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August 7, 2020

*Via Electronic Mail*

Mr. Adam Renfandt  
Public Utilities Analyst  
North Dakota Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

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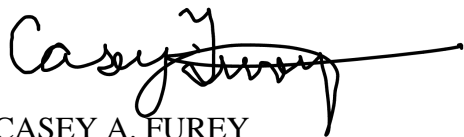
In re: ONEOK Bakken Pipeline, L.L.C.  
Demicks Lake Pipeline Project  
Case No. PU-18-399  
Our File No. 072591-000007

Dear Mr. Renfandt:

Enclosed for filing in the above-referenced matter is ONEOK Bakken Pipeline, L.L.C.'s response to the July 9, 2020 request for information letter (Docket No. 130).

Respectfully,

CROWLEY FLECK PLLP



CASEY A. FUREY

Enc.

cc: Wade C. Mann (via email)  
Michael Dailey (via email)  
Andrew Hackler (via email)



August 6, 2020

Adam Renfandt  
Public Utilities Analyst  
North Dakota Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

**RE: Case No. PU-18-399  
ONEOK Demicks Lake NGL Pipeline Post Construction Inspection**

Dear Mr. Renfandt:

ONEOK Bakken Pipeline, L.L.C. (“Company” or “ONEOK”) has completed construction of the Demicks Lake NGL Pipeline (“Project”) as of December 5, 2019. Company received a letter dated July 9, 2020 (Docket #130) requesting a response to an As-Built inspection report (Docket #129) conducted by a third-party company (WENCK). This letter and enclosures serve as a response to that letter request.

*NDPSC Staff Request for Information #1: WENCK As-Built Report Section 6.1 Documentation*

**Company Response:** North Dakota Public Service Commission (“NDPSC”) Staff requested the items listed in Section 6.1 of the As-Built Report, those items are listed and addressed below.

*1. United States Army Corps of Engineers (“USACE”) Permit (Section 3.3.2.1)*

The Project was installed under the authority of the USACE Nationwide Permit #12 (utility lines). No pre-construction notice (“PCN”) was required as the Project did not meet any of the seven criteria which trigger a PCN (see Section 6.3 of the Application for more details). Nationwide Permit #12 was attached to the USACE response letter filed with the Application (Docket #1).

*2. U.S. Fish and Wildlife Service (“USFWS”) and North Dakota Game and Fish (“NDGF”) Department required construction Migratory Bird Treaty Act (“MBTA”) and Bald and Golden Eagle Protection Act (“BGEPA”) surveys (Section 3.3.2.5 and 3.3.2.6)*

Migratory bird and raptor surveys (including bald and golden eagles) were conducted in accordance with ONEOK’s Migratory Bird Conservation and Compliance Plan, filed with the NDPSC as Docket #68. Surveys were initiated on May 8, 2019 and continued until documented birds fledged in August 2019. If active migratory bird or raptor nests were identified during surveys, ONEOK monitored these locations until the young had fledged and implemented conservation measures described in ONEOK’s Migratory Bird Conservation and Compliance Plan.

In addition, ONEOK consulted with the NDGF Department and obtained known eagle nest locations which were checked for activity during the construction migratory bird and raptor surveys. Further agency coordination and submittal of survey results was not a requirement of USFWS or NDGF. ONEOK complied with the conditions and survey protocols in its Migratory Bird Conservation and Compliance Plan.

3. *USFWS required re-route concurrences and correspondence of determination update after 1 year (Section 3.4.1.4)*

**Background from the USFWS Concurrence letter dated May 6, 2019:**

*“We recommend the following conservation measure for actions that may affect the NLEB: conduct tree removal activities outside of the NLEB pup season (June 1 to July 31). This will minimize impacts to pups at roosts not yet identified. Please keep in mind that you must report any departures from the plans submitted; results of any surveys conducted; or any dead, injured, or sick NLEB that are found to this office. If this project is not completed within one year of this letter, you must update your determination and resubmit the required information.”*

**Company Response:**

The USFWS response letter dated May 6, 2019 (see Docket #74) indicates an updated determination is needed after 1 year within a section of the letter specifically regarding the northern long-eared bat (NLEB). Therefore, ONEOK interprets this to apply to the determination for NLEB. Per the discussion in the Biological Assessment for the Project, tree clearing activities in the construction workspace associated with pipeline installation were the only source of potential impacts to the species (if clearing was done during the species’ active season). Remaining work on the Project consists of seeding and restoration activities which will not require tree clearing; as such, there are no changes to the determination for the species and no need to submit any additional information to USFWS for restoration work occurring 1 year after this determination.

In regard to the reroute outside the designated corridor submitted to the NDPSC as Docket #84, this reroute was considered in the Biological Assessment for which the USFWS concurred in their correspondence (Docket #74).

4. *USFWS concurrence on wetland and grassland easements within the Project corridor (Section 3.4.2.1)*

ONEOK reviewed publicly available data and found no USFWS wetland and grassland easements or Waterfowl Production Areas within the Project Area. As demonstrated by agency correspondence contained in both the Application (Docket #1) and Amended Application (Docket #18), ONEOK requested USFWS confirmation on these findings however, no response specific to USFWS easements has been received. ONEOK interprets no response as USFWS agreement with our analysis. In addition, none of the impacted landowners crossed by the Project indicated that they had any USFWS-managed easements on their property.



5. *Occupied Structure waiver or proof of re-route avoidance (Section 3.4.2.5 & 4.8)*

No landowner waivers for occupied structures within 500 feet of the Project route are outstanding. On June 20, 2019, ONEOK filed with the NDPSC their intent to modify the corridor and route in accordance with Order Provision No. 8 at milepost 20.0 to 21.2 (Docket #84). As stated in ONEOK's modification filing (Docket #84), as a result of this route and corridor modification, the occupied residence near milepost 20.7 was no longer within 500 feet of the Project route and a waiver from this landowner was no longer required.

Additionally, page 11 of 38 of the as-built maps provided by ONEOK (Docket #127) shows this revised route as constructed in this area.

6. *Western Area Water Supply Authority ("WAWSA") concurrence on rural water supplies (Section 3.4.2.7)*

As provided for in ONEOK's Amended Application (Docket #18), ONEOK attempted to consult with WAWSA on several occasions in August and October 2018 and in January 2019, however no comments were received. ONEOK made a good faith effort to solicit comments from WAWSA and has assumed they do not have comments or issues with the Project due to their non-response.

7. *Tree and Shrub Mitigation Plan (Section 3.5.1.2)*

ONEOK is in active discussions with impacted landowners and the North Dakota Petroleum Foundation's Planting for the Future program regarding mitigation for trees and shrubs that were removed during construction. After discussions with impacted landowners and further discussions with North Dakota's Petroleum Foundation's Planting for the Future are complete, ONEOK will file a Tree and Shrub Mitigation Plan for the Project with the NDPSC.

8. *Un-surveyed Environmental Resources (Section 4.6)*

At the time of the Project's April 3, 2019 hearing ("Hearing"), ONEOK had completed natural resource surveys within 98% of the Project Corridor, as stated in Exhibit C (Natural Resource Survey Report) of ONEOK's Amended Application (Docket #18). Areas of the Project Corridor that were unsurveyed at the time of the Hearing were shown on Hearing Exhibit 5, Exhibit B.4, map pages 2, 3, 4, and 5 (Docket #45).

Following the Hearing, additional surveys were conducted between April 17 and June 13, 2019. The results of these surveys were presented in Docket #92, 2019 Natural Resources Addendum ("Addendum"), filed on July 2, 2019. Surveys were conducted on all previously unsurveyed areas where landowner permission had since been granted, resulting in over 99% survey completion. Previously unsurveyed areas shown on Exhibit B.4, map pages 2, 3 and 5, and portions of page 4 were covered in the Addendum report (see Docket #94, Delineated Features Mapbook, pages 53-56, 72-73, and 79-81).

The unsurveyed area in the northwest quarter of T150N, R99W, Section 14 on map page 4 of Exhibit B.4 was not surveyed during the 2019 survey effort as the landowner had

not granted permission for survey. Thus, the Project workspace was narrowed to avoid any overlap with the unsurveyed area. In accordance with the Order, no construction or construction related activities or impacts occurred in this area. This area is identified as unsurveyed on pages 55 and 56 of Docket #94, Delineated Features Mapbook for the Addendum report.

9. *Correspondence Verification (Section 5.1.2)*

ONEOK respectfully submits that agency correspondence, permits, and approvals are distinct items. ONEOK has complied with the rules and regulations of other agencies having jurisdiction over the Project and has obtained all necessary licenses and permits, copies of which have been filed with the NDPSC. With respect to agency correspondence, ONEOK's consultation efforts and attempts to solicit comments are thoroughly documented throughout the record however, not all agencies/entities responded with comments. No additional correspondence has been received from the agencies noted as having no response received in Section 5.1.2 of the As-Built Report. For agencies noted as having a response received, but not found in the case file, this information is located in Exhibit D of the Application (Docket #1).

10. *Permit Verification (Section 5.1.2)*

a. USACE, Section 404 Permit

See Company Response 1(a) above.

b. Department of Transportation, Federal Highway Administration, Permit to Cross

The permit for crossing US HWY 85 was submitted to the NDPSC on July 9, 2019 under Docket #97 (see page 104-116).

c. *North Dakota Department of Environmental Quality ("NDDEQ") Permit, Stormwater Pollution Prevention Plan ("SWPPP"), and Notice of Intent ("NOI")*

As described in Section 6.11 of ONEOK's Application (Docket #1), the Project is exempt from requiring permit coverage under NDR10-0000. For this reason, a Notice of Intent (NOI) was not submitted to NDDEQ for coverage under NDR10-0000.

Although the Project did not require formal permit coverage, as part of ONEOK's Best Management Practices, ONEOK developed and implemented a SWPPP to prevent pollutant runoff from the construction site to waters of the State. The SWPPP was filed with the NDPSC (Docket #64).

d. *McKenzie County, Conditional Use Permit*

Per North Dakota Century Code § 49-22.1-13(1), county conditional use permitting is not required for NDPSC sited pipeline projects..



NDPSC Staff Request for Information #2: Status of Reclamation activities, the regrading of poorly graded areas, the maintenance of BMPs, and the potential need for additional BMPs for the concerns mentioned in Sections 5.2.6 and 5.2.6.1 of the Report.

- a. Include a discussion of the lack of topsoil replacement and grading through the hills in the Little Missouri National Grasslands at Observation points 9-13 (see Section 5.2.6), and the status of reclamation for these locations. If not fully reclaimed, what is the timeline and plan for reclamation?
- b. Include the status of the repair or replacement of non-functioning BMPs, the placement of BMPs in locations prone to erosion as indicated in the Storm Water Pollution Prevention Plan, and the placement of BMPs at locations where they -should have been implemented at Observation points 7-12, 15, 23, 24, 26, 27, 28, 38, 40, 45, and 46 (see Section 5.2.6.1). Specifically, address ONEOK's mitigation plans for these erosion issues and the maintenance of BMPs noted at those Observation Points. If a location(s) is not fully reclaimed, what is the timeline and plan for reclamation?

**Company Response:** Work is currently ongoing and is to be complete in the 3<sup>rd</sup> Quarter of 2020, unless otherwise specified. Below is the current status and planned activities for each Observation Point:

Observation Point 7: The location has dried out and has been regraded. Removal of timber matting and reseeding can now take place.

Observation Point 8: Crimped straw is unnecessary as the location is a fallow agricultural field that the landowner did not plant in 2020 and is not on a >30% slope.

Observation Point 9: Scoria is naturally occurring on higher terrain in this region. The location has steep side-slopes that will be seeded and covered with erosion control blanket (slopes >30%). Brush piles and silt fence will be removed.

Observation Point 10: Scoria is naturally occurring on higher terrain in this region. The location has steep side-slopes that will be seeded and covered erosion control blanket (slopes >30%).

Observation Points 11 & 12: The location has steep side-slopes that will be seeded and covered with erosion control blanket (slopes >30%).

Observation Point 13: Cathodic protection equipment has been repaired.

Observation Point 15: Attempts were made in late 2019 to reclaim this location, but frozen conditions were present. Landowner has requested that permanent water bars be removed from his hayfield. Reseeding will be done in fall/winter 2020 and will continue to be monitored for vegetation success.

Observation Points 23, 24, 27, 28 & 38: The locations have been reclaimed and will continue to be monitored for vegetation success.

Observation Point 26: The site has had the topsoil replaced and seeded. Will return in the fall for decompaction as this area is an agricultural field currently planted.

Observation Point 40: The location has been decompacted, topsoil has been replaced and seeded. This site needs BMPs above drainage channel and permanent waterbars will be installed. Cattle have been problematic to maintaining erosion control devices.

Observation Point 45: The location has been decompacted, topsoil has been replaced and seeded. This site will continue to be monitored for restoration success. Silt fence will be removed once no longer needed.

Observation Point 46: The location is continually wet, and sediment is likely a result of natural erosion from the waterflow of a nearby spring. The location needs to dry out before further grading and reclamation. Freezing conditions may need to be present to gain access for heavy equipment. The location will continue to be monitored and further work, if required, is estimated to occur in 4<sup>th</sup> Quarter 2020.

If you have any questions, please contact Andrew L. Hackler, Environmental Specialist (phone 918-809-8481; email [andrew.hackler@oneok.com](mailto:andrew.hackler@oneok.com)) or me with any questions or concerns you may have.

Sincerely,

**DocuSigned by:**

*Todd McKimney*

D9AC1DA0B5D742F...  
Todd McKimney

Vice President, Construction Projects

cc: Todd McKimney, Vice President, Construction Projects  
Michael Dailey, Legal Counsel  
Wade C. Mann, Crowley Fleck  
Andrew L. Hackler, Environmental Specialist  
Tulsa Large Projects, Demicks Lake Pipeline Project Files