



*South Dakota*  
Department of Environment  
& Natural Resources  
Protecting SD's Tomorrow... Today

## WATER MANAGEMENT BOARD

December 17 - 20, 2019  
LRC Conference Room 414  
State Capitol Building  
500 E Capitol Avenue  
Pierre SD

Scheduled hearing times are Central Time

Scheduled times are estimates only. Agenda items may be delayed due to prior scheduled items.  
Live audio of the meeting can be heard at <https://www.sd.net/room414>

December 17, 2019

8:30 AM Call to Order  
Adopt Final Agenda  
Conflicts Disclosures and Requests for State Board Waivers

Public comment period in accordance with SDCL 1-25-1

Continue with Witnesses and Testimony Regarding:

- Water Permit Application No. 1986-1, TransCanada Keystone Pipeline LP
- Water Permit Application No. 2792-2, TransCanada Keystone Pipeline LP
- Water Permit Application No. 2793-2, TransCanada Keystone Pipeline LP

Water Permit Application No. 1975A-1, Wink Cattle Company

Water Permit Application No. 1963A-1, Tom and Lori Wilson

The Board will recess for breaks, lunch and for the evening at their discretion. The Board meeting will continue on December 18, 19 & 20 as needed to complete testimony.

The public comment period and hearing will be conducted in accordance with the Prehearing Officer's Order on Hearing Procedure dated August 27, 2019, and November 25, 2019. Item No. 10 of the August 27 Order sets forth the procedure for public comment. The order can be found at <https://denr.sd.gov/contested.aspx> under Water Management Board proceeding on TransCanada.

### ADJOURN

Board members are reminded they are subject to SDCL 3-23-1 to 3-23-5 (Disclosure Laws) which address the disclosure of any conflicts of interest a member may have regarding contracts with the State of South Dakota. Board members should report any potential conflicts to the board and seek a waiver where appropriate.

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Department of Environment and Natural Resources at (605) 773-3352 at least 48 hours before the meeting if you have a disability for which special arrangement must be made.

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
WATER MANAGEMENT BOARD

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IN THE MATTER WATER APPLICATIONS	)	ORDER ON HEARING PROCEDURE
NO. 1986-1, 2792-2, and 2793-2,	)	
TRANSCANADA	)	
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	)	
	)	
	)	
	)	

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WHEREAS, a pre-hearing conference was held on November 22, 2019 for the purpose of setting forth the order of remaining witnesses and other procedural matters; and

WHEREAS, the pre-hearing conference was administered by the Pre-Hearing Chair, Rodney Freeman and the Board Chair, Jim Hutmacher, was present on behalf of the Board; and

WHEREAS, Board Counsel, David M. McVey, appeared on behalf of the Board; and

WHEREAS, Bill Taylor, James Moore, John Taylor, and Matt Maher appeared on behalf of TransCanada; and

WHEREAS, Peter Caposella appeared on behalf of the Great Plains Tribal Water Alliance and the Rosebud Sioux Tribe; and

WHEREAS, Jennifer Baker and Thomasina Real Bird appeared on behalf of the Yankton Sioux Tribe; and

WHEREAS, Michael Novotny appeared on behalf of the Cheyenne River Sioux Tribe; and

WHEREAS, Bruce Ellison appeared on behalf of Dakota Rural Action; and

WHEREAS, Ann F. Mines-Bailey appeared on behalf of the DENR, also present were Jean Goodman, Eric Gronlund, and Ron Duvall; and

WHEREAS, Cindy Meyers appeared on her own behalf.

NOW THEREFORE, based on the discussions held at the pre-hearing conference, the Board Orders the following:

1. For any objections, Parties and intervenors are directed to object by stating only the objection or the basis for the objection- no speaking objections. There should be no further comment by the questioner or the objector prior to the Board's ruling unless it is expressly requested by the Board.
2. Witnesses will be heard in the following order:

On Water Availability

**TransCanada**

Witness order

1. Jung-Hoe Hopgood
2. Greg Tencer

**Intervenors**

Intervenor order

1. Great Plains Tribal Water Alliance and Rosebud Sioux Tribe
2. Yankton Sioux Tribe
3. Dakota Rural Action

Witness Order

Intervenor 1 (Peter Caposella) Order

1. Doug Crow Ghost
2. Syed Huq

Intervenor 2 (Jennifer Baker) Order

1. Jason Cooke

Intervenor 3 (Bruce Ellison) order

1. No witnesses

Beneficial use and Public Interest

**DENR**

1. Jean Goodman

**TransCanada**

Witness order

1. Greg Tencer

**Intervenors**

Intervenor order

1. Great Plains Tribal Water Alliance and Rosebud Sioux Tribe
2. Yankton Sioux Tribe
3. Dakota Rural Action

Witness Order

Intervenor 1 (Peter Caposella) Order

Rosebud

1. Rodney M. Bordeaux
2. Paula Antoine
3. Ivan Crow Eagle
4. Emily Boyd-Valandra
5. Robert Oliver
6. Ben Rohde
7. Victor Deuville

Great Plains Tribal Water Alliance

1. Reno Red Cloud
2. Tim Mintz
3. Elizabeth Wakeman
4. Darla Black

Yankton Sioux Tribe (Jennifer Baker) Order

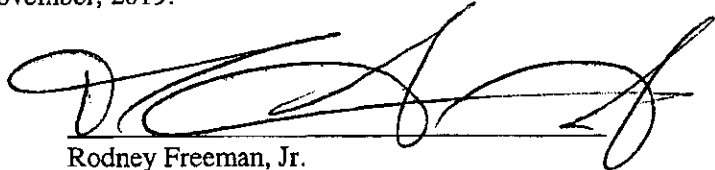
1. Jason Cook
2. Kate Finn
3. Faith Spotted Eagle
4. Joseph Robertson
5. Anita Luchese
6. Kip Spotted Eagle

Dakota Rural Action (Bruce Ellison) Order

1. Kent Moeckly
2. John Harter
3. Paul Seamans

4. Kristi Noem
  5. Julian Bear Runner
- 
3. Despite any inconsistency in the forgoing, the Board will endeavor to accommodate the following witness schedules:
    1. Jason Cook will be allowed to testify on the 17<sup>th</sup> and 18<sup>th</sup>.
    2. Kate Finn will be allowed to testify on the 19<sup>th</sup> and 20<sup>th</sup>.
    3. Faith Spotted Eagle will be allowed to testify on the 19<sup>th</sup>.
    4. Anita Luchese will be allowed to testify on the 20<sup>th</sup>.
  4. Except as expressly set forth herein, the Procedural Order of this Board dated August 27, 2019, remains in full force and effect.

Dated this 25 day of November, 2019.



Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

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IN THE MATTER OF WATER	)	ORDER ON HEARING PROCEDURE
APPLICATION NO. 1975A-1, WINK	)	
CATTLE COMPANY, C/O DEAN WINK	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	

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WHEREAS, a pre-hearing conference was held on November 22, 2019 for the purpose of setting forth the order of remaining witnesses and other procedural matters; and

WHEREAS, the pre-hearing conference was administered by the Pre-Hearing Chair, Rodney Freeman and the Board Chair, Jim Hutmacher, was present on behalf of the Board; and

WHEREAS, Board Counsel, David M. McVey, appeared on behalf of the Board; and

WHEREAS, Matt Naasz appeared on behalf of the Wink Cattle Company; and

WHEREAS, Peter Caposella appeared on behalf of the Great Plains Tribal Water Alliance and the Rosebud Sioux Tribe; and

WHEREAS, Jennifer Baker and Thomasina Real Bird appeared on behalf of the Yankton Sioux Tribe; and

WHEREAS, Bruce Ellison appeared on behalf of Dakota Rural Action; and

WHEREAS, Ann F. Mines-Bailey appeared on behalf of the DENR, also present were Jean Goodman, Eric Gronlund, and Ron Duvall.

NOW THEREFORE, based on the discussions held at the pre-hearing conference, the

Board Orders the following:

1. For any objections, Parties and intervenors are directed to object by stating only the objection or the basis for the objection- no speaking objections. There should be no further comment by the questioner or the objector prior to the Board's ruling unless it is expressly requested by the Board.
2. Witnesses will be heard in the following order:

Unlawful Impairment

**DENR**

Witness Order

1. John Farmer

**Matt Naaz**

Witness order

1. Dean Wink
2. Dr. Reinhard Zapata

**Intervenors**

Intervenor order

1. Yankton Sioux Tribe by Jennifer Baker

Witness Order

Intervenor 1 Order

1. Jason Cook

Beneficial Use and Public Interest

**DENR**

Witness Order

1. Jean Goodman

**Wink Cattle Company**

Witness order- Testifying to Prong

1. Dean Wink
2. Greg Tencer

**Intervenors**

Intervenor order

1. Yankton Sioux Tribe
2. Great Plains Tribal Water Alliance and Rosebud Sioux Tribe
3. Dakota Rural Action

Witness Order

Intervenor 1 (Jennifer Baker) Order

1. Jason Cook
2. Kate Finn
3. Faith Spotted Eagle
4. Joseph Robertson
5. Anita Luchese
6. Kip Spotted Eagle

Intervenor 2 (Peter Caposella) Order

1. Darla Black

Intervenor 3 (Bruce Ellison) Order

1. Kent Moechly
2. John Harter
3. Paul Siemans
4. Kristi Noem
5. Julian Bear Runner

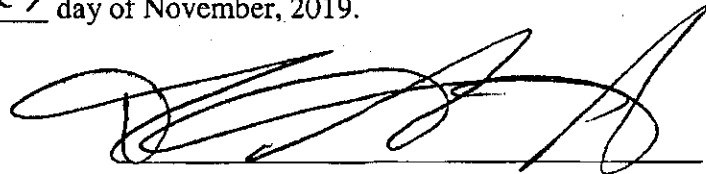
3. Despite any inconsistency in the forgoing, the Board will endeavor to accommodate the following witness schedules:

- a. Jason Cook will be allowed to testify on the 17<sup>th</sup> and 18<sup>th</sup>.
- b. Kate Finn will be allowed to testify on the 19<sup>th</sup> and 20<sup>th</sup>.
- c. Faith Spotted Eagle will be allowed to testify on the 19<sup>th</sup>.



- d. Anita Luchese will be allowed to testify on the 20<sup>th</sup>.
4. Except as expressly set forth herein, the Procedural Order of this Board dated August 27, 2019, remains in full force and effect.

Dated this 25 <sup>th</sup> day of November, 2019.



Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board

STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
WATER MANAGEMENT BOARD

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IN THE MATTER OF WATER	)	ORDER ON HEARING PROCEDURE
APPLICATION NO. 1963A-1, TOM & LORI	)	
WILSON	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	

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WHEREAS, a pre-hearing conference was held on November 22, 2019 for the purpose of setting forth the order of remaining witnesses and other procedural matters; and

WHEREAS, the pre-hearing conference was administered by the Pre-Hearing Chair, Rodney Freeman and the Board Chair, Jim Hutnacher, was present on behalf of the Board; and

WHEREAS, Board Counsel, David M. McVey, appeared on behalf of the Board; and

WHEREAS, Matt Naasz appeared on behalf of the Tom and Lori Wilson; and

WHEREAS, Peter Caposella appeared on behalf of the Great Plains Tribal Water Alliance and the Rosebud Sioux Tribe; and

WHEREAS, Jennifer Baker and Thomasina Real Bird appeared on behalf of the Yankton Sioux Tribe; and

WHEREAS, Bruce Ellison appeared on behalf of Dakota Rural Action; and

WHEREAS, Julie Santella and Tonia Stands appeared on their own behalf; and

WHEREAS, Ann F. Mines-Bailey appeared on behalf of the DENR, also present were Jean Goodman, Eric Gronlund, and Ron Duvall.

NOW THEREFORE, based on the discussions held at the pre-hearing conference, the

Board Orders the following:

1. For any objections, Parties and intervenors are directed to object by stating only the objection or the basis for the objection- no speaking objections. There should be no further comment by the questioner or the objector prior to the Board's ruling unless it is expressly requested by the Board.
2. On November 21, 2019, the Cheyenne River Sioux Tribe filed a Motion for Reconsideration and Clarification of the Water Management Board's Order Excluding Witnesses. Any Party or intervenor who wishes to file support or opposition to that Motion must have any and all papers filed before 5:00 P.M. CST on December 6, 2019.
3. Witnesses will be heard in the following order:

Unlawful Impairment

**DENR**

Witness Order- Testifying to Prong

1. Whitney Kilts

**Tom and Lori Wilson**

Witness order

1. Tom Wilson
2. Dr. Reinhard Zapata

**Intervenors**

Intervenor order

1. Yankton Sioux Tribe
2. Cheyenne River Sioux Tribe
3. Julie Santella
4. Tonia Stands

Witness Order

Intervenor 1 (Jennifer Baker) Order

1. Jason Cook

Intervenor 2 (Michael Novotny) Order

1. Leo Fisher
2. Carlyle Ducheneaux

Intervenor 3 (Julie Santella) Order

1. Mario Gonzalez
2. Tom Bring
3. Reno Red Cloud
4. Charmain White Face

Intervenor 4 (Tonia Stands) Order

1. Phyllis Young
2. Mario Gonzalez
3. Tom Bring
4. Reno Red Cloud
5. Charmain White Face

Beneficial Use and Public Interest

**DENR**

Witness Order

1. Jean Goodman

**Tom and Lori Wilson**

Witness order

1. Tom Wilson
2. Greg Tencer

**Intervenors**

Intervenor order

1. Yankton Sioux Tribe
2. Cheyenne River Sioux Tribe
3. Julie Santella
4. Dakota Rural Action

Witness Order

Intervenor 1 (Jennifer Baker) Order

1. Jason Cook
2. Kate Finn -Testify once for all applications
3. Faith Spotted Eagle
4. Joseph Robertson
5. Anita Luchese
6. Kip Spotted Eagle

Intervenor 2 (Michael Novotny) Order

1. Leo Fisher
2. Carlyle Ducheneaux
3. Steve Vance
4. Chalmer Combellick

Intervenor 3 (Julie Santella) Order

1. Mario Gonzalez
2. Tom Brings
3. Reno Red Cloud
4. Charmain White Face
5. Dr. Hannan LeGarre
6. James Jones

Intervenor 4 (Tonia Stands) Order

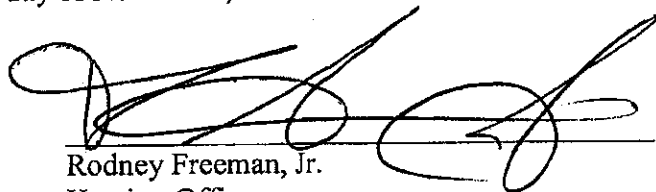
1. Phyllis Young
2. Mario Gonzalez
3. Tom Bring
4. Reno Red Cloud
5. Charmain White Face
6. Manual Peno

Intervenor 5 (Bruce Ellison) Order

1. Kent Moechly
2. John Harter
3. Paul Siemans
4. Kristi Noem
5. Julian Bear Runner

4. Despite any inconsistency in the forgoing, the Board will endeavor to accommodate the following witness schedules:
- a. Jason Cook will be allowed to testify on the 17<sup>th</sup> and 18<sup>th</sup>.
  - b. Kate Finn will be allowed to testify on the 19<sup>th</sup> and 20<sup>th</sup>.
  - c. Faith Spotted Eagle will be allowed to testify on the 19<sup>th</sup>.
  - d. Anita Luchese will be allowed to testify on the 20<sup>th</sup>.
5. Except as expressly set forth herein, the Procedural Order of this Board dated August 27, 2019, remains in full force and effect.

Dated this 25<sup>th</sup> day of November, 2019.



Rodney Freeman, Jr.  
Hearing Officer  
South Dakota Water Management Board