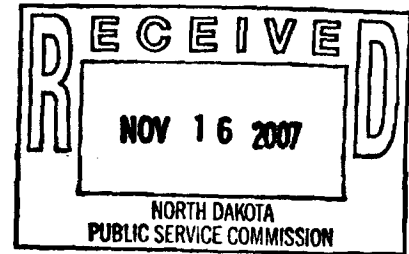
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November 15, 2007

MS ILLONA A JEFFCOAT-SACCO
EXECUTIVE SECRETARY
PUBLIC SERVICE COMMISSION
600 EAST BOULEVARD, DEPT. 408
BISMARCK ND 58505-0480



Re: TransCanada - Keystone Pipeline Project
Corridor Certificate and Route Permit Applications
Case No: PU-06-421
OAH File No. 20070181

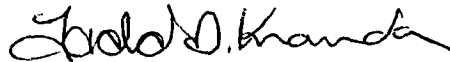
Dear Ms. Jeffcoat-Sacco:

This letter is to request a copy of the updated Docket Sheets for the Corridor Certificate and Route Permit Application file as referenced above. The last set of Docket Sheets were current through entry no. 244 as of October 30, 2007.

In addition, please forward a copy of any letter or other documents that have been filed since the last update through October 30, 2007.

If you have any questions, please feel free to contact Thomas D. Kelsch or me.

Sincerely,



Todd D. Kranda

TK:ls

c: TransCanada Keystone
Erik Johnson, Esq. (Fax 1-701-280-1902)
Nicholas Delaney, Esq. (Fax 1-370-656-3500)



**Public Service Commission
Case File / Docket Card Report**

12/18/2007

PU-06-421

**TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent Cty
Siting Application Category Pipeline
Filed 09/22/2006 Open Closed 00/00/0000**

Portfolio Kevin Cramer Advisory Staff Patrick J. Fahn

Doc#	Filed		Pages
271	11/16/2007	Email from Richard Starke Requesting Intervenor Status By Wefald Public Service Commission	1 <u>W</u>
272	11/16/2007	Letter Requesting Docket & Documents By Kelsch Kelsch Ruff & Kranda	1 <u>W</u>
273	11/15/2007	Letter re Concerns re Pipeline Impacts on Water Quality By Lake Agassiz Water Authority Public Service Commission	2 <u>W</u>
274	11/19/2007	Email and Prehearing Order from ALJ Wahl By Public Service Commission	4 <u>W</u>
275	11/16/2007	Fax Notice of Motion-Motion for Withdrawal as Counsel By Rinke Noonan Attorneys at Law	15 <u>W</u>
276	11/19/2007	Original Notice of Motion-Motion for Withdrawal of Counsel By Rinke Noonan Attorneys at Law	14 <u>W</u>
277	11/19/2007	Letter from Intervenor Klein w Newspaper Article By Public Service Commission	3 <u>W</u>
278	11/16/2007	Returned Registered Envelope to D Cowling/TransCanada By Public Service Commission	2 <u>W</u>
279	11/16/2007	Faxed Order for Expedited Hearing to D Cowling/TransCanada By Public Service Commission	3 <u>W</u>
280	11/16/2007	Affidavit of Service by Registered Mail to Send Order to Cowling By Public Service Commission	1 <u>W</u>
281	11/16/2007	Letter Notification of Starke Email By Public Service Commission	4 <u>W</u>
282	11/21/2007	Motion to Admit Attorney By Public Service Commission	1 <u>W</u>
283	11/21/2007	Motion to Continue Hearings By Dakota Resource Council Public Service Commission	6 <u>W</u>
284	11/19/2007	Original Prehearing Order By ALJ Wahl Public Service Commission	4 <u>W</u>
285	11/21/2007	Email to ALJ Wahl re Hwy Patrol Investigation re Perjury Allegations By Public Service Commission	1 <u>W</u>
286	11/21/2007	Objection to Starke Request to Intervene By Kelsch Kelsch Ruff & Kranda	6 <u>W</u>
287	11/20/2007	Motion for Admission to Practice Pro Hac Vice By Dakota Resource Council Public Service Commission	7 <u>W</u>
288	11/23/2007	Original of Motion to Continue Hearing By Dakota Resource Council Public Service Commission	6 <u>W</u>

Public Service Commission
Case File / Docket Card Report

12/18/2007

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Portfolio Kevin Cramer Advisory Staff Patrick J. Fahr

Doc#	Filed		Pages
289	11/26/2007	DOCKETED IN ERROR By Public Service Commission	1 <u>W</u>
290	11/20/2007	Letter to State Dept re Water Quality Concerns By Upper Sheyenne River Water Re: Public Service Commission	1 <u>W</u>
291	11/23/2007	Letter to Rauh & Kranda re Concerns re Project By Upper Sheyenne River Water Re: Public Service Commission	2 <u>W</u>
292	11/23/2007	Letter Requesting Security at Hearings By Kelsch Kelsch Ruff & Kranda	1 <u>W</u>
293	11/23/2007	TransCanada Response Resisting Request for Continuance By Kelsch Kelsch Ruff & Kranda	8 <u>W</u>
294	11/23/2007	Email from Capp to ALJ Wahl re Starke Intervenor Status By Public Service Commission	1 <u>W</u>
295	11/24/2007	Email from Klein to ALJ Wahl re Starke Intervenor Status By Public Service Commission	1 <u>W</u>
296	11/26/2007	Motion Requesting Permission to Appear Pro Hac Vice By Patricia Madsen Public Service Commission	5 <u>W</u>
297	11/26/2007	Email Response to Objections to Motion to Continue Hearings By Dakota Resource Council Public Service Commission	9 <u>W</u>
298	11/27/2007	Letter Requesting Opportunity to Examine & Present Evidence By Kelsch Kelsch Ruff & Kranda	2 <u>W</u>
299	11/23/2007	Fargo Response to DRC Motion to Continue Hearings By Duncan Ostrander Dingess Public Service Commission	5 <u>W</u>
300	11/27/2007	Signed Order Denying Motion to Continue Hearings By Public Service Commission	6 <u>W</u>
301	11/27/2007	Motion for Admission to Practice Pro Hac Vice (Lindeman) By Public Service Commission	7 <u>W</u>
302	11/27/2007	Order Granting Motion to Pro Hac Vice (Lindeman) By ALJ Wahl Public Service Commission	3 <u>W</u>
303	11/21/2007	Affidavit of Service Regular, Inside, Email By Public Service Commission	6 <u>W</u>
304	11/27/2007	Motion to Extend Time to Designate Route and Corridor By Public Service Commission	1 <u>W</u>
305	11/27/2007	Motion to Adopt Order Denying Motion to Continue Hearing By Public Service Commission	1 <u>W</u>
306	11/27/2007	Motion By Public Service Commission	1 <u>W</u>

**Public Service Commission
Case File / Docket Card Report**

12/18/2007

PU-06-421

**TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent Cty
Siting Application Category Pipeline
Filed 09/22/2006 Open Closed 00/00/0000**

Portfolio Kevin Cramer Advisory Staff Patrick J. Fahn

Doc#	Filed		Pages
307	11/27/2007	Order Denying Intervention By Public Service Commission	3 <u>W</u>
308	11/30/2007	Aff; 1 Motion Extend Time 2 Orders Deny Intervention, Deny Continuance By Public Service Commission	12 <u>W</u>
309	11/28/2007	Affidavit Resend Docs to Montplaisir Cass County By Public Service Commission	2 <u>W</u>
310	12/3/2007	Affidavit to Shimanek Same as Docket 309 By Public Service Commission	11 <u>W</u>
311	12/3/2007	Returned Affidavit Docket 309 Mailed to Cowling @ Keystone Canada By Public Service Commission	3 <u>W</u>
312	11/3/2007	Affidavit Replacement Mailing to Cowling @ TransCanada By Public Service Commission	1 <u>W</u>
313	12/3/2007	Request for Documents Filed in Public Input File By Kranda Kelsch Kelsch Ruff & Kranda	2 <u>W</u>
314	11/19/2007	Documents and Docket Sheets to Applicant and Intervenors By Public Service Commission	197 <u>W</u>
315	12/5/2007	Receipt# 7,038 \$72.16 11/08 Open Records Copies By Duncan Ostrander & Dingess	1 <u> </u>
316	12/6/2007	Stipulated Late Filed Exhibit Fargo 14 By City of Fargo	55 <u>W</u>
317	12/10/2007	Letter from USDOE to Richard Starke By US Dept of Energy	1 <u>W</u>
318	12/7/2007	Late Filed Exhibit T-46 Report on Quantification of High Consequence Areas By Todd Kranda TransCanada Keystone Pipeline, LP	7 <u>W</u>
319	12/14/2007	Response to PHMSA Special Permit Information, Item 203 By TransCanada Keystone Pipeline, LP	13 <u>W</u>
320	11/7/2007	Affidavit Order Motions to Intervene and Reopen By Public Service Commission	2 <u>W</u>
321	12/10/2007	Invoice 97666 \$3,679.99 By North Dakota Newspaper Association	7 <u>W</u>

Total Pages: 3057

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

TRANSCANADA KEYSTONE PIPELINE, LP)
30-INCH PIPELINE / CAVALIER TO)
SERGEANT COUNTIES SITING APPLICATION)

Case No. PU-06-421

STIPULATED LATE FILED EXHIBIT

Commissioners Susan E. Wefald, Tony Clark, and Kevin Cramer

Thomas D. Kelsch and Todd D. Kranda, Kelsch Kelsch Ruff & Kranda, 103 Collins Avenue, Mandan, ND 58554, on behalf of the Applicant TransCanada Keystone Pipeline, LP

Matthew F. Shimanek, Esq, Hammarback, Dusek & Associates, PLC, 712 DeMers Ave, PO Box 4, East Grand Forks, MN 56721-0004, and Jana Linderman, Plains Justice Center on behalf of Dakota Resources Council, Ramona Klein, Merle and Linette Kratochvill, Janie and John Capp, and Mark Novak

William W. Binek, Chief Counsel, Public Service Commission, State Capitol, Bismarck, ND 58505, on behalf of the Public Service Commission


Al Wahl, Office of Administrative Hearings, 1707 N 9th Street, Bismarck, ND 58501, as Procedural Hearing Officer

Erik R. Johnson, Esq., Erik R. Johnson & Assoc. Ltd., 505 Broadway, Suite 206, Fargo, ND 58102-4907 on behalf of Intervenor City of Fargo, North Dakota

The city of Fargo, North Dakota (Fargo), Intervenor herein, respectfully submits to the Public Service Commission (PSC) and moves for the admission of the attached Stipulated Late Filed Exhibit "Fargo - 14." Undersigned counsel for Fargo states attorneys for Applicant TransCanada Keystone Pipeline, LP, Dakota Resources Council, Ramona Klein, Merle Linette Kratochvill and Mark Novak, and pro se parties Janie and John Capp had the opportunity to review the attached Exhibit Fargo 14 and that all parties have stipulated to its admission.

Respectfully submitted this 6th day of December, 2007.

DUNCAN OSTRANDER & DINGESS, P.C.

By: 

John M. Dingess, ND Bar ID 06123

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Denver CO 80237-1829

Phone 303-779-0200

JDingess@dodpc.com

Special Counsel, City of Fargo

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December, 2007, a true and correct copy of the foregoing **STIPULATED LATE FILED EXHIBIT** was filed with the Public Service Commission of the State of North Dakota and served via E-Mail to the following:

Ilona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
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(IJS@ND.gov)

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Al Wahl, Administrative Law Judge
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Patricia E. Sullivan

John Dingess

From: Sauer, Mike T. [msauer@nd.gov]
Sent: Friday, November 30, 2007 2:27 PM
To: John Dingess; kranda@kelschlaw.com
Subject: PSC Hearing request
Attachments: WQ Standards 2006 33-16-02.1.pdf

Gentlemen: Attached is Chapter 33-16-02.1 Standards of Quality for Waters of the State. The Sheyenne River is classified IA (Page 24). This classification is defined as "The quality of the waters in this class shall be the same as the quality of a class I streams, except that treatment for municipal use may also require softening to meet the drinking water requirements of the department". (Page 8) Lake Ashtabula has the same criteria as a Class I stream. (Page 10, e. (1)). The Dept. of Health regulates the beneficial use of surface water for municipal supply at the intake structure. Michael T. Sauer, Senior Scientist, Div. of Water Quality, ND Dept. of Health
701.328.5237

Exhibit
Fargo – 14
52 Pages

CHAPTER 33-16-02.1
STANDARDS OF QUALITY FOR WATERS OF THE STATE

Section	
33-16-02.1-01	Authority
33-16-02.1-02	Purpose
33-16-02.1-03	Applicability
33-16-02.1-04	Definitions
33-16-02.1-05	Variances
33-16-02.1-06	Severability
33-16-02.1-07	Classification of Waters of the State
33-16-02.1-08	General Water Quality Standards
33-16-02.1-09	Surface Water Classifications, Mixing Zones, and Numeric Standards
33-16-02.1-10	Ground Water Classifications and Standards
33-16-02.1-11	Discharge of Wastes

33-16-02.1-01. Authority. These rules are promulgated pursuant to North Dakota Century Code chapters 61-28 and 23-33; specifically, sections 61-28-04 and 23-33-05, respectively.

History: Effective June 1, 2001.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 23-33, 61-28

33-16-02.1-02. Purpose.

1. The purposes of this chapter are to establish a system for classifying waters of the state; provide standards of water quality for waters of the state; and protect existing and potential beneficial uses of waters of the state.
2. The state and public policy is to maintain or improve, or both, the quality of the waters of the state and to maintain and protect existing uses. Classifications and standards are established for the protection of public health and environmental resources and for the enjoyment of these waters, to ensure the propagation and well-being of resident fish, wildlife, and all biota associated or dependent upon these waters, and to safeguard social, economical, and industrial development. Waters not being put to use shall be protected for all reasonable uses for which these waters are suitable. All known and reasonable methods to control and prevent pollution of the waters of this state are required, including improvement in quality of these waters, when feasible.
 - a. The "quality of the waters" shall be the quality of record existing at the time the first standards were established in 1967, or later records if these indicate an improved quality. Waters with existing quality that is higher than established standards will be maintained at the higher quality unless affirmatively demonstrated, after full

satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, that a change in quality is necessary to accommodate important social or economic development in the area in which the waters are located. In allowing the lowering of existing quality, the department shall assure that existing uses are fully protected and that the highest statutory and regulatory requirements for all point sources and cost-effective and reasonable best management practices for nonpoint sources are achieved.

- b. Waters of the state having unique or high quality characteristics that may constitute an outstanding state resource shall be maintained and protected.
- c. Any public or private project or development which constitutes a source of pollution shall provide the best degree of treatment as designated by the department in the North Dakota pollutant discharge elimination system. If review of data and public input indicates any detrimental water quality changes, appropriate actions will be taken by the department following procedures approved by the environmental protection agency. (North Dakota Antidegradation Implementation Procedure, Appendix IV.)

History: Effective June 1, 2001.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-33, 61-28-04

33-16-02.1-03. Applicability. Nothing in this chapter may be construed to limit or interfere with the jurisdiction, duties, or authorities of other North Dakota state agencies.

History: Effective June 1, 2001.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 23-33, 61-28

33-16-02.1-04. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 61-28, except:

1. "Acute standard" means the one-hour average concentration does not exceed the listed concentration more than once every three years.
2. "Best management practices" are methods, measures, or procedures selected by the department to control nonpoint source pollution. Best management practices include, but are not limited to, structural and nonstructural measures and operation and maintenance procedures.
3. "Chronic standard" means the four-day average concentration does not exceed the listed concentration more than once every three years.

4. "Consecutive thirty-day average" is the average of samples taken during any consecutive thirty-day period. It is not a requirement for thirty consecutive daily samples.
5. "Department" means the North Dakota state department of health.
6. A standard defined as "dissolved" means the total quantity of a given material present in a filtered water sample, regardless of the form or nature of its occurrence.
7. "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor. Pollution includes discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state that will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare; domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or livestock, wild animals, birds, fish, or other aquatic biota.
8. "Site-specific standards" mean water quality criteria developed to reflect local environmental conditions to protect the uses of a specific water body.
9. A standard defined as "total" means the entire quantity of a given material present in an unfiltered water sample regardless of the form or nature of its occurrence. This includes both dissolved and suspended forms of a substance, including the entire amount of the substance present as a constituent of the particulate material. Total recoverable is the quantity of a given material in an unfiltered aqueous sample following digestion by refluxing with hot dilute mineral acid.
10. "Water usage". The best usage for the waters shall be those uses determined to be the most consistent with present and potential uses in accordance with the economic and social development of the area. Present principal best uses are those defined in subdivisions a, b, c, d, and e. These are not to be construed to be the only possible usages.
 - a. Municipal and domestic water. Waters suitable for use as a source of water supply for drinking and culinary purposes after treatment to a level approved by the department.
 - b. Fish and aquatic biota. Waters suitable for the propagation and support of fish and other aquatic biota and waters that will not adversely affect wildlife in the area. Low flows or natural physical and chemical conditions in some waters may limit their value for fish propagation or aquatic biota.

- c. Recreation. Waters suitable for recreation where direct body contact is involved, such as bathing and swimming, and where secondary activities such as boating, fishing, and wading are involved. Natural high turbidities in some waters and physical characteristics of banks and streambeds of many streams are factors that limit their value for bathing.
- d. Agricultural uses. Waters suitable for irrigation, stock watering, and other agricultural uses, but not suitable for use as a source of domestic supply for the farm unless satisfactory treatment is provided.
- e. Industrial water. Waters suitable for industrial purposes, including food processing, after treatment. Treatment may include that necessary for prevention of boiler scale and corrosion.

History: Effective June 1, 2001; amended effective October 1, 2006.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-33, 61-28

33-16-02.1-05. Variances. Upon written application by the responsible discharger, the department finds that by reason of substantial and widespread economic and social impacts the strict enforcement of state water quality criteria is not feasible, the department can permit a variance to the water quality standard for the affected segment. The department can set conditions and time limitations with the intent that progress toward improvements in water quality will be made. This can include interim criteria which must be reviewed at least once every three years. A variance will be granted only after fulfillment of public participation requirements and environmental protection agency approval. A variance will not preclude an existing use.

History: Effective June 1, 2001.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-33, 61-28

33-16-02.1-06. Severability. The rules contained in this chapter are severable. If any rules, or part thereof, or the application of such rules to any person or circumstance are declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.

History: Effective June 1, 2001.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 23-33, 61-28

33-16-02.1-07. Classification of waters of the state. General. Classification of waters of the state shall be used to maintain and protect the present and future beneficial uses of these waters. Classification of waters of

the state shall be made or changed whenever new or additional data warrant the classification or a change of an existing classification.

History: Effective June 1, 2001.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 23-33, 61-28

33-16-02.1-08. General water quality standards.

1. Narrative standards.

- a. The following minimum conditions are applicable to all waters of the state except for class II ground waters. All waters of the state shall be:
 - (1) Free from substances attributable to municipal, industrial, or other discharges or agricultural practices that will cause the formation of putrescent or otherwise objectionable sludge deposits.
 - (2) Free from floating debris, oil, scum, and other floating materials attributable to municipal, industrial, or other discharges or agricultural practices in sufficient amounts to be unsightly or deleterious.
 - (3) Free from materials attributable to municipal, industrial, or other discharges or agricultural practices producing color, odor, or other conditions to such a degree as to create a nuisance or render any undesirable taste to fish flesh or, in any way, make fish inedible.
 - (4) Free from substances attributable to municipal, industrial, or other discharges or agricultural practices in concentrations or combinations which are toxic or harmful to humans, animals, plants, or resident aquatic biota. For surface water, this standard will be enforced in part through appropriate whole effluent toxicity requirements in North Dakota pollutant discharge elimination system permits.
 - (5) Free from oil or grease residue attributable to wastewater, which causes a visible film or sheen upon the waters or any discoloration of the surface of adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines or prevents classified uses of such waters.
- b. There shall be no materials such as garbage, rubbish, offal, trash, cans, bottles, drums, or any unwanted or discarded material disposed of into the waters of the state.

- c. There shall be no disposal of livestock or domestic animals in waters of the state.
- d. The department shall propose and submit to the state engineer the minimum streamflows of major rivers in the state necessary to protect the public health and welfare. The department's determination shall address the present and prospective future use of the rivers for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses.
- e. No discharge of pollutants, which alone or in combination with other substances, shall:
 - (1) Cause a public health hazard or injury to environmental resources;
 - (2) Impair existing or reasonable beneficial uses of the receiving waters; or
 - (3) Directly or indirectly cause concentrations of pollutants to exceed applicable standards of the receiving waters.
- f. If the department determines that site-specific criteria are necessary and appropriate for the protection of designated uses, procedures described in the environmental protection agency's Water Quality Standards Handbook 1994 or other defensible methods may be utilized to determine maximum limits. Where natural chemical, physical, and biological characteristics result in exceedences of the limits set forth in this section, the department may derive site-specific criteria based on the natural background level or condition. All available information shall be examined, and all possible sources of a contaminant will be identified in determining the naturally occurring concentration. All site-specific criteria shall be noticed for public comment and subjected to other applicable public participation requirements prior to being adopted.

2. Narrative biological goal.

- a. Goal. The biological condition of surface waters shall be similar to that of sites or water bodies determined by the department to be regional reference sites.
- b. Definitions.
 - (1) "Assemblage" means an association of aquatic organisms of similar taxonomic classification living in the same area. Examples of assemblages include fish, macroinvertebrates, algae, and vascular plants.

- (2) "Aquatic organism" means any plant or animal which lives at least part of its life cycle in water.
 - (3) "Biological condition" means the taxonomic composition, richness, and functional organization of an assemblage of aquatic organisms at a site or within a water body.
 - (4) "Functional organization" means the number of species or abundance of organisms within an assemblage which perform the same or similar ecological functions.
 - (5) "Metric" means an expression of biological community composition, richness, or function which displays a predictable, measurable change in value along a gradient of pollution or other anthropogenic disturbance.
 - (6) "Regional reference sites" are sites or water bodies which are determined by the department to be representative of sites or water bodies of similar type (e.g., hydrology and ecoregion) and are least impaired with respect to habitat, water quality, watershed land use, and riparian and biological condition.
 - (7) "Richness" means the absolute number of taxa in an assemblage at a site or within a water body.
 - (8) "Taxonomic composition" means the identity and abundance of species or taxonomic groupings within an assemblage at a site or within a water body.
- c. **Implementation.** The intent of the state in adopting a narrative biological goal is solely to provide an additional assessment method that can be used to identify impaired surface waters. Regulatory or enforcement actions based solely on a narrative biological goal, such as the development and enforcement of North Dakota pollutant discharge elimination system permit limits, are not authorized. However, adequate and representative biological assessment information may be used in combination with other information to assist in determining whether designated uses are attained and to assist in determining whether new or revised chemical-specific permit limitations may be needed. Implementation will be based on the comparison of current biological conditions at a particular site to the biological conditions deemed attainable based on regional reference sites. In implementing a narrative biological goal, biological condition

may be expressed through an index composed of multiple metrics or through appropriate statistical procedures.

History: Effective June 1, 2001.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 23-33, 61-28

33-16-02.1-09. Surface water classifications, mixing zones, and numeric standards.

1. **Classifications.** Procedures for the classifications of streams and lakes of the state shall follow this subsection. Classifications of streams and lakes are listed in appendix I and appendix II, respectively.
 - a. **Class I streams.** The quality of the waters in this class shall be suitable for the propagation or protection, or both, of resident fish species and other aquatic biota and for swimming, boating, and other water recreation. The quality of the waters shall be suitable for irrigation, stock watering, and wildlife without injurious effects. After treatment consisting of coagulation, settling, filtration, and chlorination, or equivalent treatment processes, the water quality shall meet the bacteriological, physical, and chemical requirements of the department for municipal or domestic use.
 - b. **Class IA streams.** The quality of the waters in this class shall be the same as the quality of class I streams, except that treatment for municipal use may also require softening to meet the drinking water requirements of the department.
 - c. **Class II streams.** The quality of the waters in this class shall be the same as the quality of class I streams, except that additional treatment may be required to meet the drinking water requirements of the department. Streams in this classification may be intermittent in nature which would make these waters of limited value for beneficial uses such as municipal water, fish life, irrigation, bathing, or swimming.
 - d. **Class III streams.** The quality of the waters in this class shall be suitable for agricultural and industrial uses. Streams in this class generally have low average flows with prolonged periods of no flow. During periods of no flow, they are of limited value for recreation and fish and aquatic biota. The quality of these waters must be maintained to protect secondary contact recreation uses (e.g., wading), fish and aquatic biota, and wildlife uses.
 - e. **Wetlands.** These water bodies, including isolated ponds, sloughs, and marshes, are to be considered waters of the state and will be protected under section 33-16-02-08.

- f. Lakes and reservoirs. The type of fishery a lake or reservoir may be capable of supporting is based on the lake's or reservoir's geophysical characteristics. The capability of a lake or reservoir to support a fishery may be affected by seasonal or climatic variability or other natural occurrences which may alter the physical and chemical characteristics of the lake or reservoir.

Class	Characteristics
1	Cold water fishery. Waters capable of supporting growth of cold water fish species (e.g., salmonids) and associated aquatic biota.
2	Cool water fishery. Waters capable of supporting natural reproduction and growth of cool water fishes (e.g., northern pike and walleye) and associated aquatic biota. These waters are also capable of supporting the growth and marginal survival of cold water species and associated biota.
3	Warm water fishery. Waters capable of supporting natural reproduction and growth of warm water fishes (e.g., largemouth bass and bluegill) and associated aquatic biota. Some cool water species may also be present.
4	Marginal fishery. Waters capable of supporting a fishery on a short-term or seasonal basis (generally a "put and take" fishery).
5	Not capable of supporting a fishery due to high salinity.

2. **Mixing zones.** North Dakota mixing zone and dilution policy is contained in appendix III.

3. **Numeric standards.**

- a. Class I streams. Unless stated otherwise, maximum limits for class I streams are listed in table 1 and table 2.
- b. Class IA streams. The physical and chemical criteria shall be those for class I, with the following exceptions:

Substance or Characteristic	Maximum Limit
Chlorides (total)	175 mg/l (30-day arithmetic average)
Sodium	60% of total cations as mEq/l
Sulfate (total)	450 mg/l (30-day arithmetic average)

- c. Class II streams. The physical and chemical criteria shall be those for class IA, with the following exceptions:

Substance or Characteristic	Maximum Limit
Chlorides (total)	250 mg/l (30-day arithmetic average)
pH	6.0-9.0 (up to 10% of representative samples collected during any 3-year period may exceed this range provided that lethal conditions are avoided)

- d. Class III streams. The physical and chemical criteria shall be those for class II, with the following exceptions:

Substance or Characteristic	Maximum Limit
Sulfate (total)	750 mg/l (30-day arithmetic average)

- e. Lakes and reservoirs.

- (1) The beneficial uses and parameter limitations designated for class I streams shall apply to all classified lakes or reservoirs. However, specific background studies and information may require that the department revise a standard for any specific parameter.
- (2) In addition, these nutrient parameters are guidelines for use as goals in any lake or reservoir improvement or maintenance program:

Parameter	Limit
NO ₃ as N	.25 mg/l
PO ₄ as P	.02 mg/l

- (3) The temperature standard for class I streams does not apply to Nelson Lake in Oliver County. The temperature of any discharge to Nelson Lake shall not have an adverse effect on fish, aquatic biota, recreation, and wildlife.
- (4) A numeric temperature standard of not greater than fifty-nine degrees Fahrenheit [15 degrees Celsius] shall be maintained in the hypolimnion of class I lakes and reservoirs during periods of thermal stratification.

- (5) The numeric dissolved oxygen standard of five mg/l as a daily minimum does not apply to the hypolimnion of class III and IV lakes and reservoirs during periods of thermal stratification.
- (6) Lake Sakakawea must maintain a minimum volume of water of five hundred thousand-acre feet [61674-hectare meters] that has a temperature of fifty-nine degrees Fahrenheit [15 degrees Celsius] or less and a dissolved oxygen concentration of not less than five mg/l.

History: Effective June 1, 2001; amended effective October 1, 2006.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 23-33, 61-28

TABLE 1
 MAXIMUM LIMITS FOR SUBSTANCES IN
 OR CHARACTERISTICS OF CLASS I STREAMS

CAS No.	Substance or Characteristic	Maximum Limit
		Acute Standard
7429905	Aluminum	750 ug/l
		Chronic Standard
		87 ug/l
		Where the pH is equal to or greater than 7.0, and the hardness is equal to or greater than 50 mg/l as CaCO ₃ in the receiving water after mixing, the 87 ug/l chronic total recoverable aluminum criterion will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute total recoverable aluminum criterion.
		Acute Standard
7446-41-7	Ammonia (Total as N)	The one-hour average concentration of total ammonia (expressed as N in mg/l) does not exceed, more often than once every three years on the average, the numerical value given by the following formula:
		$\frac{0.411}{1 + 10^{7.204-pH}} + \frac{58.4}{1 + 10^{pH-7.204}}$
		where salmonids are absent; or
		$\frac{0.275}{1 + 10^{7.204-pH}} + \frac{39.0}{1 + 10^{pH-7.204}}$
		where salmonids are present.
		Chronic Standard
		The 30-day average concentration of total ammonia (expressed as N in mg/l) does not exceed, more often than once every three years on the average, the numerical value given by the following formula; and the highest 4-day average concentration of total ammonia within the 30-day averaging period does not exceed 2.5 times the numerical value given by the following formula:
		$= \left(\frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}} \right) \bullet CV;$
		where CV = 2.85, when T ≤ 14° C; or

CAS No.	Substance or Characteristic	Maximum Limit
		$CV = 1.45 \times 10^{0.028 \cdot (25-T)}$, when $T > 14^\circ \text{ C}$.

Site-Specific Chronic Standard

The following site-specific standard applies to the Red River of the North beginning at the 12th Avenue North bridge in Fargo, North Dakota, and extending approximately 32 miles downstream to its confluence with the Buffalo River, Minnesota. This site-specific standard applies only during the months of October, November, December, January, and February. During the months of March through September, the statewide chronic ammonia standard applies.

The 30-day average concentration of total ammonia (expressed as N in mg/l) does not exceed, more often than once every three years on the average, the numerical value given by the following formula; and the highest 4-day average concentration of total ammonia within the 30-day averaging period does not exceed 2.5 times the numerical value given by the following formula:

$$= \left(\frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} \right) \bullet CV;$$

where $CV = 4.63$, when $T \leq 7^\circ \text{ C}$; or

$$CV = 1.45 \times 10^{0.028 \cdot (25-T)}$$
, when $T > 7^\circ \text{ C}$.

7440-39-3	Barium (Total)	1.0 mg/l (one-day arithmetic average)
	Boron (Total)	.75 mg/l (30-day arithmetic average)
16887-00-6	Chlorides (Total)	100 mg/l (30-day arithmetic average)
7.782-50-5	Chlorine Residual (Total)	Acute .019 mg/l Chronic .011 mg/l
7782-44-7	Dissolved Oxygen	5 mg/l as a daily minimum (up to 10% of representative samples collected during any 3-year period may be less than this value provided that lethal conditions are avoided)

CAS No.	Substance or Characteristic	Maximum Limit
	Fecal Coliform ²	Not to exceed 200 organisms per 100 ml as a geometric mean of representative samples collected during any 30-day consecutive period, nor shall more than 10 percent of samples collected during any 30-day consecutive period individually exceed 400 organisms per 100 ml. For assessment purposes, the 30-day consecutive period shall follow the calendar month. This standard shall apply only during the recreation season May 1 to September 30.
	E. coli ²	Not to exceed 126 organisms per 100 ml as a geometric mean of representative samples collected during any 30-day consecutive period, nor shall more than 10 percent of samples collected during any 30-day consecutive period individually exceed 409 organisms per 100 ml. For assessment purposes, the 30-day consecutive period shall follow the calendar month. This standard shall apply only during the recreation season May 1 to September 30.
14797-55-8	Nitrates (N) (Diss.) ¹	1.0 mg/l (up to 10% of samples may exceed)
	pH	7.0-9.0 (up to 10% of representative samples collected during any three-year period may exceed this range, provided that lethal conditions are avoided)
32730	Phenols (Total)	0.3 mg/l (organoleptic criterion) (one-day arithmetic average)
	Sodium	50 percent of total cations as mEq/l
	Sulfates (Total as SO ₄)	250 mg/l (30-day arithmetic average)
	Temperature	Eighty-five degrees Fahrenheit [29.44 degrees Celsius]. The maximum increase shall not be greater than five degrees Fahrenheit [2.78 degrees Celsius] above natural background conditions.
	Combined radium 226 and radium 228 (Total)	5 pCi/l (30-day arithmetic average)

CAS No.	Substance or Characteristic	Maximum Limit
	Gross alpha particle activity, including radium 226, but excluding radon and uranium	15 pCi/l (30-day arithmetic average)

¹The standard for nitrates (N) is intended as an interim guideline limit. Since each stream or lake has unique characteristics which determine the levels of these constituents that will cause excessive plant growth (eutrophication), the department reserves the right to review this standard after additional study and to set specific limitations on any waters of the state. However, in no case shall the concentration for nitrate plus nitrite N exceed 10 mg/l for any waters used as a municipal or domestic drinking water supply.

²Where the fecal coliform or E. coli criteria, or both, are exceeded and there are natural sources, the criteria may be considered attained, provided there is reasonable basis for concluding that the indicator bacteria density attributable to anthropogenic sources is consistent with the level of water quality required by the criteria. This may be the situation, for example, in headwater streams that are minimally affected by anthropogenic activities.

TABLE 2
WATER QUALITY CRITERIA¹
(MICROGRAMS PER LITER)

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III		Human Health Value	
		Acute	Chronic	Classes I, IA, II ²	Class III ³
83-32-9	Acenaphthene			670	990
107-02-8	Acrolein			190	290
107-13-1	Acrylonitrile ⁴			0.051	0.25
71-43-2	Benzene ⁴			2.2	51
92-87-5	Benzidine ⁴			0.000086	0.00020
56-23-5	Carbon tetrachloride ⁴ (Tetrachloromethane)			0.23	1.6
108-90-7	Chlorobenzene (Monochlorobenzene)			100 ⁷	1,600
120-82-1	1,2,4-Trichlorobenzene			35	70
118-74-1	Hexachlorobenzene ⁴			0.00028	0.00029
107-06-2	1,2-Dichloroethane ⁴			0.38	37
71-55-6	1,1,1-Trichloroethane			200 ⁷	
67-72-1	Hexachloroethane ⁴			1.4	3.3
79-00-5	1,1,2-Trichloroethane ⁴			0.59	16
79-34-5	1,1,2,2-Tetrachloroethane ⁴			0.17	4.0
111-44-4	Bis(2-chloroethyl) ether ⁴			0.030	0.53
91-58-7	2-Chloronaphthalene			1,000	1,600
88-06-2	2,4,6-Trichlorophenol ⁴			1.4	2.4
59-50-7	p-Chloro-m-cresol (4-Chloro-3-methylphenol)			3000	
67-66-3	Chloroform (HM) ⁴ (Trichloromethane)			5.7	470
95-57-8	2-Chlorophenol			81	150
95-50-1	1,2-Dichlorobenzene ⁷			420	1,300
541-73-1	1,3-Dichlorobenzene			320	960
106-46-7	1,4-Dichlorobenzene ⁷			63	190
91-94-1	3,3'-Dichlorobenzidine ⁴			0.021	0.028
75-35-4	1,1-Dichloroethylene ⁴			7 ⁷	7,100
156-60-5	1,2-trans-Dichloroethylene ⁷			100 ⁷	10,000
120-83-2	2,4-Dichlorophenol			77	290
542-75-6	1,3-Dichloropropylene (1,3-Dichloropropene) (cis and trans isomers)			0.34	21
78-87-5	1,2-Dichloropropane			0.50	15
105-67-9	2,4-Dimethylphenol			380	850
121-14-2	2,4-Dinitrotoluene ⁴			0.11	3.4

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III		Human Health Value	
		Acute	Chronic	Classes I, IA, II ²	Class III ³
122-66-7	1,2-Diphenylhydrazine ⁴			0.036	0.20
160-41-4	Ethylbenzene ⁷			530	2,100
206-44-0	Fluoranthene			130	140
39638-32-9	Bis(2-chloroisopropyl) ether			1400	65,000
75-09-2	Methylene chloride (HM) ⁴ (Dichloromethane)			4.6	590
74-83-9	Methyl bromide (HM) (Bromomethane)			47	1,500
75-25-2	Bromoform (HM) ⁵ (Tribromomethane)			4.3	140
75-27-4	Dichlorobromomethane (HM) ⁵			0.55	17
124-48-1	Chlorodibromomethane (HM) ⁵			0.40	13
87-68-3	Hexachlorobutadiene ⁴			0.44	18
77-47-4	Hexachlorocyclopentadiene			40	1,100
78-59-1	Isophorone ⁴			35	960
98-95-3	Nitrobenzene			17	690
51-28-5	2,4-Dinitrophenol			69	5,300
534-52-1	4,6-Dinitro-o-cresol (4,6-Dinitro-2-methylphenol)			13	280
62-75-9	N-Nitrosodimethylamine ⁴			0.00069	3.0
86-30-6	N-Nitrosodiphenylamine ⁴			3.3	6.0
621-64-7	N-Nitrosodi-n-propylamine ⁴			0.005	0.51
87-86-5	Pentachlorophenol	19 ⁹	15 ⁹	0.27	3.0
108-95-2	Phenol			21000	1,700,000
117-81-7	Bis(2-ethylhexyl)phthalate ⁴			1.2	2.2
85-68-7	Butyl benzyl phthalate			1,500	1,900
84-74-2	Di-n-butyl phthalate			2,000	4,500
84-66-2	Diethyl phthalate			17,000	44,000
131-11-3	Dimethyl phthalate			270,000	1,100,000
56-55-3	Benzo(a)anthracene (PAH) ⁴ (1,2-Benzanthracene)			0.0038	0.018
50-32-8	Benzo(a)pyrene (PAH) ⁴ (3,4-Benzopyrene)			0.0038	0.018
205-99-2	Benzo(b)fluoranthene (PAH) ⁴ (3,4-Benzofluoranthene)			0.0038	0.018
207-08-9	Benzo(k)fluoranthene (PAH) ⁴ (11,12-Benzofluoranthene)			0.0038	0.018
218-01-9	Chrysene (PAH) ⁴			0.0038	0.018
120-12-7	Anthracene (PAH) ⁵			8,300	40,000
86-73-7	Fluorene (PAH) ⁵			1,100	5,300
53-70-1	Dibenzo(a,h)anthracene (PAH) ⁴ (1,2,5,6-Dibenzanthracene)			0.0038	0.018

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III		Human Health Value	
		Acute	Chronic	Classes I, IA, II ²	Class III ³
193-39-5	Indeno(1,2,3-cd)pyrene (PAH) ⁴			0.0038	0.018
129-00-0	Pyrene (PAH) ⁵			830	4,000
127-18-4	Tetrachloroethylene ⁴			0.69	3.3
108-88-3	Toluene			1,000 ⁷	15,000
79-01-6	Trichloroethylene ⁴			2.5	30
75-01-4	Vinyl chloride ⁴ (Chloroethylene)			0.025	2.4
309-00-2	Aldrin ⁴	1.5		0.000049	0.000050
60-57-1	Dieldrin ⁴	0.24	0.056	0.000052	0.000054
57-74-9	Chlordane ⁴	1.2	0.0043	0.00080	0.00081
80-29-3	4,4'-DDT ⁴	0.55 ¹³	0.001 ¹³	0.00022	0.00022
75-55-9	4,4'-DDE ⁴			0.00022	0.00022
72-54-8	4,4'-DDD ⁴			0.00031	0.00031
115-29-7	alpha-Endosulfan	0.11 ¹²	0.056 ¹²	62	89
115-29-7	beta-Endosulfan	0.11 ¹²	0.056 ¹²	62	89
1031-07-8	Endosulfan sulfate			62	89
72-20-8	Endrin	0.09	0.036	0.059	0.060
7421-93-4	Endrin aldehyde			0.29	0.30
76-44-8	Heptachlor ⁴	0.26	0.0038	0.000079	0.000079
1024-57-3	Heptachlor epoxide ⁴	0.26	0.0038	0.000039	0.000039
319-84-6	alpha-BHC ⁴ (Hexachlorocyclohexane-alpha)			0.0026	0.0049
319-85-7	beta-BHC ⁴ (Hexachlorocyclohexane-beta)			0.0091	0.017
58-89-9	gamma-BHC (Lindane) ⁴ (Hexachlorocyclohexane-gamma)	0.95		0.2 ⁷	1.8
319-86-8	delta-BHC ⁴ (Hexachlorocyclohexane-delta)				
1336-36-3	PCB 1242 (Arochlor 1242) ⁴		0.014 ¹¹	0.000064 ¹¹	0.000064 ¹¹
1336-36-3	PCB-1254 (Arochlor 1254) ⁴		0.014 ¹¹	0.000064 ¹¹	0.000064 ¹¹
1336-36-3	PCB-1221 (Arochlor 1221) ⁴		0.014 ¹¹	0.000064 ¹¹	0.000064 ¹¹
1336-36-3	PCB-1232 (Arochlor 1232) ⁴		0.014 ¹¹	0.000064 ¹¹	0.000064 ¹¹
1336-36-3	PCB-1248 (Arochlor 1248) ⁴		0.014 ¹¹	0.000064 ¹¹	0.000064 ¹¹
1336-36-3	PCB-1260 (Arochlor 1260) ⁴		0.014 ¹¹	0.000064 ¹¹	0.000064 ¹¹
1336-36-3	PCB-1016 (Arochlor 1016) ⁴		0.014 ¹¹	0.000064 ¹¹	0.000064 ¹¹
8001-35-2	Toxaphene ⁴	0.73	0.0002	0.00028	0.00028
7440-36-0	Antimony			5.6	640
7440-38-2	Arsenic ⁷	340 ¹⁰	150 ¹⁰	10 ⁷	
1332-21-4	Asbestos ^{4,7}			7,000,000 f/l	7000000 f/l
7440-41-7	Beryllium ⁴			4 ⁷	

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III		Human Health Value	
		Acute	Chronic	Classes I, IA, II ²	Class III ³
7440-43-9	Cadmium	2.1 ⁶	0.27 ⁶	5 ⁷	
7440-47-3	Chromium (III)	1800 ⁶	86 ⁶	100(total) ⁷	
	Chromium (VI)	16	11	100(total) ⁷	
7440-50-8	Copper	14.0 ⁶	9.3 ⁶	1000	
57-12-5	Cyanide (total)	22	5.2	140	140
7439-92-1	Lead	82 ⁶	3.2 ⁶	15 ⁷	
7439-97-6	Mercury	1.7	0.012	0.050	0.051
7440-02-0	Nickel	470 ⁶	52 ⁶	100 ⁷	4.200
7782-49-2	Selenium	20	5	50 ⁷	
7440-22-4	Silver	3.8 ⁶			
7440-28-0	Thallium			0.24	0.47
7440-66-6	Zinc	120 ⁶	120 ⁶	7,400	26,000
1746-01-6	Dioxin (2,3,7,8-TCDD) ⁴			5.0E-9	5.1E-9
15972-60-8	Alachlor			2 ⁷	
1912-24-9	Atrazine			3 ⁷	
1563-66-2	Carbofuran			40 ⁷	
94-75-7	2,4-D			70 ⁷	
75-99-0	Dalapon			200 ⁷	
103-23-1	Di(2-ethylhexyl)adipate			400 ⁷	
333-41-5	Diazinon	0.17	0.17		
84852-15-3	Nonylphenol (Isomer mixture) ¹⁴	28	6.6		
96-12-8	Dibromochloropropane			0.2 ⁷	
156-59-2	Dichloroethylene (cis-1,2-)			70 ⁷	
88-85-7	Dinoseb			7 ⁷	
85-00-7	Diquat			20 ⁷	
145-73-3	Endothall			100 ⁷	
106-93-4	Ethylene dibromide (EDB)			0.05 ⁷	
107-83-6	Glyphosate			700 ⁷	
72-43-5	Methoxychlor			40 ⁷	
23135-22-0	Oxamyl (Vydate)			200 ⁷	
1918-02-1	Picloram			500 ⁷	
122-34-9	Simazine			4 ⁷	
100-42-5	Styrene			100 ⁷	
1330-20-7	Xylenes			10,000 ⁷	
7782-41-4	Fluoride			4,000 ⁷	
14797-65-0	Nitrite			1,000 ⁷	
12587-47-2	Beta/positron emitters			4 mrem/yr ⁷	
7440-61-1	Uranium			30 ⁷	

CAS No.	Pollutant	Aquatic Life Value Classes I, IA, II, III		Human Health Value	
		Acute	Chronic	Classes I, IA, II ²	Class III ³
15541-45-4	Bromate			10 ⁷	
	Chlorite			1,000 ⁷	
	Halocetic acids ¹⁵			60 ⁷	

CAS No. Chemical Abstracts Service Registry Number

- 1 Except for the aquatic life values for metals, the values given in this appendix refer to the total (dissolved plus suspended) amount of each substance. For the aquatic life values for metals, the values refer to the total recoverable method for ambient metals analyses.
- 2 Based on two routes of exposure - ingestion of contaminated aquatic organisms and drinking water.
- 3 Based on one route of exposure - ingestion of contaminated aquatic organisms only.
- 4 Substance classified as a carcinogen, with the value based on an incremental risk of one additional instance of cancer in one million persons.
- 5 Chemicals which are not individually classified as carcinogens but which are contained within a class of chemicals, with carcinogenicity as the basis for the criteria derivation for that class of chemicals; an individual carcinogenicity assessment for these chemicals is pending.
- 6 Hardness dependent criteria. Value given is an example only and is based on a CaCO₃ hardness of 100 mg/l. Criteria for each case must be calculated using the following formula:

$$CMC = \exp (ma [\ln (\text{hardness})] + ba)$$

	ma	ba
Cadmium	1.0166	-3.924
Copper	0.9422	-1.700
Chromium (III)	0.8190	3.7256
Lead	1.273	-1.460
Nickel	0.8460	2.255
Silver	1.72	-6.59
Zinc	0.8473	0.884

CMC = Criterion Continuous Concentration (acute exposure value)

The threshold value at or below which there should be no unacceptable effects to freshwater aquatic organisms and their uses if the one-hour concentration does not exceed that CMC value more than once every three years on the average.

$$CCC = \exp (mc [\ln (\text{hardness})] + bc)$$

	mc	bc
Cadmium	0.7409	-4.719
Copper	0.8545	-1.702
Chromium	0.8190	0.6848
Lead	1.273	-4.705
Nickel	0.8460	0.0584
Silver	—	—
Zinc	0.8473	0.884

CCC = Criterion Continuous Concentration (chronic exposure value)
The threshold value at or below which there should be no unacceptable effects to freshwater aquatic organisms and their uses if the four-day concentration does not exceed that CCC value more than once every three years on the average.

- 7 Safe Drinking Water Act (MCL).
- 8 Note 8 intentionally omitted.
- 9 Freshwater aquatic life criteria for pentachlorophenol are expressed as a function of pH. Values displayed in the table correspond to a pH of 7.8 and are calculated as follows:
$$\text{CMC} = \exp [1.005 (\text{pH}) - 4.869] \quad \text{CCC} = \exp [1.005 (\text{pH}) - 5.134]$$
- 10 This criterion applies to total arsenic.
- 11 This criterion applies to total PCBs (i.e., the sum of all congener or all isomer or homolog or Arochlor analyses).
- 12 This criterion applies to the sum of alpha-endosulfan and beta-endosulfan.
- 13 This criterion applies to DDT and its metabolites (i.e., the total concentration of DDT and its metabolites should not exceed this value).
- 14 The nonylphenol criteria address CAS numbers 84852-15-3 and 25154-52-3.
- 15 The criterion is for a total measurement of 5 haloacetic acids, dichloroacetic acid, trichloroacetic acid, monochloroacetic acid, bromoacetic acid, and dibromoacetic acid.

33-16-02.1-10. Ground water classifications and standards.

1. Class I ground waters. Class I ground waters shall have a total dissolved solids concentration of less than 10,000 mg/l. Class I ground waters are not exempt under the North Dakota underground injection control program in section 33-25-01-08.
2. Class II ground waters. Class II ground waters shall have a total dissolved solids concentration of 10,000 mg/l or greater. Class II ground waters are exempt under the North Dakota underground injection control program in section 33-25-01-08.

History: Effective June 1, 2001.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-02.1-11. Discharge of wastes. On-surface discharges. The following are general requirements for all waste discharges or chemical additions:

1. No untreated domestic sewage shall be discharged into the waters of the state.
2. No untreated industrial wastes or other wastes which contain substances or organisms which may endanger public health or degrade the water quality of water usage shall be discharged into the waters of the state.
3. The department must be notified at least twenty days prior to the application of any herbicide or pesticide to surface waters of the state for control of aquatic pests. Only certified applicators are allowed

to apply chemicals. The notification must include the following information:

- a. Chemical name and composition.
 - b. Map which identifies the area of application and aerial extent (e.g., acres or square feet).
 - c. A list of target species of aquatic biota the applicant desires to control.
 - d. The calculated concentration of the active ingredient in surface waters immediately after application.
 - e. Name, address, and telephone number of the certified applicator.
4. Any spill or discharge of waste which causes or is likely to cause pollution of waters of the state must be reported immediately. The owner, operator, or person responsible for a spill or discharge must notify the department as soon as possible (701-328-5210) or the North Dakota hazardous materials emergency assistance and spill reporting number (1-800-472-2121) and provide all relevant information about the spill. Depending on the severity of the spill or accidental discharge, the department may require the owner or operator to:
- a. Take immediate remedial measures;
 - b. Determine the extent of pollution to waters of the state;
 - c. Provide alternate water sources to water users impacted by the spill or accidental discharge; or
 - d. Any other actions necessary to comply with this chapter.

History: Effective June 1, 2001; amended effective October 1, 2006.

General Authority: NDCC 61-28-04

Law Implemented: NDCC 23-33, 61-28

APPENDIX I

STREAM CLASSIFICATIONS

The following intrastate and interstate streams are classified as the class of water quality which is to be maintained in the specified stream or segments noted. There are a number of minor or intermittently flowing watercourses, unnamed creeks, or draws, etc., which are not listed. All tributaries not specifically mentioned are classified as Class III streams.

<u>RIVER BASINS, SUBBASINS, AND TRIBUTARIES</u>	<u>CLASSIFICATION</u>
Missouri River, including Lake Sakakawea and Oahe Reservoir	I
Yellowstone	I
Little Muddy Creek near Williston	II
White Earth River	II
Little Missouri River	II
Knife River	II
Spring Creek	IA
Square Butte Creek below Nelson Lake	IA
Heart River	IA
Green River	IA
Antelope Creek	II
Muddy Creek	II
Apple Creek	II
Cannonball River	II
Cedar Creek	II
Beaver Creek near Linton	II
Grand River	IA
Spring Creek	II
Souris River	IA

RIVER BASINS, SUBBASINS, AND TRIBUTARIES

CLASSIFICATION

Des Lacs River	II
Willow Creek	II
Deep River	III
Mauvais Coulee	I
James River	IA
Pipestem	IA
Cottonwood Creek	II
Beaver Creek	II
Elm River	II
Maple River	II
Bois de Sioux	I
Red River	I
Wild Rice River	II
Antelope Creek	III
Sheyenne River	IA
Baldhill Creek	II
Maple River	II
Rush River	III
Elm River	II
Goose River	IA
Turtle River	II
Forest River	II
North Branch	III
Park River	II
North Branch	III

RIVER BASINS, SUBBASINS, AND TRIBUTARIES

CLASSIFICATION

South Branch	II
Middle Branch	III
Cart Creek	III
Pembina River	IA
Tongue River	II

APPENDIX II

LAKE AND RESERVOIR CLASSIFICATION

Lakes and reservoirs are classified according to the water characteristics which are to be maintained in the specified lakes and reservoirs. The beneficial water uses and parameter limitations designated for Class I streams shall apply to all classified lakes and reservoirs.

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Adams	Mirror Lake	3
Adams	N. Lemmon Lake	1
Barnes	Lake Ashtabula	3
Barnes	Moon Lake	2
Barnes	Clausen Springs	3
Benson	Wood Lake	2
Benson	Graves	3
Benson	Reeves	3
Bottineau	Lake Metigoshe	2
Bottineau	Long Lake	2
Bottineau	Pelican Lake	3
Bottineau	Carbury Dam	2
Bottineau	Cassidy Lake	4
Bottineau	Strawberry Lake	2
Bowman	Bowman-Haley Dam	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Bowman	Gascoyne Lake	3
Bowman	Kalina Dam	3
Bowman	Lutz Dam	2
Bowman	Spring Lake	3
Burke	Powers Lake	3
Burke	Short Creek Dam	2
Burke	Smishek Dam	2
Burke	Northgate Dam	2
Burleigh	McDowell Dam	3
Burleigh	Mitchell Lake	3
Burleigh	New Johns Lake	2
Cass	Casselton Reservoir	3
Cass	Brewer Lake	2
Cavalier	Mt. Carmel Dam	2
Dickey	Moores Lake	3
Dickey	Pheasant Lake	3
Dickey	Wilson Dam	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Divide	Baukol-Noonan Dam	2
Divide	Baukol-Noonan East Mine Pond	2
Divide	Skjeremo Dam	2
Dunn	Lake Ilo	3
Eddy	Battle Lake	3
Eddy	Warsing Dam	3
Emmons	Braddock Dam	3
Emmons	Nieuwsma Dam	2
Emmons	Rice Lake	3
Foster	Juanita Lake	3
Golden Valley	Camel Hump Dam	1
Golden Valley	Odland Dam	3
Grand Forks	Fordville Dam	2
Grand Forks	Kolding Dam	3
Grand Forks	Larimore Dam	2
Grant	Heart Butte Dam (Lake Tschida)	2
Grant	Niagara Dam	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Grant	Raleigh Reservoir	2
Grant	Sheep Creek Dam	2
Griggs	Carlson-Tande Dam	3
Griggs	Red Willow Lake	2
Hettinger	Blickensderfer Dam	2
Hettinger	Castle Rock Dam	4
Hettinger	Indian Creek	2
Hettinger	Larson Lake	3
Hettinger	Mott Watershed Dam	3
Kidder	Alkaline Lake	2
Kidder	Cherry Lake	3
Kidder	Crystal Springs	3
Kidder	Frettum Lake	2
Kidder	George Lake	5
Kidder	Horsehead Lake	2
Kidder	Lake Isabel	3
Kidder	Lake Josephine	2
Kidder	Lake Williams	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Kidder	Round Lake	2
LaMoure	Heinrich-Martin Dam	3
LaMoure	Kalmbach Lake	3
LaMoure	Kulm-Edgeley Dam	3
LaMoure	Lake LaMoure	3
LaMoure	Lehr Dam	3
LaMoure	Limesand-Seefeldt Dam	3
LaMoure	Schlecht-Thom Dam	3
LaMoure	Schlecht-Weix Dam	3
Logan	Beaver Lake	3
Logan	Mundt Lake	3
Logan	Rudolph Lake	3
McHenry	Cottonwood Lake	3
McHenry	George Lake	3
McHenry	Round Lake	3
McHenry	Buffalo Lodge Lake	3
McIntosh	Blumhardt Dam	2
McIntosh	Clear Lake	3
McIntosh	Coldwater Lake	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
McIntosh	Dry Lake	2
McIntosh	Green Lake	2
McIntosh	Lake Hoskins	3
McKenzie	Arnegard Dam	4
McKenzie	Leland Dam	2
McKenzie	Sather Dam	2
McLean	Brush Lake	3
McLean	Crooked Lake	3
McLean	Custer Mine Pond	2
McLean	East Park Lake	2
McLean	Lake Audubon	2
McLean	Lake Brekken	2
McLean	Lake Holmes	2
McLean	Lightning Lake	1
McLean	Long Lake	4
McLean	Riverdale Spillway Lake	1
McLean	Strawberry Lake	3
McLean	West Park Lake	2
Mercer	Harmony Lake	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Morton	Crown Butte Dam	3
Morton	Danzig Dam	3
Morton	Fish Creek Dam	1
Morton	Nygren Dam	2
Morton	Sweetbriar Dam	2
Mountrail	Clearwater Lake	3
Mountrail	Stanley City Pond	3
Mountrail	Stanley Reservoir	3
Mountrail	White Earth Dam	2
Nelson	McVille Dam	2
Nelson	Tolna Dam	2
Nelson	Whitman Dam	2
Oliver	East Arroda Lake	2
Oliver	Nelson Lake	3
Oliver	West Arroda Lake	2
Pembina	Renwick Dam	3
Pierce	Balta Dam	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Pierce	Buffalo Lake	3
Ramsey	Cavanaugh Lake	3
Ramsey	Devils Lake	2
Ransom	Dead Colt Creek Dam	3
Renville	Lake Darling	2
Richland	Lake Elsie	3
Richland	Mooreton Pond	3
Rolette	Belcourt Lake	2
Rolette	Carpenter Lake	2
Rolette	Dion Lake	2
Rolette	Gordon Lake	2
Rolette	Gravel Lake	2
Rolette	Hooker Lake	2
Rolette	Island Lake	3
Rolette	Jensen Lake	3
Rolette	School Section Lake	2
Rolette	Upsilon Lake	2
Rolette	Shutte Lake	2
Sargent	Alkali Lake	3
Sargent	Buffalo Lake	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Sargent	Lake Tewaukon	3
Sargent	Silver Lake	3
Sargent	Sprague Lake	3
Sheridan	Hecker Lake	2
Sheridan	South McClusky Lake (Hoffer Lake)	2
Sioux	Froelich Dam	2
Slope	Cedar Lake	3
Slope	Davis Dam	2
Slope	Stewart Lake	3
Stark	Belfield Pond	1
Stark	Dickinson Dike	1
Stark	Patterson Lake	3
Steele	North Golden Lake	3
Steele	North Tobiason Lake	3
Steele	South Golden Lake	3
Stutsman	Arrowwood Lake	4
Stutsman	Bader Lake	3
Stutsman	Barnes Lake	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Stutsman	Clark Lake	3
Stutsman	Crystal Springs	3
Stutsman	Hehn-Schaffer Lake	3
Stutsman	Jamestown Reservoir	3
Stutsman	Jim Lake	4
Stutsman	Spiritwood Lake	3
Stutsman	Pipestem Reservoir	3
Towner	Armourdale Dam	2
Towner	Bisbee Dam	2
Walsh	Bylin Dam	3
Walsh	Homme Dam	3
Walsh	Matejcek Dam	3
Ward	Hiddenwood Lake	3
Ward	Makoti Lake	4
Ward	North-Carlson Lake	3
Ward	Rice Lake	3
Ward	Velva Sportsmans Pond	1
Wells	Harvey Dam	3

<u>COUNTY</u>	<u>LAKE</u>	<u>CLASSIFICATION</u>
Wells	Lake Hiawatha (Sykeston Dam)	4
Williams	Blacktail Dam	3
Williams	Cottonwood Lake	3
Williams	East Spring Lake Pond	3
Williams	Epping-Springbrook Dam	3
Williams	Iverson Dam	2
Williams	Kettle Lake	2
Williams	Kota-Ray Dam	1
Williams	McCleod (Ray) Reservoir	3
Williams	McGregor Dam	1
Williams	Tioga Dam	3
Williams	Trenton Lake	2
Williams	West Spring Lake Pond	3
	Lake Oahe	1
	Lake Sakakawea	1

APPENDIX III

MIXING ZONE AND DILUTION POLICY AND IMPLEMENTATION PROCEDURE

PURPOSE

This policy addresses how mixing and dilution of point source discharges with receiving waters will be addressed in developing chemical-specific and whole effluent toxicity discharge limitations for point source discharges. Depending upon site-specific mixing patterns and environmental concerns, some pollutants/criteria may be allowed a mixing zone or dilution while others may not. In all cases, mixing zone and dilution allowances shall be limited, as necessary, to protect the integrity of the receiving water's ecosystem and designated uses.

MIXING ZONES

Where dilution is available and the discharge does not mix at a near instantaneous and complete rate with the receiving water (incomplete mixing), an appropriate mixing zone may be designated. In addition, a mixing zone may only be designated if it is not possible to achieve chemical-specific standards and whole effluent toxicity objectives at the end-of-pipe with no allowance for dilution. The size and shape of a mixing zone will be determined on a case-by-case basis. At a maximum, mixing zones for streams and rivers shall not exceed one-half the cross-sectional area or a length 10 times the stream width at critical low flows, whichever is more limiting. Also, at a maximum, mixing zones in lakes shall not exceed 5 percent of lake surface area or 200 feet in radius, whichever is more limiting. Individual mixing zones may be limited or denied in consideration of designated beneficial uses or presence of the following concerns in the area affected by the discharge:

- 1) There is the potential for bioaccumulation in fish tissues or wildlife.
- 2) The area is biologically important, such as fish spawning/nursery areas.
- 3) The pollutant of concern exhibits a low acute to chronic ratio.
- 4) There is a potential for human exposure to pollutants resulting from drinking water use or recreational activities.
- 5) The effluent and resultant mixing zone results in an attraction of aquatic life to the effluent plume.
- 6) The pollutant of concern is extremely toxic and persistent in the environment.
- 7) The mixing zone would prohibit a zone of passage for migrating fish or other species (including access to tributaries).
- 8) There are cumulative effects of multiple discharges and their mixing zones.

Within the mixing zone designated for a particular pollutant, certain numeric water quality criteria for that substance may not apply. However, all mixing zones shall

meet the general conditions set forth in Section 33-16-02-08 of the State Water Quality Standards.

While exceedences of acute chemical specific numeric standards are not allowed within the entire mixing zone, a portion of the mixing zone (the zone of initial dilution or ZID) may exceed acute chemical-specific numeric standards established for the protection of aquatic life. The ZID shall be determined on a case-by-case basis where the statement of basis for the discharge permit includes a rationale for concluding that a zone of initial dilution poses no unacceptable risks to aquatic life. Acute whole effluent toxicity (WET) limits shall be achieved at the end-of-pipe with no allowance for a ZID.

DILUTION ALLOWANCES

An appropriate dilution allowance may be provided in calculating chemical-specific acute and chronic and WET discharge limitations where: 1) the discharge is to a river or stream, 2) dilution is available at low-flow conditions, and 3) available information is sufficient to reasonably conclude that there is near instantaneous and complete mixing of the discharge with the receiving water (complete mixing). The basis for concluding that such near instantaneous and complete mixing is occurring shall be documented in the statement of basis for the NDPDES permit. In the case of field studies, the dilution allowance for continuous dischargers shall be based on the critical low flow (or some portion of the critical low flow). The requirements and environmental concerns identified in the paragraphs above may be considered in deciding the portion of the critical low flow to provide as dilution. The following critical low flows shall be used for streams and effluents:

Stream Flows

Aquatic life, chronic	4-day, 3-year flow (biologically based)**
Aquatic life, acute	1-day, 3-year flow (biologically based)
Human health (carcinogens)	harmonic mean flow
Human health (non-carcinogens)	4-day, 3-year flow (biologically based) or 1-day, 3-year flow (biologically based)

Effluent Flows

Aquatic life, chronic	Mean daily flow
Aquatic life, acute	Maximum daily flow
Human health (all)	Mean daily flow

* Biologically based refers to the biologically based design flow method developed by EPA. It differs from the hydrologically based design flow method in that it directly uses the averaging periods and frequencies specified in the aquatic life water quality criteria for individual pollutants and whole effluents for determining design flows.

** A 30-day, 10-year flow (biologically based) can be used for ammonia or other chronic standard with a 30-day averaging period.

For chemical-specific and chronic WET limits, an appropriate dilution allowance may also be provided for certain minor publicly owned treatment works (POTWs) where allowing such dilution will pose insignificant environmental risks. For acute WET limits, an allowance for dilution is authorized only where dilution is available and mixing is complete.

For controlled discharges, such as lagoon facilities that discharge during high ambient flows, the stream flow to be used in the mixing zone analysis should be the lowest statistical flow expected to occur during the period of discharge.

Where a discharger has installed a diffuser in the receiving water, all or a portion of the critical low stream flow may be provided as a dilution allowance. The determination shall depend on the diffuser design and on the requirements and potential environmental concerns identified in the above paragraphs. Where a diffuser is installed across the entire river/stream width (at critical low flow), it will generally be presumed that near instantaneous and complete mixing is achieved and that providing the entire critical low flow as dilution is appropriate.

OTHER CONSIDERATIONS

Where dilution flow is not available at critical conditions (i.e., the water body is dry), the discharge limits will be based on achieving applicable water quality criteria (i.e., narrative and numeric, chronic and acute) at the end-of-pipe; neither a mixing zone or an allowance for dilution will be provided.

All mixing zone dilution assumptions are subject to review and revision as information on the nature and impacts of the discharge becomes available (e.g., chemical or biological monitoring at the mixing zone boundary). At a minimum, mixing zone and dilution decisions are subject to review and revision, along with all other aspects of the discharge permit upon expiration of the permit.

For certain pollutants (e.g., ammonia, dissolved oxygen, metals) that may exhibit increased toxicity or other effects on water quality after dilution and complete mixing is achieved, the waste load allocation shall address such effects on water quality, as necessary, to fully protect designated and existing uses. In other words, the point of compliance may be something other than the mixing zone boundary or the point where complete mixing is achieved.

The discharge will be consistent with the Antidegradation Procedure.

IMPLEMENTATION PROCEDURE

This procedure describes how dilution and mixing of point source discharges with receiving waters will be addressed in developing discharge limitations for point source discharges. For the purposes of this procedure, a mixing zone is defined as a designated area or volume of water surrounding or downstream of a point

source discharge where the discharge is progressively diluted by the receiving water and numerical water quality criteria may not apply. Based on site-specific considerations, such a mixing zone may be designated in the context of an individual permit decision. Discharges may also be provided an allowance for dilution where it is determined that the discharge mixes with the receiving water in near instantaneous and complete fashion. Such mixing zones and allowances for dilution will be granted on a parameter-by-parameter and criterion-by-criterion basis as necessary to fully protect existing and designated uses.

The procedure to be followed is composed of six individual elements or steps. The relationship of the six steps and an overview of the mixing zone/dilution procedure is shown in Figure 1.

Step 1 - No Dilution Available During Critical Conditions

Where dilution flow is not available at critical low flow conditions, discharge limitations will be based on achieving applicable narrative and numeric water quality criteria at the end-of-pipe.

Step 2 - Dilution Categorically Prohibited for Wetland Discharges

Permit limitations for discharges to a wetland shall be based on achieving all applicable water quality criteria (i.e., narrative and numeric, chronic and acute) at end-of-pipe.

Step 3 - Procedure for Certain Minor POTWs

Minor POTWs that discharge to a lake or to a river/stream at a dilution greater than 50:1 qualify for this procedure. Minor POTWs with dilution ratios less than 50:1 may also qualify (at the discretion of the permit writer) where it can be adequately demonstrated that this procedure poses insignificant environmental risks. For the purposes of this procedure, the river/stream dilution ratio is defined as the chronic low flow of the segment upstream of the POTW discharge divided by the mean daily flow of the POTW. For controlled discharges from lagoon facilities (discharging during high flows), the river/stream dilution ratio is defined as the lowest upstream flow expected during the period of discharge divided by the mean daily flow of the discharge.

For minor POTWs that qualify for this procedure and discharge to lakes, the allowance for dilution for chemical-specific and chronic WET limits will be determined on a case-by-case basis. Dilution up to 19:1 (5 percent effluent) may be provided.

For minor POTWs that qualify for this procedure and discharge to a river/stream segment, dilution up to the full chronic aquatic life, acute aquatic life, and human health critical flows may be provided.

Step 4 - Site-Specific Risk Considerations

Where allowing a mixing zone or a dilution allowance would pose unacceptable environmental risks, the discharge limitations will be based on achieving applicable narrative and numeric water quality criteria at the end-of-pipe. The existence of environmental risks may also be the basis for a site-specific mixing zone or dilution allowance. Such risk determinations will be made on a case-by-case and parameter-by-parameter basis. These decisions will take into account the designated and existing uses and all relevant site-specific environmental concerns, including the following:

1. Bioaccumulation in fish tissues or wildlife
2. Biologically important areas such as fish spawning areas
3. Low acute to chronic ratio
4. Potential human exposure to pollutants resulting from drinking water or recreational areas
5. Attraction of aquatic life to the effluent plume
6. Toxicity/persistence of the substance discharged
7. Zone of passage for migrating fish or other species (including access to tributaries)
8. Cumulative effects of multiple discharges and mixing zones

Step 5 - Complete Mix Procedures

For point source discharges to rivers/streams where available data are adequate to support a conclusion that there is near instantaneous and complete mixing of the discharge with the receiving water (complete mix) the full critical low flow or a portion thereof may be provided as dilution for chemical-specific and WET limitations. Such determinations of complete mixing will be made on a case-by-case basis using best professional judgement. Presence of an effluent diffuser that covers the entire river/stream width at critical low flow will generally be assumed to provide complete mixing. Also, where the mean daily flow of the discharge exceeds the chronic low stream flow of the receiving water, complete mixing will generally be assumed. In addition, where the mean daily flow of the discharge is less than or equal to the chronic low flow of the receiving water, it will generally be assumed that complete mixing does not occur unless otherwise demonstrated by the permittee. Demonstrations for complete mixing should be consistent with the study plan developed in cooperation with the states/tribes and EPA Region VIII. Near instantaneous and complete mixing is defined as no more than a 10 percent difference in bank-to-bank concentrations within a longitudinal distance not greater than two river/stream widths. For controlled discharges (lagoon facilities), the test of near instantaneous and complete mixing will be made using the expected rate of effluent discharge and the lowest upstream flow expected to occur during the period of discharge.

The following critical low flows shall be applied for streams and effluents:

Stream Flows

Aquatic life, chronic	4-day, 3-year flow (biologically based)**
Aquatic life, acute	1-day, 3-year flow (biologically based)
Human health (carcinogens)	Harmonic mean flow
Human health (non-carcinogens)	4-day, 3-year flow (biologically based) or 1-day, 3-year flow (biologically based)

Effluent Flows

Aquatic life, chronic	Mean daily flow
Aquatic life, acute	Maximum daily flow
Human health (all)	Mean daily flow

* Biologically based refers to the biologically based design flow method developed by EPA. It differs from the hydrologically based design flow method in that it directly uses the averaging periods and frequencies specified in the aquatic life water quality criteria for individual pollutants and whole effluents for determining design flows.

** A 30-day, 10-year flow (biologically based) can be used for ammonia or other chronic standard with a 30-day averaging period.

Where complete mixing can be concluded and the environmental concerns identified in step 4 do not justify denying dilution, but are nevertheless significant, some portion of the critical low flows identified above may be provided as dilution. Such decisions will take site-specific environmental concerns into account as necessary to ensure adequate protection of designated and existing uses.

Step 6 - Incomplete Mix Procedures

This step addresses point source discharges that exhibit incomplete mixing. Because acute WET limits are achieved at the end-of-pipe in incomplete mix situations, this step provides mixing zone procedures for chronic aquatic life, human health, and WET limits, and ZID procedures for acute chemical-specific limits. Where a ZID is allowed for chemical limits, the size of the ZID shall be limited as follows:

- Lakes: The ZID volume shall not exceed 10 percent of the volume of the chronic mixing zone.
- Rivers and Streams: The ZID shall not exceed 10 percent of the chronic mixing zone volume or flow, nor shall the ZID exceed a maximum downstream length of 100 feet, whichever is more restrictive.

The following provides guidelines for determining the amount of dilution available for dischargers that exhibit incomplete mixing.

Default Method

This method addresses situations where information needed for modeling is not available or there are concerns about potential environmental impacts of allowing a mixing zone. The default method provides a conservative dilution allowance.

Stream/River Dischargers: Dilution calculation which uses up to 10 percent of the critical low flow for chronic aquatic life limits or human health limits. However, this allowance may be adjusted downward on a case-by-case basis depending upon relevant site-specific information, designed and existing uses of the segment, and especially the uses of the segment portion affected by the discharge.

Lake/Reservoir Dischargers: Dilution up to 4:1 ratio (20 percent effluent) may be provided for chronic aquatic life analyses or human health analyses. However, this allowance may be adjusted downward on a case-by-case basis depending upon discharge flow, lake size, lake flushing potential, designated and existing uses of the lake, and uses of the lake portion affected by the discharge.

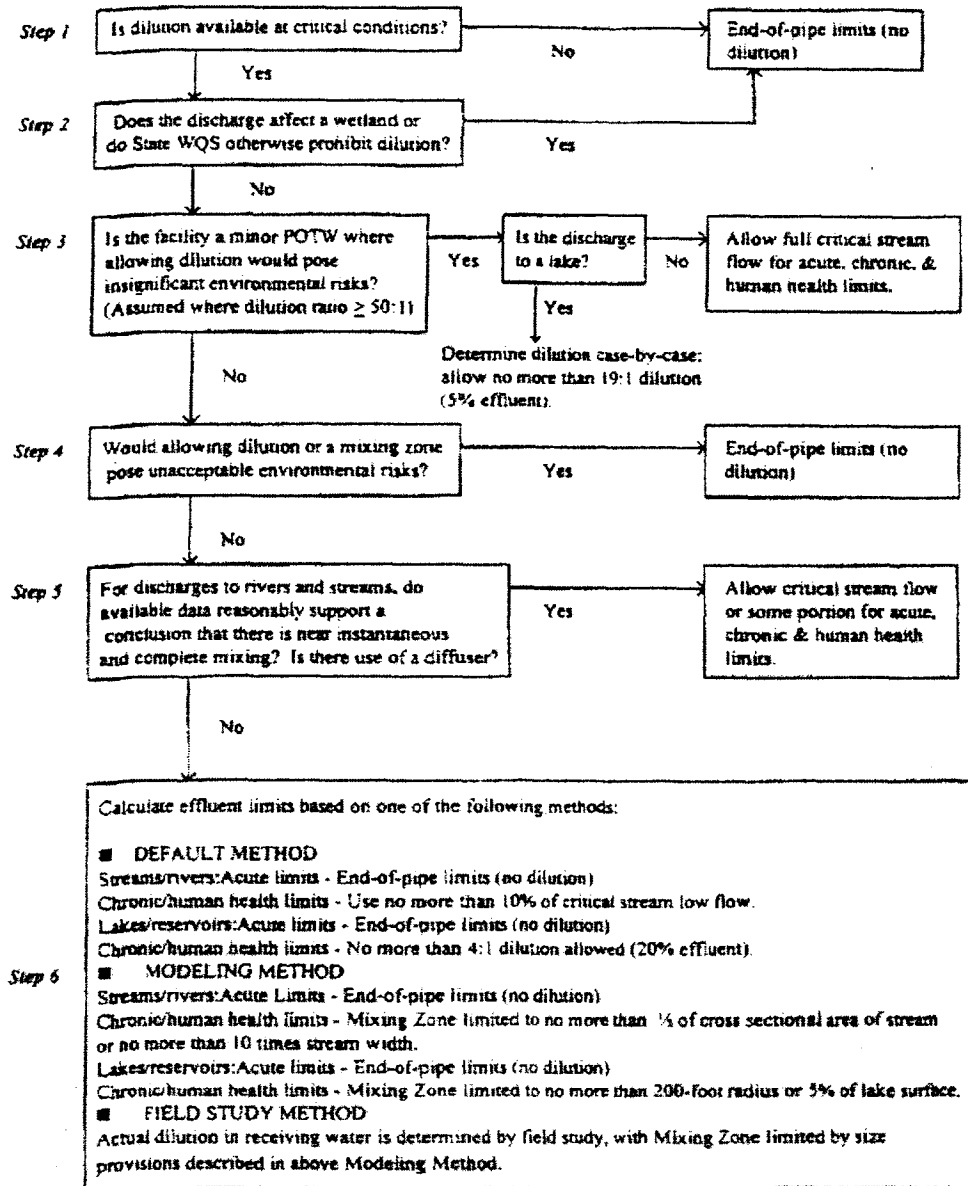
Modeling Method

An appropriate mixing zone model is used to calculate the dilution flow that will allow mixing zone limits to be achieved at the critical low flow. Prior to initiating modeling studies, it should be determined that compliance with criteria at the end-of-pipe is not practicable.

Field Study Method

Field studies which document the actual mixing characteristics in the receiving water are used to determine the dilution flow that will allow mixing zone size limits to be achieved at the critical low flow. For the purposes of field studies, "near instantaneous and complete mixing" is operationally defined as no more than a 10 percent difference in bank-to-bank concentrations within a longitudinal distance not greater than two stream/river widths.

FIGURE 1
NORTH DAKOTA MODEL MIXING ZONE/DILUTION PROCEDURE*



* This procedure is applied to both chemical-specific and WET limits. In the case of complex discharges, the dilution or mixing zone may vary parameter-by-parameter.

APPENDIX IV

NORTH DAKOTA ANTIDegradation PROCEDURE

I. INTRODUCTION

This antidegradation implementation procedure delineates the process that will be followed by the North Dakota State Department of Health for implementing the antidegradation policy found in the Standards of Water Quality for the State of North Dakota, Rule 33-16-02.

Under this implementation procedure, all waters of the state are afforded one of three different levels of antidegradation protection. All existing uses, and the water quality necessary for those uses, shall be maintained and protected. Antidegradation requirements are necessary whenever a regulated activity is proposed that may have some effect on water quality. Regulated actions include permits issued under Section 402 (NDPDES) and 404 (Dredge and Fill) of the Clean Water Act (CWA), and any other activity requiring Section 401 water quality certification. Nonpoint sources of pollution are not included. When reviewing 404 nationwide permits, the department will issue 401 certifications only where it determines that the conditions imposed by such permits are expected to result in attainment of the applicable water quality standards, including the antidegradation requirements. However, it is anticipated that the department will exclude certain nationwide permits from the antidegradation procedures for Category 1 waters on the basis that the category of activities covered by the permit is not expected to have significant permanent effects on the quality and beneficial uses of those waters, or the effects will be appropriately minimized and temporary.

II. EXISTING USE PROTECTION FOR CATEGORY 1, 2, AND 3 WATERS

Existing use means a use that was actually attained in the water body on or after 1967, whether or not it is included in the water quality standards. This procedure presumes that attainment of the criteria assigned to protect the current water body classification will serve to maintain and protect all existing uses. However, where an existing use has water quality requirements that are clearly defined, but are not addressed by the current classification and criteria, the department will ensure that such existing uses are protected fully, based on implementation of appropriate numeric or narrative water quality criteria or criteria guidance. In some cases, water quality may have improved in the segment since the classification was assigned, resulting in attainment of a higher use. In other cases, the classification may have been assigned based on inadequate information, resulting in a classification that does not describe or adequately protect actual uses of the segment. In such cases, the department will develop

requirements necessary to protect the existing uses and, where appropriate, recommend reclassification of the segment.

III. ANTIDegradation REVIEW PROCEDURE

The department will complete an antidegradation review for all proposed regulated activities. The findings of these reviews will be summarized using an antidegradation worksheet. A statement of basis for all conclusions will be attached to the completed worksheet. The level of detail of the review will depend upon the antidegradation protection applicable to the various classes of water.

In conducting an antidegradation review, the Division of Water Quality will sequentially apply the following steps:

- A. Determine which level of antidegradation applies.
- B. Determine whether authorizing the proposed regulated activity is consistent with antidegradation requirements.
- C. Review existing water quality data and other information submitted by the project applicant.
- D. Determine if additional information or assessment is necessary to make a decision.
- E. A preliminary decision is made by the department and subsequently distributed for public participation and intergovernmental coordination.
 - The content of public notices will be determined case by case. In preparing a public notice, the department may address: a) the department's preliminary antidegradation review conclusions; b) a request for public input on particular aspects of the antidegradation review that might be improved based on public input (e.g., existing uses of a segment that needs to be protected); c) notice of the availability of the antidegradation review worksheet; d) notice of the availability of general information regarding the state antidegradation program; and e) a reference to the state antidegradation policy.
 - The antidegradation review findings will be available for public comment; however, publication of a separate notice for purposes of antidegradation is not necessary. For example, the antidegradation preliminary findings may be included in the public notice issued for purposes of an NDPDES permit or CWA § 401 certification.

The department will ensure appropriate intergovernmental coordination on all antidegradation reviews. At a minimum, the department will provide copies of the completed antidegradation review worksheet and/or the public notice to appropriate local, state, and federal government agencies, along with a written request to provide comments by the public comment deadline.

- F. Comments are considered.
- G. The department determines if the change in quality is necessary to accommodate important economic or social development.
- H. The department makes a final decision.

The level of antidegradation protection afforded each water body in the state is consistent with beneficial uses of those water bodies. Appendix I and Appendix II of the Standards of Water Quality for the State of North Dakota identify rivers, streams, and lakes in the state with their classification. The classification shall be consistent with the following categories:

Category 1: Very high level of protection that automatically applies to Class I and Class IA streams and Class I, II, and III lakes, and wetlands that are functioning at their optimal level. In addition, Category 1 is presumed to apply to Class II and Class III streams. Particular Class II and Class III streams may be excluded from Category 1 if, at the time of the antidegradation review, it is determined that one or both of the following criteria are applicable: 1) there is no remaining assimilative capacity for any of the parameters that may potentially be affected by the proposed regulated activity in the segment in question, or 2) an evaluation submitted by the project applicant demonstrates (based on adequate and representative chemical, physical, and biological data) that aquatic life and primary contact recreation uses are not currently being attained because of stressors that will require a long-term effort to remedy. Evaluations in response to Criterion #2 must include more than an identification of current water quality levels. They must include evidence of the current status of the aquatic life and primary contact recreation uses of the segment.

Category 2: Class IV and Class V lakes and particular wetlands after antidegradation review. In addition, Class II and Class III streams or wetlands meeting one of the criteria identified above at the time of the antidegradation review shall be included in Category 2.

Category 3: Highest level of protection; Outstanding State Resource Waters.



Public Service Commission
Receipt of Payment

Receipt# 7038

Received: 12/5/2007 Check# 15210 for \$72.16
Subject: 11/08 Open Records Copies

Docket # PU-06-421

Duncan Ostrander & Dingess
3600 S Yosemite St #500
Denver CO 80237

315 PU-06-421

Pages: 1

Receipt# 7,038 \$72.16 11/08 Open
Records Copies
by Duncan Ostrander & Dingess

12/05/2007



Public Service Commission

State of North Dakota

COMMISSIONERS

Susan E. Wefald, President
Kevin Cramer
Tony Clark

Executive Director
Ilona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.nd.gov/psc
e-mail: ndpsc@nd.gov
TTY 800-366-6888 or 711
Fax 701-328-2410
Phone 701-328-2400

November 19, 2007

Todd D. Kranda, Esq.
Kelsch Kelsch Ruff & Kranda
PO Box 1266
Mandan, ND 58554-1266

John M. Dingess
Special Counsel to the City of Fargo
Duncan Ostrander & Dingess, PC
3600 South Yosemite Street, Suite 500
Denver, CO 80237-1829

John & Janie Capp
12466 60th Street NE
Lankin, ND 58250

Mark Novak
PO Box 122
Lankin, ND 58250

Erik R. Johnson
Attorney to the City of Fargo
Erik R. Johnson & Associates
505 Broadway Street North, Suite 206
Fargo, ND 58102

Lynn C. Wolff, Organizer
Dakota Resource Council
118 Broadway Street, Suite 801
Fargo, ND 58102

Ramona Klein
3340 123rd Avenue SE
Oriska, ND 58663

Linette & Merle Kratochvil
6355 County Road 14
Lankin, ND 58250

Re: TransCanada Keystone Pipeline, LP
Case No. 06-421
Route Corridor & Route Permit Applications

Dear Sirs/Madams:

On November 15, 2007 the applicant requested copies of the docket sheets in the captioned case as well as copies of all docketed items subsequent to October 30, 2007. Since the letter does not indicate that a copy of the request letter was sent to all intervenors, a copy is included with this mailing. Also included in this mailing are the copies of the docket and the docketed items requested by the applicant.

Please note that in a previous mailing dated November 7, 2007, Notice of Intent to Consider Materials Not Considered at Previous Hearing, the intervenors received a large packet of materials which was subsequently docketed to our file as item number 248. Because item 248 contains a variety of documents with many docket numbers, it has been set apart in its entirety by blue slip sheets in an effort to avoid confusing the reader.

If you have questions or need additional information, please contact me.

Best regards,

A handwritten signature in black ink, appearing to read "Illona A. Jeffcoat-Sacto". The signature is fluid and cursive, with a large initial "I" and a long, sweeping underline.

Illona Jeffcoat-Sacto
Executive Director
Director, Public Utilities Division

Enclosure

PU-06-421
Open

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent Cty
Siting Application Filed 9/22/2006
Kevin Cramer Patrick J. Fahh

273 11/15/2007 Letter re Concerns re Pipeline Impacts on Water Quality
Public Service Commission
By Lake Agassiz Water Authority
Exhibit: Pages 2 Certified 0

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\\Regulator\Case Mgmt\Orderlib\2006\060421\273.doc
\\Regulator\Case Mgmt\OrderLib\2006\060421\

272 11/16/2007 Letter Requesting Docket & Documents
Kelsch Kelsch Ruff & Kranda
By
Exhibit: Pages 1 Certified 0

W

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271 11/16/2007 Email from Richard Starke Requesting Intervenor Status
Public Service Commission
By Wefald
Exhibit: Pages 1 Certified 0

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270 11/8/2007 Emails to NDNA to Request/Confirm Publication w Notice of Expedited Hearing
Public Service Commission
By
Exhibit: Pages 6 Certified 0

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269 11/14/2007 Affidavit of Service w Order for Expedited Hearing
Public Service Commission
By
Exhibit: Pages 4 Certified 0

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PU-06-421
Open

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent Cty
Siting Application Filed 9/22/2006
Kevin Cramer Patrick J. Fahn

268 11/14/2007 Letter & Request for Prehearing Conference

Kelsch Kelsch Ruff & Kranda

By:

Exhibit: Pages 3 Certified 0

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267 11/9/2007 Fax of Return to Notice of Withdrawal

Kelsch Kelsch Ruff & Kranda

By:

Exhibit: Pages 8 Certified 0

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\\Regulator\Case Mgmt\OrderLib\2006\060421\267.doc
\\Regulator\Case Mgmt\OrderLib\2006\060421\

266 11/8/2009 Notice of Further Hearing on Expedited Time Frame

Public Service Commission

By:

Exhibit: Pages 1 Certified 0

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\\Regulator\Case Mgmt\OrderLib\2006\060421\

265 11/9/2007 Original of Notice of Withdrawal

Rinke Noonan Attorneys at Law

By TransCanada Keystone Pipeline, LP

Exhibit: Pages 5 Certified 0

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264 11/13/2007 Affidavit of Service Notice of Intent-Notice of Expedited

Public Service Commission

By:

Exhibit: Pages 2 Certified 0

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PU-06-421
Open

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent Cty
Siting Application Filed 9/22/2006
Kevin Cramer Patrick J. Fahn

263 11/9/2007 Affidavit of Service by Certified & Registered Mail

Public Service Commission

By:

Exhibit:

Pages 2

Certified 0

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262 11/8/2007 Affidavit of Service by Certified & Registered Mail

Public Service Commission

By:

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261 11/8/2007 Motion to Issue Notice of Further Hearing on Expedited Time Frame

Public Service Commission

By:

Exhibit:

Pages 1

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\\Regulator\Case Mgmt\OrderLib\2006\060421\261.doc

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260 11/7/2007 Affidavit of Service by Certified & Registered Mail

Public Service Commission

By:

Exhibit:

Pages 2

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\\Regulator\Case Mgmt\OrderLib\2006\060421\260.doc

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259 11/7/2007 Motion to Adopt Order to Intervene and Reopen

Public Service Commission

By:

Exhibit:

Pages 1

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PU-06-421
Open

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent Cty
Siting Application Filed 9/22/2006
Kevin Cramer Patrick J. Fahn

258 11/9/2007 Letter, Return to Notice of Withdrawal & Affidavit

Kelsch Kelsch Ruff & Kranda

By:

Exhibit:

Pages 6

Certified 0

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\\Regulator\Case Mgmt\OrderLib\2006\060421\258.doc

\\Regulator\Case Mgmt\OrderLib\2006\060421

257 11/8/2007 Order for Hearing on Expedited Notice

Public Service Commission

By:

Exhibit:

Pages 2

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\\Regulator\Case Mgmt\OrderLib\2006\060421

256 11/13/2007 Letter re Court Reporter for Nov 27-27 Hearing

Kelsch Kelsch Ruff & Kranda

By:

Exhibit:

Pages 1

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\\Regulator\Case Mgmt\OrderLib\2006\060421\256.doc

\\Regulator\Case Mgmt\OrderLib\2006\060421

255 11/6/2007 Letter Opposing Reopening Hearings

Public Service Commission

By Cavalier County Commission

Exhibit:

Pages 1

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\\Regulator\Case Mgmt\OrderLib\2006\060421

254 11/8/2007 Motion to Adopt Order for Hearing on Expedited Notice

Public Service Commission

By:

Exhibit:

Pages 1

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PU-06-421
Open

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent Cty
Siting Application Filed 9/22/2006
Kevin Cramer Patrick J. Fahn

253 11/8/2007 Motion to Issue Notice of Further Hearing on Expedited Time Frame

Public Service Commission

By:

Exhibit:

Pages 1

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W

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252 11/9/1997 Notice of Further Hearing on Expedited Time Frame

Public Service Commission

By:

Exhibit:

Pages 1

Certified 0

251 11/9/2007 Fax of Notice to Withdraw from Case

Rinke Noonan Attorneys at Law

By:

Exhibit:

Pages 5

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\\Regulator\Case Mgmt\OrderLib\2006\060421\251.doc

\\Regulator\Case Mgmt\OrderLib\2006\060421\

250 11/7/2007 Orders on Motion to Intervene and Reopen

Public Service Commission

By:

Exhibit:

Pages 9

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W

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\\Regulator\Case Mgmt\OrderLib\2006\060421\

249 11/6/2007 Notice of Prehearing Conference & Affidavit

Public Service Commission

By ALJ Al Wahl

Exhibit:

Pages 2

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W

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\\Regulator\Case Mgmt\OrderLib\2006\060421\

PU-06-421
Open

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent City
Siting Application Filed 9/22/2006
Kevin Cramer Patrick J. Fahn

248 11/7/2007 Motion & Notice of Intent to Consider Information Not Presented At Hearing
Public Service Commission
By:
Exhibit: Pages 95 Certified 0

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\\Regulator\Case Mgmt\OrderLib\2006\060421\

247 11/8/2007 Original Letter re Scheduling of Hearing
Public Service Commission
By City of Fargo
Exhibit: Pages 2 Certified 0

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\\Regulator\Case Mgmt\OrderLib\2006\060421\

246 11/8/2007 Email from ALJ to Capp re Atty Delaney Withdrawal from Case
Public Service Commission
By Al Wahl
Exhibit: Pages 1 Certified 0

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245 11/8/2007 Email from ALJ Wahl to Atty Delaney re Withdrawal From Case
Public Service Commission
By:
Exhibit: Pages 1 Certified 0

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244 11/7/2007 Letter re Scheduling of Hearing
Public Service Commission
By City of Fargo
Exhibit: Pages 2 Certified 0

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PU-06-421
Open

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent Cty
Siting Application Filed 9/22/2006
Kevin Cramer Patrick J. Fahn

243 11/6/2007 Letter to Cramer re Reopening of Hearings

Kelsch Kelsch Ruff & Kranda

By Kranda

Exhibit:

Pages 3

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242 11/6/2007 Letter to Wefald re Reopening of Hearings

Kelsch Kelsch Ruff & Kranda

By Kranda

Exhibit:

Pages 3

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\\Regulator\Case Mgmt\OrderLib\2006\060421\

241 11/6/2007 Letter to Clark re Reopening Hearings

Kelsch Kelsch Ruff & Kranda

By Kranda

Exhibit:

Pages 3

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240 11/6/2007 Original Response to Supp Objection/Motion for Intervention/Motion to Reopen

Public Service Commission

By City of Fargo

Exhibit:

Pages 6

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\\Regulator\Case Mgmt\OrderLib\2006\060421\

239 11/2/2007 Letter re Concerns/Use of Thinner Material on Pipeline & Route

Public Service Commission

By Capp

Exhibit:

Pages 2

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\\Regulator\Case Mgmt\OrderLib\2006\060421\

Kelsch Kelsch Ruff & Kranda

C.F. Kelsch
1890-1987

Attorneys at Law
Mandan, North Dakota

William C. Kelsch
Retired

THOMAS F. KELSCH
ARLEN M. RUFF, P.C.
THOMAS D. KELSCH, P.C.
TODD D. KRANDA, P.C.*
WILLIAM J. DELMORE
DANIEL NAGLE

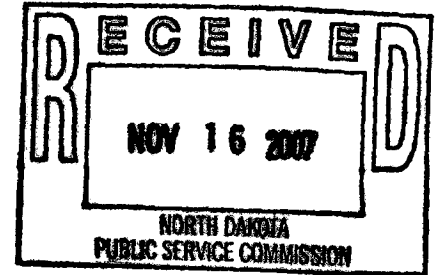
*Also Licensed in Minnesota

TTT MERITAS LAW FIRMS WORLDWIDE

103 Collins Avenue
P.O. Box 1266
Mandan, ND 58554-7266
Phone (701) 663-9818
1-888-663-9818
Fax (701) 663-9810
Website www.kelschlaw.com

November 15, 2007

MS ILLONA A JEFFCOAT-SACCO
EXECUTIVE SECRETARY
PUBLIC SERVICE COMMISSION
600 EAST BOULEVARD, DEPT 408
BISMARCK ND 58505-0480



Re: TransCanada - Keystone Pipeline Project
Corridor Certificate and Route Permit Applications
Case No: PU-06-421
OAH File No. 20070181

Dear Ms. Jeffcoat-Sacco:

This letter is to request a copy of the updated Docket Sheets for the Corridor Certificate and Route Permit Application file as referenced above. The last set of Docket Sheets were current through entry no. 244 as of October 30, 2007.

In addition, please forward a copy of any letter or other documents that have been filed since the last update through October 30, 2007.

If you have any questions, please feel free to contact Thomas D. Kelsch or me.

Sincerely,

A handwritten signature in black ink that reads "Todd D. Kranda".

Todd D. Kranda

TK:ls

c: TransCanada Keystone
Erik Johnson, Esq. (Fax 1-701-280-1902)
Nicholas Delaney, Esq. (Fax 1-370-656-3500)



272 PU-06-421

Pages: 1

Letter Requesting Docket & Documents

by Kelsch Kelsch Ruff & Kranda

11/16/2007

CC: Comm Legal Illona, Pat ALJ

Kelsch Kelsch Ruff & Kranda

C.F. Kelsch
1890-1987

Attorneys at Law
Mandan, North Dakota

William C. Kelsch
Retired

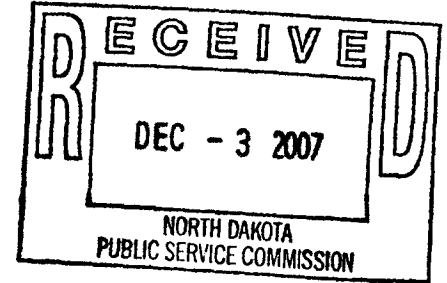
THOMAS F. KELSCH
ARLEN M. RUFF, P.C.
THOMAS D. KELSCH, P.C.
TODD D. KRANDA, P.C.*
WILLIAM J. DELMORE
DANIEL NAGLE

*Also Licensed in Minnesota

 MERITAS LAW FIRMS WORLDWIDE

103 Collins Avenue
P.O. Box 1266
Mandan, ND 58554-7266
Phone (701) 663-9818
1-888-663-9818
Fax (701) 663-9810
Website www.kelschlaw.com

November 30, 2007



MS ILLONA A JEFFCOAT-SACCO
EXECUTIVE SECRETARY
PUBLIC SERVICE COMMISSION
600 EAST BOULEVARD, DEPT 408
BISMARCK ND 58505-0480

Re: TransCanada - Keystone Pipeline Project
Case No: PU-06-421
OAH File No. 20070181
Our File No. 11815

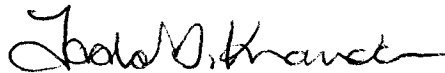
Dear Ms. Jeffcoat-Sacco:

This letter is to request copies of any documents that have been received by the Public Service Commission and placed into the ~~Public Input File~~ regarding the Keystone Pipeline Project since October 31, 2007 through the hearings that took place November 27 and 28, 2007.

I am also enclosing an Affidavit of Service which indicates that this request letter is being provided to Attorney Erik Johnson who is legal counsel for the City of Fargo, Attorney Jana Linderman who is legal counsel of record for the Intervenors of Dakota Resource Council et al as well as to Intervenors John and Janie Capp.

If you have any questions, please feel free to contact Thomas D. Kelsch or me.

Sincerely,



Todd D. Kranda

TK:ls

Enc

c: TransCanada Keystone



313 PU-06-421

Pages: 2

Request for Documents Filed in Public Input
File
by Kelsch Kelsch Ruff & Kranda by Kranda
12/03/2007

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

TRANSCANADA KEYSTONE PIPELINE, LP) CASE NO. PU-06-421
30-INCH CRUDE OIL PIPELINE/CAVALIER TO)
SARGENT COUNTIES SITING APPLICATION)

STATE OF NORTH DAKOTA)
) ss. **AFFIDAVIT OF SERVICE**
COUNTY OF MORTON)

LORI SPENCER being first duly sworn, on oath, deposes and says: That she is a citizen of the United States, over the age of eighteen and not a party to the above-entitled action.

That on the 30 day of November, 2007, this affiant deposited in the United States Post Office at Mandan, North Dakota, a true and correct copy of the following document(s) in the above-captioned action:


November 30, 2007 request letter for Documents from the Public Input File since October 31, 2007 through the hearings that took place November 27 and 28, 2007

That a copy of the above document(s) was securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

ERIK R JOHNSON
ATTORNEY AT LAW
505 BROADWAY ST N - STE 206
FARGO ND 58102

JANA LINDERMAN
ATTORNEY AT LAW
100 1st STREET SW
CEDAR RAPIDS IA 52404

JOHN & JANIE CAPP
12466 60TH ST NE
LANKIN ND 58250



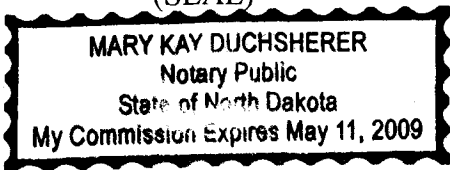
LORI SPENCER

Subscribed and sworn to before me this 30 day of November, 2007.



Notary Public, State of North Dakota

(SEAL)



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to
Sargent Counties

Case No. PU-06-421

AFFIDAVIT OF SERVICE BY REGISTERED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Lisa Zeimer deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 3rd day of **December, 2007**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with registered postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

MOTION TO EXTEND TIME FOR DESIGNATION OF CORRIDOR AND ROUTE
ORDER DENYING INTERVENTION
ORDER DENYING MOTION TO CONTINUE HEARINGS

The envelope was addressed as follows:

Dean Cowling, Project Manager
Keystone TransCanada Pipelines Limited
PO Box 1000, Station M
450 First Street SW
Calgary, Alberta
CANADA T2P 5H1

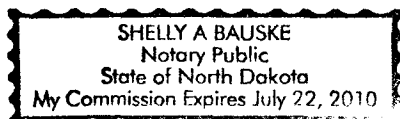
Registered No. RR 047 608 690 US

This mailing replaces the exact item mailed on November 30, 2007, Registered No. RR 047 608 709 which was returned undelivered by the post office.

The address shown is the addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this 3rd day of **December, 2007**

SEAL



Lisa Zeimer

Shelly A Bauske
Notary Public

312 PU-06-421

Pages: 1

Affidavit Replacement Mailing to Cowling @
TransCanada
by Public Service Commission
11/03/2007

Name and Address of Sender

PSC

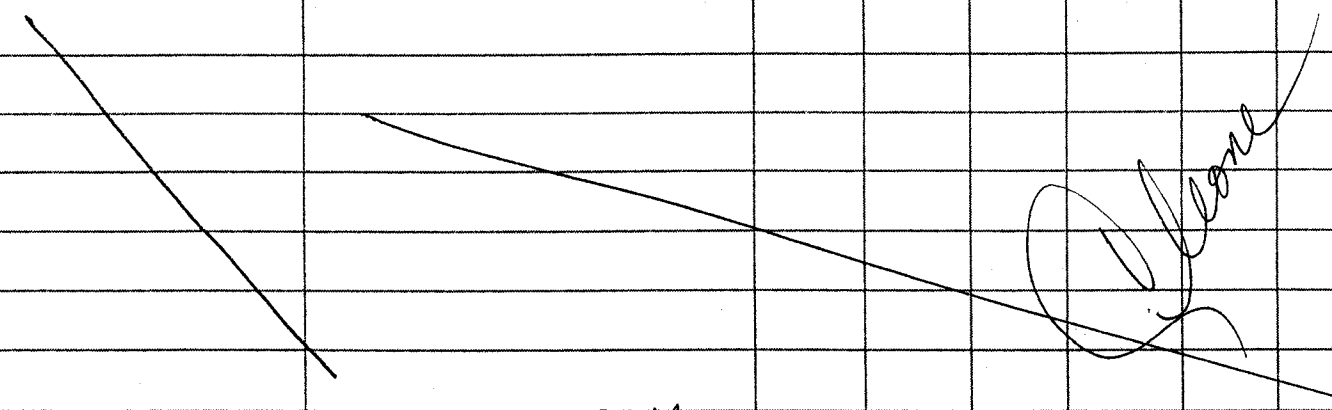
Check type of mail or service:

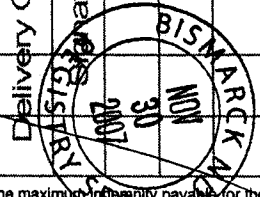
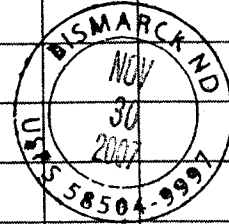
- Certified
- COD
- Delivery Confirmation
- Express Mail
- Insured
- Recorded Delivery (International)
- Registered
- Return Receipt for Merchandise
- Signature Confirmation

Affix Stamp Here

(If issued as a certificate of mailing, or for additional copies of this bill) Postmark and Date of Receipt

Article Appears to have been opened AND resealed. Refused for dispatch

Line	Article Number	Addressee Name, Street, and PO Address	Postage	Fee	Handling Charge	Actual Value if Registered	Insured Value	Due Sender if COD	DC Fee	SC Fee	SH Fee	RD Fee	RR Fee												
1	RR047608709 US	DEAN COWLING																							
2		TRANSCANADA PIPELINES																							
3		PO BOX 1000																							
4		STATION M																							
5		450 1ST ST SW																							
6		CALGARY, ALBERTA																							
7		CANADA T2P 5H1																							
8																									
9																									
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15																									
Total Number of Pieces Listed by Sender														Total Number of Pieces Received at Post Office		Postmaster, Per (Name of receiving employee)		The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for the reconstruction of nonnegotiable documents under Express Mail document reconstruction insurance is \$500 per piece subject to additional limitations for multiple pieces lost or damages in a single catastrophic occurrence. The maximum indemnity payable on Express Mail merchandise insurance is \$500, but optional Express Mail Service merchandise insurance is available for up to \$5,000 to some, but not all countries. The maximum indemnity payable is \$25,000 for registered mail. See Domestic Mail Manual R900, S913, and S921 for limitations of coverage on insured and COD mail. See International Mail Manual for limitations of coverage on international mail. Special handling charges apply only to Standard Mail (A) and Standard Mail (B) parcels.							



Delivery Confirmation
Signature Confirmation
Special Handling
Restricted Delivery
Return Receipt

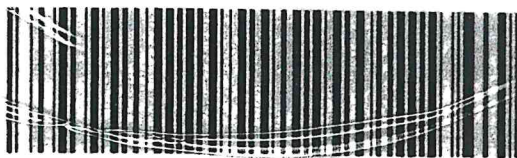
Refused for dispatch:- Article opened AND resealed
PS Form 3877 Not completed.
Take registered mail to Post Office.



Public Service Commission
State of North Dakota

Official Mail 600 E BOULEVARD AVE DEPT 408
BISMARCK ND 58505-0480

United States Postal Service
REGISTERED MAIL



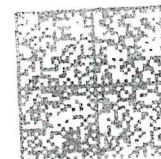
RR 047 608 709 US

Label 200, July 1999

(102595) 99-M-1904

Dean Cowling, Project Manager
TransCanada Pipeline Limited
PO Box 1000, Station M
450 First Street SW
Calgary Alberta
CANADA T2P 5H1

RETURN RECEIPT REQUESTED



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Completed by the office of origin. (A remplir par le bureau d'origine.)	Item Description (Nature de l'envoi) <input checked="" type="checkbox"/> Registered Article (Envoi recommandé) <input type="checkbox"/> Letter (Lettre) <input type="checkbox"/> Printed Matter (Imprimé) <input type="checkbox"/> Other (Autre) <input type="checkbox"/> Recorded Delivery (Envoi à livraison attestée) <input type="checkbox"/> Express Mail International	
	<input type="checkbox"/> Insured Parcel (Colis avec valeur déclarée)	Insured Value (Valeur déclarée) Article Number RR 047 608 709 US
	Office of Mailing (Bureau de dépôt)	Date of Posting (Date de dépôt) 30 November 2007
Completed at destination. (A compléter à destination.)	Addressee Name or Firm (Nom ou raison sociale du destinataire) Dean Cowling, Keystone TransCanada Pipelines Limited	
	Street and No. (Rue et No.) PO Box 1000, Station M, 450 1st Street SW	
	Place and Country (Localité et pays) Calgary, Alberta, CANADA T2P 5H1	
	This receipt must be signed by: (1) the addressee; or, (2) a person authorized to sign under the regulations of the country of destination; or, (3) if those regulations so provide, by the employee of the office of destination. This signed form will be returned to the sender by the first mail. (Cet avis doit être signé par le destinataire ou par une personne y autorisée en vertu des règlements du pays de destination, ou, si ces règlements le comportent, par l'agent du bureau de destination, et renvoyé par le premier courrier directement à l'expéditeur.)	
<input type="checkbox"/> The article mentioned above was duly delivered. (L'envoi mentionné ci-dessus a été dûment livré.)	Date	
Signature of Addressee (Signature du destinataire)	Office of Destination Employee Signature (Signature de l'agent du bureau de destination)	

1-1.2

supervisor or manager who is knowledgeable in registry procedures and regulations.

The performance cluster registry coordinator is responsible for the following:

- a. Coordinate all registry activities.
- b. Prepare standard operating procedures.
- c. Coordinate security matters with the security control officer.
- d. Arrange for training for employees who handle Registered Mail functions [e.g., mail acceptance, rates and classification, processing and distribution, Collect on Delivery (COD), transfer of Registered Mail].
- e. Ensure that yearly audits are conducted at the processing and distribution center/facility and airport mail center/facility registry operations within each performance cluster.
- f. Ensure that all registry procedures comply with current official guidelines.

1-1.2 Description

1-1.2.1 Purpose

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1-1.2.2 Eligibility

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1-1.2.3 Prohibitions

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- a. Placed in a street letterbox or a mail drop in a public building, Post Office™, or self-service postal unit.
- b. Addressed to a Post Office to which it cannot be transported safely.
- c. Prepared improperly or packaged inadequately to withstand normal handling.
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- e. Contained in an envelope or package that appears to have been opened or resealed.
- f. Presented in a padded bag or self-sealing envelope. (*Exception:* Padded bags are permitted for international registered articles.)
- g. Placed in an envelope or mailer manufactured of plastic, glossy paper, spun-bonded olefin, (e.g., Tyvek), or substances that will not absorb an ink seal (see DMM 911.14 and 911.36).

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to
Sargent Counties

Case No. PU-06-421

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Lisa Zeimer deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 3rd day of **December, 2007**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

MOTION TO EXTEND TIME FOR DESIGNATION OF CORRIDOR AND ROUTE
ORDER DENYING INTERVENTION
ORDER DENYING MOTION TO CONTINUE HEARINGS

The envelope was addressed as follows:

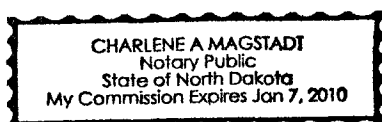
Matthew Shimanek, Esq.
Hammarback, Dusek & Associates
712 DeMers Avenue
PO Box 4
East Grand Forks, MN 56721

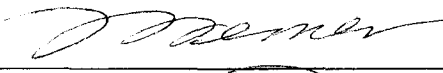
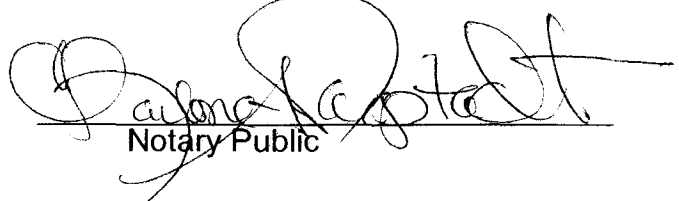
Certified No. 7007 2560 0001 6057 8169

The address shown is the addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this 3rd day of **December, 2007**

SEAL





Notary Public

310 PU-06-421

Pages: 11

Affidavit to Shimanek Same as Docket 309

by Public Service Commission
12/03/2007

APPROVED

DATE: 11-27-07
[Signature]

MOTION

November 27, 2007

**TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent
Counties
Siting Application**

Case No. PU-06-421

I move the Commission for just cause extend the time for designation of a corridor and a route to a date to be determined at a future time in TransCanada Keystone Pipeline, LP's application to construct a 30-inch crude petroleum pipeline in Cavalier to Sargent Counties, Case No. PU-06-421.

WWB

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent
Counties
Siting Application

Case No. PU-06-421

ORDER DENYING INTERVENTION

November 27, 2007

Background

On April 11, 2007, TransCanada Keystone Pipeline, LP (TransCanada) filed an application for a waiver of procedures and time schedules, and consolidated applications for a certificate of corridor compatibility and a route permit authorizing construction of approximately 218 miles of 30-inch crude oil pipeline and associated facilities (Keystone Pipeline) in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and Sargent Counties of North Dakota, Case No. PU-06-421.

On November 15, 2007 Richard Starke filed a request to intervene in the captioned proceeding. Starke states on his request that he would like to be awarded intervenor status "because there are many technical questions concerning the chemistry and fluids dynamics of the oil that you apparently have little knowledge of but must be known prior to your decision" Mr. Starke does not state what he would contribute to the hearing.

On November 20, 2007, TransCanada filed an objection to the request. TransCanada states that the initial hearings in the proceeding were held on July 23 and 24, 2007 and continued on September 5 and 6, 2007, and that Starke had notice of those hearings and appeared and participated in the hearings in Valley City and Bismarck. He now seeks to intervene in the reopened record with the very limited scope and focus of the "safety and public health issues relating to the water supply of the City of Fargo from Lake Ashtabula and the Sheyenne River." TransCanada states that the request was not filed ten (10) days before the hearings and that the request is in direct violation of Section 69-02-02-05 of the North Dakota Administrative Code.

TransCanada argues that Starke has not demonstrated good cause for his late and untimely request to intervene in this proceeding. TransCanada asserts that Starke has not alleged that material changes in fact or law have occurred since the prior hearings. TransCanada also asserts that Starke is not affected by the limited issue involved in the reopened proceeding.

Discussion

Section 69-02-02-05 of the North Dakota Administrative code provides in part that "[a]ny person with a substantial interest in a proceeding may petition to intervene in that proceeding by complying with this section. An intervention may be granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and intervention would not unduly broaden the issues or delay the proceeding."

Subsection 1 of section 69-02-02-05 states in part that the petition to intervene must set forth the grounds for intervention and what the petitioner would contribute to the hearing.

The issues that have been established for this reopened proceeding are limited to the "safety and public health issues relating to the water supply of the City of Fargo from Lake Ashtabula and the Sheyenne River. Mr. Starke has appeared and has testified as a landowner and member of the public in the previous hearings held in Valley City and Bismarck. Mr. Starke is not a resident of the City of Fargo and has not shown that he has any interest in the limited issues of this reopened proceeding. Mr. Starke has repeatedly sent rude, sarcastic and inflammatory e-mail messages to the Commissioners.

We find that Mr. Starke's request fails to set forth any grounds for intervention and fails to state what he would contribute to the hearing. We also find that Mr. Starke's request for intervention is untimely and unnecessary, and would likely unduly broaden the issues or delay the proceeding.

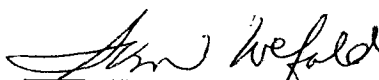
Order

The Commission orders that the request for intervention filed by Richard Starke is DENIED.


PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Susan E. Wefald
President



Kevin Cramer
Commissioner

DISSENTING OPINION
Commissioner Susan E. Wefald

November 27, 2007

**TransCanada Keystone Pipeline
30-Inch Crude Oil Pipeline/
Cavalier to Sargent County
Siting Application**

Case No. PU-06-421

I concur with the Commission's order to deny Mr. Starke intervention. However, the main reason I would deny Mr. Starke intervention is not mentioned in this order. Mr. Starke has not petitioned to intervene in this case in a timely manner. On November 7 I voted to deny late intervention to the City of Fargo for important procedural reasons, and these same procedural issues make it important to deny late intervention to Mr. Starke today.

Also, the present order lists a number of reasons Mr. Starke should be denied intervention. I agree with all of these reasons except for two. I do not agree that Mr. Starke should be denied intervention status because he is not a citizen of the city of Fargo. The Commission has granted intervention to other people who are not citizens of Fargo in this case. I also do not agree that Mr. Starke should not be granted intervention because he has written threatening communications to the Commission. Although it is unfortunate that Mr. Starke has not controlled his behavior in this regard, his behavior does not relate to his right to be granted or denied intervention.



Susan E. Wefald, Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**TransCanada Keystone Pipeline, LLC
30-Inch Crude Oil Pipeline/Cavalier to Sargent
Counties
Siting Application**

Case No. PU-06-421

ORDER DENYING MOTION TO CONTINUE HEARINGS

November 27, 2007

Background

On April 11, 2007, TransCanada Keystone Pipeline, LLC ("TransCanada") filed an application for a waiver of procedures and time schedules, and consolidated applications for a certificate of corridor compatibility and a route permit authorizing construction of approximately 218 miles of 30-inch crude oil pipeline and associated facilities in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and Sargent Counties of North Dakota.

The hearing in Case No. PU-06-421 was closed on September 6, 2007. On October 15, 2007, Dakota Resource Council, Janie Capp, John Capp, Ramona Klein, Linette Kratochvil, Merle Kratochvil, and Mark Novak, collectively referred to as "Intervenors," filed their post hearing Memorandum Brief, and TransCanada filed its Memorandum Brief and proposed Findings of Fact, Conclusions of Law and Order.

On October 24, 2007, the City of Fargo filed a Motion to Intervene and Reopen the Hearing. On November 7, 2007, the Public Service Commission ("Commission") issued an order to reopen proceedings in Case No. PU-06-421 limited to the safety and public health issues relating to the water supply of the City of Fargo from Lake Ashtabula and the Sheyenne River.

On November 6, 2007, Administrative Law Judge Al Wahl held a pre-hearing conference for the purpose of scheduling further hearing. The Intervenors' counsel, Nicholas Delaney, appeared along with Janie Capp. Both Delaney and Capp stated they could be available for further hearings on November 27th and 28th, 2007. These dates were also satisfactory to TransCanada, the City of Fargo and the Commission. Delaney indicated at that time that he did not know if it would be necessary for him to participate in the re-opened hearing, because the Intervenors already put on their case, were able to testify, cross examine witnesses, introduce exhibits and put on their own witnesses in the previous four days of hearings.

On November 8, 2007, the Commission issued a Notice of Further Hearing on Expedited Time Frame scheduling the hearing to begin November 27, 2007 for the purpose of allowing the City of Fargo to provide evidence regarding the safety and public health issues relating to the water supply from Lake Ashtabula and the Sheyenne River. The hearing dates of November 27 and 28 were agreed upon by counsel representing the parties to this proceeding.

On November 9, 2007, Nicholas Delaney of the Rinke Noonan law firm filed a Notice of Withdrawal as legal counsel for the Intervenor, Dakota Resource Council and Ramona Klein, Merle and Linette Kratochvill, Janie and John Capp and Mark Novak.

On November 9, 2007, TransCanada filed a Return to Notice of Withdrawal opposing the withdrawal unless there are protections and assurances that the proceedings will not be delayed and that appropriate parameters are established for the November 27 and 28, 2007 hearings. TransCanada expressed concern that there must not be any delay in the event the Intervenor wants to participate and are unable to obtain legal counsel for the November 27 and 28 hearings. TransCanada specifically requested that withdrawal not be granted unless there is no continuance granted and the matter will proceed with the hearings on November 27 and 28 as scheduled.

On November 16, 2007, Nicholas Delaney filed a Notice and Motion for Withdrawal of Counsel together with a Memorandum of Law in Support of Motion for Withdrawal and supported by affidavits of Nicholas R. Delaney of the Rinke Noonan law firm and Lynn Wolff, an authorized agent and representative of the Dakota Resource Council. In his Affidavit dated November 15, 2007 and executed before a Notary Public on November 16, 2007, Lynn Wolff stated:

1. I am the organizer for the Dakota Resource Council. I am an authorized agent and representative of the Dakota Resource Council. We have obtained Intervenor status in the above referenced matter
2. The Dakota Resource Council does not wish to incur further legal expenses related to legal representation at the November 27th and 28th, 2007, hearings in Bismarck, ND. The Dakota Resource Council wishes to appear pro se at said hearing and does not wish for Rinke Noonan to travel to Bismarck and represent its interests. I have spoken with the other Intervenor who are all members of the Dakota Resource Council. They also agree that further legal expenses should not be incurred in this matter and do not wish for Rinke Noonan to appear at the hearings scheduled for November 27th and 28th, 2007. If the Dakota Resource Council were required to incur additional legal fees it would create great financial hardship on the Intervenor.
3. The Dakota Resource Council does, however, wish to retain all rights associated with their Intervenor status, including without limitation, the

right to present evidence and question witnesses at the hearings on November 27th and 28th, 2007.

On November 16, 2007, Administrative Law Judge, Al Wahl, held a prehearing conference to consider, among other matters, the Motion for Withdrawal of Counsel. Persons participating in the prehearing conference included attorneys Nicholas R. Delaney, Thomas D. Kelsch, Todd Kranda, Eric Johnson, John Dingess, and William W. Binek. Other persons participating included Lynn Wolff, Mark Novak, Linette and Merle Kratochvil, Janie Capp (on behalf of John and Janie Capp), Ramona Klein, and attorney Jana Linderman, an attorney with Plains Justice of Cedar Rapids, Iowa. At the prehearing conference Lynn Wolff, speaking on behalf of the Dakota Resource Council, stated that he agreed with Mr. Delaney's statement of facts and circumstances. The Intervenors participating in the prehearing conference each individually agreed with the statement of facts and circumstances presented by Nicholas R. Delaney. The Administrative Judge, before granting the Motion for Withdrawal of Counsel discussed in detail with the Intervenors the consequences of their decision to seek the withdrawal of counsel and explained how they would be able to participate pro se.

On November 16, 2007, Administrative Law Judge, Al Wahl, issued a Prehearing Order in which he granted the Motion for Withdrawal of Counsel.

On November 20, 2007, Matthew F. Shimanek, Hammarbach, Dusek & Associates, East Grand Forks, Minnesota, filed a Motion for Admission to Practice *Pro Hac Vice* for attorney Jana M. Linderman for the purpose of appearing as counsel for the Intervenors Dakota Resource Council, Janie Capp, John Capp, Ramona Klein, Linette Kratochvil, Merle Kratochvil, and Mark Novak. Mr. Shimanek advised that he will serve as co-counsel for Ms. Linderman in this matter.

On November 21, 2007, Matthew F. Shimanek, on behalf of the Intervenors, filed a Motion to Continue Hearings. Mr. Shimanek states that previous counsel was not granted leave to withdraw as counsel until November 16, 2007, and until that date, Intervenors did not have certain knowledge as to whether previous counsel would continue to represent them in this matter or whether counsel would be required. He states that upon previous counsel finally being granted permission to withdraw, Intervenors acted promptly to obtain alternate counsel. Mr. Shimanek further states that the laws of North Dakota governing the withdrawal of legal representation contemplate that withdrawal will be allowed only where it will not have material adverse impact on the interests of the client or clients being represented, and that if hearings proceed as scheduled, the interests of the Intervenors will have been materially prejudiced by counsel for the Intervenors withdrawing only a week prior to the hearings and Intervenors having to locate and retain new counsel to present their interests within a matter of just a few days.

On November 23, 2007, TransCanada filed a Response Resisting Request for Continuance. TransCanada states 1) that the Intervenors have participated in four days of hearings and according to their previous counsel, Nicholas Delaney, they have

already presented their case; testified; introduced exhibits, cross examined witnesses, and called witnesses; 2) the withdrawal of previous counsel was agreed to by the Intervenor; and 3) TransCanada has demonstrated serious adverse consequences of further delay in hearings in this case. TransCanada points out that even as late as November 16, 2007, at the prehearing conference where the Administrative Law Judge considered the motion for withdrawal of attorney, the individual Intervenor including Lynn Wolff and Jana Linderman on behalf of the Dakota Resource Council did not object to the hearing dates of November 27 and 28, 2007.

TransCanada states that pursuant to section 69-02-04-03 of the North Dakota Administrative Code, continuances may be granted for good cause and must be submitted as far in advance as possible. This motion for continuance was filed on November 21, 2007 at 3:29 p.m. The motion was filed only two working days (not including Thanksgiving Day and the intervening weekend) before the scheduled hearing date. TransCanada points out that the individual witnesses for TransCanada and presumably for the City of Fargo have made travel arrangements and revised schedules to appear on the scheduled dates for the hearing. Furthermore, the six month deadline for issuance of a decision in this case has already been extended, and if the reopened hearing were to be continued, the period of time for issuance of a decision would significantly increase and would result in unreasonable delay in the Commission acting on the application for corridor and route.

TransCanada states that the motion for continuance is untimely and appears to have been made solely for the purpose of delay. TransCanada argues that the Intervenor should not be permitted to consent to the withdrawal of their legal representation less than 10 days before a scheduled hearing that they consented to and then use that withdrawal to attempt to obtain a continuance.

On November 23, 2007, the City of Fargo filed a Response resisting the Intervenor's motion for continuance. The City of Fargo requests that the Commission deny the motion, or in the alternative, if the motion is granted that the Commission order that the Dakota Resource Council be responsible for the costs that the City of Fargo will incur resulting from rescheduling of travel and lodging for witnesses and legal counsel. The City of Fargo states that it has used the services of witnesses who are located in the state of Minnesota, and that its special counsel is located in Colorado. All of Fargo's witnesses and counsel have made arrangements to be present for the November 27 and 28, 2007 hearings.

The City of Fargo points out that the Commission, through its Administrative Law Judge, and in cooperation with the parties to this matter, established the dates of November 27 and 28, 2007, as the time for hearing concerning the issues set forth in the November 7, 2007 Order. The City of Fargo also states that the Intervenor has not heretofore focused on the issues to be presented by the City of Fargo.

On November 26, 2007, Matthew Shimanek and Jana Linderman, on behalf of the Intervenor, filed a response to the objections of the City of Fargo and TransCanada

to continuance of the hearings. The Intervenor's argue that their right to due process and full and fair participation in these hearings exist independent of travel plans of witnesses and counsel for the City of Fargo. The Intervenor's object to the request of the City of Fargo for reimbursement of costs resulting from rescheduling of travel and lodging for witnesses and legal counsel if the Motion for Continuance is granted. Intervenor's state that the City of Fargo and TransCanada are both in much better positions to absorb costs of minor procedural delays.

Intervenor's state that their right to fully and fairly participate in these proceedings has been unduly burdened by the late withdrawal of Intervenor's' previous counsel. Intervenor's argue that the constricted timeline for the hearing has created hardships that would not exist in a more expanded timeframe. Intervenor's state that time to prepare for these hearings would have been difficult had Intervenor's continued with the same counsel, but with previous counsel for the Intervenor's withdrawing only one week prior to the hearings creates an almost impossible situation.

Discussion

The facts and circumstances relating to the withdrawal of counsel for these Intervenor's differs substantially from the statements of Mr. Shimanek contained in the Motion to Continue Hearings. As pointed out above, the Intervenor's all supported the withdrawal of the Rinke Noonan. The Affidavit of Lynn Wolff states that "[t]he Dakota Resource Council wishes to appear pro se at said hearing and does not wish for Rinke Noonan to travel to Bismarck and represent its interests. I have spoken with the other intervenor's who are all members of the Dakota Resource Council. They also agree that further legal expenses should not be incurred in this matter and do not wish for Rinke Noonan to appear at the hearings scheduled for November 27th and 28th, 2007."

The Intervenor's also had Jana Linderman participate in the November 16, 2007 prehearing conference by telephone. The Intervenor's indicated that Jana Linderman would provide advice to the Intervenor's but that she was not licensed to practice law in North Dakota. At no time during the prehearing conference did Jana Linderman indicate that she would seek to be admitted to practice *Pro Hac Vice* nor did she indicate any concern about the hearing dates.

The Intervenor's understood the facts and circumstances of the withdrawal of their attorney and they all agreed to and supported the withdrawal of Rinke Noonan. They were also aware that the hearings were scheduled for November 27 and 28, and expressed no concern relating to the date of those hearings and made no request that the hearings be continued. Jana Linderman, the present counsel for the Intervenor's, participated in the prehearing conference on November 16, 2007. The Intervenor's gave no indication at the November 16, 2007 prehearing conference that they intended to retain other counsel to represent them at the further hearing. Had the Intervenor's advised the Administrative Law Judge and the other parties of that intent, it may have influenced the decision on the motion to withdraw.

The Commission finds that good cause does not exist for the continuance of the hearings scheduled for November 26 and 27, 2007. The intervenors chose to seek and support the withdrawal of Rinke Noonan knowing that hearings were scheduled for these dates. The Administrative Law Judge fully informed the intervenors of their rights to present evidence and cross examine witnesses as well as the consequences of granting of the Withdrawal prior to his granting the Motion for Withdrawal of Counsel.

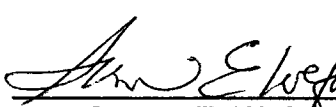
ORDER

The Commission orders that the Motion to Continue Hearings is DENIED.

PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Susan E. Wefald
President



Kevin Cramer
Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/
Cavalier to Sargent Counties
Siting Application

Case No. ~~PU-06-421~~

TransCanada Keystone Pipeline, LP
Keystone Pipeline
Public Convenience & Necessity

Case No. PU-07-152

AFFIDAVIT OF SERVICE BY REGULAR MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Shelly A. Bauske deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 28th day of **November, 2007**, she deposited 1 envelope in the United States Mail, Bismarck, North Dakota, postage fully prepaid, securely sealed containing a photocopy of:

**Order on Motion to Intervene and Reopen
Order for Hearing on Expedited Notice (PU-06-421)
Notice of Further Hearing on Expedited Time Frame (PU-06-421)**

The envelope was addressed as follows:

Michael Montplaisir
Cass County Auditor
PO Box 2806
Fargo ND 58108-2806

Each address shown is the respective addressee's last reasonably ascertainable post office or email address.

Subscribed and sworn to before me
this 28th day of November, 2007

309 PU-06-421

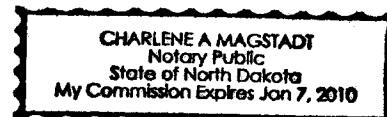
Pages: 2

Affidavit Resend Docs to Montplaisir Cass
County
by Public Service Commission
11/28/2007

Shelly A. Bauske

Charlene A. Magstadt

Notary Public



PUBLIC SERVICE COMMISSION
600 E BOULEVARD AVE
DEPT 408
BISMARCK ND 58505-0480

NOV 26 2007

PUBLIC SERVICE COMMISSION

Michael Montplaisir
Cass County Auditor
PO Box 2806
Fargo ND 58108-2806

RETURNED FOR LACK OF POSTAGE = - Resent 11/28/07 -

NOV 26 2007

NOV 26 2007

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to
Sargent Counties**

Case No. PU-06-421

AFFIDAVIT OF SERVICE BY CERTIFIED & REGISTERED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Lisa Zeimer deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **30th day of November, 2007**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with registered postage and **thirteen** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

**MOTION TO EXTEND TIME FOR DESIGNATION OF CORRIDOR AND ROUTE
ORDER DENYING INTERVENTION
ORDER DENYING MOTION TO CONTINUE HEARINGS**

The envelopes were addressed as follows:

Todd Kranda
Kelsch Kelsch Ruff & Kranda
PO Box 1266
Mandan, ND 58554-1266

Thomas D. Kelsch, Esq.
Kelsch Kelsch Ruff & Kranda
PO Box 1266
Mandan, ND 58554-1266

Certified No. 7007 0710 0003 6056 8969

Certified No. 7007 0710 0003 6056 8952

Gary R. Leistico, Esq.
Rinke Noonan, Attorneys at Law
1015 West Germain Street #300
PO Box 1497
St. Cloud, MN 56302-1497

Nicholas Delaney, Esq.
Rinke Noonan, Attorneys at Law
1015 West Germain Street #300
PO Box 1497
St. Cloud, MN 56302-1497

Certified No. 7007 0710 0003 6056 8945

Certified No. 7007 0710 0003 6056 8938

APPROVED

DATE: 11-27-07
ef

MOTION

November 27, 2007

**TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent
Counties
Siting Application**

Case No. PU-06-421

I move the Commission for just cause extend the time for designation of a corridor and a route to a date to be determined at a future time in TransCanada Keystone Pipeline, LP's application to construct a 30-inch crude petroleum pipeline in Cavalier to Sargent Counties, Case No. PU-06-421.

WWB

Lynn Wolff
Dakota Resource Council
118 Broadway Street North #801
Fargo, ND 58102

Certified No. 7007 0710 0003 6056 8921

John & Janie Capp
12466 60th St. NE
Lankin, ND 58250

Certified No. 7007 0710 0003 6056 8907

Ramona Klein
3340 123rd Avenue SE
Oriska, ND 58663

Certified No. 7007 0710 0003 6056 8853

John M. Dingess, Esq.
Duncan Ostrander & Dingess PC
3600 South Yosemite Street #500
Denver, CO 82037-1829

Certified No. 7007 0710 0003 6056 8884

Jana Linderman, Esq.
Plains Justice
100 First Street SW
Cedar Rapids, IA 52404

Certified No. 7007 0710 0003 6056 8860

Erik R. Johnson, Esq.
Erik R. Johnson & Associates
505 Broadway Street North #206
Fargo, ND 58102

Certified No. 7007 0710 0003 6056 8914

Merle & Linette Kratochvil
6355 County Road 14
Lankin, ND 58250

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Mark Novak
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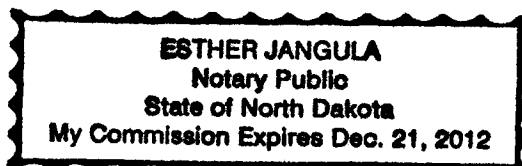
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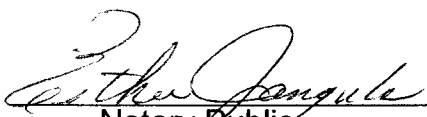
Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this 30th day of November, 2007

SEAL






Notary Public

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent
Counties
Siting Application

Case No. PU-06-421

ORDER DENYING INTERVENTION

November 27, 2007

Background

On April 11, 2007, TransCanada Keystone Pipeline, LP (TransCanada) filed an application for a waiver of procedures and time schedules, and consolidated applications for a certificate of corridor compatibility and a route permit authorizing construction of approximately 218 miles of 30-inch crude oil pipeline and associated facilities (Keystone Pipeline) in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and Sargent Counties of North Dakota, Case No. PU-06-421.

On November 15, 2007 Richard Starke filed a request to intervene in the captioned proceeding. Starke states on his request that he would like to be awarded intervenor status "because there are many technical questions concerning the chemistry and fluids dynamics of the oil that you apparently have little knowledge of but must be known prior to your decision" Mr. Starke does not state what he would contribute to the hearing.

On November 20, 2007, TransCanada filed an objection to the request. TransCanada states that the initial hearings in the proceeding were held on July 23 and 24, 2007 and continued on September 5 and 6, 2007, and that Starke had notice of those hearings and appeared and participated in the hearings in Valley City and Bismarck. He now seeks to intervene in the reopened record with the very limited scope and focus of the "safety and public health issues relating to the water supply of the City of Fargo from Lake Ashtabula and the Sheyenne River." TransCanada states that the request was not filed ten (10) days before the hearings and that the request is in direct violation of Section 69-02-02-05 of the North Dakota Administrative Code.

TransCanada argues that Starke has not demonstrated good cause for his late and untimely request to intervene in this proceeding. TransCanada asserts that Starke has not alleged that material changes in fact or law have occurred since the prior hearings. TransCanada also asserts that Starke is not affected by the limited issue involved in the reopened proceeding.

Discussion

Section 69-02-02-05 of the North Dakota Administrative code provides in part that "[a]ny person with a substantial interest in a proceeding may petition to intervene in that proceeding by complying with this section. An intervention may be granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and intervention would not unduly broaden the issues or delay the proceeding."

Subsection 1 of section 69-02-02-05 states in part that the petition to intervene must set forth the grounds for intervention and what the petitioner would contribute to the hearing.

The issues that have been established for this reopened proceeding are limited to the "safety and public health issues relating to the water supply of the City of Fargo from Lake Ashtabula and the Sheyenne River. Mr. Starke has appeared and has testified as a landowner and member of the public in the previous hearings held in Valley City and Bismarck. Mr. Starke is not a resident of the City of Fargo and has not shown that he has any interest in the limited issues of this reopened proceeding. Mr. Starke has repeatedly sent rude, sarcastic and inflammatory e-mail messages to the Commissioners.

We find that Mr. Starke's request fails to set forth any grounds for intervention and fails to state what he would contribute to the hearing. We also find that Mr. Starke's request for intervention is untimely and unnecessary, and would likely unduly broaden the issues or delay the proceeding.


Order

The Commission orders that the request for intervention filed by Richard Starke is DENIED.


PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Susan E. Weald
President



Kevin Cramer
Commissioner

DISSENTING OPINION
Commissioner Susan E. Wefald

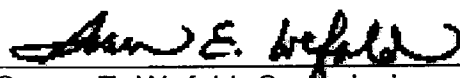
November 27, 2007

**TransCanada Keystone Pipeline
30-Inch Crude Oil Pipeline/
Cavalier to Sargent County
Siting Application**

Case No. PU-06-421

I concur with the Commission's order to deny Mr. Starke intervention. However, the main reason I would deny Mr. Starke intervention is not mentioned in this order. Mr. Starke has not petitioned to intervene in this case in a timely manner. On November 7 I voted to deny late intervention to the City of Fargo for important procedural reasons, and these same procedural issues make it important to deny late intervention to Mr. Starke today.

Also, the present order lists a number of reasons Mr. Starke should be denied intervention. I agree with all of these reasons except for two. I do not agree that Mr. Starke should be denied intervention status because he is not a citizen of the city of Fargo. The Commission has granted intervention to other people who are not citizens of Fargo in this case. I also do not agree that Mr. Starke should not be granted intervention because he has written threatening communications to the Commission. Although it is unfortunate that Mr. Starke has not controlled his behavior in this regard, his behavior does not relate to his right to be granted or denied intervention.



Susan E. Wefald, Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**TransCanada Keystone Pipeline, LLC
30-Inch Crude Oil Pipeline/Cavalier to Sargent
Counties
Siting Application**

Case No. PU-06-421

ORDER DENYING MOTION TO CONTINUE HEARINGS

November 27, 2007

Background

On April 11, 2007, TransCanada Keystone Pipeline, LLC ("TransCanada") filed an application for a waiver of procedures and time schedules, and consolidated applications for a certificate of corridor compatibility and a route permit authorizing construction of approximately 218 miles of 30-inch crude oil pipeline and associated facilities in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and Sargent Counties of North Dakota.

The hearing in Case No. PU-06-421 was closed on September 6, 2007. On October 15, 2007, Dakota Resource Council, Janie Capp, John Capp, Ramona Klein, Linette Kratochvil, Merle Kratochvil, and Mark Novak, collectively referred to as "Intervenors," filed their post hearing Memorandum Brief, and TransCanada filed its Memorandum Brief and proposed Findings of Fact, Conclusions of Law and Order.

On October 24, 2007, the City of Fargo filed a Motion to Intervene and Reopen the Hearing. On November 7, 2007, the Public Service Commission ("Commission") issued an order to reopen proceedings in Case No. PU-06-421 limited to the safety and public health issues relating to the water supply of the City of Fargo from Lake Ashtabula and the Sheyenne River.

On November 6, 2007, Administrative Law Judge Al Wahl held a pre-hearing conference for the purpose of scheduling further hearing. The Intervenors' counsel, Nicholas Delaney, appeared along with Janie Capp. Both Delaney and Capp stated they could be available for further hearings on November 27th and 28th, 2007. These dates were also satisfactory to TransCanada, the City of Fargo and the Commission. Delaney indicated at that time that he did not know if it would be necessary for him to participate in the re-opened hearing, because the Intervenors already put on their case, were able to testify, cross examine witnesses, introduce exhibits and put on their own witnesses in the previous four days of hearings.

300 PU-06-421

Pages: 6

Signed Order Denying Motion to Continue
Hearings
by Public Service Commission
11/27/2007

On November 8, 2007, the Commission issued a Notice of Further Hearing on Expedited Time Frame scheduling the hearing to begin November 27, 2007 for the purpose of allowing the City of Fargo to provide evidence regarding the safety and public health issues relating to the water supply from Lake Ashtabula and the Sheyenne River. The hearing dates of November 27 and 28 were agreed upon by counsel representing the parties to this proceeding.

On November 9, 2007, Nicholas Delaney of the Rinke Noonan law firm filed a Notice of Withdrawal as legal counsel for the Intervenors, Dakota Resource Council and Ramona Klein, Merle and Linette Kratochvill, Janie and John Capp and Mark Novak.

On November 9, 2007, TransCanada filed a Return to Notice of Withdrawal opposing the withdrawal unless there are protections and assurances that the proceedings will not be delayed and that appropriate parameters are established for the November 27 and 28, 2007 hearings. TransCanada expressed concern that there must not be any delay in the event the Intervenors want to participate and are unable to obtain legal counsel for the November 27 and 28 hearings. TransCanada specifically requested that withdrawal not be granted unless there is no continuance granted and the matter will proceed with the hearings on November 27 and 28 as scheduled.

On November 16, 2007, Nicholas Delaney filed a Notice and Motion for Withdrawal of Counsel together with a Memorandum of Law in Support of Motion for Withdrawal and supported by affidavits of Nicholas R. Delaney of the Rinke Noonan law firm and Lynn Wolff, an authorized agent and representative of the Dakota Resource Council. In his Affidavit dated November 15, 2007 and executed before a Notary Public on November 16, 2007, Lynn Wolff stated:

1. I am the organizer for the Dakota Resource Council. I am an authorized agent and representative of the Dakota Resource Council. We have obtained Intervenor status in the above referenced matter
2. The Dakota Resource Council does not wish to incur further legal expenses related to legal representation at the November 27th and 28th, 2007, hearings in Bismarck, ND. The Dakota Resource Council wishes to appear pro se at said hearing and does not wish for Rinke Noonan to travel to Bismarck and represent its interests. I have spoken with the other Intervenors who are all members of the Dakota Resource Council. They also agree that further legal expenses should not be incurred in this matter and do not wish for Rinke Noonan to appear at the hearings scheduled for November 27th and 28th, 2007. If the Dakota Resource Council were required to incur additional legal fees it would create great financial hardship on the Intervenors.
3. The Dakota Resource Council does, however, wish to retain all rights associated with their Intervenor status, including without limitation, the

right to present evidence and question witnesses at the hearings on November 27th and 28th, 2007.

On November 16, 2007, Administrative Law Judge, Al Wahl, held a prehearing conference to consider, among other matters, the Motion for Withdrawal of Counsel. Persons participating in the prehearing conference included attorneys Nicholas R. Delaney, Thomas D. Kelsch, Todd Kranda, Eric Johnson, John Dingess, and William W. Binek. Other persons participating included Lynn Wolff, Mark Novak, Linette and Merle Kratochvil, Janie Capp (on behalf of John and Janie Capp), Ramona Klein, and attorney Jana Linderman, an attorney with Plains Justice of Cedar Rapids, Iowa. At the prehearing conference Lynn Wolff, speaking on behalf of the Dakota Resource Council, stated that he agreed with Mr. Delaney's statement of facts and circumstances. The Intervenor participants in the prehearing conference each individually agreed with the statement of facts and circumstances presented by Nicholas R. Delaney. The Administrative Judge, before granting the Motion for Withdrawal of Counsel discussed in detail with the Intervenor participants the consequences of their decision to seek the withdrawal of counsel and explained how they would be able to participate pro se.

On November 16, 2007, Administrative Law Judge, Al Wahl, issued a Prehearing Order in which he granted the Motion for Withdrawal of Counsel.

On November 20, 2007, Matthew F. Shimanek, Hammarbach, Dusek & Associates, East Grand Forks, Minnesota, filed a Motion for Admission to Practice *Pro Hac Vice* for attorney Jana M. Linderman for the purpose of appearing as counsel for the Intervenor participants Dakota Resource Council, Janie Capp, John Capp, Ramona Klein, Linette Kratochvil, Merle Kratochvil, and Mark Novak. Mr. Shimanek advised that he will serve as co-counsel for Ms. Linderman in this matter.

On November 21, 2007, Matthew F. Shimanek, on behalf of the Intervenor participants, filed a Motion to Continue Hearings. Mr. Shimanek states that previous counsel was not granted leave to withdraw as counsel until November 16, 2007, and until that date, Intervenor participants did not have certain knowledge as to whether previous counsel would continue to represent them in this matter or whether counsel would be required. He states that upon previous counsel finally being granted permission to withdraw, Intervenor participants acted promptly to obtain alternate counsel. Mr. Shimanek further states that the laws of North Dakota governing the withdrawal of legal representation contemplate that withdrawal will be allowed only where it will not have material adverse impact on the interests of the client or clients being represented, and that if hearings proceed as scheduled, the interests of the Intervenor participants will have been materially prejudiced by counsel for the Intervenor participants withdrawing only a week prior to the hearings and Intervenor participants having to locate and retain new counsel to present their interests within a matter of just a few days.

On November 23, 2007, TransCanada filed a Response Resisting Request for Continuance. TransCanada states 1) that the Intervenor participants have participated in four days of hearings and according to their previous counsel, Nicholas Delaney, they have

already presented their case, testified, introduced exhibits, cross examined witnesses, and called witnesses; 2) the withdrawal of previous counsel was agreed to by the Intervenor; and 3) TransCanada has demonstrated serious adverse consequences of further delay in hearings in this case. TransCanada points out that even as late as November 16, 2007, at the prehearing conference where the Administrative Law Judge considered the motion for withdrawal of attorney, the individual Intervenor including Lynn Wolff and Jana Linderman on behalf of the Dakota Resource Council did not object to the hearing dates of November 27 and 28, 2007.

TransCanada states that pursuant to section 69-02-04-03 of the North Dakota Administrative Code, continuances may be granted for good cause and must be submitted as far in advance as possible. This motion for continuance was filed on November 21, 2007 at 3:29 p.m. The motion was filed only two working days (not including Thanksgiving Day and the intervening weekend) before the scheduled hearing date. TransCanada points out that the individual witnesses for TransCanada and presumably for the City of Fargo have made travel arrangements and revised schedules to appear on the scheduled dates for the hearing. Furthermore, the six month deadline for issuance of a decision in this case has already been extended, and if the reopened hearing were to be continued, the period of time for issuance of a decision would significantly increase and would result in unreasonable delay in the Commission acting on the application for corridor and route.

TransCanada states that the motion for continuance is untimely and appears to have been made solely for the purpose of delay. TransCanada argues that the Intervenor should not be permitted to consent to the withdrawal of their legal representation less than 10 days before a scheduled hearing that they consented to and then use that withdrawal to attempt to obtain a continuance.

On November 23, 2007, the City of Fargo filed a Response resisting the Intervenor's motion for continuance. The City of Fargo requests that the Commission deny the motion, or in the alternative, if the motion is granted that the Commission order that the Dakota Resource Council be responsible for the costs that the City of Fargo will incur resulting from rescheduling of travel and lodging for witnesses and legal counsel. The City of Fargo states that it has used the services of witnesses who are located in the state of Minnesota, and that its special counsel is located in Colorado. All of Fargo's witnesses and counsel have made arrangements to be present for the November 27 and 28, 2007 hearings.

The City of Fargo points out that the Commission, through its Administrative Law Judge, and in cooperation with the parties to this matter, established the dates of November 27 and 28, 2007, as the time for hearing concerning the issues set forth in the November 7, 2007 Order. The City of Fargo also states that the Intervenor has not heretofore focused on the issues to be presented by the City of Fargo.

On November 26, 2007, Matthew Shimanek and Jana Linderman, on behalf of the Intervenor, filed a response to the objections of the City of Fargo and TransCanada

to continuance of the hearings. The Intervenors argue that their right to due process and full and fair participation in these hearings exist independent of travel plans of witnesses and counsel for the City of Fargo. The Intervenors object to the request of the City of Fargo for reimbursement of costs resulting from rescheduling of travel and lodging for witnesses and legal counsel if the Motion for Continuance is granted. Intervenors' state that the City of Fargo and TransCanada are both in much better positions to absorb costs of minor procedural delays.

Intervenors state that their right to fully and fairly participate in these proceedings has been unduly burdened by the late withdrawal of Intervenors' previous counsel. Intervenors argue that the constricted timeline for the hearing has created hardships that would not exist in a more expanded timeframe. Intervenors state that time to prepare for these hearings would have been difficult had Intervenors continued with the same counsel, but with previous counsel for the Intervenors withdrawing only one week prior to the hearings creates an almost impossible situation.

Discussion

The facts and circumstances relating to the withdrawal of counsel for these Intervenors differs substantially from the statements of Mr. Shimanek contained in the Motion to Continue Hearings. As pointed out above, the Intervenors all supported the withdrawal of the Rinke Noonan. The Affidavit of Lynn Wolff states that "[t]he Dakota Resource Council wishes to appear pro se at said hearing and does not wish for Rinke Noonan to travel to Bismarck and represent its interests. I have spoken with the other intervenors who are all members of the Dakota Resource Council. They also agree that further legal expenses should not be incurred in this matter and do not wish for Rinke Noonan to appear at the hearings scheduled for November 27th and 28th, 2007."

The Intervenors also had Jana Linderman participate in the November 16, 2007 prehearing conference by telephone. The Intervenors indicated that Jana Linderman would provide advice to the Intervenors but that she was not licensed to practice law in North Dakota. At no time during the prehearing conference did Jana Linderman indicate that she would seek to be admitted to practice *Pro Hac Vice* nor did she indicate any concern about the hearing dates.

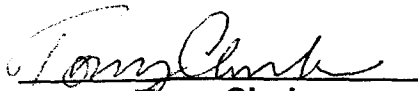
The Intervenors understood the facts and circumstances of the withdrawal of their attorney and they all agreed to and supported the withdrawal of Rinke Noonan. They were also aware that the hearings were scheduled for November 27 and 28, and expressed no concern relating to the date of those hearings and made no request that the hearings be continued. Jana Linderman, the present counsel for the Intervenors, participated in the prehearing conference on November 16, 2007. The Intervenors gave no indication at the November 16, 2007 prehearing conference that they intended to retain other counsel to represent them at the further hearing. Had the Intervenors advised the Administrative Law Judge and the other parties of that intent, it may have influenced the decision on the motion to withdraw.

The Commission finds that good cause does not exist for the continuance of the hearings scheduled for November 26 and 27, 2007. The Intervenor chose to seek and support the withdrawal of Rinke Noonan knowing that hearings were scheduled for these dates. The Administrative Law Judge fully informed the Intervenor of their rights to present evidence and cross examine witnesses as well as the consequences of granting of the Withdrawal prior to his granting the Motion for Withdrawal of Counsel.

ORDER

The Commission orders that the Motion to Continue Hearings is DENIED.

PUBLIC SERVICE COMMISSION


Tony Clark
Commissioner

 
Susan E. Wefald
President

Kevin Cramer
Commissioner

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent
Counties
Siting Application**

Case No. PU-06-421

ORDER DENYING INTERVENTION

November 27, 2007

Background

On April 11, 2007, TransCanada Keystone Pipeline, LP (TransCanada) filed an application for a waiver of procedures and time schedules, and consolidated applications for a certificate of corridor compatibility and a route permit authorizing construction of approximately 218 miles of 30-inch crude oil pipeline and associated facilities (Keystone Pipeline) in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and Sargent Counties of North Dakota, Case No. PU-06-421.

On November 15, 2007 Richard Starke filed a request to intervene in the captioned proceeding. Starke states on his request that he would like to be awarded intervenor status "because there are many technical questions concerning the chemistry and fluids dynamics of the oil that you apparently have little knowledge of but must be known prior to your decision" Mr. Starke does not state what he would contribute to the hearing.

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TransCanada argues that Starke has not demonstrated good cause for his late and untimely request to intervene in this proceeding. TransCanada asserts that Starke has not alleged that material changes in fact or law have occurred since the prior hearings. TransCanada also asserts that Starke is not affected by the limited issue involved in the reopened proceeding.

Discussion

Section 69-02-02-05 of the North Dakota Administrative code provides in part that "[a]ny person with a substantial interest in a proceeding may petition to intervene in that proceeding by complying with this section. An intervention may be granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and intervention would not unduly broaden the issues or delay the proceeding."

Subsection 1 of section 69-02-02-05 states in part that the petition to intervene must set forth the grounds for intervention and what the petitioner would contribute to the hearing.

The issues that have been established for this reopened proceeding are limited to the "safety and public health issues relating to the water supply of the City of Fargo from Lake Ashtabula and the Sheyenne River. Mr. Starke has appeared and has testified as a landowner and member of the public in the previous hearings held in Valley City and Bismarck. Mr. Starke is not a resident of the City of Fargo and has not shown that he has any interest in the limited issues of this reopened proceeding. Mr. Starke has repeatedly sent rude, sarcastic and inflammatory e-mail messages to the Commissioners.

We find that Mr. Starke's request fails to set forth any grounds for intervention and fails to state what he would contribute to the hearing. We also find that Mr. Starke's request for intervention is untimely and unnecessary, and would likely unduly broaden the issues or delay the proceeding.

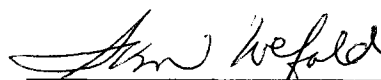
Order

The Commission orders that the request for intervention filed by Richard Starke is DENIED.

PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Susan E. Wefald
President



Kevin Cramer
Commissioner

DISSENTING OPINION
Commissioner Susan E. Wefald


November 27, 2007

**TransCanada Keystone Pipeline
30-Inch Crude Oil Pipeline/
Cavalier to Sargent County
Siting Application**

Case No. PU-06-421

I concur with the Commission's order to deny Mr. Starke intervention. However, the main reason I would deny Mr. Starke intervention is not mentioned in this order. Mr. Starke has not petitioned to intervene in this case in a timely manner. On November 7 I voted to deny late intervention to the City of Fargo for important procedural reasons, and these same procedural issues make it important to deny late intervention to Mr. Starke today.

Also, the present order lists a number of reasons Mr. Starke should be denied intervention. I agree with all of these reasons except for two. I do not agree that Mr. Starke should be denied intervention status because he is not a citizen of the city of Fargo. The Commission has granted intervention to other people who are not citizens of Fargo in this case. I also do not agree that Mr. Starke should not be granted intervention because he has written threatening communications to the Commission. Although it is unfortunate that Mr. Starke has not controlled his behavior in this regard, his behavior does not relate to his right to be granted or denied intervention.



Susan E. Wefald, Commissioner

APPROVED

DATE: 11-27-07
EQ

MOTION

November 27, 2007

**TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent
Counties
Siting Application**

Case No. PU-06-421

I move the Commission adopt the Order Denying Intervention in TransCanada Keystone Pipeline, LP's application to construct a 30-inch crude petroleum pipeline in Cavalier to Sargent Counties, Case No. PU-06-421.

PJF

APPROVED

DATE: 11-27-07
EG

MOTION

November 27, 2007

**TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent
Counties
Siting Application**

Case No. PU-06-421

I move the Commission adopt the Order Denying Motion to Continue Hearing in TransCanada Keystone Pipeline, LP's application to construct a 30-inch crude petroleum pipeline in Cavalier to Sargent Counties, Case No. PU-06-421.

PJF

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/
Cavalier to Sargent Counties
Siting Application**

Case No. PU-06-421

**TransCanada Keystone Pipeline, LP
Keystone Pipeline
Public Convenience & Necessity**

Case No. PU-07-152

AFFIDAVIT OF SERVICE BY REGULAR, EMAIL OR INSIDE MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Shelly A. Bauske deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **21st day of November, 2007**, she deposited envelopes in the United States Mail, Bismarck, North Dakota, postage fully prepaid, securely sealed, or via inside or email and each containing a copy of:

**Order on Motion to Intervene and Reopen
Order for Hearing on Expedited Notice (PU-06-421)
Notice of Further Hearing on Expedited Time Frame (PU-06-421)
Findings of Fact, Conclusions of Law and Order (PU-07-152)**

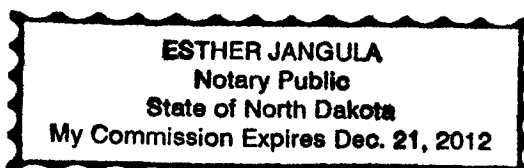
The envelopes/emails were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office or email address.

Subscribed and sworn to before me
this **26th day of November, 2007**

SEAL



Shelly A Bauske

Esther Jangula

Notary Public

303 PU-06-421

Pages: 6

81 PU-07-152

Pages: 6

Affidavit of Service Regular, Inside, Email

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11/21/2007

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~~TransCanada Pipeline~~

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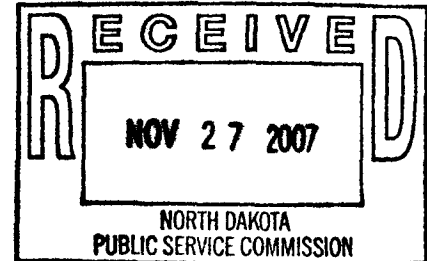
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US Army Engineer District Omaha
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John Castleberry
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MEMORANDUM

DATE: November 26, 2007
TO: Illona Jeffcoat-Sacco, Executive Director
Public Service Commission
FROM: Al Wahl
RE: TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline
Cavalier to Sargent Counties
Siting Application



Enclosed for filing is the order granting motion for admission to practice *pro hac vice* for the captioned matter.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

OAH File No. 20070181

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline
Cavalier to Sargent Counties
Siting Application

Case No. PU-06-421

ORDER GRANTING
MOTION FOR ADMISSION TO PRACTICE *PRO HAC VICE*

Jana M. Linderman, an attorney admitted to practice in the state of Iowa, having moved for admission to practice *pro hac vice* for the representation of the intervenors Dakota Resource Council, Janie Capp, John Capp, Ramona Klein, Linette Kratochvil, Merle Kratochvil, and Mark Novak for this matter, and having complied with the requirements of ND Admission to Practice R. 3, it is

Ordered, that Jana M. Linderman shall be, and she hereby is, admitted to practice *pro hac vice*, pursuant to and in accordance with the provisions of ND Admission to Practice R. 3, and granted leave to appear as counsel for the intervenors Dakota Resource Council, Janie Capp, John Capp, Ramona Klein, Linette Kratochvil, Merle Kratochvil, and Mark Novak for all further proceedings to be had for this matter.

Dated at Bismarck, North Dakota, this 23rd day of November, 2007.

State of North Dakota
Public Service Commission



Al Wahl, Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501
(701) 328-3260; awahl@nd.gov

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

OAH File No. 20070181

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline
Cavalier to Sargent Counties
Siting Application

Case No. PU-06-421

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the **ORDER GRANTING MOTION FOR ADMISSION TO PRACTICE *PRO HAC VICE*** to which this Certificate of Service is attached were served on the 13 day of November, 2007, by email addressed to:

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Todd D. Kranda
Kelsch Kelsch Ruff & Kranda
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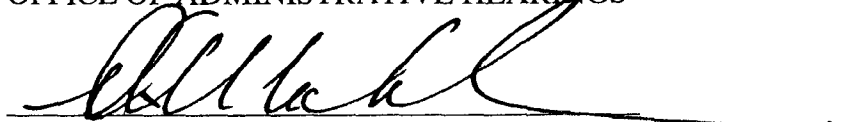
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OFFICE OF ADMINISTRATIVE HEARINGS



Al. Wahl, Administrative Law Judge