September 21, 2016

Statement from Aaron Norby

3106 Wisconsin Drive

Bismarck, ND 58503

I'm a Professional Land Surveyor in North Dakota and 5 other states and I'm also a Certified Federal Survey under the Bureau of Land Management CFedS program. I also work with Geographic Information Systems (GIS) mapping programs and have developed maps, easements, surveys in Texas, North and South Dakota, Montana and Wyoming for the past 31 years during my career.

After being away from North Dakota for 22 years in Austin, Texas my family and I moved back to North Dakota in 2005. Although I reside with my family in Bismarck, ND, I purchased our family farm near Larson in Burke County where I'm from. Recently, a petroleum pipeline operator and other utilities have sought easements on my land and I have granted those easements in every case. In 2010, I also provided professional services with the engineering firm where I'm employed for GIS mapping and assistance with easements for what was known then as the Burke Divide Williams Water 6" water mainline along Highway 5 between Crosby and Columbus. I also represented my company at the ribbon cutting ceremony in Noonan. The utility is now a WAWSA utility and operation by Williams Rural Water District.

This past **April**, I contacted WAWSA in regards to a water usage survey and service request documents. I was aware that there was an expansion for service being constructed this year from the mainline into Larson, approximately 750 feet into the first outlot of the now unincorporated town. So I was interested in service to our farm home and 2 other neighbors in the town are also requesting service. Since that time, my family and I determined that we would seek service from the same expansion in a few years since we are not there fulltime and our cistern works fine for now. WAWSA staff indicated to me that they would need an easement from me to proceed into Larson from Highway 5 once they had their route established. Through telephone conversation with WAWSA staff, I and they anticipated the line to run into Larson either west or east of and along the "Main Street" ROW, now owned and managed by Keller Township and that WAWSA was to get back to me later in the year with the route.

Now out to **August 15, 2016** I received the easement document in an email from an oil company in Williston, that apparently is constructing the easement documents for WAWSA. On **August 23, 2016** after being out for a week, I opened the email and found an easement document that described the entire tract, with no route map, exhibit or any other indication of where the line proposed was to run on the property. In surveying terms, we refer to these as "blanket easements", a term meaning that the proposed line could be anywhere inside the entire tract of land. In some cases, a preliminary route map may be attached, but not referenced in an easement document, still creating a blanket easement, but at least a landowner would know where the proposed line is to run. Not in my case. I had no idea, other than an inferences from communication with WAWSA staff that the line was to run on the west side of my property and along with the street running into Larson. I asked for an exhibit, that needed to be attached to the easement document and called for in the document.

Seven days later on **August 31, 2016** I received the proposed route map, and the route was revealed to me as an attachment to an email. The screen capture was saved as a JPG file format, it was not labeled in any way with start and termination locations, it also showing a tie to line that is not there and showed

the line running along in my farm field. It was confusing and ambiguous and was not called or referenced in the easement document.

On **September 1, 2016** I spoke with WAWSA staff, whom also expressed surprise to the proposed location as it meandered around a Montana Dakota Utility outlot and although along the west side of my field, was out in the field and followed in the field around another outlot to the south into Larson. This is when the "negotiations" began, with my questions of why there and not on the expected direct route into Larson, reduction of the temporary easement from 50' to 10' and also my need for a properly described utility easement so that encumbrance would be retraceable in the public record not to create future title issues with the land. She said she thought the engineer would approve the temporary construction to 30' and would get back to me on the other questions.

Apparently the same day I asked my questions of WAWSA staff, and just 1 day after the route was revealed to me for the first time, WAWSA staff had to have been in contact with their attorney in Fargo. Because although WAWSA staff was going to get back me as she said that same **Thursday September 1st**, the WAWSA attorney drafted a letter to me **dated the same day**. I received it certified on **September 6th** in which quoting the attorney in his letter to me, "...while there have been numerous communications between yourself and representatives of WAWSA, we have not been able to reach agreement with you to acquire an easement...".

It was disappointing to me and I felt misled that only after 14 days of receiving an easement document by email, 10 days after reading it, and then only 1 day after seeing the route for the first time, and the same day WAWSA telling me they were to get back to me with questions I had, I was under an eminent domain threat. And remember, I worked on the mainline of this project, I want service to our farm from this project and I have always been willing to grant an easement for this project, but yet WAWSA proceeds very quickly to a "Quick Take" option.

My story is not the only story of this practice by water resource organizations as I learned of others and also a very similar situation to mine with the 2 farmers in Pembina County and the PCWRD. I'm a proponent and advocate of utility construction in our state. We need infrastructure, especially water in rural areas, petroleum pipelines to move oil products safely, electric and telecommunication lines. I understand government must have an ability to acquire property in emergencies, rights for the public good and in cases where a landowner is simply not willing to work with the utility. But misuse of "Quick Take" eminent domain simply to provide expediency without regard for landowner rights is a form of hubris, a "I can do what I want attitude." From a landowner perspective, it is not negotiating to ask for proper easement documentation prior to signing an easement. WAWSA is paying nothing for the right to use the land so there is no negotiation there. This isn't about negotiations gone bad, it is about a utility not following through with responsibilities required of them and then pushing the nuclear option on the landowner when asked for basic information to protect title and property. As I reminder and also as how unnecessary these cases can be, I have always stated I did not oppose the utility, indeed I want the utility for our farm home and was willing to grant the easement.

Therefore, I do not support any water resource organizations that are providing service or distribution projects in this state to have "Quick Take" eminent domain authority. The can proceed with standard eminent domain case since planning a water system, engineering the system, permitting the route and surveying the route takes several years of development. They know well in advance where their project is and are able to determine which landowners are not going to work with them.

RIGHT-OF-WAY EASEMENT AGREEMENT

RIGHT-OF-WAY EASEMENT AGREEMENT ("this Agreement"), effective as of this **15th** day of **August, 2016** by and between **Aaron Norby,** with mailing address, **3106 Wisconsin Drive, Bismarck, ND 58503,** as grantor ("Grantor"), and Williams Rural Water District, a political subdivision, whose address is 22 Second Street West, P.O. Box 1285, Williston, North Dakota 58802-1285, as grantee ("the District").

In consideration of the sum of one dollar ($1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor does grant and convey unto the District, its successors and assigns, a permanent right-of-way easement with the right, privilege, and authority of the District to lay, construct, maintain, inspect, test, protect, operate, increase or decrease the capacity of, repair, replace and remove its water mains or pipelines and other appurtenances and fixtures related thereto, including the right to excavate and refill ditches and trenches for the location of such water mains or pipelines and other appurtenances and fixtures related thereto, ("the Easement") through, over, under and across the following described real property situated in **Burke County**, State of North Dakota, described as follows, to-wit:

Township 162 North, Range 94 West 5th P.M.
Section 03: Portion of NENE (Less Outlot 2 of the unplatted portion of Larson Village, tract mfd in Doc #249242)

("the Property").

"SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF."

Grantor grants to the District the right of ingress to and egress from the Easement across the Property, together with any contiguous real property owned by Grantor, by means of routes and lanes

thereon, if existing, or by such route that provides the least practical damage and inconvenience to Grantor.

Upon completion, the Easement shall be no more than ten (10) feet in width with the centerline of the Easement being the water distribution line as installed in the Property.

Grantor grants and conveys to District the right to utilize an additional fifty (50) feet in width of the Property during initial construction, for a total width of fifty (50) feet for the Easement during initial construction.

The District may trim, cut, fell and remove from the Property all trees, underbrush, obstructions, and other vegetation, structure, or obstacles that interfere with the location, construction, operation, inspection, maintenance and repair of the water mains or pipelines and other appurtenances and fixtures related thereto.

After completing the original installation of the water mains or pipelines and other appurtenances and fixtures related thereto, the District shall restore the Property to its original condition to the extent that is reasonable and physically possible.

After completing the original installation of the water mains or pipelines and other appurtenances and fixtures related thereto, including final testing, the District shall reimburse Grantor for any crop damage to the Property resulting from repair, maintenance and replacement necessitated by the operation of the water mains or pipelines and other appurtenances and fixtures related thereto.

The District shall maintain the Easement in good repair so that no unreasonable damage will result from its use to the Property of Grantor, his/her successors and assigns.

Grantor, his/her successors and assigns, reserves all rights to possess, use and enjoy the Property to the fullest possible extent while allowing the exercise by the District of the rights granted in this Agreement as fully as if this conveyance had not been executed, except Grantor shall not erect or construct any building or other structure, plant trees, dig any excavations or diminish or substantially add to the ground cover over said Easement, unless otherwise expressly authorized in writing by the District.

The grant of the Easement by Grantor and other provisions of this Agreement shall constitute a covenant running with the land, together with any contiguous real property owned by Grantor, for the benefit of the District, its successors and assigns, for the longest term available by law.

The District covenants that the District has the power and capacity to hold the Easement under this Agreement. The District takes subject to Grantor's right, title and capacity to grant the Easement under this Agreement.

In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorneys' fees and costs.

This Agreement shall be binding on the heirs, legal representative, successors and assigns of Grantor and the Grantee.

IN WITNESS WHEREOF, Grantor has executed this Agreement on the date set forth in the acknowledgement below, but is effective, however, as of the effective date shown above.

GRANTORS:

_____

Aaron T. Norby

STATE OF _____)
:ss ACKNOWLEDGEMENT
COUNTY OF _____)

On this _____ day of _____, 2016, before me personally appeared, **Aaron T. Norby,** known to me to be the persons described in and who executed the within instrument and acknowledged to me that he/she/they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year above written.

(SEAL)

_____
Notary Public
My Commission Expires: _____

EXHIBIT "A" TO

RIGHT-OF-WAY EASEMENT AGREEMENT

This Agreement is attached to and by reference made a part of the Right-of-Way Easement Agreement dated August 15, 2016, by and between **Aaron Norby**, Grantor, and WILLIAMS RURAL WATER DISTRICT, a political subdivision, (the "District"), covering the following described tract of land situated in Burke County, North Dakota, to-wit:

Township 162 North, Range 94 West 5th P.M.
Section 03: Portion of NENE (Less Outlot 2 of the unplatted portion of Larson Village, tract mfd in Doc #249242)

Notwithstanding any provisions of the attached and foregoing Right-of-Way Easement Agreement shall be subject to the following conditions:

1. The District agrees to bury all pipe at or below forty-eight inch (48") depth and to pay for any physical damage to crops, livestock, timber, fences, or other structural improvements located outside the above-described right-of-way and easement which are caused by construction, maintenance, operation, repairing, alteration, replacement or removal of said pipeline and appurtenant facilities. Furthermore, the District shall compensate Grantor or Grantor's tenant(s) for damages to crops, livestock, timber, and fences which may be occasioned upon said right-of-way during the maintenance of said pipeline after construction is completed. The said Grantor has a right to fully use and enjoy said premises, except as the same may be necessary for the purposes herein conveyed to said District.

Dated this_____day of_____, 2016.

GRANTOR:

_____

Aaron Norby

PIPELINE EASEMENT

North Dakota State Water Commission
County of Mercer
Parcels H-MER-29, H-MER-30, H-MER-31, H-MER-32, and H-MER-33

ALL PERSONS TAKE NOTICE:

That the undersigned, Bruce Voegele and Melissa Voegele, whether one or more, called the Grantor, being the owner of, or having an interest in, land situated in the County of Mercer, State of North Dakota, more fully described below, in consideration of One and No/100 Dollars ($1.00) and other valuable consideration, does hereby grant, convey, and warrant to the State of North Dakota, acting by and through the North Dakota State Water Commission, a state agency and public corporation, with its principal office at 900 East Boulevard Ave., Bismarck, North Dakota 58505, called the Grantee, and to its successors and assigns, the right, privilege, and easement to construct, maintain, operate, inspect, repair, alter, replace, change the size of or remove a pipeline, and appurtenances thereto, for the transportation of water under, across, and through:

Parcel H-MER-29
A 40 foot wide strip of land 20 feet wide on each side of the pipeline centerline lying within the N1/2 SW1/4 Section 17, Township 144 North, Range 88 West of the 5th P.M.

Said tract contains 2.42 acres, more or less.

Temporary Construction Easement
An additional 20 feet of temporary right-of-way lying adjacent to the above described tract for a total construction easement width of 60 feet.

Said tract contains 1.21 acres, more or less.

Parcel H-MER-30
A 40 foot wide strip of land 20 feet wide on each side of the pipeline centerline lying within the N1/2 SE1/4 Section 17, Township 144 North, Range 88 West of the 5th P.M.

Said tract contains 2.42 acres, more or less.

Temporary Construction Easement
An additional 20 feet of temporary right-of-way lying adjacent to the above described tract for a total construction easement width of 60 feet.

Said tract contains 1.21 acres, more or less.

Parcel H-MER-31
A 40 foot wide strip of land 20 feet wide on each side of the pipeline centerline lying within the N1/2 SW1/4 Section 15, Township 144 North, Range 88 West of the 5th P.M.

Said tract contains 2.42 acres, more or less.

Temporary Construction Easement
An additional 20 feet of temporary right-of-way lying adjacent to the above described tract for a total construction easement width of 60 feet.

Said tract contains 1.21 acres, more or less.

Parcel H-MER-32
A 40 foot wide strip of land 20 feet wide on each side of the pipeline centerline lying within the S1/2 SE1/4 NW1/4 Section 15, Township 144 North, Range 88 West of the 5th P.M.

Said tract contains .50 acres, more or less.

Temporary Construction Easement
An additional 20 feet of temporary right-of-way lying adjacent to the above described tract for a total construction easement width of 60 feet.

Said tract contains .25 acres, more or less.

Parcel H-MER-33
A 40 foot wide strip of land 20 feet wide on each side of the pipeline centerline lying within the S1/2 NE1/4 Section 15, Township 144 North, Range 88 West of the 5th P.M.

Said tract contains 2.42 acres, more or less.

Temporary Construction Easement
An additional 20 feet of temporary right-of-way lying adjacent to the above described tract for a total construction easement width of 60 feet.

Said tract contains 1.21 acres, more or less. Bk-640-19

together with the right to utilize additional land for a period up to ~~three~~ two years from the date of this easement, adjacent to the above described tract, for purposes of temporary working space during initial construction of the pipeline, and the right of ingress to and egress from said strip of land across the adjacent lands of the Grantor, for the purposes specified above at the will of the Grantee.

THE GRANTOR AND THE GRANTEE FURTHER AGREE:

1. **Use of right-of-way by Grantor.** Grantor reserves the right to use the surface of the easement strip provided, however, that Grantor, without prior approval of Grantee, shall neither construct nor permit to be constructed any building, structure, or other improvement upon the easement strip which would interfere with Grantee's exercise of the rights conveyed by this pipeline easement, including access to the easement strip.

2. **Appurtenances.** The Grantee shall have the right to install and construct necessary appurtenances upon the surface of the easement strip. Prior to construction, the Grantee will notify the Grantor of the approximate location of such appurtenances if any, to be located on the easement strip, and shall pay to the Grantor the sum of $500 for each appurtenance located at a distance of more than 5 feet from a field boundary or fence line. Such payments shall be paid prior to construction.

3. **Damages.** The Grantee will pay to Grantor or Grantor's tenants, as their respective interests may appear, for damages caused by the operations or activities of the Grantee; provided, however, that the Grantee shall have the right, without liability for damages, to clear, and keep cleared, all trees, brush, and other obstructions from the easement strip that may, in the Grantee's judgment, interfere with the rights and privileges of the Grantee under this pipeline easement.

   If the amount of any damage which Grantor may sustain as a result of Grantee's exercise of rights hereunder cannot be mutually agreed upon, such damages shall be ascertained and determined by three (3) disinterested person; one to be appointed by the Grantor, one by Grantee, and a third by the two so appointed, and the award of such three persons shall be final and conclusive.

4. **Restoration of surface.** The Grantee will restore the surface of the construction area to its original contour as nearly as practicable.

5. **Topsoil segregation.** When excavating the pipeline trench with a backhoe/trackhoe, the Grantee will remove the topsoil separately during the construction of the pipeline for the full width of the pipe trench to a depth of twelve (12) inches or the actual topsoil depth, whichever is less, and to be replaced at the top of the backfill over the pipe trench.

6. **Assignment and covenant by parties.** The rights of either party may be assigned in whole or in part. The terms and provisions of this easement shall constitute covenants running with the land and shall be binding upon, and inure to the benefit of, the parties hereto, their successors, assigns, personal representatives, and heirs.

7. **Grantor's title.** Grantor warrants that he is the owner of, or has an interest in, the land described in this easement, and that he has full right and authority to enter into and deliver this easement. This instrument may be executed in counterparts and each counterpart shall constitute a separate agreement between the parties thereto. Any payments pursuant to this pipeline easement shall be in proportion to the Grantor's interest in the undivided fee simple estate.

8. **Entire agreement.** This instrument contains the entire agreement of the parties and there are no other, or different, agreements or understandings between the Grantor and the Grantee, or its agents. The Grantor, in executing this pipeline easement, has not relied upon any promises, inducements, or representatives of the Grantee, or its agents, except as are set forth herein.

9. **Term of easement.** The term of this easement shall be as long as it is needed by the Grantee, or its assigns, and until a release of this easement is recorded, but shall not exceed ninety-nine (99) years pursuant to NDCC §47-05-02.1.

10. **Tenants.** The Grantor represents that the land described in this easement is (not rented) (rented to) None.

Dated this 10 day of June, 2009.

Bruce Voegele
Grantor

Melissa Voegele
Grantor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF Mercer)

On this 10th day of June, 2009, before me personally appeared Bruce + Melissa Voegele, known to me to be the person(s) described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

Bruce Koppinger
Notary Public

(SEAL)

BRUCE KOPPINGER
NOTARY PUBLIC, STATE OF NORTH DAKOTA
MY COMMISSION EXPIRES AUG 12, 2014

8-12-2014 County, ND
My Commission expires:

MORTGAGEE
MORTGAGOR
INDEXED

192955

STATE OF NORTH DAKOTA
COUNTY OF MERCER

OFFICE OF
COUNTY RECORDER

I hereby certify that the within instrument was filed in this office for record this 10/12/2009 at 9:24 AM, and was duly recorded as Book 181 MISC on Page 411 Fee: $16.00

County Recorder Brenda L. Cook,
By Deputy Kathryn Schumann
Return To: ND STATE WATER COMMISSION, 900 E BOULEVARD
DEPT 770 BISMARCK, ND 58505-0850

COUNTY RECORDER SEAL MERCER COUNTY, N. DAK.