BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT FILED BY TM RURAL WATER DISTRICT AGAINST MP NEXLEVEL, LLC FOR AN INCIDENT OCCURING ON JULY 26, 2012 IN SALEM, SOUTH DAKOTA	) ENFORCEMENT PANEL) RECOMMENDATION TO) THE SD ONE CALL BOARD))) OC12-014

On August 2, 2012 the South Dakota Public Utilities Commission received a complaint from TM Rural Water District (herein "TM") of Parker, SD against MP Nexlevel, LLC (herein "Nexlevel") of Maple Lake, MN. The complaint alleges Nexlevel performed excavation outside the ticket area.

A copy of the complaint was sent to Nexlevel on August 3, 2012. Nexlevel responded to the Complaint on August 20, 2012. In its response Nexlevel acknowledged their error and stated the steps taken to prevent a violation in the future.

On August 29, 2012, pursuant to SDCL 49-7A-22 a panel of five One Call Board members (herein "Panel") convened. The Panel met to determine whether probable cause exists to believe the violation occurred as described in the complaint. The Panel found sufficient evidence was presented to determine probable cause exists to believe a violation of SDCL 57-7A-5 occurred. Specifically, the Panel found Nexlevel performed excavation outside the ticket area. Based on evidence in the Complaint, the Panel found the violation to be intentional.

The Panel found it proper to assess a One Thousand Dollar ($1,000) penalty but found it proper to conditionally suspend Five Hundred Dollars ($500) of the penalty because there have not been any prior complaints against Nexlevel and the company took steps to prevent future violations.

The suspension conditions are as follows:

(i) Nexlevel shall make payment of the **Five Hundred Dollar ($500) unsuspended portion** of the penalty within thirty days of issuance of the final SD One Call Board Order.

(ii) Nexlevel must not be found guilty of a One Call violation in the next 12 months.

If any of the conditions are not met, the entire One Thousand Dollar Penalty ($1,000) will be immediately due and owing.

The Panel recommends the South Dakota One Call Board accept its findings and recommendations herein. If either party to this Complaint disagrees or objects to the recommendations or findings herein, a hearing may be requested. To request a hearing you must reply within twenty days from the date of service of this notice. Failure to request a hearing is considered acceptance of the recommendations and findings herein.

The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile by first class mail, or by other electronic means.

Larry L. Janes, Executive Director

Date 8-31-2012