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MINUTES OF THE 222nd MEETING OF THE
WATER MANAGEMENT BOARD
CASEY TIBBS RODEO CENTER
210 VERENDRYE DRIVE
FT. PIERRE, SOUTH DAKOTA
JANUARY 21, 2020

CALL TO ORDER: Chairman Hutmacher called the meeting to order at 11:00 a.m. Central Time. The roll was called, and a quorum was present.

Chairman Hutmacher announced that the meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

The following were present:

Water Management Board Members: Jim Hutmacher, Leo Holzbauer, Tim Bjork, Peggy Dixon, Rodney Freeman, and Everett Hoyt. Chad Comes was absent.

Department of Environment and Natural Resources (DENR): Jeanne Goodman, Eric Gronlund, Ron Duvall, Mark Rath, John Farmer, and Vickie Maberry.

Attorney General's Office: Ann Mines Bailey, Water Rights Program counsel and David McVey, board counsel.

Others:

In the matter of the TransCanada applications (spelling of names is a best effort from interpreting the sign-in sheet)

James Ehlers, Presho, SD
Mahmud Fital, petitioner, Omaha, NE
Rebecca Terk, Brookings, SD
Maria Birch, Toronto, SD
John Taylor, counsel for TransCanada Keystone Pipeline, Sioux Falls, SD
William Taylor, counsel for TransCanada Keystone Pipeline, Sioux Falls, SD
James Moore, counsel for TransCanada Keystone Pipeline, Sioux Falls, SD
Anthony Helland, Sioux Falls, SD
Matt Naasz, counsel for Tom & Lori Wilson and Wink Cattle Company, Rapid City, SD
Frank James
Stephan Grover, Sioux Falls, SD
Sarah Grover, Sioux Falls, SD
Jordan Walker, Brookings, SD
Bob Mercer, KELOLAND News, Pierre, SD
Elizabeth Lone Eagle, petitioner, Bridger, SD
Tatanka Lone Eagle, petitioner, Bridger, SD

Zora Lone Eagle, petitioner, Bridger, SD
Faylita Joe, Ft. Thompson, SD
Mona Rencountre, Ft. Thompson, SD

ADOPT FINAL AGENDA: Motion by Freeman, second by Bjork, to adopt the agenda. A roll call vote was taken, and the motion carried unanimously.

CONFLICT DISCLOSURES AND REQUEST FOR STATE BOARD WAIVERS: None

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: Anthony Helland, Sioux Falls, SD, Zora and Tatanka Lone Eagle, Bridger, SD.

WATER PERMIT APPLICATION NO. 1986-1, TRANSCANADA KEYSTONE PIPELINE LP: Motion by Freeman, seconded by Hoyt, to go into executive session under the contested case provisions of SDCL 1-26 and SDCL 1-25-2(3) to consult with the board's legal counsel on this pending litigation. A roll call vote was taken, and the motion carried unanimously.

The board came out of executive session and resumed the hearing at 1:30 p.m.

David McVey, board counsel, stated that on or about January 17, 2020, the Yankton Sioux Tribe, Cheyenne River Sioux Tribe, and Dakota Rural Action filed a joint post-hearing evidentiary summary. At the close of the last meeting Chairman Hutmacher closed the evidence in this matter so that evidentiary summary is untimely and will not be presented to the board.

Chairman Hutmacher noted that the board is not taking comments from anyone at this time unless the board calls on someone or needs assistance from someone in the audience.

Motion by Freeman, seconded by Dixon, to approve Water Permit Application No. 1986-1, TransCanada Keystone Pipeline, LP, subject to the qualifications set forth by the Chief Engineer.

Motion by Hoyt, seconded by Bjork, to amend Qualification No. 2 as follows:

1. ~~The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Cheyenne River.~~ Prior to any withdrawal of water from the Cheyenne River and subject to design approval by the Chief Engineer, the permit holder shall install real-time instantaneous metering of water withdrawals at the water withdrawal site, which may be monitored by appropriate communications technology, and the permit holder shall report to the Chief Engineer weekly the amount of water withdrawn from the Cheyenne River during the previous month and the previous 12 months.

Chairman Hutmacher asked if Mr. Hoyt was talking about a meter coming off the pump or a stream gauge.

Mr. Hoyt stated that this is a meter for water withdrawals at the pump site to be used in the project.

A roll call vote was taken on the motion to amend Qualification No. 2, and the motion carried unanimously.

Motion by Bjork, seconded by Dixon, to amend Qualification No. 3 as follows:

3. Water Permit No. 1986-1 authorizes a total ~~annual~~ diversion of 238.21 acre feet of water.

Mr. Hoyt stated that it is his recollection from the evidence and the testimony that the application requests 238.21 acre feet of water, and by adopting Mr. Bjork's amendment, the board in effect is changing the qualification by the Chief Engineer and conforming the maximum amount of water withdrawn to that in the application.

Mr. Holzbauer said that would mean TransCanada Keystone Pipeline could take the total amount in one year, if that is what they chose, as long as the downstream flow meets the requirements.

A roll call vote was taken on the motion to amend Qualification No. 3 , and the motion carried unanimously.

Motion by Hoyt, seconded by Dixon, to amend Qualification No. 4 as follows:

4. After construction and reclamation of disturbed lands are complete, this water right permit shall be subject to cancellation by the Water Management Board due to no further water needs for pipeline construction purposes. The permit holder shall report to the Chief Engineer within ~~six months~~ 60 days of cessation of water use authorized by Water Permit No. 1986-1 for the purpose of proceeding with cancellation of the permit.

A roll call vote was taken on the motion to amend Qualification No. 4 , and the motion carried unanimously.

Motion by Hoyt, seconded by Bjork, to add a new Qualification No. 5 as follows:

5. Prior to any withdrawal of water from the Cheyenne River, the permit holder shall provide to the Chief Engineer for approval engineering plans and specifications, the operation plan, and the proposed location for a real-time instantaneous instream flow measuring device as close downstream from the pump site as reasonable and practicable. The operation and flow measurements by the instream flow device are to be constructed utilizing appropriate telecommunications technology so as to permit monitoring of instantaneous flow readings by DENR. The permit holder shall complete construction and operation of the measuring device prior to diverting water from the Cheyenne River.

Mr. Hoyt noted that the intent of the amendment is simply to provide for the instream flow measuring device downstream from the withdrawal site in order to measure the downstream flows such that the bypass flows and other flows that are required to serve prior water rights will be available.

Chairman Hutmacher asked if the gauge that this qualification requires is just during construction or permitting process, or will it be a permanent gauge.

Mr. Hoyt stated that his intent was for the construction phase of the project, however, it might be a useful device in the future should the applicant work with DENR to leave the instream measuring device in place.

A roll call vote was taken on the motion to add Qualification No. 5, and the motion carried unanimously.

Chairman Hutmacher asked for further discussion on the motion to approve the permit subject to the qualifications of the Chief Engineer, as amended by the board.

Mr. Hoyt stated that it is his view in supporting the motion to approve the application that there has been evidence which clearly establishes the reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion will be developed without unlawful impairment of existing rights including domestic rights and livestock watering, that the proposed use is a beneficial use, and that it is in the public interest, with the qualifications amended and adopted by the board.

Chairman Hutmacher asked if the amended qualifications adopted by the board were satisfactory to DENR.

Ms. Mines Baily stated that the department believes the language the board adopted for the qualifications is consistent with other qualifications, and the amended qualifications will work for DENR.

Mr. Hoyt stated that the instantaneous stream flow and the telecommunications are not necessarily to be taken as words of science. The intent is to leave it to the Chief Engineer and the applicant to work out the technology. Mr. Hoyt said he believes there was evidence from Mr. Tencer that it may require satellite communication and that this type of communication could be provided from the withdrawal site for a flow measuring device.

Mr. Holzbauer expressed concern about making sure the measuring devices are in place and working before any water is taken.

Chairman Hutmacher stated that the applicant cannot withdraw water until the permit conditions and qualifications are met.

A roll call vote was taken on the motion to approve Water Permit Application No. 1986-1, TransCanada Keystone Pipeline LP, subject to the Chief Engineer's qualifications, as amended and approved by the board, and the motion carried unanimously.

WATER PERMIT APPLICATION NO. 2792-2, TRANSCANADA KEYSTONE PIPELINE LP:
Motion by Freeman, seconded by Bjork, to approve Water Permit Application No. 2792-2, TransCanada Keystone Pipeline LP subject to the qualifications set forth by the Chief Engineer.

Motion by Hoyt, seconded by Freeman, to amend Qualification No. 3 as follows:

3. ~~The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the White River.~~ Prior to any withdrawal of water and subject to design approval by the Chief Engineer, the permit holder shall install real-time instantaneous metering of water withdrawals at the water withdrawal site, which may be monitored by appropriate communications technology; and the permit holder shall report to the Chief Engineer weekly the amount of water withdrawn from the White River during the previous month and the previous 12 months.

Hoyt withdrew the motion and Freeman withdrew the second.

Motion by Hoyt, seconded by Freeman, to amend Qualification No. 3 as follows:

3. ~~The Permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the White River.~~ Prior to any withdrawal of water and subject to design approval by the Chief Engineer, the permit holder shall install real-time instantaneous metering of water withdrawals at the water withdrawal site, which may be monitored by appropriate communications technology, and the permit holder shall report to the Chief Engineer weekly the amount of water withdrawn from the White River during the previous week and the previous 52 weeks.

A roll call vote was taken on the motion to amend Qualification No. 3, and the motion carried unanimously.

Motion by Bjork, seconded by Dixon, to amend Qualification No. 4 as follows:

4. Water Permit No. 2792-2 authorizes a total ~~annual~~ diversion of 223.68 acre feet of water.

A roll call vote was taken on the motion to amend Qualification No. 4, and the motion carried unanimously.

Motion by Hoyt, seconded by Bjork, to add new Qualification No. 6 as follows:

6. Prior to any withdrawal of water from the White River, the permit holder shall provide to the Chief Engineer for approval engineering plans and specifications, the operation plan, and the proposed location for a real-time instantaneous instream flow measuring device as close downstream from the pump site as reasonable and practicable. The operation and flow measurements by the instream flow device are to be constructed utilizing appropriate telecommunications technology so as to permit monitoring of instantaneous flow readings by DENR. The permit holder shall complete construction and operation of the measuring device prior to diverting water from the White River.

A roll call was taken on the motion to add Qualification No. 6, and the motion carried unanimously.

Motion by Dixon, seconded by Bjork, to amend Qualification No. 5 as follows:

5. After construction and reclamation of disturbed lands are complete, this water right permit shall be subject to cancellation by the Water Management Board due to no further water needs for pipeline construction purposes. The permit holder shall report to the Chief Engineer within ~~six months~~ 60 days of cessation of water use authorized by Water Permit No. 2792-2 for the purpose of proceeding with cancellation of the permit.

A roll call vote was taken on the motion to amend Qualification No. 5, and the motion carried unanimously.

Chairman Hutmacher asked for further discussion on the motion to approve the permit subject to the qualifications of the Chief Engineer, as amended by the board.

Mr. Hoyt stated that it is his view in supporting the motion to approve the application that there has been evidence which clearly establishes the reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion will be developed without unlawful impairment of existing rights including domestic rights and livestock watering, that the proposed use is a beneficial use, and that it is in the public interest, with the qualifications amended and adopted by the board.

A roll call vote was taken on the motion to approve Water Permit Application No. 2792-2, TransCanada Keystone Pipeline LP, subject to the Chief Engineer's qualifications, as amended and approved by the board, and the motion carried unanimously.

WATER PERMIT APPLICATION NO. 2793-2, TRANSCANADA KEYSTONE PIPELINE LP:
Motion by Freeman, seconded by Dixon, to approve Water Permit Application No. 2793-2, TransCanada Keystone Pipeline LP, subject to the qualifications set forth by the Chief Engineer.

Motion by Hoyt, seconded by Bjork, to amend Qualification No. 1 as follows:

1. ~~The Permit holder shall provide engineering plans and specifications and operation plan for an instream measuring device to the Chief Engineer for approval and complete construction of the measuring device prior to diverting water. Prior to any withdrawal of water from the Bad River the permit shall provide to the Chief Engineer for approval engineering plans and specifications, the operation plan, and the proposed location for real-time instantaneous instream flow measuring device as close downstream from the pump site as reasonable and practicable. The operation and flow measurements by the instream flow device are to be constructed utilizing appropriate telecommunications technology so as to permit monitoring of instantaneous flow readings by DENR. The permit holder shall complete construction and operation of the measuring device prior to diverting water from the Bad River.~~

Mr. Holzbauer asked if it would be possible to leave the metering device in place when the project is completed.

Chairman Hutmacher stated that the board can add that qualification, but the Bad River gauge that is in place now is not working like it should. He questioned whether there is an acceptable type stream gauge that would read those small readings on a permanent basis.

Mark Rath, Water Rights Program, stated that at that location it would be difficult to have a monitoring device that could be left in the stream and continue to function without a lot of maintenance. It is possible that as time goes on with the existing gauge and USGS gets more low level readings, the gauge will start being more valuable at a lower level. A bridge was rebuilt at the existing gauge site, and it changed the configuration of the channel.

A roll call vote was taken on the motion to amend Qualification No. 1, and the motion carried unanimously.

Motion by Hoyt, seconded by Bjork, to amend Qualification No. 4 as follows:

4. ~~The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Bad River.~~ Prior to any withdrawal of water and subject to design approval by the Chief Engineer, the permit holder shall install real-time instantaneous metering of water withdrawals at the water withdrawal site, which may be monitored by appropriate communications technology, and the permit holder shall report to the Chief Engineer weekly the amount of water withdrawn from the Bad River during the previous week and during the previous 52 weeks.

A roll call vote was taken on the motion to amend Qualification No. 4, and the motion carried unanimously.

Motion by Bjork, seconded by Hoyt, to amend Qualification No. 5 as follows:

5. Water Permit No. 2793-2 authorizes a total ~~annual~~ diversion of 50.44 acre feet of water.

A roll call vote was taken on the motion to amend Qualification No. 5, and the motion carried unanimously.

Motion by Hoyt, seconded by Dixon, to amend Qualification No. 6 as follows:

6. After construction and reclamation of disturbed lands are complete, this water right permit shall be subject to cancellation by the Water Management Board due to no further water needs for pipeline construction purposes. The permit holder shall report to the Chief Engineer within ~~six months~~ 60 days of cessation of water use authorized by Water Permit No. 2793-2 for the purpose of proceeding with cancellation of the permit.

A roll call vote was taken on the motion to amend Qualification No. 6, and the motion carried unanimously.

Chairman Hutmacher asked for further discussion on the motion to approve the permit subject to the qualifications of the Chief Engineer, as amended by the board.

Mr. Hoyt stated that it is his view in supporting the motion to approve the application that there has been evidence which clearly establishes the reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion will be developed without unlawful impairment of existing rights including domestic rights and livestock watering, that the proposed use is a beneficial use, and that it is in the public interest, with the qualifications amended and adopted by the board.

A roll call vote was taken on the motion to approve Water Permit Application No. 2793-2, TransCanada Keystone Pipeline LP, subject to the Chief Engineer's qualifications, as amended and approved by the board, and the motion carried unanimously.

WATER PERMIT APPLICATION NO. 1975A-1, WINK CATTLE COMPANY: Motion by Freeman, seconded by Bjork, to approve Water Permit Application No. 1975A-1, Wink Cattle Company, subject to the qualifications set forth by the Chief Engineer.

Motion by Bjork, to amend Qualification No. 3 as follows:

3. The Permit holder shall report the annual volume of water diverted for all uses from the Inyan Kara aquifer. The report shall provide the portion of the ~~annual~~ monthly volume of water diverted for use at the temporary workforce camps. The reporting for workforce camp use is not required once the temporary workforce camps are no longer in place.

Mr. Bjork withdrew his motion.

Motion by Bjork, seconded by Freeman, to amend Qualification No. 3 as follows:

3. The Permit holder shall report the annual volume of water diverted for all uses from the Inyan Kara aquifer. The report shall provide the portion of the ~~annual~~ monthly and prior 12-month volume of water diverted for use at the temporary workforce camps. The reporting for workforce camp use is not required once the temporary workforce camps are no longer in place.

Discussion took place regarding the intent of the amendments in the qualification.

Mr. Bjork withdrew the motion and Mr. Freeman withdrew the second.

Mr. McVey offered suggestions for amending the qualification.

Motion by Hoyt, seconded by Bjork, to amend Qualification No. 3 as follows:

3. The Permit holder shall report the annual volume of water diverted for all uses from the Inyan Kara aquifer. The permit holder shall also report ~~shall provide~~ the portion of the ~~annual~~ volume of water diverted for use at the temporary workforce camps on a monthly basis and for the 12 months prior. The reporting for workforce camp use is not required once the temporary workforce camps are no longer in place.

A roll call vote was taken on the motion to amend Qualification No. 3, and the motion carried unanimously.

Chairman Hutmacher asked for further discussion on the motion to approve the permit subject to the qualifications of the Chief Engineer, as amended by the board.

A roll call vote was taken on the motion to approve Water Permit Application No. 1975A-1, Wink Cattle Company, subject to the Chief Engineer's qualifications, as amended and approved by the board, and the motion carried unanimously.

WATER PERMIT APPLICATION NO. 1963A-1, TOM AND LORI WILSON: Motion by Freeman, seconded by Hoyt, to approve Water Permit Application No. 1963A-1, Tom and Lori Wilson, subject to the qualifications set forth by the Chief Engineer.

Motion by Hoyt, seconded by Bjork, to amend Qualification No. 4 as follows:

4. The Permit holder shall report monthly the ~~annual~~ volume of water diverted for use at the temporary workforce camps during the prior month and the past 12 months. The reporting will cease to be required once the temporary workforce camps are no longer in place.

A roll call vote was taken on the motion to amend Qualification No. 4, and the motion carried unanimously.

A roll call vote was taken on the motion to approve Water Permit Application No. 1963A-1, Tom and Lori Wilson, with the Chief Engineer's qualifications, as amended and approved by the board, and the motion carried unanimously.

Mr. McVey stated that the proposed Findings of Fact and Conclusions of Law for all five water permit applications are to be submitted by 5:00 p.m. Central Time on February 3, 2020. Objections or proposed alternative the proposed Findings of Fact and Conclusions of Law are to be submitted by 5:00 p.m. on February 18, 2020. The proposed Findings of Fact and Conclusions of Law will be presented to the board at its February 26-27, 2020, meeting.

Ms. Mines Baily asked if the board plans to entertain argument on the Findings of Fact and Conclusions of Law at the February meeting.

Chairman Hutmacher answered that he does not plan to entertain arguments on the Findings of Fact and Conclusions of Law at the February meeting.

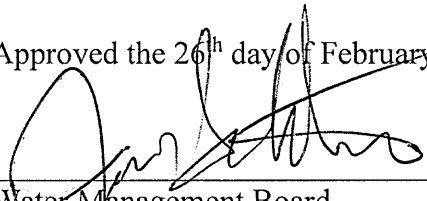
Chairman Hutmacher declared the hearing closed at 2:35 p.m.

Motion by Bjork, seconded by Holzbauer, to adjourn. Motion carried unanimously.

A court reporter was present, and a transcript of the hearing may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501, and (605) 224-7611.

Water Management Board
January 21, 2020, Meeting Minutes

Approved the 26th day of February 2020.



Water Management Board



Witness

ATTENDANCE SHEET
 WATER MANAGEMENT BOARD

Date Jan. 21, 2020

NAME (PLEASE PRINT)	MAILING ADDRESS	CITY, STATE & ZIP	ITEM OF INTEREST
<u>James Ehlers</u>	<u>Prashe</u>	<u>Prashe SD</u>	
<u>Mahmud Fitol</u>		<u>Omaha NE</u>	
<u>Rebecca Turk</u>	<u>910 4th St</u>	<u>Brookings 57006</u>	<u>KXL</u>
<u>Maria Birch</u>	<u>PO Box 338</u>	<u>Pronto 57268</u>	<u>KXL</u>
<u>James Moore</u>	<u>P.O. Box 5027</u>	<u>Sioux Falls</u>	<u>KXL</u>
<u>N^M Taylor</u>	<u>Sioux Falls</u>		<u>KXL</u>
<u>JOHN TAYLOR</u>	<u>Sioux Falls</u>		<u>KXL</u>
<u>Anthony Helland</u>	<u>Sioux Falls, SD</u>		<u>KXL</u>
<u>Matt Nassz</u>	<u>hard City</u>		<u>Wink/Wilson</u>
<u>Frank Janz</u>	<u>Towanda Po Box 549</u>	<u>Brookings</u>	<u>KXL</u>
<u>Stephen Grover</u>	<u>7105 S Phillips Sioux Falls, SD</u>	<u>Sioux Falls 57105</u>	<u>KXL</u>
<u>Sarah Groves</u>	<u>" "</u>	<u>" "</u>	<u>KXL</u>
<u>JORDAN WALKER</u>	<u>PO BOX 5491</u>	<u>Brookings, SD 57006</u>	<u>KXL</u>
<u>BOB MERCER</u>		<u>Perre</u>	<u>KXL</u>
<u>Elizabeth Lone Eagle</u>		<u>Bridger</u>	<u>KXL</u>
<u>Edna</u>			

ATTENDANCE SHEET
WATER MANAGEMENT BOARD

Date Jan. 20, 2020

NAME (PLEASE PRINT)

MAILING ADDRESS

CITY, STATE & ZIP

ITEM OF INTEREST

Tatanka Ironcan

Zara Lone Eagle

Faylita Joe

Mona Rencountre

Bridger

Bridger

FT. Thompson SD

FT Thompson SD

KXL

KXL

KXL

hearings

PUBLIC COMMENT

SIGN IN SHEET

WATER MANAGEMENT
BOARD MEETING

Date Jan. 20, 2020

Name

City

1. Mahmud Fiti

Omaha

2. ~~Peterson Turk~~

~~Brockton~~

3. Anthony Helland

Sioux Falls, SD

4. Zora + Tatanka Hancock Lone Eagle

Bridger SD

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____

12. _____
