

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 7 – J

DATE: May 8-10, 2018

SUBJECT

West River / Lyman – Jones Rural Water Systems, Inc. Easement Resolution (SDSU)

CONTROLLING STATUTE, RULE, OR POLICY

SDCL [5-2-10](#) & [5-2-11](#).

BACKGROUND / DISCUSSION

West River / Lyman – Jones Rural Water Systems, Inc. is seeking to locate a section of its water transmission / distribution pipeline across a portion of the land occupied by SDSU's Cottonwood Range & Livestock Field Station in rural Jackson County. To simplify the document trail, the easement encompasses the entirety of the water pipeline at the SDSU Field Station, but the only portion that is new is that portion located in the northeast quarter (NE1/4) of section 21. The location of the new water pipeline does not unnecessarily interfere with SDSU's use of the land.

IMPACT AND RECOMMENDATION

South Dakota State University (SDSU) requests that the Board of Regents adopt the Resolution set forth in Attachment I requesting the grant of an easement to West River / Lyman – Jones Rural Water Systems, Inc. to erect, construct, reconstruct, replace, repair, use, maintain, and operate a potable water transmission or distribution pipeline, together with all necessary and appurtenant incidental structures and appliances necessary for the operation and maintenance of such water pipeline. The foregoing will allow West River / Lyman – Jones Rural Water Systems, Inc. to locate a portion of its water pipeline on SDSU's property in Jackson County.

Staff recommends approval.

ATTACHMENTS

Attachment I – Resolution Requesting the Grant of an Easement to West River / Lyman – Jones Rural Water Systems, Inc.

Attachment I, Exhibit I – Draft Easement to West River / Lyman – Jones Rural Water Systems, Inc.

DRAFT MOTION 20180508_7-J:

I move to approve and adopt the Resolution set forth in Attachment I, requesting the Commissioner of School and Public Lands to proceed with the easement as stated therein.

RESOLUTION

Resolution requesting the grant of an easement through, under, in, on and across portions of land occupied by South Dakota State University for the use and benefit of West River / Lyman – Jones Rural Water Systems, Inc.

The South Dakota Board of Regents (hereinafter referred to as “Grantor”), on behalf of South Dakota State University, in consideration of one dollar (\$1) and other good and valuable consideration, and pursuant to the authority vested in Grantor under SDCL § 5-2-11, hereby requests the Commissioner of School and Public Lands to draw up all necessary documents and to forward them to the Governor to request their execution in order to grant to West River / Lyman – Jones Rural Water Systems, Inc., an easement to erect, construct, reconstruct, replace, repair, use, maintain, and operate a potable water transmission or distribution pipeline, together with all necessary and appurtenant incidental structures and appliances necessary for the operation and maintenance of such water pipeline through, under, in, on and across the following legally described real estate within the Jackson County:

The strip of land being fifty (50) feet wide, extending twenty-five (25) feet on each side of the pipeline as constructed, in the East Half (E1/2) of the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of Section Seventeen (17); the North Half (N1/2) of the North Half (N1/2) of the North Half (N1/2), the West Half (W1/2) of the West Half (W1/2) of the Northwest Quarter (NW1/4), and the Southwest Quarter (SW1/4), all of Section Twenty-one (21); the West Half (W1/2) of the East Half (E1/2) of the Northwest Quarter (NW1/4) of Section Twenty-eight (28); all in Township One South (1S), Range Nineteen East (19E), Black Hills Meridian, as further shown in Exhibit A to Exhibit I, a copy of which is attached hereto and incorporated into this agreement, the same as if written at length herein.

Grantor requests that any grant of easement be consistent with, or responsive to, the issues identified in the draft grant of easement prepared by the Office of School and Public Lands and attached hereto as Exhibit I, without restricting the ability of the parties to further revise and finalize the details of the final document(s).

Grantor requests that any grant of easement provides that Grantor shall not be liable for any personal injury, property damage, or other liability to Grantee, its agents, employees, invitees, or to any other party caused by or related to Grantee’s use of the premises, irrespective of how such injury or damage may be caused, whether by action of the elements or acts of negligence of Grantee or any other party, and that Grantee further agree to reimburse Grantor for any judgment against it arising from Grantee’s use of the property.

Dated this ____ day of May, 2018

SOUTH DAKOTA BOARD OF REGENTS

By _____

Bob Sutton

President

Certification:

I have compared the foregoing with an action taken by the Board of Regents at a regular meeting of the Board in Vermillion, South Dakota, on the ____ day of May, 2018, and I hereby certify that the same is a true, correct, and complete copy thereof and that the same has not been rescinded.

Dated this ____ day of May, 2018

SOUTH DAKOTA BOARD OF REGENTS

By _____

John W. Bastian

Secretary

**This document prepared by:
Office of School and Public Lands
(605)773-3303
500 East Capitol Avenue
Pierre, South Dakota 57501-5070**

**STATE OF SOUTH DAKOTA
PERMANENT EASEMENT**

THIS EASEMENT is made and entered by and between the State of South Dakota acting through its Governor and Commissioner of School and Public Lands on behalf of the South Dakota Board of Regents, 500 East Capitol, Pierre, South Dakota, 57501 [the "State"] and between West River / Lyman – Jones Rural Water Systems, Inc., 307 Main Street, Murdo, South Dakota, 57559 ["WRLJ Rural Water"].

WHEREAS WRLJ Rural Water is desirous of acquiring a permanent easement for the purpose of constructing and maintaining a potable water transmission or distribution pipeline and related facilities above and below the surface of the proposed easement area upon land belonging to the State, and the State is desirous of cooperating with WRLJ Rural Water for said easement.

NOW THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. For and in consideration of the sum of One dollar (\$1.00), the receipt of which is hereby acknowledged and other valuable consideration set forth in this Easement, the State hereby grants and conveys to WRLJ Rural Water a permanent easement for the following described purposes: the right to erect, construct, reconstruct, replace, repair, use, maintain, and operate a potable water transmission or distribution pipeline, together with all necessary and appurtenant incidental structures and appliances necessary for the operation and maintenance of such water pipeline through, under, in, on and across the following legally described real estate within the County of Jackson, State of South Dakota (the "Easement Area"):

The strip of land being fifty (50) feet wide, extending twenty-five (25) feet on each side of the pipeline as constructed, in the East Half (E1/2) of the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of Section Seventeen (17); the North Half (N1/2) of the North Half (N1/2) of the

North Half (N1/2), the West Half (W1/2) of the West Half (W1/2) of the Northwest Quarter (NW1/4), and the Southwest Quarter (SW1/4), all of Section Twenty-one (21); the West Half (W1/2) of the East Half (E1/2) of the Northwest Quarter (NW1/4) of Section Twenty-eight (28); all in Township One South (1S), Range Nineteen East (19E), Black Hills Meridian, as further shown in Exhibit A, a copy of which is attached hereto and incorporated into this agreement, the same as if written at length herein.

2. WRLJ Rural Water agrees that any construction will not interfere unnecessarily with the State's use of its adjoining property and will not endanger or injure any improvements thereon. The State reserves the right to utilize the Property for all purposes not inconsistent with the easement rights herein conveyed. The State and / or WRLJ Rural Water may enter upon the above described property for the purposes of effectuating the grant of and reserved rights in this easement.

3. WRLJ Rural Water further agrees, at no cost to the State, to be responsible for the operation, repair, maintenance, replacement, or removal of the water pipeline and other utilities or structures installed by WRLJ Rural Water and associated with the operation and maintenance of said pipeline.

4. WRLJ Rural Water further understands and agrees, that to the extent provided by South Dakota law it shall be liable for all damages caused by the construction, operation, maintenance, enlargement, upgrade, repair, alteration, removal or replacement of the water pipeline and other utilities or structures installed by WRLJ Rural Water and associated with the operation and maintenance of said pipeline and WRLJ Rural Water agrees to indemnify, defend, and hold the State harmless for the same. Nothing in this agreement shall be read to waive Grantor's sovereign immunity.

5. WRLJ Rural Water further understands and agrees that the State has and retains the right to lease, sell or otherwise convey the Easement Area, or any part thereof, provided, however, that this Easement shall remain in full force and effect until the expiration of the term hereof notwithstanding such lease, sale or conveyance. In addition, the above-described easement is subject to a reservation of further easements and rights-of way for irrigation ditches and canals, as provided by South Dakota Codified Laws 5-4-2, so long as they do not infringe upon the rights granted hereunder. This Easement is also subject to a reservation of rights relating to deposits of coal, ores, metal and other minerals, asphaltum, oil, gas and like substances provided South Dakota Constitution Art. VIII, §19, South Dakota Codified Laws 5-7-3 to 5-7-6, inclusive and South Dakota Codified Laws 5-2-12, and in any law of the State

of South Dakota reserving any rights of any kind in said State or any of its departments, institutions, subdivisions, funds or accounts.

6. In consideration of this Easement, WRLJ Rural Water will not impose special assessments on the State to pay for connection costs to WRLJ Rural Water that may be associated with the development of the above describe area.

7. The land herein described is to be used for the water pipeline and other utilities or structures associated with the operation and maintenance of said pipeline and no other purpose whatsoever, and that should the above described real property granted by this Easement cease to be used for said purposes for two consecutive years, this Easement reverts to the State or its successor and assigns.

8. This agreement and attachments shall constitute the entire agreement between the State and WRLJ Rural Water. This agreement supersedes any other written or oral agreements between the State and WRLJ Rural Water pertaining to the Easement Area, or any portion thereof. This agreement can be modified only in writing and signed by the State and WRLJ Rural Water or their respective heirs, representatives, executors, administrators, successors and assigns.

9. This easement shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of the parties hereto.

10. This Easement is governed by and shall be construed in accordance with the laws of the State of South Dakota.

11. This Easement shall be binding upon the heirs, executors, administrators, assigns and successors in interest of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Easement on this ____ day of _____, 2018.

STATE OF SOUTH DAKOTA

BY: _____
Dennis Daugaard
Governor

ATTEST:

Ryan Brunner
Commissioner of School and Public Lands

WEST RIVER / LYMAN –
JONES RURAL WATER
SYSTEMS, INC.

BY: _____

ATTEST:

ACKNOWLEDGMENTS

STATE OF SOUTH DAKOTA)
) ss
COUNTY OF HUGHES)

On this ____ day of _____, 2018, before me the undersigned Notary Public within aforesaid County and State, personally appeared Dennis Daugaard, Governor, known to me to be the person described herein who executed the within and forgoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

Notary Seal

Notary Public

Commission Expires

[illegible]

On this ____ day of _____, 2018, before me the undersigned Notary Public within aforesaid County and State, personally appeared Ryan Brunner, Commissioner of South Dakota School and Public Lands, known to me to be the person described herein who executed the within and forgoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

Notary Seal

Notary Public

Commission Expires

[illegible]

On this ____ day of _____, 2018, before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of West River / Lyman – Jones Rural Water Systems, Inc., and that s/he, as _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of West River / Lyman – Jones Rural Water Systems, Inc., as _____.

Notary Seal

Notary Public

Commission Expires

[illegible]

On this ____ day of _____, 2018, before me the undersigned Notary Public within aforesaid County and State, personally appeared _____, known to me to be the person described herein who executed the within and forgoing instrument for the purposes therein contained and acknowledged to me that he executed the same.

Notary Seal

Notary Public

Commission Expires

