



# CITY OF RAPID CITY

## RAPID CITY, SOUTH DAKOTA 57701-2724

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### Office of the City Attorney

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April 16, 2013

Ken Edel  
20 Anaconda Road  
Rapid City, SD 57701

Dear Mr. Edel:

I am writing in response to your letter to Stacey Titus dated April 1, 2013 which you copied to me and several others. In that letter, you refer to issues with stray current from MDU anode beds which you believe has caused damage to the water line at the home of your daughter, Jodie Bunker, and you request that the City take action to correct the water line problem at Ms. Bunker's home.

A short history of this matter is appropriate. In 2003-04, the City developed the Schamber Additional Water Main Extension Project No.: W03-2386 at the request of the Cleghorn Springs Water Association to provide city water services to its customers. The Bunkers' home at 1905 38<sup>th</sup> Street was affected by this improvement, which involved installing a new 1 inch copper water service to connect the home to an existing water main in 38<sup>th</sup> Street. It appears that in 2011, the Bunkers had a leak in their service line, and the repairs cost them \$3,316.02. You have asserted that the entire service line to the house is "unserviceable" because of corrosion caused by the nearby MDU anode bed. You have estimated the cost to replace the entire service line to be \$5,600.

In January 2012, you contacted the City concerning this matter. At that time, Public Works engineer Michelle Schweitzer informed you of the City's position that your claim was with MDU, not the City, based on the belief that the damage was caused by a nearby MDU anode bed. She suggested that you request an exception to the standard specifications to allow you to use an alternate material or an alternate method of cathodically protecting the service line. In February 2012, you filed a formal claim with the City of Rapid City which was submitted to the City's insurer, Travelers Indemnity Company. On March 3, 2012 Travelers provided formal notice of denial of the claim based on its determination that there was no evidence of the City's negligence. Again, it was suggested that you file a claim with MDU, and Travelers also provided information about filing a claim against the contractor of the water utility improvement.

On April 6, 2012, Travelers issued an amended denial providing further support for its conclusion that your claim must be denied because the City was not negligent. In that letter, Travelers reiterated that the City followed proper protocol in installing the service line, including using One Call Utility Locate, and recommended that you address your problems to MDU, not the City. Travelers noted that you had not provided any scientific evidence or proof that the damage for which you are seeking payment was caused by the anode bed, nor had you ever provided any documentation that the City caused your damage. For all of these reasons, Travelers denied your claim.

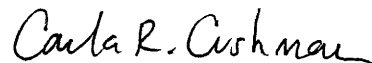
Thereafter, you filed a lawsuit in small claims court in Pennington County. The City denied the claims and asserted defenses in accordance with its position that the City has acted properly and that any claim you have should be addressed to MDU. Last month, you voluntarily dismissed that lawsuit. Had that matter gone to trial, you would have been required to provide sufficient proof that the City breached a duty it owed to the Bunkers as well as scientific evidence of the cause of your damage.

Throughout your communications with various City staff, the City has consistently communicated its position that it acted appropriately in installing the water service line. Nothing in your latest correspondence has caused the City to change its mind. Further, the City has repeatedly stated that if you believe your water line was damaged by the MDU anode bed, you should assert a claim against MDU. Your letter implies that you agree, in that two of your four requested actions involve relocating and/or abandoning the MDU anode beds – actions which are entirely within the control of MDU, not the City. Despite ample opportunities to do so, you have provided no evidence that the City was negligent nor have you proven that your damage was the result of City's wrongful act.

As we have stated before, the City will entertain a request for an exception from the standard specifications to replace the service line with an alternate material, such as plastic. However, the City has not changed its position about your claim, and no action will be taken on your request that the City relocate the water line, replace the service line, or relocate/abandon the MDU anode bed.

If you have any questions in this regard, please feel free to give me a call at any time.

Sincerely,



Carla R. Cushman  
Assistant City Attorney

cc: Mayor Sam Kooiker  
Bonny Petersen  
Ron Sasso  
Ron Blum  
Terry Wolterstorff  
Stacey Titus  
Keith L'Esperance