



Public Service Commission

State of North Dakota

COMMISSIONERS

Julie Fedorchak
Randy Christmann
Brian P. Kalk

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
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Fax: 701-328-2410
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October 27, 2016

Marty Haraldson, Program Manager
NDPES Permits Program
North Dakota Department of Health
918 East Divide Avenue, 4th Floor
Bismarck, ND 58501

Dear Mr. Haraldson:

Enclosed are copies of two complaints recently filed with the North Dakota Public Service Commission concerning the Sacagawea Pipeline, a crude oil transmission pipeline being constructed by Sacagawea Pipeline Company, LLC in McKenzie and Mountrail Counties, North Dakota. Siting of this pipeline was approved by the Commission's January 5, 2016 Order (Case No. PU-15-114).

The filings contain stated concerns relating to the protection of wetlands, which may fall under the authority of the NDDOH. Commission staff are currently investigating those items identified within the complaints that are subject to Commission jurisdiction.

You may contact me at 701-328-4188 if you have any questions regarding the Commission's investigation of these complaints.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Prescott", written over a horizontal line.

Julie Prescott
Public Utilities Division

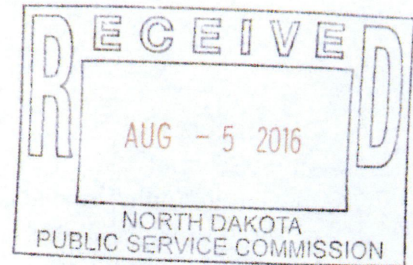
Enclosures

C: Derrick Braaten, Baumstark Braaten

August 4, 2016

VIA HAND DELIVERY

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



**RE: Sacagawea Pipeline Company, LLC
Case No. PU-15-114**

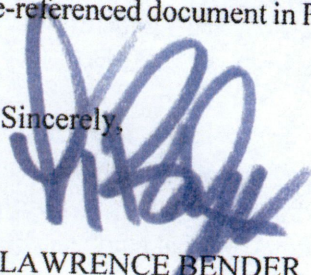
Dear Mr. Nitschke:

Enclosed for filing in the above entitled matter, please find an original copy and ten (10) additional copies of the following document:

- o Letter from Sacagawea Pipeline Company, LLC in response to Notice of Potential Violation.

Also enclosed is a CD containing the above-referenced document in PDF format. Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

cc: Zachary Pelham (via e-mail)
Julie Prescott (via e-mail)
Derrick Braaten (via e-mail)

59353076_1.docx

Attorneys & Advisors
main 701.221.8700
fax 701.221.8750
fredlaw.com

3 PU-16-582 Filed 08/05/2016 Pages: 3
Response to letter regarding Notice of Potential Violation
Sacagawea Pipeline Company, LLC
Lawrence Bender, Fredrikson&Byron, P.A.

August 4, 2016

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

**RE: Sacagawea Pipeline Company, LLC
Case No. PU-15-114**

Dear Mr. Nitschke:

On August 3, 2016, Sacagawea Pipeline Company, LLC ("SPC"), received a Notice of Potential Violation filed with the North Dakota Public Service Commission ("Commission") by attorney Derrick Braaten on behalf of the Laborers District Council of Minnesota and North Dakota for the above referenced matter. The Notice of Potential Violation ("Notice") cites to perceived violations of the federal regulations governing the project, which are referenced in the orders of the Commission dated January 5, 2016 and July 1, 2016, and overseen by the Pipeline and Hazardous Materials Safety Administration ("PHMSA").

Prior to receipt of the Notice filed with the Commission, on July 25, 2016, SPC received notice from PHMSA that an anonymous phone call had been placed to PHMSA. According to the caller, he or she believed there may be issues with the coating of the 16-inch pipeline associated with the project installed under Lake Sakakawea. PHMSA officials have been on site on two separate occasions, namely April 26-27, 2016 and July 19-20, 2016, to inspect construction operations. Inspection of construction operations specifically includes review of welding and coating of the pipeline.

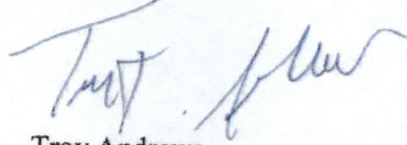
Following the anonymous call, PHMSA requested information from SPC in order to conduct an investigation into the allegations. SPC has complied with PHMSA's request and has submitted the information for review. SPC is currently awaiting the results of the PHMSA investigation into the allegations.

At this time, Sacagawea Pipeline Company, LLC has received no notice from PHMSA of any violation of previously approved construction specifications. SPC will keep the Commission

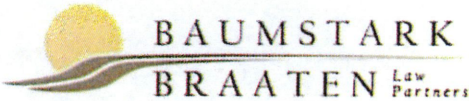
Mr. Darrell Nitschke
August 4, 2016
Page 2

advised of the findings of the PHMSA investigation. If the Commission desires any additional information prior to the conclusion of PHMSA's review of the allegations, please do not hesitate to contact SPC.

Sincerely,

A handwritten signature in blue ink, appearing to read "Troy Andrews". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline.

Troy Andrews
CEO, Paradigm Energy Partners, LLC on behalf
of Sacagawea Pipeline Company, LLC



Derrick Braaten
Partner

derrick@baumstarkbraaten.com

109 N. 4th Street, Suite 100
Bismarck, ND 58501
Phone: 701-221-2911
Fax: 701-221-5842
www.baumstarkbraaten.com

August 3, 2016

Mr. Darrell Nitschke, Executive Secretary
North Dakota PSC
600 East Boulevard Ave, Dept 408
Bismarck, ND 58505-4080

Via email and hand delivery

**Re: Notice of Potential Violation
Sacagawea Pipeline Company, LLC
16-inch Crude Oil Pipeline – McKenzie & Mountrail
Case No. PU-15-114**

Commissioners:

Our firm has been retained to represent the interests of Intervenor Laborers District Council of Minnesota and North Dakota ("Laborers Union"). The Laborers Union was granted intervention by order of Administrative Law Judge Patrick Ward, dated March 29, 2016.

The Laborers Union has been contacted by a former laborer for Boyd & Company, the contractor selected to and which conducted the construction work for the subject pipeline. Based on the statement from this laborer, it appears that the construction process of the pipeline is not in accordance with the Public Service Commission's Findings of Fact, Conclusions of Law, and Order dated May 24, 2016.

Specifically, the PSC's Findings indicate that "The Project will be designed, constructed, operated, and maintained in compliance with Code of Federal Regulations Title 49 Part 195, Hazardous Liquids Pipeline Safety Regulations." Pursuant to 49 C.F.R. § 195.561, a contractor "must inspect all external pipe coating ... just prior to lowering the pipe into the ditch or submerging the pipe... [and] must repair any coating damage discovered." As is explained in the attached statement from Kenny Crase, it appears that the obligatory final inspection was not completed. More alarming, however, is the potential that a pipeline is being constructed beneath Lake Sakakawea with damaged coating.

Also attached is an affidavit from Evan Whiteford, who is employed by the Laborers Union. Mr. Whiteford's affidavit documents what he views as a failure by Boyd & Company to utilize best practices and generally to conduct its operations in a reasonable manner. While the Laborers Union may not have provided this additional information otherwise, in light of the potential serious violation described by Mr. Crase, the Laborers Union feels compelled to point out other potential issues that the PSC might want to review and inspect, in its discretion.

North Dakota Public Service Commission

August 3, 2016

Page 2

Sincerely,

A handwritten signature in black ink, appearing to read 'Derrick Braaten', with a stylized, cursive script.

Derrick Braaten

Copy: Illona Jeffcoat Sacco (*via email to ijs@nd.gov*)
Lawrence Bender (*via email to lbender@fredlaw.com*)
Danielle Krause (*via email to dkrause@fredlaw.com*)
Zachary Pelham (*via email to zep@pearce-durick.com*)
Patrick Ward (*via email to pward@zkslaw.com*)

Enclosures

My name is Kenny Crase, and I currently live in Stanley, North Dakota. I have 34 years of experience in the construction industry, beginning as a mason tender and bricklayer in St. Louis, Missouri. My wife and I moved to North Dakota at the beginning of the oil boom because there wasn't enough work in St. Louis.

Since moving to North Dakota, I have gained an extensive knowledge of pipeline construction working as a pipeline laborer and inspector for several contractors and inspection companies, including Alpha Oil & Gas and B&B inspections.

My most recent job was for pipeline contractor Boyd & Company, where I worked as a laborer on the coating crew helping to build the Sacajawea Pipeline. I was hired by Boyd around March 1, 2016 and worked for the company until I was told I had been let go on July 16, 2016.

I was familiar with Boyd before I took the job on the coating crew because I was an inspector on pipeline work where the company was responsible for directional drills. I was not eager to work for Boyd based on what I had seen as an inspector, but there wasn't enough inspection work available after oil prices collapsed and I needed a paycheck. I also had previous experience working with the coating

foreman, Mike Conrad, at Alpha, and I thought he would run a good crew.

There were a lot of headaches and delays in the coating process, especially on the roughly two-mile bore pipe that was pulled under Lake Sakagawea. In my opinion, most of the problems were caused by the coating material they used and the fact that the inspectors couldn't seem to get on the same page about what they wanted. There were two different inspection companies: Optimal Energy on the reservation and SDI off the reservation, and we went through multiple coating inspectors who had different ideas about what they wanted the pipe to look like. One inspector made us re-do all of our work because she said the second was applied outside the "cure window" even though the manufacturers specifications said it was fine.

We were told the pull for the lake bore was scheduled on or about Saturday, July 16. By the day before, our crew spent had about three weeks on the coating of the lake bore pipe. We would start at one of the pipe using a Holiday Detector (we called it the jeep) to identify defects in the coating. Each time we found a defect, we would blast or sand down the place where we found the problem, re-apply the coating, and then babysit it while it cured to make sure the coating fully protected the pipe. When we got to the other end, we would start all over again.

When you're coating the bore pipe, you keep going down the pipe checking for defects and fixing them until you can jeep the whole pipe and not find one. Then it's ready to be pulled through the bore, but while it's being pulled you jeep it one more time as it's coming off the rollers. The pipe should never go underground without a final jeep. But that's exactly what happened on this project.

We worked all day the day before the pipe was pulled under the lake trying to get it ready. On our last pass, we had found and tried to fix about a dozen jeeps, and we were expecting to take at least one more pass in the morning because the reapplication of the coating doesn't always work.

The coating material we used would sag and leave a ridge at the bottom of the pipe, and there was nothing you could do to stop it except wrap it in cellophane, which the inspectors didn't want us to do. The ridge wasn't really a problem for the integrity of the pipe, but the inspector wanted us to remove it anyway so they had us sand it down. We were able to sand the ridges out but the pipe was discolored where we sanded it.

An inspector from Phillips 66, which is one of the owners of the Sacagawea Pipeline, came by late that day. and I guess he wanted

the color to be uniform because we were told that we were going to have to reapply so the it looked the same all around the pipe.

Armaido told me that we were going to have reapply coating that night to make it uniform, and I said then you're going to need to bring out lights because it was already getting late. Then he changed his mind and told us we could knock off for the day. I figured we would have a chance to do a final jeep and fix any remaining defects in the morning.

Instead, early the next morning, they started setting up for the pull, even though the pipe had never made it through a final jeep. I remember the day not only because of what happened but because there was rain and some lightning, and they had people in their equipment.

We were ready to jeep the pipe as it was coming off the rollers into the bore, but the General Superintendent told us to stay in our trucks because we weren't going to be allowed jeep the pipe. I knew if was wrong, but he said the inspector had signed off on it, and I didn't think there was anything I could do to stop it.

The pull that Michels did was quick and efficient, the fastest I've ever seen, but I kept thinking about what would happen to the lake if the pipe corroded because it wasn't properly inspected. Once the pull

was finished, we were told we were being let go because Clive, who was Boyd's guy in charge of us had decided that we took too long to finish the coating.

There were safety and other problems on the project, for example Boyd consistently used incredibly steep, unsafe bore pits, and a lot of times the inspectors weren't around to inspect the work. But pulling a pipe that hadn't been properly inspected under Lake Sakagawea was probably the worst decision I've ever seen a pipeline contractor make. I was told they expected to have bigwigs there for the pull, although I didn't see any, and I was told it was going to cost \$100,000 a day to have Michels onsite waiting for the pipe, but I still don't understand why any company would put the lake at risk like that.

I declare under penalty of perjury that the foregoing is true and correct.

Kenny Erwin
SIGNATURE

7/28/16
DATE

STATE OF NORTH DAKOTA)

) SS.

COUNTY OF WILLIAMS)

Evan Whiteford, being duly sworn under oath, hereby states as follows:

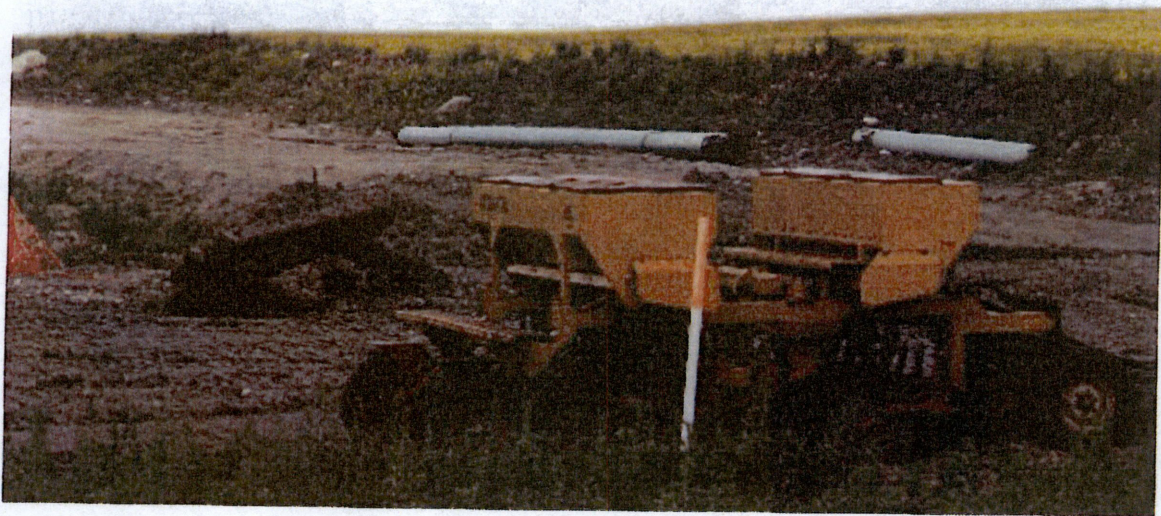
I give this affidavit based on my personal observation of construction of the Sacagawea Pipeline by pipeline contractor Boyd & Co. for Sacagawea Pipeline Company between July 12 and July 16, 2016. I have included in this affidavit a set of photos that I personally took along the pipeline right-of-way in Mountrail County during that period to document Boyd's clear failure to employ pipeline construction best practices and Sacagawea Pipeline Company's failure to enforce such practices.

My observations are informed by an extensive knowledge of pipeline construction techniques that was acquired during a roughly nine-year career as a pipeline laborer, foreman, and union steward working on pipeline projects across the United States. I have completed more than 20,000 hours of work and 280 hours of skills training since I began my pipelining career in 2007. My employers included top contractors in the pipeline industry, and my experience includes projects that ranged from 42-inch mainlines to small gathering lines and well-site connections.

My work and training have given me a working knowledge of all major aspects of pipeline construction, including environmental controls, coating, locating, lowering-in, tie-in, testing, and clean-up. My current position as a Marketing Representative for the Laborers Union's Great Lakes Regional Organizing Committee, which I have held since January 2015, affords me additional opportunities to observe pipeline construction work.

The photos below show locations along the Sacagawea Pipeline right-of-way where sections of pipe were left lying on the ground. The first two were taken near 49th Street

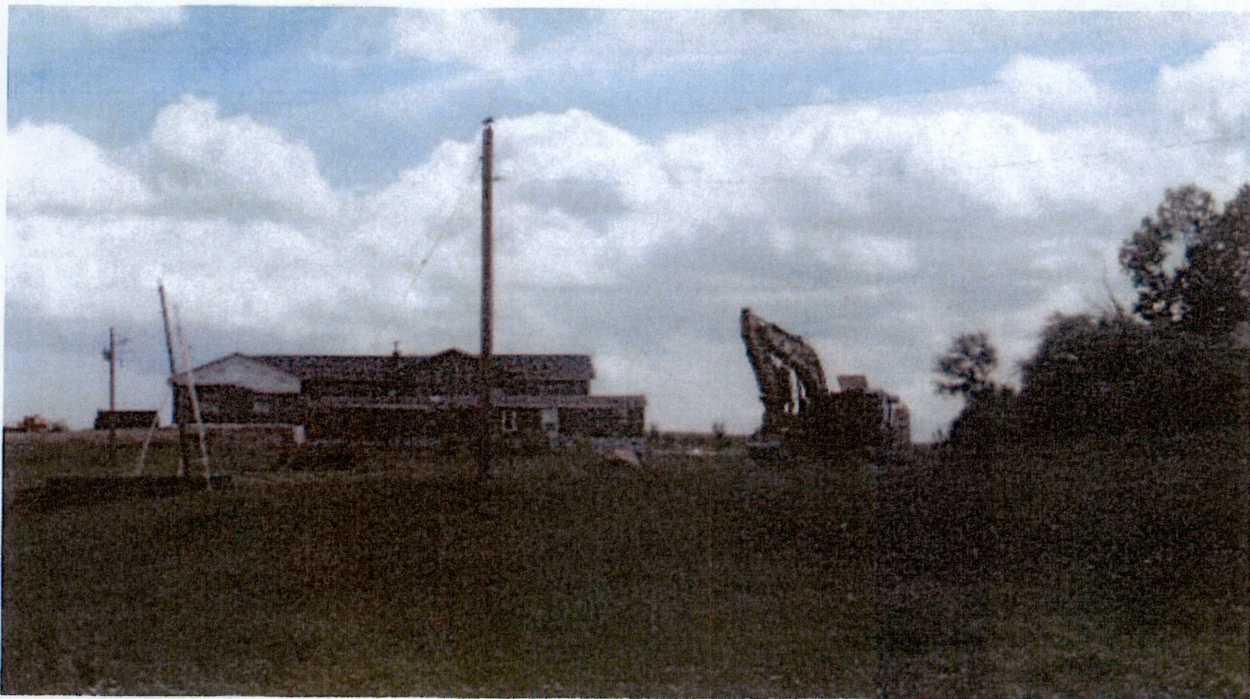
approximately two miles west of Highway 8, the second two were taken near Highway 8 south of 53rd Street NW, and the last was taken at 59th Street west of 80th Avenue NW. Skilled pipeline workers are taught never to place pipe on the ground because rocks and dirt can scratch the factory coating, which can contribute to corrosion and integrity problems down the line.







The photo below, taken near 53rd Street NE east of Highway 8 in Mountrail County, shows an excavator working near overhead power lines without a spotter. In my experience a responsible contractor will not allow use heavy equipment in the vicinity of a live power line without a spotter because contact with the line can injure or kill the operator in addition to the potential for damage to the equipment and the power system.



The next two photos, taken near 59th Street west of 80th Avenue NW, shows construction activity along a road that has not been adequately posted to warn drivers of potential hazards

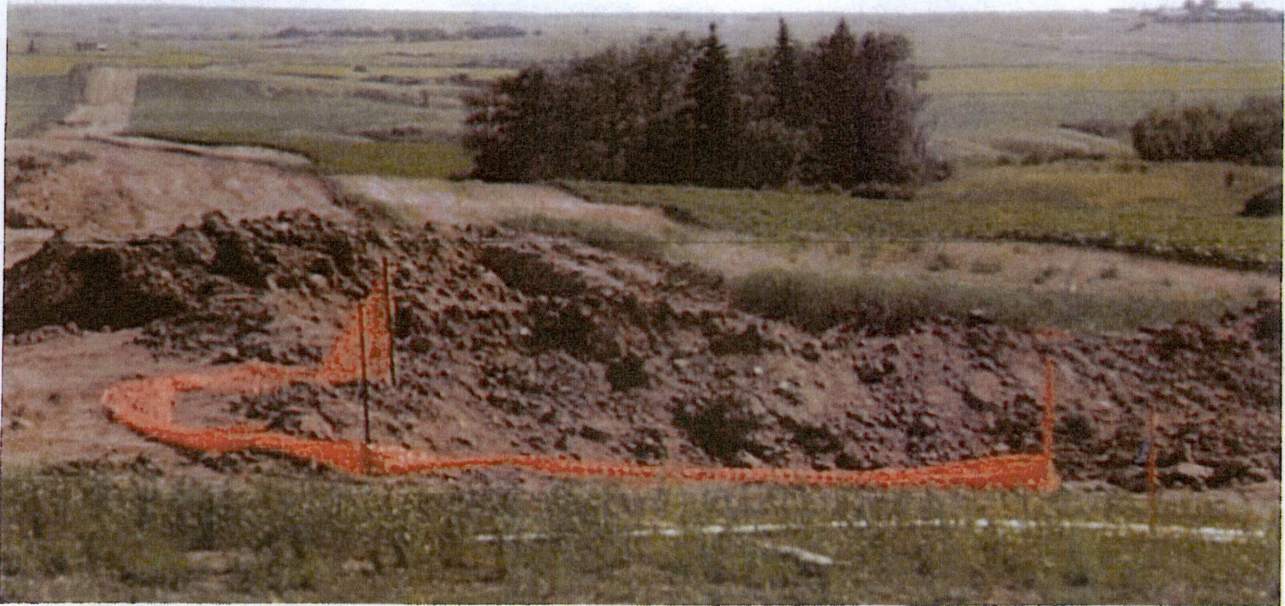
ahead. In this situation, there should be signs and the flagger should be more visible for the safety of drivers and the crew.



The photos below – the first taken 59th Street west of 80th Avenue, the second taken near 49th Street approximately two miles west of Highway 8, and the rest taken two miles west of 92nd Avenue NW on an unnamed road south of Newton – show collapsed safety fence near road crossings that is no longer helping to protect people, animals, or vehicles from injury or damage that can result from a fall into a bore pit.







The next photo, taken in the vicinity of 60th Street a mile west of 79th Avenue, shows a section of the right-of way where heavy equipment has obviously been moved across unprotected wetland, leaving a clear set of tracks. Heavy equipment can permanently damage fragile wetland soil and vegetation, which is why a responsible contractor will use a mat bridge when wetland crossings are unavoidable.



The photos below show areas where the contractor has failed to properly install or maintain silt fence or other erosion controls. Skilled pipeliners are trained to install and maintain proper erosion controls, because erosion can kill wetland vegetation, while removing topsoil necessary to sustain native plant life or cultivation on exposed areas. The following photo shows a section of the right-of-way on 53rd Street NW East of Highway 8 in Mountrail County where no silt fence has been put in place to prevent runoff into a wetland.



The next two photos, taken at a location east of 87th Avenue on an unnamed road in Mountrail County, show an area where silt fence was installed but then evidently run over and neglected.

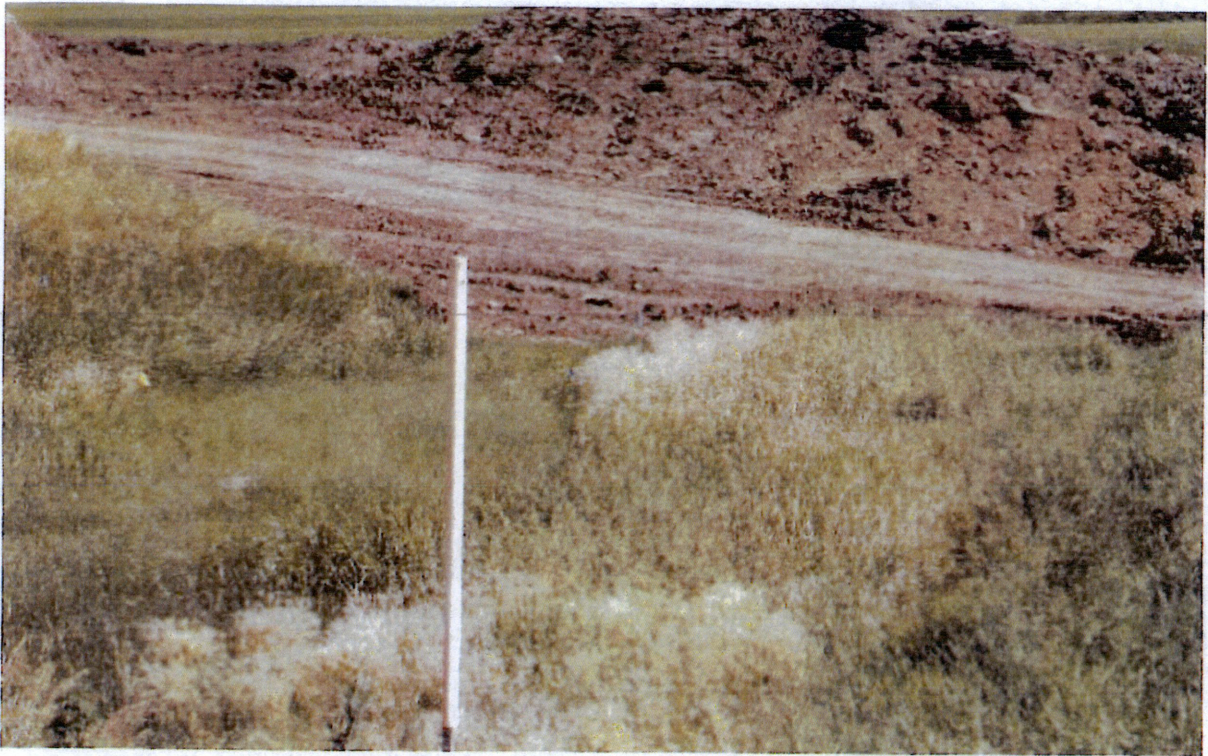


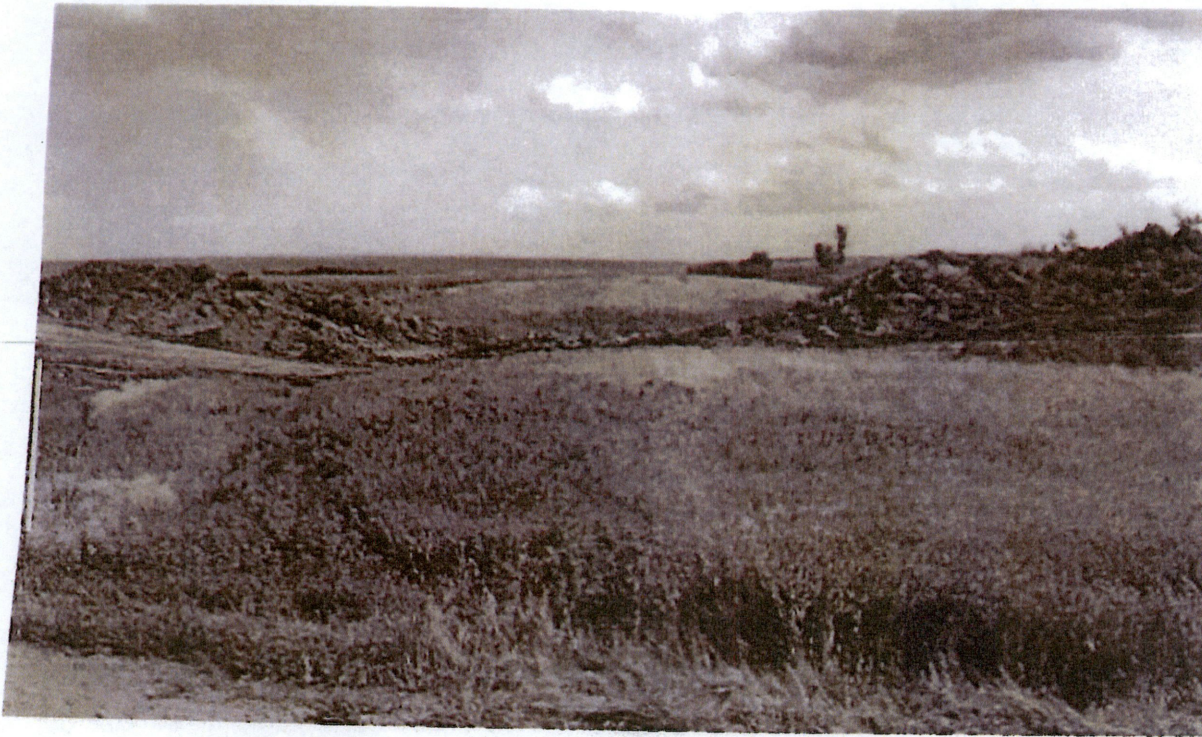


The photos below show locations along the right-of-way where there is clearly no silt fence in place to protect a wetland area. The first photos was taken near 80th Avenue NW north of 59th Street NW; the second two were taken approximately a half-mile west of 87th Avenue NW along an unnamed road north of Newtown; and the remainder were taken about two miles west of 9nd Avenue NW on an unnamed road soth of Newtown.









The above is true and correct to the best of my knowledge.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Signed _____

A handwritten signature in black ink, appearing to be 'J. Smith', written over a horizontal line.

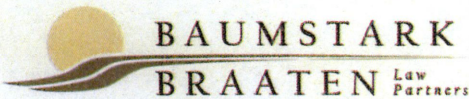
Subscribed and sworn to before me

this 2 day of AUG, 2016.

Notary Public _____

A handwritten signature in black ink, appearing to be 'Ann Smith', written over a horizontal line.

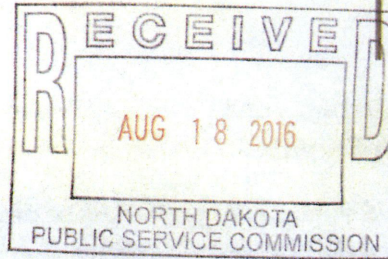
ANN SMITH
Notary Public
State of North Dakota
My Commission Expires Feb. 20, 2019



Derrick Braaten
Partner

derrick@baumstarkbraaten.com

109 N. 4th Street, Suite 100
Bismarck, ND 58501
Phone: 701-221-2911
Fax: 701-221-5842
www.baumstarkbraaten.com



August 18, 2016

Mr. Darrell Nitschke, Executive Secretary
North Dakota PSC
600 East Boulevard Ave, Dept 408
Bismarck, ND 58505-4080

Via email and hand delivery

**Re: Notice of Potential Violation
Sacagawea Pipeline Company, LLC
16-inch Crude Oil Pipeline – McKenzie & Mountrail
Case No. PU-15-114**

Commissioners:

Enclosed for filing is an additional statement regarding the failure to conduct a final inspection of the pipeline that was the subject of Case No. PU-15-114.

Sincerely,

Derrick Braaten

Copy: Illona Jeffcoat Sacco (via email to ijs@nd.gov)
Lawrence Bender (via email to lbender@fredlaw.com)
Danielle Krause (via email to dkrause@fredlaw.com)
Zachary Pelham (via email to zep@pearce-durick.com)

Enclosure

4 **PU-16-582** Filed: 8/18/2016 Pages: 3
Additional statement regarding potential violation

Re: Boyd Statement

My name is Jesse Graham, and I currently live at 11829 Bremen Point, Peyton, CO 80831. I have 4 years of experience in the pipeline construction industry.

Until a couple of weeks ago, I was part of the coating crew for pipeline contractor Boyd & Company, working on the Sacajawea Pipeline. I was hired by Boyd around March 29, 2016 and worked for the company until I was let go around the weekend of July 16, 2016.

Our crew worked on the coating of a roughly two-mile section of bore pipe that was designed to go under Lake Sakakawea. We were told the pull for the lake bore was scheduled on or about Saturday, July 16, 2016.

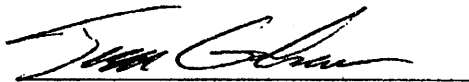
The process for preparing the bore pipe involved starting at one end of the pipe with a Holiday Detector ("jeep") to identify defects in the coating. Each time we found a defect, we would blast or sand down the place where we found the problem, re-apply the coating and then babysit it while it cured to make sure the coating fully protected the pipe. When we got to the other end we would start the process over again in the other direction.

We worked all day the day before the pipe was pulled under the lake trying to get it ready. On our last pass we found and repaired about a dozen jeeps, and we were expecting to take at least one more pass in the morning.

Instead, early the next morning, they started setting up for the pull. Usually, the pipe would be jeeped coming off the rollers prior to entering the bore entrance, but the General Superintendent told us to stay in our trucks because we were not going to be allowed to jeep the pipe. He also mentioned that he did not want our crew to jeep the pipe.

Once the pull was finished, we were told we were being let go. It was my understanding that Clive, who was Boyd's person in charge of us, said we took too long to finish the coating and used too many supplies.

I declare under penalty of perjury that the foregoing is true and correct.



SIGNATURE

8-9-2016

DATE

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Sacagawea Pipeline Company, LLC
16-inch Crude Oil Pipeline – McKenzie & Mountrail**

Case No. PU-15-114

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document:

1. Letter to Public Service Commission from Derrick Braaten regarding additional statement regarding potential violation,

was on the 18th day of August, 2016, emailed to the following:

Lawrence Bender
lbender@fredlaw.com
Danielle Krause
dkrause@fredlaw.com

Zachary Pelham
zep@pearce-durick.com

Timothy Dawson
tjdawson@nd.gov

Illona Jeffcoat-Sacco
ijs@nd.gov

DATED this 18th day of August, 2016.

BAUMSTARK BRAATEN LAW PARTNERS

/s/ Derrick Braaten

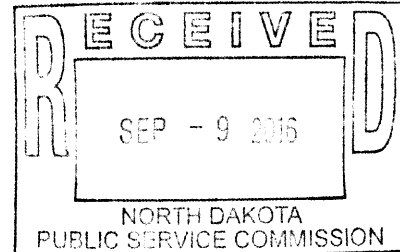
Derrick Braaten (ND 06394)
derrick@baumstarkbraaten.com
109 North 4th St., Suite 100
Bismarck, ND 58501-4003
Tel. 701-221-2911
Fax 701-221-5842



Responsive partner.
Exceptional outcomes.

September 8, 2016

Mr. Patrick Fahn
ND Public Service Commission
600 E. Boulevard Ave.
Bismarck, ND 58501



RE: Construction Inspection Report for the Sacagawea 16-inch Pipeline Project

Dear Mr. Fahn,

Enclosed are two (2) signed copies of the construction inspection report for the Sacagawea 16-inch Crude Oil Pipeline Project, PSC case number PU-15-114. Also provided is one (1) electronic copy of the report on CD for the project. The CD also includes original site inspection photos.

You can reach me at the office at 701-751-6130 or via email at sswanberg@wenck.com if you have any questions.

Sincerely,

Wenck Associates, Inc.

A handwritten signature in black ink that reads 'Samantha Swanberg'.

Samantha Swanberg
Environmental Scientist

6 PU-16-582 Filed 09/09/2016 Pages: 24
Construction Inspection Report
Wenck Associates, Inc.
Samantha Swanberg

enc: Sacagawea 16-in Pipeline Project, 2 Signed Copies; 1 CD's

Technical Memo



Responsive partner.
Exceptional outcomes.

To: Patrick Fahn, North Dakota Public Service Commission
From: Samantha Swanberg, Wenck Associates, Inc.
Copy: Kevin Magstadt, P.E., Wenck Associates, Inc.
Date: September 8, 2016
Subject: PU-15-114 Sacagawea Crude Oil Pipeline - Construction Inspection Report

Construction Inspection Report

Site Visits: July 21 and September 1, 2016

Sacagawea Pipeline, LLC – 16-inch Crude Oil Pipeline – PSC Case No. PU-15-114

In attendance:

- Matt Finken – Environmental Inspector – Keitu Engineers & Consultants, Inc.
- Evan Whiteford – Laborers Union Great Lakes Region Organizing Committee
- Samantha Swanberg – Environmental Scientist – Wenck Associates, Inc.

The construction inspection on July 21, 2016 was accompanied by Matt Finken and on September 1, 2016 by Evan Whiteford. During the July inspection there was a welding crew working on the southern half of the pipeline right-of-way (ROW), on spread one. Other than that very little work was being completed at the time of inspection due to one of the county road permits being taken away. The environmental inspector stated that the Lake Sakakawea bore was pulled the week before and that there was approximately 5 miles of topsoil replaced on the project ROW. During the September inspection, select violation sites that Mr. Whiteford had documented were observed from roadsides/public access. Most violation locations were wetland areas with poorly located, poorly maintained, or no erosion control. During inspection of these sites and other sites along the route, erosion control devices (such as silt fences) were checked. Some sites were missing erosion control, while other sites had erosion control, but needed maintenance. It did not appear that previously documented sites had improvements to erosion control.

Some of the observed areas of interest include (see attached pictures and map):

- Temporary gate for fence put up across the ROW (Photo #1, Point #443);
- Drainage area intersected by ROW. No erosion control devices were in place and the corridor had not been necked down in this area to reduce disturbance (Photo #2, Point #446);

Mr. Patrick Fahn
ND Public Service Commission
September 8, 2016



Responsive partner.
Exceptional outcomes.

- Drainage area intersected by ROW, which appeared to be a potential wetland based on the topography and change in vegetation. Topsoil pile is along the left of photo. (Photo #3, Point #446);
- Drainage area intersected by ROW. Pipe trenched and backfilled along the edge of the ROW. The drainage area appeared to be a potential wetland. Notice the vegetation change. However, the environmental inspector stated it was not a wetland. No erosion control devices were observed. The PSC was informed of this site the day after the inspection (Photo #4, Point #446);
- Excavator removing mats from road ditch (far side of the road), which was used for access to the ROW. Most of the topsoil had been replaced in this area (Photo #5, Point #447);
- ROW necked down to 50 ft width through tree rows. Unknown if or how many trees were taken out in this area. Topsoil replaced back on the ROW (Photo #6, Point #448);
- Silt fence observed in drainage area near crop field, which needs maintenance. The area was rutted up and needs to be smoothed out again. Topsoil had been replaced back on the ROW (Photo #7, Point #448);
- Lake Sakakawea bore area (Photo #8, Point #449);
- ROW going up to Lake Sakakawea bore area. The bore contractor wanted mats placed on ROW up to bore area. Mats are observed on the left side of the ROW (Photo #9, Point #449);
- Open trench with partially covered pipe in trench. Orange safety blockades to the left of photo. White and black pipe rollers (visible in trench in far distance of photo) were used to guide the pipe into the bore hole (Photo #10, Point #450);
- Open trench with orange blockades to the right of photo, trench spoil to the left. White and black pipe rollers in foreground were used to guide the bore pipe. Bridge was used for a vehicle crossing to get to the bore area (Photo #11, Point #450);
- Open trench with few orange blockades ending to the right of photo, and only partial orange fence to the left of trench. White and black pipe rollers in trench were used to guide the bore pipe. Photo taken from bridge shown in photo #11 (Photo #12, Point #450);
- Area near rural water line break. Open trench to the left of photo. No standing safety fence observed, unknown how long there has been an open trench, no work going on in the area. Environmental inspector thought they hit the rural water line while they were doing boring activities (Photo #13, Point #444);
- Area near rural water line break. Extended ROW for bore area. Topsoil pile to the left of photo on left side of ROW with vegetation growing on it (Photo #14, Point #444);
- Area near rural water line break. Looks like subsoil had been pushed around, there was some ponded water in back of photo (Photo #15, Point #444);
- ROW and access road next to wetland. No erosion control devices observed (Photo #16, Point #481);
- Drainage area, no erosion control device. Area along the drainage pathway looks light in color, possibly due to topsoil erosion (Photo #17, Point #482);

Mr. Patrick Fahn
ND Public Service Commission
September 8, 2016



Responsive partner.
Exceptional outcomes.

- Swamp mats floating all around wetland. ROW is next to the wetland/open water. Wetland appears it may have had an influx of water at some point, reason for this is unknown (Photo #18, Point #483);
- Swamp mats floating in wetland, no erosion control devices observed. Small orange fenced in area, possible pot holing site, under water (Photo #19, Point #483);
- Swamp mats floating in wetland. Dirt pile in water seen to left of photo on wetland edge. No erosion control devices observed (Photo #20, Point #483);
- Silt fence in drainage area, needs maintenance (Photo #21, Point #484);
- Pipeline ROW goes down the hill in the distance and wetland was bored under. No erosion control devices observed (Photo #22, Point #485);
- No erosion control devices observed. Area appears to have been bored but it looks like the wetland was driven through (Photo #23, Point #488);
- Pipeline ROW has vegetation growing. Looks like the right side of the ROW, where no vegetation is growing, has been/or is being used as a travel lane (Photo #24, Point #490).

Lead Project Manager, Kevin Magstadt, and Environmental Scientist, Samantha Swanberg, prepared the report.

Kevin Magstadt, P.E., Principal/Regional Manager

Date

Samantha Swanberg, Environmental Scientist

Date

Enclosed

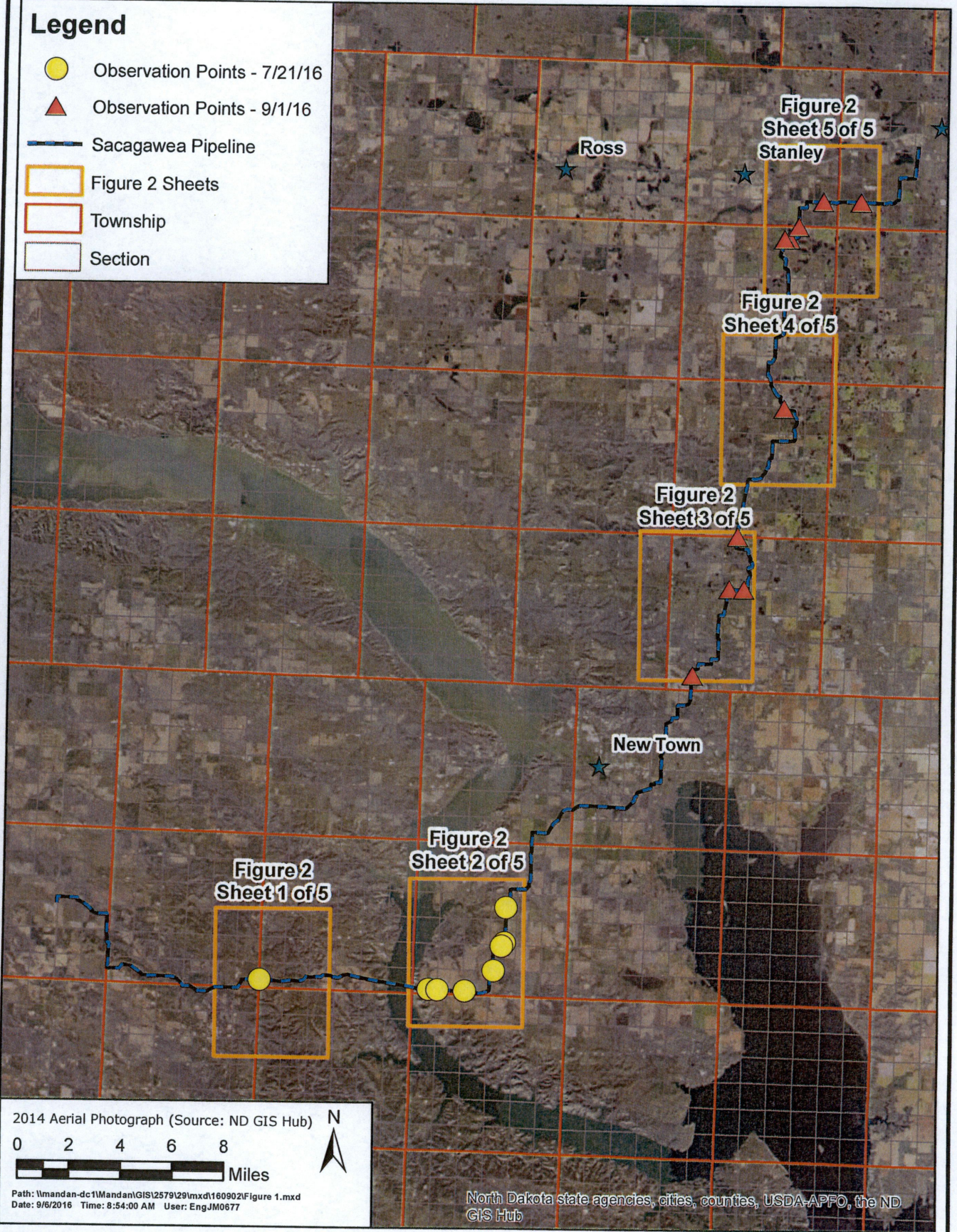
- Attachment 1: Figure 1 & 2 – Inspection GPS Waypoints
Attachment 2: Photo Log with Notes

Attachment 1

Figure 1 – Interim Inspection GPS Waypoints

Legend

- Observation Points - 7/21/16
- ▲ Observation Points - 9/1/16
- Sacagawea Pipeline
- Figure 2 Sheets
- Township
- Section








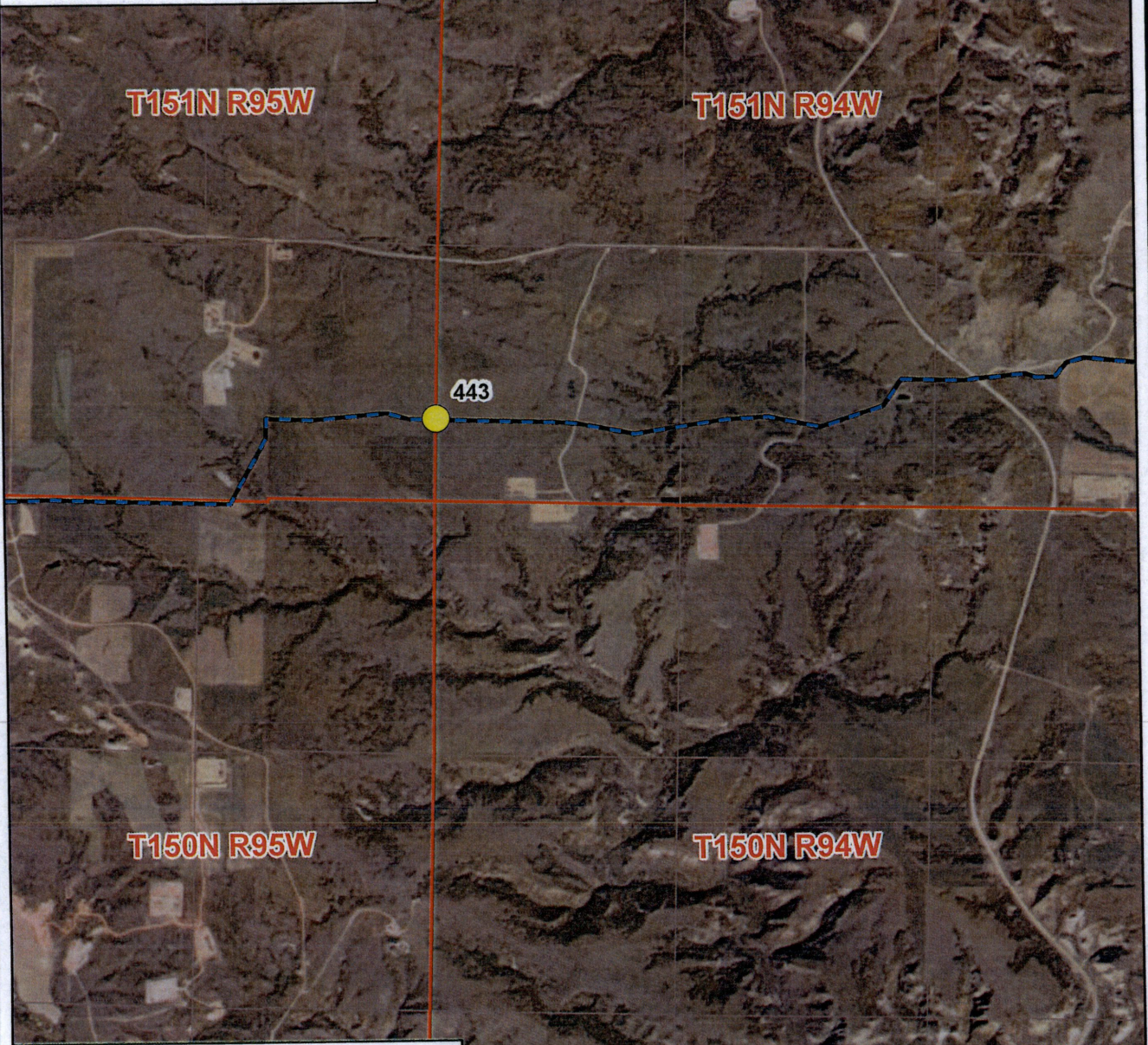
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North Dakota state agencies, cities, counties, USDA-APFO, the ND GIS Hub


Legend

-  Observation Points - 7/21/16
-  Observation Points - 9/1/16
-  Sacagawea Pipeline
-  Township
-  Section



2014 Aerial Photograph (Source: ND GIS Hub)

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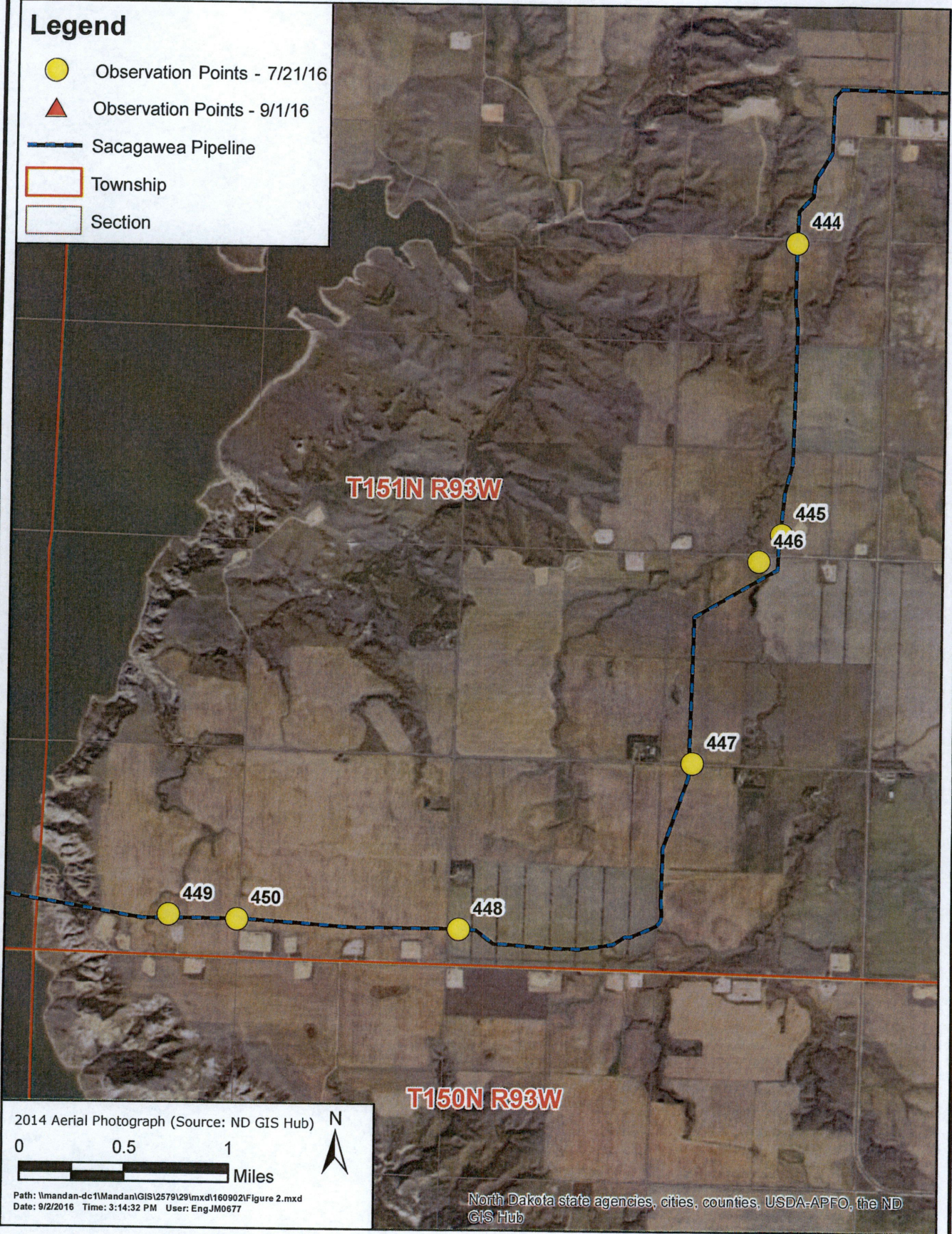
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North Dakota state agencies, cities, counties, USDA-APFO, the ND GIS Hub



Legend

- Observation Points - 7/21/16
- ▲ Observation Points - 9/1/16
- Sacagawea Pipeline
- Township
- Section



2014 Aerial Photograph (Source: ND GIS Hub)

0 0.5 1 Miles



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T150N R93W

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NORTH DAKOTA PUBLIC SERVICE COMMISSION






Field Observation Map (Page 2 of 5)

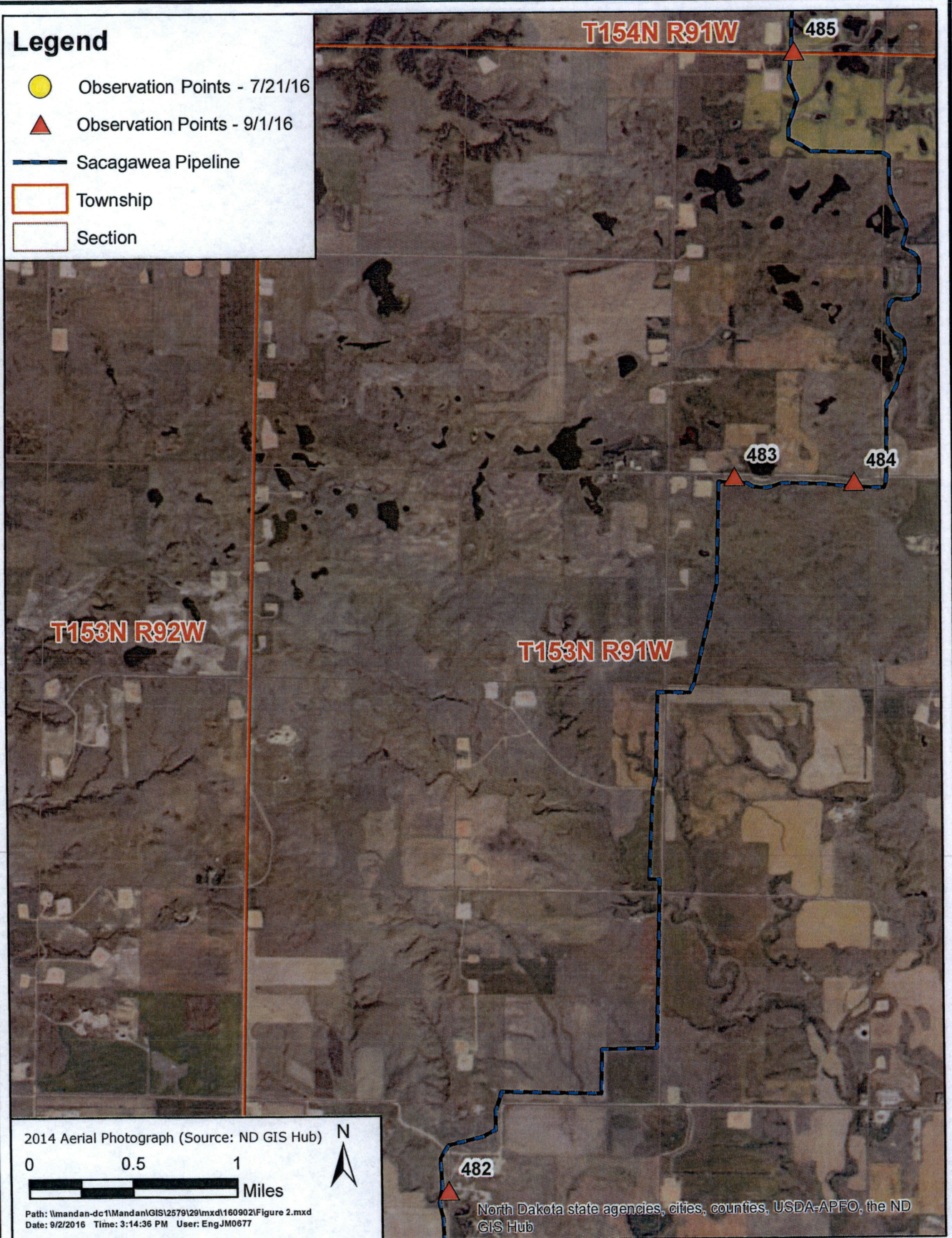


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

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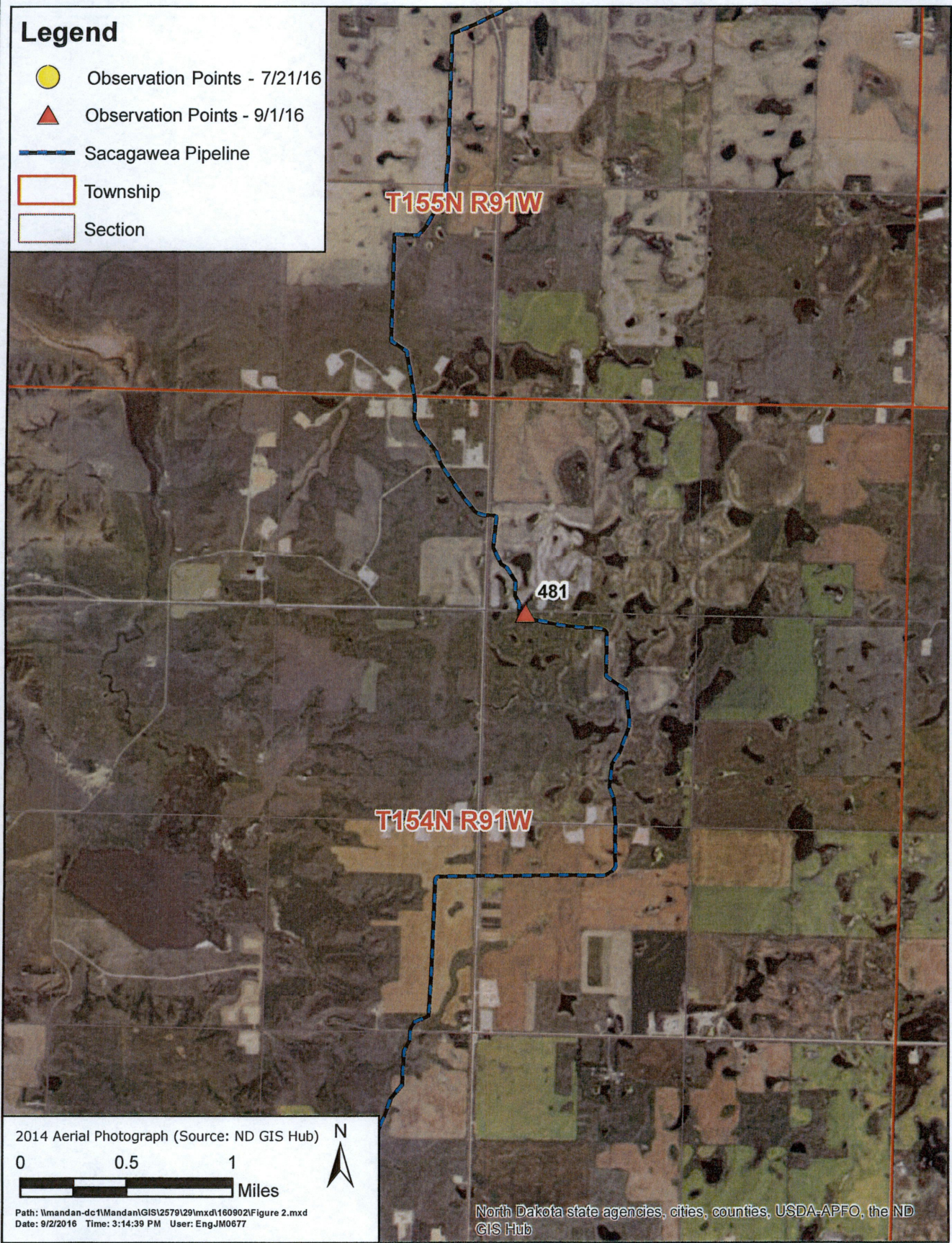
Legend

-  Observation Points - 7/21/16
-  Observation Points - 9/1/16
-  Sacagawea Pipeline
-  Township
-  Section



Legend

-  Observation Points - 7/21/16
-  Observation Points - 9/1/16
-  Sacagawea Pipeline
-  Township
-  Section



2014 Aerial Photograph (Source: ND GIS Hub)

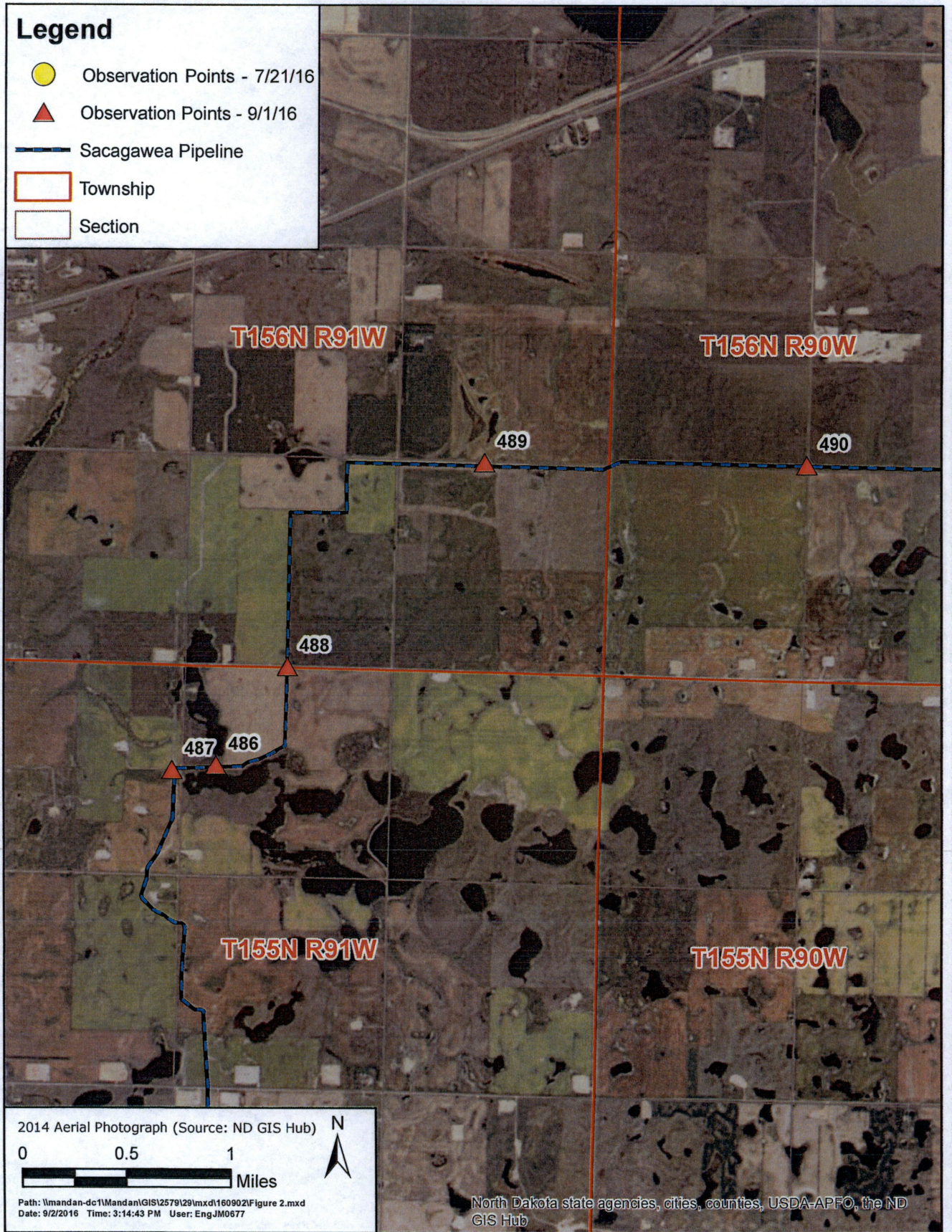
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North Dakota state agencies, cities, counties, USDA-APFO, the ND GIS Hub

Legend

- Observation Points - 7/21/16
- ▲ Observation Points - 9/1/16
- Sacagawea Pipeline
- Township
- Section



2014 Aerial Photograph (Source: ND GIS Hub)

0 0.5 1 Miles

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Date: 9/2/2016 Time: 3:14:43 PM User: EngJM0677

North Dakota state agencies, cities, counties, USDA-APFO, the ND GIS Hub

Attachment 2

Photo Log with Notes



Photo 1. (GPS Point #443) – Temporary gate for fence put up across the ROW. Site visit 7/21/2016.



Photo 2. (GPS Point #446) – Drainage area intersected by ROW. No erosion control devices were in place and the corridor had not been necked down in this area to reduce disturbance. Direction: East.



Photo 3. (GPS Point #446) - Drainage area along ROW, which appeared to be a potential wetland based on the topography, moist soil (along ROW edge) and change in vegetation. Topsoil pile along the left of photo. Drainage area looks like a potential wetland area.



Photo 4. (GPS Point #446) - Drainage area intersected by ROW. Pipe trenched and backfilled along the edge of the ROW. The drainage area appeared to be a potential wetland. Notice the vegetation change. However, the environmental inspector stated it was not a wetland. No erosion control devices were observed. The PSC was informed of this site the day after the inspection.



Photo 5. (GPS Point #447) – Excavator removing mats from road ditch (far side of the road), which was used for access to the ROW. Most of the topsoil had been replaced in this area. Direction: South



Photo 6. (GPS Point #448) – ROW necked down to 50 ft width through tree rows. Unknown if or how many trees were taken out in this area. Topsoil replaced back on the ROW. Direction: East.



Photo 7. (GPS Point #448) - Silt fence observed in drainage area near crop field, which needs maintenance. The area was rutted up and needs to be smoothed out again. Topsoil had been replaced back on the ROW.



Photo 8. (GPS Point #449) - Lake Sakakawea bore area. Direction: West



Photo 9. (GPS Point #449) – ROW going up to Lake Sakakawea bore area. The bore contractor wanted mats placed on ROW up to bore area. Mats are observed on the left side of the ROW. Direction: East



Photo 10. (GPS Point #450) - Open trench with partially covered pipe in trench. Orange safety blockades to the left of photo. White and black pipe rollers (visible in trench in far distance of photo) were used to guide the bore pipe into bore hole. Direction: West



Photo 11. (GPS Point #450) - Open trench with orange blockades to the right of photo, trench spoil to the left. White and black pipe rollers in foreground were used to guide bore pipe. Bridge was used for a vehicle crossing to get to the bore area. Direction: East



Photo 12. (GPS Point #450) - Open trench with few orange blockades ending to the right of photo, and only partial orange fence to the left of trench. White and black pipe rollers in trench were used to guide bore pipe. Photo taken from bridge shown in photo #11. Direction: East



Photo 13. (GPS Point #444) - Area near rural water line break. Open trench to the left of photo. No standing safety fence observed. Environmental inspector thought they hit the rural water line while they were doing boring activities. Direction: North



Photo 14. (GPS Point #444) - Area near rural water line break. Extended ROW for bore area. Topsoil pile to the left of photo on left side of ROW with vegetation growing on it. Direction: South



Photo 15. (GPS Point #444) - Area near rural water line break. Looks like subsoil had been pushed around, there was some ponded water in back of photo. Direction: South



Photo 16. (GPS Point #481) - ROW and access road next to wetland. No erosion control devices observed. Site visit 9/1/2016. Direction: West



Photo 17. (GPS Point #482) - Drainage area, no erosion control device. Area along the drainage pathway looks light in color, possibly due to topsoil erosion. Direction: West



Photo 18. (GPS Point #483) - Swamp mats floating all around wetland. ROW is next to the wetland/open water. Wetland appears it may have had an influx of water at some point, reason for this is unknown (there has been little to no rain in the last couple of weeks).
Direction: South

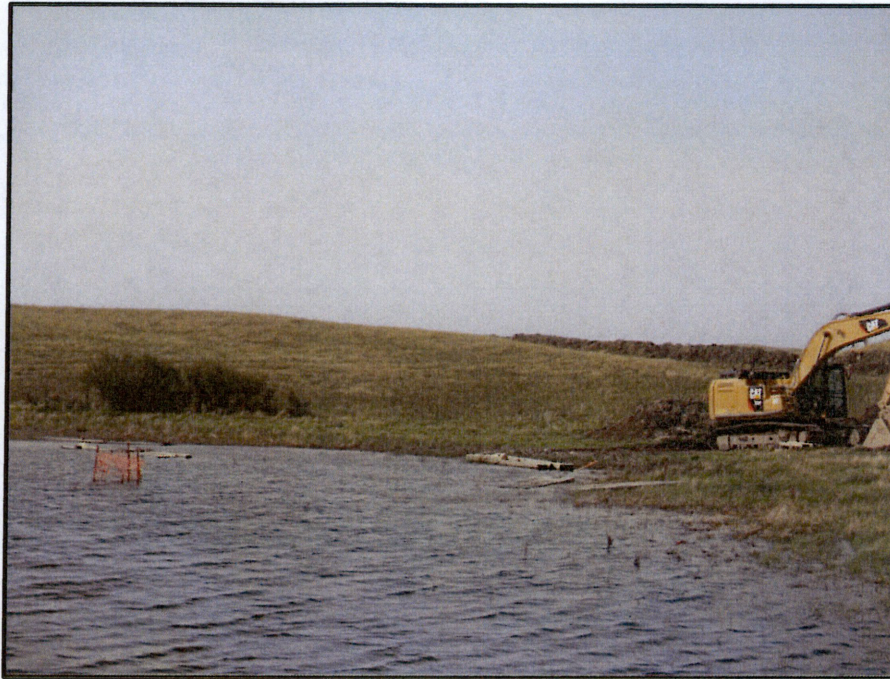


Photo 19. (GPS Point #483) - Swamp mats floating in wetland, no erosion control devices observed. Small orange fenced in area, possible pot holing site, under water. Direction: South



Photo 20. (GPS Point #483) - Swamp mats floating in wetland. Dirt pile in water seen to left of photo on wetland edge. No erosion control devices observed. Direction: South



Photo 21. (GPS Point #484) - Silt fence in drainage area, needs maintenance. Direction: South



Photo 22. (GPS Point #485) - Pipeline ROW goes down the hill in the distance and wetland was bored under. No erosion control devices observed. Direction: North



Photo 23. (GPS Point #488) - No erosion control devices observed. Area appears to have been bored but it looks like the wetland was driven through.



Photo 24. (GPS Point #490) - Pipeline ROW has vegetation growing. Looks like the right side of the ROW, where no vegetation is growing, has been/or is being used as a travel lane. Direction: East

September 22, 2016

VIA HAND DELIVERY

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

**RE: Sacagawea Pipeline Company, LLC
(PU-16-582) - Response Regarding
Compliance for Case No. PU-15-114**

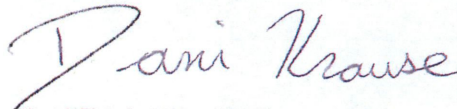
Dear Mr. Nitschke:

Enclosed for filing in the above entitled matter, please find an original copy and ten (10) additional copies of the following documents:

- o Supplemental Response Letter from Sacagawea Pipeline Company, LLC Regarding Compliance for Case No. PU-15-114; and
- o Certificate of Service.

Also enclosed is a CD containing the above-referenced documents in PDF format. Should you have any questions or require additional information, please advise.

Sincerely,



DANI M. KRAUSE

cc: Zachary Pelham (via e-mail)
Julie Prescott (via e-mail)
Derrick Braaten (via e-mail)

Attorneys & Advisors
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58501-1215

7 PU-16-582 Filed 09/22/2016 Pages: 9
Supplemental Response Letter regarding Compliance
Sacagawea Pipeline Company, LLC
Dani Krause, Fredrikson&Byron, P.A.

September 22, 2016

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

**RE: Sacagawea Pipeline Company, LLC
(PU-16-582) - Response Regarding
Compliance for Case No. PU-15-114**

Dear Mr. Nitschke:

In addition to the previous response submitted by Sacagawea Pipeline Company, LLC (“SPC”) for the Sacagawea Pipeline Project (“Project”), SPC herein submits additional information with respect to the potential violations noted in the August 3, 2016, letter submitted by Derrick Braaten and accompanying affidavits of Kenny Crase and Evan Whiteford (PSC Case No. PU-16-582, Docket No. 2); the August 18, 2016, letter submitting the affidavit of Jesse Graham (PSC Case No. PU-16-582, Docket No. 4); and the Construction Inspection Report authored by Samantha Swanberg, Wenck Associates, Inc. dated September 8, 2016 (PSC Case No. PU-16-582, Docket No. 6). Each of the documents will be addressed below.

Kenny Crase Affidavit

In addition to the previously addressed issues falling within the jurisdiction of the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (“PHMSA”) raised in the Affidavit of Kenny Crase, Crase notes various additional potential violation areas. First, Mr. Crase describes an issue regarding weather conditions for construction. *See* Affidavit of Kenny Crase (hereinafter referred to as “Crase Aff.”) 4, PSC Case No. PU-16-582, Docket No. 2. Specifically, he alleges that individuals were seen inside their equipment during rain and lightning weather conditions.

SPC understands the risks posed by rain and lightning during construction activities. Employees working outdoors, in open spaces, and near conductive materials have a significant exposure to lightning strikes. When safe building structures are not accessible, Occupational Health and Safety ("OHSA") best practices suggest workers stay inside hard-topped metal vehicles with rolled up windows. *See Lightning Safety When Working Outdoors*, OSHA/NOAA Fact Sheet 2 (2016), <https://www.osha.gov/Publications/OSHA3863.pdf>.

In accordance with these best practices, SPC correctly instructs employees to stop working, remain inside their equipment and vehicles, and wait for the weather conditions to improve. SPC minimizes the serious risks posed by workers standing outside in water, near 11,000 feet of steel pipeline (an effective conductor of electrical current), through these practices.

Second, Crase makes allegations regarding "steep, unsafe bore pits" during construction. *See Crase Aff. 5*. While Crase may have perceived the bore pits as "steep," the bore pits were OSHA compliant. OSHA has been actively onsite during construction of the Sacagawea Pipeline auditing safety conditions and procedures, and as noted, the bore pits were in compliance with OSHA standards.

Third, Crase alleges that "a lot of times" inspectors were not present onsite to inspect the work. *See Crase Aff. 5*. However, throughout his affidavit, Crase states there were "two different inspection companies" and "multiple coating inspectors" who instructed workers to cure defects. *See Crase Aff. 2-4*. While the pipeline coating is not at issue here, Crase's detailed accounts of inspectors making corrections to the coating work on several occasions contradict his allegations that inspectors were hardly present. To the contrary, inspectors were continually onsite assessing various aspects of construction.

SPC does not believe any of the issues raised in the Crase affidavit rise to the level of violations of the Public Service Commission ("PSC") permit or regulations.

Evan Whiteford Affidavit

The August 3, 2016, letter also includes an affidavit authored by Evan Whiteford who notes potential violation areas for which SPC has reviewed. *See Affidavit of Evan Whiteford* (hereinafter referred to as "Whiteford Aff."), PSC Case No. PU-16-582, Docket No. 2. The Whiteford Affidavit includes several photographs offered to prove the existence or non-existence of certain conditions. Whiteford provides neither the date nor time the photographs were purportedly taken. Consequently, responses to the allegations are speculative regarding the phase of the activities depicted. Notwithstanding the lack of information, SPC provides the following information.

First, Whiteford notes that pipe was left on the ground, which in his opinion should not be done. *See Whiteford Aff. 2*. However, the sections of pipe depicted on pages 2 through 4 of the

affidavit were likely pipeline “pups,” i.e. short lengths of pipe, or partial joints that had been cut as part of the construction process. The photos indicate that stringing, welding, trenching, lowering and backfilling were completed. *See* Whiteford Aff. 2-4. However, the photos were likely taken prior to topsoil replacement/final restoration. Consequently, the pipes depicted are likely surplus waiting to be retrieved prior to final topsoil preparation. The seeder (machine for mechanically sowing seed) on page 2 confirms this speculated phase of the project. Furthermore, even if any of the depicted pipes were not surplus and instead used after the photos were taken, their coatings would have been inspected and any defects remedied prior to subsequent use.

Second, Whiteford notes that an excavator was “working near overhead power lines without a spotter.” *See* Whiteford Aff. 4. Again, this photo is undated and it is impossible to tell whether work is actually occurring at the time the photo was taken. There was one incident whereby an excavator was discovered working near a powerline without a spotter. The responsible excavator was terminated for unsafe work practices.

Third, Whiteford notes a shortage of signage and flagging on a road. *See* Whiteford Aff. 4. SPC has already addressed signage issues with both the contractors and Mountrail County Rail and Bridge.

Fourth, Whiteford describes collapsed safety fences near road crossings. *See* Whiteford Aff. 6-8. Safety fences are components used to prevent passage into dangerous areas and mitigate risk. Due to the windy weather conditions in North Dakota, the maintenance of safety fences is ongoing. At times, portions of safety fences are intentionally removed to facilitate work in a specified area. Other times, safety fences are intentionally removed during clean-up or to facilitate revegetation during early stages of restoration. Without specifics regarding the timing of these photos, it is impossible to identify the exact circumstances with respect to any safety fences.

Fifth, Whiteford alleges that heavy equipment was moved across an “unprotected wetland.” *See* Whiteford Aff. 8-9. As explained in the wetland delineation report prepared by SWCA, not all wetlands are classified as jurisdictional wetlands. Furthermore, even if the depicted area was indeed a jurisdictional wetland, a Nationwide Permit 12 permits construction through wetlands where the total disturbance is less than 0.10 acres.

Sixth, Whiteford alleges a failure to properly install or maintain silt fences or erosion control measures. *See* Whiteford Aff. 9-14. SPC, per the Storm Water Pollution Prevention Plan (“SWPPP”), requires the inspection of erosion control devices after precipitation events. However, inspectors and work crews are proscribed from driving on muddy right-of-ways (“ROW”) to further avoid erosion.

Viewing an area after a precipitation event presents an inaccurate portrayal of true conditions, but without knowing when the photos were taken, it is difficult to determine whether the devices

shown in the photos were damaged by a rain event. However, the images do suggest a recent, major, precipitation event, with no current or post rain construction activity. The absence of construction activity within the photos demonstrates that SPC complied with Provision #15 of the Certification Relating to Order Provisions for the Project, which mandates the suspension of work during unsuitable construction conditions. Upon receiving notice of this issue, SPC advised all construction personnel and directed them to address any issues.

Jesse Graham Affidavit

The affidavit of Jesse Graham only sets forth issues within the jurisdiction of PHMSA regarding coating of the pipeline. Because the perceived violations of federal regulations set forth in the Graham Affidavit are being reviewed by PHMSA, no additional response is submitted here, and SPC incorporates by reference the information submitted to the PSC on August 5, 2016. *See* PSC Case No. PU-16-582, Docket No. 3.

Construction Inspection Report

The Construction Inspection Report authored by Samantha Swanberg with Wenck Associates, Inc. lists observations along the ROW during site visits conducted on July 21, 2016 and September 1, 2016.¹ *See* Construction Inspection Report (hereinafter referred to as the "Report"), PSC Case No. PU-16-582, Docket No. 6. Representatives for SPC were not provided a copy of the Report at the time of filing with the PSC, but upon forwarding of the Report by SPC counsel, the issues raised in the Report were reviewed. In addition to internal discussions regarding the Report, SPC asked Keitu Engineers & Consultants ("Keitu") to review the Report. Various aspects of the report are addressed below.

Photo 1 of the Report notes that a temporary gate was erected across a ROW. SPC's agreement with landowners requires the installation of gates in any fence gaps to facilitate construction.

The comments associated with photos 2, 3 and 4 imply erosion control and drainage area deficiencies. *See* Report 1, 12-13. For example, Photo 2 states "the corridor had not been necked down in this area to reduce disturbance." *See* Report 1. However, as outlined in the Project's environmental mitigation plan, waterway disturbance areas are to be narrowed where practical, but are not applicable to every swale or other type of drainage areas. Furthermore, the depicted site is in excess of 25 feet of vegetative cover to open water. Even on high slope areas, 50 feet of vegetative

¹ It is important to note that the Report discusses observations and areas of interest, not necessarily deficiencies or violations.

cover between the disturbance and any surface water is considered an adequate BMP. Finally, the drainage in question is not a designated wetland.

BMP's can include existing vegetative cover. In this case there is more than 50 feet of vegetative cover between the disturbance and any surface water and the drainage in question is not a designated wetland.

Photo 7 depicts a silt fence requiring repair and was taken during the July 21, 2016 inspection. *See Report 2, 15.* The depicted area received multiple storms, traditional for the July season. The noted fence was likely repaired prior to the next event. Furthermore, it is unlikely that the depicted area was in violation of storm water regulations due to visible vegetative cover which prevents sediment from entering surface waters.

The Report indicates photos 8 through 12 were taken at the east side of the Lake Sakakawea HDD bore location on July 21, 2016. *See Report 2.* The accompanying photos imply an inadequate safety marking of the excavation hazard. *See Report 15-17.* Note that it is atypical for open pipeline trenches to be marked in their entirety.

Regardless, SPC recognizes the hazards associated with open trenches. SPC limits construction site access to authorized personnel, workers who have completed the requisite project safety orientation, and workers escorted by project personnel. When there are specific hazards, such as unstable soils, large excavations, or nonobvious excavations from the designated rive lanes, these limited areas will be marked with barriers. Photos 10 through 12 are consistent with this practice.

Photo 13 of the Report depicts an open trench. *See Report 2, 18.* The trench was open to complete the tie-in of the bore section to the mainline. SPC's primary concern is safety and inspections for BMP and safety measures are routine. When potential violations and/or concerns are raised, SPC takes prompt remedial measures.

In addition, Photo 13, along with Photos 14 and 15 of the Report, depict an area near a rural water line break. *See Report 2, 18-19.* The photos show "pushed around" soil and pooled water. *See Report 18-19.* However, the images are expected due to the associated land events. Consistent with PSC requirements, construction activity halted to allow for the soil to dry and to avoid unnecessary damage.

Photo 16 of the Report alleges insufficient erosion control devices. *See Report 2, 19.* The photo shows a bored wetland with an adjacent bypass road to move traffic around the area. The bare dirt road is without a control fence; however, no visible sediment is flowing into the wetland and the road slopes back away from the water. Also note that sufficient vegetative cover between surface waters and the disturbance may be considered a BMP.

Photo 17 of the Report shows a drainage area allegedly lacking an erosion control device. *See Report 2, 20.* The area depicted is a restored ROW and as such, any BMPs were intentionally removed. While the foreground appears to have some soil mixed into the vegetation off of the ROW, the foreground also appears to be "upstream" of the ROW location. The photo's background indicates that an adequate vegetative cover exists beyond the ROW, thus preventing sediment from reaching surface waters until vegetation in the ROW is re-established. Photo 17 is an example of a drainage path continuing to exist following the completion of pipeline construction. Any issues that potentially exist with respect to this photo are being addressed by construction and environmental personnel.

Photos 18 through 20 of the Report depict wood mats used to protect property next to a wetland. *See Report 3, 20-21.* Large amounts of rain from May through July led to a rapid expansion of the surface water which has been slow to drain in this area. The wood mats likely floated and were carried by wind or wave action to the other side of the pool. The depicted fenced pothole demonstrates the relatively large impact/pond boundary shift of the prior rain events. The photos also indicate that the pool is at the bottom of a rather large size drainage area which would be subject to wide seasonal fluctuations in size. The submerged vegetation boundary speaks to the rarity of the event. Further, the landowner requested that SPC delay reclaiming the area until it had dried.

The area detailed in photo 21 has already been addressed as a result of a SWPPP inspection conducted on September 6, 2016 by SPC Environmental Inspectors. *See Report 3, 22.* The maintenance was completed by a contractor on September 8, 2016 in accordance with the provisions of the existing stormwater management plan. Furthermore, the existing vegetation served to prevent sediment from being discharged into the nearest surface water.

Photo 22 of the Report depicts a "rough" topsoil surface restoration with BMPs intentionally removed. *See Report 3, 22.* The vegetative cover between the surface water and the disturbance serves as a BMP.

Photo 23 of the Report does not present a surface disturbance as alleged. *See Report 3, 23.* The area is a final ROW restoration with a sole, low travel lane to allow revegetation.

With respect to the topsoil segregation issue previously discussed between representatives of SPC and PSC staff, these concerns were sent on to the construction manager. All issues have been addressed. ROW is being reclaimed throughout the Project area.

At this time, SPC has provided full and complete responses to the noted concerns given available information. SPC will keep PSC staff apprised of any new factual findings.

Mr. Darrell Nitschke
September 22, 2016
Page 7

If any additional information is desired, please do not hesitate to contact Sacagawea Pipeline Company, LLC.

Sincerely,

A handwritten signature in blue ink that reads "Criss Doss". The signature is written in a cursive style with a large initial "C" and "D".

Criss Doss
COO, Paradigm Energy Partners, LLC on behalf
of Sacagawea Pipeline Company, LLC