

**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

APPLICATION FOR CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY)

Case No. PU-07-152

**MOTION FOR INTERVENTION TO APPEAR AS A PARTY
AND
MOTION TO REOPEN PROCEEDINGS**

APPEARANCES

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

Nicholas R. Delaney, Rinke Noonan US Bank Plaza, Suite 300, St. Cloud, MN 56302 on behalf of Interveners, 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 North 9th Street, Bismarck, ND 58501
As Procedural Hearing Officer

Janie and John Carr, *pro se*, 12466 60th St NE, Lankin, ND 58250, Interveners

INTRODUCTION AND MOTIONS

The city of Fargo, North Dakota, through its undersigned counsel, respectfully submits Motions contained herein and attached materials to the North Dakota Public Service Commission concerning the Commission's consideration of the above-captioned matters relating to the requests of TransCanada Keystone Pipelines LLC ("TKP") for a certificate of public

convenience and necessity (PU-07-152) and a certificate of corridor compatibility and route permit authorization (PU-06-421) for construction and operation of a crude petroleum pipeline through approximately 218 miles of the state of North Dakota.¹

The city of Fargo respectfully submits the siting of the TKP crude petroleum pipeline along TKP's proposed route would present potential public health and safety risks that may adversely affect the welfare of a substantial number, even a majority, of the citizens of North Dakota due to undesirable impacts upon the water supply of the city of Fargo and other North Dakota communities who will rely on water resources that either arise in or flow through Lake Ashtabula and the Sheyenne River Basin both now and in the future. If adequate protection of these water resources is not made part of the TKP crude petroleum pipeline project, Fargo respectfully requests the Commission deny any certification of public convenience and necessity and deny the issuance of any certificate of corridor compatibility and route permit authorization. In order to present its concerns, the city of Fargo therefore respectfully requests the Public Service Commission:

- 1) grant Fargo leave to appear as a party in these matters; and,
- 2) grant Fargo's request per § 69-02-06-01 for the ND Administrative Code to reopen the proceedings in these matters, to receive the competent and relevant information and materials submitted herewith, and any other such information, materials, and testimony that may be presented during any reopened proceedings.

GROUND FOR REOPENING

The city of Fargo did not receive direct notice of these proceedings. While hearings with notice were held in some of the North Dakota counties through which the pipeline would pass, hearings were not held in all of the communities that have water supply sources in the Sheyenne River Basin. The North Dakota Department of Health did receive notices of the hearings, but did not consult with Fargo before testifying at the Public Service Commission hearings. Fargo has taken action to assert its citizens' interests before this Commission as soon as practical after it was on notice of the risks to its water supply the proposed crude petroleum pipeline presents.

As described hereinafter the city of Fargo has both legal interests and public health interests that may be substantially affected by these proceedings. Fargo maintains a municipal water treatment and distribution system that presently provides potable water service to a population in excess of 100,000 people. Fargo reasonably expects this service obligation to increase and a service population as high as 250,000 people in the next 50 years may be expected. Presently the city of Fargo operates and maintains water intake facilities on both the Red River of the North and the Sheyenne River. While the Red River has historically provided the majority of Fargo's water supply, resources of the Sheyenne River are used on a regular basis

¹ TransCanada Keystone Pipeline has alternately been referred to as both an "L.P." and an "L.L.C." in various pleadings and docket entries in these matters.

and have supplied water to the City’s inhabitants as recently as summer 2007. The supply of water in surface streams is variable. Public health and safety require, and prudence dictates, that whenever possible a major water supplier should diversify its portfolio of water sources. The water resources of the Sheyenne River are critical to Fargo’s ability to provide a dependable supply of potable water to its inhabitants and those relying on its system for water service. A copy of the North Dakota water permit for Fargo’s Sheyenne River intake facility is attached as Exhibit A.²

In addition to Fargo’s permit to make direct withdrawals from the Sheyenne River, Fargo also is the owner of a North Dakota water permit for water stored within Lake Ashtabula. Lake Ashtabula is the name given to the water impoundment that lies behind the U.S. Army Corps of Engineers Baldhill Dam that is located northeast of Valley City, North Dakota, in Barnes County. A copy of Fargo’s perfected Lake Ashtabula’s water storage permit is enclosed as Exhibit B.

In addition to Fargo’s Lake Ashtabula water storage permit, the North Dakota communities of Grand Forks, Valley City, West Fargo, and Lisbon hold valid Lake Ashtabula water storage permits totaling 63,916 Acre-Feet of water for the provision of water for their municipal needs.³ (One Acre-Foot equals 325,851 gallons.) These permits reflect not only the critical importance to public health and safety played by Lake Ashtabula and the Sheyenne River Basin in much of North Dakota but also the monetary contributions made by these communities to the construction of the Baldhill facility. Thus, Fargo and several other municipalities within the state of North Dakota have both a public health and a financial interest in the present water resources of Lake Ashtabula and the Sheyenne River Basin.

In addition to the present resources of Lake Ashtabula and the Sheyenne River, Fargo, along with nearly the entire eastern third of the state of North Dakota and three municipalities within the state of Minnesota, are members of the Lake Agassiz Water Authority (“LAWA”). LAWA, in connection with the Garrison Water Conservancy District and other entities, are in the

² The conditional permit as modified and Fargo’s 2007 request to make the water right absolute compose Exhibit A.
³

Permit No.	City	Acre-Feet
1091	Fargo	35,880
835A	Grand Forks	20,023
1096	Valley City	6,686
921	West Fargo	954
3588	Lisbon	373
Total		63,916

final steps of an EIS process for the Red River Valley Water Supply Project (“RRVWSP”). The RRVWSP in most of the proposed alternative forms would transport water from the Missouri River Basin through existing facilities of the Garrison Water Conservancy District to treatment and pipeline facilities to be constructed that would bring the water to the Sheyenne River above Lake Ashtabula. From that location, the water transported would be placed into the Sheyenne River for purposes of both storage in Lake Ashtabula and for the use of Fargo and other downstream LAWA members. Fargo and the other LAWA members have already expended substantial sums on the RRVWSP which is now in its final EIS stages. Ultimately, it is expected that construction costs for the RRVWSP will approximate \$400 million. Accordingly, Fargo and the other members of LAWA have both a public health and a financial interest in the future status of the water resources of Lake Ashtabula and the Sheyenne River Basin.

The critical importance of these water resources to Fargo and a substantial portion of the population of North Dakota stand in sharp contrast to the short shrift given to Lake Ashtabula and the Sheyenne River Basin by TKP in these proceedings. TKP has received a waiver from the federal Pipeline and Hazardous Materials Safety Administration which would allow TKP to use thinner steel than normally required, thus lowering the safety factor of the proposed crude petroleum pipeline in the rural areas from which Fargo and others draw their municipal water supplies. Despite having spent years planning its crude petroleum pipeline, TKP has sought to rush proper consideration of the proposal through requests for waivers of procedure and time schedules before this Public Service Commission. Indeed, in its Memorandum Brief in Support of Application for Certificate of Corridor Compatibility and Route Permit in Case No. PU-06-421, dated October 15, 2007, TKP states at page 11:

49. The Keystone Pipeline Project does not cross public water supply wetlands or surface water supply in lakes.”

Thus TKP attempts to cloak the importance to public health and safety of the present and future water resources of Lake Ashtabula and the Sheyenne River Basin. Thus far the Public Service Commission record in this matter contains precious little concerning the present water resources of Lake Ashtabula and the Sheyenne River Basin and nothing that Fargo has yet been able to discern concerning the future importance of Lake Ashtabula and the Sheyenne River Basin to the RRVWSP.

Fargo has met the appropriate legal standards for its Motions required by NDCC § 28-32-25 and NDPSC Rule 69-02-02-05 by showing the required legal interest and by the inclusion of information herein so as not to unduly delay these proceedings. In recognition of Fargo’s legal interests and in the interests of public health and safety, the Public Service Commission should therefore allow Fargo the opportunity to make these and other related points part of the record herein.

Fargo has learned, through its own experience in the RRVWSP and through its observation of procedures associated with the Devil’s Lake Outlet Project (a project designed to relieve flooding problems in the Devil’s Lake area), that many interests from the nation of Canada have sought to oppose those projects for reasons that may not be well founded.

However, in the present circumstances Fargo does not choose to oppose TKP's crude petroleum pipeline merely because of its Canadian owners and beneficiaries. While it may be appealing to some to seek governmental opposition to a "Canadian" project, Fargo prefers to ask the Public Service Commission to focus on the following substantive issues of injury to water supply systems that now and in the future will rely on Lake Ashtabula and the Sheyenne River Basin.

In particular, Fargo respectfully requests this Commission recognize and consider the following points, and, if the Commission is inclined, to grant Fargo's Motion to reopen to allow the City to present additional technical materials which Fargo can produce in approximately one month's time.

1. The proposed alignment of the crude petroleum pipeline along Lake Ashtabula should be adjusted and/or additional design protection is warranted to lower the threshold of "acceptable" risk in order to provide an additional margin of safety to protect the municipal water supplies. TKP specifically identified human use-recreational and human use-water intakes as the highest priority sensitive receptors (see 3.13.4.1, Factors Affecting Oil Spill Impacts of the DEIS). Lake Ashtabula, the direct drainage areas leading to Lake Ashtabula, and the Sheyenne River are priority sensitive receptors and High Consequence Areas. The proposed crude petroleum pipeline route traverses many of the coulees, tributaries, and waterways leading directly to Lake Ashtabula and the Sheyenne River below Lake Ashtabula. Any spill is likely to result in the immediate introduction of crude petroleum contaminants into these water resources that are the water supply for the city of Fargo and other North Dakota communities.⁴
2. TKP's document "Pipeline Risk Assessment and Environmental Consequence Analysis" uses a deterministic risk assessment approach, which fails to adequately characterize the range of failure risks and spill volume. The deterministic approach fails to consider the inherent uncertainty in the parameters used to estimate risk (e.g., spill frequency and volume, historical probability of failure) and consequently is inadequate to establish the probability of failure. The city of Fargo submits that a stochastic risk assessment approach be used to estimate the probability distribution for the failure risk and spill volume. A stochastic risk assessment approach allows for an understanding of the range of risks, by incorporating the explicit uncertainty in input values. This range of

⁴ See the map attached hereto as Exhibit C. Exhibit C points out twenty locations where leaks emanating from TKP's crude petroleum pipeline would reach the waters of the Sheyenne River by tributary flow. Exhibit C should be contrasted with the map attached as Exhibit D comparing the crude petroleum pipeline route with the Surficial Groundwater Aquifers in the area. Exhibits C and D clearly show that movement of the crude petroleum pipeline route in an easterly direction within Griggs and Barnes Counties will remove the danger of spills for the majority of the locations tributary to the Sheyenne River while still avoiding Surficial Groundwater Aquifers in the area.

risk should then be used for assessing the environmental consequences including the risk to water resources that are the water supply for the city of Fargo and other North Dakota communities.

3. The likelihood and volume of a spill event is based upon historical information. The probability of a failure and the volume release is based on a relatively short amount of observational record. Additional analyses exploring a greater range of probabilities are warranted to more exhaustively define risk of failure. Similarly, the risk analysis used by TKP assumed an equal chance of failure along each portion of the crude petroleum pipeline route. The likelihood of failure should be based upon the proportion of geologic and other conditions that reflect actual design and construction. The risk of failure will in fact vary depending upon these conditions.
4. Information presented by TKP suggests that for large leaks the time for detection is an estimated nine minutes (see Frequency – Volume Study of Keystone Pipeline 70015849-2 (rev 1)). TKP also showed the exceedance of the Maximum Contaminant Level (MCL) for benzene in the event of a spill to the Sheyenne River Basin (see Table 4-2, Pipeline Risk Assessment and Environmental Consequence Analysis) for a nominal throughput of 435,000 barrels per day for small (50 barrels), moderate (1,000 barrels), and large (10,000 barrels) spills. While the estimated time for the detection of a large leak is nine minutes, the estimated detection time for small leaks is much longer. Statistically, small leaks are more likely to occur. Based upon this information it is imperative that additional design measures be developed and the route reevaluated, to ensure sufficient response time to protect the water supply for the city of Fargo and other North Dakota communities.
5. The route selection process for the crude petroleum pipeline was stated as including numerous iterations with the main objective of moving oil from Canada to its delivery points in Illinois and Oklahoma. It was further stated that two main control points for locating the pipeline through North Dakota were the use of an existing natural gas line in Canada, which defines where the pipeline enters North Dakota, and a suitable crossing of the Missouri River at Yankton, South Dakota, which defines where the pipeline exits North Dakota. A study area was established for the pipeline route that included wetlands environmental data, threatened and endangered species information, and soils information. Additionally, information was obtained regarding sites with historic and cultural significance. This information was in addition to the Public Service Commission citing rules that define exclusion and avoidance areas when determining a suitable route. In performing routing analyses, many

considerations are evaluated, such as environmental, social, and engineering-related considerations. The criteria for which the potential routes will be evaluated are further defined by a number of factors within each consideration. Information gathered for each of the factors for the potential routes serve as the basis for comparing the potential routes and consequently identifying the preferred route. Each consideration has a different impact on the surrounding area, whether it be environmental-related or social-related, and therefore is assigned a weight that defines the relative importance of the particular consideration. Further, the factors within each consideration are assigned a weight to define their relative importance within the specific consideration. The potential routes are compared to one another based on site-specific information gathered for each factor identified for the routing analysis and also based on the weighted factor which defines the relative importance for the area where the route resides. A preferred route can be defined by comparing the scoring of the potential routes based on the weighted factors. It appears the routing analysis performed for TKP's crude petroleum pipeline did not distinguish between the relative importance of a factor, and the analysis further assumed that each factor in the analysis carried equal weight. Accordingly then, each factor in the routing analysis assumed equal weight. Such weighting improperly discounts the location of a ground water or surface water source for municipal use when otherwise these critical municipal water supply areas would be considered an exclusion or avoidance area, or at a minimum, carry a significantly greater weight when compared to other environmental factors in the route analysis. In TKP's crude petroleum pipeline route selection process, it should give greater weight to water resources to protect the water supply for the city of Fargo and other North Dakota communities by locating their proposed crude petroleum pipeline away from tributaries to Lake Ashtabula and the Sheyenne River Basin. Placement of TKP's crude petroleum pipeline in close proximity to Lake Ashtabula and the Sheyenne River Basin is contrary to a safe and logical routing approach.

6. Several design standards should be reviewed and additional protections should be put in place by the Public Service Commission. As an example, the preliminary design of TKP's crude petroleum pipeline shows a total of only 13 valves for the entire length of the pipeline within the boundaries of the state of North Dakota, an interval of about 20 miles. Fargo believes the requested minimal number of valves falls short of a safe design and is representative of the need for additional review of the design plans and specifications. Additionally, TKP filed a petition with the USDOT, Pipeline and Hazardous Materials Safety Administration on November 17, 2006, revised April 10, 2007, for a Special Permit to construct its crude petroleum pipeline at design pressures up to 80 per cent of the specified

minimum yield strength. Fargo's preliminary investigations reveal there are no existing operating liquid petroleum pipelines presently in the U.S. that would meet such pressure standards. Accordingly the North Dakota Public Service Commission must provide additional conditions that would prudently address and mitigate the increased risks associated with operations at the requested unusually high pressures.

7. The proposed construction plans call for clear-cutting a path eighty-five feet wide throughout the length of the crude petroleum pipeline. A clear-cut of this width through the forested areas adjacent to the Sheyenne River Basin will increase runoff, sediment, and pollutant loadings into the Basin. TKP has stated it will investigate alternatives to clear-cutting, but such statement does not guarantee any such alternative will ever be investigated or implemented.

CONCLUSION

The location of TKP's proposed crude petroleum pipeline is, for much of its length, within the Sheyenne River Basin. At many locations, the pipeline is near the thread of the Sheyenne River itself and it does cross the Sheyenne River. As set forth in the foregoing sections, the location of the pipeline on this course presents real dangers to the water supply of Fargo and other North Dakotans. This danger will exist with any leak, either small or catastrophic, if such leak is not promptly closed. Accordingly, Fargo respectfully requests the Public Service Commission: 1) grant Fargo leave to appear as a party in these matters and 2) grant Fargo's request to reopen the proceedings in these matters to receive the materials submitted herewith and any other materials and testimony that may be presented during any reopened proceedings. Fargo would further request that if the Public Service Commission is disinclined to grant Fargo's requests, then for the health and safety of the citizens of this State the Public Service Commission, pursuant to NDCC § 28-32-25, avail itself of the competent and relevant evidence furnished by Fargo and, upon the Public Service Commission's own motion, put in place permit requirements that will both ensure the integrity of the pipeline to prevent any leakage and provide for the most efficient possible leak detection and mitigation activities. Such requirements are obviously appropriate in circumstances such as these where the extremely grave risks to public health are balanced against relatively small to non-existent local benefits resulting from TKP's foreign-owned and operated crude petroleum pipeline.

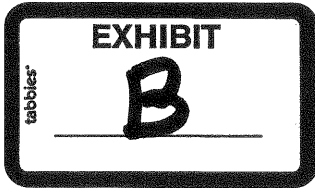
Respectfully submitted this 23rd day of October, 2007.



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OFFICE OF STATE ENGINEER
STATE OF NORTH DAKOTA



Perfected Water Permit No. 1091

Conditional Permit No. 1091 Priority Date June 27, 1963

Name of Conditional Permit Holder City of Fargo

Address Fargo, North Dakota 58102

Source of Water Stored water from Lake Ashtabula, Shyenne River, trib. to Red River of the North

Quantity of Water Approved in Conditional Permit 35,880.0 acre-feet Nature of Use Municipal

Date Application Approved and Conditional Permit Issued July 31, 1963

Date Water Beneficially Used 1963

This is to certify that the holder(s) of the conditional permit to divert and appropriate water as indicated above has completed construction of the works as set forth therein. And that the holder(s) of said conditional permit did, on the 20th day of July, 1972 and 19th day of September, 1972, submit proof of the application to beneficial use of 35,880.0 acre feet of water for the following purpose Municipal

Now, therefore, by virtue of the authority vested in me by the laws of the State of North Dakota, I hereby grant and confirm to the City of Fargo of Fargo, North Dakota

holder(s) of said Conditional Permit No. 1091, a right dating from June 27, 1963

to appropriate and divert from at a point located in the NW1/4 Sec 5 Twp 138 Rge 49; or NW1/4 1/4 Sec 32 Twp 139 Rge 49

a quantity of water limited to the amount that can be beneficially used herein, but not to exceed 35,880.0 acre feet annually for Municipal Use

(Purpose)

and if purpose is irrigation, water is to be applied to the following lands to which this Water Permit is appurtenant:

Sec.	Twp.	Rge.	NE1/4				NW1/4				SW1/4				SE1/4				TOTAL
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
			N/A																

Estimated return flow to stream 40-50%

This Water Permit is subject to the limitation on the use of water as set forth in the laws of this State and to the rights of prior claimants recognized under the laws of North Dakota, and to the following additional limitations

The right to use water for irrigation set forth herein is limited to the above described lands and is subject to cancellation for nonuse.

WITNESS my hand and seal at Bismarck, North Dakota, this 5th day of July, 1973

(SEAL)

Vernon Selby

State Engineer - State of North Dakota

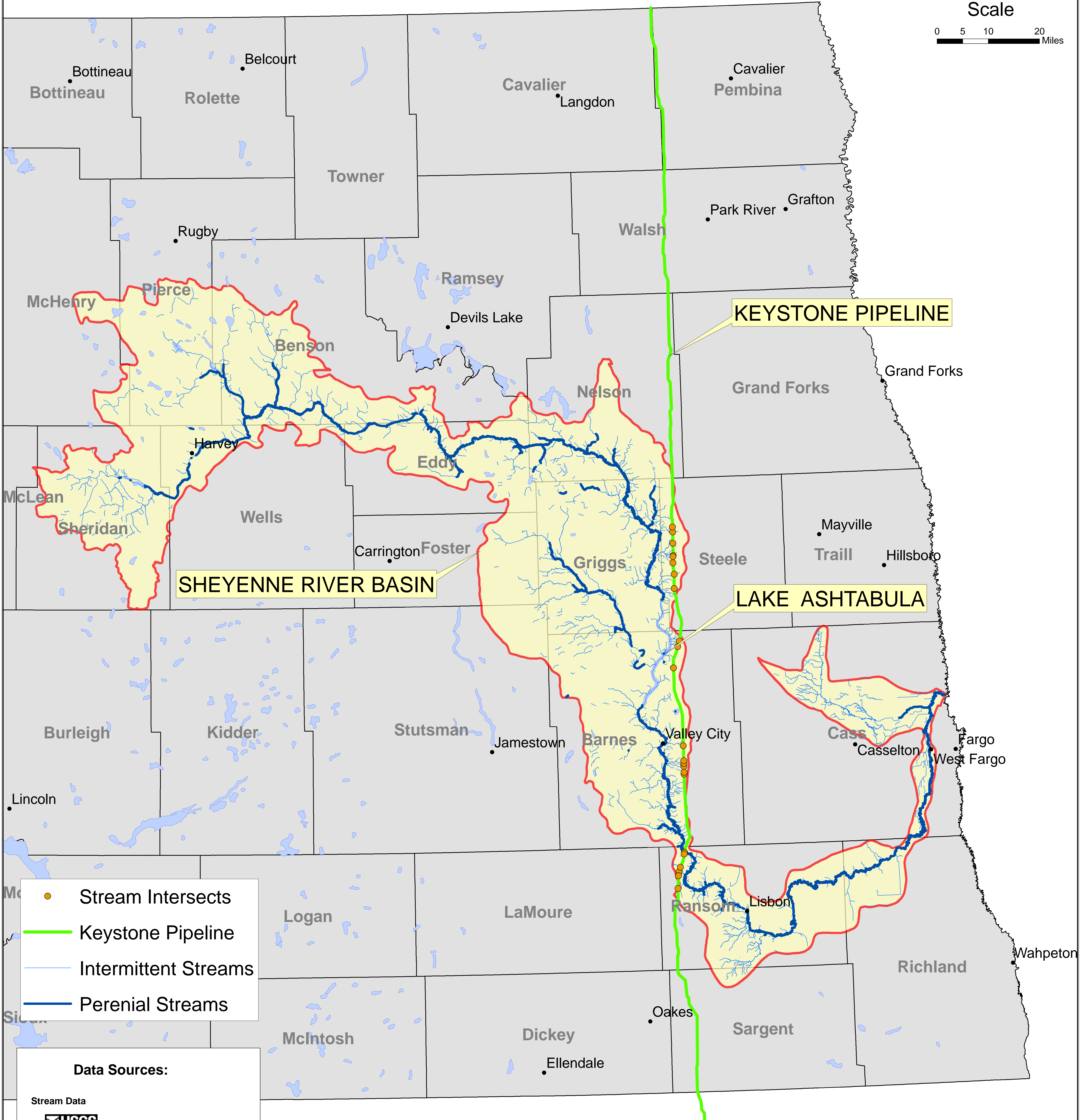
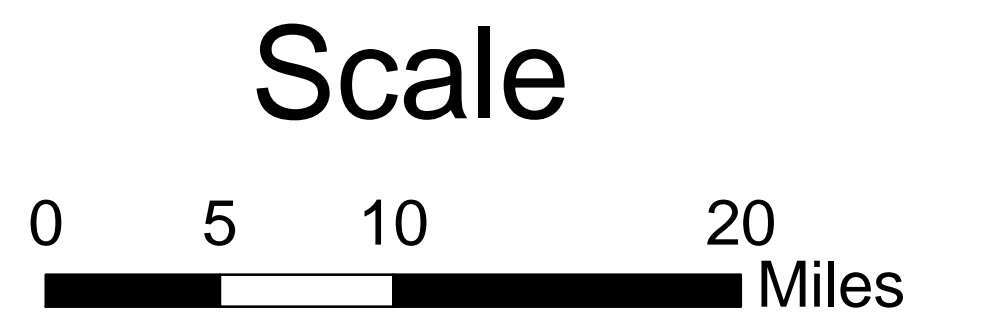
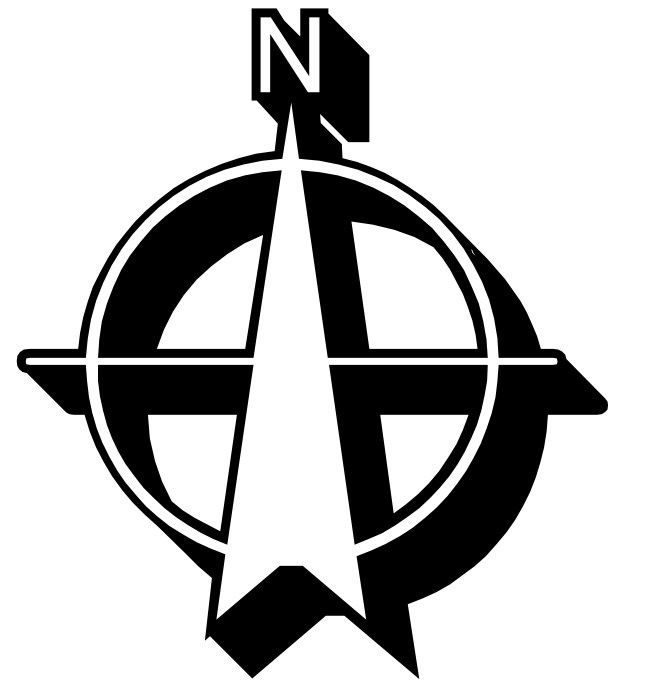
STATE OF NORTH DAKOTA, }
COUNTY OF BURLEIGH. } ss.





On this 5th day of July, 1973, before me a notary public, personally appeared ~~VERNON SELBY~~ Vernon Selby known to me to be the same person who executed the Perfected Water Permit and acknowledged to me that he executed the same.

M. C. Emerson


Notary Public

Keystone Pipeline and USGS National Hydrography Stream Data




-  Stream Intersects
-  Keystone Pipeline
-  Intermittent Streams
-  Perennial Streams


Data Sources:

Stream Data
 National Hydrologic Data:
<http://www.nhd.gov/>

Cities & Counties data:
 Various state agencies via the ND GIS Hub
<http://www.nd.gov/gis/>

Keystone Pipeline Route
 Digitized from Pipeline route as of April 7, 2007

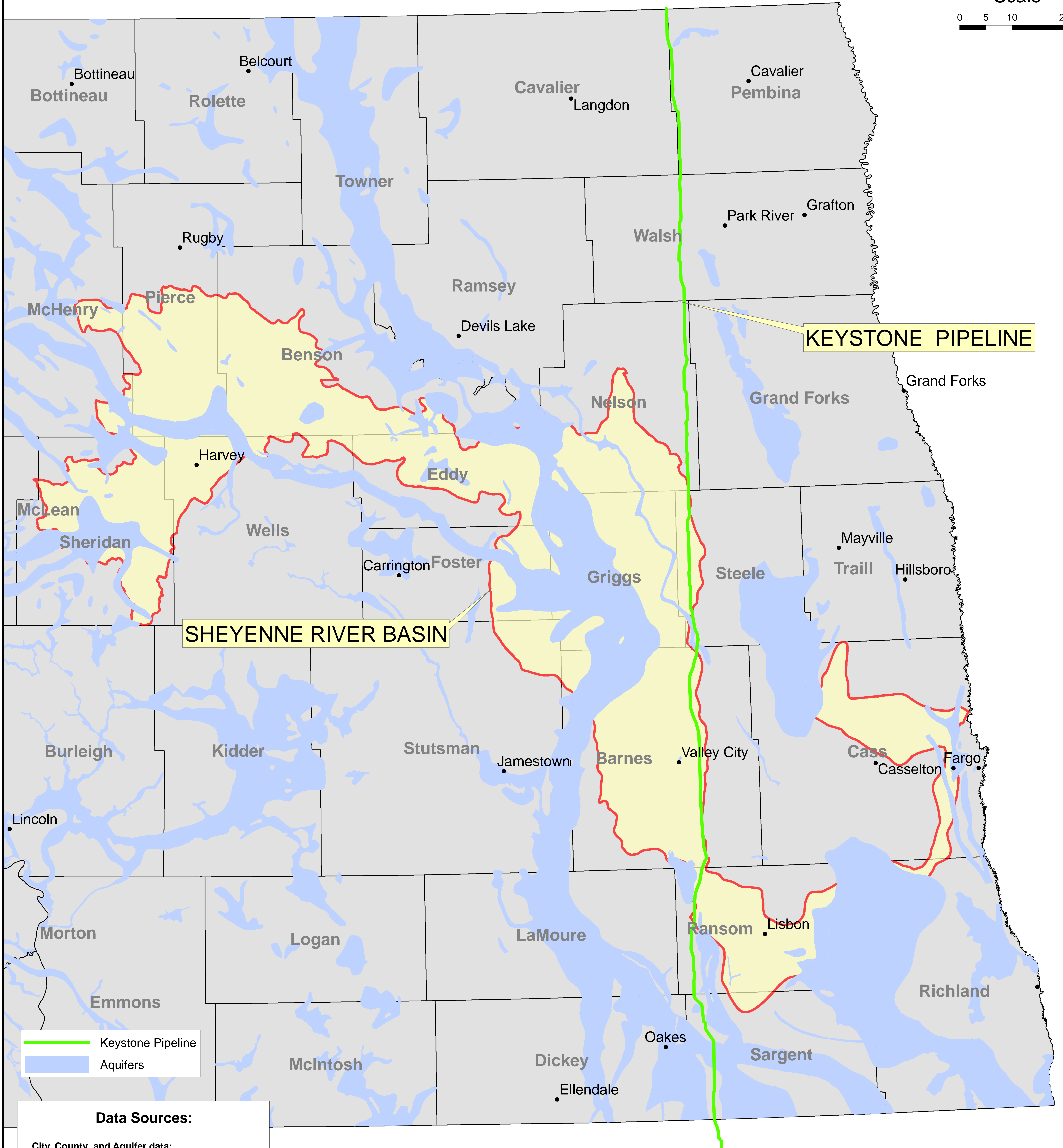
Hydrologic Boundaries:


Prepared By:
 **Houston Engineering, Inc.**

Keystone Pipeline and Surficial Aquifers



Scale



KEYSTONE PIPELINE

SHEYENNE RIVER BASIN

- Keystone Pipeline
- Aquifers

Data Sources:

City, County and Aquifer data:
Various state agencies via the ND GIS Hub
<http://www.nd.gov/gis/>

Keystone Piple Route
Digitized from Pipeline route as of April 7, 2007

Hydrologic Boundaries

Prepared By: