

**JOINT PETITION TO VACATE ROAD**

Claire M. Olson, **Acting CEO & General Manager** of Basin Electric

Power Cooperative (hereinafter "Basin Electric") of 1717 E. Interstate Ave., Bismarck, ND 58503, the owner of the real property described in Part II (a) below, and Sharon A. Norman (hereinafter "Norman") of P.O. Box 514, Frederick, CO 80530, the owner of the real property described in Part II (b) below, being first duly sworn, depose and state as follows:

I

That Basin Electric is the legal owner in fee of the real property described in Part II (a) below, and that it was purchased for the purpose of constructing an electrical substation ac/dc/ac conversion facility thereon. That Norman is the legal owner in fee of the real property described in Part II (b) below, which property is undeveloped.

II

(a) That the legal description of the real property owned by Basin is as follows:

The South Half of the Southeast Quarter of the Southwest Quarter; the South Half of the North Half of the Southeast Quarter of the Southwest Quarter; the Southeast Quarter of the Southwest Quarter of the Southwest Quarter except the west two-hundred twenty feet thereof, and the South Half of the Northeast Quarter of the Southwest Quarter of the Southwest Quarter except the west two-hundred twenty feet thereof, all in Section 28, Township 1 North, Range 8 East of the Black Hills Meridian, Pennington County, South Dakota, containing 40 acres more or less.

(b) That the legal description of the real property owned by Norman is as follows:

The North Half of the Southwest Quarter, the West Half of the Southwest Quarter of the Southwest Quarter, the west two-hundred twenty feet of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter, the North Half and the west two-hundred twenty feet of the South Half of the Northeast Quarter of the

Southwest Quarter of the Southwest Quarter, the North Half of the North Half of the Southeast Quarter of the Southwest Quarter, and that portion of the Northwest Quarter of the Southeast Quarter described as follows: Beginning at a point on the center line of Section 28, 1320 feet north of the quarter-section corner on the south line of said Section; thence east 1320 feet to Corner No. 1; thence north 204 feet to Corner No. 2 and the center of a county road; thence north 54 degrees 45 minutes west 974 feet to Corner No. 3 along the center line of said county road; thence north 32 degrees 55 minutes west 662 feet (some recorded instrument also gives this distance as 732 feet) to Corner No. 4; thence west 166 feet to Corner No. 5; thence south 1320 feet to the point of beginning, excepting therefrom a strip of land across the south side of said tract 99 feet wide, all located in Section 28, Township 1 North, Range 8 East of the Black Hills Meridian, Pennington County, South Dakota.

III

That the real property described in Part II (a) and (b) above is within three miles of the boundaries of the City of Rapid City and therefore, pursuant to SDCL 9-45-13.1, is within the City of Rapid City's extraterritorial jurisdiction for the purposes of vacating streets and roads.

IV

That as a result of a Judgment entered on the 23<sup>rd</sup> day of December, 1970, by Circuit Court Judge Thomas Parker in an action entitled Robert L. Taylor, Roma L. Taylor, Herman Piebenga and Esther Piebenga, Plaintiffs, vs. Pennington County; The County Commission of Pennington County Consisting of Donald Kelly, Lloyd St Pierre, Ray Parker, Martin Collins and Walter Taylor; Ed Packard, county Superintendent of Highways, and Glenn Best, Sheriff of Pennington County, Defendants, which Judgment has been recorded on December 23, 1979 in Book 104, Page 1 of Miscellaneous Records,

Pennington County Register of Deeds, a certain road identified as Sammis Road was declared to be a legally established and existing road.

V

That the legal description of the road described in said Judgment as the "Sammis Road" is set forth as follows:

Beginning at a point on the Rapid City and Spring Creek County Road (commonly known as the Gramberg Road) near where said road crosses Dry Creek on land owned by Jacob Spahr in Section Twenty-Eight (28), Township One North (T1N), Range Eight East (R8E), thence west and south to the Southwest (SW) corner of the Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4) of said Section Twenty-Eight (28), thence west on section line between Sections Twenty-Eight (28) and Thirty-Three (33), Twenty-Nine (29) and Thirty-Two (32), thence diagonally across the north one-half (1/2) of Section Thirty-One (31) to the Southeast (SE) corner of the Northeast Quarter (NE1/4) of Section Thirty-Six (36), Township One North (T1N), Range Seven East (R7E), thence in a westerly direction across Sections Thirty-Six (36) and Thirty-Five (35) to interest the Rapid City and Rockerville Road, thence west on the line of said road to where same bears south, thence west and north on line of present travel to a point on section line between Sections Twenty-Eight (28) and Thirty-Three (33), near the Quarter (1/4) Section corner, thence westerly, keeping as near the section line as possible, to the Section corner common to Sections Twenty-Eight (28), Twenty-Nine (29), Thirty-Two (32), and Thirty-Three (33), thence north on section line to intersect the Rapid City and Sheridan County Road.

VI

That the portion of the Sammis Road set forth above and as described in the 1970 Judgment that traverses the Property described in Section II (a) and (b) above, if any, has not been utilized as a road since at some unknown time prior to the entry of that Judgment and for more than twenty years since the entry of the 1970 Judgment, and is in fact within the boundaries of fenced pastures. Further that from a visual inspection of the Property described in Part II (a) and (b) above, either on-site or by viewing of aerial

photographs, it is nearly impossible to ascertain the existence of any such road that may have existed at some time prior to the December 23, 1970 Judgment.

VII

That the portion of the road set forth in the 1970 Judgment that Petitioners desire to be vacated is only that portion that traverses the real property set forth in Part II (a) and (b) above that does not follow the section line between Sections Twenty-Eight (28) and Section Thirty-Three (33), Township 1 North, Range 8 East of the Black Hills Meridian. Therefore the portion of the road subject to this Petition to Vacate is located exclusively on the land of Petitioners, and there are no other property owners whose property is adjacent to the portion of the road Petitioners seek to vacate.

VIII

For more than twenty years, no portion of the Sammis Road as described in the 1970 Judgment east of U.S. Highway 16, which is approximately four miles west of the property of the Petitioners as set forth in Part II (a) and (b) hereof, has been used as a public road. Nor has any portion of the Sammis Road east of the Petitioners' property been open or used by the public for more than twenty years last past.

IX

That the vacation of that portion of the Sammis road subject to this Petition would not be injurious to the public health, welfare or safety in that it is not and has not been utilized as a public (or private) road for more than twenty-five years last past, and that there are numerous alternate public roads currently existing and in use in the reasonably nearby area.

X.

That the vacation of that portion of Sammis Road sought to be vacated by this Petition would facilitate the construction of the electrical substation ac/dc/ac conversion site and associated electric transmission lines by Basin and eliminate a title encumbrance to the property owned by Norman.

XI.

That attached hereto and marked Attachment A is an aerial photograph of that part of the Sammis Road that Petitioners desire to have vacated, that is the route marked "actual line of travel" and/or that route not following the section line marked "route from old map (never used)" and "route of description (used in part)". Attached as Exhibit B is the same aerial photograph as shown on Exhibit A, without the markings, demonstrating the lack of any visual evidence of the existence of the portion of the Sammis Road which is the subject of this Petition to Vacate. Exhibit C is a geological Survey made from aerial photographs taken in 1952 the encompasses the eastern slope of the Black Hills, including the area east of U.S. Highway 16 to the Old Folsom Road to where there marked Sammis Road intersects with the Old Folsom Road in Section 28, and showing other roads in the vicinity.

WHEREFORE, Petitioners respectfully requests that the City of Rapid City, pursuant to SDCL 9-45-10 through 9-45-12, vacate that portion of Sammis Road, not following the Section line, contained within the boundaries of the real property described in Part II (a) and (b) of this Petition. By making this Petition, Petitioners, as the owners

of the property adjoining that portion of the Sammis Road subject to this Petition, hereby consent to such vacation.

Dated this 27<sup>th</sup> day of March, 2002

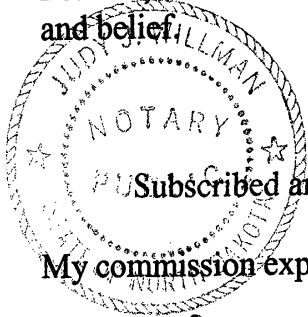
Claire M. Olson  
Basin Electric Power Cooperative  
By Its: Acting CEO & General Manager

**VERIFICATION**

Claire M. Olson, the Acting CEO & General Manager, of Basin Electric being first duly sworn on oath, states that he has read the foregoing Petition, knows the contents of such Petition, and that said Petition is in all things true and correct to the best of his knowledge and belief.

Claire M. Olson

Subscribed and sworn to before me this 27<sup>th</sup> day of March, 2002.



My commission expires: JUDY J. WILLMAN  
Notary Public, State of North Dakota  
My Commission Expires March 1, 2008

Judy J. Willman  
Notary Public

Sharon A. Norman  
Sharon A. Norman

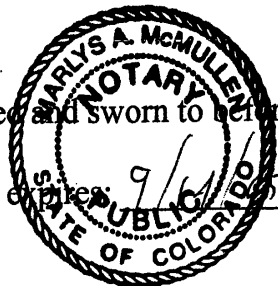
**VERIFICATION**

Sharon A. Norman being first duly sworn on oath, states that she has read the foregoing Petition, knows the contents of such Petition, and that said Petition is in all things true and correct to the best of her knowledge and belief.

Sharon A. Norman

Subscribed and sworn to before me this 26<sup>th</sup> day of March, 2002.

My commission expires: 9/16/05



My Commission Expires Sept. 14, 2005

Marys A. McMullen  
Notary Public