

## MIDWEST DIGEST

### Flooded Roads Cause Headaches In S.D.

SIoux FALLS (AP) — Roads closed because of flooding are causing headaches for motorists in southeastern South Dakota. The distance between the towns without flooding is only 10 miles.

Flooding also has forced a few people from their homes in the region and has prompted sandbagging in many areas. Sioux Falls officials said the flood threat there had passed. City officials earlier were forced to release 500,000 gallons of untreated wastewater into the Big Sioux River to keep the sanitary sewer system from backing up into people's basements after floodwaters flooded into the system.

The Vermillion and James River drainages still were experiencing either flooding or rising water. Near Mitchell, the James River is expected to crest by Friday at 25.3 feet, which would tie the record set in 2001. Officials said damage has been minimal.

### Prenatal Care For Some In Neb. To Stop

LINCOLN, Neb. (AP) — State-funded prenatal care for about 1,500 pregnant illegal and legal residents of Nebraska won't be restored this year.

Knowing she lacked the votes to pass it, Sen. Kathy Campbell of Lincoln on Wednesday pulled the bill from consideration. It would have continued Nebraska's more than two-decade-old policy of allowing unborn children to qualify for care, regardless of the legal status of the mother.

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## PETA

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have failed to provide the organization with documents related to the university's taxpayer-funded experiments on monkeys.

"The action is PETA versus the South Dakota Board of Regents and the University of South Dakota," Collier told Jensen. "so we move that USD is a proper defendant in this case. They (USD) have been named in other cases. In this case, a USD employee, not a member of the Board of Regents, handled this particular FOI (Freedom of Information) request. It is the USD employee that basically said 'No, these are the things you can't have,' and the BOR (Board of Regents) delegates a lot of its administrative power to institutional executives."

Collier was referring to Laura Jenki, USD vice president for research. In July 2008, PETA submitted a public records act request to Jenki, and to James

Shekleton, general counsel for the Regents.

The request was denied, as was an appeal through the South Dakota Board of Hearing Examiners.

Action by the South Dakota Legislature during its session last year amended South Dakota law pertaining to public records, prompting PETA to once again request records from USD.

According to court papers filed Wednesday, USD responded on July 31, 2009, claiming that certain information requests were denied based upon exemptions in the new law and that USD would charge an estimated fee of \$2,000 to provide the requested information.

Court files show PETA requested 19 pieces of information in the summer of 2009, ranging from protocol revision request forms and veterinary medical records, to video and photographic footage of experiments, and copies of various reports, correspondence and minutes.

That request was ultimately denied. PETA made a third request in late October, paring its list of requested documents to 11. It also asked for copies of three records pertaining to the use of rabbits in

experiments at USD.

Jenki responded with a specific reason for denying nearly every document. In some cases, she noted, the requested document didn't exist. Some of the materials being sought were exempt from South Dakota public records law to protect specific details of the research.

In some instances, Jenki agreed to provide information, such as meeting minutes pertaining to experiments, but personnel names were redacted in accordance to state law.

"This was a vice president at USD that was making these decisions," Collier said.

The South Dakota Public Records Act imposes duties on public officials and entities, she said. "The entity, USD, is a proper defendant, so the proper county (for the legal proceedings) is here where USD is located."

Collier said that USD wasn't added as a defendant to the complaint as a means of controlling venue.

She cited several lawsuits that have gone to court in recent years involving the Regents and USD. "Venue was appropriately found in

Clay County," she said. "I don't think this is any different than any of those other actions."

Luce noted that the one of the statutes Collier was referring to talks specifically about action against a public officer or person.

"That's not what this action is," he said. "She can talk about some public officer being involved, but the subsection in the venue statute clearly does not relate to state agencies or anything other than actions against officers or persons."

Luce discounted the argument that the University of South Dakota is a proper party because they have been sued before, and that the court action has taken place in Clay County.

"They may have been sued on issues regarding employment and things like that, but the statute that I cited in my demand for a change of venue is very specific," Luce said.

That statute, he said, indicates that the Board of Regents is the "body corporate" to be sued regarding holding, leasing and managing property belonging to educational institutions under its control.

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