

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN THE MATTER OF THE HEARING FOR)
REISSUING THE GENERAL WATER) ORDER FOR CONTINUANCE OF HEARING
POLLUTION PERMIT FOR CONCENTRATED)
ANIMAL FEEDING OPERATIONS)

THIS MATTER having come before the Secretary of the Department of Environment and Natural Resources upon the MOTION TO CONTINUE of Dakota Rural Action, by and through their counsel of record, Kelsea K. Sutton;

AND THE SECRETARY, being fully advised in the premises of said motion as set forth in the MOTION and supporting AFFIDAVIT;

NOW THEREFORE, said motion is hereby GRANTED, and the hearing scheduled to be held in the above matter commencing on December 16, 2016, is hereby continued to an alternative hearing date to be set in 2016, based upon the mutual availability of the Secretary, the parties, their counsel and witnesses.

The Secretary and his procedural advisors will work with the parties to find appropriate dates for an anticipated two consecutive day hearing in this matter which when determined will be noticed to the parties of record as required by South Dakota Codified Laws Chapter 1-26, and particularly SDCL 1-26-17.

The PROCEDURAL AND SCHEDULING ORDER entered in this matter on November 25, 2015 is hereby rescinded except to the extent that it grants the PETITIONS TO INTERVENE of the recognized parties to this proceeding. A new PROCEDURAL AND SCHEDULING ORDER will be entered in this matter after the determination of the hearing dates. The new PROCEDURAL AND SCHEDULING ORDER will address the discovery deadlines for the parties, and will not require any discovery disclosures by the parties before January 15, 2016.

Dated this 11th Day of December, 2015.



Steven M. Pirner, Secretary
Department of Environment and Natural Resources

Certificate of Service

The undersigned certifies that on this ____ day of December 2015, the forgoing ORDER FOR CONTINUANCE OF HEARING was served by US Mail, full first class postage attached thereto upon the following parties of record in this matter:

Ellie Bailey, AAG
DENR Feedlot Program
1303 E. Highway 14, Suite 1
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Ellie.Bailey@state.sd.us

Kelsea K. Sutton, Attorney at Law
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kelsea@rosebudlaw.com

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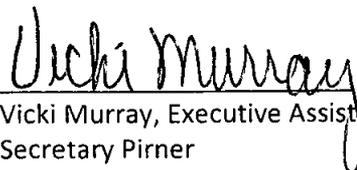
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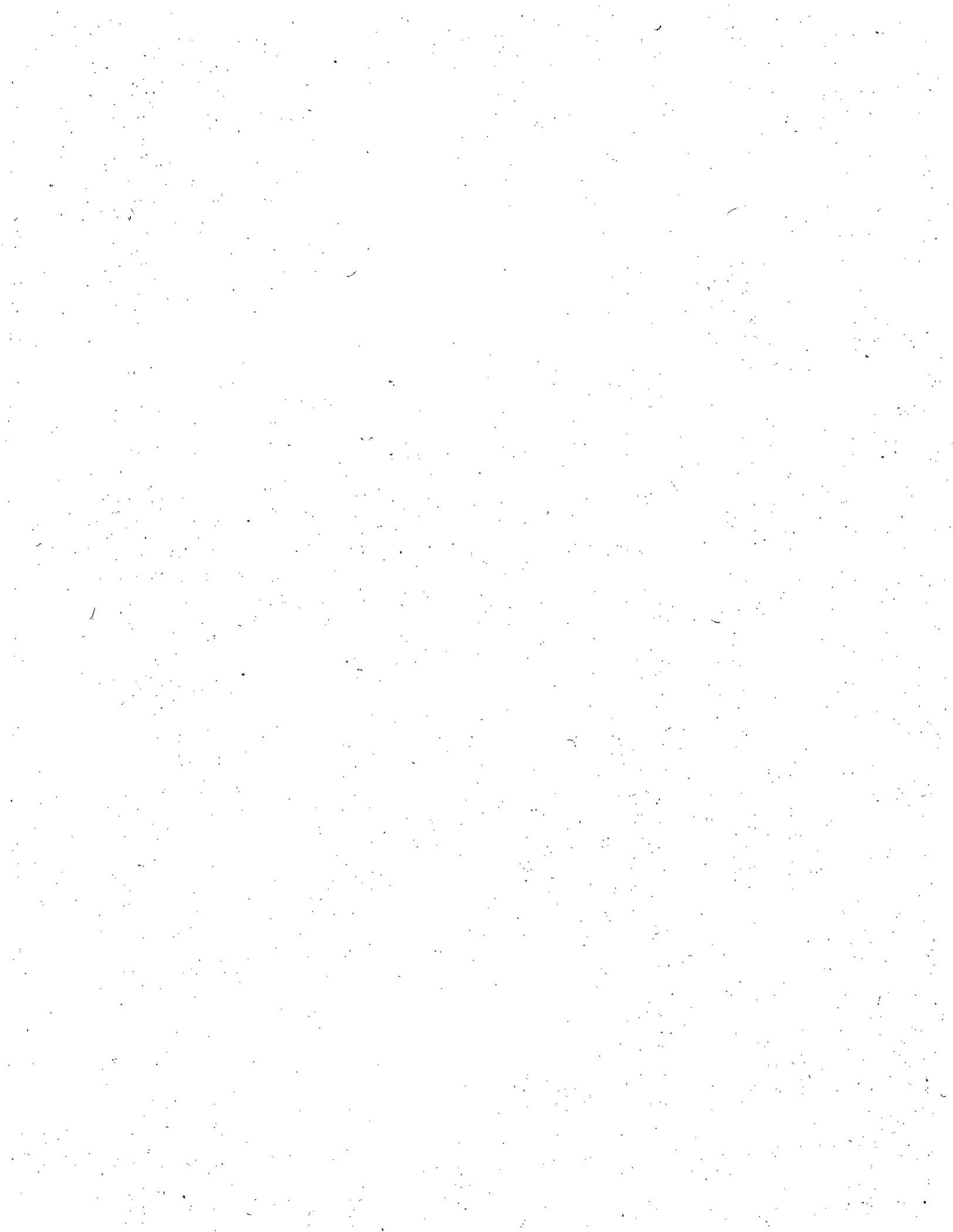
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Vicki Murray, Executive Assistant to
Secretary Pirner



Johnson Pochop & Bartling

ATTORNEYS AT LAW

RECEIVED

DEC 10 2015

Dept. of Environment and
Natural Resources
Secretary's Office

Stephanie E. Pochop
George F. Johnson
Amy R. Bartling
Kelsea K. Sutton

December 8, 2015

SD DENR
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DENR Staff Attorney
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Ellie Bailey
DENR Feedlot Permit Program
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Re: Attorney Engagement & Motion to Continue

Dear Mr. Nadenicek & Parties of Record:

My name is Kelsea Kenzy Sutton, and I have been retained to represent Dakota Rural Action in the Contested Case Hearing for the reissuing of the general water pollution control permit for concentrated animal feeding operations.

Enclosed with this letter for filing with the Department of Environment and Natural Resources, you'll find my **Notice of Appearance**, Dakota Rural Action's **Motion to Continue**, and two supporting **Affidavits**.

We look forward to the Agency's response to our Motion, and I encourage the Agency to contact me at my office at (605) 835-8391 or kelsea@rosebudlaw.com with any further inquiries about these pleadings.

Sincerely,


Kelsea K. Sutton

Cc: Client
/Enclosures

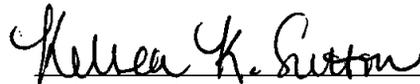
STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE HEARING FOR REISSUING)	
THE GENERAL WATER POLLUTION)	
CONTROL PERMIT FOR)	NOTICE OF APPEARANCE
CONCENTRATED ANIMAL)	
FEEDING OPERATIONS)	

PLEASE TAKE NOTICE that I will be appearing on behalf of Intervenor Organization
Dakota Rural Action in the above-entitled matter.

Dated this 8th day of December 2015.

JOHNSON POCHOP & BARTLING



Kelsea K. Sutton
405 Main St. | PO Box 149
Gregory, SD 57533
(605) 835-8391
kelsea@rosebudlaw.com
Attorney for Dakota Rural Action

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE HEARING FOR REISSUING)	
THE GENERAL WATER POLLUTION)	
CONTROL PERMIT FOR)	MOTION TO CONTINUE
CONCENTRATED ANIMAL)	
FEEDING OPERATIONS)	

COMES NOW Intervenor and Petitioner Dakota Rural Action, by and through their attorney of record, Kelsea K. Sutton of Johnson Pochop & Bartling, and requests a continuance of the contested case hearing scheduled for December 16, 2015. For the reasons set forth below, the motion to continue should be granted.

According to Mr. Nadenicek’s November 25, 2015, letter to the parties of record in the above-entitled action: “[T]he South Dakota Bar requires anyone representing another, including an organization, be licensed to practice law in a proceeding such as this contested case hearing.” Similarly, ¶ 3 of Secretary Pirner’s Procedural and Scheduling Order requires: “All corporations, partnerships, associations, and other legal entities (including non-profit associations) must be represented by counsel to fully participate in the December 16, 2015, hearing.” Thus, without an attorney to represent them, Dakota Rural Action would effectively be denied the right to intervene.

Dakota Rural Action submitted its Petition to Intervene on November 20, 2015. The organization received the Agency’s letter and Secretary Pirner’s Scheduling Order on November 25, 2015. Dakota Rural Action searched urgently and diligently for an attorney to represent them at the contested case hearing. Attorney Kelsea K. Sutton was retained on December 7, 2015. Ms. Sutton has an unavoidable prior conflict with the December 16, 2015, hearing date. Additionally, she needs ample time to properly prepare witnesses, research designated experts

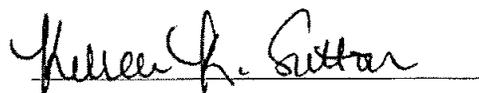
and compile testimony. Less than ten (10) days is not sufficient time to prepare for a hearing that involves such complex and technical issues, and licensed legal counsel is required in order for Dakota Rural Action to participate in the hearing.

Dakota Rural Action is one of the largest conservation and environmental protection organization in the State of South Dakota. It is the only organization of its kind participating in these proceedings. Dakota Rural Action plans to present numerous substantive issues to the Board, many of which are complex and technical. Dakota Rural Action has, to date, the only rebuttal expert witness of any of the intervenors. The Organization is a major party to this proceeding, and the nature and substance of its testimony and evidence make them an indispensable party to the contested case hearing.

Without their attorney present at the hearing, Dakota Rural Action will not be able to cross examine witnesses, object to the admission of certain evidence or experts, or argue on behalf of the admissibility and relevance of its own evidence and experts. Thus, without their attorney, Dakota Rural Action would effectively be denied the right to intervene. Fairness would demand that Dakota Rural Action be given the same opportunity as the Agency, as well as the other intervenors, to present testimony and evidence, cross examine witnesses and contest or defend the admissibility and relevance of evidence and expert testimony. Due process demands the right to be heard at a meaningful time and in a meaningful manner, and the time strictures in this case, coupled with the inability of the Organization's attorney to attend the December 16th hearing, require a continuance to be granted.

Dated this 8th day of December 2015.

JOHNSON POCHOP & BARTLING

A handwritten signature in cursive script, reading "Kellen R. Suttar", is written over a horizontal line.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 8th day of December 2015, she served a copy of this **Motion to Continue** by U.S. First Class mail upon the following parties of record:

Joe Nadenicek
DENR Staff Attorney
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523 E. Capitol
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Joe.Nadenicek@state.sd.us

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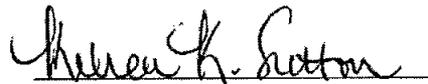
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Kelsea K. Sutton

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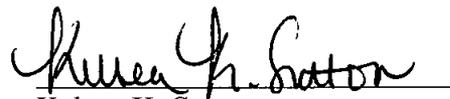
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Kelsea K. Sutton

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE HEARING FOR REISSUING)	
THE GENERAL WATER POLLUTION)	
CONTROL PERMIT FOR)	MOTION TO CONTINUE
CONCENTRATED ANIMAL)	
FEEDING OPERATIONS)	
)	

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Dated this 8th day of December 2015.

JOHNSON POCHOP & BARTLING

A handwritten signature in cursive script, reading "Helen K. Suttar", is written over a horizontal line.

Kelsea K. Sutton
405 Main St. | PO Box 149
Gregory, SD 57533
(605) 835-8391
kelsea@rosebudlaw.com
Attorney for Dakota Rural Action

CERTIFICATE OF SERVICE

The undersigned certifies that on the 8th day of December 2015, she served a copy of this **Motion to Continue** by U.S. First Class mail upon the following parties of record:

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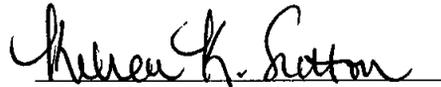
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Kelsea K. Sutton

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE HEARING FOR REISSUING)	
THE GENERAL WATER POLLUTION)	
CONTROL PERMIT FOR)	AFFIDAVIT OF KELSEA K.
CONCENTRATED ANIMAL)	SUTTON
FEEDING OPERATIONS)	
)	

STATE OF SOUTH DAKOTA)
 §
COUNTY OF GREGORY)

COMES NOW Affiant Kelsea K. Sutton, attorney for the Intervenor Dakota Rural Action, and hereby states and affirms as follows:

- 1) I am an attorney in the law office of Johnson Pochop & Bartling, which represents the Intervenor Dakota Rural Action in the above-entitled matter.
- 2) Dakota Rural Action timely filed their Petition to Intervene in the Contested Case on November 20, 2015.
- 3) Secretary Steven M. Pirner granted their request to intervene on November 25, 2015.
- 4) I was retained by Dakota Rural Action on December 7, 2015, to represent them at the Department of Environment and Natural Resource's Contested Case Hearing.
- 5) I have a prior conflict with the December 16, 2015, Contested Case Hearing date that is unavoidable and cannot be rescheduled.

Dated this 8th day of December 2015.

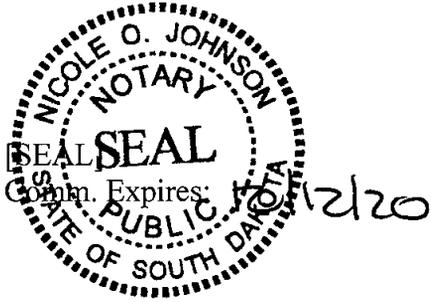
JOHNSON POCHOP & BARTLING



Kelsea K. Sutton
405 Main St. | PO Box 149
Gregory, SD 57533

(605) 835-8391
kelsea@rosebudlaw.com
Attorney for Dakota Rural Action

Subscribed and sworn to before me this 8th day of December 2015.



Nicole O. Johnson
Notary Public

CERTIFICATE OF SERVICE

The undersigned certifies that on the 8th day of December 2015, she served a copy of this **Affidavit of Kelsea K. Sutton** by U.S. First Class mail upon the following parties of record:

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DENR Staff Attorney
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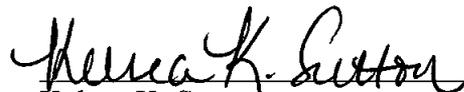
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Kelsea K. Sutton

STATE OF SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

IN RE HEARING FOR REISSUING)	
THE GENERAL WATER POLLUTION)	
CONTROL PERMIT FOR)	AFFIDAVIT OF MEGHAN
CONCENTRATED ANIMAL)	THOREAU
FEEDING OPERATIONS)	
)	

STATE OF SOUTH DAKOTA)
 §
COUNTY OF BROOKINGS)

COMES NOW Affiant Meghan Thoreau, agent for the Intervenor Dakota Rural Action, and hereby states and affirms as follows:

1) I am a Staff Organizer for Dakota Rural Action, a federally recognized 501(c)(3) nonprofit, operating in the State of South Dakota; I am an authorized agent of the organization.

2) Dakota Rural Action participated in the informal and formal public comment period relevant to the proposed General Permit by submitting public comment and attending public meetings.

3) Dakota Rural Action did not request a contested case hearing; to the best of my knowledge, the Department of Environment and Natural Resources made the decision to schedule the hearing and did schedule it of their own volition.

4) Dakota Rural Action timely filed its Petition to Intervene in this matter on November 20, 2015.

5) Dakota Rural Action first became aware on November 25, 2015, that in order to fully participate in the December 16, 2015, contested case hearing, the organization would be required to have a South Dakota licensed attorney represent it.

6) Dakota Rural Action searched urgently and diligently for an attorney from the date that it became aware it would need one in order to meaningfully participate in the contested case hearing.

7) Dakota Rural Action was not able to find an attorney who was willing, able and conflict-free to take their case until it retained Kelsea K. Sutton on December 7, 2015.

8) Dakota Rural Action plans to present numerous complex and technical issues at the contested case hearing.

Dated this 8th day of December 2015.


Meghan Thoreau, Agent of DRA

Subscribed and sworn to before me this 8th day of December 2015.


[SEAL]
Comm. Expires: August 26, 2021


Notary Public

CERTIFICATE OF SERVICE

The undersigned certifies that on the 8th day of December 2015, she served a copy of this **Affidavit of Meghan Thoreau** by U.S. First Class mail upon the following parties of record:

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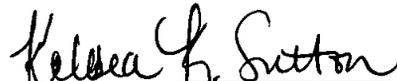
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Kelsea K. Sutton
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