

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Dakota Access, LLC  
Dakota Access Pipeline Project  
Siting Application

Case No. PU-14-842

**AFFIDAVIT OF SERVICE BY REGULAR AND ELECTRONIC MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Geralyn R. Schmaltz** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **5th day of June, 2017**, she deposited in the United States Mail, Bismarck, North Dakota, **15** envelopes by first class mail, fully prepaid and **75** addressees electronically mailed a copy of:

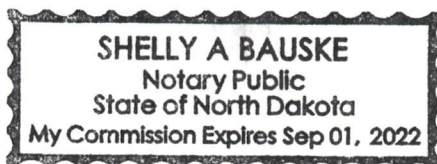
- **Order to Show Cause and Order Dismissing Complaint without Prejudice**

The envelopes and electronic mails respectively were addressed as follows:

**See attached list.**

Each post office address shown is the respective addressee's last reasonably ascertainable post office address and each email address is the respective addressee's last reasonably ascertainable electronic mailing address.

Subscribed and sworn to before me  
this **5th day of June, 2017**.



SEAL

Notary Public

County Auditor  
Dunn County  
205 Owens Street  
Manning ND 58642-0105

County Commission  
Dunn County  
205 Owens Street  
Manning ND 58642-0105

Emmons County Auditor  
100 4th Street NW  
Linton ND 58552

Emmons County Commission  
100 4th Street NW  
Linton ND 58552

Federal AViation Administration  
Bismarck Airports District Office, BIS-i  
Bismarck ND 58504

McKenzie County Auditor  
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McKenzie County Commission  
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Watford City ND 58854

County Auditor  
Mercer County  
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Stanton ND 58571

Chairman  
Mercer County Commissioners  
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COUNTY AUDITOR  
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**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Dakota Access, LLC**  
**Dakota Access Pipeline Project**  
**Siting Application**

**Case No. PU-14-842**

**ORDER TO SHOW CAUSE**  
**AND**  
**ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE**

**May 31, 2017**

**Preliminary Statement**

On January 20, 2016, the Public Service Commission ("Commission") issued its Findings of Fact, Conclusion of Law and Order authorizing the construction, operation and maintenance of the Dakota Access Pipeline, approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in North Dakota.

On May 24, 2016, the Commission issued Supplemental Findings of Fact, Conclusion of Law and Order.

On June 22, 2016, the Commission issued Second Supplemental Findings of Fact, Conclusion of Law and Order.

On November 7, 2016, Public Service Commission Advocacy Staff ("Advocacy Staff") filed a formal complaint against Dakota Access, LLC ("Dakota Access") alleging that Dakota Access violated the Commission's Orders.

On November 30, 2016, Dakota Access filed a Motion to Dismiss Complaint.

On December 16, 2016, Advocacy Staff filed its response to the Motion to Dismiss, and on January 5, 2017, Dakota Access filed a reply.

On January 31, 2017, the Commission issued an Order denying the Motion to Dismiss.

On February 17, 2017, Dakota Access filed its Answer to the Complaint.

## Discussion

Dakota Access filed applications for a certificate of corridor compatibility and a route permit concerning approximately 358 miles of 12-, 20-, 24-, and 30-inch diameter crude oil pipeline and associated facilities in Mountrail, Williams, McKenzie, Dunn, Mercer, Morton, and Emmons Counties, North Dakota, and terminals near Stanley in Mountrail County, near Tioga in Williams County, near Epping in Williams County, near Trenton in Williams County, near Watford City in McKenzie County, and near Johnsons Corner in McKenzie County ("Project"). The Commission held three hearings on the Project and issued a corridor certificate and route permit to Dakota Access on January 20, 2016. The Commission issued Supplemental Findings of Fact, Conclusions of Law and Order and Second Supplemental Findings of Fact, Conclusions of Law and Order on May 24, 2016 and June 22, 2016, respectively. Dakota Access executed the Certification Relating to Order Provisions ("Certification"), which the January 20, 2016, May 24, 2016, and June 22, 2016 Orders incorporated. See Affidavit of Patrick Fahn (the Affidavit is incorporated into this Order by reference).

Provisions of the Certification document, made a part of the Orders, required Dakota Access to do the following upon an unanticipated discovery of a cultural resource:

12. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society and clearance to proceed is given by the Commission.

\* \* \*

**38. ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before conducting any construction activities for any adjustment to the designated route within the designated corridor under NDCC 49-22-16.3(1), the Company will file:

- a. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;
- b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
- c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

The Commission retained Keitu Engineers & Consultants, Inc. ("Keitu") as independent construction inspectors for the Project on January 20, 2016. On October 25, 2016, Keitu filed a site inspection trip report with the Commission. The report stated during the site inspection on October 21, 2016, Keitu found an area flagged off from construction traffic and was informed by an Environmental Inspector with Dakota Access that "an unanticipated discovery was found on or around October 15, 2016 which resulted in a ROW reroute that was approved." Dakota Access had commenced construction of the re-route prior to notifying the Commission of the discovery of the cultural resource. Dakota Access had not, at that point in time, informed the Commission of the unanticipated discovery. Upon the request of the Commission, Dakota Access formally provided the Commission with information concerning the unanticipated discovery and route adjustment on October 27, 2016.

The Commission held a regular meeting on November 2, 2016. At the administrative matters portion of that meeting, the Commission discussed the unanticipated discovery and route adjustment that was reported to the Commission by Keitu. At the meeting, Commissioner Fedorchak instructed Commission staff to draft a formal Complaint against Dakota Access for possible violations of the Order.

A formal Complaint was prepared and filed by Advocacy Staff and was served on Dakota Access. The Complaint generally alleged that Dakota Access violated the Commission's Order by failing to report the unanticipated discovery and route adjustment to the Commission as required by N.D.C.C. § 49-22-16.3(1), and the January 20, 2016, May 24, 2016, and June 22, 2016 Orders, subjecting Dakota Access to penalties set forth at N.D.C.C. § 49-22-21.

Dakota Access did not Answer and instead filed a Motion to Dismiss the Complaint, and a supporting brief, on November 30, 2016. Commission advocacy staff filed a Response in Opposition to the Motion to Dismiss on December 16, 2016. Dakota Access filed a Reply Brief in Support of its Motion to Dismiss on January 5, 2017. On January 31, 2017, the Commission denied the Motion to Dismiss. Dakota Access filed an Answer on February 17, 2017.

The Commission has determined that the Complaint brought against Dakota Access should be dismissed without prejudice and that an Order to Show Cause hearing, allowing Dakota Access to respond to the allegations of non-compliance with law and Commission Orders following the unanticipated discovery of a cultural resource and subsequent re-route of the Project route, is more efficient and appropriate than proceeding under the formal complaint process. The Commission is currently investigating other unrelated potential violations in this case and has determined the Order to Show Cause procedure under N.D. Admin. Code § 69-02-02-09 is the appropriate manner to proceed on the issues raised by the Complaint.

## Order

The Commission orders:

1. Dakota Access LLC shall appear before the Public Service Commission at the time and place as set forth in the Notice of Hearing and show cause, if any, why Dakota Access should not be found in violation for failing to comply with North Dakota siting law and the January 20, 2016, May 24, 2016, and June 22, 2016 Orders, which incorporated the Certification provision requiring Dakota Access to do the following upon an unanticipated discovery of a cultural resource:

12. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society and clearance to proceed is given by the Commission.

\* \* \*

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- a. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;
- b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
- c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

2. Dakota Access shall appear by and through representatives who have sufficient knowledge and information to discuss the allegations.

3. A Notice of Hearing on the Order to Show Cause shall be served with this Order.

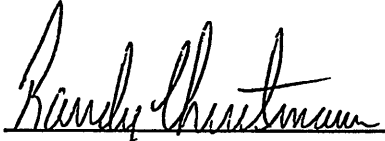
4. A copy of the Commission Motion to issue an Order to Show Cause and a Notice of Hearing shall be served with this Order.

5. Briefs on relevant issues of law may be filed with the Commission at least five business days prior to the Order to Show Cause hearing.

**PUBLIC SERVICE COMMISSION**



**Brian Kroshus  
Commissioner**



**Randy Christmann  
Chairman**



**Julie Fedorchak  
Commissioner**

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Dakota Access, LLC**  
**Dakota Access Pipeline Project**  
**Siting Application**

**Case No. PU-14-842**

**AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE**

STATE OF NORTH DAKOTA            )  
  ) SS.  
COUNTY OF BURLEIGH            )

Patrick Fahn, being first duly sworn, deposes and states as follows:

1. I make this affidavit pursuant to N.D. Admin. Code § 69-02-02-09.
2. I am the Director of the Public Utilities Division of the North Dakota Public Service Commission.
3. Under my direction and control, the Public Utilities Division responsibilities include implementation of the state's Siting Act policy to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota. The Division monitors and enforces utility compliance with applicable State laws and rules, as well as Commission orders and procedures.
4. The Order to Show Cause being issued against Dakota Access, LLC, is premised on the failure of Dakota Access to notify the Commission pursuant to the January 20, 2016, May 24, 2016, June 22, 2016, Orders, which included the Certification Relating to Order Provisions ("Certification"). Specifically, the Commission's third-party construction inspector Keitu

Engineers & Consultants, advised the Commission on October 25, 2016, that it noted on October 21, 2016, during an inspection of the Project, that an area had been flagged and construction of a route adjustment was in progress. See Report, attached as Exhibit A [Dkt. 225]. The Report further indicated that Keitu inspectors were informed by Dakota Access that the route adjustment had taken place as a result of an unanticipated discovery which occurred on or around October 15, 2016. *Id.* Commission staff contacted Dakota Access on October 25, 2016, seeking additional information. Dakota Access provided a response on October 27, 2016. Dakota Access Response, attached as Exhibit B [Dkt. 227].

5. Dakota Access did not comply with N.D.C.C. § 49-22-16.3, the Certification, or the January 20, 2016, May 24, 2016, June 22, 2016, Orders, prior to beginning construction on the route adjustment and is subject to penalties set forth at N.D.C.C. § 49-22-21.

6. The North Dakota Century Code section 49-22-21 provides in relevant part

Any person who willfully engages in any of the following conduct shall be subject to a civil penalty of not to exceed ten thousand dollars for each such violation for each day that such violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:

\* \* \*

b. Constructs, operates, or maintains an energy conversion facility or a transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.

7. The North Dakota Century Code section 49-22-16.3(1) provides:

1. Before or during construction, a utility, without any action by the commission, may adjust the route of a gas or liquid transmission line within the designated corridor if, before conducting any construction activities associated with the adjustment, the utility files with the commission certification and supporting documentation that:

- a. The construction activities will be within the designated corridor;
- b. The construction activities will not affect any known exclusion or avoidance areas within the designated corridor; and
- c. The utility will comply with the commission's order, laws, and rules designating the corridor and designating the route.

8. The Certification states, in relevant part:

12. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society and clearance to proceed is given by the Commission.


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- b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
- c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

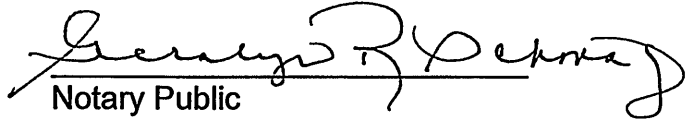
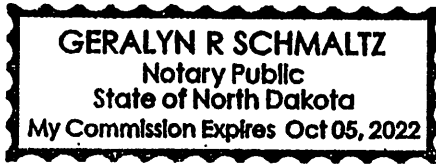
FURTHER YOUR AFFIANT SAYETH NOT.

Dated this 31 day of May, 2017.

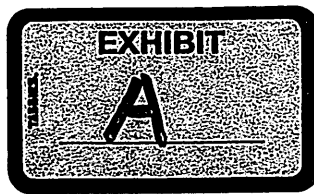


Patrick Fahm  
Director, Public Utilities Division, North  
Dakota Public Service Commission

Subscribed and sworn to before me this 31<sup>st</sup> day of May, 2017.



Notary Public



**Site/Project Location:** Spread 7-8 Morton & Dunn Counties

**Date of Inspection:** 21 October 2016

Inspected Spread 7-8 of pipeline ROW approximately starting near Fort Rice, North Dakota and concluding near Zap, North Dakota.

**Observed Work / Weather Conditions**

Visit occurred between 9:30 a.m. – 4:30 p.m. Weather included mostly cloudy to partly cloudy skies with unrestricted visibility. No precipitation during visit. SSE wind at 6 mph gusts to 13 mph. No precipitation during visit. ROW surface was dry. Temperature 34 - 54° F.

Grading, Stringing/Skids, Bending, Road Bore, Trenching, Lowering In, Backfill, Tie In, and HDD crews were observed active. MP 159 topsoil stripping and soil segregation was ongoing. Care was taken around wetland boundaries and cultural resource delineated boundary. ROW survey stakes remain.

**Top Soil Management / Condition / Erosion Control / Stormwater Management**

Topsoil and subsoil segregation appeared to be adequate. Topsoil depth was as thin as 0.5" on hilltops while up to or exceeding 12" on the bottom of hill slopes. A majority of the top soil and subsoil piles from stripping and trenching showed clear separation. Where subsoil and topsoil piles were bordering each other it appeared to occur near where the ROW was narrowed near wetland crossings. Even though they were bordering each other, it was observed care was taken to keep the soils segregated. Storm water BMPs remain in place and in good repair. Drainage points protected with straw bales or silt fence were cleared of silt.

**Vegetation Condition**

Near MP 159 vegetation stripping was occurring and no trees or shrubs were observed along the ROW. Adequate vegetation buffer at wetland crossings were in place. Near MP 79 the ROW was already seeded and cover crop was growing.

**Depth of Cover / Road Crossings / River Crossings / Riparian Condition at HDD Bore Sites**

Open trench areas observed appeared to be at specified depth or deeper. Silt fence was implemented to prevent any sediments from entering. Matted road was built over the crossing as it connects HDD bore pads.

**Other Project Issues**

During the inspection Keitu found one area flagged off from construction traffic adjacent to the ROW. Christian Patrick, Environmental Inspector – Energy Transfer, informed Keitu that an unanticipated discovery was found on or around October 15, 2016 which resulted in a ROW reroute that was approved. It appears that the project is following their unanticipated discovery plan and communicated with Keitu that project archaeologists are working with the ND SHPO. At the time of the inspection on October 20, 2016 Keitu did not find any docket files on the PSC website in reference to the reroute. It is possible these documents have been filed but not made publicly available at the date of the inspection.

**Deficiencies**

None to report.

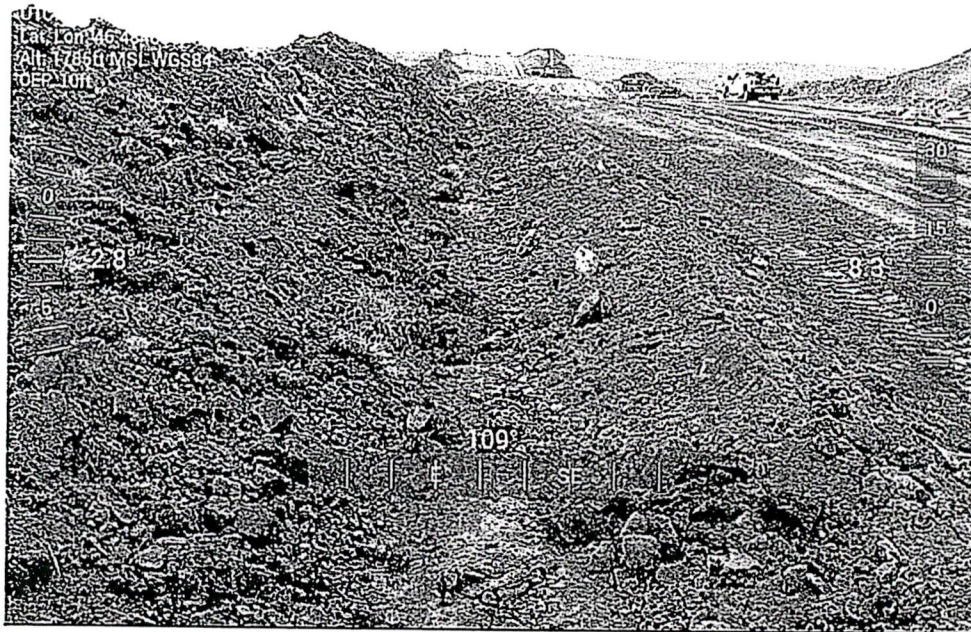
**Actions Taken/To Be Taken**

Highlight reported reroutes on interim report to PSC staff. Follow-up on the issue at PSC's discretion.

**Keitu Inspector:** KRF

**Inspection Report Submitted:** 24 October 2016

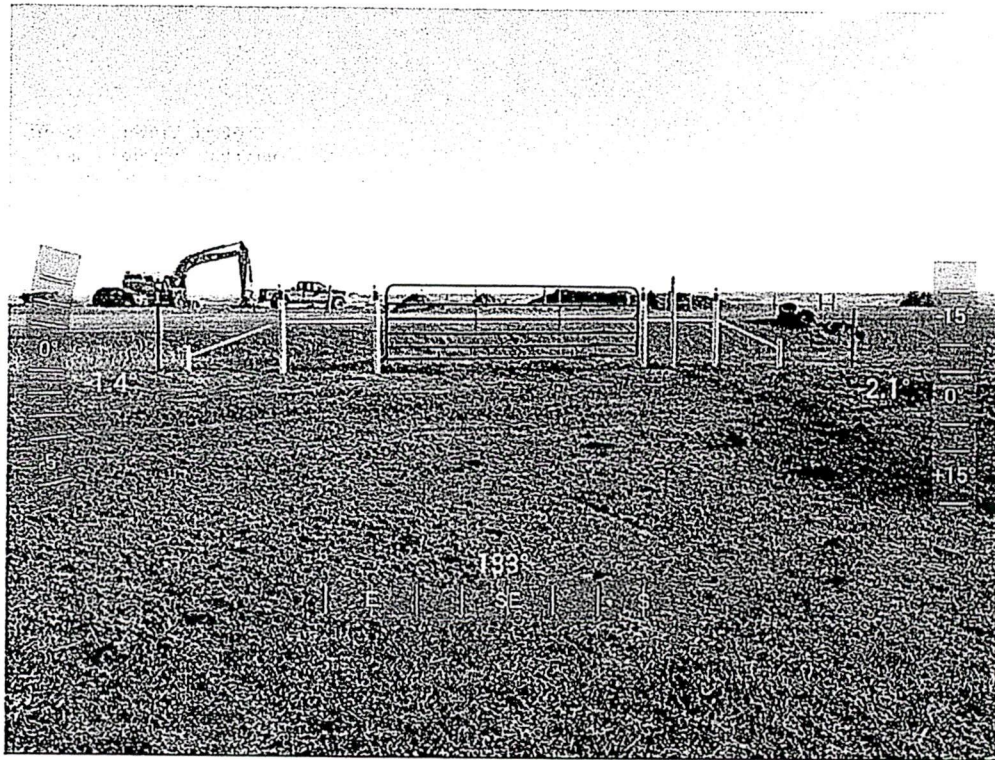
**Report Photo #1 Subsoil and Topsoil Segregation**



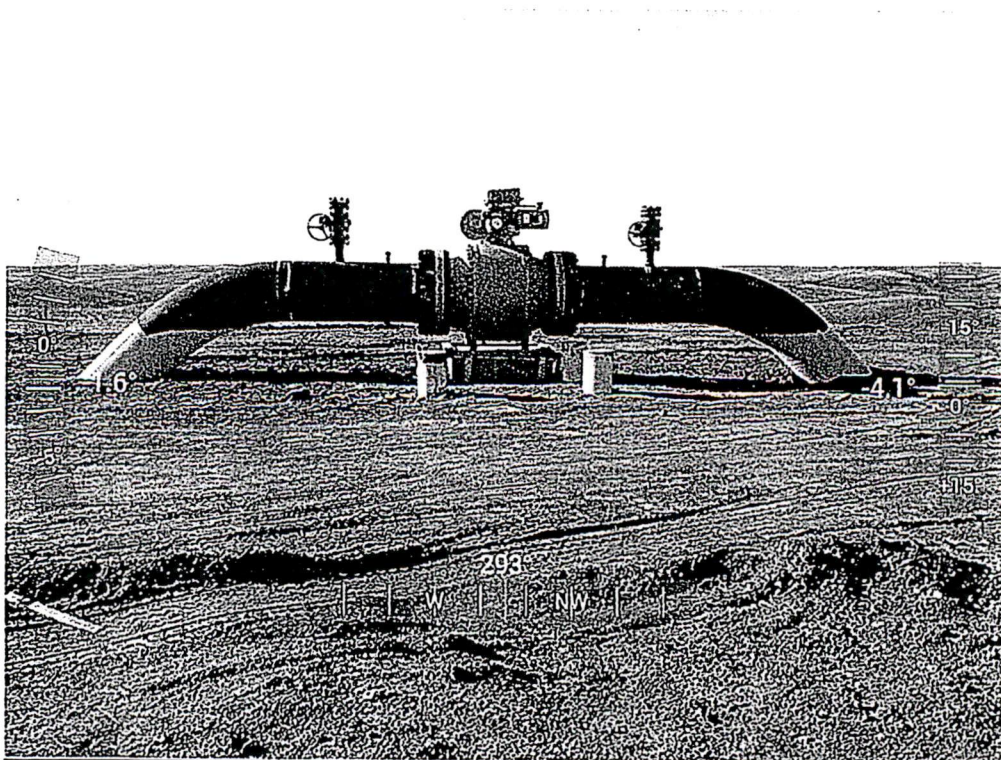
**Report Photo #2 Sodic Soils Area**



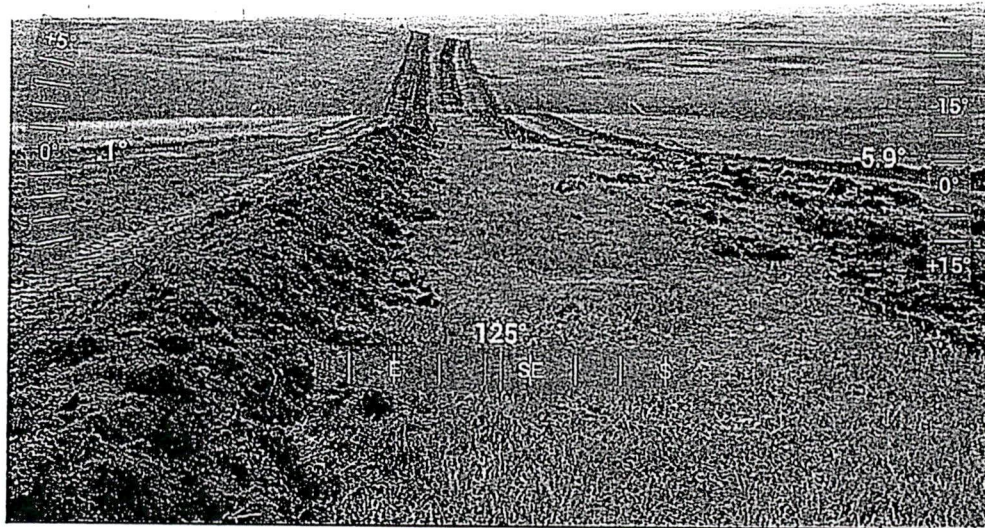
**Report Photo #3 Permanent Gates Being Installed**



**Report Photo #4 Valve Being Installed**



**Report Photo #5 Topsoil Stripping**



**Report Photo #6 Waterbody Crossing**

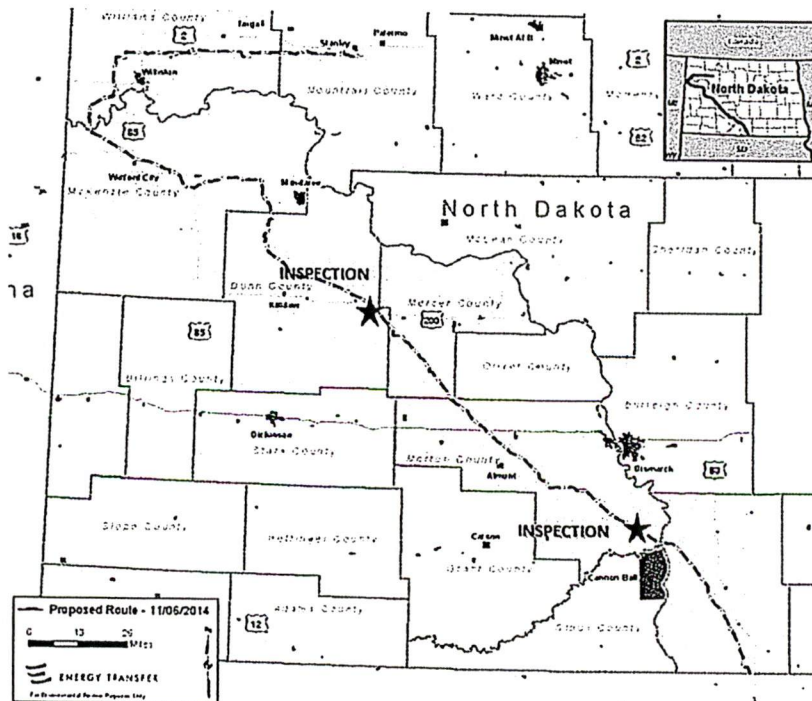


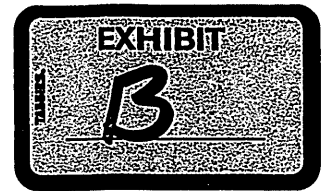
**Report Photo #7 BMPs along Wetland**



**Project Map Inspection Locations:**

Spread 7-8





Fredrikson  
BYRON, PA

October 27, 2016

**VIA HAND-DELIVERY**

Mr. Darrell Nitschke  
Executive Secretary  
North Dakota Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

Re: **Dakota Access, LLC - Case No. PU-14-842  
Response to Commission Inquiry,  
Notification of Unanticipated Discovery,  
and Notification of Route Adjustment  
under N.D.C.C. § 49-22-16.3(1)**

Dear Mr. Nitschke:

Keitu Engineers & Consultants, Inc. ("Keitu") conducted a site inspection for the Dakota Access Pipeline Project ("Project") on October 21, 2016. The report prepared in conjunction with the site inspection included reference to an unanticipated discovery and a route adjustment. The North Dakota Public Service Commission ("Commission") has requested additional information from Dakota Access, LLC ("Dakota Access") to clarify the information contained in the report regarding the unanticipated discovery and route adjustment.

The unanticipated discovery occurred on October 17, 2016, when a third-party cultural resource monitor was conducting a cursory inspection of the Project workspace in coordination with clearing and grade activities in Morton County, North Dakota. Following the discovery, the monitor immediately notified the Environmental Inspector for the Project. The Project Archaeologist was also dispatched to the area to conduct a formal assessment of the find.

The find was thoroughly investigated in close coordination with the archaeological Principal Investigator, and included photo-documentation, mapping of all surface features, delineation of site boundaries based on distribution of artifacts and features, and the excavation of seventeen (17) shovel probes.

Attorneys & Advisors  
main 701.221.8700  
fax 701.221.8750  
fredlaw.com

Fredrikson & Byron, P.A.  
1133 College Drive, Suite 1000  
Bismarck, North Dakota  
58501-1215

Mr. Darrell Nitschke  
October 27, 2016  
Page 2

The shovel probes identified degrading sediments across the landform that consisted of a thin veneer of dirt near the northeastern portion of the site with a low likelihood for buried cultural deposits. However, based on the presence of multiple cairns in close context with Knife River flint artifacts, the Principal Investigator recommended avoidance of the property. Additional information regarding the discovery is set forth in the Unanticipated Discovery Notification accompanying this letter, which includes privileged and confidential information not suitable for public distribution.

Following the assessment noted above, the location data for the site was provided to Dakota Access construction and engineering staff to aid in the design of a reroute to avoid impacts. An avoidance route to avoid impacts to the discovery was designed and submitted to the North Dakota State Historic Preservation Office ("SHPO") for review and approval. The attached Unanticipated Discovery Notification is the professional examination report filed with SHPO requesting such concurrence. By letter dated October 18, 2016, SHPO concurred with the information found in the Unanticipated Discovery Notification and the plans of Dakota Access to avoid any impacts.

The discovery was made far enough in advance that the construction crews were not stalled. As noted, Dakota Access has adjusted the centerline within the approved corridor to avoid any impacts to cultural resources. Proper notification of the route adjustment under North Dakota Century Code Section 49-22-16.3(1) is also provided herewith.

With respect to status of the Project in the area, grading is complete. Dakota Access has not commenced ditching operations for the Project. Dakota Access has moved grade crews past the site because law enforcement needed all crews within a certain distance of Highway 1806 no later than the morning of October 26, 2016 for safety reasons. Dakota Access has not yet welded the pipe, but welding crews are nearing this area.

The delay in providing notification to the Commission regarding the unanticipated discovery is a result of the find occurring simultaneously with Dakota Access officials coordinating an on-site visit for various officials, including Congressman Kevin Cramer, Standing Rock Sioux Chairman David Archambault, U.S. Corps of Engineers Omaha District Commander Col. John Henderson, Standing Rock Sioux Tribal Historic Preservation Officer John Eagle, North Dakota State Historic Preservation Officer Paul Picha, Cheyenne River Sioux archaeologists, and other tribal cultural and historical specialists. Dakota Access ensured the Unanticipated Discovery Plan protocols were followed, and did not intentionally delay providing notification to the Commission. All requirements of Certification Relating to Order Provision number 12 regarding unanticipated discoveries have now been satisfied, and Dakota Access requests clearance to proceed with construction for the Project.

The Commission has also inquired as to specific details regarding the reroute noted in Keitu's report. The unanticipated discovery will necessitate a reroute under North Dakota Century Code Section 49-22-16.3(1) to avoid any cultural resources. To that end, the appropriate notification of the Route Adjustment with corresponding documentation is provided as follows:

Mr. Darrell Nitschke

October 27, 2016

Page 3

- Certification of Joey Mahmoud, with accompanying exhibits:
  - Exhibit A: Dakota Access Reroute Location Map;
  - Exhibit B: Landowner Information;
  - Exhibit C: Environmental Crossing Analysis for Reroute Location 132 and Exclusion and Avoidance Criteria Analysis for Reroute Location 132;
  - Exhibit D: Dakota Access Pipeline Project, Unanticipated Discovery Notification, Morton County, North Dakota – PRIVILEGED AND CONFIDENTIAL; and
  - Exhibit E: SHPO Concurrence Letter
  
- Certificate of Service

As noted, SHPO has concurred the route adjustment will avoid any impacts to the recent unanticipated discovery. Further, no known exclusion or avoidance areas, as defined in North Dakota Administrative Code §§ 69-06-08-02(1) and (2), will be affected by construction activities associated with the route adjustment. All construction activities will be within the previously designated corridor.

The requisite eleven (11) copies of all documents are included herewith. Also enclosed is a CD containing the above-referenced documents in PDF format. Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/dmk  
Enclosures

cc: Zack Pelham (via e-mail)  
Julie Prescott (via e-mail)

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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA**

**Dakota Access, LLC  
Dakota Access Pipeline Project  
Siting Application**

**CASE NO. PU-14-842**

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**CERTIFICATION OF JOEY MAHMOUD**

---

STATE OF TEXAS

COUNTY OF HARRIS

Joey Mahmoud, being first duly sworn upon oath, states and alleges as follows:

1. That I am employed as the Vice President of Engineering for Dakota Access, LLC (“Dakota Access”) for the Dakota Access Pipeline Project (the “Project”) and have the authority to bind Dakota Access with respect to the certification made herein.
2. That I submit this certification in accordance with North Dakota Century Code (“N.D.C.C.”) § 49-22-16.3(1) in support of Dakota Access’s route adjustment for the Project.
3. That on January 20, 2016, the North Dakota Public Service Commission (“Commission”) issued its Findings of Fact, Conclusions of Law and Order granting Dakota Access a Certificate of Corridor Compatibility and Route Permit for the Project.
4. That on May 24, 2016, the Commission issued its Supplemental Findings of Fact, Conclusions of Law and Order granting Dakota Access First Amended Certificate of Corridor Compatibility No. 179 and First Amended Route Permit No. 191 for the Project.
5. That Dakota Access now seeks to modify the approved Project route, as depicted on the map filed herewith, under N.D.C.C. § 49-22-16.3(1).

6. The reroute will occur in Morton County, North Dakota. A map depicting the designated corridor and route, and the route adjustment, is attached hereto as Exhibit A.

7. The owner of the real property on which the adjustment is to be located does not oppose the adjustment. Attached hereto as Exhibit B is the landowner information for the landowner affected by the route adjustment.

8. All construction activities for the route adjustment will be within the previously designated corridor. *See Exhibit A.*

9. The studies conducted in connection with the original application for the Project cover the route adjustment. *See PSC Docket No. 1 et seq.*

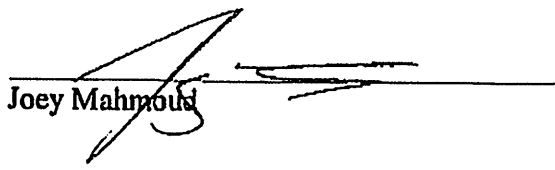
10. Dakota Access reviewed the survey information submitted in conjunction with the original application, and any applicable supplemental surveys, for the route adjustment. In reviewing the previously submitted information, no exclusion or avoidance areas were found that will be impacted by the route adjustment. *See Exhibit C.* Exhibit C contains information setting forth the findings of the environmental crossing analysis review for Reroute Location 132 in table format. Exhibit C also contains a table setting forth the exclusion and avoidance criteria analysis review performed for Reroute Location 132.

11. The route adjustment was necessitated by an unanticipated discovery of cultural materials on October 17, 2016. In connection with the discovery, Dakota Access prepared an Unanticipated Discovery Notification, which is attached hereto as Exhibit D. Exhibit D contains privileged and confidential information which is not suitable for public distribution.

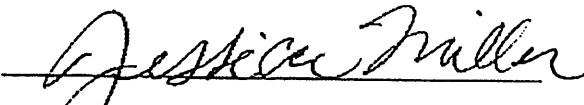
12. That following the unanticipated discovery, the Unanticipated Discovery Notification was provided to the North Dakota State Historic Preservation Office for review and

approval. A letter from the North Dakota State Historic Preservation Office concurring with the findings set forth in the Unanticipated Discovery Notification is attached hereto as **Exhibit E**.

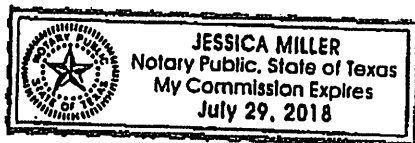
13. That Dakota Access will comply with the Commission's orders, laws, and rules designating the corridor and designating the route.

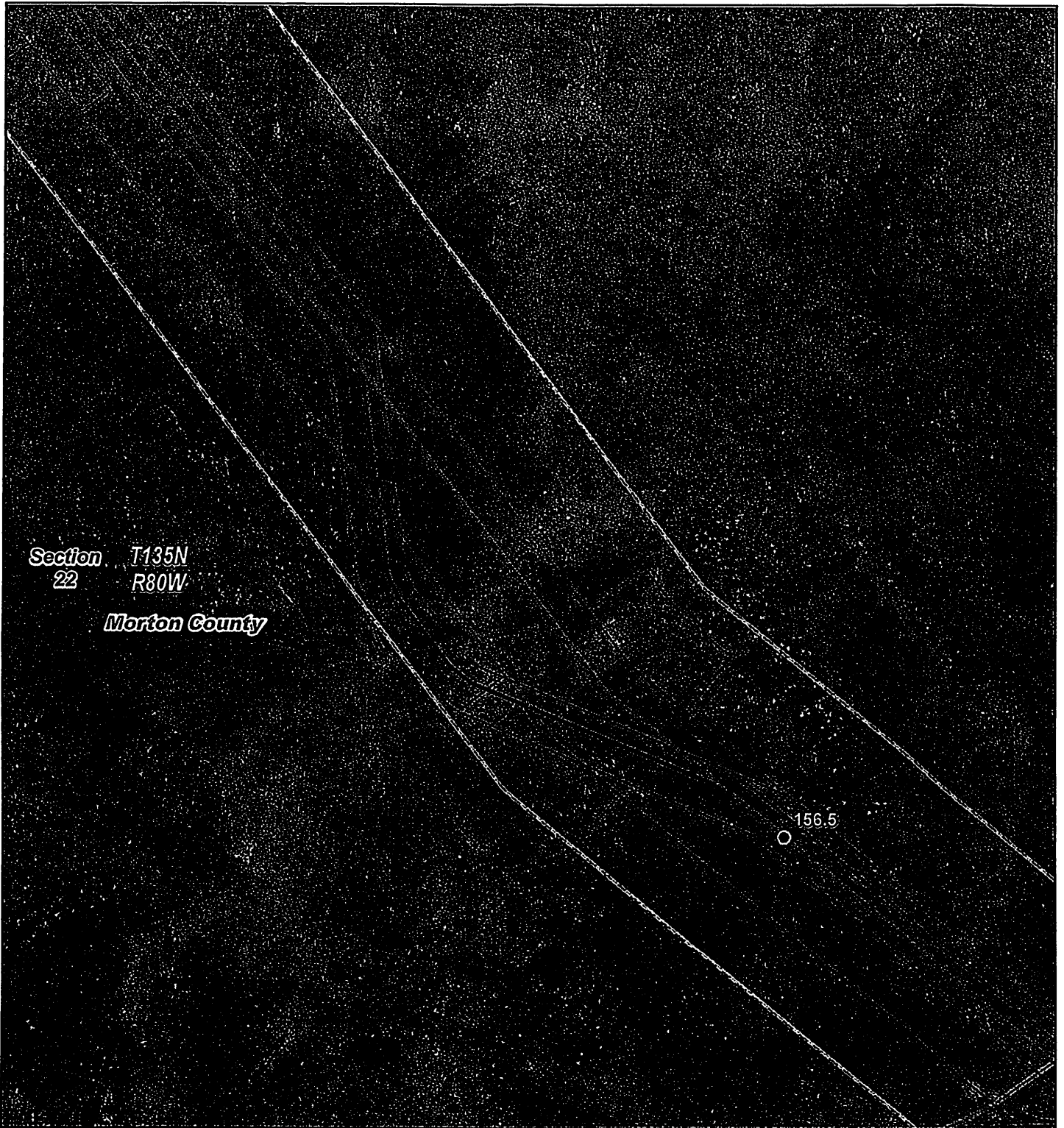
  
Joey Mahmoud

Subscribed and sworn to before me  
this 27<sup>th</sup> day of October, 2016.

  
Notary Public

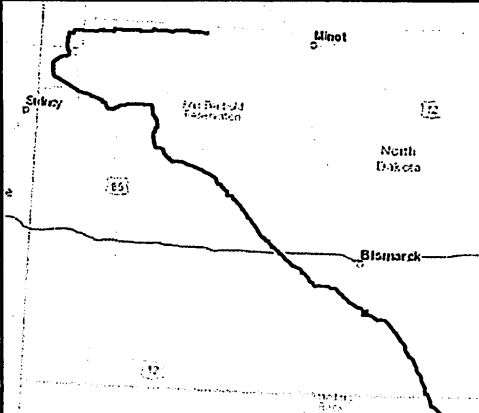
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Section 22 T135N  
R80W  
Morton County

156.5



- PSC Milepost
- December 2014 Route
- December 2014 Workspace
- PSC Corridor
- 1 Mile Study Corridor
- October 2016 Route
- October 2016 Workspace

0 200 Feet

**DAKOTA ACCESS, LLC**

**Dakota Access Pipeline Project**  
**North Dakota PSC**  
**Reroute Location 132**  
**EXHIBIT A**

Page 1 of 1	1:2,400
UTM83-13F	Date: October, 2016

**DAKOTA ACCESS, LLC – DAKOTA ACCESS PIPELINE PROJECT**  
**EXHIBIT B — LANDOWNER INFORMATION**

Kelly Schaff  
6110 Co. Rd. 81  
St. Anthony, ND 58566  
(701) 445-7382

**Easement Description:**

Township 135 North, Range 80 West, Morton County, North Dakota  
Section 22

59904819\_1.docx

**Dakota Access, LLC – Case No. PU-14-842**  
**Dakota Access Pipeline Project**  
**Exhibit C**

<b>Dakota Access Environmental Crossing Analysis for Reroute Location 132 North Dakota PSC</b>										
Filed Route	Centerline length within reroute location (miles)	Length of centerline outside original PSC corridor (miles)	Land Cover Type <sup>1</sup> (acres within workspace)						Wetlands <sup>2</sup> (acres within workspace)	Waterbodies <sup>2</sup> (number of features crossed by centerline)
			Cultivated Crops	Forest	Developed, Open Space	Grasslands/Herbaceous	Pasture/Hay	Shrub/Scrub		
December 2014	0.15	0	0	0	0	4.15	0	0	0	0
October 2016	0.17		0	0	0	1.95	0	0	0	0
<i>Net Difference</i>	+0.02		0	0	0	-2.20	0	0	0	0

<sup>1</sup> Based on the U.S. Geological Survey National Land Cover Database  
<sup>2</sup> Based on field delineations

<b>Dakota Access Exclusion and Avoidance Criteria Analysis for Reroute Location 132 North Dakota PSC</b>										
Filed Route	Prime Farmlands <sup>a</sup> (acres within workspace)	Irrigated Lands (acres within workspace)	Geologically Unstable Areas <sup>b</sup>	Wetlands (acres within workspace)	Woodlands (acres within workspace)	Workspace within 100 year Floodplain <sup>c</sup>	Historic Resources or Landmarks (sites within workspace)	National, State, or County Exclusion Areas (sites within workspace)	T&E/Rare Species Critical Habitat (acres within workspace)	City Limits or Military Installation (sites within workspace)
December 2014	0.92	0	Low	0	0	N/A	1 <sup>d</sup>	0	0	0
October 2016	0.61	0	Low	0	0	N/A	0	0	0	0
<i>Net Difference</i>	-0.31	0	--	0	0	--	-1	0	0	0

<sup>a</sup> All impacts associated with pipeline construction would be temporary, no permanent surface impacts would occur on prime farmlands.  
<sup>b</sup> Geologically unstable area data from: U.S. Geological Survey Landslide Susceptibility, Low: Low landslide incidence (less than 1.5% of the area is involved)  
<sup>c</sup> 100 year Floodplain data from: Federal Emergency Management Agency 100 Year Flood Zones, N/A: data not available for area.  
<sup>d</sup> Post-filing unanticipated discovery within workspace, see Exhibit D and Exhibit E for correspondence regarding compliance with Unanticipated Discovery Plan protocols and SHPO concurrence.

# **EXHIBIT D**

Dakota Access Pipeline Project

Unanticipated Discovery Notification

Morton County, North Dakota

**CASE NO. PU-14-842**

**PRIVILEGED**

**NOT FOR INTERNET PUBLICATION**



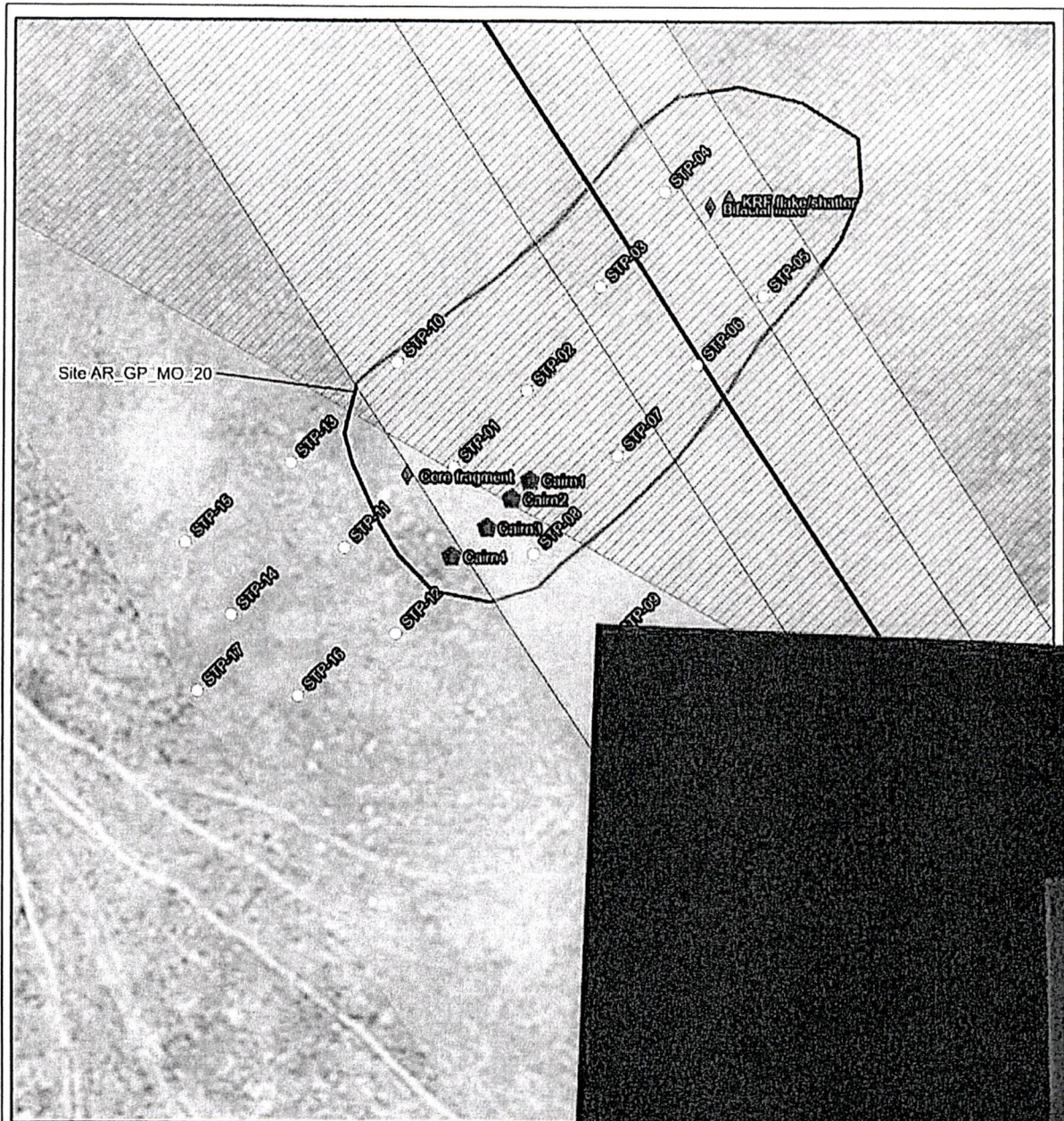
Dakota Access Pipeline Project  
Unanticipated Discovery Notification,  
Morton County, North Dakota  
October 18, 2016

---

In accordance with the Dakota Access Pipeline Project (DAPL) Unanticipated Discovery Plan (UDP), this memo serves as notification of the post review discovery of previously undocumented cultural materials on private property within the DAPL Project area by a 3<sup>rd</sup>-party cultural resource monitor. At approximately 1:15 pm on October 17, 2016, the monitor was conducting cursory inspection of the DAPL workspace in coordination with the clearing and grade activities and identified cultural materials in surface contexts consisting of four cairns at station 4443+00 in Morton County, North Dakota (Figures 1 through 6). No previously recorded archaeological sites are documented in this area. Once identified, the monitor immediately notified the Environmental Inspector (EI), and the Project Archaeologist (Jason Kovacs) was dispatched to the area to conduct a formal assessment of the find. The Project Archaeologist, cultural monitor and EI cordoned off the find with stakes and exclusionary fencing (Figure 8). The find was thoroughly investigated in close coordination with the archaeological Principal Investigator, and included photo-documentation, mapping of all surface features, delineation of site boundaries based on distribution of artifacts and features, and the excavation of 17 shovel probes. The shovel probes identified degrading sediments across the landform that consisted of a thin veneer of dirt near the northeastern portion of the site with a low likelihood for buried cultural deposits. Based on the presence of multiple cairns in close context with Knife River flint artifacts, the Principal Investigator recommended avoidance of the property.

Following this assessment, the location data for the site was provided to DAPL construction and engineering staff to aid in the design of a reroute to avoid impacts to this property. An avoidance route is planned that will avoid impacts to the site from DAPL construction activities (Figure 9). Exclusionary fencing will be placed along the boundary of the newly designed workspace in the vicinity of the site boundary to ensure protection of the site. Additionally, cultural monitors and EI staff will be present at this location during all stages of construction. A site form and technical report of the findings with National Register of Historic Places (NRHP) recommendation will be prepared and submitted to the North Dakota SHPO in accordance with North Dakota reporting guidelines. Overview photos, site map, and engineering drawings are provided below to demonstrate DAPL's commitment to the avoidance and preservation of this property.

In accordance with the DAPL UDP, we request concurrence from the SHSND that the documentation and avoidance are appropriate treatment measures for the cultural resource identified at station 4443+00.



**LEGEND**

- Project Centerline
- ⊕ Project Workspace
- ▭ DAPL Survey Corridor
- ⬮ Site Boundary
- Shovel Test - Negative
- ◆ Surface Find
- ⬮ Cairn
- - Northern Border Centerline
- ▨ Northern Border Survey (MS 3455, 1983)

Figure 1. Site Plan View Map with old DAPL Workspace



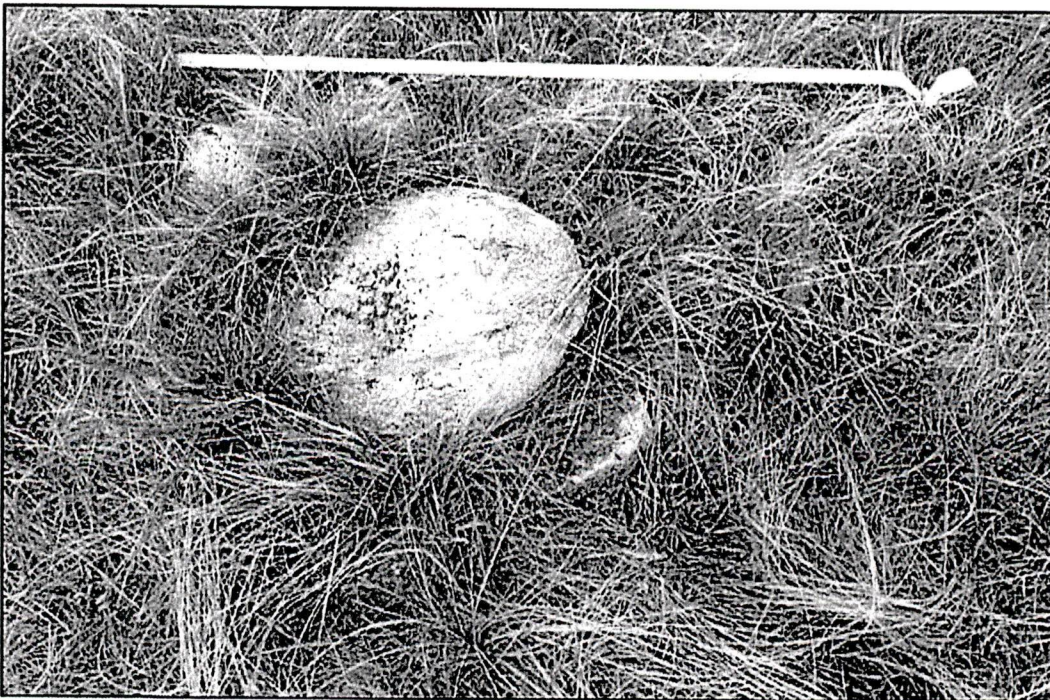
**Figure 2. Overview of Cairn #1**



**Figure 3. Overview of Cairn #2**



**Figure 4. Overview of Cairn #3**



**Figure 5. Overview of Cairn #4**



**Figure 6. Overview of cairn features**



**Figure 7. View of biface artifact found in surface contexts**



**Figure 8. View of site with exclusionary flagging**

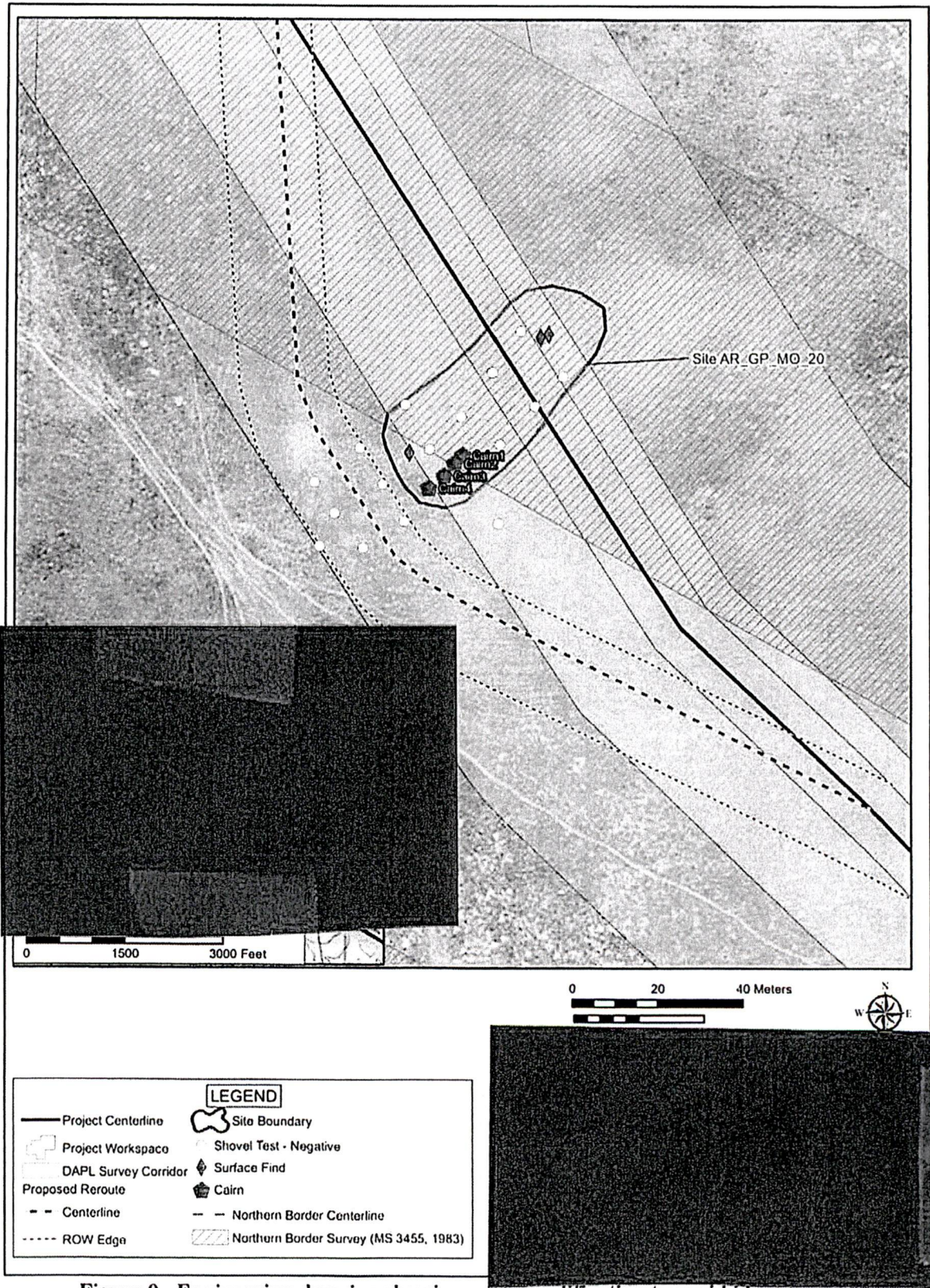


Figure 9. Engineering drawing showing route modification to avoid identified site



**STATE  
HISTORICAL  
SOCIETY**  
OF NORTH DAKOTA

Jack Dalrymple  
*Governor of North Dakota*

**North Dakota  
State Historical Board**

Margaret Puetz  
*Bismarck - President*

Gereld Gerntholz  
*Valley City - Vice President*

Albert I. Berger  
*Grand Forks - Secretary*

Calvin Grinnell  
*New Town*

Diane K. Larson  
*Bismarck*

Chester E. Nelson, Jr.  
*Bismarck*

Terrance Rockstad  
*Bismarck*

Sara Otte Coleman  
*Director  
Tourism Division*

Kelly Schmidt  
*State Treasurer*

Alvin A. Jaeger  
*Secretary of State*

Mark Zimmerman  
*Director  
Parks and Recreation  
Department*

Grant Levi  
*Director  
Department of  
Transportation*

Claudia J. Berg  
*Director*

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October 18, 2016

Monica Howard  
Director, Environmental Sciences  
Energy Transfer Partners, L.P.  
6111 Westchester Drive Suite 600  
Dallas, TX 75225-6142

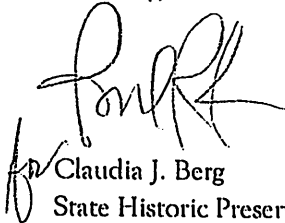
NDSHPO Ref.: 15-0106o PSC Dakota Access Pipeline Project (DAPL)  
Unanticipated Discovery Notification at Station 4443+00, (AR\_GP\_MO\_20,  
SITS designation 32MO1476), and Avoidance Routing Modification, Morton County,  
North Dakota

Dear Monica:

We have received and reviewed correspondence and document for 15-0106o Dakota Access Pipeline Project: "Unanticipated Discovery Notification, Morton County, North Dakota, October 18, 2016," and find it acceptable. We concur with the project routing modification to avoid identified site depicted in Figure 9 of the document provided it is of the nature stated, it takes place in the plotted and mapped location, and that exclusionary measures and cultural monitoring recommendations are followed as stipulated.

Thank you and we look forward to receiving final documentation on the discovery (NSCRS form and accompanying report documentation) as well as ongoing consultation on the project. Please include the ND SHPO reference number listed above in any further correspondence for this specific project. If you have any questions, please contact either Paul Picha at (701) 328-3574 or [ppicha@nd.gov](mailto:ppicha@nd.gov) or Susan Quinnell at (701) 328-3576 or [squinnell@nd.gov](mailto:squinnell@nd.gov).

Sincerely,



Claudia J. Berg  
State Historic Preservation Officer (North Dakota)  
and

Director, State Historical Society of North Dakota  
c: Dennis Woods and Abby Payton, Perennial Environmental Services (email pdf copy)  
c: Patrick Trader and Beth McCord, Gray & Pape, Inc. (email pdf copy)

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA

Dakota Access, LLC  
Dakota Access Pipeline Project  
Siting Application

CASE NO. PU-14-842

---

CERTIFICATE OF SERVICE

---

I, the undersigned, hereby certify that true and correct copies of the following documents:

- Letter to the North Dakota Public Service Commission in Response to Commission Inquiry, Notification of Unanticipated Discovery, and Notification of Route Adjustment under N.D.C.C. § 49-22-16.3(1);
- Certification of Joey Mahmoud, with accompanying exhibits:
  - Exhibit A: Dakota Access Reroute Location Map;
  - Exhibit B: Landowner Information;
  - Exhibit C: Environmental Crossing Analysis for Reroute Location 132 and Exclusion and Avoidance Criteria Analysis for Reroute Location 132; and
  - Exhibit E: SHPO Concurrence Letter

were on the 27th day of October, 2016 served by placing the same in the United States mail, postage prepaid, properly addressed to the following:

Zachary E. Pelham  
Pearce & Durick  
314 E. Thayer Ave.  
P.O. Box 400  
Bismarck, ND 58502-0400

Derrick Braaten  
Baumstark Braaten Law Partners  
109 North Fourth Street, Suite 100  
Bismarck, ND 58501-4003

Matt J. Kelly  
Tarlow and Stonecipher, PLLC  
1705 West College Street  
Bozeman, MT 59715

Bryan Van Grinsven  
McGee, Hankla & Backes  
2400 E. Burdick Expy., Ste. 100  
Minot, ND 58702-0998

Bryan L. Giese  
Attorney at Law  
107 First Ave. NW  
Mandan, ND 58554-3150

Brian Bjella  
Blaine Johnson  
Crowley Fleck, PLLP  
100 West Broadway, Suite 250  
Bismarck, ND 58501

Please note that Exhibit D, the Unanticipated Discovery Notification, contains privileged and confidential information not suitable for public distribution and has not been included with service of the above.

Eleven (11) copies of the foregoing documents were also hand delivered to the North Dakota Public Service Commission on said date.

By: 

LAWRENCE BENDER, ND Bar #03908  
DANIELLE M. KRAUSE, ND Bar #06874  
*Attorneys for Dakota Access, LLC*  
1133 College Drive, Suite 1000  
Bismarck, North Dakota 58501  
Telephone: (701) 221-8700  
Facsimile: (701) 221-8750  
lbender@fredlaw.com  
dkrause@fredlaw.com

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Dakota Access, LLC  
Dakota Access Pipeline Project  
Siting Application

Case No. PU-14-842

NOTICE OF HEARING ON ORDER TO SHOW CAUSE

May 31, 2017

On May 31, 2017, the Commission adopted an Order to Show Cause and Order Dismissing Complaint Without Prejudice requiring that Dakota Access, LLC (Dakota Access) appear before the Commission and show cause, if any, why Dakota Access should not be found in violation for failing to comply with North Dakota siting law and the Commission's January 20, 2016 Findings of Fact, Conclusions of Law and Order, May 24, 2016 Supplemental Findings of Fact, Conclusions of Law and Order, and June 22, 2016 Second Supplemental Findings of Fact, Conclusions of Law and Order.

A public hearing on the Order to Show Cause is scheduled for **August 16, 2017, at 1:00 p.m. central time in the Commission Hearing Room, State Capitol, 12<sup>th</sup> Floor, Bismarck, North Dakota 58505.** The issues to be considered are:

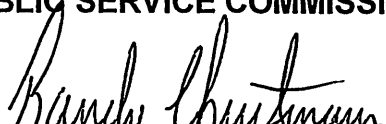
1. Whether Dakota Access should be found in violation of North Dakota siting law and the Commission's Orders for failing to timely report an unanticipated discovery, failing to obtain clearance from the Commission to proceed with construction, and failing to timely file with the Commission certifications for a route adjustment.
2. If a violation is found, whether the Commission should impose a civil penalty and, if so, in what amount.

For more information, contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400 or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission, at least 24 hours in advance.

PUBLIC SERVICE COMMISSION



Brian Kroshus  
Commissioner



Randy Christmann  
Chairman



Julie Fedorchak  
Commissioner