

DRAINAGE MEETING  
MULTIPLE DISTRICTS  
APRIL 5, 2016

The Story County Drainage District Trustees met in the Public Meeting Room of the Story County Administration Building during a recess of the regular Board of Supervisors meeting to consider Resolution #16-50 setting out specifications for the crossing of drainage district facilities by a hazardous liquid pipeline, the Bakken Shale Pipeline being built by Dakota Access LLC. Members present were Paul Toot, chair, Rick Sanders, and Wayne Clinton. Also present were County Attorney Stephen Holmes, Engineer Darren Moon, Drainage Clerk Scott Wall, several other county staff, and at least 50 members of the public.

Toot called the meeting to order at 10:10 a.m. and asked Holmes to talk about the resolution and drainage district trustee authority.

Holmes spoke on the content of the resolution. Code of Iowa Section 468 gives the Board of Supervisors, acting as Drainage District Trustees, control over managing drainage districts. This resolution lays out the conditions Dakota Access must meet to cross drainage district facilities with their pipeline. The authority of the trustees is limited under the Code. They can impose conditions on how the pipeline crosses district facilities only because the district was there first and has a pre-existing easement.

Clinton pointed out that this resolution was created by the Iowa Drainage District Association working with drainage attorneys and other experts and it has already been passed by most of the counties in Iowa through which the pipeline is passing. This isn't a resolution being considered by just one or two counties.

Sanders asked Holmes if anything in the resolution had raised any red flags for him. Holmes said no, nothing at all.

Toot asked Moon about the condition of the one district tile affected in Story County. Moon said it is a new 14" concrete pipe paralleling County R-38. It was replaced when R-38 was widened five years ago.

Toot had requests from several individuals who wanted to speak to the trustees. He asked that they restrict their comments specifically to the resolution.

Linda Murken said the map of the pipeline's route crosses the South Skunk River and that appears to be in a drainage district also. Does the resolution include the Skunk River crossing and will Kent Rode of I & S, who the resolution names as the drainage engineer, oversee that crossing as well?

Sanders said it was his understanding that I & S will be responsible for monitoring pipeline construction all the way across the county – tile crossings, rail crossings, road crossings, and the Skunk River. Sanders said the resolution as he reads it says drainage districts and the Skunk River is clearly in a drainage district so I & S should be on site there as well as at the tile crossing by R-38.

Murken asked if the \$7,500 is all the county will get or is it a per crossing fee? Does the county have to pay all costs beyond \$7,500?

Holmes said the \$7,500 is an additional fee to meet the county's administrative expenses on top of what Dakota Access will have to pay to do the work. It does not represent the cost of the work to be done.

Wall said he'd had a couple of discussions with Craig Schoenfeld, who submitted the resolution to the trustees, and Schoenfeld said the expectation was that the average cost of each crossing statewide would

be \$5,000. There may be some that are \$4,500 and some that are as much as \$6,500 but they do not expect costs to exceed \$7,000 anywhere.

Murken asked if Dakota Access should be allowed to self-insure.

Holms said Dakota Access and its affiliates have far more ability to self-insure than, for instance, Story County does. He doesn't think that is an issue.

Murken said even large companies can go bankrupt.

Holmes said under federal law companies like Dakota Access must have a considerable amount of money set aside in the federal superfund to cover accidents. Even if Dakota Access should go out of business the superfund moneys would still be available. Holmes does not Murken's concerns about liability in considering this resolution.

Murken said there have been spills around this nation that have exceeded the \$25,000,000 per event required by the Iowa Utilities Board (IUB) and even exceeding \$1,000,000,000 so she is still concerned about the adequacy of the \$25,000,000 per incident amount.

Murken submitted her questions (on file in the Auditor's Office) in written format to the trustees. She hoped the trustees could take some time to look into her questions before taking final action on the resolution.

Susie Petra asked how allowing the pipeline to go forward equates with the obligation to protect our water quality. Dr. Vondra, a professor of geology at ISU, has stated that all pipes leak eventually.

Toot said Petra's question was not pertinent to the resolution before the trustees today which simply lays out requirements for pipeline construction where it crosses drainage district facilities.

Petra said the trustees do not have to go along with the pipeline.

Toot said the trustees do not have to pass the resolution and put the measures it specifies in place. The pipeline will come through Story County regardless of what happens with the resolution. The resolution imposes additional restrictions on Dakota Access to safeguard Story County's drainage district facilities.

Arlene Bates wanted to know how many associates will be employed by I & S to supervise the pipeline where it crosses tile lines and stream beds. The pipeline will cross a large portion of the state – a big area to keep track of. She wants someone there when Dakota Access is on her farm to watch their progress.

Moon said inspectors will be on site to witness every crossing. He believes I & S will be using 10-15 people state-wide to monitor crossings.

Sharon Guber said everything she's heard so far is "we believe" or "we think". She would like some more definitive answers. She also wanted to know if the route of the pipeline can be diverted around obstacles. Is there any flexibility in the route? Can the pipeline be rerouted so it does not intersect the district tile?

Brenda Brink asked if the trustees were going to help the people stop the pipeline.

Toot asked if Brink had a specific question regarding the resolution.

Brink said there was a pipeline leak in South Dakota just last week and this pipeline is a disaster waiting to happen.

Holmes said Brink is asking the trustees for something they have no authority to do. Code of Iowa Section 479A.1 confers on the Iowa Utilities Board (IUB) the power to act on behalf of the federal government in determining pipeline company compliance with federal standards for pipelines. 479B.1 grants the IUB the authority to implement certain controls over hazardous liquid pipelines to protect landowners. Nowhere in Chapter 479 does it mention county Boards of Supervisors or Drainage District Trustees. The trustees cannot, by law, do what Brink is asking.

Brink said she believes that, in the court of law, the pipeline will be shown to not be good for the state of Iowa and she would hope that the trustees would help the people and be on the right side of history.

Mary Ann Dilla seconded Brink's comments.

Dave Lowman asked if there will be enough supervisors to cover the work if someone gets sick or has a family emergency.

Moon said resolution requires that Dakota Access gives 48 hours' notice before they can proceed with their work. Moon said I & S has sufficient staff to cover work absences.

Lowman said if no one can be there then Dakota Access can go ahead.

Holmes said as long as Dakota Access has given 48 hours' notice they can proceed. Sanders said the contract specifies that I & S will have someone on site to monitor construction and I & S has staffed up to meet that requirement.

Larry Koehrsen asked if the \$7,500 fee was sufficient for the South Skunk River crossing. It might be fine for buried tile or drainage ditches but the river is much larger and will be harder to cross. Will the county have to cover expenses in excess of \$7,500 at the Skunk River?

Gerald Johnson farms just south of Ketelsen Marsh. The pipeline will not cross his land but he has 3 natural gas lines through his land. One was built when the soils were wet and when they dried they had just enough clay content that the ground hardened like concrete and rejected his plow for 10 years. Will construction on the pipeline be limited to certain soil conditions or will it go ahead regardless of weather?

Sanders said he believed that if the construction crews are able to install pipeline then they will install pipeline. The role of I & S is to ensure that installation and restoration of the land meets the standards set forth by the IUB.

Clinton said the issues raised here can be communicated to I & S by the County Engineer. The trustees may not be able to answer all the questions raised here or accede to everyone's requests but they do appreciate the effort made by those present to be heard.

Murken said there are still many permits Dakota Access has not acquired, from the Corp of Engineers for example. Do the trustees have to act on this resolution today? Can they take some time to investigate the questions raised here and revisit the resolution at a later date?

Holmes said the resolution is on top of what is already required of Dakota Access. The trustees have a little time to act but if they delay the pipeline will come through without the resolution and without the additional protections it requires.

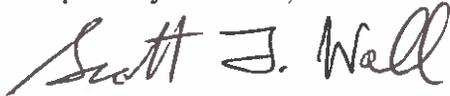
Sanders said the Boone County Supervisors opposed construction of the pipeline by a 3-0 vote last year but they approved this resolution last week. They felt it was their best chance to retain some control over how the pipeline gets built. This issue could have been dealt with in a separate drainage district meeting but Chairman Toot made the decision to include it in the regular board meeting so more people would know about it and that was absolutely the right decision. The resolution was placed on the agenda without any provision for public comment. Again Chairman Toot made the right decision to allow everyone present a chance to have their voices heard.

A year ago Story County held a hearing on and gathered a lot of public input on the pipeline. Sanders said this board made clear then that they had no interest in exceeding their authority. This board has an interest in protecting Story County in whatever way they can. Sanders believes this document does that, he believes it is as thorough as it can be in protecting Story County's interests, he believes people who are absolutely against the pipeline weighed in one creating this document, and he moved approval of Resolution #16-50 so we can move on.

Clinton seconded Sander's motion to approve Resolution #16-50. Toot commented that if the trustees put off acting on the resolution the pipeline will go through. If it goes through with any action by the trustees we will have lost our best chance at having a say in how the pipeline impacts our drainage districts. Motion carried unanimously (MCU).

Clinton moved, seconded by Sanders, to adjourn. MCU. Meeting adjourned at 11:00 a.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Scott T. Wall". The signature is written in a cursive style with a large, stylized "S" and "W".

Scott T. Wall

**DRAINAGE ATTENDANCE SHEET**  
**Drainage District Grant #5**  
**March 22, 2016**

Name	Address	Owner/Tenant
Scott Perovault	23048 580 <sup>th</sup> Ave	Tenant
John Long	214 N Main	owner
Larry Stevens, HR Green Ankeny		Representing City of Nevada
Dennis P. [unclear]	20433 570th Ave.	Both
Michael T. [unclear]	20267 580th AVE	OWNER/TENANT
Carol Collins	58853 250TH ST	NEVADA OWNER
Chuck Myers	25173 620 <sup>th</sup> Ave	Nevada owner
Ken Nelson	1409 SW 3rd ST	Nevada/owner
Jim Conner		
DUNCAN & ZOB KENNER	58135 LINCOLN Hwy	NEVADA
Tracy/Linda Kull	57816 220 <sup>th</sup>	Ames
Randy - Lisa Mintley	20274 570 <sup>th</sup> Ave	Ames
Roger Engstrom	57646-210	5040
DAVE SWENSEN	C1503 - 260 <sup>th</sup>	50201
Bryan Cousseis	25461 620 <sup>th</sup>	owner
Zinn David	57476 190 <sup>th</sup> Ames	owner
Rynn Johnson	1377 country Club Blvd.	owner
DAVE JENSEN	59595 250 <sup>th</sup> ST	OWNER/TENANT
Jeff Taylor	55850 Ames	owner
Bob Taylor	2635 24 <sup>th</sup> ST	owner
JUSTIN VESTER	23941 590 <sup>th</sup> AVE	OWNER/MGR
Eric Jensen	58176 Hite street	OWNER



**QUESTIONS REGARDING PROPOSED RESOLUTION #16-50**

Submitted by Linda Murken, April 5, 2016

*How is anything in this document asking you to exceed your authority?*

**General Questions:**

The IUB has not yet granted a final permit to Dakota Access to construct this pipeline. We have yet to hear from the U.S. Army Corps of Engineers about certain parts of the route. Why are you adopting this now? How is this resolution related to the IUB decision and the IUB's permitting process?

*Most?*

How many counties have passed resolutions similar to this so far?

How many counties have hired I+S for engineering so far?

Has Dakota Access filed an application for any easements to cross drainage districts?

Will you as County Supervisors adopt a similar resolution for the crossing of county roads?

**Page 1:**

In the last "Whereas" it is stated that "The Board has obtained input from the public ... in order to make an informed determination of what conditions are necessary." When was the opportunity for public input specific to conditions for granting an easement?

Last year the Story County Soil and Water District Commissioners took a position in opposition to the pipeline and the Iowa Rural Water Association expressed concerns. Did you take their statements into consideration as public input?

**Page 2, section 1-g:** States that the crossing fee "... shall only be deemed to reimburse a drainage district for ..." and then lists several costs, including engineering costs and inspection costs. Are there additional funds that will be used for the contract with I+S group, or is the amount per crossing the maximum the county will be reimbursed from Dakota Access for this contract? Also see Page 13, section 7-I, which repeats this language and sets the amount at \$7,500 per crossing.

*Scott says \$5000 maybe up to \$6000. This will be sufficient.*

How many drainage districts would the proposed pipeline cross in Story County? (I have identified two, in the western and southeastern parts of the county but am sure there are more.)

**Page 2, section 1-j:** Has the county also contracted with I+S to ensure Dakota Access' compliance with the Agricultural Impact Mitigation Plan? Is the cost of that contract separate and also to be reimbursed by Dakota Access?

Given the ambitious construction goals, construction would be occurring at multiple sites in several counties simultaneously, and might even go on around the clock.

*Darrell says I+S has ramped up. Last yr, Sup's contracted with*

## QUESTIONS REGARDING PROPOSED RESOLUTION #16-50

Submitted by Linda Murken, April 5, 2016

*guess so*  
Has I+S guaranteed that they will have an engineer on-site at as many multiple locations as necessary and at the necessary times to oversee the entire construction process?

**Page 3, Section 2-b and subsequent sections:** This section requires Dakota Access to furnish the board with plats showing the proposed construction and all proposed crossings of the drainage district no later than 90 days prior to the start of the construction. Combined with other timeframes, this might mean construction across drainage districts cannot start until late summer. Are you going to hold them to this? (Dakota Access has asked IUB for expedited treatment so they can begin construction, and IUB has refused the request.)

This is the first of many sections that describes the process of referring disagreements between the Drainage District Engineer and Dakota Access regarding how to proceed to a third party engineer. Most sections do not address whether construction must stop until the third party engineer renders a decision. Can you clarify when Dakota Access would be required to stop when there is a dispute about proper construction techniques, and when they would be allowed to proceed before the third party engineer can intervene?

Are landowners on their own for seeking payment for damages if there is a spill in the drainage district? Might they seek redress from the county as well as from Dakota Access?

**Page 5, Section 2-k:** Refers to work Dakota Access would do after the pipeline is constructed, requiring notice to the county and allowing county to have a Drainage Engineer present. Would the county maintain a contact with I+S for this service, or would the oversight be provided by the County Engineer's office?

**Page 5, Section 2-n:** Does "reasonable attorney fees" include reimbursing the county for time the county attorney would need to devote to this task (and others throughout the document)?

**Page 6, Section 3-a:** This section implies there is no additional funding for the Drainage Engineer other than the \$7500 per crossing. Why the cap? Does this mean if the expenses exceed this amount, the county cannot charge Dakota Access for the difference?

States when the Drainage Engineer needs to be there to observe, but also that if the Drainage Engineer can't get there after being given "proper notice," (no time frame!), Dakota Access can go ahead with work, which would include backfilling.

Later in this section it states that the Drainage Engineer may request that the County Inspector suspend construction if there is an imminent risk to persons or

*see next page*

## QUESTIONS REGARDING PROPOSED RESOLUTION #16-50

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property. Aren't the Drainage Engineer and the County Inspector the same person? And does this provision apply to other sections where the Drainage Engineer/County Inspector is calling in a third party engineer?

**Page 11-12 of 14, section 7-f:** The insurance clause appears to allow Dakota Access the option of being self-insured for the risks associated with the construction and operation of the pipeline. The IUB did not give Dakota Access this option; they required a \$25 million policy, that it be submitted to IUB and refused Dakota Access' request to hold the entire document confidential. How does allowing Dakota Access to self-insure protect Story County?

Is the \$10 million liability coverage in addition to or just part of the \$25 million required by the IUB?

A spill might affect different areas of the state to different extents. Will the state of Iowa and the 18 counties combine any award(s) to get the money where the remediation is needed?

Please note that clean-up of pipeline spills has sometimes exceeded \$1 billion.

### REVIEW AND COMPLETE:

#### Construction and Observation

*where?* Why does a drainage district provide an easement on 150' on either side of the drainage improvement?

#### Ongoing Operations

These conditions apply only to construction. What can you put in these conditions to ensure that Dakota Access will maintain this pipeline safely in perpetuity?

Top of page 9.

? (2) All Project installations must maintain a minimum of two (2) feet clearance based on the projected depth of future District tiles designed for a 1" drainage co-efficient. Said projected depths shall be provided by the District's Drainage Engineer as part of the Application review, and the costs thereof shall be incorporated into the Crossing Fee

Submitted by:  
Linda Murken,  
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*L Amy - the Skunk River  
crossing is a major  
crossing - you don't  
want to be limited to  
\$7500 for that crossing.*